

**SOAH DOCKET NO. 453-04-1982.M5  
TWCC MRD# M5-03-3315-01**

<b>IRVING IMAGING</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>TEXAS MUTUAL INSURANCE CO,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This case is an appeal by Irving Imaging (“petitioner”) from a decision of an independent review organization (“IRO”) on behalf of the Texas Workers’ Compensation Commission (“commission”) in a dispute regarding the medical necessity for magnetic resonance imaging (“MRI”). The IRO found that the insurer, Texas Mutual Insurance Co. (“respondent”), properly denied reimbursement for a lumbar MRI performed by Petitioner in the diagnosis of a claimant suffering from lower back pain.

Petitioner challenged the decision on the basis that the treatment at issue was, in fact, medically necessary, within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that reimbursement of Petitioner should be denied, as previously ordered.

**JURISDICTION AND VENUE**

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction or venue.

## STATEMENT OF THE CASE

The hearing in this docket was convened on March 22, 2004, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by Peter Rogers, attorney. Respondent was represented by Patricia Eads, attorney. After presentation of evidence and argument, the hearing was adjourned and the record was closed on that same date.<sup>1</sup>

The record revealed that on \_\_\_\_, the claimant suffered a compensable injury when he fell on his right side, partly braking the fall with his right hand. After the claimant’s lower-back pain from the injury had persisted for about three weeks, his treating physicians referred him for an MRI of the lumbar spine, which was performed by Petitioner on March 3, 2003.

When Petitioner subsequently billed the Respondent (insurer for the claimant’s employer) \$1,100.00 for the MRI, Respondent denied reimbursement on the grounds that the service had been medically unnecessary.<sup>2</sup> Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on November 17, 2003, concluding that the patient in this case had exhibited no conditions that would justify an early MRI (*i.e.*, prior to the failure of six weeks of conservative care) and that the disputed service was indeed medically unnecessary.

The Commission’s Medical Review Division (“MRD”) reviewed the IRO’s decision and, on November 19, 2003, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

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<sup>1</sup> The staff of the Commission formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of the hearing.

<sup>2</sup> The denial of the disputed services in the EOB from Respondent also made reference to the code “RG,” meaning: “The treatment/service provided exceeds medically accepted utilization review criteria and/or reimbursement guidelines established for severity of injury, intensity of service and appropriateness of care.”

## **THE PARTIES' EVIDENCE AND ARGUMENTS**

### **A. PETITIONER**

Petitioner argued that the disputed MRI was appropriate under nationally recognized treatment guidelines for workers' compensation cases (specifically, the "Presley-Reed Guidelines"). Dr. Jenny Fugere, a licensed chiropractor who treated the claimant in this case, testified that the patient's condition satisfied those guidelines' criteria for an early MRI (one administered between 21 and 28 days after the date of injury). Specifically, Dr. Fugere noted that the claimant's subjective assessment of pain in his lower back consistently registered at 7 on a scale of 10 for several weeks after the injury and that the claimant experienced continuing radiculopathy in his buttocks and upper legs. Moreover, said Dr. Fugere, in evaluating the need for an MRI, the treating physicians took into account the twisting position of the claimant's body at the time that he fell. Such an alignment put the lumbar spine in a particularly weak and vulnerable position at the time of impact.

Dr. Greg Bunting, a chiropractor who referred the claimant to Dr. Fugere, reiterated these same rationales in a letter dated May 6, 2003. He added that many other orthopedic tests done shortly after the claimant's injury indicated a possible disc injury and thus concluded, "The combination of this history, subjective findings, and objective findings made it absolutely necessary to send this patient for the lumbar MRI to visualize the discs."

After an orthopedic consultation with the claimant on April 3, 2003 (a month after the disputed MRI), David Lewis, M.D., reported that the patient was still experiencing moderate radicular pain, which (as described by earlier by Dr. Fugere) extended into the "upper posterolateral buttocks and thighs bilaterally."

### **B. RESPONDENT**

Respondent directly countered the Petitioner's contention that the disputed MRI was consistent with appropriate medical care, as defined in authoritative treatment guidelines. Dr. Nicholas Tsourmas, a board-certified orthopedic surgeon, testified that such an early MRI would not be countenanced under the *Spine Treatment Guideline*, which formerly governed Commission practice on this subject (and which, while now procedurally superseded, nevertheless remains a valid

compilation of standards, based on nationally recognized treatment patterns), nor under guidelines or protocols promulgated by the North American Spine Society and the American Academy of Orthopedic Surgery.

Dr. David Alvarado, a licensed chiropractor who also testified for the Respondent, concluded that the claimant's condition in this case did not satisfy the standards generally taught to chiropractors for determining when an early MRI is appropriate. While a patient's radiculopathy would be an indicator of some conditions meriting immediate referral for an MRI, both Dr. Alvarado and Dr. Tsourmas asserted a lack of proper evidence for radiculopathy in this claimant. The pain termed "radicular" or "radiculopathy" by the treating physicians was *bilateral* -extending into both of the claimant's buttocks and upper thighs. Dr. Alvarado noted that radiculopathy -pain generated in the extremities because of an inflamed nerve root -is rarely bilateral. Such symmetrical symptoms would occur only if two opposite nerve roots were similarly affected -a result that would probably require the presence of a tumor, significant lesion, or relatively drastic discopathy (none of which was observed in this case).

Moreover, noted Dr. Alvarado, testing showed the claimant's reflexes to be normal on his first visit to Dr. Fugere -a condition inconsistent with the nerve-root compromise or compression that produces radiculopathy.

