MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007
Thursday, August 17, 2017 – 1:00 p.m.

Present: Dale L. Schultz Chairman
Joseph M. Hennelly, Jr. Vice Chair
Robin S. Orchard Commissioner
Steven J. Krenzel Commissioner
James Ashley Director
Jason M. Porter Chief Legal Counsel
Melinda Poppe Deputy Director
Trevor Laky Legislative Affairs Chief / Public Information Officer
Renee Pastor Self Insurance
William Warren ADOSH Director
Phillip Murphy ADOSH Assistant Director
Steven Welker Labor Director
Jonathan Hauer Assistant Chief Legal Counsel
Kara Dimas Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m.

Public Hearing regarding Senate Bill 1332’s directive to “review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines.”

The following attendees addressed the Commission during the Public Hearing: Randall S. Prust, M.D. with Rincon Pain Management; David Parker; Cathy Vines with CopperPoint; and Debra Runbeck with AALIW.

A written transcript of the Public Hearing is attached hereto.

Chairman Schultz recessed the meeting at 1:45 p.m. The meeting reconvened at 1:53 p.m. in Conference Room 308. Also present was Elena Puevner with Schoeller Allibert US, Inc.; Frank Garcia and Dale Gillaspy with Premier Risk Management; David Danowski and Chris Yonker with Tolin Mechanical Systems Company; David Parker; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of August 11, 2017 Regular Meeting.

Chairman Schultz postponed approval of the August 11, 2017 regular meeting Minutes and moved the item to the agenda of the August 31, 2017 Commission Meeting.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a
final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C-16/17-1977 A & M Renovations, LLC
2. 2C-16/17-2098 Beyond Massage Therapy LLC
3. 2C-15/16-1425 IL Tocco, LLC
4. 2C-16/17-2149 JOM Enterprises LLC, dba Arizona Southwest Shuttle
5. 2C-15/16-2416 Reborn Assistance Association

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Arizona Municipal Risk Retention Pool
2. Freeport-McMoran, Inc.
3. QuikTrip Corporation
4. Southwest Gas Corporation
5. TMC Healthcare
6. Van Tuyl Group, LLC dba Berkshire Hathaway Automotive, Inc.

Chairman Schultz removed item b.3. (QuikTrip Corporation) from the Consent Agenda. He applauded Southwest Gas Corporation and TMC Healthcare for their excellent experience modification rating.

Vice Chair Hennelly moved to approve the remaining items on the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

QuikTrip Corporation: Chairman Schultz discussed the safety record of QuickTrip Corporation, the company’s experience modification rating, and the Commission’s expectations for self-insureds. He requested that the self-insurance renewal be conditioned on the company’s agreement to work with the ADOSH Consultation Division in an effort to improve their safety record.

Commissioner Orchard moved to approve QuickTrip Corporation’s request for renewal of self-insurance authority with the condition that they work with the ADOSH Consultation Division. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purposes and processes involved in the Commission’s consideration of ADOSH citations and proposed penalties.

Schoeller Allibert US, Inc, a Delaware Corporation
4320 S Cotton Lane Ste 200
Goodyear, AZ 85338

Unprogrammed Related
Years in Business: 50/6
Empl. Covered by inspection: 14
SERIOUS – Citation 1 - Item 1 –

a) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction related activities, was not protected from falling approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

b) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction work, was not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - $1,750.00            Formula Amt. - $1,750.00

SERIOUS – Citation 1 - Item 2 – 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof at heights greater than six feet and exposed to falls, during construction related activities, was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - $1,750.00            Formula Amt. - $1,750.00

TOTAL PENALTY - $3,500.00            TOTAL FORMULA AMT. - $3,500.00

Mr. Murphy discussed the worksite, explained the relationship between Huhtamaki (lessor) and Schoeller Allibert (lessee), and the circumstances that prompted the inspection of Schoeller Allibert. Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Commissioner Orchard, Mr. Warren, and Mr. Murphy discussed the scope of the project to replace roof-top HVAC units, the involvement of Schoeller Allibert’s employee, the involvement of Tolin Mechanical Systems (contractor), and the nature of the hazards existing on the roof. Chairman Schultz noted the citation was not based on Schoeller Allibert being a “controlling employer” of Tolin Mechanical’s workers, but rather based on the exposure of its own employee.

Commissioner Krenzel and Mr. Murphy discussed the owner of the building (Huhtamaki) and the relationship between Huhtamaki and Schoeller Allibert.

Commissioner Krenzel and Mr. Murphy discussed the tools found on the roof and the involvement of Schoeller Allibert’s employee.

Commissioner Krenzel moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion.

Commissioner Orchard and Mr. Murphy discussed Photograph No. 4 and how employees accessed the roof. Chairman Schultz and Mr. Murphy discussed the fixed ladder and how it was in compliance with ladder standards.

Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Tolin Mechanical Systems Company
3901 E Roeser Rd
Phoenix, AZ 85040

Site Location: 4320 S Cotton Lane, Ste 200

Unprogrammed Related
Years in Business: 69
Empl. Covered by inspection: 2
Goodyear, AZ 85338

Inspection No: Q6169-1235186
Inspection Date: 05/03/2017

**SERIOUS – Citation 1 - Item 1 – 4320 S Cotton Ln., Goodyear, AZ:** Five employees removing/installing HVAC units on a roof, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

**SERIOUS – Citation 1 - Item 2 –**

a) **4320 S Cotton Ln., Goodyear, AZ:** One employee anchored to a stanchion of an HVAC unit duct work as part of their complete personal fall arrest system which was not capable of supporting at least 5,000 pounds per employee or maintained a safety factor of at least two. (29 CFR 1926.502(d)(15)), (29 CFR 1926.502(d)(15)(ii)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

b) **4320 S Cotton Ln., Goodyear, AZ:** One employee used an anchor attached to their personal fall arrest system that was not designed, installed and used under the supervision of a qualified person. (29 CFR 1926.502(d)(15)(ii)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

**SERIOUS – Citation 1 - Item 3 – 4320 S Cotton Ln., Goodyear, AZ:** Three employees working at heights greater than 6 feet and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards.

(29 CFR 1926.503(a)(2)).

Div. Proposal - $2,250.00  
Formula Amt. - $2,250.00

**TOTAL PENALTY - $6,750.00**  
**TOTAL FORMULA AMT. - $6,750.00**

Mr. Murphy summarized the citation and proposed penalties and reviewed the photographs.

Chairman Schultz and Mr. Murphy discussed the location depicted in Photograph No. 7 and the need to “tie off” while working at that location. Mr. Warren noted the large number of skylights on the roof.

Commissioner Orchard, Mr. Warren, and Mr. Murphy discussed the inadequate use of fall protection, the presence of numerous skylights, and the circumstances leading to a fatality at the worksite. Commissioner Orchard and Mr. Warren discussed the company’s provision of fall protection equipment, but noted that the employer did not seem to take the skylights into consideration.

Commissioner Krenzel and Mr. Warren discussed the circumstances leading to the inspection and various methods of protecting employees from skylight hazards.

Mr. Yonker discussed challenges facing their industry and acknowledged Tolin Mechanical’s failures at the worksite. He discussed fall protection equipment and training provided by the company, the difficulties associated with working on old buildings, and efforts of the company to develop an electronic “app” to assist employees in properly assessing worksites and taking appropriate steps to avoid hazards. He noted that the company has a lot of employees who work alone and commended that the new fall protection standards are helpful. He acknowledged that the worksite had not been properly assessed before work began and asserted the company’s commitment to employee safety. He discussed actions taken after the inspection to correct deficiencies in the company’s safety program.
Mr. Danowski discussed additional safety training provided by the company related to fall protection, aerial lifts, and scissor lifts. He discussed frustrations with having to compete against companies who do not include safety costs in project bids and having to educate building owners about fall protection and workplace safety. He asked whether the Commission had ideas on how to incentivize building owners to take steps to make their buildings safe before contractors are hired to work at those sites.

Chairman Schultz discussed ADOSH’s partnership with the Arizona State University Del Webb School of Construction and efforts to make safety part of every step of the design and building process. He also discussed Commission partnerships with various contractor associations, including efforts to promote safe worksites. He acknowledged the importance of owners effectively maintaining their buildings, including by engineering safety controls into the buildings.

Mr. Yonker and Chairman Schultz discussed: (1) efforts of the company to educate property owners about building safety; (2) the ADOSH Consultation Division; and (3) Commission alliances with various trades focused on helping industries improve workplace safety (sometimes at significant expense).

Commissioner Krenzel and Chairman Schultz discussed the Chairman’s Roofers Alliance and efforts of the Commission to bring various industry groups together to encourage trades to work together on job sites to improve safety for all. Mr. Warren noted that some protective equipment for skylights is relatively inexpensive and noted that there are a variety of things employers can do to protect against skylight hazards. He noted that sometimes skylight hazards go unnoticed by employers.

Commissioner Orchard and Mr. Yonker discusses the company’s safety training program and the training that had been provided to the employees who were at the worksite.

