

**DOCKET NO. 453-04-5713.M5**

<b>TEXAS MUTUAL INSURANCE COMPANY</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>RICHARD TAYLOR, D.O.</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Texas Mutual Insurance Company (Carrier) challenges the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) ordering reimbursement for certain treatments provided to injured worker (Claimant). After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Carrier is liable for reimbursing Richard Taylor, D.O. (Provider) the additional sum of \$200.

**I. BACKGROUND**

Claimant suffered a compensable, work-related injury to her lower back in \_\_\_\_ As part of her treatment after the injury, Claimant saw Provider for various therapeutic and pain relief treatments. In dispute in this proceeding is one specific treatment decompression provided with a DRX9000 machine on 10 dates of service. Provider billed Carrier \$175 per date of service for this decompression, using the billing code 64999. Carrier declined reimbursement, challenging the coding and supporting documentation for the service.

Based on Carrier's denial, Provider sought medical dispute resolution through the Commission. The Commission's MRD determined that the procedure was properly documented and ordered reimbursement. Carrier then requested a contested case hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on April 5, 2005, with ALJ Craig R. Bennett presiding. Carrier appeared through its attorney, Katie Kidd. Provider appeared through his attorney, Dick Swift. No parties objected to notice or jurisdiction. The hearing concluded that same day, but the record did not close until April 12, 2005.

## II. DISCUSSION AND ANALYSIS

Carrier presented alternate arguments why the decompression treatments with the DRX9000 should not be reimbursed.<sup>1</sup> Of relevance here, Carrier argues that the treatment was not properly billed. Carrier notes that Provider billed the treatment under Code 64999, which is a surgical billing code for unlisted procedures. Carrier disputes that the decompression is a surgical procedure and contends that it should not be billed as one. Carrier presented evidence showing that decompression with the DRX9000 consists of the use of a machine that suspends a person, resulting in intervertebral decompression, thus providing pain relief for lower back pain. It does not involve any invasive procedure that would qualify as a surgical treatment. Carrier argues that decompression with a DRX9000 machine is equivalent to mechanical traction (which is properly billed under Code 97012) and should be billed that way. The maximum allowable reimbursement (MAR) for mechanical traction is \$20 per date of service.

Provider disputes that decompression with a DRX9000 is comparable to mechanical traction or the use of a VAX-D machine. Provider testified to differences between mechanical traction, the VAX-D, and decompression with the DRX9000. In particular, Provider testified that the design of the DRX9000 is very different from the VAX-D. The VAX-D places a patient in a prone position on their stomach and puts more pressure on the spine, whereas the DRX9000 places the patient in a stable position on their back. This positioning is also different from the positioning of patients in mechanical traction. Provider argues that the use of the DRX9000 is more effective than the VAX-D or mechanical traction in providing disk decompression and pain relief to patients. Further, Provider noted that the billing guidelines were not clear for this particular treatment at the time it was provided and billed. Provider pointed out that both the manufacturer of the machine and at least one billing guideline newsletter published by a medical billing group indicated that the proper billing code for the treatment was 64999, which is the code Provider used.

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<sup>1</sup> One of Carrier's arguments against reimbursement related to the lack of medical necessity for the treatments. However, in the explanation of benefits for the dates of service in dispute, Carrier did not identify a lack of medical necessity as a basis for its denial of reimbursement. Therefore, the ALJ finds that issue has been waived and declines to consider medical necessity in this proceeding.

After considering the evidence and arguments presented, the ALJ finds that Carrier has established that the decompression treatment offered by Provider was not a surgical procedure and is not properly billed under Code 64999. Although surgical procedures are not clearly defined within the Commission's rules or applicable statute, the evidence presented by Carrier and analogous statutes support Carrier's assertion that surgical procedures involve some violation of the skin barrier. Dr. Nicholas Tsourmas, an orthopedic surgeon, testified to the generally accepted definition of surgery. Specifically, he testified that surgery is understood to include the violation of the skin barrier and usually involves an incision, puncture of the skin barrier, or possibly an injection. Based on this, he concluded that decompression with the DRX9000 was not a surgical procedure.

Further, the Legislature has offered some guidance on what constitutes a surgical procedure. For example, in defining the practice of chiropractic, the Legislature has excluded incisive or surgical procedures and has stated that an incisive or surgical procedure includes making an incision into any tissue, cavity, or organ by any person or implement.<sup>2</sup> This definition reflects the understanding that an opening of the skin barrier is an essential element of a surgical procedure. In this case, it is undisputed that the DRX9000 is a machine that uses the weight of the patient as a counterbalance for decompression. It does not involve any incisions, opening of the skin barrier, or any other invasive procedure. Rather, the procedure is similar to mechanical traction or decompression with a VAX-D. Therefore, the ALJ concludes that the treatment in issue is not properly billed as a surgical procedure.

