

<b>HIGHPOINT PHARMACY, Petitioner</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
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<b>V.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
	<b>§</b>	
<b>LIBERTY MUTUAL INSURANCE COMPANY, Respondent</b>	<b>§</b>	
	<b>§</b>	
	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

### **DECISION AND ORDER**

Highpoint Pharmacy (Petitioner) appealed the findings and decision of the Texas Workers' Compensation Commission's designee, an independent review organization (IRO), which found that carisoprodol prescriptions that Petitioner provided a workers' compensation claimant (Claimant) were not medically necessary healthcare. The IRO's decision upheld a denial of reimbursement by the Liberty Mutual Insurance Company (Carrier). This decision and order finds the prescriptions were not shown to be medically necessary for Claimant.

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

There were no contested issues of jurisdiction or notice. Those issues are set out only in the Findings of Fact and Conclusions of Law below.

The hearing in this matter convened and the record closed May 23, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. Petitioner was represented by its employee, Nicky Otts. Attorney Kevin Franta represented Respondent. The Commission Staff did not participate in the hearing.

#### **II. DISCUSSION**

##### **A. Factual Background**

Claimant sustained a compensable injury to his back in \_\_\_\_\_. At the time of the injury,

Carrier was the workers' compensation insurer for Claimant's employer. Claimant underwent multiple back surgeries, but suffers from chronic low back pain for which his treating physician, Jacob Rosenstein, M.D., prescribed carisoprodol, among other drugs.<sup>1</sup> These prescriptions were filled at Petitioner's pharmacy on June 19, July 3 and 31, and August 14, 2003.

Carrier denied payment for the prescriptions based on the lack of medical necessity. The IRO reviewer upheld the denial, writing:

In agreement with Dr. Greenberg [the peer reviewer] and many others, long term use of Soma (carisoprodol) and methocarbamol is not likely indicated and Soma, in particular, carries a relatively high degree of a possibility of addiction. Muscle relaxants medi[c]ations are most efficacious for short term use with acute flare-ups of muscle spasm. These certainly could be used in short term flare-ups but long term usage of either of these medications is felt not to be indicated.

Petitioner timely appealed the decision.

## **B. Legal Standards**

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC §155.41. Pursuant to the Texas Worker's Compensation Act (Act), an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A). The IRO was authorized to hear the medical dispute pursuant to 28 TAC §133.308.

## **C. Discussion**

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At the hearing, the parties agreed that this dispute was limited to the carisoprodol prescriptions because Carrier paid for the methocarbamol prescriptions that the IRO had denied. (Carrier Ex. 1, p. 16-17).

## **1. Petitioner's Evidence**

Petitioner presented documentary evidence, including Dr. Rosenstein's letter of medical necessity in which he stated only that the carisoprodol was prescribed as a muscle relaxer. (Pet. Ex. 1, pp. 3, 5, 6, 7).

Petitioner also presented the testimony of its expert, Richard Taylor, D.O., who is board certified in family practice and pain management. Dr. Taylor stated that long term use of muscle relaxers such as carisoprodol to alleviate muscle spasms, such as Claimant has, is common. He admitted that use of carisoprodol for chronic pain is an "off-label" use but stated that as long as the drug either reduces pain or improves functioning it should be considered an effective drug.

As for carisoprodol's addictive properties, Dr. Taylor believed that, as long as its use was monitored, the actual risk of addiction was small. He found no indication in the medical records he reviewed that Claimant was addicted to carisoprodol or engaging in drug-seeking behavior. Although botox injections are being frequently used in place of muscle relaxers now, he preferred oral muscle relaxers to repeated botox injections, which are both invasive and painful.

Dr. Taylor agreed that Claimant's long term use of multiple drugs to control his chronic pain was not optimal, but was probably necessary given his multiple failed back surgeries. Michael Rainer, M.D., one of the physicians who treated Claimant, noted on October 8, 2003, that Claimant's Soma (carisoprodol) prescription was being discontinued because Dr. Rainer did not think it was necessary. (Pet. Ex. 1, p. 30). Dr. Taylor did not read that note as stating Claimant did not need a muscle relaxer because on that same date, Dr. Rainer prescribed Skelaxin, another muscle relaxer.

## **2. Carrier's Evidence**

Carrier presented documentary evidence consisting of Claimant's medical records and the expert testimony of Casey Cochran, M.D. Dr. Cochran is board certified in occupational and family practice medicine. Dr. Cochran explained that carisoprodol is not suitable for treatment of chronic pain because it metabolizes into a sedative that carries a high risk of habituation and addiction. With habituation, the drug itself begins to cause certain unwanted symptoms after prolonged usage and thus increases the patient's medical problems. According to Dr. Cochran, the accepted use of carisoprodol is for short term treatment of acute, not chronic pain.

