

SOAH DOCKET NO. 453-03-3995.M4
[TWCC MDR NO. M4-03-0626-01]

**METROCREST ORTHOPAEDICS AND
SPORTS MEDICINE,**
 Petitioner

V.

**THE PHOENIX INSURANCE
COMPANY,**
 Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Metrocrest Orthopaedics & Sports Medicine (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through its Medical Review Division (MRD), denying additional reimbursement for lumbar diskography¹ procedures provided to injured worker ____ (Claimant).

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that The Phoenix Insurance Company (Respondent) is liable for reimbursing Petitioner the sum of \$924.00, plus applicable interest, for the lumbar diskography procedures.

The hearing convened on November 19, 2003, with State Office of Administrative Hearings ALJ Howard S. Seitzman presiding. Petitioner appeared through its designated representative, James A. Guess, M.D. Respondent appeared through its designated representative, Dan Flanagan. The hearing concluded and the record closed that same day. Neither party objected to notice or jurisdiction.

¹ Sometimes spelled "discography," the procedure involves the injection of a contrast media into the disk to assist in identifying the source of pain..

On July 18, 2002, Petitioner performed a lumbar diskography on Claimant at three separate levels, L3-4, L4-5 and L5-S1. Petitioner invoiced Respondent for each level under CPT Code 72295-WP.² Petitioner requested \$462.00 for each level. Respondent reimbursed Petitioner \$462.00 and asserted the CPT Code encompassed all three levels as a single procedure. Petitioner requested a medical fee dispute and in its May 30, 2003 Decision and Order, the MRD stated the “fee is for the lumbar area and not per level as indicated by the 1996 MFG CPT descriptor.”

The only issue in this case is whether CPT Code 72295-WP covers all three levels or whether each level is billed as a separate procedure. No previous SOAH decisions on this issue have been identified.

Respondent relies upon the CPT Code descriptor and upon the modifier-WP to support its total payment of \$462.00. Petitioner contends that nothing in the descriptor states that diskography at multi-levels is a single procedure for reimbursement and relies upon a February 1998 letter from the American Medical Association (AMA) stating “it is appropriate to report the radiological supervision and interpretation codes for cervical (72285) and lumbar (72295) diskography for each level evaluated.”

The descriptor for CPT Code 72295 is “Diskography, lumbar, radiological supervision and interpretation.” The -WP (Whole Procedure) modifier indicates that both the professional and the technical components were performed by a single provider.

² The applicable guideline is the 1996 Medical Fee Guideline (MFG), effective April 1, 1996. 28 TEX. ADMIN. CODE § 134.

Nothing in the CPT Code 72295 descriptor, the -WP modifier, or the 1996 MFG Radiology/Nuclear Medicine Ground Rules suggests that the reimbursement is for the entire lumbar area. The AMA developed the CPT Codes adopted by the Commission.³ The February 1998 AMA letter is persuasive, especially absent any specific evidence of a contrary historic practice.

Petitioner is entitled to recover an additional \$924.00, plus applicable interest.

II. FINDINGS OF FACT

1. On July 18, 2002, Metrocrest Orthopaedics & Sports Medicine (Petitioner) performed a lumbar diskography on injured worker ____ (Claimant) at three separate levels, L3-4, L4-5 and L5-S1.
2. Petitioner invoiced The Phoenix Insurance Company (Respondent) \$462.00 for each level under CPT Code 72295-WP.
3. Respondent reimbursed Petitioner a total of \$462.00 based upon its interpretation that CPT Code 72295-WP encompasses all three levels as a single procedure.
4. Diskography involves the injection of a contrast media into the disk to assist in identifying the source of pain.
5. The American Medical Association (AMA) developed the CPT Codes adopted by the Texas Workers' Compensation Commission (Commission).
6. Under the AMA's February 1998 interpretation, each level is a separate procedure for CPT Code 72295.
7. The descriptor for CPT Code 72295 is "Diskography, lumbar, radiological supervision and interpretation." The -WP (Whole Procedure) modifier indicates that both the professional and the technical components were performed by a single provider.
8. Neither the CPT Code 72295 descriptor, nor the -WP modifier, nor the 1996 MFG Radiology/Nuclear Medicine Ground Rules suggests that the reimbursement is for the entire lumbar area.
9. The amount in dispute is \$924.00, plus applicable interest.

³ 1996 MFG Notice of Disclaimer.

10. Respondent denied Petitioner's requests for additional reimbursement for lumbar diskography procedures provided to Claimant.
11. The Commission, acting through its Medical Review Division, denied Petitioner additional reimbursement for lumbar diskography procedures provided to Claimant.
12. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on November 19, 2003, with SOAH Administrative Law Judge Howard S. Seitzman presiding. Petitioner appeared through its designated representative, James A. Guess, M.D. Respondent appeared through its designated representative, Dan Flanagan. The hearing concluded and the record closed that same day.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. The applicable guideline is the 1996 Medical Fee Guideline (MFG) effective April 1, 1996. 28 TEX. ADMIN. CODE § 134.
7. Under CPT Code 72295-WP, it is appropriate to report each level as a separate procedure.
8. Petitioner established, by a preponderance of the evidence, that Respondent failed to properly reimburse charges associated with a July 18, 2002, a lumbar diskography on Claimant at three separate levels, L3-4, L4-5 and L5-S1 and is liable for reimbursing Petitioner \$924.00, plus applicable interest.

ORDER

THEREFORE IT IS ORDERED that The Phoenix Insurance Company reimburse Metrocrest Orthopaedics & Sports Medicine the sum of \$924.00, plus applicable interest, for charges associated with a July 18, 2002 lumbar diskography for _____

SIGNED December 22, 2003.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**