

**SOAH DOCKET NO. 453-05-3771.M5**  
**MDR Tracking No. M5-05-0508-01**

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

**DECISION AND ORDER**

Highpoint Pharmacy (Provider) appealed the findings and decision of the Texas Workers' Compensation Commission's designee,<sup>1</sup> an independent review organization (IRO), which found that prescriptions that Provider provided a workers' compensation claimant (Claimant) were not medically necessary healthcare. The IRO's decision upheld a denial of reimbursement by the Protective Insurance Company (Carrier). This decision and order finds that the prescriptions were medically necessary for Claimant, and orders reimbursement.

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

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

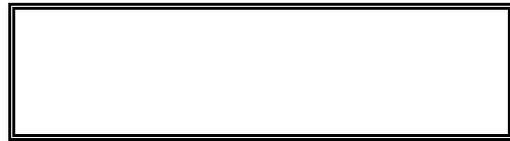
The hearing in this matter convened and the record closed August 25, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Charles Homer III. Provider was represented by its employee, Nicky Otts. Attorney Charles Finch represented Carrier.

**II. DISCUSSION**

**A. Factual Background**

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<sup>1</sup>Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.



On \_\_\_\_\_, Claimant, a 58-year-old man, was driving a van for a freight company when it hit a large pothole. Claimant suffered injuries to his cervical spine that were compensable. At the time of the injury, Carrier was the workers' compensation insurer for Claimant's employer. In September 2000, Claimant underwent a two-level cervical fusion. (In 1992, he had undergone a similar operation at the C5-6 and C6-7 spinal levels.) Post-operatively, his treating physician, Jacob Rosenstein, M.D., who had diagnosed him with chronic pain syndrome, prescribed Celebrex, HydroApap (hydrocodone) and carisoprodol for him. These prescriptions were filled at Provider's pharmacy from October 21 - November 18, 2003.

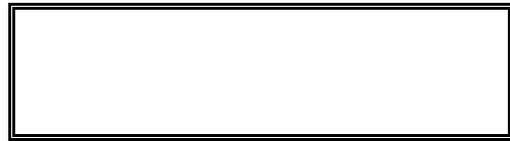
Carrier denied payment for the prescriptions based on its assertion of lack of medical necessity. The IRO reviewer upheld the denial, concluding that Claimant had a chronic pain problem and that none of hydrocodone, carisoprodol, or Celebrex are indicated for chronic pain, but instead should be used for acute illness or injury. Provider timely appealed the denial.

#### **B. Legal Standards**

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) § 148.14(a); 1 TAC § 155.41. The Texas Worker's Compensation Act (Act), provides that 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. Evidence and Argument**

Both Provider and Carrier offered the records they submitted to the IRO; Carrier also submitted a number of medical articles and surveys concerning treatment of long-term spinal pain,



and the Official Disability Guidelines created by an organization called the Work Loss Data Institute.<sup>2</sup>

Rick Taylor, D.O., testified for Provider. Dr. Taylor practices internal medicine and pain management, including treating patients with chronic pain. Dr. Taylor stated that he disagreed with the IRO determination in part because Celebrex was developed for long-term use as anti-inflammatory in musculoskeletal pain as well as arthritic pain. Dr. Taylor agreed to some extent with Carrier that long-term use of the muscle relaxant carisoprodol is controversial as to whether there is benefit in long-term use, and that more conservative practitioners feel that they are only of benefit in the short term. He opined that carisoprodol seemed appropriate for Claimant, given his two neck surgeries.

Concerning opioids, the pharmaceutical family that includes hydrocodone, Dr. Taylor stated that, for a chronic pain patient such as Claimant, most pain management guidelines and most pain management societies recommend adding an opioid to a nonsteroidal anti-inflammatory drug (NSAID) for adequate pain control if the patient's moderate to severe pain is not being controlled with the NSAID alone.

