

**SOAH DOCKET NO. 453-05-1647.M5
TWCC MR NO. M5-04-1587-01**

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Petitioner**

V.

**JOSEPH PRIESTER VERNOW, D.C.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Liberty Mutual Fire Insurance Company (Carrier) challenges a decision of the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD) regarding medical services that Joseph Priester Vernow, D.C. (Provider or Dr. Vernow) provided ___ (Claimant) from February 1, 2003, through December 15, 2003. MRD, relying on a determination of an independent review organization (IRO), found that Dr. Vernow did not prevail on the issue of medical necessity. However, MRD further decided that the IRO failed to address reimbursement for certain other medical services that Dr. Vernow provided, and ordered Carrier to reimburse Provider \$591.78 for those services.

As set out below, the Administrative Law Judge (ALJ) finds that Carrier has already reimbursed Dr. Vernow for services billed under Current Procedural Terminology (CPT) codes 99080 and 99455 and thus denies any further reimbursement for those services. The ALJ further finds that reimbursement for the medical services that Dr. Vernow provided Claimant under CPT codes 98940 and 97140 on December 15, 2003, should be denied as medically unnecessary.

II. FINDINGS OF FACT

1. On ___, ___ (Claimant) sustained a work-related injury to his lumbar spine as a result of his work activities (compensable injury).

2. On the date of injury, Claimant's employer was United Parcel Service, Inc., and its workers' compensation insurance carrier was Liberty Mutual Fire Insurance Company (Carrier).
3. Claimant's treating physician, Joseph Priester Vernow, D.C., furnished the following medical services to Claimant on the dates and with the Current Procedural Terminology (CPT) codes shown below and requested reimbursement from Carrier:

CPT CODES	SERVICE DESCRIPTION	DATES	TOTAL DISPUTED REIMBURSEMENT AMOUNTS
99080-73	Special report; review medical data	2/28/2003; 3/15, 29/2003; 4/12/2003	\$ 60.00
99455-V5 WP	Impairment rating examination by treating physician	4/22/2003	\$435.00
98940	Chiropractic manipulation	12/15/2003	\$ 31.68
97140-59	Manual therapy	12/15/2003	\$ 65.10

4. On May 28, 2003, Carrier reimbursed Dr. Vernow \$403.00 under CPT code 99455-V5 WP.
5. Under CPT code 99455, the maximum available reimbursement (MAR) for an impairment rating examination of one body area is \$300.00.
6. Carrier overpaid Dr. Vernow \$103.00 for his examination and impairment rating of Claimant's spine.
7. On January 14, 2004, Carrier sent an explanation of benefits (EOB) to Dr. Vernow. Carrier denied his requested reimbursement under CPT code 98940 as unnecessary treatment with peer review and his requested reimbursement under CPT code 97140-59 as lacking appropriate documentation to support his request for payment.
8. On January 19, 2004, Carrier paid all of Dr. Vernow's requests for reimbursement under CPT code 99080-73, for a total amount of \$60.00 (\$15.00 x 4).
9. On February 2, 2004, Dr. Vernow filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).

10. An independent review organization (IRO) reviewed the medical dispute and found that, among other medical services Dr. Vernow provided from February 1, 2003, through December 15, 2003, the manual therapy and chiropractic manipulation that he provided Claimant on December 15, 2003, were medically unnecessary treatments.
11. Based on the IRO's findings, TWCC's Medical Review Division (MRD) found that the medical services provided by Dr. Vernow and considered by the IRO were not medically necessary. However, MRD decided that the IRO had not considered the medical services set out in Finding of Fact No. 3 and ordered Carrier to reimburse Dr. Vernow \$591.78 for those services.
12. After the MRD decision was issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
13. Notice of a contested-case hearing concerning the dispute was mailed on November 16, 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.
14. On June 14, 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, and the record closed that same day.
15. Dr. Vernow did not appear at the hearing.
16. Carrier appeared at the hearing through its attorney, Kevin J. Franta.

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) (Vernon Supp 2004-2005) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (Vernon 2000).
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 §§ 133.308(v) and 148.14(a) (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) (Vernon 1996).

5. Based on the above Findings of Fact and Conclusions of Law, the chiropractic manipulation and manual therapy services that Dr. Vernow provided Claimant on December 15, 2003, were not medically necessitated by Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier is not required to reimburse Dr. Vernow for the services he provided Claimant on December 15, 2003, under CPT codes 98940 and 97140-59.
7. Based on the above Findings of Fact Nos. 4 - 6, and 8, Carrier is not required to further reimburse Dr. Vernow for medical services he provided Claimant under CPT codes 99080-73 and 99455-V5 WP.

ORDER

THEREFORE, IT IS ORDERED that Joseph Priester Vernow, D.C., shall not be reimbursed in the amount of \$591.78 by Liberty Mutual Fire Insurance Company.

SIGNED August 15, 2005.

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