



Texas Department of Insurance, Division of Workers' Compensation
 7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

Retrospective Medical Necessity

PART I: GENERAL INFORMATION

Type of Requestor: (X) Health Care Provider () Injured Employee () Insurance Carrier	
Requestors Name and Address:	MDR Tracking No.: M5-06-0345-01
Eric A. VanderWerff, D. C. 615 N. O'Connor Rd. Suite 12 Irving, TX 75061	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address:	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:
Liberty Mutual Fire Insurance, Box 28	

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include DWC-60 form, Explanations of Benefits, and CMS 1500's. Position summary states, "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."

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include DWC-60 response and Explanations of Benefits. Table of Disputed Services states, "denied by peer review."

PART IV: SUMMARY OF DISPUTE AND FINDINGS - Medical Necessity Services

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
4-5-05 – 7-14-05	CPT codes 97150, 97140-59, 97116, 98943	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	0

PART V: MEDICAL DISPUTE RESOLUTION REVIEW SUMMARY, METHODOLOGY, AND/OR EXPLANATION

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code and Division Rule 133.308 (relating to Medical Dispute Resolution by Independent Review Organization), Medical Dispute Resolution assigned an Independent Review Organization (IRO) to conduct a review of the medical necessity issues between the requestor and respondent.

The Division has reviewed the enclosed IRO decision and determined that the requestor did not prevail on the disputed medical necessity issues.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308

PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code, Sec. 413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

Donna Auby

12-19-05

Authorized Signature

Typed Name

Date of Findings and Decision

PART VIII: YOUR RIGHT TO REQUEST JUDICIAL REVIEW

Appeals of medical dispute resolution decisions and orders are procedurally made directly to a district court in Travis County [see Texas Labor Code, Sec. 413.031(k), as amended and effective Sept. 1, 2005]. An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable. The Division is not considered a party to the appeal.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.

December 14, 2005

TX DEPT OF INS DIV OF WC
AUSTIN, TX 78744-1609

CLAIMANT: ____

EMPLOYEE: ____

POLICY: M5-06-0345-01

CLIENT TRACKING NUMBER: M5-06-0345-01-5278

Medical Review Institute of America (MRIoA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above mentioned case to MRIoA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIoA has performed an independent review of the case in question to determine if the adverse determination was appropriate. In performing this review all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the IRO.

Records Received:

Records from the State:

- 1 page Texas Department of Insurance Division of Workers' Compensation Notification of IRO Assignment dated 11/22/05.
- 1 page cover from Texas Department of Insurance Division of Workers' Compensation Medical Dispute Resolution dated 10/13/05.
- 1 page Medical Dispute Resolution Request/Response Form received 10/13/05.
- 1 page list of providers
- 12 pages Table of Disputed Services
- 9 pages Explanation of Benefits from Liberty Mutual for dates 4/5/05 to 7/13/05, total of \$7,931.00.

Records from Insurance Company:

- 2 pages letter dated 12/6/05 addressed to Medical Review Inst. of America from Liberty Mutual Insurance Group.
- 3 pages letter dated 2/18/05 addressed to Liberty Mutual from Gary D. Martin, D.C., DACNB.
- 2 pages Addendum dated 3/22/05 addressed to Liberty Mutual from Gary D. Martin, D.C., DACNB.
- 6 pages Designated Doctor Examination dated 4/8/05 from The University of Texas Southwestern Medical Center at Dallas signed by Samuel Bierner, M.D.
- 10 pages Impairment Rating by Samuel M. Bierner, M.D., MRM.