Dr. Taylor believed that Claimant's trial of Bufferin for his pain , which failed, supported Dr. Rosenstein's continuing prescriptions of Celebrex plus hydrocodone, and on cross-examination stated that such treatment is within the ODG Guidelines, even though those guidelines are, according to Dr. Taylor, conservative. Also during cross-examination, Dr. Taylor stated that he did not treat or examine Claimant, that he only offers medical testimony in cases involving providers related to Mr. Ott, and that he was unaware of any ownership interest of Dr. Rosenstein in Provider.

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<sup>2</sup> Provider Exhibits 1 and 2; Carrier Ex. 1.



Carrier offered no witnesses, but argued that both carisoprodol and hydrocodone are highly addictive drugs that are not appropriate for chronic pain, and that Celebrex should not be given for long-term pain. It cited to the ODG Guidelines and other literature to bolster its case.

**D. Analysis**

Provider presented a live witness who, although he is affiliated with Provider at least by his continuing testimony for it, is clearly familiar with the medications and therapy choices at issue in this case. Judging from his testimony and experience, the issues raised by Claimant's situation are not so unique that Dr. Taylor's failure to attend or examine him significantly reduce the credibility of his opinions.

Nor, in this case, was much evidence required to overcome the IRO decision. The IRO determination is conclusory and not as well-supported as Dr. Taylor's. The IRO wrote:

The . . . reviewer explained that the use of Hydrocodone/Apap, Carisoprodol, and Celebrex are used [*sic*] in the treatment of an acute illness or injury. The . . . reviewer indicated that the use of these medications for a chronic pain problem is not appropriate treatment. Therefore, the . . . consultant concluded that the HydroApap, Carisoprodol, and Celebrex from 10/21/03 through 11/18/03 were not medically necessary to treat this patient's condition.<sup>3</sup>

The IRO gave no reason at all for its determination. Nothing in its determination is specific to Claimant.

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<sup>3</sup>Carrier Ex. 1, p. 4.



Carrier's literature cites two reasons for opposing long-term use of carisoprodol and hydrocodone: their addictive nature and, at least regarding opioids, a sensitization<sup>4</sup> effect in which the patient after prolonged use begins to feel pain despite the drugs. But Dr. Rosenstein signed a follow-up report dated November 4, 2003 (essentially in the middle of the prescription dates at issue) which reads:

He [Claimant] continues to be observed continuously and is very happy with his current level of pain.<sup>5</sup>

Claimant's daily pain and the relief provided by the prescriptions at issue had previously been documented as follows:

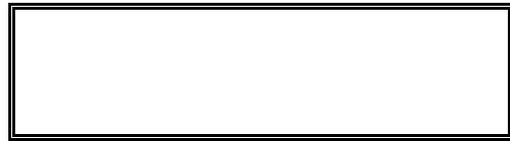
[May 22, 2003] He continues to have residual pain especially in the mornings. . . . He takes Celebrex, Lortab 10 (hydrocodone), and Carisoprodol. These medications allow him to do things around the house.<sup>6</sup>

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<sup>4</sup>Carrier Ex. 1, p. 13.

<sup>5</sup>Provider Ex. 1, p. 5.

<sup>6</sup>Provider Ex. 1, p. 12



Also on May 22, 2003, Dr. Rosenstein ordered a series of X-rays to determine the status of Claimant's cervical spinal fusion, as his pain is becoming worse. On July 17<sup>7</sup> and September 9,<sup>8</sup> 2003, Dr. Rosenstein and his assistant made the same notation in Claimant's records concerning Claimant's pain and the treatment for it. The July 17 entries explain the x-ray findings from the films requested as evidencing solid fusion but with **listhesis of the seventh cervical vertebra on the first thoracic.**<sup>9</sup> (**Listhesis refers to the slippage of one vertebral body with respect to the one beneath it.**) Finally, it is important to observe that in March 2003, under Plan, the following note was made in Claimant's record:

We will refill his Hydrocodone and Carisoprodol as this allows him to do things around the house *if he takes it regularly.* (Emphasis supplied.)<sup>10</sup>

Furthermore, Claimant's prescription records show that he must pick up his medications every fifteen days, and do not reveal addiction problems. Although Carrier has shown that addiction is a problem with hydrocodone that should be monitored in the general population, it has not shown that Provider's continuing prescription of either hydrocodone or carisoprodol for Claimant is addicting him or doing anything for Claimant but relieving his pain.

