

TEXAS MUTUAL INSURANCE CO.	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
v.	§	OF
	§	
DONALD KRAMER, M.D.	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

Texas Mutual Insurance Company (“Texas Mutual”) challenges an Independent Review Organization (“IRO”) decision approving preauthorization for bilateral facet injections and trigger point injections to be performed by Respondent Donald Kramer, M.D. on \_\_\_ (Claimant). The Administrative Law Judge (“ALJ”) finds that (1) the request for preauthorization should be dismissed for lack of jurisdiction because Dr. Kramer did not request reconsideration of Texas Mutual’s preauthorization denial before submitting this case to the Texas Workers’ Compensation Commission for medical dispute resolution, and (2) to the extent SOAH has jurisdiction to reach the merits of this case, the request for preauthorization is denied because the requested treatment has already been provided.

#### **I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

Pursuant to notice issued on June 4, 2003, ALJ Gary Elkins convened the hearing on June 30, 2003, at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Texas Mutual appeared through its attorney, Christopher H. Trickey. Dr. Kramer did not appear at the hearing and did not file a motion to appear telephonically.

No party contested SOAH’s authority to hear and decide this dispute. Texas Mutual argued, however, that the appropriate outcome of this proceeding was a dismissal of Dr. Kramer’s preauthorization request because both the Commission and the SOAH lacked jurisdiction to consider the merits of the issue. Following the presentation of Texas Mutual’s arguments and evidence, the hearing was closed on the same day.

#### **II. SUMMARY OF DECISION**

As set out in the Findings of Fact and Conclusions of Law, the ALJ concludes the following:

1. The request for preauthorization should have been dismissed for lack of jurisdiction because Dr. Kramer did not request reconsideration of Texas Mutual’s preauthorization denial.
2. To the extent SOAH has jurisdiction to reach the merits of this case regarding preauthorization, preauthorization should not be granted for the requested services because the services have already been performed by Dr. Kramer.

### **III. FINDINGS OF FACT**

1. On \_\_\_, \_\_\_ (“Claimant”), sustained an on-the-job injury.
2. At the time of Claimant’s injury, Texas Mutual Insurance Company (“Texas Mutual”) provided workers’ compensation coverage to Claimant’s employer.
3. On January 21, 2003, Donald Kramer, M.D. requested preauthorization from Texas Mutual to perform trigger point injections and facet joint injections on Claimant.
4. On January 24, 2003, Texas Mutual denied preauthorization for the requested services.
5. Dr. Kramer did not request that Texas Mutual reconsider its denial of preauthorization.
6. On or about February 7, 2003, Dr. Kramer filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission (“Commission”).
7. On April, 9, 2003, Texas Mutual filed a position statement with the Commission regarding Dr. Kramer’s medical dispute resolution request, arguing that Dr. Kramer’s request should be dismissed because he had not requested reconsideration of Texas Mutual’s preauthorization denial.
8. On April 23, 2003, the Independent Review Organization issued its decision, finding that the requested services should be preauthorized.
9. On May 6, 2003, Dr. Kramer performed the requested services on Claimant.
10. On May 8, 2003, Texas Mutual timely filed a request for hearing at SOAH.
11. The services performed on May 6, 2003, were not performed on an emergency basis.

### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers’ Compensation Commission has jurisdiction to decide issues relating to preauthorization, pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 et seq.
2. The State Office of Administrative Hearings has jurisdiction over matters relating to preauthorization, including consideration of jurisdictional challenges, and has the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §§ 402.073 and 413.031(d), and TEX. GOV’T CODE ANN. ch. 2003.
3. Texas Mutual timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.

4. Proper and timely notice of the hearing was effected upon the parties in accordance with TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. Texas Mutual had the burden of proof by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (I).
6. The requested non-emergency services required preauthorization under 28 TAC § 134.600.
7. Texas Mutual and Dr. Kramer were at all times subject to the medical dispute resolution rules regarding preauthorization disputes, including 28 TAC § 133.308. and 28 TAC § 134.600.
8. Pursuant to 28 TAC §§ 134.600(g)(3) and 133.308, a healthcare provider's request for reconsideration of a carrier's preauthorization denial is a required step in the medical dispute resolution process. Failure to complete this step before filing for Commission Medical Dispute Resolution is grounds for dismissal of a request for medical dispute resolution regarding preauthorization.
9. The Commission's preauthorization rule, 28 TAC § 134.600, defines "preauthorization as the "prospective approval obtained from the insurance carrier by the requestor or injured employee prior to providing the health care treatment or services."
10. Neither the Texas Labor Code nor the Commission's rules provide for retrospective preauthorization.
11. Texas Mutual is not liable for the medical services for which Dr. Kramer did not obtain preauthorization.

### **ORDER**

IT IS ORDERED that Dr. Donald Kramer's request for preauthorization is dismissed in its entirety. IT IS FURTHER ORDERED that to the extent SOAH has jurisdiction to consider the merits of this case, preauthorization of the treatment and services requested by Respondent Dr. Kramer is denied.

SIGNED this 18<sup>th</sup> day of July 2003.

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**GARY ELKINS**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS