STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Ste. 502
Austin, TX 78701

SOAH DOCKET NO. 453-03-2101.M4
MDR TRACKING NO. M4-02-3698-01

JOHN A. SAZY, M.D.,	§	**BEFORE THE STATE OFFICE**
PETITIONER	§	
V.	§	
	§	
TEXAS WORKERS' COMPENSATION	§	**OF**
COMMISSION AND	§	
TRAVELERS INDEMNITY	§	
COMPANY OF CONNECTICUT,	§	
RESPONDENTS	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Petitioner, John A. Sazy, M.D., appealed a Texas Workers' Compensation Commission's Medical Review Division's (MRD's) decision that found certain surgery charges were included within global CPT codes. The amount in dispute is $2,681.50. This decision finds that Petitioner is entitled to reimbursement because the specific procedures were more complex than services usually considered in the global service charge.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing convened April 14, 2003, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with the undersigned administrative law judge (ALJ) presiding. Petitioner represented himself, *pro se,* and Dan Flanagan represented the Carrier. The MRD did not participate in the hearing. After the hearing concluded, the record was left open until May 5, 2003, for submission of additional documents and arguments.

II. DISCUSSION

On October 15, 2001, Petitioner performed surgery on a workers' compensation claimant.[1] In Petitioner's operative report, he listed the following procedures:

- right iliac crest bone graft, allograft, fat graft, laminectomy, bilateral foraminotomy at L4, L5, and S1;
- neuroplasty of the dura and the nerve roots of L5 and S1, bilaterally;
- L4, L5, S1 posterior spinal fusion;

[1]Petitioner diagnosed the claimant as having degenerative disc and joint disease with L4-5, L5-S1 herniated nucleus pulposus, back and leg pain, severe vascular disease, and coronary artery disease. Ex. 1, p. 2.

- left transforaminal lateral interbody fusion L4-5, L5-S1; and
- somatosensory evoked potential monitoring.[2]

For the surgery, Petitioner billed ten CPT codes for lumbar and spine fusion, spine surgery, bone harvesting, and musculoskeletal surgery, and the Carrier paid for those charges. In addition, Petitioner billed for eight other codes:

Reported Code	Description of Service	Charge	Paid	MAR[3]
63047	removal of spinal lamina	$5,155	$3,540	n/a
63048	removal of spinal lamina	$1,115	$708	n/a
63048	removal of spinal lamina	$1,115	$708	n/a
64714-22[4]	revise low back nerve(s)	$1,890	0	$657.50[5]
64722 -22[6]	relieve pressure on nerves(s)	$1,530	0	506
64722 -22	relieve pressure on nerves(s)	$1,530	0	506
64722 -22	relieve pressure on nerves(s)	$1,530	0	506
64722 -22	relieve pressure on nerves(s)	$1,530	0	506

[2]Ex. 1, p. 3.

[3]Maximum allowable reimbursement.

[4]The Medical Fee Guideline (MFG) describes this code as "lumbar plexus."

[5]The MFG allows a MAR of $1,315 for CPT code 64714 and $1,012 for CPT code 64722. The MFG reduces the MAR by half when the procedures are performed as part of another surgery. Surgery Ground Rule I.D.1.b.

[6]The MFG describes this code as "decompression; unspecified nerve(s)."

The Carrier paid the MAR for the first three codes listed in the chart. It denied payment for the last five by stating, "rebundled to a more comprehensive code that more accurately describes the entire procedure performed." MRD also found the two CPT codes at issue, 64714-22 and 64722-22, were global to or included in CPT code 63047, removal of spinal lamina. The MRD decision states:

> Pursuant to the Global Service Data for Orthopaedic Surgery, CPT Code 64714 is listed under the >Generic' intraoperative services that are included in the global service package for this code. The TWCC modifier 22 is defined as "Unusual Services: When the service(s) provided is greater than that usually required for the listed procedure, add the modifier '22' to the CPT code. DOP is required. However, the adding of the TWCC modifier does not alleviate the global aspect of the code billed.

Petitioner's Evidence and Arguments

In 1983, the claimant underwent a first laminectomy and discectomy, which left a large amount of scar tissue about the dura. Thus, according to Petitioner, it was necessary to remove the scar tissue, and this procedure is a totally separate, unrelated procedure to spinal fusion and instrumentation.

