

**SOAH DOCKET NO. 453-04-5200.M5**  
**MDR Docket No. M5-03-2540-01**

<b>CONTINENTAL CASUALTY</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMPANY,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>CENTRAL DALLAS REHAB,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Continental Casualty Company (Carrier) contested the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) ordering reimbursement of treatment provided to Claimant by Central Dallas Rehab (Provider) between November 20, 2002, and February 10, 2003. Following the hearing on the merits, the parties submitted an agreed amended table of disputed services, because Carrier had already paid Provider for some of the MRD-ordered reimbursement. Remaining in dispute is \$9,765 for temperature gradient studies, range of motion measurements, therapeutic procedures, manual traction, TENS application, myofascial release, joint mobilization, kinetic activities, work hardening, physical performance tests, muscle testing, office visits, office visits with manipulation, and team conference by physician. Carrier denied reimbursement on the basis that the treatment and services were not reasonable or medically necessary to treat Claimant's compensable injuries. The Administrative Law Judge (ALJ) finds Carrier proved by a preponderance of the evidence that the disputed treatment and services were not reasonable or medically necessary except for the TENS application, myofascial release, joint mobilization, and manual traction rendered on November 25, 2002, muscle testing, and one range of motion measurement. Therefore, Carrier is to reimburse Provider \$407.

**I. PROCEDURAL HISTORY**

ALJ Sharon Cloninger convened the hearing on October 13, 2004, in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Carrier was represented by Erin Shanley, attorney. Provider was represented by Scott Hilliard, attorney. The record closed October 27, 2004, after the parties submitted an amended table of disputed services. The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below.

**II. BACKGROUND**

Claimant suffered compensable injuries to his right elbow, low back, and head on \_\_\_\_, when he fell nine feet from a scaffold. Later that day, at Medical Center Plano, he was diagnosed with a broken left radial head fracture.<sup>1</sup> Ted Krejci, D.C., who is associated with Provider's rehabilitation center, first saw Claimant October 29, 2002, and diagnosed him to have a

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<sup>1</sup> Provider's Exh. 3, 37.

Closed fracture of the head of the radius, intervertebral disc disorder with myelopathy in the lumbar region, and headache.

On November 6, 2002, Veena Daulat, M.D., a radiologist, x-rayed Claimant and reported “negative right elbow, normal skull, normal lumbar spine.” Dr. Daulat recommended continued conservative treatment, if clinically indicated.<sup>2</sup>

An MRI of Claimant’s brain taken November 22, 2002, was normal.<sup>3</sup> An MRI of Claimant’s right elbow on November 22, 2002, showed small to moderate joint effusion, a small amount of subcutaneous soft tissue edema, and no evidence of a fracture or other abnormality.<sup>4</sup> An MRI of Claimant’s lumbar spine that same day revealed disc bulges at L3-4 and L4-5, and annular tears at L3-4, L4-5, and L5-S1.<sup>5</sup> Dr. Krejci characterized the tears as indicative of a more recent trauma than an old healed injury.<sup>6</sup>

### **III. APPLICABLE LAW**

#### **A. Texas Labor Code**

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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE § 408.021(a).

#### **B. Medical Fee Guideline: Medicine Ground Rule**

For the purposes of the Medical Fee Guideline, treatment provided under CPT Code 97110 is considered physical medicine care or therapy, and a one-to-one setting is required. Medicine Ground Rule (I) (A) (9).

### **IV. EVIDENCE AND DISCUSSION**

Carrier called one witness and offered eight exhibits, which were admitted. Provider called one witness and offered three exhibits, which were admitted.

#### **A. Was the treatment rendered to Claimant by Provider after December 18, 2002, reasonable and medically necessary?**

##### **1. Testimony of Sam Bierner, M.D.**

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2 Provider’s Exh. 2, 58.

