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2/2/2023 3:13 PM
FELICIA PITRE
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DALLAS CO., TEXAS
Martin Reyes DEPUTY

CAUSE NO. DC-22-09377

PETER CHERRY, Plaintiff,	IN THE DISTRICT COURT
v.	191ST JUDICIAL DISTRICT
ADAM BAZALDUA, Defendant.	DALLAS COUNTY, TEXAS

DEFENDANT'S NOTICE OF FILING AFFIDAVIT OF JANETTE KURBAN, DC, DABCA

TO: PETER CHERRY, by and through Plaintiff(s)' attorney of record, Rogelio Guerrero, 1934 Pendleton Drive, Garland, TX 75041

ADAM BAZALDUA, hereinafter referred to as Defendant whether one or more, pursuant to Rules 803(6) and 803(7) and 902(10) of the Texas Rules of Civil Evidence and pursuant to the applicable sections of the Texas. Civ. Prac. & Remedies Code, Sec. 18.001, files the attached Affidavit of JANETTE KURBAN, DC, DABCA.

Respectfully submitted,

LISA CHASTAIN & ASSOCIATES

THERESA BYRD
TBN: 00791638

P.O. Box 655441
Dallas, TX 75265
E-Service Only: DallasLegal@allstate.com
(469) 543-5907
(877) 678-4763 (fax)

ATTORNEY FOR DEFENDANT(S)
ADAM BAZALDUA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the 2nd day of February, 2023, to:

BEN ABBOTT & ASSOCIATES, PLLC
Rogelio Guerrero, Esquire
State Bar No. 24126397
1934 Pendleton Drive
Garland, TX 75041
(972) 263-5555
(817) 263-5555
(972) 682-7586 Facsimile
eService@benabbott.com
ATTORNEY FOR PLAINTIFF

Theresa Byrd

THERESA BYRD

CAUSE NO. DC-22-09377

PETER CHERRY,	IN THE DISTRICT COURT
Plaintiff,	
vs.	191ST JUDICIAL DISTRICT
ADAM BAZALDUA	
Defendant.	DALLAS COUNTY, TEXAS

DEFENDANT BAZALDUA,
CONTROVERTING AFFIDAVIT OF JANETTE KURBAN, DC, DABCA.

On this day personally appeared **JANETTE KURBAN, DC, DABCA**. who being personally known to me and duly sworn on her oath deposes and says:

1. My name is **JANETTE KURBAN**. I am over 21 years of age, am of sound mind and body, and have never been convicted of any felony or criminal offense. I am a licensed Chiropractic physician and have been practicing for approximately **24** years. I am authorized to make this affidavit.

2. I have received and reviewed the affidavits, medical records and statements produced by Plaintiff **PETER CHERRY** pertaining to services provided of/by: **ACCIDENT CENTERS OF TEXAS/ DONGHAK LEE, D.C., JALAL JALALI, D.C., MINAL PATEL, D.C., JAYNIAZ, D.C. and MEDHI JALALI, D.C.** Based upon my knowledge, skill, experience, training, education, and other expertise, I state that it is my opinion based upon review of Plaintiff's medical records that:

*A. **The number of treatment/services rendered for the injuries alleged were not all medically necessary. Passive modalities used during visits #10-13 were <u>not</u> considered medically necessary.***

Firstly, for the purpose of this affidavit, the term "medically necessary" refers solely to whether the treatments were even needed in the first case. Concerning the low back injury, and using the 2021 Official Disability Guidelines (ODG) www.mcg.com/odg as a reference, customary standard of care recommends up to 6 visits over 2 weeks of treatment of mild (Grade 1) cervical sprain/strain injury, and a trial of 6 visits over 2 weeks for the treatment of moderate (Grade 2) cervical strain/sprain injury. Moderate (Grade 2) cervical strain/sprain injury with evidence of objective functional improve, allow total of up to 18 visits over 6 weeks. The ODG recommends up to 10 physical therapy/rehabilitation medicine visits over 8 weeks for treatment of cervical strain/sprain injury. With origins dating to 1995, ODG provides "unbiased, evidence-based guidelines" and analytical tools designed to "improve and benchmark return-to-work performance, facilitate quality care while limiting inappropriate utilization, assess claim risk for interventional triage, and set reserves based on industry data."

Occupational Disability Guidelines 2021 are evidence-based medical treatment and disability duration guidelines used to minimize the impact of illness and injury in the workplace. They also are applied to improve as well as benchmark outcomes in workers' compensation and non-occupational disability. They are succinct, complete, and authoritative statements and standards developed based on an aggregate of over 10 million cases and a decade and a half of research, including a systematic medical literature review. From the medical records and documentation provided, it would be reasonable to suggest a working diagnosis of Grade 2 cervical sprain/strain sustained by the alleged mechanism of injury.

According to these same guidelines used in the industry, passive modality treatments/therapy may be utilized in the initial acute phase of a condition for pain control, reduction of inflammation, or reduction of muscle spasm(s). As a condition progresses, passive care should be replaced by active treatment modalities such as physical medicine and/or therapeutic exercise therapy. Insufficient

evidence exists to support the continued use of passive treatment(s) as a means for improved clinical outcomes.

Furthermore, the treatment plan or plan of care must include the clinical rationale for each service, a description of the service, the area of the body the service will be provided and a time component, if indicated. The records provided did contain all the above, making it possible to ascertain the time component involved. In the documentation provided, there were specific exercises listed per daily visit, visits timed, and what exact areas per visit.

Clinicians utilizing exercise-based treatments in the care of patients are taught to accurately record the activities the patient engages in during each exercise session. The documentation should include the different exercises utilized, the number of sets of each exercise performed, the number of repetitions of each exercise performed, increases in strength resulting from the exercise utilized, the types of stretching exercises utilized, the number of sets of each performed during the exercise session, and the increases in range of motion resulting from the stretching protocols. The medical records should also contain documentation regarding the time in and out of the exercise sessions. The medical records provided did contain these items with documentation.

References for the above may be found on the Texas Board of Chiropractic Examiners website under TBCE Title 22, Park 3, Chapter 76, Rule 76.1.

The records provided did not show objective patient improvement at periodic re-evaluations/examination of patient's condition(s).

Commenting on the apparent Lumbosacral sprain/strain after diagnostic imaging results revealed no fracture(s), this injury did not respond as well as expected to conservative chiropractic

adjustments and passive care and apparently did require further diagnostic testing (MRI) and referral to orthopedic physician/pain management.

The following references were used in my response/comments on the low back injury:

Definition of Sprain/Strain Severity Grade(s) are as follows:

Grade 1 – or mild strain/sprain caused by overstretching or slight tearing of the ligament/muscle/tendon with no instability, and a person with a mild sprain usually experiences minimal pain, swelling and little or no loss of functional ability. Although the injured muscle is tender and painful, it has normal strength.

Grade 2 - caused by incomplete tearing of the ligament/muscle/tendon and is characterized by bruising, moderate pain and swelling, and

Grade 3 – means complete tear and rupture of a ligament/muscle/tendon.

A sprain is a stretch and/or tear of a ligament (a band of fibrous tissue that connects two or more bones at a joint). A strain is an injury to either a muscle or a tendon (fibrous cords of tissue that connect muscle to bone). (Hannafin, 2004). Using the Occupational Disability Guidelines 2021 for low back pain, it is also noted that the documentation provided does appropriately determine patient active length of care per rehabilitation session(s).

Using these same best practice guidelines in the industry, passive modality treatments may be utilized in the initial acute phase (1-4 weeks) of a condition for pain control, reduction of inflammation or reduction of muscle spasms. As a condition progresses, passive care should be replaced by active treatment (6-12 weeks) modalities such as therapeutic exercises. *Insufficient evidence exists in the documentation provided to support the continued use of passive treatment(s), past 4-5 weeks, as a means for improved clinical outcomes.* Passive therapy modalities such as ice, heat, passive intersegmental traction, and ultrasound treatments are not recommended after the

acute/subacute phases of treatment. Ice or cold therapy is referenced in the ODG guidelines in the following citations:

"Recommended as an option for acute pain. At-home local applications of cold packs should be used in the first few days of acute complaint, followed by applications of heat packs or cold packs. (Bigos, 199) (Airaksinen, 2003) (Bleakley, 2004) (Hubbard, 2004)".

Once the patient enters the active therapy or exercise therapy stage of care, the above guidelines do not recommend returning to passive modalities unless there is an exacerbation of the patient conditions(s).

In the medical records provided, there is no clear, legible evidence of patient having any type of re-injury or exacerbations. Furthermore, the patient's Visual Analog Scale (VAS), located on the daily treatment notes, reveals patient's pain scale was mildly improving over the duration of the chiropractic/physical medicine treatment plan.

In the records provided, there were no instruments of function before and after exercise therapy treatment series of visits. These instruments are standard in the healthcare industry to establish a better program for the patient to improve his/her function.

B. The chiropractic/physical medicine treatments undergone by the Plaintiff were for conditions allegedly sustained because of the 02/17/2021 accident.

C. It is my opinion the referrals made by the Chiropractic doctor were related to the condition(s) allegedly sustained because of the 02/17/2021 accident.

