

<b>HIGHPOINT PHARMACY,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>STATE OFFICE OF RISK</b>	§	
<b>MANAGEMENT,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**DECISION AND ORDER**

Highpoint Pharmacy (Provider) challenges the findings and decision of the Texas Workers' Compensation Commission's<sup>1</sup> designee, 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 State Office of Risk Management (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 February 8, 2006, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Bill Zukauckas. Provider was represented by its employee, Nicky Otts. Attorney J.Red Tripp represented Carrier

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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.

## II. DISCUSSION

### A. Factual Background

Claimant was a \_\_\_-year-old female at the time of her work related injury on\_\_\_\_. She was involved in a motor vehicle accident and developed low back pain by the morning following her accident. She was initially treated with a soft collar and then physical therapy. She underwent a C5-6 fusion on June 16, 1999. Post-operatively, her treating physician, Jacob Rosenstein, M.D., diagnosed her with chronic cervical and lumbar radiculopathy, bilateral carpal tunnel syndrome confirmed by EMG, lumbar facet syndrome, post-traumatic headaches with post-concussion syndrome and memory loss, lumbar trigger points, C4-5 bulge, C5-6 bulge, C6-7 bulge, and IDDS at L4-5 and L5-S1 confirmed by discogram. A letter from Dr. Rosenstein dated June 14, 2004, indicated that she had chronic cervical radiculopathy, disc bulges at C4-5 and C6-7, and internal disc disruption syndrome at L4-5 and L5-S1 confirmed by lumbar discography. It noted that the EMG revealed right L5 radiculopathy. It also noted that the patient had continued neck pain and back pain. Claimant has been treated with physical therapy, surgery, epidural steroid injections, trigger point injections, and medications.

Dr. Rosenstein prescribed Oxycontin, Hydrocodone, Carisprodol, Topamax, and Bextra for treatment of Claimant's pain from her compensable injury. These prescriptions were filled at Provider's pharmacy from January 9 - February 23, 2004.

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 the medications 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)(E). 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.

Rick Taylor, D.O., testified for Provider. Dr. Taylor practices internal medicine, sports medicine, and pain management, including treating patients with chronic pain. Dr. Taylor stated that he disagreed with the IRO determination. He testified that Oxycontin was a long-acting opioid developed specifically for long-term intractable pain syndromes, like Claimant's failed back syndrome. Likewise, he testified that although the Hydrocodone was a short-acting opioid, and consequently should not be used continuously throughout the day to address Claimant's pain, it can be used at peak pain times during the day to address breakthrough pain between Oxycontin doses. Dr. Taylor believed that Claimant's trial of over-the-counter pain relievers failed, and that failure supported Dr. Rosenstein's continuing prescriptions of Oxycontin plus Hydrocodone as needed. Dr. Taylor saw no evidence of misuse of or addiction to these medications by Claimant.

Dr. Taylor testified that Carisoprodol (or Soma), classified as a muscle relaxant, also had sedative properties. He opined that it seemed appropriate for Claimant, given her back surgeries, because she is constantly bombarded with pain and in need of the sedation properties for anxiety.

Dr. Taylor testified that the Topomax was an anti-seizure medication, but it is routinely prescribed "off-label" for radicular nerve pain, much like another anti-seizure medication, Neurontin. He testified it was appropriate for long-term use.

Bextra is an anti-inflammatory medication COX-2 inhibitor with safer gastrointestinal side effects than other non-narcotic analgesics. It would have been appropriate, in his view, for pain treatment in combination with the other medications.

Carrier offered no witnesses, but argued that both opioids at issue are highly addictive drugs that are not appropriate for chronic pain. Carrier also disputed whether Dr. Rosenstein had given Claimant an appropriate trial of less potent non-habit forming medications first.

#### **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 rationale is as follows:

The . . . physician reviewer indicated that the medications used to treat this patient's condition are not prescribed for long-term chronic use for pain management.

