

**SOAH DOCKET NO. 453-05-2095.M5
MR NO. M5-04-4026-01**

**CONTINENTAL CASUALTY
COMPANY,
Petitioner**

V.

**PAIN & RECOVERY CLINIC OF
NORTH HOUSTON,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Continental Casualty Company (Carrier) challenges a decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD),¹ regarding medical services that Pain & Recovery Clinic of North Houston (Provider or Pain & Recovery Clinic) provided ___ (Claimant) from October 20, 2003, through December 19, 2003. An independent review organization (IRO) determined that medical services provided Claimant by Pain & Recovery Clinic between July 25, 2003, and August 14, 2003, and office visits and manual therapy billed by Provider from October 20, 2003, through December 19, 2003, were not medically necessary.² The IRO determined that the remainder of the medical services Pain & Recovery Clinic provided Claimant from October 20, 2003, through December 19, 2003, that is, therapeutic exercises and neuromuscular re-education, were medically necessary.

¹ Effective September 1, 2005, the functions of the Commission were transferred to the Texas Department of Insurance's Division of Workers' Compensation.

² Because Provider did not appeal the IRO's findings, reimbursement for these medical services is not at issue in this proceeding.

Contending it was relying on the decision of the IRO, MRD mistakenly asserted that the office visits and manual therapy billed by Provider from October 20, 2003, through December 19, 2003, had been determined by the IRO to be medically necessary, as well as therapeutic exercises, myofascial release, joint mobilization, and neuromuscular re-education. MRD ordered Carrier to reimburse Pain & Recovery Clinic for the services provided from October 20, 2003, through December 19, 2003.³

Because Pain & Recovery Clinic did not bill for myofascial release or joint mobilization during the period in dispute, the issue is whether the therapeutic exercises and neuromuscular re-education that Pain & Recovery Clinic provided Claimant from October 20, 2003, through December 19, 2003, were medically necessary. As set out below, the Administrative Law Judge finds that the therapeutic exercises and neuromuscular re-education, as well as the office visits and manual therapy provided by Pain & Recovery Clinic to Claimant during the period in dispute were not medically necessary.

II. Findings of Fact

1. On ____, ____ (Claimant) sustained a work-related injury to his left knee as a result of his work activities (compensable injury).
2. On the date of injury, Claimant's employer was US Personnel, Inc., and its workers' compensation insurance carrier was Continental Casualty Company (Carrier).
3. As a result of the compensable injury, Claimant suffered a partial bucket-handle tear of the posterior horn of the medial meniscus.
4. On October 13, 2003, Lubor Jarolimek, M.D., performed a partial medial meniscectomy on Claimant's left knee and referred Claimant to Pain & Recovery Clinic of North Houston (Pain & Recovery Clinic or Provider) for post-surgical physical therapy.

³ The MRD decision states that medical necessity is the only issue to be resolved and that "the therapeutic exercises, *office visits*, myofascial release, joint mobilization, neuromuscular re-education, and manual therapy from 10-20-03 through 12-19-03 were found to be medically necessary." (Emphasis added.) However, in the next sentence, MRD notes that "the office visits 10-20-03 through 12-19-03 were not found to be medically necessary." (Emphasis in original.) Clearly, the reference to office visits, as well as manual therapy, in the first sentence were inadvertent typographical errors on the part of the MRD officer who drafted the decision.

5. Pain & Recovery Clinic furnished the following disputed medical services to Claimant on the dates and with the Current Procedural Terminology (CPT) codes and maximum allowable reimbursements (MARs) shown below:

CPT CODES	SERVICE DESCRIPTION	DATES	MARS	TOTAL AMOUNTS
97110	Therapeutic exercises	Oct. 20, 22, 24, 27, 29, & 31; Nov. 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, & 29; Dec. 1, 3, 5, 8, 10, 12, 15, 17, & 19	\$35.91	\$969.57 (\$35.91 x 27)
97112	Neuromuscular re-education	Oct. 20, 22, 24, 27, 29, & 31; Nov. 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, & 29; Dec. 1, 3, 5, 8, 10, 12, 15, 17, & 19	\$36.63	\$989.01 (\$36.63 x 27)