These referrals included Magnetic Resonance imaging studies (MRI) referral when documentation provided reveals patient was not improving/responding to conservative care. Thus, the duty to refer for additional orthopedic and/or pain management, with pain management physician group consideration, was also within the standards of care of the treating Doctor of Chiropractic. TAC, Title22, Part 3, CH75.1(b)

D. Based upon my review of the Plaintiff's medical bills submitted in relation to Chiropractic services/treatments and the reasonableness of the amounts billed it is my opinion that:

1. ***The fees charged for these Chiropractic services are not considered reasonable and customary for the geographic region/location in which these services were rendered. The references and tables listed below, along with explanations, were used in determining the reasonable amount for codes billed and reimbursement allowed by these entities.***

The 2021 CMS Medicare Fee Guidelines for Texas Region JH were used in the compilation of amounts allowed in the following chart. The Centers for Medicare and Medicaid Services (CMS) website is a tool that can show you detailed pricing on current and past pricing for any code, and status information that determines if the code is billable. This fee schedule is divided into geographical region by state and city for the reimbursement allowed by a provider. This website is a nationally accepted site for Medicare/Medicaid fee scheduling.

www.novitas-solutions.com/webcenter/portal/MedicareJH

The references below, along with explanations, were used in determining the reasonable amount for codes billed and reimbursement allowed by these entities for the geographical region involved.

2022 Chiropractic Economics annual Fees & Reimbursements Survey for South Region

January 2021 Medicare Physician's Fee Schedule – Texas Locality 11/Dallas Region

www.healthcarebluebook.com/ui/consumerfront

www.fairhealthconsumer.org

The following table shows the fee compilation according to the medical records received and databases used.

CPT CODE	CHARGE/UNIT	#UNITS	TOTAL	UNITS ALLOWED	CHARGE/UNIT ALLOWED	TOTAL ALLOWED
99203	450.00	1	450.00	1	83.00	83.00
99211	85.00	2	170.00	2	51.22	51.22
99213	300.00	1	300.00	1	54.00	54.00
A4556	25.00	1	25.00	1	25.00	25.00
97014	105.00	6	630.00	6	18.00	108.00
97010	45.00	6	270.00	6	18.00	108.00
97012	95.00	10	950.00	6	15.00	90.00
97110	125.00	18	2250.00	18	26.00	468.00
98940	85.00	3	255.00	3	35.00	105.00
97035	105.00	4	420.00	2	16.00	32.00
TOTALS			**$5,720.00**			**1,124.22**

2. The total amount allowed for these services should be $1,124.22

3. <u>Qualifications</u>

I am a licensed Doctor of Chiropractic (TX#8258), serving as a private practitioner since 1999. I am familiar with the medical conditions and issues relevant to this file/claim because of my background as a Board-Certified doctor. In addition to my role as a Chiropractor, I have served in several positions that afford me an expertise in evaluation the practice and documentation of procedures of other healthcare providers. I have had the honor of being appointed by Gov. Rick

Perry as a Member of the Texas Board of Chiropractic Examiners (TBCE). I was then appointed by our Board President as Rules Committee Chairperson. The Rules Committee established and published specific rules which potentially, and most often, became Chiropractic Standards/Rules in the State of Texas. Our Rules Committee worked together with not only the State of Texas Attorney General's Office, but with our own TBCE Enforcement and Education Committees to assure all standards were of the utmost integrity to protect the citizens of the State of Texas. In developing and updating these Rules, we used national recognized standards regarding evidence-based studies of chiropractic treatment(s) and care. Due to these experiences, and over 24 years of clinical application in my private practice and teaching doctors online and in-person certification and continuing education modules both in state and nationally, I am professionally qualified to provide an expert opinion regarding the required elements warranting medically necessary and/or reasonable care per documented clinical findings, as well as Chiropractic billing standards.

These opinions are based on my review of the provided medical records, other listed documents, and my experience as a board-certified Chiropractor. My conclusions reached in this report are not intended to be direct or implied criticism of the patient or the patient's medical providers but are observations of the records reviewed. There may be facts and circumstances not disclosed which could justify a different conclusion.

4 A copy of my written report is attached hereto as Exhibit A. This written report further details my opinions and impressions in reviewing **PETER CHERRY** medical records and billing statements, as well as a summary of the factual basis for my opinions.

5. A copy of my list of cases for affidavits, depositions and trials is attached hereto as Exhibit B.

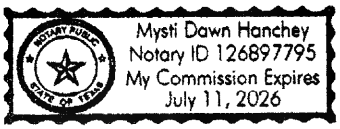
Further Affiant sayeth not.

Janette Kurban, DC

JANETTE KURBAN, DC, DABCA

STATE OF TEXAS §
§
COUNTY OF Parker §

SUBSCRIBED AND SWORN TO before me on the 2 day of February, 2023, by **JANETTE KURBAN, DC, DABCA** who is personally known to me, to certify which witness my hand and seal of office.



Mysti Hanchey

Notary Public State of Texas

Notary's Printed Name:

Mysti Hanchey

My Commission Expires: 07-11-26

EXHIBIT A

KURBAN CHIROPRACTIC HEALTHCARE CLINIC, P.C.

02/01/2023

Attorney Theresa Byrd
Lisa Chastain & Associates
8675 Freeport Parkway
Irving, TX 75063

Re: PETER CHERRY v ADAM BAZALDUA
Cause No. DC-22-09377

Dear Attorney Byrd:

I have received and reviewed the affidavits, medical records and billing statements produced by Plaintiff **PETER CHERRY** pertaining to services provided of/by: **ACCIDENT CENTERS OF TEXAS/ DONGHAK LEE, D.C., JALAL JALALI, D.C., MINAL PATEL, D.C., JAYNIAZ, D.C. and MEDHI JALALI, D.C.** Based upon my knowledge, skill, experience, training, education, and other expertise, I state that it is my opinion based upon review of Plaintiff's medical records that:

A. ***The number of treatment/services rendered for the injuries alleged were not all medically necessary. Passive modalities used during visits #10-13 were <u>not</u> considered medically necessary.***

221 VISTA DRIVE, WILLOW PARK, TEXAS 76087
T: (817)266-5558

Firstly, for the purpose of this affidavit, the term "medically necessary" refers solely to whether the treatments were even needed in the first case. Concerning the low back injury, and using the 2021 Official Disability Guidelines (ODG) www.mcg.com/odg as a reference, customary standard of care recommends up to 6 visits over 2 weeks of treatment of mild (Grade 1) cervical sprain/strain injury, and a trial of 6 visits over 2 weeks for the treatment of moderate (Grade 2) cervical strain/sprain injury. Moderate (Grade 2) cervical strain/sprain injury with evidence of objective functional improve, allow total of up to 18 visits over 6 weeks. The ODG recommends up to 10 physical therapy/rehabilitation medicine visits over 8 weeks for treatment of cervical strain/sprain injury. With origins dating to 1995, ODG provides "unbiased, evidence-based guidelines" and analytical tools designed to "improve and benchmark return-to-work performance, facilitate quality care while limiting inappropriate utilization, assess claim risk for interventional triage, and set reserves based on industry data."

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documentation provided, it would be reasonable to suggest a working diagnosis of Grade 2 cervical sprain/strain sustained by the alleged mechanism of injury.

According to these same guidelines used in the industry, passive modality treatments/therapy may be utilized in the initial acute phase of a condition for pain control, reduction of inflammation, or reduction of muscle spasm(s). As a condition progresses, passive care should be replaced by active treatment modalities such as physical medicine and/or therapeutic exercise therapy. Insufficient evidence exists to support the continued use of passive treatment(s) as a means for improved clinical outcomes.

Furthermore, the treatment plan or plan of care must include the clinical rationale for each service, a description of the service, the area of the body the service will be provided and a time component, if indicated. The records provided did contain all the above, making it possible to ascertain the time component involved. In the documentation provided, there were specific exercises listed per daily visit, visits timed, and what exact areas per visit.

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stretching exercises utilized, the number of sets of each performed during the exercise session, and the increases in range of motion resulting from the stretching protocols. The medical records should also contain documentation regarding the time in and out of the exercise sessions. The medical records provided did contain these items with documentation. References for the above may be found on the Texas Board of Chiropractic Examiners website under TBCE Title 22, Park 3, Chapter 76, Rule 76.1.

The records provided did not show objective patient improvement at periodic re-evaluations/examination of patient's condition(s). Commenting on the apparent Lumbosacral sprain/strain after diagnostic imaging results revealed no fracture(s), this injury did not respond as well as expected to conservative chiropractic adjustments and passive care and apparently did require further diagnostic testing (MRI) and referral to orthopedic physician/pain management. The following references were used in my response/comments on the low back injury:

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A sprain is a stretch and/or tear of a ligament (a band of fibrous tissue that connects two or more bones at a joint). A strain is an injury to either a muscle or a tendon (fibrous cords of tissue that connect muscle to bone). (Hannafin, 2004). Using the Occupational Disability Guidelines 2021 for low back pain, it is also noted that the documentation provided does appropriately determine patient active length of care per rehabilitation session(s).

Using these same best practice guidelines in the industry, passive modality treatments may be utilized in the initial acute phase (1-4 weeks) of a condition for pain control, reduction of inflammation or reduction of muscle spasms. As a condition progresses, passive care should be replaced by active treatment (6-12 weeks) modalities such as therapeutic exercises. *Insufficient evidence exists in the documentation provided to support the continued use of passive treatment(s), past 4-5 weeks, as a means for improved clinical outcomes.* Passive therapy modalities such as ice, heat, passive intersegmental traction, and ultrasound treatments are not recommended after the acute/subacute phases of treatment. Ice or cold therapy is referenced in the ODG guidelines in the following citations:

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Once the patient enters the active therapy or exercise therapy stage of care, the above guidelines do not recommend returning to passive modalities unless there is an exacerbation of the patient's conditions(s).

In the medical records provided, there is no clear, legible evidence of patient having any type of re-injury or exacerbations. Furthermore, the patient's Visual Analog Scale (VAS), located on the daily treatment notes, reveals patient's pain scale was mildly improving over the duration of the chiropractic/physical medicine treatment plan.

In the records provided, there were no instruments of function before and after exercise therapy treatment series of visits. These instruments are standard in the healthcare industry to establish a better program for the patient to improve his/her function.

B. The chiropractic/physical medicine treatments undergone by the Plaintiff were for conditions allegedly sustained because of the 02/17/2021 accident.

C. It is my opinion the referrals made by the Chiropractic doctor were related to the condition(s) allegedly sustained because of the 02/17/2021 accident.

These referrals included Magnetic Resonance imaging studies (MRI) referral when documentation provided reveals patient was not improving/responding to conservative care. Thus, the duty to refer for additional orthopedic and/or pain management, with pain management physician group consideration, was also within the standards of care of the treating Doctor of Chiropractic. TAC, Title22, Part 3, CH75.1(b)

D. Based upon my review of the Plaintiff's medical bills submitted in relation to Chiropractic services/treatments and the reasonableness of the amounts billed it is my opinion that:

1. ***The fees charged for these Chiropractic services are not considered reasonable and customary for the geographic region/location in which these services were rendered. The references and tables listed below, along with explanations, were used in determining the reasonable amount for codes billed and reimbursement allowed by these entities.***

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on current and past pricing for any code, and status information that determines if the code is billable. This fee schedule is divided into geographical region by state and city for the reimbursement allowed by a provider. This website is a nationally accepted site for Medicare/Medicaid fee scheduling.

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97014	105.00	6	630.00	6	18.00	108.00
97010	45.00	6	270.00	6	18.00	108.00
97012	95.00	10	950.00	6	15.00	90.00
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TOTALS			**$5,720.00**			**1,124.22**

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I am a licensed Doctor of Chiropractic (TX#8258), serving as a private practitioner since 1999. I am familiar with the medical conditions and issues relevant to this file/claim because of my background as a Board-Certified doctor. In addition to my role as a Chiropractor, I have served in several positions that afford me expertise in evaluation the practice and documentation of procedures of other healthcare providers. I have had the honor of being appointed by Gov. Rick Perry as a Member of the Texas Board of Chiropractic Examiners (TBCE). I was then appointed by our Board President as Rules Committee Chairperson. The Rules Committee established and published specific rules which potentially, and most often, became Chiropractic Standards/Rules in the State of Texas. Our Rules Committee worked together with not only the State of Texas Attorney General's Office, but with our own TBCE Enforcement and Education Committees to assure all standards were of the utmost integrity to protect the citizens of the State of Texas. In developing and updating these Rules, we used national recognized standards regarding evidence-based studies of chiropractic treatment(s) and care. Due to these experiences, and over 24 years of clinical application in my private practice and teaching doctors online and in-person certification and continuing education modules both in state and nationally, I am

professionally qualified to provide an expert opinion regarding the required elements warranting medically necessary and/or reasonable care per documented clinical findings, as well as Chiropractic billing standards.

These opinions are based on my review of the provided medical records, other listed documents, and my experience as a board-certified Chiropractor. My conclusions reached in this report are not intended to be direct or implied criticism of the patient or the patient's medical providers but are observations of the records reviewed. There may be facts and circumstances not disclosed which could justify a different conclusion. If new information becomes available, I will be happy to review and reconsider it in the formulation of my opinions. If you have any specific questions, please contact me.

Sincerely,

Janette Kurban, D. C.

Janette Kurban, D. C., DABCA

TX License #8258

EXHIBIT B

LIST OF CASES FOR AFFIDAVIT, DEPOSITION OR TRIAL:

Parks, Christopher v. Kahler, et al.

Sanchez, Carlos (2) v. Nunez

Johnson, Shavon v. Rayo

Zamundio, Lola v. Byrd

Gray, James v. Gebremariam, et al.

Mosley, Sonya v. Sanchez Garcia

Wicker, Emile v. Marrero

Degeffe, Daniel v. Norman

Bentley, Kaylee v. Weaver

Coley, Letecia et al. v. Collins

Irigoyen, Octavio v. Vannaraj

Dabney, William v. Atehjieh

Rodriguez, et al. v. Ong

Douglas, Tina v. Goldmark Hospitality

Alfaro Arias, Jennifer v. Polio

Rodriguez, Carlos v. Patel

KURBAN CHIROPRACTIC HEALTHCARE CLINIC, P.C.

02/01/2023

Attorney Theresa Byrd
Lisa Chastain & Associates
8675 Freeport Parkway
Irving, TX 75063

Re: PETER CHERRY v ADAM BAZALDUA
Cause No. DC-22-09377

Dear Attorney Byrd:

I have received and reviewed the affidavits, medical records and billing statements produced by Plaintiff **PETER CHERRY** pertaining to services provided of/by: **ACCIDENT CENTERS OF TEXAS/ DONGHAK LEE, D.C., JALAL JALALI, D.C., MINAL PATEL, D.C., JAYNIAZ, D.C. and MEDHI JALALI, D.C.** Based upon my knowledge, skill, experience, training, education, and other expertise, I state that it is my opinion based upon review of Plaintiff's medical records that:

A. ***The number of treatment/services rendered for the injuries alleged were not all medically necessary. Passive modalities used during visits #10-13 were <u>not</u> considered medically necessary.***

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Firstly, for the purpose of this affidavit, the term "medically necessary" refers solely to whether the treatments were even needed in the first case. Concerning the low back injury, and using the 2021 Official Disability Guidelines (ODG) www.mcg.com/odg as a reference, customary standard of care recommends up to 6 visits over 2 weeks of treatment of mild (Grade 1) cervical sprain/strain injury, and a trial of 6 visits over 2 weeks for the treatment of moderate (Grade 2) cervical strain/sprain injury. Moderate (Grade 2) cervical strain/sprain injury with evidence of objective functional improve, allow total of up to 18 visits over 6 weeks. The ODG recommends up to 10 physical therapy/rehabilitation medicine visits over 8 weeks for treatment of cervical strain/sprain injury. With origins dating to 1995, ODG provides "unbiased, evidence-based guidelines" and analytical tools designed to "improve and benchmark return-to-work performance, facilitate quality care while limiting inappropriate utilization, assess claim risk for interventional triage, and set reserves based on industry data."

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documentation provided, it would be reasonable to suggest a working diagnosis of Grade 2 cervical sprain/strain sustained by the alleged mechanism of injury.

According to these same guidelines used in the industry, passive modality treatments/therapy may be utilized in the initial acute phase of a condition for pain control, reduction of inflammation, or reduction of muscle spasm(s). As a condition progresses, passive care should be replaced by active treatment modalities such as physical medicine and/or therapeutic exercise therapy. Insufficient evidence exists to support the continued use of passive treatment(s) as a means for improved clinical outcomes.

Furthermore, the treatment plan or plan of care must include the clinical rationale for each service, a description of the service, the area of the body the service will be provided and a time component, if indicated. The records provided did contain all the above, making it possible to ascertain the time component involved. In the documentation provided, there were specific exercises listed per daily visit, visits timed, and what exact areas per visit.

Clinicians utilizing exercise-based treatments in the care of patients are taught to accurately record the activities the patient engages in during each exercise session. The documentation should include the different exercises utilized, the number of sets of each exercise performed, the number of repetitions of each exercise performed, increases in strength resulting from the exercise utilized, the types of

stretching exercises utilized, the number of sets of each performed during the exercise session, and the increases in range of motion resulting from the stretching protocols. The medical records should also contain documentation regarding the time in and out of the exercise sessions. The medical records provided did contain these items with documentation. References for the above may be found on the Texas Board of Chiropractic Examiners website under TBCE Title 22, Park 3, Chapter 76, Rule 76.1.

The records provided did not show objective patient improvement at periodic re-evaluations/examination of patient's condition(s). Commenting on the apparent Lumbosacral sprain/strain after diagnostic imaging results revealed no fracture(s), this injury did not respond as well as expected to conservative chiropractic adjustments and passive care and apparently did require further diagnostic testing (MRI) and referral to orthopedic physician/pain management. The following references were used in my response/comments on the low back injury:

Definition of Sprain/Strain Severity Grade(s) are as follows:

Grade 1 – or mild strain/sprain caused by overstretching or slight tearing of the ligament/muscle/tendon with no instability, and a person with a mild sprain usually experiences minimal pain, swelling and little or no loss of functional ability. Although the injured muscle is tender and painful, it has normal strength.

Grade 2 - caused by incomplete tearing of the ligament/muscle/tendon and is characterized by bruising, moderate pain and swelling, and

Grade 3 – means complete tear and rupture of a ligament/muscle/tendon.

A sprain is a stretch and/or tear of a ligament (a band of fibrous tissue that connects two or more bones at a joint). A strain is an injury to either a muscle or a tendon (fibrous cords of tissue that connect muscle to bone). (Hannafin, 2004). Using the Occupational Disability Guidelines 2021 for low back pain, it is also noted that the documentation provided does appropriately determine patient active length of care per rehabilitation session(s).