3 Provider’s Exh. 2, 56.

4 Provider’s Exh. 2, 57.

5 Provider’s Exh. 2, 55.

6 Provider’s Exh. 2, 38.

Sam Bierner, M.D., testified on behalf of Carrier that in his opinion, Claimant should have been released to work modified duty by December 18, 2002. He said the proper physical therapy end date should have been six weeks after the first session; the first session was October 29, 2002. Dr. Bierner thought physical therapy three times per week throughout, dropping to twice per week by the end, would have been appropriate treatment. He said it would have benefitted Claimant to keep him working and exercising, because higher activity early on promotes recovery.

He said some of the disputed services were not medically necessary to treat the injury to Claimant's elbow, which turned out to be a contusion, and not a fracture, as originally diagnosed. He pointed to the x-rays taken November 6, 2002, about a week after the injury occurred, which were negative for a fracture; the November 22, 2002 MRI of the elbow which was normal; and the negative examination of elbow and arm by James E. Laughlin, D.O., on December 16, 2002.

Dr. Bierner found Dr. Laughlin's December 16, 2002 diagnosis of lumbar sprain/strain with trigger points to be reasonable.<sup>7</sup> He said the MRI supports his opinion that Claimant's spine injury was not serious. Dr. Bierner disagreed with Dr. Krejci's assessment that the annular tears revealed in the November 22, 2002 MRI of Claimant's lumbar spine were indicative of a recent trauma. He said the annular tears and bulging are typical of early degenerative disease. He did admit that they could be the result of an acute event, but said they can also occur over time and can be associated with back pain. He also testified that annular tears cannot be treated with manual manipulation, physical therapy, or work hardening.

Dr. Bierner said that although Claimant briefly lost consciousness after his fall from the scaffold, and may very well have suffered resulting headaches, he did not suffer a serious head injury.

Dr. Bierner said Claimant's subjective report that his pain level remained unchanged at 8 or 9 out of 10 for his back and elbow from October 2002 through January 20, 2003, does not comport with the objective evidence, which is that Claimant's range of motion improved between the November 5, 2002, and November 25, 2002 range of motion tests, and his elbow was at 100 percent, or normalized, by December 18, 2002. Dr. Bierner noted that range of motion testing conducted November 25, 2002, shows Claimant's range of motion to be well within limits for normal function for the neck and back, and within the range required for construction work.<sup>8</sup> He also said Claimant's pain levels are not indicative of a need for physical therapy or work hardening.

Dr. Bierner said Claimant's unchanged pain levels are a sign that either Claimant has a psychological issue, such as a need to portray himself as disabled or ill, or a pathology is being overlooked. He said the remedy is not to treat the pain rating, but to treat Claimant's function and look at the objective data such as strength and range of motion. He said Provider should have re-evaluated Claimant's treatment based on the objective data, and once it was ascertained that no pathology was being overlooked, prescribed home exercise, modified duty at work, and re-training if needed. Based on the objective evidence, Dr. Bierner believes Claimant could have returned to work on light duty and been placed on a home exercise program beginning December 18, 2002. Dr.

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7 Carrier's Exh. 8, 100.

8 Carrier's Exh. 8, 57-58, and 129.

Bierner said that by January 6, 2003, full work duty “should not have been harmful” to Claimant.<sup>9</sup>

Dr. Bierner testified that Claimant did not exhibit the objective pathology to warrant work hardening, that Claimant was exercising prior to participation in a work hardening program beginning in January 2002, and that there is no evidence the psychological examination required for entry into a work hardening program was done or that Claimant’s job requirements were discussed with his employer. He said that any time between January 6, 2003, and January 23, 2002, Claimant could have been returned to work with a 50-pound lifting restriction or even full duty, because the majority of the time Claimant’s job requires him to lift 50 pounds, and occasionally 100 pounds.