6. Pain & Recovery Clinic also provided office visits and manual therapy from October 20, 2003, through December 19, 2003.
7. Pain & Recovery Clinic did not bill Carrier for providing Claimant myofascial release or joint mobilization from October 20, 2003, to December 19, 2003.
8. Provider sought reimbursement from Carrier for the provided medical services.
9. Carrier sent an explanation of benefits (EOB) to Provider denying the requested reimbursement as medically unnecessary based on peer review.
10. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD).
11. An independent review organization (IRO) reviewed the medical dispute and determined that medical services provided Claimant by Pain & Recovery Clinic between July 25, 2003, and August 14, 2003, and office visits and manual therapy billed by Provider from October 20, 2003, through December 19, 2003, were not medically necessary. The IRO determined that

the remainder of the medical services Pain & Recovery Clinic provided Claimant from October 20, 2003, through December 19, 2003, that is, therapeutic exercises and neuromuscular re-education, were medically necessary.

12. MRD mistakenly asserted that the office visits and manual therapy billed by Provider from October 20, 2003, through December 19, 2003, as well as therapeutic exercises, myofascial release, joint mobilization, and neuromuscular re-education, had been determined by the IRO to be medically necessary. MRD ordered Carrier to reimburse Pain and Recovery Clinic for all the services it provided Claimant from October 20, 2003, through December 19, 2003.
13. After the MRD order was issued, Carrier on November 1, 2004, asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
14. Notice of a contested-case hearing concerning the dispute was mailed on December 7, 2004, to Carrier and Provider. The notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters to be considered.
15. On October 17, 2005, Carol Wood, a SOAH ALJ, held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded that day, and the record remained open until November 7, 2005, for the filing of written arguments.
16. Carrier appeared at the hearing through its attorney, David L. Swanson.
17. Provider appeared at the hearing through its attorney, Larry G. Trimble.
18. Provider's physical therapist, Clay Meekins, designed a treatment plan for Claimant, which included the following specific therapeutic exercises:
 - a. Straight leg raise in all planes
 - b. Heel slides
 - c. Ankle pumps
 - d. Quadriceps sets
 - e. Heel raises
 - f. Short arc quadriceps
 - g. Long arc quadriceps
19. Mr. Meekins' treatment plan is similar to the post-operative treatment guidelines

recommended by the Medical University of South Carolina's Department of Physical Therapy (MUSC protocol).

20. Both Mr. Meekins' plan and the MUSC protocol contemplate exercise progression and emphasize the importance of closed-chain exercises, that is, exercises in which the foot remains in contact with a solid surface.
21. Provider did not instruct Claimant to perform any of the therapeutic exercises designed by Mr. Meekins. Rather, Claimant was instructed to perform exercises that he had done for several months prior to his surgery, namely, gymnic ball, theraband, synergy, Life Fitness Isokinetic Circuit, and wobble board.
22. The therapeutic exercises that Claimant actually performed at Provider's instruction were not tailored to post-operative rehabilitation of Claimant's left knee.
23. Therapeutic exercises using the theraband, synergy, and Life Fitness machines are open-chain exercises that Claimant's surgeon, Dr. Jarolimek, had advised him to avoid.
24. Although from October 20, 2003, to December 19, 2003, Claimant showed some mild improvement in range of motion and experienced less pain in his left knee, that was to be expected as a result of his surgery.
25. Generally indicated only for neuromuscular problems, neuromuscular re-education is not indicated for post-operative rehabilitation of a meniscal tear.
26. Claimant had no neuromuscular problem that required retraining his muscles how to work.

III. Conclusions of Law

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2005); TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC § 148.14 (2005), Carrier has the burden of proof in this case.
4. 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, 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. Labor Code § 408.021 (a).

5. Based on the above Findings of Fact and Conclusions of Law, the office visits, therapeutic exercises, manual therapy, and neuromuscular re-education that Pain & Recovery Clinic provided Claimant from October 20, 2003, through December 19, 2003, were medically unnecessary.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier is not required to reimburse Pain & Recovery Clinic for the therapeutic exercises, office visits, neuromuscular re-education, and manual therapy it provided Claimant from October 20, 2003, through December 19, 2003.

ORDER

THEREFORE, IT IS ORDERED that Pain & Recovery Clinic of North Houston shall not be reimbursed by Continental Casualty Company for the services disputed in this proceeding.

SIGNED JANUARY 6, 2006.

**CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**