Using these same best practice guidelines in the industry, passive modality treatments may be utilized in the initial acute phase (1-4 weeks) of a condition for pain control, reduction of inflammation or reduction of muscle spasms. As a condition progresses, passive care should be replaced by active treatment (6-12 weeks) modalities such as therapeutic exercises. *Insufficient evidence exists in the documentation provided to support the continued use of passive treatment(s), past 4-5 weeks, as a means for improved clinical outcomes.* Passive therapy modalities such as ice, heat, passive intersegmental traction, and ultrasound treatments are not recommended after the acute/subacute phases of treatment. Ice or cold therapy is referenced in the ODG guidelines in the following citations:

"Recommended as an option for acute pain. At-home local applications of cold packs should be used in the first few days of acute complaint, followed by applications of heat packs or cold packs. (Bigos, 199) (Airaksinen, 2003) (Bleakley, 2004) (Hubbard, 2004)".

Once the patient enters the active therapy or exercise therapy stage of care, the above guidelines do not recommend returning to passive modalities unless there is an exacerbation of the patient's conditions(s).

In the medical records provided, there is no clear, legible evidence of patient having any type of re-injury or exacerbations. Furthermore, the patient's Visual Analog Scale (VAS), located on the daily treatment notes, reveals patient's pain scale was mildly improving over the duration of the chiropractic/physical medicine treatment plan.

In the records provided, there were no instruments of function before and after exercise therapy treatment series of visits. These instruments are standard in the healthcare industry to establish a better program for the patient to improve his/her function.

B. The chiropractic/physical medicine treatments undergone by the Plaintiff were for conditions allegedly sustained because of the 02/17/2021 accident.

C. It is my opinion the referrals made by the Chiropractic doctor were related to the condition(s) allegedly sustained because of the 02/17/2021 accident.

These referrals included Magnetic Resonance imaging studies (MRI) referral when documentation provided reveals patient was not improving/responding to conservative care. Thus, the duty to refer for additional orthopedic and/or pain management, with pain management physician group consideration, was also within the standards of care of the treating Doctor of Chiropractic. TAC, Title22, Part 3, CH75.1(b)

D. Based upon my review of the Plaintiff's medical bills submitted in relation to Chiropractic services/treatments and the reasonableness of the amounts billed it is my opinion that:

1. ***The fees charged for these Chiropractic services are not considered reasonable and customary for the geographic region/location in which these services were rendered. The references and tables listed below, along with explanations, were used in determining the reasonable amount for codes billed and reimbursement allowed by these entities.***

The 2021 CMS Medicare Fee Guidelines for Texas Region JH were used in the compilation of amounts allowed in the following chart. The Centers for Medicare and Medicaid Services (CMS) website is a tool that can show you detailed pricing

on current and past pricing for any code, and status information that determines if the code is billable. This fee schedule is divided into geographical region by state and city for the reimbursement allowed by a provider. This website is a nationally accepted site for Medicare/Medicaid fee scheduling.

www.novitas-solutions.com/webcenter/portal/MedicareJH

The references below, along with explanations, were used in determining the reasonable amount for codes billed and reimbursement allowed by these entities for the geographical region involved.

2022 Chiropractic Economics Annual Fees & Reimbursements Survey for South Region

January 2021 Medicare Physician's Fee Schedule – Texas Locality 11/Dallas Region

www.healthcarebluebook.com/ui/consumerfront

www.fairhealthconsumer.org

The following table shows the fee compilation according to the medical records received and databases used.

CPT CODE	CHARGE/UNIT	#UNITS	TOTAL	UNITS ALLOWED	CHARGE/UNIT ALLOWED	TOTAL ALLOWED
99203	450.00	1	450.00	1	83.00	83.00
99211	85.00	2	170.00	2	51.22	51.22
99213	300.00	1	300.00	1	54.00	54.00
A4556	25.00	1	25.00	1	25.00	25.00
97014	105.00	6	630.00	6	18.00	108.00
97010	45.00	6	270.00	6	18.00	108.00
97012	95.00	10	950.00	6	15.00	90.00
97110	125.00	18	2250.00	18	26.00	468.00
98940	85.00	3	255.00	3	35.00	105.00
97035	105.00	4	420.00	2	16.00	32.00
TOTALS			**$5,720.00**			**1,124.22**

2. **The total amount allowed for these services should be $1,124.22**

3. **Qualifications**

I am a licensed Doctor of Chiropractic (TX#8258), serving as a private practitioner since 1999. I am familiar with the medical conditions and issues relevant to this file/claim because of my background as a Board-Certified doctor. In addition to my role as a Chiropractor, I have served in several positions that afford me expertise in evaluation the practice and documentation of procedures of other healthcare providers. I have had the honor of being appointed by Gov. Rick Perry as a Member of the Texas Board of Chiropractic Examiners (TBCE). I was then appointed by our Board President as Rules Committee Chairperson. The Rules Committee established and published specific rules which potentially, and most often, became Chiropractic Standards/Rules in the State of Texas. Our Rules Committee worked together with not only the State of Texas Attorney General's Office, but with our own TBCE Enforcement and Education Committees to assure all standards were of the utmost integrity to protect the citizens of the State of Texas. In developing and updating these Rules, we used national recognized standards regarding evidence-based studies of chiropractic treatment(s) and care. Due to these experiences, and over 24 years of clinical application in my private practice and teaching doctors online and in-person certification and continuing education modules both in state and nationally, I am

professionally qualified to provide an expert opinion regarding the required elements warranting medically necessary and/or reasonable care per documented clinical findings, as well as Chiropractic billing standards.