With respect to the Petitioner's contention that the claimant's persistent pain justified an early MRI (either in itself or in conjunction with other factors), Dr. Alvarado pointed out that Dr. Fugere's "daily progress notes," recording the claimant's therapy sessions during the month prior to the MRI, reflect a slow but steady improvement in the patient's perception of pain. While the claimant continued to rate his pain at 7 on a scale of 10 throughout the period, he also acknowledged the percentage of improvement in pain since his first visit as five percent on February 20, 2003, seven percent on February 21, ten percent on February 24, and 15 percent on March 1, 2003. Even such slight improvement, asserted Dr. Alvarado, provided a rationale for continuing the same conservative care the claimant had so far received, not for looking to an MRI to assess a need for significant changes in treatment.

Both Dr. Tsourmas and Dr. Alvarado emphasized that, in the context of the claimant's

clinical presentation at the time, an MRI was most unlikely to dictate any immediate change in the patient's treatment. And, indeed, Dr. Fugere confirmed, on cross-examination, that the treating physicians did not really alter the claimant's care after obtaining the disputed MRI.

### **ANALYSIS**

Petitioner bears the burden of proving that the factual basis or analytical rationale for the IRO's decision in this case was invalid. In the ALJ's view, it has not discharged that burden. The record developed in this case bolsters the IRO's determination that proper indications for an MRI in this case would have included "neurologic deficits, evidence of radiculopathy, suspected neurological disorders, localized back pain with radiculopathy, and failure of 6 weeks of conservative care" -and that the claimant exhibited none of these indications at the time the disputed MRI was ordered.

Dr. Alvarado and Dr. Tsourmas rebutted quite persuasively the Petitioner's contention that the claimant in this case experienced the type of persistent pain and radiculopathy that would justify an early MRI. In the medical records presented, the treating physicians generally appear to have used the terms "radiculopathy" and "radiculitis" loosely (if not absolutely incorrectly) to mean simply a diffuse sort of pain. The claimant's persisting pain, while fairly intense, apparently never prevented him from continuing to work and thus did not represent the sort of "unremitting" or debilitating pain that some of the guidelines cited by the parties define as an indicator for an immediate MRI. Finally, the Petitioner never clearly established the identity, source, and relevant content of the "Presley-Reed Guidelines" upon which it relied.<sup>3</sup> But even conceding that the weight of the parties' respective evidentiary and legal presentations may have been generally comparable, Petitioner certainly has not demonstrated by a preponderance of the evidence that the prior decisions of the IRO and MRD should be overturned.

### **CONCLUSION**

The ALJ finds that, under the record provided in this case, the medical services at issue have not been shown to be medically necessary. Reimbursement for these services should be denied,

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<sup>3</sup> Dr. Alvarado and Dr. Tsourmas testified that they had never heard of these guidelines.

accordingly, as initially determined by the IRO.

### **FINDINGS OF FACT**

1. On \_\_\_\_, the claimant suffered a compensable injury under the Texas Worker's Compensation Act (Athe Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.*, when he fell on his right side, partly braking the fall with his right hand. Subsequent to the injury, claimant experienced persistent pain in the lower back, buttocks, and upper thighs.
2. After the claimant's treating physicians had provided about three weeks of conservative care (including passive and active chiropractic modalities) for the conditions noted in Finding of Fact No. 1, they referred the claimant for magnetic resonance imaging ("MRI") of the lumbar spine, which was performed by Irving Imaging ("Petitioner") on March 3, 2003.
3. Petitioner sought reimbursement for the MRI noted in Finding of Fact No. 2 from Texas Mutual Insurance Co. ("Respondent"), the insurer for the claimant's employer.
4. Respondent denied the requested reimbursement on grounds that the MRI was medically unnecessary.
5. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.
6. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on November 17, 2003, concluding that the claimant had exhibited no conditions that would justify an early MRI (*i.e.*, prior to the failure of six weeks of conservative care) and that the disputed service was thus medically unnecessary.
7. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated November 19, 2003, in dispute resolution docket No. M5 \_\_\_\_.
8. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the MRD decision regarding reimbursement.
9. The Commission mailed notice of the hearing's setting (originally for January 30, 2004) to the parties at their addresses on January 5, 2004. The hearing was subsequently continued to March 22, 2004, with proper notice to parties.
10. A hearing in this matter was convened on March 22, 2004, at the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented, with Petitioner appearing by telephone.
11. The pain noted in Finding of Fact No. 1 did not prevent the claimant from continuing to work

and subsided slightly prior to performance of the MRI noted in Finding of Fact No. 2

12. The pain noted in Finding of Fact No. 1, which extended bilaterally into the upper thighs and was not associated with any diminution of reflexes, did not represent radiculopathy.
13. The parties did not demonstrate that, prior to the MRI noted in Finding of Fact No. 2, the claimant exhibited conditions that would warrant an immediate MRI, according to any nationally recognized medical treatment guidelines or protocols.

### **CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the 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(k) 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 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC") §133.305(g) and §§ 148.001-148.028.
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, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, the MRI for the claimant noted in Finding of Fact No. 2 does not represent an element of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions of the IRO issued in this matter on November 17, 2003, and of the MRD, issued on November 19, 2003, were correct; reimbursement for the MRI noted in Finding of Fact No. 2 should be denied.

**ORDER**

**IT IS THEREFORE, ORDERED** that the appeal of Irving Imaging, seeking reimbursement for an MRI performed on March 3, 2003, be denied, in accordance with the findings and decision of the independent review organization issued in this matter on November 17, 2003, which concluded that the disputed services had not been shown to be medically necessary.

**SIGNED March 29, 2004.**

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**MIKE ROGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**