

In the ORS 656.248 Medical Fee Dispute of
Intractable Pain Center, Claimant

Contested Case No: 10-056H

FINAL ORDER

January 4, 2011

THOMAS A. PURTZER MD, INTRACTABLE PAIN CENTER, Petitioner
SPECIALTY RISK SERVICES, Respondent

Before Cory Streisinger, Director, Department of Consumer and Business Services

Intractable Pain Centers (IPC) brought this dispute alleging Specialty Risk Services (SRS) improperly failed to pay the full billed amount for medical services IPC provided. In an April 8, 2010, Amended Administrative Order the Workers' Compensation Division's (the division) Resolution Team (RT) found SRS owed \$60 additional payment. Following a hearing, Administrative Law Judge (ALJ) Bruce D. Smith issued a Proposed and Final Order on October 12, 2010. That order modified RT's order in part and required SRS to pay an additional \$660. I find RT's order was correct and therefore reverse the Proposed and Final Order to the extent it disagrees with the Amended Administrative Order.

FACTUAL SUMMARY

Sharon L. Long (claimant) is the injured worker here, but she is not participating in this medical fee dispute. Claimant suffered a compensable injury. Dr. Thomas A. Purtzer, MD, treated claimant at his clinic, Intractable Pain Centers, on December 23, 2009. Dr. Purtzer also saw claimant on September 30, 2009. Although payment for the earlier date of service is not in dispute here, the billing for that date was similar to the billing in this case and is illustrative of some relevant points.

Medical billing relies on Current Procedural Terminology (CPT®) codes to explain the level of service. These codes have been incorporated into Oregon's workers' compensation medical fee rules. OAR 436-009-0004(3), (4).¹

As part of providing treatment on both dates, IPC tested claimant's urine for twelve different drugs. For performing this testing, IPC billed code 80101 at twelve units, \$60 per unit. IPC also billed code 99070, one unit at \$50, for the specimen cup used in the drug testing. SRS did not pay IPC anything for these two billing codes for the December 23, 2009, date of service. SRS asked IPC for further explanation as to these codes.

¹ The Current Procedural Terminology (CPT®) is a numerical method of categorizing medical procedures, developed and copyrighted by the American Medical Association. The CPT® assistant is an accompanying explanatory document. OAR 436-009-0004 provides in part:

“(3) The director adopts, by reference, the American Medical Association's (AMA) *Current Procedural Terminology* (CPT® 2009), Fourth Edition Revised, 2008, for billing by medical providers. The guidelines are adopted as the basis for determining level of service.

(4) The director adopts, by reference, the AMA's *CPT® Assistant*, Volume 0, Issue 04, 1990 through Volume 18, Issue 12 2008, as a supplement for determining the level of service described by the CPT® manual guidelines. If there is a conflict between the CPT® manual and CPT® Assistant, the CPT® Manual shall be the controlling resource to determine the level of service.”

CPT® code 80101 states: “Drug screen, qualitative; single drug class method (eg. Immunoassay, enzyme assay), each drug class.” The *CPT Assistant* clarifies: “For code 80101, each single drug class method tested and reported is to be counted as one drug class. If a sample is analyzed by five separate class-specific immunoassays and reported separately, code 80101 should be reported five times.” CPT® 99070 includes: “Supplies and materials (except spectacles), provided by the physician over and above those usually included with the office visit or other services rendered”

IPC requested administrative review when SRS failed to pay the billed amounts for codes 80101 and 99070. RT issued an Amended Administrative Order on April 8, 2010. The order found IPC had used a 12-panel cup to test the urine on December 23, 2009. This cup is a single cup, with 12 built-in test panels, that provides results about the presence of 12 drugs.

As to the 99070 charge for the cup, the order found this was an integral part of providing the service and therefore could not be the basis for a separate charge for supplies. The order therefore found SRS was not liable to pay the \$50 charge for this item.

For the 80101 charges, the order found a single test was performed using the 12-panel cup. The order further found only a single report of all the results was provided, because the drug screen results were only reported by checking boxes on the chart notes, and on a form included with the chart notes. This was found to constitute only a single report, for which the code only allows a single charge. As SRS had refused to pay anything for the drug testing, the order required SRS to pay \$60, or one unit, for the 80101 code.

IPC requested a hearing to review the administrative order. Ms. Regina Purtzer testified on IPC’s behalf. She testified that, although IPC had used 12-panel test cups at times, the drug testing in this case was performed by using 12 individual test strips dipped into urine contained in a plain sample cup. Specifically, while under oath, Ms. Purtzer testified: “Our office has used, umm, twelve-panel cups in the past, umm, however, we have also used, umm, many other methods.”² Although they were not admitted into evidence, Ms. Purtzer testified about several examples of the individual test strips that she brought to the hearing. Ms. Purtzer also testified at the hearing that IPC does not bill for the sample cup used in testing because it is included in the materials necessary to perform the procedure.