**2. Crawford Sloan, M.D.**

Crawford Sloan, M.D., examined Claimant on October 30, 2002, and found decreased range of motion with moderate pain and spasm in the lumbar spine, and right elbow pain with flexion/extension, supination, and pronation. He recommended continuation of conservative therapy modalities and treatment, pain medication, and diagnostic testing.<sup>10</sup>

**3. Michael O’Kelley, D.C.**

Michael O’Kelley, D.C., performed a peer review analysis on December 9, 2002. He did not speak with Claimant’s treating doctors, and did not know the results of Claimant’s neuroimaging. Based on his review of the medical records, he supported 56 days of disability, and was able to support treatment for lumbar strain. He said it was medically reasonable and necessary for Claimant to undergo two weeks of passive care to the spine and elbow three times per week, not to exceed four units on any given visit. He recommended active care for the lumbar spine as soon as possible at three times per week for up to six weeks, with no more than four units per session. He found one month of TENS unit rental reasonable. He said he expected resolution of the effects of Claimant’s work injuries by December 17, 2002.<sup>11</sup>

**4. James E. Laughlin, D.O.**

James E. Laughlin, D.O., examined Claimant December 16, 2002. He said Claimant was not responding well to conservative care, so recommended trigger point injections to the lumbar spine, and an injection to Claimant’s elbow, with continuation of conservative treatment.<sup>12</sup>

**5. Cornelius Matwijecky, M.D.**

The Commission requested a designated doctor evaluation, which was performed by Cornelius Matwijecky, M.D., on March 6, 2003. Dr. Matwijecky expected Claimant to reach maximum medical improvement (MMI) sometime near June 6, 2003. He recommended a series of

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<sup>9</sup> See Carrier’s Exh. 7.

<sup>10</sup> Carrier’s Exh. 8, 3-5.

<sup>11</sup> Provider’s Exh. 2, 109-111.

<sup>12</sup> Provider’s Exh. 2, 59.

Epidural steroid injections to treat Claimant's lumbar spine. He recommended that there be an orthopedic assessment or evaluation from a hand specialist for Claimant's elbow.<sup>13</sup>

#### **6. K. L. Blanchette, M.D., and Roger Clifford, D.C.**

In a retrospective peer review dated March 31, 2003, K. L. Blanchette, M.D., and Roger Clifford, D.C., concluded that Claimant's MRIs were normal, and the end treatment date for Claimant's compensable injuries should have occurred four weeks following the onset of treatment, or on November 30, 2002.<sup>14</sup> The doctors further opined that because Claimant suffered a soft tissue injury only, no formalized work hardening would be reasonable. Also, because the diagnostic testing had already been recorded as negative, no further diagnostic testing would be indicated in the absence of neurological deficits.<sup>15</sup> The doctors note that when Claimant was seen by Dr. Laughlin on December 16, 2002, there was pain noted to palpation over the medial epicondyle but there were no other findings pertaining to the elbow; and examination of the lumbar spine revealed some muscle spasms and tenderness, but no muscle deficits. They concluded Claimant had clearly reached an end treatment date by December 16, 2002.<sup>16</sup>

#### **7. Dr. Krecji's assessment**

In the October 20, 2002, SOAH note, Dr. Krecji stated that Claimant's anticipated release date was December 31, 2002.<sup>17</sup> On November 20, 2002, Dr. Krecji's treatment plan was for Claimant to receive active passive rehabilitation for two weeks, with an anticipated release date of December 31, 2002.<sup>18</sup> As late as December 24, 2002, Dr. Krecji anticipated Claimant's release date to be December 31, 2002.<sup>19</sup>

#### **8. ALJ's analysis and conclusion**

The ALJ finds Carrier proved by a preponderance of the evidence that Provider's treatment of Claimant after December 18, 2002, was not reasonable or medically necessary.

Admittedly, there was some evidence that Claimant's treatment should have continued past December 16, 2002. Dr. Laughlin recommended on December 16, 2002, that Claimant undergo injections, followed by conservative treatment, but did not say for how long. Dr. Plate, who is employed by Provider, testified that treatment should have continued through the last disputed date of service, or February 20, 2003. Dr. Matwijecky found Claimant to be in need of continued treatment as late as March 6, 2003. Dr. Sloan made no recommendation as to length of treatment.

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<sup>13</sup> Provider's Exh. 3, 23-24.

<sup>14</sup> Carrier's Exh. 8, 361.