## **E. Conclusion**

Provider has shown that the prescriptions provided Claimant were medically necessary healthcare, and is entitled to reimbursement from Carrier for those drugs.

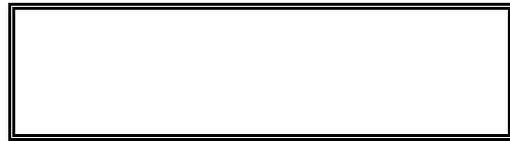
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<sup>7</sup>Id., p. 10.

<sup>8</sup>Id.,p. 7.

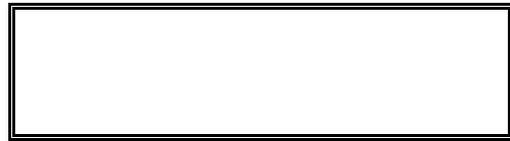
<sup>9</sup>Id., pp. 9-10.

<sup>10</sup>Id., p. 16.



### III. FINDINGS OF FACT

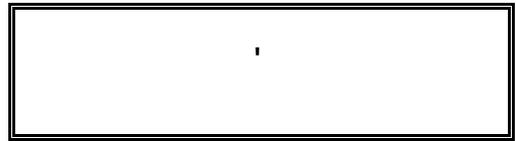
1. In \_\_\_\_\_, Claimant sustained injuries to his neck that were compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with Protective Insurance Company (Carrier).
3. Claimant's treating physician, Jacob Rosenstein, M. D., prescribed hydrocodone, an opium derivative, and carisoprodol, a muscle relaxant, for Claimant's chronic neck pain.
4. Dr. Rosenstein also prescribed Celebrex, a non-steroidal anti-inflammatory, for Claimant's chronic pain.
5. Highpoint Pharmacy (Provider) filled Claimant's drug prescriptions for carisoprodol, hydrocodone, and Celebrex on October 21, 2003, and November 18, 2003.
6. Provider filled Claimant's drug prescriptions for carisoprodol and hydrocodone on November 5, 2003.
7. Carrier asserted lack of medical necessity as the reason for its denial of reimbursement to Provider for the prescriptions.
8. Provider's appeal of the denial was considered by the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO).
9. The IRO's decision upheld Carrier's denial of reimbursement on the basis that the prescriptions were not medically necessary. Provider appealed that decision within the required time.
10. The Commission Staff sent notice of hearing to the parties that 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.
11. The disputed prescriptions were prescribed for Claimant's chronic neck pain.
12. Dr. Rosenstein observed Claimant regularly and did not note addiction, sensitization, or any other problems with Claimant's taking the drugs at issue.
13. Claimant reported that he was very happy with the pain control the prescriptions gave him.
14. Carrier failed to show that any addiction or other problems arose from claimant's long-term use of carisoprodol and hydrocodone.



15. Carisoprodol, Celebrex, and HydroApap/hydrocodone were medically necessary for Claimant's compensable injuries when dispensed by Provider from October 21 - November 18 2003.

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

16. 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.
17. 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.
18. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308.
19. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TAC § 133.308.
20. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
21. Provider had the burden of proof in this proceeding. 28 TAC §§ 148.14(a); 1 TAC § 155.41.
22. 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).
23. Health care includes all reasonable and necessary medical services. TEX. LAB. CO 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).
24. Provider is entitled to reimbursement for carisoprodol, HydroApap, and Celebrex it dispensed to Claimant from October 21 through November 18, 2003, because those drugs were reasonable and medically necessary healthcare for him.



**ORDER**

It is further ORDERED that Protective Insurance Company reimburse Highpoint Pharmacy for the carisoprodol, HydroApap, and Celebrex it dispensed to Claimant from October 21 through November 18, 2003.

**SIGNED October 24, 2005.**

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**CHARLES HOMER III  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**