

DOCKET NO. 454-06-1910.P1

TWCC NO.

NATIONAL SURETY CORPORATION	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
TEXAS DEPARTMENT OF INSURANCE,	§	
DIVISION OF WORKERS'	§	
COMPENSATION and MARY F.	§	
BURGESSER, M.D.,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

(Corrected) **DECISION AND ORDER**

**I. INTRODUCTION**

National Surety Corporation (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance's Division of Workers' Compensation (DWC) requiring Carrier to reimburse or pay Mary F. Burgesser, M.D., for additional medical services she proposed to provide (Claimant). Grace Lea Stringfellow, M.D., performed a prospective review medical examination (PRME) of Claimant and determined that Dr. Burgesser's proposed services were medically necessary to treat Claimant's compensable injury. The Administrative Law Judge (ALJ) concludes that the proposed services are not medically necessary and that the Carrier is eligible to seek reimbursement for any payments made to Dr. Burgesser for three additional monthly office visits and prescription medications.

**II. FINDINGS OF FACT**

1. On \_\_\_\_\_, Claimant suffered an injury to her lumbar spine (compensable injury) during the course and scope of her employment.

2. On the date of injury, Carrier was the workers' compensation insurance carrier for Claimant's employer.
3. On March 14, 2002, Claimant had a posterior fusion at L2-L3 and remained in the hospital for two months because of a post-operative infection.
4. In 2002, Claimant was prescribed 10 mg. OxyContin every eight hours.
5. Beginning in July 2004, Dr. Burgesser prescribed 40 mg. OxyContin three times a day to treat Claimant's chronic back pain.
6. In August 2001, Claimant was taking Flexoril to treat her back pain.
7. Since 2005, Dr. Burgesser has prescribed Flexoril to treat Claimant's chronic back pain.
8. Long-term use of narcotics such as OxyContin and Flexoril are contra-indicated in pain patients and become psychological habits for those patients.
9. OxyContin is inappropriate for long-term treatment of chronic pain.
10. On November 9, 2005, an orthopaedic surgeon, George M. Cole, D.O., conducted an independent medical evaluation of Claimant. He determined that Claimant's current complaints were related to her previous degenerative conditions, her previous back surgeries, and her diabetes.
11. On November 30, 2005, Dr. Cole recommended that Claimant's prescription for OxyContin be discontinued as inappropriate for treatment of chronic pain and that Claimant be treated with over-the-counter medications and home exercise.
12. Claimant was unable to obtain OxyContin for a several weeks, and she did so well without the medication that Dr. Burgesser has now taken Claimant off OxyContin.
13. On January 26, 2006, Dr. Burgesser requested prospective review of her proposed medical services for Claimant.
14. On February 28, 2006, Dr. Stringfellow, the PRME doctor, determined that the proposed services were medically necessary to treat Claimant's compensable injury.

15. On March 10, 2006, DWC issued an MIO. Based on the PRME doctor's review and under the authority of TEX. LABOR CODE (Labor Code) § 413.055, DWC required Carrier to reimburse Dr. Burgesser for the proposed three additional monthly office visits to monitor the medications of OxyContin 40 mg. (one tablet three times a day) and Flexoril 10 mg. (one tablet twice a day) to treat Claimant.
16. On March 27, 2006, Carrier requested a hearing by a State Office of Administrative Hearings (SOAH) ALJ to appeal the MIO.
17. All parties received adequate notice of not less than 10 days 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 a short, plain statement of the matters asserted.
18. On December 12, 2006, SOAH ALJ Carol Wood held a hearing concerning the matter in Austin, Texas. The hearing concluded, and the record closed that day.
19. Carrier appeared at the hearing through its attorney, Steven Tipton.
20. DWC appeared at the hearing through its attorney, Terra Colvin.
21. Dr. Burgesser appeared at the hearing by telephone.

### 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. LABOR CODE §§ 402.073(b) and 413.055(e) and TEX. GOV'T. CODE (Gov't Code) ch. 2003.
2. Notice of the hearing was proper and timely. Gov't Code §§ 2001.051 and 2001.052.
3. 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).

4. Carrier had the burden of proving by the preponderance of the evidence that the proposed services are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TAC § 148.21(h).
5. Based on the above Findings of Fact and Conclusions of Law, the proposed services were not reasonably medically necessary to treat Claimant's compensable injury.

**ORDER**

**THEREFORE, IT IS ORDERED** that the three additional office visits to monitor the medications of Oxycotin and Flexoril proposed by Dr. Burgesser are not medically necessary and Carrier is eligible to seek reimbursement, if any, for the payment of those services.

**SIGNED February 14, 2007.**

*Carol Wood*

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CAROL WOOD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING