

# MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

## PART I: GENERAL INFORMATION

<b>Type of Requestor:</b> ( ) HCP ( ) IE (X) IC	<b>Response Timely Filed?</b> (X) Yes ( ) No
Requestor's Name and Address  Texas Mutual Insurance Company Box 54	MDR Tracking No.: M4-05-3729-01
	TWCC No.:
	Injured Employee's Name:
Respondent's Name and Address  United Medical Evaluators 2900 Wesleyan, Suite 620 Houston, TX 77027	Date of Injury:
	Employer's Name: Tempo Mechanical Services, Inc.
	Insurance Carrier's No.: 99C0000329780

## PART II: SUMMARY OF DISPUTE AND FINDINGS

Dates of Service		CPT Code(s) or Description	Amount in Dispute	Refund Due
From	To			
05/10/2004	05/10/2004	97750 – Functional Capacity Evaluation	\$294.00	\$294.00

## PART III: REQUESTOR'S POSITION SUMMARY

The requestor has requested a refund of the \$294.00 paid for this functional capacity evaluation (FCE) for several reasons. UME did not perform the FCE “under a physician’s direct personal supervision” as required by TWCC Rules. Neither UME nor Dr. Lee disclosed financial interests under TWCC Rule 180.24. UME consistently overcharged the insurance carrier by significantly overstating the duration of the FCEs. UME’s billing practices violate Rule 134.801 because UME charges the insurance carrier more than the physician charges UME.

## PART IV: RESPONDENT'S POSITION SUMMARY

The request should be dismissed because UME is not a provider. UME is not a doctor, nor is it a health care provider or practitioner. UME served as Dr. Lee’s billing service under Rule 134.801. UME provides clerical and administrative support to doctors who contract for its services. UME does not, and not being licensed cannot, practice medicine. UME offers office and examining space, receptionist staff, range of motion technicians, medical equipment, report collection, transcription, and other services. UME has a contractual relationship with the doctors and receives 60% of the amount paid. Bills are submitted in the treating doctor’s name. UME has no control over the manner in which a doctor delivers his or her services, nor is it responsible for the doctor’s actions. The respondent feels that the requestor’s position is not supported. The alleged Functional Capacity Evaluation was performed properly in accordance with professional standards and TWCC Rules, and was billed properly. UME has no financial interest in Dr. Lee and Dr. Lee has no financial interest in UME.

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

This dispute relates to a request for a refund for a Functional Capacity Evaluation (FCE) for which the insurance carrier paid \$294.00. Reimbursement for a FCE is subject to the provisions of Rule 134.202 (Medical Fee Guideline). Both parties raise different arguments, which are discussed in this decision.

Regarding the issue of whether or not UME is a health care provider, UME’s own position statements and the affidavit signed by Dr. Lee verify that it was UME’s staff that administered the FCE. As stated by Dr. Lee, his role was to “interpret” the FCE that was “performed at UME premises using UME testing equipment and computers and UME technicians...(t)he evaluation is administered by a trained technician employed by UME...” Therefore, it is clearly evident that UME was acting as a health care provider in performing functional capacity evaluations on this injured worker. In addition, while the CMS-1500 claim lists Dr. Lee as the “physician or supplier,” this form also shows UME as the “facility” where the evaluation was conducted and UME as the physician’s billing name and address.

Under Rule 134.202(a) and (b), the Commission adopted the Medicare program reimbursement methodologies for all professional medical services except where other provisions of the Act or rules take precedence over those methodologies. While this rule does outline certain provisions that are different for FCEs, these provisions relate to reimbursement calculations and other issues (limiting the number which can be performed, etc...). It is important to note that nothing in Rule 134.202(e)(4) changes who may perform these types of evaluations or who may be reimbursed for these evaluations.

Under the Medicare Physical Medicine and Rehabilitation payment policies, these types of services may be billed under one of three practitioner benefits:

- By physicians or non-physician practitioners as their own professional services or as services of their employees furnished “incident to” their professional services;
- By physical therapists in independent practice; or
- By occupational therapists in independent practice.

“Incident to” is defined as services that are furnished as an integral part of a physician’s or non-physician practitioner’s personal professional services; and are performed by either:

- A licensed physical therapist; or
- A licensed therapy assistant under the direct supervision of a physician or non-physician practitioner where permitted by state law.

This situation raises several problems with these provisions of the Medicare reimbursement methodologies. The “UME technicians” are not employees of Dr. Lee, which is required for the physician to be able to bill for the services. Further, UME has stated that these individuals are not licensed, which prevents reimbursement even if they were Dr. Lee’s employees. Given these provisions of the Medicare reimbursement methodologies, it appears that neither UME nor Dr. Lee are entitled to payment for a FCE administered by a non-licensed individual not in Dr. Lee’s employment.

Regarding the issue of financial disclosure, I find no provision in the medical fee guideline that would restrict reimbursement due to the failure to properly disclose any potential relationship. Those issues are not under the purview of Medical Dispute Resolution.

Based on the facts of this situation, the parties’ positions, the application of the provisions of Rule 134.202, and Medicare policies; the Division has determined that the requestor is entitled to reimbursement for the FCE in the amount of \$294.00.

**PART VI: COMMISSION DECISION AND ORDER**

Based upon the review of the disputed healthcare services, the Medical Review Division has determined that the requestor is entitled to a refund in the amount of \$ **294.00** . The Division hereby **ORDERS** the respondent to remit this amount plus all accrued interest due at the time of payment to the Requestor within 20-days of receipt of this Order.

Ordered by:

Regina Cleave

May 5, 2005

Authorized Signature

Typed Name

Date of Order

**PART VII: 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. A request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings/Appeals Clerk within 20 (twenty) days of your receipt of this decision (28 Texas Administrative Code § 148.3). This Decision was mailed to the health care provider and placed in the Austin Representatives box on \_\_\_\_\_. This Decision is deemed received by you five days after it was mailed and the first working day after the date the Decision was placed in the Austin Representative’s box (28 Texas Administrative Code § 102.5(d)). A request for a hearing should be sent to: Chief Clerk of Proceedings/Appeals Clerk, Mail Stop 35, 7551 Metro Center Dr., Suite 100, Austin, Texas, 78744 or faxed to (512) 804-4011. A copy of this Decision should be attached to the request.

The party appealing the Division’s Decision shall deliver a copy of their written request for a hearing to the opposing party involved in the dispute.

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

**PART VIII: INSURANCE CARRIER DELIVERY CERTIFICATION**

I hereby verify that I received a copy of this Decision and Order in the Austin Representative’s box.

Signature of Insurance Carrier: \_\_\_\_\_ Date: \_\_\_\_\_