<sup>15</sup> Carrier's Exh. 8, 362.

<sup>16</sup> Carrier's Exh. 8, 363.

<sup>17</sup> Carrier's Exh. 8, 12.

<sup>18</sup> Provider's Exh. 2, 100-101.

<sup>19</sup> Carrier's Exh. 8, 138.

However, the ALJ was persuaded by the fact that Claimant's injuries were a contusion of the elbow, lumbar sprain/strain, and headache, that Dr. Bierner, Dr. Blanchette, Dr. Clifford, and Dr. O'Kelly were correct in their assessment that treatment did not need to extend beyond December 2002. Dr. Bierner recommended a treatment end date of December 16, 2002. Dr. Blanchette and Dr. Clifford recommended a treatment end date of November 30, 2002, but no later than December 16, 2002. Dr. O'Kelly said Claimant's work injuries should have resolved by December 17, 2002. Therefore, the ALJ concludes that Carrier should not reimburse Provider for any treatment rendered to Claimant beyond December 18, 2002.

**B. Was treatment rendered from the injury date through December 17, 2002, reasonable and medically necessary?**

**1. Testimony of Chris Plate, D.C.**

Chris Plate, D.C., a treating doctor at Central Dallas Rehab, testified on behalf of Provider that the disputed treatments were reasonably required to cure and relieve Claimant's condition. He does not agree with Dr. Bierner's conclusion that Claimant suffered minor injuries. Rather, he agrees with the IRO doctor who termed Claimant's injuries as "serious," based on Claimant's annular tears and temporary loss of consciousness after the accident. He said Claimant, whose pain level was 9 out of 10 on November 25, 2002, could not return to work by that time.

Dr. Plate said Claimant benefitted from Provider's treatment rendered through December 2002, as is evidenced by documented improvements in range of motion, and gains in strength.<sup>20</sup>

**2. Disputed treatment and services provided from date of injury through December 16, 2002**

**a. Physical performance test (CPT Code 97750) on November 20, 2002.**

Claimant did not complete the physical performance evaluation on November 20, 2002, due to pain.<sup>21</sup>

**b. Temperature gradient studies (CPT Code 93740-WP) on November 25, 2002.**

Dr. Bierner testified that the temperature gradient studies are "worthless, with no relevance to the diagnosis they claim to show." He disagreed with the statement in the record that 2 degree of difference between the left and right spinal levels is indicative of nerve root compression. He said there is no indication in the medical literature that this is true, and that the technique is not generally accepted in the medical community for the purpose Provider used it for.<sup>22</sup>

**c. TENS application (CPT Code 97139-TN) on November 25, 2002.**

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20 See Carrier's Exh. 8, 57 and 128-130.

21 Provider's Exh. 2, 63.

22 See Carrier's Exh. 8, 186.

Dr. O'Kelly found one month of TENS unit rental to be reasonable.<sup>23</sup>

**d. Range of motion measurements (CPT Code 95851) on November 25, 2002, and December 13, 2002.**

Dr. Bierner noted that range of motion testing conducted November 25, 2002, shows Claimant's range of motion to be well within limits for normal function for the neck and back, and within the range required for construction work.<sup>24</sup> There is no significant change in Claimant's range of motion test results between November 25, 2002, and December 13, 2002.<sup>25</sup> The test results show that on November 25, 2002, Claimant's lumbar range of motion was between 72 percent and 96 percent of normal, and that on December 13, 2002, it was between 80 percent and 96 percent of normal. There are no test results for Claimant's elbow range of motion on November 25, 2002, but on December 13, 2002, the elbow was at 100 percent of normal.

**e. Joint mobilization (CPT Code 97265) on November 25 and 27, 2002, and December 2, 3, 4, 5, 10, 12, 13, and 16, 2002.**

On October 30, 2002, Dr. Sloan recommended continuation of conservative therapy modalities and treatment, pain medication, and diagnostic testing.<sup>26</sup> Dr. O'Kelly said it was medically reasonable and necessary for Claimant to undergo two weeks of passive care to the spine and elbow three times per week, not to exceed four units on any given visit. Two weeks would have ended at approximately November 15, 2002. Dr. Blanchette and Dr. Clifford felt treatment should continue through November 30, 2002. Dr. Bierner thought physical therapy three times per week throughout, dropping to twice per week by the end, would have been appropriate treatment, although he said Claimant's annular tears cannot be treated with manual manipulation.

**f. Myofascial release (CPT Code 97250) on November 25 and 27, 2002, and December 3, 4, 5, 10, 12, 13, and 16, 2002.**

On October 30, 2002, Dr. Sloan recommended continuation of conservative therapy modalities and treatment, pain medication, and diagnostic testing. Dr. O'Kelly said it was medically reasonable and necessary for Claimant to undergo two weeks of passive care to the spine and elbow three times per week, not to exceed four units on any given visit. Two weeks would have ended at approximately November 15, 2002. Dr. Blanchette and Dr. Clifford felt treatment should continue through November 30, 2002. Dr. Bierner thought physical therapy three times per week throughout, dropping to twice per week by the end, would have been appropriate treatment, although he said Claimant's annular tears cannot be treated with manual manipulation.

**g. Manual traction (CPT Code 97122) on November 25 and 27, 2002, and December 2, 4, 5, 10, 12, 13, and 16, 2002.**

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<sup>23</sup> Provider's Exh. 2, 109-111.

<sup>24</sup> Carrier's Exh. 8, 57-58, and 129.

<sup>25</sup> See Carrier's Exh. 8, 57-58, and 97-99.

<sup>26</sup> Carrier's Exh. 8, 3-5.

On October 30, 2002, Dr. Sloan recommended continuation of conservative therapy modalities and treatment, pain medication, and diagnostic testing. Dr. O’Kelly said it was medically reasonable and necessary for Claimant to undergo two weeks of passive care to the spine and elbow three times per week, not to exceed four units on any given visit. Two weeks would have ended at approximately November 15, 2002. Dr. Blanchette and Dr. Clifford felt treatment should continue through November 30, 2002. Dr. Bierner thought physical therapy three times per week throughout, dropping to twice per week by the end, would have been appropriate treatment, although he said Claimant’s annular tears cannot be treated with manual manipulation.

**h. Therapeutic procedures (CPT Code 97110) on December 3, 4, 5, and 12, 2002.**

Dr. O’Kelly recommended active care for Claimant’s lumbar spine, as soon as possible, at three times per week for up to six weeks, with no more than four units per session, which would have put the end date at mid-December 2002. Dr. Bierner said it would have benefitted Claimant to keep him working and exercising because higher activity early on promotes recovery.

However, while Provider documents that Claimant participated in supervised therapeutic exercises for the lumbar region and posterior neck on December 3, 4, 5, and 12, 2002, there is insufficient evidence as to what types of exercises were performed, how much weight was used, or how many repetitions were completed. Nor is there any information regarding whether Claimant’s supervision was one-on-one. The SOAH notes simply say Claimant performed passive stretching for 15 minutes, treadmill /wobbleboard for 15 minutes, and “prescribed exercises to patient’s tolerance” for 30 minutes.<sup>27</sup>

**i. Office visit (CPT Code 99213) on December 3, 4, 5, 10 and 12, 2002.**

For office visits to be compensable under CPT Code 99213, the evidence must show that at least two of the three following components occurred: an expanded problem-focused history, an expanded problem-focused examination; or medical decision-making of low complexity.<sup>28</sup> None of the SOAP notes for the disputed office visits supports that at least two of the three required components were met.

**j. Muscle testing (CPT Code 97750-MT) on December 10, 2002.**

There was no evidence regarding the medical necessity of the disputed muscle testing.

**3. ALJ’s analysis and conclusion**

Because Claimant did not complete the physical performance evaluation on November 20, 2002, due to pain, the ALJ finds Carrier should not reimburse Provider for the evaluation.

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<sup>27</sup> See Carrier’s Exh. 8, 65-67, 74-76, 80-89, and 90-92.

<sup>28</sup> See the Commission’s 1996 Medical Fee Guideline, 19. See also Carrier’s Exh. 8, 68-70, 71-73, 74-76, 80-89, and 90-92.

Provider argued that temperature gradient studies have a CPT Code, so the procedure is recognized and reimbursable. However, the ALJ is persuaded by Dr. Bierner's testimony that the use of temperature gradient studies is not generally accepted in the medical community for the purpose Provider used it for. Therefore, Carrier is not to reimburse Provider for the temperature gradient studies.

Dr. O'Kelly found one month of TENS unit rental to be reasonable. Therefore, the ALJ finds Carrier should reimburse Provider for the TENS unit application.

The ALJ finds it was reasonable and medically necessary to test Claimant's range of motion on November 25, 2002. However, since the November 25, 2002 range of motion testing indicated Claimant's range of motion to be well within limits for normal function for the neck and back, and within the range required for construction work, there was no need to conduct further range of motion testing on December 13, 2002. Therefore, Carrier should reimburse Provider for the November 25, 2002, range of motion testing, but not for the December 13, 2002, range of motion testing.

The ALJ finds that joint mobilization, myofascial release, and manual traction provided to Claimant on November 25, 2002, were reasonable and medically necessary, based on the opinions of Dr. O'Kelly that passive therapy should end November 15, 2002, and Claimant's November 25, 2002 range of motion testing that showed him to be within the normal range for a construction worker. Although Dr. Bierner opined that physical therapy should have ended December 18, 2002, he did not distinguish between active and passive therapy. Because the MRI of Claimant's elbow was normal on November 22, 2002, and because Dr. Laughlin stated on December 16, 2002, that conservative treatment was not benefitting Claimant's back injury, the ALJ finds Carrier should reimburse Provider for joint mobilization, myofascial release, and manual traction provided to Claimant on November 25, 2002, but not for that provided on November 27, 2002, and December 2, 4, 5, 10, 12, 13, and 16, 2002.

The ALJ finds Provider is not entitled to reimbursement for therapeutic exercises provided to Claimant, because the evidence does not demonstrate that Claimant received one-on-one supervision.

Because Provider's SOAH notes do not demonstrate that two of the three required components for office visits billed under CPT Code 99213 were met, the ALJ finds Carrier is not to reimburse Provider for the disputed office visits.

Because Carrier has the burden of proof in this proceeding, and presented no evidence regarding the lack of medical necessity for the disputed muscle testing, the ALJ finds Carrier should reimburse Provider for the muscle testing, which occurred prior to December 18, 2002.

#### **IV. CONCLUSION**

The ALJ finds Carrier met its burden of proof in this case as to all services provided after December 18, 2002; and as to the physical performance test, temperature gradient studies, the December 13, 2002 range of motion testing; the joint mobilization, myofascial release, and manual traction provided on December 2, 3, 5, 10, 12, 13, and 16, 2002; the therapeutic exercises; and the office visits. Provider should not be reimbursed for the aforementioned treatment and services.

However, Carrier did not meet its burden as to the TENS unit application (\$85); range of motion testing performed on November 25, 2002 (\$72); the manual traction(\$35), myofascial release(\$43), and joint mobilization (\$43) provided on November 25, 2002; and the muscle testing performed on December 10, 2002 (\$129). Therefore, Carrier should reimburse Provider \$407 for the disputed services.

