

<b>SCD BACK &amp; JOINT CLINIC, INC.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>LIBERTY INSURANCE</b>	§	
<b>CORPORATION,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**DECISION AND ORDER**

SCD Back & Joint Clinic, Inc. (Provider) requested a hearing to contest the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC)<sup>1</sup> denying reimbursement for office visits, therapeutic exercises, group therapeutic procedures, electrical stimulation, massage and chiropractic manipulation provided to Claimant from December 23, 2003,<sup>2</sup> through August 9, 2004, on the basis that the treatment was not medically necessary. The Administrative Law Judge (ALJ) finds that the disputed treatment from December 23, 2003, through January 15, 2004, and from March 25, 2004, through April 22, 2004, was medically necessary, but that the remaining disputed treatment was not medically necessary. Therefore, Carrier is to reimburse Provider \$2,068.01 for the disputed treatment provided to Claimant from December 23, 2003, through January 15, 2004, and \$413.94 for treatment provided from March 25, 2004, through April 22, 2004, for a total of \$2,481.95 plus interest.

**I. PROCEDURAL HISTORY**

The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law set out below.

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1 Effective September 1, 2005, TWCC's functions were transferred to the Texas Department of Insurance, Division of Workers' Compensation.

2 The Table of Disputed Services submitted with Provider's Request for Medical Dispute Resolution lists the disputed dates of service as November 24, 2003, through August 9, 2004. However, the IRO and MRD addressed dates of service from December 23, 2003, through August 9, 2004. Therefore, this Decision and Order will only consider the dates set out in the MRD's order.

ALJ Sharon Cloninger convened the hearing on May 4, 2006, at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Provider was represented by William Maxwell, attorney. Liberty Insurance Corporation (Carrier) was represented by Kevin J. Franta, attorney.

Provider offered three exhibits, which were admitted, and called David N. Bailey, D.C., FACO, who is Provider's manager, as a witness. Carrier offered two exhibits, which were admitted, and called Bernie L. McCaskill, M.D., as a witness. After the presentation of evidence, the hearing concluded and the record closed that same day.

## **II. APPLICABLE LAW**

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 ANN. § 408.021(a).

## **III. FINDINGS OF FACT**

1. Claimant sustained a compensable work-related injury to his right knee on\_\_\_\_, when he slipped at a construction site and hit the inside of the knee against an I-beam.
2. Liberty Insurance Corporation (Carrier) was the workers' compensation insurer for Claimant's employer on \_\_\_\_.
3. Claimant's compensable injury was diagnosed as an internal derangement of the right knee, with a grade II sprain/strain and myofascial pain syndrome.
4. John R. Wyatt, D.C., of SCD Back & Joint Clinic, Inc. (Provider) began treating Claimant on November 24, 2003, with in-office passive and gentle active treatment, and home therapy which continued throughout the disputed dates of service.
5. On December 15, 2003, upon Provider's referral, Claimant saw B. Rick Seabolt, M.D., an orthopedic surgeon.
  - a. Dr. Seabolt found Claimant to have quadriceps atrophy.

- b. Dr. Seabolt recommended that Claimant do VMO strengthening exercise in a therapy program.
  - c. Dr. Seabolt showed Claimant exercises to do at home.
  - d. Dr. Seabolt estimated it could take four-to-six months for the swelling in Claimant's knee to resolve.
6. Provider's treatment of Claimant from December 23, 2003, through January 12, 2004, included active rehabilitation.
  - a. Between December 29, 2003, and January 8, 2004, Claimant progressed from stretching lower extremity muscles for three times at 30 seconds each to three times at 50 seconds each, not quite reaching the goal of five repetitions at 45 seconds each. He increased his active range of motion exercises from three sets of 25 repetitions to four sets of 30 repetitions, exceeding the treatment goal of three sets of 20 repetitions. He increased the number of knee mobilization exercises from three sets of 35 repetitions to four sets of 40 repetitions, exceeding the treatment goal of three sets of 20 repetitions. Claimant progressed from using the treadmill for 15 minutes to using the elliptical trainer for 15 minutes.
  - b. Claimant also performed VMO strengthening exercises, per Dr. Seabolt's recommendation.
7. In a follow-up visit on January 12, 2004, Dr. Seabolt determined Claimant was not significantly better since the December 15, 2003 visit.
  - a. Dr. Seabolt noted continuing problems in the anterior aspect of Claimant's knee, mostly aggravated by knee extension exercises.
  - b. Dr. Seabolt recommended that Claimant no longer perform knee extension exercises, but that he continue with quadriceps and VMO strengthening exercises.
8. On January 16, 2004, Hugh W. Ratliff, M.D., P.A., conducted a Required Medical Examination of Claimant, and concluded the length and frequency of treatment to date was appropriate, but did not recommend further chiropractic treatment.
  - a. Dr. Ratliff found Claimant had undergone extensive therapy, and was still undergoing therapy, without getting any better.
  - b. He determined Claimant could return to work with restrictions including not lifting more than 30 pounds, and not squatting, kneeling, climbing, or twisting his right leg.
  - c. Dr. Ratliff noted Claimant continued to have knee pain in spite of a recent negative MRI, and extensive conservative and non-operative treatment.
  - d. Dr. Ratliff found Claimant to have clinical signs of a tear of the medial meniscus, and concluded Claimant needed knee surgery.

9. Provider's rehabilitation of Claimant's knee continued for 10 sessions from January 20, 2004, through March 4, 2004, with no significant difference in protocol or progressive improvement in Claimant's condition, and no notable pain relief.
  - a. Provider modified Claimant's exercise program to accommodate Dr. Seabolt's recommendation that Claimant not do knee extension exercises, but continue with quadriceps and VMO strengthening exercises.
  - b. Claimant's stretching of lower extremity muscles increased from four stretches lasting 45 seconds each to five stretches lasting up to 60 seconds. In active range of motion exercises, Claimant progressed from four sets of 30 repetitions to four sets of 45 repetitions. Knee mobilization exercises improved from four sets of 40 repetitions to four sets of 50 repetitions.
  - c. Between January 15, 2004, and March 4, 2004, and based on Dynatron results, Claimant's right knee flexion was down 34.4 percent, and his right knee extension decreased 35.9 percent. As of March 4, 2004, according to the Dynatron results, Claimant's right knee flexion deficit was 38.9 percent, for a mild loss, and his extension deficit was 71.4 percent, for marked loss.
  - d. Claimant's pain level on March 4, 2004, was at 6 out of 10, sharp, constant, located above and below, on both sides, and at the back of his knee, and in his heel.
  - e. Claimant's pain decreased when he used ice, Celebrex, and home exercise.
  - f. Claimant reported improvement in his range of motion since beginning treatment with Provider, and the ability to walk for longer periods of time, although with pain.
  - g. After January 12, 2004, Claimant could have performed therapeutic exercises exclusively at home with no need to perform them at Provider's office. There is no evidence that he did not understand how to perform them, or that he was previously non-compliant with the home exercises Provider and Dr. Seabolt showed him.
10. In a follow-up evaluation of Claimant's knee on February 23, 2004, Dr. Seabolt found Claimant had not gotten better with physical therapy, and recommended surgery.
11. On March 15, 2004, Dr. Seabolt performed an arthroscopic partial meniscectomy and debridement of chondromalacia patella on Claimant's right knee, releasing him for post-surgical rehabilitation on March 17, 2004.
12. Claimant's post-surgical rehabilitation with Provider lasted for 11 sessions from March 25, 2004, through April 16, 2004.
  - a. Claimant's post-surgical rehabilitation included active supervised treatment with adjunct passive therapy, stretching, active range of motion, and gait training.
  - b. Verifiable and well-documented goals to improve Claimant's exercise tolerance,

reduce his pain, and increase his activities of daily living and stamina were met through specific protocols of stretching.

- c. After a trial of two days of post-surgical active care, Claimant began stamina exercises with 15 minutes of gait training, progressing to stationary bicycle work on the eighth of 11 post-surgery visits. Stretching of hamstrings and gastroc-soleus muscles to normalize joint motion, reduce the muscle spasm and/or tightness progressed over the visits from one stretch lasting 10 seconds to four stretches lasting up to 30 seconds. Active range of motion of the knee and hip to assist in joint stabilization, balance and coordination progressed from one set of 10 repetitions to four sets of 30 repetitions over the 11 visits.
  - d. Claimant's right knee range of motion increased during the post-surgery rehabilitation, from a flexion (supine) of 48 degrees on March 23, 2004, to 110 degrees on April 22, 2004, and from a flexion (seated) of 39 degrees on March 23, 2004, to 90 degrees on April 22, 2004.
  - e. Claimant's pain level diminished over the course of post-surgical rehabilitation from 10 out of 10 (10 being the most intense) on March 23, 2004, to 6 out of 10 on April 22, 2004.
13. On April 19, 2004, Claimant saw Dr. Seabolt for a follow-up exam.
- a. Dr. Seabolt found Claimant to have excellent range of motion with minimal tenderness and mild swelling.
  - b. Dr. Seabolt planned for Claimant to continue with rehabilitation exercises to increase his strength.
  - c. Dr. Seabolt planned to work Claimant off of his single crutch.
14. On May 19, 2004, Claimant was examined by Dr. Seabolt in a second post-operative follow-up exam.
- a. Dr. Seabolt observed Claimant to have no swelling in his knee, and well-healed portals and mild tenderness over the patella.
  - b. Claimant reported feeling significant anterior knee pain.
  - c. Claimant reported that leg extension exercises performed in rehabilitation bothered him the most.
  - d. Dr. Seabolt recommended that he continue with aggressive rehabilitation, but avoid leg extension exercises and concentrate on straight leg raises and VMO strengthening exercises.
  - e. Claimant could have performed the straight leg raises and strengthening exercises at

home, without the need to be supervised by Provider, because he knew how to do the exercises and was not previously non-compliant with his home exercise program.

15. Provider modified Claimant's April 26, 2004, to June 29, 2004 treatment plan to avoid extension exercises and focus on strengthening.
  - a. Claimant underwent stamina training and aerobic conditioning to increase mobility and aerobic capacity; performed stretches of hamstrings, surrounding knee and hip musculature; did active range of motion exercises of the knee and hip; did isometric functional tasks; avoided active extension exercises; and focused on strengthening.
  - b. Stamina and endurance training progressed from gait training alone to bicycle or treadmill alone; from two stretches lasting 30 seconds to five stretches lasting up to 50 seconds; and in active range of motion exercises, from one set of 15 repetitions to four sets of 30 repetitions.
  - c. Claimant began exhibiting a low level of motivation and would only complete the exercises with constant and extensive supervision.
  - d. Despite Claimant's low level of motivation, he understood how to perform the exercises, and could have performed exercises at home that would have improved his condition as much as performing them in Provider's office did.
  - e. Provider's continued treatment of Claimant at the office, rather than Claimant's performance of exercises exclusively at home, led to doctor dependence by Claimant.
16. Thomas B. Sato, D. C., prepared a peer review on June 22, 2004.
  - a. Dr. Sato concluded that post-operative rehabilitation provided through April 20, 2004, was necessary to treat Claimant.
  - b. Dr. Sato found that after Claimant's post-operative visit with Dr. Seabolt on April 19, 2004, in which Dr. Seabolt found Claimant to have excellent range of motion and minimal pain, Claimant could have done the recommended strengthening exercises at home with no barriers or complications.
17. In a June 29, 2004 follow-up evaluation, Provider noted that Claimant had progressed from using a crutch to using a cane during ambulation; had improved his right knee strength up to 333 percent; and although his pain was constant, it had diminished from 6 out of 10 on April 22, 2004, to 4 out of 10 on June 29, 2004.
18. Provider continued to provide rehabilitation for Claimant from July 2, 2004, through August 4, 2004.
  - a. During this time, Claimant's extremity stretching increased from five stretches lasting 50 seconds to six stretches lasting up to 45 seconds; his active range of motion exercise increased from three sets of 10 repetitions to three sets of 30 repetitions.

- b. Knee extension exercises were limited, and re-introduced on August 4, 2004.
  - c. Claimant continued to walk with a cane.
  - d. Claimant continued to exhibit a low level of motivation and required repeated cuing and supervision during his exercise sessions to complete his treatment plan.
  - e. Despite Claimant's low level of motivation, he could have performed exercises at home that would have improved his condition as much as performing them in Provider's office did.
  - f. Provider's continued treatment of Claimant at the office, rather than Claimant's performance of exercises exclusively at home, led to doctor dependence by Claimant.
19. Claimant's subjective pain level did not change significantly between December 23, 2003, and August 9, 2004.
- a. Between December 23, 2003, and January 15, 2004, Claimant's subjective pain level fluctuated between 4 and 5 on a scale of 1 to 10, with 10 being the most intense pain.
  - b. Immediately following Claimant's March 15, 2004 surgery, his pain was at 10 out of 10 on March 23, 2004, and decreased to 6 out of 10 by April 22, 2004.
  - c. Claimant's subjective pain level improved slightly from 5 out of 10 on July 2, 2004, to 4 out of 10 on August 19, 2004.
20. Claimant's range of motion improved between November 24, 2003,<sup>3</sup> and August 19, 2004,<sup>4</sup> but did not change for the better after January 15, 2004, or post-surgery after April 22, 2004.
- a. Between November 24, 2003, and January 15, 2004, Claimant's right knee flexion (supine) improved from 90 degrees to 110 degrees; remained at 110 degrees on March 4, 2004; dropped to 48 degrees on March 23, 2004, following surgery; increased to 110 degrees as of April 22, 2004; dropped to 86 on June 29, 2004; and increased to 102 degrees on August 19, 2004.
  - b. On November 24, 2003, Claimant's right knee flexion (seated) was 91 degrees; flexion increased to 119 degrees on January 15, 2004, improved very slightly to 120 degrees as of March 4, 2004; dropped to 39 degrees after the March 15, 2004 surgery; increased to 90 degrees as of April 22, 2004; to 95 degrees as of June 29, 2004; and to 101 degrees as of August 19, 2004.
21. Orthopedic surgeon Barry L. Veazey, M.D., prepared a Designated Doctor report dated

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<sup>3</sup> The record contains no information regarding Claimant's range of motion on December 23, 2004, the first disputed date of service.

<sup>4</sup> The record contains no information regarding Claimant's range of motion on August 4, 2004, the last disputed date of service.

September 3, 2004.

- a. Dr. Veazey found Claimant's condition did not significantly improve after the March 15, 2004 knee surgery, noting that on April 19, 2004, Claimant was still on crutches with continued swelling in the knee; that on May 19, 2004, Claimant continued to complain of pain, but had no swelling; and that as of September 3, 2004, Claimant still walked with a cane, and had pain, swelling and crepitus in the right knee, with severe atrophy of the quadriceps.
  - b. Dr. Veazey concluded that Provider's therapeutic treatment to address Claimant's muscular atrophy and decrease his pain did not result in significant improvement of Claimant's condition.
  - c. Dr. Veazey pronounced Claimant to be at maximum medical improvement, because Claimant was not making any material medical improvement, and had not done so for months.
22. Provider's disputed treatment of Claimant from December 23, 2003, through August 9, 2004, included the passive modalities of electrical stimulation, massage therapy, and chiropractic manipulation.
- a. The disputed electrical stimulation (CPT Code 97139-EU) provided on 42 dates of service from December 29, 2003, through August 9, 2004, relieved the effects naturally resulting from Claimant's injury, promoted his recovery, or enhanced his ability to return to or retain employment from December 29, 2003, through January 15, 2004, and again from March 25, 2004, through April 22, 2004, but did not do on any of the other disputed dates of service.
  - b. The disputed massage therapy (CPT Code 97124) provided on 17 dates from December 29, 2003, through July 12, 2004, relieved the effects naturally resulting from Claimant's injury, promoted his recovery, or enhanced his ability to return to or retain employment from December 29, 2003, through January 15, 2004, and again from March 25, 2004, through April 22, 2004, but did not do so on any of the other disputed dates of service.
  - c. The chiropractic manipulative treatment of Claimant's knee (CPT Code 98943) provided on 40 dates from December 29, 2003, through August 9, 2004, relieved the effects naturally resulting from Claimant's injury, promoted his recovery, or enhanced his ability to return to or retain employment from December 29, 2003, through January 15, 2004, and again from March 25, 2004, through April 22, 2004, but not on any of the other disputed dates of service.
23. Provider's disputed treatment of Claimant included one-on-one therapeutic exercises (CPT Code 97110) provided on 43 dates from December 29, 2003, through August 9, 2004, and group therapeutic exercises (CPT Code 97150) provided on 45 dates of service from December 29, 2003, through August 9, 2004.
- a. One-on-one therapeutic exercises and group therapeutic exercises provided from



December 29, 2003, through January 15, 2004, and again from March 25, 2004, through April 22, 2004, relieved the effects naturally resulting from Claimant's injury, promoted his recovery, or enhanced his ability to return to or retain employment.

- b. One-on-one therapeutic exercises and group therapeutic exercises provided from January 21, 2004, through March 3, 2004, did not relieve the effects naturally resulting from Claimant's injury, promote his recovery, or enhance his ability to return to or retain employment.
24. Provider's disputed treatment of Claimant included 42 office visits (CPT code 99211, 99211-25, 99212, 99212-25, 99213 and 99213-25) from December 23, 2003, through August 9, 2004.
    - a. The office visits on the disputed dates of service were reasonable or medically necessary from December 23, 2003, through January 15, 2004, and again from March 25, 2004, through April 30, 2004.
    - b. The office visits from January 20, 2004, through March 9, 2004, and from May 3, 2004, through August 9, 2004, were not reasonable or medically necessary.
  25. Carrier denied Provider's claim for the above services on the basis that the treatment was not reasonable or medically necessary.
  26. On November 18, 2004, Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement for the above-described services.
  27. The MRD issued a decision on January 26, 2005, stating that Provider did not prevail on the disputed issues of medical necessity, after its review of the Independent Review Organization (IRO) decision issued January 4, 2005, in this dispute.
  28. On February 22, 2006, Provider requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD decision.<sup>5</sup>
  29. On March 16, 2005, TWCC mailed notice of the hearing to Provider and Carrier.
  30. 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.
  31. On May 4, 2006, SOAH Administrative Law Judge Sharon Cloninger held a hearing in the William P. Clements Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. Provider was represented by William Maxwell, attorney. Carrier was represented by Kevin J. Franta,

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<sup>5</sup> Provider only contested those services denied by TWCC and/or the IRO, and not the additional services reviewed by the MRD.

attorney. The hearing concluded and the record closed that same day.

#### **IV. 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. LAB. CODE ANN. §413.031(k) and TEX. GOV' T CODE ANN. ch. 2003.
2. Provider timely filed notice of appeal of the decision of TWCC's MRD, 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. As the party contesting the MRD decision, Provider had the burden of proving the case by a preponderance of the evidence.
5. Based on the above Findings of Fact and pursuant to TEX. LAB. CODE § 408.021(a), Provider's treatment of Claimant's compensable injury was neither reasonable nor medically necessary, except for the disputed treatment provided from December 23, 2003, through January 15, 2004, and from March 25, 2004, through April 22, 2004.
6. Based on the above Findings of Fact and Conclusions of Law, Provider's request for reimbursement should be granted in part and denied in part.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that Liberty Insurance Corporation is to reimburse SCD Back & Joint Clinic, Ltd., \$2,068.01 for the disputed treatment provided to Claimant from December 23, 2003, through January 15, 2004, and \$413.95 for the disputed treatment provided from March 25, 2004, through April 22, 2004, for a total of \$2,481.95 plus interest.

**SIGNED July 5, 2006.**

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