Commissioner Orchard noted Tolin Mechanical’s good faith, including its robust safety program and efforts to prevent similar future safety hazards, including by developing a worksite assessment “app” to assist employees with workplace safety. She moved to amend the proposed penalties, as follows: (1) the proposed penalty for Citation 1, Item 1 be reduced by 30% (from $2,250.00 to $1,575.00); (2) the proposed penalty for Citation 1, Item 2 be reduced by 30% (from $2,250.00 to $1,575.00); and (3) the proposed penalty for Citation 1, Item 3 be reduced by 30% (from $2,250.00 to $1,575.00), for a total penalty of $4,725.00. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard and Commissioner Krenzel voted in favor of the motion. The motion passed.

Field Operation Manual Inspection Scope (III. Penalty Factors) Discussion.

Mr. Warren discussed OSHA’s penalty policy under the OSH Act and the ADOSH Field Operations Manual (“FOM”). He discussed the purposes of the penalty policy, A.R.S. § 23-418, penalties for violations contributing to a fatality or serious injury, statutory penalty ranges for the various citations classifications, penalties for failure to correct a violation, additional penalties permitted in cases involving permanent disability or death, the reduction factors under § 23-418(i) and the FOM, and ADOSH’s gravity-based penalty evaluation.

Commissioner Orchard, Mr. Warren, Mr. Murphy, and Chairman Schultz discussed the requirements for good faith reductions under the FOM.
Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code relating to the Fair Wages and Healthy Families Act (Proposition 206), including proposed rulemaking to R20-5-1201; 20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; and R20-5-1218.

Mr. Welker discussed proposed final rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code arising out of the Fair Wages and Healthy Families Act (Proposition 206). He summarized the rulemaking process to date, which included two public comment sessions. He recommended that the Commission authorize the Labor Department to proceed with final rulemaking consistent with the Notice of Supplemental Proposed Rulemaking.

Vice Chair Hennelly moved to authorize the Labor Division to proceed with final rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the results of the employee engagement survey, including employee feedback regarding professional development. He discussed efforts by Commission staff to develop policies related to tuition and professional education reimbursement. Chairman Schultz, Mr. Ashley, and Commissioner Orchard discussed the scope of the programs being designed.

Chairman Schultz commented on his participation in a Gemba Walk, noting the amazing work being done across all Divisions. He noted that a Gemba Walk would be scheduled for the Commissioners to see how the Huddle Boards have improved.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed upcoming Commission meeting dates through October 2017. Commissioner Orchard, Vice Chair Hennelly, and Commissioner Krenzel noted possible scheduling conflicts.

Ms. Dimas presented a retirement resolution for Melissa Smith, Workers’ Compensation Insurance Claims Processing Supervisor in the Claims Division, for 32 years of state service. Mr. Ashley commended Ms. Smith for her outstanding efforts in reducing the backlog of 104 Forms (Notice of Claim Status).

Public Comment.

Mr. Parker noted that it is good to see the Commission conducting its business so well. He discussed the FOM and its value. He discussed how the “Three E’s” of highway safety (engineering, education, and enforcement) apply to employee safety. He mentioned a “Fourth E” (evaluation) to provide for ongoing monitoring. He noted the “Three E’s” of child-rearing (education, employment, and eviction).

There was no other public comment.
Vice Chair Hennelly moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 3:11 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary
BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

PUBLIC HEARING REGARDING "PROCESS FOR STREAMLINING THE AUTHORIZATION PROCESS FOR TREATMENT THAT IS WITHIN THE EVIDENCE-BASED TREATMENT GUIDELINES"

Phoenix, Arizona
August 17, 2017
1:00 p.m.

APPEARANCES:

Dale Schultz, Chairman
Joe Hennelly, Vice-Chair
James Ashley, Director
Jason Porter, Chief Legal Counsel
Robin Orchard, Commissioner
Steve Krenzel, Commissioner

PREPARED BY:
Vicki L. O'Ceallaigh Champion, RPR
Certified Reporter
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ORIGINAL

Perfecta Reporting
(602) 421-3602
Phoenix, Arizona
August 17, 2017
1:00 p.m.

PROCEEDINGS

CHAIRMAN SCHULTZ: We have reached the appointed
time. I'd like to call this meeting in the Industrial
Commission to order. I'd like to start the meeting with the
Pledge of Allegiance.

(Pledge of Allegiance.)

CHAIRMAN SCHULTZ: Now I'd like to have
introductions here so that you all know. We won't extend it
to all of you folks, but at least so you'll know who is up
here. I'm Dale Schultz, and I'm Chairman of the Industrial
Commission.

