IRO America Inc.

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December 5, 2005

TDI-DWC Medical Dispute Resolution
Fax: (512) 804-4868

Patient:	___
TDI-DWC #:	___
MDR Tracking #:	M2-06-0292-01
IRO #:	5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI, Division of Workers' Compensation (DWC) has assigned this case to IRO America for independent review in accordance with DWC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America has performed an independent review of the proposed care 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.

The independent review was performed by a matched peer with the treating doctor; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed MD, board certified and specialized in Orthopedic Surgery. The reviewer is on the DWC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer 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 carriers health care providers who reviewed the case for decision before referral to IRO America for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

Notification of IRO Assignment, records from the Requestor, Respondent, and Treating Doctor(s), including: 6/26/1 McConnell, MD7/3/1 Vaughan. 8/21/1 McConnell op note10/31/1 Sekhavat, MD12/20/1 McConnell1/23/2 Sekhavat4-29-2 Eanes, DO, RME/16/2 Tonn, MD, RME1/16/3 Kuenstler, PT2/3 Eanes, DO, RME12-23-3 Xray L spine1/22/4 Williams, MD2-27-4 M/CT5/4/4 Marks, MD, initial OV6/28/4 Krejci, MD7/2/4 MRI including F/E seated views12/6/4 Franz, MD1-18-5 Bendow, DO5/11/5 Parker, MD9-15-5 UniMed denial letter9-21-05? UniMed denial letter9-15-5 UniMed denial letter10-11-05 MRI11/11/5 IRO Report.

CLINICAL HISTORY

M = Dr. Richard Marks

1989 “2 level lumbar lam.”

DOI ___

6/29/00 Concentra, Warren, MD. c/o L abdomen, R wrist, pain L great toe (pallet hit toe). PE swelling of L gr toe, No c/o LBP and no PE of lb or XR. No lb dx. Rec gen surgeon eval for hernia.

___ (? date correct) Njamfa, MD. PMP. c/o lbp, L. inc actibity, 7/10, L pain , N , weak. ROS pt communicates helplessness and hopelessness, D. Frustrated can’t rtw. PE no dtrs, dec rom, h/t ok, slr difficult to asses, nl gait, NO neuro deficits. Imaging dessicated discs. Rec surgical consult.

7/28/00 Cione, MD. Performed L hernia repair.

8/28/00 Cione. Recovering well, no c/o.

9/12/00 Walia, MD, EMG report. Mild bilat L5 and S1 radic.

9/15/00 Keene, MD. Pt says most of his pain is low back rather than in hernia site. PE dec LLE. L dtr’s are sig increased LLE. + slr L. Dx L HNP with radic, lubar contusion with spasm, OA R K, pharyngitis. Rec wrist mri, review emg, meds, mri lumbar.

10-31-00 MRI. 2 mm bulges 34 and 45. No nr.

11/13/00 Keene. MRI shoes 2 mm bulge 34 and 45. EMG bil 5 and 1 radic. DX HNP 34 and 45 (incorrect). Rec ortho and esi.

11/28/00 Vaughan, MD. c/o lb and L 8/10. PE dec rom, slr 80 on L, wekness of L5 may be voluntary of possibly from a radic. MRI disc dislocation 34 and 45. Rec blox and esic. If no better, then 4 level disco, poss fusion. No mention of PT, nsaids, etc.

12/5/00 Miller, DC. Multiple notes. Adjustments.

2/28/01 Fisk, MD, ESI note. 45. 3 total esi’s.

3/19/1 FCE. Pain behaviors, emotional dysfunction, At risk for chronic pain.

3/19/01 Psych. Depression.

11/6/2.Sekhavat, MD. “L45 instability with disc bulge”. + slr L.Surgery requested, denied.

12/11/2. S. Surgery denied. Pt demanding something done. Pos slr L.

6-4-1 Myelo/CT. 34 bulge, mild lat rec, effaces sac mild, mild encroach inf foramina; 45 3-4 mm bulge effaces sac mild, mild lat rec, mild encroach inf foram. No nerve root at any level.

6/4/1 Morrison, MD, EMG UE. Median neuropathy, radial superfic branch neuropathy.

6/26/1 McConnell, MD.for wrist c/o.

7/3/1 Vaughan. M/CT no stenosis. Pt not surgical.

8/21/1 McConnell op note, repair wrist.

10/31/1 Sekhavat, MD. Lb and L. PE. Spasm, tender 45, dec rom, antal, h/t, slr + L left leg pain repre, dec sens L esp L5 derm, dtrs, ? MMT weak L ehl. MRI severe facets, bulge 45 M/CT bulge 45, facets 45 and 51, foram bilat 45. DX failed nonsurg, incompetent L45 disc. RTC to review more records.

11/14/1 S. recs disco and possible L45 fusion.

12/12/01 S. Carrier denies disco.

12/20/1 McConnell. Pt happy with result of wrist surgery.

1/23/2 Sekhavat. Pt wants ALIF 45 and decomp. Facet screws.

3/25/2 S. Evidence of instab 45. Rec dispute res.

4-29-2 Eanes, DO, RME. Brief exam, neuro “grossly negative”. Not at MMI, pursuing surgery. Rec sij and blox.

7/16/2 Tonn, MD, RME. 10 page report. 5/8 Waddell. No surgery or disco rec’d.

1/16/3 Kuenstler, PT. Dx severe chronic pain. Rec surgical consult. And PMP.

1/2/3 Eanes, DO, RME. 5% MMI lb and wrist. Believes pt has lumbar disc disease, but pt no longer wants surgery.

12-23-3 Xray L spine. Mild diffuse DD. Scoliiosis. SI joints degen.

5/5/3 F/E Xrays, Cheatham, MD, radiologist. 3-4 mm of displacement on flexion views L5S1.

1/22/4 Williams, MD, neurosurgeon. LBP>leg. Does not think that he can help the patient, but he recommends Ortho spine consult to deal with the instability L5S1 seen on Xrays.

2-27-4 M/CT. partial report. No nr 51. Facets.

5/4/4 Marks, MD, initial OV. Williams MD rec'd ortho consult for possible fusion. Xrays show grade I/II slip 51. Slip increases with flexion. Recs F/E MRI.

6/28/4 Krejci, MD. Pt reports dec wrist and inguinal pain.

7/2/4 MRI including F/E seated views. DD 3-1, 1 mm bulging all levels. F/E neg. No nr.

7/12/4 M. Recs 5 level disco.

11/4/4 M. Recs 3 level transcutaneous disc resection since disco denied. [I strongly disagree. He'll perform a discectomy on a slip 51. He doesn't know if these other levels are symptomatic].

12/6/4 Franz, MD. c/o lbp and L. Inc ant col and post col. PE, inc with trans, spasms, + Milgram's and Kemp's. Rec surgical consult.

1-18-5 Benbow, DO. OTJ Walmart. Pallet jack pined him, infured wrist, groin, and lb.Had surgery on wrist and groin. C/o lb and L. WC denied surgery and disco.PT and meds. 70% lb and 30% L lT, lC and lF. 7/10.Pain severe. N and weak L. PE dec rom, + Waddell x 3,SLR + lb and B L, 4+/5 ta, ehl, gastroc with giveaway L, + stocking, + light touch. MRI dd 3-1, NO nr. Ct/m bulges 3-1, vacets,. Dx dd 3-1, facets, radic L, healed pars fx. Rec EMG, esi. Repeat disco L2-1 Hopes disco + one level. No mention of Waddell.

2-22-5 M. Pt will be doomed to lifetime of pain without intervention.

5/11/5 Parker, MD."I agree with Dr. Williams, there is no absolutely no reason for any form of neurosurgical or any other type of operative intervention in this patien's spine. Poss extreme psychological overlay. Rec psych. Surgery is contraindicated. Unethical to operative. Disco has 50% false pos gives excuse to operate. Has reached MMI." [Parker did not see the 5/5/3 Xrays showing slip at 51. He reviewed Willimas note which said no neurosurgical intervention but made no comment about Williams rec to see ortho spine for instab. Brief PE note, poor documentation. Misstates Dr. Williams conclusion, fails to document evidence of psych overlay, fails to see evidence of instability (did not have F/E films), and overstates problems with discography.

6/2/5 M. States Parker's conclusions are incorrect, "If …not overtly illegal…unethical… in a civilized society."

9-15-5 UniMed denial letter. Denied because bulges not clinically significant per 2 neurosurgeons, Williams and Parker. No clinical evidence of consistent LE radic.

9-21-05? UniMed denial letter.Innumberable injection proc back and wrist pain. Surgery on wrist failed. Several providers 2002-3 pain behaviors. PE no radic. No recent MRI, only from Oct 2000. showing midline bulges, no NR. CT/myelo show DD and facet, no NR. Request for fusion denied. No surgery rec'd, ACOEM guides recs against Percutaneous disc because no efficacy has been proved.

9-6-5 Dr. Marks. Recs disco 4 level, but that was denied. Because of the denial, recs perc discectomy at 3 levels. Discussed nonsurg via interpreter.

10-11-05 MRI. Prob 2-3 mm slip 51 with facets. Rec F/E.

10/18/5 M. DD 3-1. Slip 51. Rec WHP, inj, PT all already done. Options surgery vs meds. Recs 4 level disco.

11/11/5 IRO Report. 7 RME's including Tonn and Bigos. PT 91 visits. Meds, 3 esi's. 2 level LL 1989. This injury c/o lbp and R pT (incorrect). Opinion is against trans disc resection because of chronic back and R radic pain (incorrect side). Rec MRI with gadolinium.

DISPUTED SERVICE(S)

Under dispute is the prospective, and/or concurrent, medical necessity of 3 level transcutaneous disc resection L3-4, L4-5, L5S1.

DETERMINATION/DECISION

The Reviewer agrees with the determination of the insurance company.

RATIONALE/BASIS FOR THE DECISION

For this procedure to be justified there should be evidence that the patient's pain is coming from all three of these discs. But there is no evidence that this patient's pain is coming from all 3 of these discs: 1. No nerve root impingement has been demonstrated at these levels, 2. The insurance carrier denied the discogram test that could have helped sort out the pain generator, and 3. If the patient's pain is coming from the spondylolisthesis at L5-S1, then the pain may actually be made worse if Dr. Marks performs a discectomy at L5-S1 because he will make the spine more unstable.

Although two neurosurgeons, Drs. Williams and Parker saw this patient, Dr. Williams recommended that this patient be evaluated for the spondylolisthesis at L5-S1 by a spine surgeon who performs fusions. Unfortunately, Dr. Parker misquoted or misstated Dr. Williams and failed to address the spondylolisthesis at all. Also Dr. Marks' failed to concentrate on the L5-S1 level as being a pain generator. Additionally, a number of providers saw this patient and no one ordered flexion/extension lateral X-rays to rule out instability, a commonly missed diagnosis. It wasn't until 5/5/03 that one was ordered and the diagnosis was made. A number of providers rendered opinions on this case without this crucial piece of evidence.

In The Reviewers' opinion, what's best for this patient is to see a conservative, thorough spine surgeon who performs fusions, one who should be made aware of this patient's psychological issues, looks for psych issues on physical exam, but will weigh the instability evidence as well.

A number of providers seem to conclude that his patient should not have surgery because he is at risk for delayed recovery because of psych issues. But psych issues don't contraindicate all surgical procedures, particularly if the diagnosis of spondylolisthesis has been missed by many of the providers.

Screening Criteria

1. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by DWC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM

Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

CERTIFICATION BY OFFICER

IRO America has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. IRO America has made no determinations regarding benefits available under the injured employee's policy.

As an officer of IRO America Inc., I certify that there is no known conflict between the Reviewer, IRO America and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

IRO America is forwarding by mail or facsimile, a copy of this finding to the DWC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,
IRO America Inc.

Dr. Roger Glenn Brown
President & Chief Resolutions Officer

Cc:

Richard Marks
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Your Right To Appeal

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). 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. If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision.

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

I hereby certify, in accordance with DWC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the DWC via facsimile, U.S. Postal Service or both on this 6th day of December, 2005.

Name and Signature of IRO America Representative:

Sincerely,
IRO America Inc.

Dr. Roger Glenn Brown
President & Chief Resolutions Officer