In most instances, this would resolve this dispute and Provider would be entitled to no additional reimbursement, as it is generally not appropriate to provide reimbursement for improperly coded procedures. However, this case is unusual in that there was no clearly-established code for the procedure in issue at the time of the billing, there is no indication the Provider intentionally miscoded the treatment to obtain greater reimbursement, and the manufacturer of the machine and at least one billing service advised that the treatment should be billed under Code 64999. Under these circumstances, the ALJ finds it inappropriate to disallow all reimbursement for the services.

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<sup>2</sup> TEX. OCC. CODE § 201.002(a).

After considering the evidence, the ALJ concludes that the treatment by the DRX9000 is most similar to mechanical traction and should be reimbursed that way. As Dr. Tsourmas testified and other evidence in the record supports, the decompression treatment provided with the DRX9000 is similar to decompression with a VAX-D or mechanical traction. Provider's purported differences between the DRX9000 and VAX-D are mainly superficial and go more to the efficacy of the treatment, and not actually a difference in the type and nature of the treatment. Accordingly, the ALJ concludes that Provider should be reimbursed for the procedure in a manner consistent with the reimbursement protocol for decompression with a VAX-D or mechanical traction, which are reimbursed at \$20 per date of service. Because it is undisputed that Provider treated Claimant on 10 dates of service, appropriate reimbursement is \$200. This is the amount of reimbursement the ALJ orders Carrier to remit to Provider. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

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

1. (Claimant) suffered a compensable, work-related injury to her lower back in \_\_\_\_.
2. Texas Mutual Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for her compensable injury.
3. As part of her treatment after the injury, Claimant saw Richard Taylor, D.O. (Provider) for various therapeutic and pain relief treatments.
4. Among other services, Provider treated Claimant on 10 dates of service with decompression with the use of a DRX9000 machine between August 20, 2002, and October 11, 2002.
5. Provider then billed Carrier the sum of \$175 per treatment, for a total of \$1,750 for the 10 DRX9000 treatments in dispute.
6. Carrier declined reimbursement, identifying payment exception codes N (not properly documented), F (Fee Guideline MAR reduction), and JM (The Medical Fee Guideline states in the importance of proper coding "accurate coding of services rendered is essential for proper reimbursement," the services rendered are not reimbursable as billed).
7. Based on Carrier's denial, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).

8. After conducting dispute resolution, the Commission's Medical Review Division (MRD) issued an order on March 26, 2004, requiring Carrier to reimburse Provider the sum of \$1,750 for the DRX9000 treatments.
9. On April 19, 2004, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
10. On April 5, 2005, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Carrier appeared through its attorney, Katie Kidd. Provider appeared through his attorney, Dick Swift. No parties objected to notice or jurisdiction. The hearing concluded that same day and the record closed on April 12, 2005.
11. During the dates of service in dispute, there was no clearly-established billing code for decompression treatments provided with a DRX9000 treatment.
12. Decompression treatments with a DRX9000 machine are not surgical procedures and do not involve any incisions, opening of the skin barrier, or any other invasive procedure. Rather, the DRX9000 is a machine that uses the weight of the patient as a counterbalance for decompression.
13. Decompression with a DRX9000 machine is similar to mechanical traction and decompression provided through other machines, such as a VAX-D.
14. The maximum allowable reimbursement for mechanical traction and VAX-D treatments is \$20 per date of service.

#### **IV. 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. Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).

6. Carrier has shown, by a preponderance of the evidence, that the decompression treatments provided through the use of the DRX9000 machine are not surgical procedures, were not properly billed under Code 64999, and are not properly reimbursed at the billed rate of \$175 per date of service.
7. Carrier has shown, by a preponderance of the evidence, that the decompression treatments provided through the use of the DRX9000 machine are comparable to a mechanical traction procedure, are properly billed under Code 97012, and are properly reimbursed at a maximum of \$20 per date of service.
8. Provider is entitled to total reimbursement of \$200 for the disputed treatments.

### **ORDER**

**IT IS HEREBY ORDERED THAT** Richard Taylor, D.O., is entitled to additional reimbursement in the amount of \$200 for the 10 decompression treatments provided through the use of the DRX9000 machine to injured worker between August 20, 2002, and October 11, 2002.

**SIGNED May 2, 2005.**

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**CRAIG R. BENNETT  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**