As Petitioner described it, removing the scar tissue usually takes between an hour to five hours, and in this case, took at least two hours. The procedure is a delicate one and requires removal of dissecting nerves from scar tissue that has adhered to bone. If Petitioner had made an error, the claimant would have been paralyzed. This excerpt from Petitioner's operative report describes the work for which he seeks reimbursement:

> [The scar tissue] taken down by performing a neuroplasty[7] of the dura by removing the scar tissue from adhesions to the laminae of S1, L5 and L4. This was done with a curette and Kerrison rongeur. After this was done, the foramen and remaining laminae of S1, L5 and L4 was dissected and removed with Kerrison rongeur and the foramen opened at L4, L5, S1 bilaterally with Kerrison rongeur, thereby completing the neuroplasty of the nerve roots and dura and the laminectomy with decompression of the foramen from L4 to the sacrum. After this was done the nerve roots [im]proved their conduction by 2 milliseconds at L5 and S1 bilaterally. The patient then had all adhesions from the nerve at L5 and S2 completely dissected and freed up so that there was no remaining scar tissue about the L5 and S1 nerve roots.

Petitioner also testified that in over 98 percent of cases requiring the neuroplasty, there is an immediate nerve-response improvement, as reflected on the monitoring device. Thus, it is a vital procedure for second surgeries. If Petitioner had completed the fusion without the neuroplasty, the

[7]Neuroplasty is "plastic surgery of a nerve." *Dorland's Illustrated Medical Dictionary*, 28th Edition, at 1133 (1994).

bones would not have moved properly. If he had put screws into the vertebrae and stretched them out without the procedure, the nerves would have remained stuck to them and stretched with the bones, resulting in nerve injury. Petitioner said he had to free the nerves so he could work with the bone.

> Petitioner highlighted an excerpt from the Global Service Data for Orthopedic Surgery (GSDOS)[8] from the American Academy of Orthopaedic Surgeons, under the heading, *Unusual Dissection of Tendons and Nerves in Repeat Surgery*:
>
> In repeat surgical cases with extensive scarring requiring complicated, time-consuming arterial/venous lysis, tenolysis, or neuroplasty, a -22 modifier may be utilized along with an operative report and/or supporting letter documenting the extra work and time required.[9]

Carrier's Evidence and Arguments

The Carrier noted that Petitioner failed to record the exact amount of time required to perform the neuroplasty, and the MFG requires documentation of procedure when modifier -22 is used.[10] The Carrier also noted that the GSDOS[11] defines as generic or bundled services to be included within the global service package:

> Surgical approach, with necessary identification, isolation, and protection of anatomical structures, including hemostasis and nerve stimulation, or skin scar revision (*e.g.* . . . 64702-64726).

The Carrier also argued that 64714-22 should have been billed only once.

Petitioner's Response

While acknowledging that the Carrier and MRD may have been correct had this been the first surgery for the claimant, Petitioner emphasized the fact that this was a second surgery. His work in this case was unusual dissection of nerves in repeat surgery and should be governed by the GSDOS provision describing extensive scarring that requires complicated, time-consuming neuroplasty. Further, because the procedure was necessary at each of four nerve roots B two at L5 and two at S1 B Petitioner billed code 64722 four times.

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[8]In its preamble, the MFG requires participants to code correctly using the MFG and the GSDOS.

[9]Ex. 1, p. 7.

[10]MFG VIII.B.

[11]The two-page excerpt from the GSDOS was filed after the hearing. It is admitted into evidence, as Exhibit 4.

III. ANALYSIS

The ALJ agrees with Petitioner's arguments. Although the GSDOS rules generally require bundling of CPT codes 64702 - 64726, the description states that work for those codes includes "necessary identification, isolation, and protection of anatomical structures, including hemostasis and nerve stimulation, or skin scar revision." It does not mention removing scar tissue from nerves. The
GSDOS description in the section entitled, *Unusual Dissection of Tendons and Nerves in Repeat Surgery*, describes the work Petitioner did for the claimant.

The description requires documentation of the extra work and time required. Petitioner's written documentation describes the extra work he did, and while it would have been preferable if he contemporaneously recorded the time required for this part of the surgery, his testimony was adequate to support his claim that the work took significant time.