Dr. Cochran noted that Claimant began regularly taking carisoprodol several years ago and

has been taking it on and off since 1999. He stated that repeated scientific studies and the medical literature have shown that drugs like carisoprodol are not effective for chronic pain because muscle relaxants simply do not relieve this type of pain. He agreed with the March 2003 report of the peer review doctor, Daniel Greenberg, M.D., who wrote that:

This medication is almost entirely metabolized to meprobamate (Miltown). Use of meprobamate fell out of favor many years ago because of the risk of abuse, addiction, and overdose. It is known to cause significant cognitive and motor impairment and there are risks associated with it in driving motor vehicles or functioning in potentially hazardous situations. . . . there are no specific indications for the medication in this case. It is probably functioning primarily as a mood altering medication for this patient. (Carrier Ex. 1, p. A0011).

Dr. Cochran found carisoprodol was not medically necessary for Claimant when dispensed by Petitioner in June, July, and August 2004.

### **3. Analysis**

Petitioner failed to establish that the carisoprodol it dispensed was medically necessary for Claimant in June, July, and August 2004. The carisoprodol was prescribed to treat Claimant's chronic back pain but the evidence in this record showed that carisoprodol is not appropriate for treatment of chronic pain.

In this case, Petitioner had the burden of proof to show the prescriptions were appropriate and failed to do so. Claimant has taken carisoprodol continually since at least 2003. None of the information in the record from Dr. Rosenstein explained why the carisoprodol was appropriate for Claimant's long term use. Taylor could only speculate as to why Dr. Rosenstein keep Claimant on the drug despite long term usage being less than optimal by Dr. Taylor's own admission.

Even if the drug helped to relieve Claimant's chronic pain, its addictive nature rendered it contraindicated for this long-term use. To show medical necessity in June, July and July 2003, Petitioner needed medical evidence to support the long- term use of carisoprodol. Petitioner failed to provide the necessary evidence.

The carisoprodol dispensed by Petitioner in June, July, and August 2004 to Claimant was not

medically necessary healthcare and Carrier is not obligated to reimburse Petitioner for those prescriptions.

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

1. In \_\_\_, Claimant sustained injuries to his back that were compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with Liberty Mutual Insurance Company (Carrier).
3. Beginning in 2003, Claimant's treating physician, Jacob Rosenstein, M.D., prescribed Carisoprodol, a muscle relaxer, for Claimant's chronic back pain.
4. Highpoint Pharmacy (Petitioner) filled Claimant's drug prescriptions for Carisoprodol on June 19, July 3 and 31, and August 14, 2003.
5. Carrier denied reimbursement to Petitioner for the prescriptions based on the lack of medical necessity.
6. Petitioner's appeal of the denial was considered by the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO).
7. The IRO's decision upheld Carrier's denial of reimbursement on the basis that the prescriptions were not medically necessary. Petitioner timely appealed that decision.
8. The Commission Staff's notice of hearing stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.
9. Petitioner and Carrier were represented at the hearing but the Commission Staff chose not to participate.
10. The carisoprodol prescriptions were to treat Claimant's complaints of chronic low back pain.
11. Carisoprodol is a highly addictive drug that is not suitable for treatment of chronic pain.
12. Petitioner failed to adequately document that carisoprodol is an appropriate drug to treat Claimant's chronic pain.
13. Carisoprodol was not medically necessary for Claimant's compensable injuries when dispensed by Petitioner on June 19, July 3 and 31, and August 14, 2003.

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

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this

matter pursuant to the Texas Workers' Compensation Act (Act), 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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308.
4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the rules at 28 TAC § 133.308(u) and 1 TAC ch. 155.
5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
6. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
7. Pursuant to the Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
8. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
9. Petitioner is not entitled to reimbursement for the carisoprodol it dispensed to Claimant on June 19, July 3 and 31, or August 14, 2003, because that drug was not shown to be reasonable or medically necessary healthcare for him.

## **ORDER**

It is ORDERED that Highpoint Pharmacy is not entitled to reimbursement by Liberty Mutual Insurance Company for the carisoprodol dispensed to Claimant on June 19, July 3 and 31, or

August 14, 2003.

**SIGNED May 31, 2005.**

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**ANN LANDEROS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**