## **V. FINDINGS OF FACT**

1. Claimant sustained a work-related injury on \_\_\_\_, when he fell nine feet from a scaffold, injuring his right elbow, low back, and the left side of his head. He suffered lumbar sprain/strain with trigger points, a contusion of the elbow, and headaches as a result of the fall.
2. Continental Casualty Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer when his compensable injuries occurred.
3. Claimant was first seen by Ted Krecji, D.C., at Central Dallas Rehab (Provider) on October 29, 2002.
4. X-rays of Claimant's right elbow, lumbar spine, and head taken November 6, 2002, showed "negative right elbow, normal skull, normal lumbar spine."
5. MRIs of Claimant's right elbow, lumbar spine, and brain taken November 22, 2002, showed his brain to be normal; small to moderate joint effusion, a small amount of subcutaneous soft tissue edema, and no evidence of fracture or other abnormality to his elbow; and disc bulges at L3-4 and L4-5, and annular tears at L3-4, L4-5, and L5-S1.
6. From November 20, 2002, through February 10, 2003, Provider treated Claimant with oral pain medications, physical performance testing, temperature gradient studies, myofascial release, joint mobilization, manual traction, therapeutic procedures, TENS unit, range of motion testing, muscle testing, kinetic activities, therapeutic exercises, office visits, office visits with manipulation, team conference by physician, and work hardening.
7. Provider requested reimbursement for the treatment and services outlined in Finding of Fact No. 6, which Carrier denied on the basis that the treatment and services were not reasonable or medically necessary.
8. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement of the above-described services, as well as for other services that are not in dispute in this proceeding.
9. The MRD issued its decision ordering reimbursement for all services in dispute in this proceeding on March 22, 2004, after reviewing the independent review organization (IRO) decision issued July 29, 2003.
10. On April 2, 2004, Provider contested the MRD decision, requesting a hearing before the State Office of Administrative Hearings (SOAH).

11. On May 11, 2004, a notice of the hearing in this case was mailed to Carrier and Provider.
12. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On October 13, 2004, SOAH Administrative Law Judge Sharon Cloninger convened and recessed the hearing in the William P. Clements Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. Carrier was represented by Erin Shanley, attorney. Provider was represented by Scott Hilliard, attorney. The record closed October 27, 2004, after the parties submitted an amended table of disputed services.
14. Provider's treatment of Claimant beyond December 16, 2002, was not reasonable or medically necessary.
15. Claimant did not complete the physical performance evaluation on November 20, 2002, so the service was not provided.
16. The temperature gradient studies performed on November 25, 2002, were not reasonable or medically necessary.
17. The TENS application provided November 25, 2002, was reasonable and medically necessary.
18. The range of motion measurements performed November 25, 2002, were reasonable and medically necessary to track Claimant's progress and determine the effectiveness of the ongoing treatment. Because the test results were within the normal range of function for a construction worker such as Claimant, the range of motion measurements subsequently taken December 13, 2002, were not reasonable and medically necessary.
19. The joint mobilization, myofascial release, and manual traction performed on November 25, 2002, were reasonable and medically necessary to promote Claimant's healing. However, because range of motion testing performed that same date showed Claimant to be able to function as a construction worker, any passive modalities performed after November 25, 2002, were neither reasonable nor medically necessary.
20. Claimant was not provided one-on-one supervision for his therapeutic exercises, so the treatment does not meet the requirements of the Commission's 1996 Medical Fee Guideline.
21. The disputed office visits were not reasonable or medically necessary, because they did not include at least two of the three following components: an expanded problem-focused history, an expanded problem-focused examination; or medical decision-making of low complexity.
22. The muscle testing provided to Claimant on December 10, 2002, was reasonable and medically necessary to determine Claimant's strength.

## VI. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely requested a hearing contesting the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission), as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC § 148.4(b).
4. Carrier, as the petitioner, has the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
5. Based on the above Findings of Fact and Conclusions of Law, and pursuant to TEX. LABOR CODE § 408.021(a), Provider's disputed treatments of Claimant's compensable injuries were neither reasonable nor medically necessary, except for the TENS application, range of motion testing conducted November 25, 2002, the manual traction, myofascial release, and joint mobilization provided on November 25, 2002, and the muscle testing provided on December 10, 2002.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier's request should be granted in part and denied in part, and Provider should be reimbursed \$407.

### ORDER

IT IS ORDERED THAT Continental Casualty Company is to reimburse Dallas Mega Rehab \$407 for the disputed treatments and services rendered to Claimant from November 20, 2002, through February 10, 2003.

**SIGNED December 21, 2004.**

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**SHARON CLONINGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**