These opinions are based on my review of the provided medical records, other listed documents, and my experience as a board-certified Chiropractor. My conclusions reached in this report are not intended to be direct or implied criticism of the patient or the patient's medical providers but are observations of the records reviewed. There may be facts and circumstances not disclosed which could justify a different conclusion. If new information becomes available, I will be happy to review and reconsider it in the formulation of my opinions. If you have any specific questions, please contact me.

Sincerely,

Janette Kurban, D. C.

Janette Kurban, D. C., DABCA

TX License #8258

JANETTE A. KURBAN, D.C. DABCA

817-266-5558
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EDUCATION

1996-1999 -- **PARKER UNIVERSITY, DALLAS**, TX- Doctorate in Chiropractic

1993-1995-- **TEXAS CHRISTIAN UNIVERSITY, FORT WORTH, TX** Bachelor General Studies

National Board Certifications:

09/2017 - Present -Board Certified Diplomate American Board of Chiropractic Acupuncture (DABCA)

06/2006 - Present - Fellow Acupuncture Society of America

08/1980 - Present - 7th Degree Black Belt in Taekwondo Master Instructor Certification

EMPLOYMENT HISTORY

10/2014 - PRESENT -**ACUPUNCTURE SOCIETY OF AMERICA** - LEAD PROFESSOR FOR THIS NATIONALLY ACCREDITED CERTIFICATION COURSE IN ACUPUNCTURE, WHERE PHYSICIANS FROM SEVERAL FIELDS, INCLUDING VETERAN'S ADMINISTRATION HOSPITALS, ARE CERTIFIED IN TECHNIQUES EVALUATING & TREATING OVER 2,500 NIH AND WHO JOURNAL REFERENCED CONDITIONS INCLUDING MUSCULOSKELETAL PAIN, CHRONIC PAIN AND PTSD TO NAME JUST A FEW.
2018-PRESENT - **NACA TEXAS** - ONLINE & LIVE WEBINAR CONTINUING EDUCATION COURSES FOR CHIROPRACTIC PHYSICIANS
06/1999- Present --**KURBAN CHIROPRACTIC HEALTHCARE CLINIC, P.C.**, President/Owner

05/2016 thru 05/2018 - **Parker University**, Clinical Faculty Doctor, Assistant Professor

01/2010 -06/ 2013 - **TEXAS RANGERS BASEBALL TEAM** - On-call Acupuncturist for Team Physician, Keith Meister, M.D., Arlington, Texas as Team Acupuncturist for home and visiting baseball players at the Arlington Stadium. This position involved an interdisciplinary approach/communication/cooperation with various team trainers and physicians in applying acupuncture treatments to baseball players from NBL teams.

1/2001–06/2001 -- **PARKER COLLEGE OF CHIROPRACTIC ADJUNCT PROFESSOR**, Business Department

10/1981-06/1999 - - **AMERICAN BLACK BELT ACADEMY, INC.** - co-owner and instructor/office manager.

CONFERENCE PRESENTATIONS

Nebraska State Physicians Convention -2019 mandatory hours - Clean needle techniques and safety guidelines for your clinic

Numerous live Webinars for Chiropractic Doctors mandatory hours - NACA Texas - 2018-present

Parker University Homecoming Seminar 2015 - Ethics and Documentation Mandatory Hours

"BLACK BELT TECHNIQUES FOR TODAY'S CHIROPRACTIC ASSISTANT", TCA State Convention-2002

"ETHICS FOR TODAY'S CHIROPRACTOR" Parker University Homecoming Convention –2009

VOLUNTEER EXPERIENCE

2008-2013 - **TEXAS BOARD OF CHIROPRACTIC EXAMINERS** -Rules Chair

2005-2007 - Team Chiropractor/Rehab Coach for NAHL (National Amateur Hockey League) Hockey Team, the *Cavalry*, Bedford, Texas. Duties here included diagnosis and management of sport's injuries before, during and after the games, as well as follow-up care with local physicians.

1991-1995 - Held Class Officer positions and graduated from Parker University with Outstanding Intern Award and the James W. Parker Philosophy Award for demonstrating to an outstanding degree, the principles of friendship, love of mankind, and the compassion to serve in the practice of Chiropractic.

2012- World Congress of Women Chiropractors Woman of the Year

2018- present- American Chiropractic Association Council on Chiropractic Acupuncture Treasurer

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Lori Munoz on behalf of Theresa Byrd
Bar No. 791638
lori.munoz@allstate.com
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Status as of 2/2/2023 3:24 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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