

MEDICAL REVIEW OF TEXAS

[IRO #5259]

3402 Vanshire Drive

Austin, Texas 78738

Phone: 512-402-1400

FAX: 512-402-1012

NOTICE OF INDEPENDENT REVIEW DETERMINATION

TWCC Case Number:	
MDR Tracking Number:	M2-05-1506-01
Name of Patient:	
Name of URA/Payer:	Zurich American Insurance
Name of Provider: (ER, Hospital, or Other Facility)	
Name of Physician: (Treating or Requesting)	Matthew Hicken, DC

July 5, 2005

An independent review of the above-referenced case has been completed by a medical physician board certified in orthopedic surgery. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD
Medical Director

cc: Robert J. Henderson, MD
Matthew Hicken, DC
Texas Workers Compensation Commission

CLINICAL HISTORY

The patient apparently was seen at Ellis Spine Care by a Dr. Benjamin Cunningham on 4/1/04. He was noted to have injured himself on ____ when he was lifting a heavy box. He complained of left lower back pain, left leg pain, and left hand numbness. Previous MRI scan dated 1/20/04 showed congenital narrowing of the lumbar spine, lumbar lordosis, and a posterior central annular tear at L4-5. X-rays of the lumbar spine showed mild facet joint changes at L5-S1 with some evidence of degenerative spurring of the lumbar spine. EMG done on 1/29/04 showed mild L5 radiculopathy. He was noted to have decreased sensation in the left leg in the L4, L5, and S1 distributions with a positive straight leg raising on the left. He was noted to have some diffuse weakness in his knee extensors, tibialis anterior, and gastrocnemius and EHL muscles. Reflexes were equal at the knee and absent at the ankles. The diagnosis was left leg radiculopathy, possible piriformis syndrome, S1 joint strain, and low back pain. A workup for infection was recommended due to a history of fevers. It was noted that MRI imaging showed no significant neurocompressive pathology. A CT myelogram was recommended in consideration for epidural steroid injections. On 10/13/04 Dr. Cunningham saw him again with the patient having apparently had a myelogram and CT with central stenosis noted at L4-5 and bilateral L5 nerve root sleeve cutoff. An IDET procedure was recommended. Lumbar decompression was recommended. On 1/28/05 Dr. Henderson saw the claimant at Dallas Spine Care, PA. He reviewed the previous history and imaging studies. Flexion/extension x-rays apparently showed little if any motion with no abnormalities on the oblique or the flexion/extension films. He noted that a CT myelogram done on 5/17/04 showed severe central canal stenosis at L4-5 secondary to a disc bulge, facet hypertrophy, and ligamentum flavum hypertrophy. He also had a disc bulge at L3-4. He reviewed the previous MRI and EMG studies. He

diagnosed severe spinal canal stenosis at L4-5 and ruled out discogenic pain. He recommended lumbar discography at the lower three lumbar levels and stated that the patient was at least a candidate for decompression of his spinal stenosis. He felt that further investigation to identify pain generators via obtaining a discogram was important.

On 8/26/04 the patient had another opinion from Paul Vaughan, MD. He reviewed the patient's history and imaging studies. His neurological exam was grossly normal. He recommended a decompression bilateral micro laminotomy and a left micro discectomy to decompress the spinal stenosis.

The patient had a psychosocial evaluation on 10/19/04. Findings indicated that the patient was found to have evidence of severe depression. He also demonstrated evidence of severe anxiety/somatic preoccupation. He was also noted to have a high score on the pain and impairment relationship scale, indicating a strong level of beliefs likely to interfere with the recovery process. It was felt that he needed a multidisciplinary program such as a work hardening program to deal with the psychological abnormalities and needed evaluation for medications for his mood disturbance. Individual psychotherapy was also recommended for treatment of his depression and symptom dependency.

On 5/28/05 he had a designated doctor exam by Dr. Castano. She felt that he was not at MMI considering the fact that surgery had been proposed and the patient was considering having surgery. Of significance on exam, he was noted to have left S1 joint pain with painful lumbar range of motion. He had a positive straight leg raising on the left. Neurological exam revealed decreased strength in the left quadriceps, hamstrings, and EHL. Sensory exam revealed a deficit in the left L4, L5, and S1 dermatomes.

He had another impairment rating evaluation by Dr. Diaz, DC on 5/25/04. It was his opinion that the patient had not reached MMI.

Dr. Castano saw him again on 8/27/04 and again indicated he was not at MMI, as he was considering having surgery. Dr. Castano saw him again on 3/16/05 indicating that he was still not at MMI. The claimant stated that he wished to have surgery to alleviate his symptoms. He was complaining of constant numbness and tingling in his left leg down

to the foot. His pain was aggravated by prolonged standing, sitting, or bending. He apparently was scheduled for a lumbar discogram.

Subsequently there are reports indicating that a request for work conditioning program was reviewed and was felt to be not medically indicated by three chiropractors including Dr. Bottoroff, Dr. Carlson, and again by Dr. Bottoroff.

Subsequent records indicate that the claimant underwent a lumbar epidural steroid injection on 4/12/04 by Dr. Schade. Diagnoses included lumbar radicular syndrome with right sciatica and bulging discs at L4-5, depression, and Type II diabetes.

Evaluation by Dr. Schade on 2/20/04 indicated that the patient was complaining of low back pain and bilateral leg pain and numbness and weakness. He noted also that the claimant was depressed with mood swings. He reviewed his MRI and previous EMG studies. The Oswestry disability index showed severe disability. He showed marked elevation of scores for depression, anxiety and somatization. It was noted that he was taking Glucophage. He was noted to have decreased reflexes on the left side and positive straight leg raising at 75°. Lumbar ESIs and medications were recommended as well as an anti-depressant. On 4/27/04 Dr. Schade noted that the ESI did not help him. Psychological counseling was recommended as well as continuation of medications.

A medical record review was performed on 1/13/05 by Jane Duncan, DC. It was her opinion that further physical and chiropractic treatment was not needed. She also felt that a complex multidisciplinary rehab program would not be helpful. She felt that the effects of the injury had resolved and that the ongoing complaints and residual deficits should be attributed to the congenital and degenerative changes noted on his imaging studies.

A functional capacity evaluation was completed on 3/30/04. Findings indicated that the claimant could not return to his previous occupational position due to inability to perform very heavy physical demand level work. A work hardening program was recommended.

Subsequent review determinations regarding requests for lumbar discograms were performed by Dr. Yatsu on 2/10/05 and Dr. Simpson

on 3/17/05. Both reviewers noted that there was no evidence of instability noted. It was felt that discography was unreliable and therefore was not indicated.

REQUESTED SERVICE(S)

Lumbar discogram/CT; L3-4, L4-5, L5-S1. L2-3 only if necessary for control level.

DECISION

Denied.

RATIONALE/BASIS FOR DECISION

Dr. Carragee's article in *Spine* 25 (11:1373-1381) concluded that positive pain responses were apparent in 83% of a group of patients with somatization disorder. This report concluded that significantly painful injections were very common in subjects with annular disruption and chronic pain or abnormal psychometric testing. This article would therefore cast doubt on the accuracy of discography for determining whether a disc was the pain generator in the lower back. Additionally, discography would normally be performed to determine whether an individual disc level is a pain generator and therefore should be fused. In the absence of any evidence of spinal instability at any of the disc levels, the consideration for fusion is not medically necessary or reasonable.

Further evidence, which would support non-authorization of discography is also available from Carragee in *Spine* 29 (10:1112-1117). This study concluded that painful disc injections are poor independent predictors of subsequent low back pain episodes in patients initially without active lower back complaints. It was also noted that annular disruption was a weak predictor of future low back pain problems and that psychological distress and preexisting chronic pain processes were stronger predictors of low back pain outcomes. Further information from Ivar Brox et al. September 1, 2003, *Spine* demonstrated that in a prospective randomized trial that patients treated with lumbar fusion did no better than patients treated with a lecture about the safety of ordinary activity followed by exercise three times a day for three weeks. The surgical fusion group was no better at the final follow-up than the nonoperative group in terms of residual pain. Therefore, obtaining discogram to determine what level should

be fused is not medically reasonable or necessary as there is no medical indication for lumbar fusion. Further information to document the lack of medical necessity for discography prior to considering lumbar fusion comes from Fitzler's study in 2001, indicating limited improvement between a surgical fusion group and a nonoperative group of only 15% at two years postop. This limited improvement must be considered in relationship to the 17% surgical complication rate in the fusion surgery group.

YOUR RIGHT TO REQUEST A HEARING

Either party to this medical dispute may disagree with all or part of the decision and has a right to request a hearing.

If disputing a spinal surgery prospective decision a request for a hearing must be in writing, and it must be received by the TWCC Chief Clerk of Proceedings within **10** (ten) calendar days of your receipt of this decision (20 Tex. Admin. Code 142.5©).

If disputing other prospective medical necessity (preauthorization) decisions a request for a hearing must be in writing, and it must be received by the TWCC Chief Clerk of Proceedings within **20** (twenty) calendar days of your receipt of this decision (28 Tex. Admin. Code 148.3).

This decision is deemed received by you 5 (five) days after it was mailed or the date of fax (28 Tex. Admin. Code 102.4(h) or 102.5(d)). A request for a hearing and a **copy of this decision** must be sent to:

Chief Clerk of Proceedings/Appeals Clerk
Texas Workers' Compensation Commission
P.O. Box 17787
Austin, Texas 78744

Or fax the request to (512) 804-4011. A copy of this decision must be attached to the request.

The party appealing the decision shall deliver a copy of its written request for a hearing to the opposing party involved in the dispute.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on this 6th day of July 2005.

Signature of IRO Employee: _____

Printed Name of IRO Employee: Cindy Mitchell