Records from Requestor:

- 1 page letter dated 12/13/05 addressed to MRIoA and signed by Eric VandeWerff, D.C.
- 1 pages report signed by Eric A. VanderWerff, D.C.
- 3 pages operative report dated 10/27/05 from Park Cities Surgery Center and unsigned by Garner Newton, M.D.
- 1 page Medical Dispute Resolution DWC-60 request from Millennium Chiropractic, dated 12/12/05.
- 1 page Medical Dispute Resolution Request/Response Form received 10/13/05.
- 1 page list of providers
- 12 pages Table of Disputed Services
- 2 pages Initial Report dated 11/24/05 from Millennium Chiropractic and signed by Eric A. VanderWerff, D.C.
- 2 pages Treatment Plan dated 11/29/04 addressed to Liberty Mutual Corp., and signed by Eric A. VanderWerff, D.C.
- 6 pages Physical Performance Evaluation dated 12/15/04 from back@work rehab, unsigned by Adrian Olivares, D.C.
- 2 pages MRI Scan Without Contrast - Left Knee dated 1/27/05 from Texas Imaging & Diagnostic Center.
- 6 pages Physical Performance Evaluation dated 1/31/05 from back@work rehab, unsigned by Adrian Olivares, D.C.
- 6 pages Physical Performance Evaluation dated 3/9/05 from back@work rehab, unsigned by Adrian Olivares, D.C.
- 8 pages medical report dated 3/30/05 addressed to Liberty Mutual and signed by James Box, M.D.
- 1 page Work Status Report dated 3/30/05 and signed by James J. Box, M.D.
- 1 page letter dated 3/28/05 addressed to Eric VanderWerff, D.C. from Irving Orthopedics and Sports Medicine and signed by Mark A. Kazewych, M.D.
- 2 pages report dated 3/28/05 from Irving Orthopedics & Sports Medicine, and unsigned by Mark A. Kazewych, M.D.
- 6 pages Designated Doctor Examination dated 4/8/05 from The University of Texas Southwestern Medical Center at Dallas and signed by Samuel Bierner, M.D.

- 10 pages Impairment Rating by Samuel M. Bierner, M.D., MRM.
- 1 page Work Status Report dated 4/8/05 and signed by Samuel M. Bierner, M.D., MRM.
- 1 page pain chart dated 4/8/05.
- 6 pages Physical Performance Evaluation dated 4/20/05 addressed to Eric A. VenderWerff, D.C. from back@work rehab and unsigned by Adrian Olivares, D.C.
- 1 page DWC-69-report of Medical Evaluation dated 5/10/05, signed by Samuel M. Bierner, M.D., MRM.
- 6 pages Physical performance Evaluation dated 6/2/05 addressed to Eric A. VanderWerff, D.C., unsigned by Adrian Olivares, D.C.
- 3 pages Workers' Compensation Initial Behavioral Health Evaluation dated 6/9/05 from Sky Clinical Association, signed by Sandra K. Young-Whigham, LMSW-ACP.
- 13 pages computer-generated Daily Notes for dates 4/5/05 to 7u/14/05 a total of 36 visits.
- 13 pages patient status for dates 4/5/05 to 7/14/05, total of 36 visits.
- 7 pages Doctor's Notes for dates 4/21/05 to 6/20/05, total of 9 visits.

Summary of Treatment/Case History:

The records indicate the patient alleges an industrial injury on ___ while employed as a forklift driver by Siemens Dematic. The patient alleges he stepped off the lift and landed on a 2X4 and had a buckling of his left knee. The patient indicated he did not have immediate pain, but the knee began to swell. He reported the incident to his supervisor. The patient continued to work until 10/13/04. X-rays were taken of the left knee but failed to disclose any remarkable findings. The patient was given crutches and meds. The patient was provided medical attention and there was a diagnosis of patellar fracture, which was later changed. An MRI was performed that indicated joint effusion and a moderate-sized baker's cyst. There was a tear of the medial and lateral meniscus and evidence of mild degenerative changes.

On 4/8/05 a Designated Doctor Examination performed by Samuel M. Bierner, M.D. set forth the history of the injury, listing of the patient's subjective complaints, and physical examination objective findings. Dr. Bierner diagnosed left knee sprain/strain, left lateral meniscal injury, possibility of a lateral meniscal tear, unrelated lumbar radiculopathy. Dr. Bierner indicated that he assigned an impairment rating of 4% using the AMA Guidelines, Fourth Edition. Dr. Bierner further indicated that he did not feel that continuing the treatment that had been provided was likely to alter the patient's complaints. On 5/10/05 Dr. Bierner submitted a Report of Medical Evaluation indicating he was a designated doctor selected by the TWCC and that the patient had reached maximum medical improvement on 4/8/05 with a 4% permanent impairment.

The records indicate that Eric VanderWerff, D.C. provided passive chiropractic manipulation of the left knee, manual therapy referred to as joint mobilization, myofascial therapy, rehabilitative exercises and gait retraining. The records indicate the doctor of chiropractic intended to treat at 3 to 4 times per week for 8 weeks with a re-examination to follow. The report from Dr. VanderWerff indicates the patient changed primary treating physicians to Dr. VanderWerff after "seeing his condition deteriorate." The documentation provided indicates the patient was seen by Dr. VanderWerff on 11/24/05 and was treated until at least 7/14/05.

In addition to the services provided by Dr. VanderWerff the patient was also seen by Adrian Olivares, D.C. of back@work rehab. The referral to back@work rehab was ostensibly to maintain the patient's leg strength awaiting surgery. There is also mention in a report from Dr. Olivares that "work hardening" was recommended.

On 3/28/05 the patient was seen by Mark A. Kazewych, M.D. of Irving Orthopedics & Sports Medicine. Dr. Kazewych indicated the patient claimed the meniscal tear was not limiting him significant and the doctor did not recommend surgery at that time.

On 3/30/05 the patient was seen by James Box, M.D., Diplomate, American Board of Orthopedic Surgery. Dr. Box references the MRI dated 1/27/05 indicating the baker's cyst, effusion, lateral meniscus tear, degenerative changes, patial tear of the adductor magnus tendon and a degenerative cyst in the posterior aspect of the medial femoral condyle of the left knee. Dr. Box performed a physical examination and diagnosed lateral meniscus tear, mild degenerative arthritis, partial tear of the adductor magnus tendon, allo of the left knee. Dr. Box indicated the patient probably had a prior history of degenerative changes in the left knee which was aggravated by the current alleged injury. The doctor recommended arthroscopy.

On 6/9/05 a behavioral health evaluation was provided upon the referral from Eric A. VanwerWerff, D.C. It was performed by Sky Clinical Associates, not by a Clinical Psychologist, but by a LMSW-ACP. It is unclear why the patient was referred for a psychological evaluation.

The only chart notes provided from Dr. VanderWerff cover dates 4/5/05 to 7/14/05. They are computer-generated and are not signed by the doctor. From 4/5/05 to 7/14/05 there is very little, if any, improvement in the patient's complaints or ability to perform usual functions with the left knee. The level of service provided, more than 36 visits, does not correspond to the lack of success with the patient's complaints. The last chart note dated 7/14/05 indicates the patient is scheduled for surgery the following week and there is an intention to provide even more rehabilitation after the surgery.

On 10/27/05, the patient was operated on by Garner Newton, M.D, at Park Cities Surgery Center. The operative report indicates the patient had complex tearing of the posterior horn of the medial and lateral meniscus, chondromalacia of the trochlear groove, synovitis in the medial prepatellar area and chondromalacia of the medial femoral condyle.

The carrier objected to the provider's claims from 4/5/05 to 7/14/05 and the doctor filed a request for an independent review.

Questions for Review:

Items in dispute, #97150, therapeutic activities, #97140-59, manual therapy (referred to as joint mobilization by the doctor), #97115, gait training and #98943, chiropractic manipulation.

1. Are these medically necessary for dates of service 4/5/05 to 7/14/05?

Explanation of Findings:

The first issue to be addressed is the use of chiropractic manipulation of a knee for a patient with a torn meniscus. A very thorough search of the current literature failed to disclose any significant controlled clinical studies that indicate any efficacy of chiropractic manipulation for a meniscal tear. There are two choices in dealing with a torn meniscus: 1) leave it alone and wait until the patient can no longer stand the discomfort and seeks surgery, or, 2) refer the patient for surgery immediately. The patient received passive chiropractic manipulation and alleged rehabilitation of a knee that was clearly in need of surgery. The knee could be adjusted multiple times per day, for months and months and that would have absolutely no impact on the patient's outcome. It is clear that months of physical therapy/rehabilitation failed to resolve the problem, nor would it ever.

The same thing is true with manual therapy (joint mobilization), gait training, and therapeutic activities. None of these services will have any impact on a torn meniscus, synovitis, or chondromalacia patellae. They are either lived with, or there is surgery performed.

There is no documentation evident that indicated the patient was unable to perform a self-directed home exercise program, if exercise was required, prior to the surgery. There is no documentation that clearly indicates that it was medically necessary to have the patient seen as frequently as he was seen by the doctor of chiropractic and the rehab facility. The patient could have been educated/instructed in a self-directed home exercise program of strengthening, stretching, increasing flexibility and muscle tone. That does not require licensed supervision or be performed in an office. It can be done by the patient in the privacy of his own home and at his own speed. Dr. VanderWerff indicated he continued to provide services due to others failing to perform as he indicates they should have performed. In actuality, the continuing treatment was not efficacious and had no impact on the fact the patient needed knee surgery and ultimately had it.

It is understandable that Dr. VanderWerff would disagree with a peer reviewer who issued an opinion in opposition to his. That is to be expected and it was appropriate for Dr. VanderWerff to request an IRO if he so chose. It is the responsibility of a reviewer to base decisions on facts found in documentation and for those decisions to be supported by high quality scientific studies as well as nationally recognized evidence-based guidelines.

The American College of Occupational and Environmental Medicine, 2nd Edition, in Chapter 13, page 339, indicates, "Manipulation does not appear to be effective in alleviating knee pain." There is a lack of high-quality scientific studies that clearly indicate the efficacy of passive chiropractic manipulation of the knee. In chapter 13, page 339, the guide states, "Physical modalities, such as massage, diathermy, cutaneous laser treatment, ultrasound, and biofeedback have no scientifically proven efficacy in treating acute knee symptoms. Table 13-3 on page 338 indicates under non-prescribed physical methods, the recommendations of modification of workstation, tasks, work hours and methods; stretching; specific knee exercises; at-home application of cold/heat and aerobic exercise. The guidelines recommend on page 343, that if a patient has activity limitation for more than one month the patient should be referred for a surgical consult. In Table 13-5 on page 346, under physical treatment methods, the guide does not recommend passive modalities without an exercise program or manipulation.

The records clearly indicate that passive chiropractic treatment was not medically necessary, not supported by nationally recognized, evidence-based guidelines, and it was inappropriate to continue treating from November 2004 to July 2005. In addition, it was inappropriate to continue to attempt rehabilitation of a knee that was clearly in need of surgical intervention. Whether it was certified by a peer reviewer or by the carrier was immaterial to the fact the doctor of chiropractic inappropriately continued to provide a high level of service with multiple lines of services when it was clear the patient would not have resolution and did not have a cure of obtain relief, as the doctor states, as a requirement under Texas law.

Conclusion/Decision to Not Certify:

Items in dispute, #97150, therapeutic activities, #97140-59, manual therapy (referred to as joint mobilization by the doctor), #97115, gait training and #98943, chiropractic manipulation.

1. Are these medically necessary for dates of service 4/5/05 to 7/14/05?

No, there is no medical necessity shown for the dates of service from 4/5/05 to 7/14/05.

References Used in Support of Decision:

This decision is based upon documentation, local and national community standards and the following reference:

- 1)Occupational Medicine Practice Guidelines, 2nd Edition, American College of Occupational and Environmental Medicine, OEM Press, 2004. Citations are referenced in the text of the discussion.

2) Milliman Care Guidelines, Milliman USA, Inc., 9th Edition. Ambulatory Care. Knee Pain Section. Recommends 6 to 9 visits for physical therapy of the knee. No indication for passive chiropractic manipulation of a torn meniscus.

This reviewer has been provided by a licensed chiropractor in active practice for over twenty years. This reviewer is a Board eligible Chiropractic Orthopedist and is a member of their state Chiropractic Association and the American Chiropractic Association. This reviewer specializes in disability evaluation, industrial injuries, roentgenology and independent medical examinations and is active in continuing education related to disability and impairment ratings. The reviewer has additional qualifications and training in Acupuncture. This reviewer is certified by their State Chiropractic Association in Industrial Disability examinations and evaluations.

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

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The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Valerie O ext 554