For these reasons, the ALJ finds the charges were appropriate and should be paid. Therefore, the Carrier is ordered to pay the additional sum of $2,681.50 for the surgery.

IV. FINDINGS OF FACT

1. On October 15, 2001, Petitioner, John A. Sazy, M.D., performed surgery on a workers' compensation claimant.

2. In Petitioner's operative report, he listed the following procedures:

   - right iliac crest bone graft, allograft, fat graft, laminectomy, bilateral foraminotomy at L4, L5, and S1;
   - neuroplasty of the dura and the nerve roots of L5 and S1, bilaterally;
   - L4, L5, S1 posterior spinal fusion;
   - left transforaminal lateral interbody fusion L4-5, L5-S1; and
   - somatosensory evoked potential monitoring.

3. For the surgery, Petitioner billed ten CPT codes for lumbar and spine fusion, spine surgery, bone harvesting, and musculoskeletal surgery, and the Carrier paid for those charges.

4. In addition to the ten CPT codes mentioned in the previous Finding of Fact, Petitioner billed for eight additional codes: 63047, removal of spinal lamina; 63048, removal of spinal lamina (twice); 64714-22, revise low back nerves; and 64722 -22; relieve low back nerves (four times).

5. Travelers Indemnity Company of Connecticut, the Carrier, was the workers' compensation carrier for the workers' compensation claimant's employer on the date of injury.

6. The Carrier paid the maximum allowable reimbursement (MAR) for CPT codes 63047 and 63048 but denied payment for CPT codes 64714-22 and 64722-22, asserting they were global to the charges for 63047 and 63048.

7. Based on a statement in the Global Service Data for Orthopaedic Surgery (GSDOS), the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD) also found the two CPT codes at issue, 64714-22 and 64722-22, were global to or included in CPT code 63047, removal of spinal lamina.

8. Petitioner timely appealed the MRD decision.

9. The Commission sent notice of the hearing on February 24, 2003.

10. The notice included a statement of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

11. The hearing convened April 14, 2003, and the Petitioner and the Carrier were both represented.

12. The Medical Fee Guideline (MFG) MAR for CPT code 64714 is $1,315 and for CPT code 64722 is $1,012.

13. The MFG reduces the MAR by half when the procedures are performed as part of another surgery. Surgery Ground Rule I.D.1.b.

14. In 1983, the claimant underwent a first laminectomy and discectomy, which left a large amount of scar tissue about the dura.

15. For the 2001 surgery, it was necessary to remove the scar tissue before performing a spinal fusion.

16. Removing the scar tissue or neuroplasty is a separate, unrelated procedure to spinal fusion and instrumentation.

17. Neuroplasty usually takes between an hour to five hours, and in this case, took at least two hours.

18. The procedure is a delicate one and requires removal of dissecting nerves from scar tissue that has adhered to bone.

19. Petitioner removed scar tissue from four nerve roots.

20. If Petitioner had performed a fusion without the removing the scar tissue from the nerve roots, the bones would not have moved properly.

21. If Petitioner had put screws into the claimant's vertebrae and stretched them out without the procedure, the nerves would have remained stuck to them and stretched with the bones, resulting in nerve injury.

22. The GSDOS under the heading, *Unusual Dissection of Tendons and Nerves in Repeat Surgery*, allows use of a -22 modifier in repeat surgical cases with extensive scarring requiring complicated, time-consuming arterial/venous lysis, tenolysis, or neuroplasty, if the work is supported by documentation of the extra work and time required.

23. Petitioner's operative report describes the extra work required for the charges billed under CPT codes 64714-22 and 64722-22.

24. The additional work took between one and four hours.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 413.031.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

5. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21.

6. The surgical services Petitioner provided in removing scar tissue from four nerves was an *Unusual Dissection of Tendons and Nerves in Repeat Surgery*, as described in the GSDOS and were properly billed using a -22 modifier.

7. Petitioner adequately documented the time and extra work required, as required by the GSDOS.

8. Petitioner is entitled to additional reimbursement of $2,681.50 for the specific services provided in removing scar tissue from the four nerve roots.

ORDER

IT IS ORDERED that Travelers Indemnity Company of Connecticut reimburse John A. Sazy, M.D., the additional amount of $2,681.50 for surgery he performed on October 15, 2001.

Signed July 2, 2003.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS