

MATUTECH, INC.

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April 24, 2006

Rebecca Farless
Texas Department of Insurance
Division of Worker's Compensation
Fax: (512) 804-4868

Re: Medical Dispute Resolution
MDR Tracking #: M2-06-0773-01
DWC#: _____
Injured Employee: _____
DOI: _____
IRO#: IRO5317

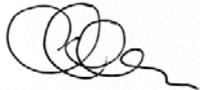
Dear Ms. Farless:

Matutech, Inc. has performed an Independent review of the medical records of the above-named case to determine medical necessity. In performing this review, Matutech reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

Matutech certifies that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him the provider, 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 Independent Review Organization.

Information and medical records pertinent to this medical dispute were obtained from Kenneth Berliner, M.D. The Independent review was performed by a matched peer with the treating health care provider. This case was reviewed by the physician who is licensed in orthopedics, and is currently on the DWC Approved Doctors List.

Sincerely,



John Kasperbauer
Matutech, Inc.

REVIEWER'S REPORT

Information provided for review:

Request for Independent Review

Information provided by Kenneth Berliner, M.D.:

Office visits (02/20/04 – 12/16/05)
Procedure note (05/29/04)
Radiodiagnostics (04/07/04-10/10/05)
Electrodiagnostics (02/14/05)
Functional capacity evaluation (11/11/04)
ROM testing notes (09/28/04 - 12/16/05)

Clinical History:

This is a 41-year-old male who injured his lower back on _____. He was climbing the back of a truck when he missed the ladder and fell to the ground. The patient complained of back pain radiating down up to his left ankle. He was taken via ambulance to Hermann Hospital.

2002: In September, radiodiagnostics were performed. X-rays of the lumbar spine were unremarkable. Lumbar magnetic resonance imaging (MRI) revealed a disc bulge at L5-S1 and a disc herniation at L4-L5. (2003: No medical records are available for review).

2004: Dr. E. K. Gaston diagnosed herniated lumbar disc and referred the patient to Kenneth Berliner, M.D., for an orthopedic evaluation. Dr. Berliner noted the following: Following the injury, the patient had been seen by a company doctor. The patient underwent extensive physical therapy (PT) under the care of Dr. Gaston. An MRI of the lumbar spine was obtained. Dr. Le performed three epidural steroid injections (ESIs). The patient underwent two more ESIs. The patient followed up with Dr. Douglas for medication management. Dr. Berliner noted a history of back injury in 1998 that resulted in lumbar laminectomy at L4-L5. Dr. Berliner noted some foraminal stenosis on the left at L4-L5 upon reviewing the MRI. He diagnosed possible recurrent herniated nucleus pulposus (HNP) at L4-L5. The patient was put on Lorcet, Naprosyn, and Soma. MRI of the lumbar spine revealed paracentral scar tissue at L4-L5 and a small central disc bulge at L5-S1 with effects of status post left hemilaminectomy seen at L4-L5. Lumbar x-rays revealed posterior osteophyte at L4-L5 and suggestion of hemilaminectomy on the left. On May 29, 2004, Dr. Berliner performed revision laminectomy with discectomy at L4-L5 on the left. Postop rehabilitation was started. In a functional capacity evaluation (FCE), the patient qualified at a light physical demand level (PDL) whereas his job required a heavy PDL. A work hardening program (WHP) was recommended.

2005: Electromyography/nerve conduction velocity (EMG/NCV) studies revealed axonopathy of the left posterior tibial nerve. X-rays revealed localized disc disease at L4-L5. Lumbar MRI revealed postsurgical changes at L4-L5 with a left-sided surgical defect with bilateral foraminal narrowing due to diffuse disc protrusion and facet disease. Repeat x-rays revealed reduced disc space height at L4-L5 and L5-S1. Dr. Berliner could not determine whether there was recurrent disc herniation. He diagnosed failed laminectomy syndrome. In August, Dr. Berliner noted recurrence of back pain after the patient lifted a pipe. MRI of the lumbar spine revealed an underlying 5-mm disc herniation at L4-L5 and hypertrophy of the facets at L5-S1. Dr. Berliner noted tenderness in the lumbar spine, positive SLR test on the left and decreased sensation in the left L5 distribution. He diagnosed left L5 radiculopathy and discussed revision discectomy versus fusion. Naprosyn, Soma, Restoril, and hydrocodone were refilled.

On December 12, 2005, a request for lumbar discectomy was not certified on the basis that the records did not indicate any progressive findings or stable postoperative residuals. Dr. Berliner recommended revision decompression at L4-L5 on the left for continued back pain. A reconsideration request for the lumbar re-do discectomy was denied on December 22, 2005, for the following reason: the patient had static imaging from September 2002, April 2004, and February 2005. It was not clear whether these were acute changes or chronic or recurring over time.

Disputed Services:

L4-L5 lumbar discectomy. Revision.

Explanation of Findings:

As noted above, Mr. ____ has undergone previous L4-L5 discectomy followed by revision discectomy at L4-L5 in May 2004. The patient has been noted recently to have increasing low back pain and MRI findings suggestive of small residual disc herniation at L4-L5 and documentation of changes at L4-L5 and L5-S1. The patient has been noted to have a left L5 radiculopathy and a request has been made for revision discectomy.

Conclusion/Decision To Uphold, Overturn or Partially Uphold/Overturn denial:

At this time, I do feel that the patient warrants further workup prior to performing any second revision operation. The radiographic studies and the symptomatic complaints of the patient suggest a high likelihood of axial pain arising from the changes at the L4-L5 and L5-S1 level and potentially the result of architectural abnormalities at the L4-L5 discs status post herniation with discectomy and recurrent disc herniation followed by revision discectomy.

Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:

Secondary to the fact the patient has undergone previous discectomy and revision discectomy and second recurrent disc herniation with a complaint of primarily low back

pain, I do not feel that a revision discectomy would provide the patient with significant symptomatic benefit. If the patient had significant L5 radiculopathy for a period of relief post revision, and a primary complaint of left lower extremity radiculopathy, this surgical procedure would be reasonable. The type of surgery provided after a second recurrent disc herniation varies from surgeon to surgeon, however, it is quite reasonable to perform a fusion after the second recurrent disc herniation or third surgical procedure as required. The theory there may be evidence of micro instability resulting in repeat disc herniations with which revision discectomy would likely prove unsuccessful. The difficulty with Mr. ____' problem is that there are changes at L4-L5 which may be stressed by a supra jacent fusion resulting in increasing back pain. Therefore, my recommendation at this time would be to perform a provocative discography with pressure monitoring at the L4-L5 and L5-S1 levels with one normal control to determine if there is a significant source of back pain. If in fact the patient has primarily leg pain and is noted to have electrodiagnostic studies which do not suggest a chronic but rather an acute radiculopathy, a repeat discectomy would be reasonable, however, prior to performing a second revision operation, electrodiagnostic studies should be entertained even with a primary complaint of left lower extremity radiculopathy. The presence of a primary complaint of axial pain or back pain would warrant the discography as previously mentioned in order to provide the patient with a significant chance of improving from a surgical procedure. It appears currently the patient's symptoms are primarily those of decreased sensibility in L5 distribution with primary complaint of low back pain based on the records provided. For this reason, I do feel further workup to determine the true source of the patient's symptoms is required prior to performing a third operative procedure.

The physician providing this review is an Orthopedic Surgeon. The reviewer is national board eligible by the American Board of Orthopedic Surgeons. The reviewer has been in active practice for 9 years.

Matutech is forwarding this decision by mail and in the case of time sensitive matters by facsimile a copy of this finding to the provider of records, payer and/or URA, patient and the Texas Department of Insurance.

Matutech retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by Matutech clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the Utilization Review Accreditation Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by Matutech 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 Matutech for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Matutech 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. 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.

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.