

KENNETH G. BERLINER, M.D.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
AMERICAN HOME ASSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

Kenneth G. Berliner, M.D. (Petitioner) has appealed the findings of an independent review organization (IRO) affirming the denial by American Home Assurance Company (Carrier) of pre-authorization for right knee meniscal debridement<sup>1</sup> and chondroplasty<sup>2</sup> to be administered to Petitioner's patient (Claimant). The Administrative Law Judge (ALJ) finds that pre-authorization should be ordered because the requested treatment is medically necessary to cure or relieve the effects naturally resulting from Claimant's compensable injury.

#### I. JURISDICTION, NOTICE, AND VENUE

The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on August 20, 2003. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Sharon Cloninger convened the hearing September 22, 2003, in the William P. Clements Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. Petitioner appeared *pro se* by telephone. Carrier failed to appear. The hearing concluded and the record closed that same day.

#### II. BACKGROUND

Claimant incurred a compensable injury to both knees on \_\_\_\_, when she fell over some boxes at work. An MRI of her right knee taken on April 16, 2002, revealed a large joint effusion, or fluid collection within the joint, with medial meniscal tears.

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<sup>1</sup> Debridement is the surgical removal of lacerated, devitalized, or contaminated tissue. *Merriam Webster's Medical Dictionary* (1995), p. 161.

<sup>2</sup> Chondroplasty is used to repair loose cartilage. (Petitioner's testimony).

Petitioner, an orthopedic surgeon, is Claimant's treating physician. He requested pre-authorization from Carrier to perform debridement and chondroplasty to repair the meniscal tears and any loose cartilage in Claimant's right knee. Carrier denied the request. Petitioner requested an appeal of Carrier's denial before the Commission's Medical Review Division, pursuant to 28 TAC § 134.600(g). The Commission referred the appeal request to an IRO, as permitted under 28 TAC § 133.308. On July 9, 2003, the IRO recommended non-authorization on the basis that the requested treatment is not medically necessary. On July 18, 2003, Petitioner appealed the IRO decision, which culminated in this hearing before SOAH.

### **III. DISCUSSION**

#### **A. Applicable Law**

The only issue in this case is whether, by a preponderance of the evidence, there is medical necessity for the requested treatment. Medical necessity is defined in TEX. LABOR CODE ANN. §408.021(a), which states:

- (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:
  - (1) cures or relieves the effects naturally resulting from the compensable injury;
  - (2) promotes recovery; or
  - (3) enhances the ability of the employee to return to or retain employment.

Under 28 TAC §148.21(h), the appealing party has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LABOR CODE ANN. § 413.031. Thus, Petitioner must prove the requested treatment is reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

#### **B. Evidence**

The evidence consisted of Petitioner's testimony. He testified that the requested treatment is medically necessary to repair meniscus tears and loose cartilage which Claimant suffered when she incurred her compensable injury. He disagreed with the IRO physician's conclusion that the cause of Claimant's symptoms is degenerative arthritis, which cannot be effectively treated by the requested surgical procedure. He said while it is true that Claimant has arthritis in her right knee-because everyone over the age of 30 has arthritis in the joints to some degree-the requested treatment has been shown to be beneficial in patients such as Claimant who have arthritis with mechanical symptoms, and also in patients with meniscal tears, such as Claimant.

He also testified that it is clear that Claimant did not have effusions prior to her compensable injury, and that it is the injury rather than arthritis which caused the intraarticular<sup>3</sup> damage that he seeks to treat with the debridement and chondroplasty.

#### IV. ANALYSIS

Petitioner has met his burden of establishing that the requested treatment is medically necessary and that it should be pre-authorized. The requested treatment would relieve Claimant's mechanical symptoms, such as locking of her knee, which resulted from her compensable injury. There is therefore sufficient evidence to prove the requested treatment will cure or relieve the effects naturally resulting from Claimant's compensable injury. Thus, Petitioner is entitled to pre-authorization of the debridement and chondroplasty for Claimant under TEX. LABOR CODE ANN. § 408.021(a).

#### V. FINDINGS OF FACT

1. Claimant suffered a compensable injury to her knee on \_\_\_\_\_, when she fell over some boxes at work.
2. American Home Assurance Company (Carrier) was the insurance provider for Claimant's employer at the time of her injury.
3. Kenneth G. Berliner, M.D. (Petitioner) is Claimant's treating physician.
4. Claimant's compensable injury consists in part of immediate post-injury effusion and meniscal tears in her right knee.
5. Debridement and chondroplasty would relieve the mechanical symptoms-such as the locking of Claimant's right knee-that resulted from her compensable injury.
6. Petitioner requested pre-authorization from Carrier for Claimant to undergo debridement and chondroplasty in her right knee.
7. Carrier denied Petitioner's request for pre-authorization on the basis that the treatment is not medically necessary.
8. Following the denial referenced in Finding of Fact No. 7, Petitioner filed a timely request with the Texas Workers' Compensation Commission (TWCC) for medical dispute resolution.
9. Petitioner's request was randomly assigned to an independent review organization (IRO) by the Commission's Medical Review Division.
10. The IRO issued a decision July 9, 2003, affirming the denial of Petitioner's request for pre-authorization.

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<sup>3</sup> Intraarticular *adj.*: situated within, occurring within, or administered by entering a joint. *Merriam Webster Medical Dictionary* (1995), p. 337.

11. On July 18, 2003, Petitioner filed a timely request for hearing to appeal the IRO decision.
12. Notice of the hearing was sent to the parties on August 20, 2003.
13. The notice contained a statement of the time, place, and nature of the hearing; a statement of 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.
14. Administrative Law Judge Sharon Cloninger convened the hearing September 22, 2003, in the William Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.

Petitioner appeared *pro se* via telephone. Carrier failed to appear. The hearing concluded and the record was closed that same date.

## **VI. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. Chapter 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. Petitioner met his burden of proving the requested treatment is medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the foregoing Findings of Fact and Conclusions of Law, the requested treatment should be pre-authorized.

## **ORDER**

IT IS, THEREFORE, ORDERED that American Home Assurance Company shall pay the reasonable costs of the debridement and chondroplasty requested by Kenneth G. Berliner, M.D., for treatment of Claimant's right knee.

**SIGNED October 20, 2003.**

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**SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**