Dr. Taylor persuasively addressed the medical necessity of each medication at issue. He noted that the Oxycontin was specifically designed for chronic, intractable back pain and failed back syndrome and that it was appropriate for this Claimant. He also noted that the more short-acting Hydrocodone, while not particularly appropriate as the base pain medication for the ongoing pain, was well-suited for periodic breakthrough pain and could be used long-term on that basis.

As for the Carisprodal, Dr. Taylor persuasively testified that although classified as a muscle relaxant, Carisprodal has sedative properties that likely address the Claimant's anxiety from relentless pain.

Dr. Taylor credibly testified that the Topomax has a label use as a seizure medicine, but that it has a common off-label use for treating nerve pain. He persuasively opined that it was appropriate to treat the radicular nerve pain resulting from Claimant's compensable injury.

Finally, he persuasively testified that Bextra, prescribed by Dr. Rosenstein, was a good anti-inflammatory COX-2 inhibitor. Although now off the market, he noted at the time it was developed for arthritis and designed for long-term use. He believes it was a good adjunct medication to the others prescribed by Dr. Rosenstein because it was non-habit forming and easy on the gastrointestinal system.

#### **E. Conclusion**

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

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

1. In\_\_, Claimant sustained injuries to her 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 the State Office of Risk Management (Carrier).
3. Claimant's treating physician, Jacob Rosenstein, M.D., prescribed Hydrocodone and Oxycontin, short and long-term acting narcotic opioids respectively, for Claimant's chronic back pain.
4. Because the Oxycontin is a long-acting narcotic designed for chronic back pain, it is appropriate to treat Claimant's chronic back pain.
5. Although Hydrocodone is a short-acting opioid and potentially of concern for general long-term use, it was prescribed on an as-needed basis to treat Claimant's breakthrough pain and is medically necessary in this case for that use.
6. Carisoprodol is a muscle relaxant that has sedative properties and is appropriate to treat Claimant's anxiety from his intractable and chronic back pain.
7. Topomax has an appropriate off-label use for treating nerve pain. Topomax was appropriately used to treat Claimant's radicular nerve pain resulting from Claimant's compensable injury.

8. Bextra was a good COX-2 selective non-steroidal anti-inflammatory drug and an appropriate adjunct medication to the others prescribed by Dr. Rosenstein for Claimant because it was non habit-forming and easy on the gastrointestinal system. It was medically necessary to treat any inflammations in Claimant's back from her compensable back injury.
9. Highpoint Pharmacy (Provider) filled Claimant's drug prescriptions for Oxycontin, Hydrocodone, Carisoprodol, Topomax, and Bextra between January 9 and February 23, 2004.
10. Carrier asserted lack of medical necessity as the reason for its denial of reimbursement to Provider for the prescriptions.
11. Provider's appeal of the denial was considered by the Texas Workers' Compensation Commission's designee, an Independent Review Organization (IRO).
12. 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.
13. The disputed prescriptions were prescribed for Claimant's chronic back pain.
14. Oxycontin, Hydrocodone, Carisoprodol, Topomax, and Bextra were medically necessary for Claimant's compensable injuries when dispensed by Provider from January 9 to February 23, 2004.

#### **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(k) 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 Commission's rules, 28 TAC § 133.308.
5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
6. Provider had the burden of proof in this proceeding. 28 TAC §§148.14(a); 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)(E). 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. Provider is entitled to reimbursement for Oxycontin, Hydrocodone, Carisprodol, Topomax, and Bextra it dispensed to Claimant from January 9 to February 23, 2004, because those drugs were reasonable and medically necessary healthcare for her.

### **ORDER**

It is further ORDERED that the State Office of Risk Management reimburse Highpoint Pharmacy for the Oxycontin, Hydrocodone, Carisprodol, Topomax, and Bextra it dispensed to Claimant from January 9 to February 23, 2004.

**SIGNED February 24, 2006.**

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**BILL ZUKAUCKAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**