There are several documents in the hearing record highly relevant to resolving the billing dispute here that neither the parties nor the ALJ addressed at the hearing, in the Proposed and Final Order, or in the exceptions. Page 7 of Exhibit 9, and page 14 of Exhibit 17, is a single page that is identified as page three of the chart notes for the December 23, 2009, visit. Dr. Purtzer signed these notes. There is a section at the top of page three to record drug test results labeled: “12 Panel Drug Screen.” There are two check boxes at the top of that section. The first is labeled “Sent to quantify” and the second is labeled “99070 specimen cup.” The 99070 box is checked and circled.

² This testimony appears on the hearing recording at time stamp 9:39:20.

On the bills for September 30, 2009, and December 23, 2009, IPC billed 12 units under 80101 and one unit under 99070. Exhibit 4, at page 9, is a “Review Analysis” from SRS, dated January 7, 2010. SRS requested further explanation of IPC’s billing for September 30, 2009. Below SRS’ printed inquiry concerning code 99070 is what appears to be IPC’s handwritten response. The response states: “12 panel ua drug panel cup.”

Exhibit 13, at page 4, is a “Review Analysis” from SRS, dated January 19, 2010, for the December 23, 2009, date of service. The review requests additional information from IPC about billing codes 80101 and 99070. What appears to be IPC’s handwritten response circles the 99070 code with a line leading to the handwritten words: “12 panel ua drug screen cup. Documented on 3rd page of chart note.”

Exhibit 4, at page 19, is another “Review Analysis” dated February 10, 2010. This document requests information concerning billing for the December 23, 2009, date of service. IPC’s apparent handwritten response at the bottom of the page states: “12/23/10 99070 12 panel drug screen cup not paid.”³

Exhibit 17, at page 6, is a form apparently created by IPC. It is titled “Intractable Pain Centers request for an appeal on” This document is dated April 5, 2010, and appeals payment for the December 23, 2009, date of service. There is a box that is checked, that states: “99070 Special Supply Not paid correctly with documentation. Included with 80101 is a urine specimen cup. This is a separate supply required to test for each of the following 12-13 individual drugs and is not included in the office visit: [12 drugs listed].”

ALJ Smith affirmed RT’s order as to the 99070 billing. He found this was a charge for the specimen cup, and that this item is not a supply required over and above normal supplies because it is an inherent part of performing the drug screen test. It appears IPC is not challenging this ruling in its responses to the exceptions.

Following the hearing, ALJ Smith submitted a question to the division. OAR 436-001-0170(9). The ALJ’s letter asked for clarification of the application of billing code 80101 in the context of the facts as he had found them in this case. ALJ Smith’s letter stated:

“This question arises in the context of a dispute regarding the appropriate reimbursement for a single qualitative urine drug screen, wherein the provider tested a single urine sample using a single, standard specimen cup, by dipping into the cup 12 separate plastic rapid-read, dip format devices, each of which came individually-wrapped, and each of which tested the sample for a different drug/class. The results were then recorded in a single report, with each drug/class shown either positive or negative for the respective drugs.

The question is this: Does the director consider this to constitute 12 different tests, each separately reimbursable under CPT® code 80101, notwithstanding the fact that a single specimen was used, and a single report (containing outcomes for each of the 12

³ Although the handwritten note refers to “12/23/10” (emphasis added), this appears to be an error as the Review is dated February 10, 2010, and service was provided on December 23, 2009.

drugs/classes) was produced?”

The division responded as follows:

“The context of your question is a qualitative urine drug screen where the provider tests a urine sample with a rapid read, dip format device, individually wrapped, which tests for a specific drug/class. The results of the test are then recorded in a single report, identifying each drug class and the test result. The *Current Procedural Terminology* (CPT®) 2009 manual provides the following for CPT® code 80101, ‘Drug screen, qualitative; single drug class method (eg. Immunoassay, enzyme assay), each drug class.’ *CPT Assistant* clarifies: ‘For code 80101, each single drug class method tested and reported is to be counted as one drug class. If a sample is analyzed by five separate class-specific immunoassays and reported separately, code 80101 should be reported five times.’ Given the context of your question, the answer would be each would be a reimbursable test.

However, as testing technology has evolved, advances have made it easy to screen for a dozen or more drug classes in a single test. The coding system has not kept pace and is still based on a time when each drug class was a single procedure to test it. This allowed a situation where a provider could utilize a single modern multi-drug test kit and bill for the more involved single drug testing procedure. In such a scenario, a multi-drug single test kit, after July 1, 2010, should be billed using HCPCS code GO430 rather than multiple units of CPT® code 80101.

Therefore, in the context of qualitative urine drug screen using a multi-test kit such as QTest 12 or *iCup* should be billed [sic] using a single CPT® code 80101 prior to July 1, 2010, and the HCPCS code after.”

ALJ Smith found that the urine testing in this case was done by collecting the urine in a plain sample cup and dipping twelve separate test strips into the urine. In its responses to the exceptions, IPC does not dispute that finding. The ALJ interpreted the division’s response to his question to mean that, under the facts as he found them here, IPC was entitled to bill 12 units for the drug testing. He therefore ordered SRS to pay the \$720 IPC had billed for the tests.

IPC also submitted an additional document attached to its response to the exceptions to the Proposed and Final Order. Specifically, one of IPC’s responses is labeled: “Reply to Response to Proposed and Final Order,” and dated November 19, 2010. The attached document is purported to be a copy of page three of the chart notes, discussed above, and found at Exhibit 9, page 7, and page 14 of Exhibit 17. On the copy attached to the response to the exceptions, in the section of the chart note labeled: “12 Panel Drug Screen,” the words “specimen cup,” which appear next to the box labeled “99070” on the original document in the hearing record, are not visible. Instead, there is a handwritten entry next to the box labeled “99070,” that states: “12 Individual drugs tested.” The response states this is a “revised version” of the exhibit offered at hearing.

IPC submitted another document to the division dated December 2, 2010, and titled “Reply to Response to Proposed and Final Order.” IPC states in this letter: “IPC wants to clarify

once again; they do not acknowledged [sic] stating at hearing utilizing twelve panel specimen cups in the past.”

CONCLUSIONS OF LAW

In a medical fee dispute, I review de novo. OAR 436-001-0225(1).

The only issue remaining to be resolved is whether SRS should be required to pay one unit or 12 units for the drug testing, as billed under CPT® code 80101. Ms. Purtzer testified at the hearing that the testing in this case was done using 12 separate dip sticks. ALJ Smith found that Ms. Purtzer’s testimony on this point was “unrebutted.”

It is true that no witness testified at the hearing that the 12-strip cup was used on December 23, 2009. However, the documentary record, consisting of IPC’s own documents and handwritten notes, directly, explicitly, and unequivocally rebuts Ms. Purtzer’s testimony. Given the documentary record, Ms. Purtzer’s hearing testimony is simply inexplicable.

The chart note of the December 23, 2009, visit has a pre-printed check box in the drug testing section that states “99070 specimen cup.” This box is checked and circled. IPC acknowledged in its documentation and at the hearing that it cannot charge for a plain urine sample cup, because that cost is included within the charge under 80101 for the testing service. The presence of the 99070 check box on IPC’s form establishes that IPC used, and intended to bill for, something other than a plain sample cup to test claimant’s urine on December 23, 2009. IPC has not asserted this charge was for the 12 separate test strips allegedly used. That the code was billed only for one unit, and not 12, also implies this charge was not for the test strips.

IPC also appears to have responded several times to SRS’ billing inquiries that the 99070 code was for the “12 panel ua drug panel cup,” or “12 panel ua drug screen cup . . . ,” or “12 panel drug screen cup.” IPC was unquestionably billing insurer for using a 12-panel drug screen cup on December 23, 2009. Only one unit is billed under 99070 even though IPC billed 12 units under 80101 purportedly for performing 12 separate tests. IPC’s own records, created contemporaneously with the testing and the billing, and created before the billing dispute became subject to review, clearly and explicitly demonstrate that IPC used, or at least attempted to bill for, a 12-panel drug screen cup on December 23, 2009. The factual finding in the Proposed and Final Order, which does not account for the documentary evidence referenced above, is simply erroneous on this point.

IPC’s submission of the “revised” version of page three of the chart notes, referenced above, and included in the hearing record at page 7 of Exhibit 9, and page 14 of Exhibit 17, is as inexplicable as Ms. Purtzer’s hearing testimony. It could be construed as an attempt to alter documents contained in the record, which have already formed the basis for the decisions by RT and the ALJ, in order to mislead subsequent decision-makers. Given that the original document was prepared contemporaneously at the time the service was provided, and that it is a pre-printed form, and that IPC created it, IPC’s attempt to present a “revised” version further enhances the conclusion that the use of the form and the check box indicate IPC’s standard practice was to use the 12-panel test cup and that IPC used that cup on December 23, 2009. In addition, if the

“revised” document is actually somehow more accurate or correct than the original, this suggests that IPC is creating and maintaining inaccurate or incorrect patient files, and is using those inaccurate records as a basis for billing.

Given that the hearing was recorded, and that Ms. Purtzer testified under oath, IPC’s December 2, 2010, letter, asserting that IPC did not state at the hearing that they had used 12-panel test cups, raises serious questions about IPC’s intent. The hearing was recorded. And Ms. Purtzer did testify under oath. And Ms. Purtzer did state during her testimony that IPC had used the 12-panel cups, and other test methods, in the past. The letter is even more curious given the documentary evidence in the record here that unquestionably proves IPC attempted to bill insurer for using a 12-panel cup. If Ms. Purtzer’s testimony and IPC’s letter are accepted as true, then IPC attempted to bill insurer for materials IPC did not actually use.

The question remains as to whether IPC is entitled to be paid 12 units for having performed a single test and provided a single report. The CPT® codes are essentially a method for specifying the amount of time, effort, and skill required to perform a given procedure. It is obvious that performing 12 separate tests, which must each be documented and reported individually, will consume more time than performing a single test and checking the relevant boxes on a pre-printed form.

The billing codes for these services have recently been revised and the revision provides guidance in this case. IPC included information about these revisions in the record at Exhibit A, pages 1-3. The changes are explained in a publication from the Department of Health and Human Services, titled “CMS Manual System, Pub 100-20 One-Time Notification, Transmittal 653, March 19, 2010.” That publication explains that new codes are being established to replace the use of the 80101 and related codes concerning drug testing. A new code, G0430, was created to cover a single test that tests for multiple drugs. The publication explains this code as: “G0430 – Drug screen, qualitative; multiple drug classes other than chromatographic method, each procedure.” It is further explained that the new codes are being created in part because “some companies were using questionable billing practices concerning CPT Code 80100 and 80101.” The publication further explains:

“New test code G0430 was created to limit the billing to one time per procedure and to remove the limitation of the method (chromatographic) when this method is not being used in the performance of the test. As a result, when a clinical laboratory that does not require a CLIA certificate of waiver performs a qualitative drug screening test for multiple drug classes that does not use chromatographic methods, new test code G0430 is the appropriate code to bill. When a clinical laboratory that does require a CLIA certification of waiver performs a qualitative drug screening test for multiple drug classes that does not use chromatographic methods, new test code G0430QW is the appropriate code to bill.” (Emphasis added).

Thus, new codes have been created for the type of drug testing performed in this case, a single test for multiple drugs, not using the chromatographic method, specifically to ensure that only one unit is billed per testing procedure. The changes in the billing codes, and the accompanying explanation, suggest that the entities responsible for the codes understood that a single test for multiple drugs should only be billed once, but that some providers were exploiting the explanatory language of the codes the bill multiple times for a single test.

The problem in resolving this dispute is that IPC's conflicting hearing testimony and documentary evidence make it very difficult to determine exactly what testing IPC performed on December 23, 2009. The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Salem Decorating v. National Council on Comp. Ins.*, 116 Or App 170 (1992), *rev den*, 315 Or 643 (1993). IPC contends it performed drug testing on December 23, 2009, and that it performed that testing by using individual test sticks dipped into a urine sample in a plain cup. Unfortunately, IPC's hearing testimony directly contradicts its own documents in the written record on this issue. And to further confuse the matter, IPC's December 2, 2010, letter directly conflicts with IPC's own hearing testimony as to whether IPC has ever used a twelve-strip cup. The written documentation in the hearing record carries greater weight than the hearing testimony because the original, unaltered chart notes were created contemporaneously when the service was provided and the other relevant documents were created before the dispute over the testing method developed. The stronger inference, therefore, is that IPC tested using a single, twelve-strip cup, but IPC denies this is the case.

Given the documentary record, it is likely IPC did perform some form of drug testing on December 23, 2009. However, the conflicts in IPC's own evidence means that IPC has not met its burden of establishing it used the more time-intensive individual dip strip test method. IPC is therefore only entitled to bill, and to be paid for, one unit under code 80101 for the December 23, 2009, services, that is the appropriate charge where testing is performed using a twelve-strip cup.

IT IS HEREBY ORDERED the April 8, 2010, Amended Administrative Order is affirmed in full and insurer is ordered to pay IPC only \$60.00 for code 80101. The October 12, 2010, Proposed and Final Order is affirmed in part and reversed in part. That part of the order affirming the denial of payment under code 99070 is affirmed. That part of the order requiring insurer to pay IPC an additional \$660.00 for code 80101 is reversed.