MR. HENNELLY: Joe Hennelly, Commissioner.

MR. KRENZEL: Steve Krenzel, Commissioner.

MR. ASHLEY: James Ashley, ICA Director.

MS. ORCHARD: I'm Robin Orchard, Commissioner.

MR. PORTER: Jason Porter, Chief Counsel.

CHAIRMAN SCHULTZ: Great. Thank you.

Our first order of business today is to have this
public hearing at which we are discussing the issue of
streamlining the authorization process for treatment that is
within the evidence-based treatment guidelines.
By way of a summary in April of 2012, Arizona lawmakers passed House Bill 2368, which required the Industrial Commission to develop and implement a process for the use of evidence-based treatment guidelines where appropriate to treat injured workers. With significant input from stakeholders, the Commission developed and implemented a series of 12 rules published in Title 20, Chapter 5 of Arizona's Administrative Code.

Among other things, the treatment guidelines prescribe a limited use of evidence-based treatment guidelines as a tool to support clinical decision making and quality health care delivery to injured employees within the context of the Arizona Worker's Compensation System. It adopted Work Loss Institute's Official Disability Guidelines, ODG, Treatment and Worker's Compensation as the standard reference for evidence-based medicine.

It limited the applicability of ODG to the management of chronic pain and the use of opioids for all stages of pain management. It outlined a noncompulsory process for a medical provider or injured worker to seek preauthorization from a payor for medical services for treatment, established an administrative review process to help resolve disputes between medical providers, injured employees, and payors, and outlined procedures for bringing unresolved disputes to the Industrial Commission for hearing.
Under the treatment guidelines, medical providers are committed to seek preauthorization from a payor for medical treatment or services for an injured worker. Preauthorization requests must be in writing and may be submitted my mail, electronically, or by fax directly to a payor. When a preauthorization request is properly submitted, the payor is required to respond within 10 business days. A payor may respond by communicating its preauthorization decision to the provider or notifying the provider that an IME, an independent medical evaluation or exam, has been requested under Arizona Administrative Code Section 20-5-114.

When a payor requests an IME, the time for rendering a preauthorization decision is suspended. In these circumstances, the payor's decision on a preauthorization request must be issued no later than 10 business days after the final IME report has been received by the payor. If a payor does not communicate its preauthorization decision within 10 business days, the payor's nonaction is deemed a no-response, and the provider or injured employee may bypass the reconsideration process and immediately request administrative review from the Industrial Commission.

Administrative review is a process that includes a peer review of the requested treatment or services. The administrative review process is expeditiously administered
by the Industrial Commission's medical resource office. The
payer is responsible for paying the cost of the peer review.

Following the issuance of the administrative review
determination, an interested party, which includes the
employer, employee, and insurance carrier or their
representative, who is dissatisfied with the administrative
review determination may request that the dispute be referred
to the Industrial Commission's Administrative Law Judge
Division for hearing. Parties may elect to participate in a
fast track ALJ dispute resolution program designed to
expedite review of contested cases.

Section 5 of Senate Bill 1332 of the 53rd
Legislature, First Regular Session, directed the Commission
to review and determine a process for streamlining the
authorization process for treatment that is within the
evidence-based treatment guidelines. The Commission is
required to complete the process on or before December 31,
2017.

We now welcome you to present your oral comments
regarding your concerns with the current authorization
process and suggestions for streamlining the process for
treatment that is within the evidence-based treatment
guidelines. Those wishing to speak may do so by filling out
a speaker's slip, which is available at the door. I will
call each speaker who will have five minutes to speak,
thereatouting. It depends upon the number of speakers. If we can allow additional time and that additional time is necessary, then we will permit some additional time, but I reserve the right to hold your comments to five minutes per person.

Although the public hearing will end when oral comments have concluded, written comments will be accepted through Friday, September 15. Friday, September 15. So there is considerable additional time for you all to submit and for anyone else to submit written comments. The Commission will carefully consider all written comments along with your oral comments. The Commission will discuss and take action on the issue at a future regular public meeting of the Commission.

Please keep in mind that this oral proceeding is for the Commission to receive public comment on the issue of streamlining the process for treatment that is within the evidence-based treatment guidelines. If you have questions regarding the treatment guidelines, the Commission has posted an extensive list of frequently asked questions on the Commission's medical resource office website.

In the event that the F.A.Q.s do not answer your questions, we would invite you to submit questions directly to Jackie Kurth, manager of the medical resource office. Ms. Kurth's e-mail address and phone number are available on
the Commission's website.

With that, we now open the floor to public comment, and I would ask each of you as a speaker to please introduce yourself and indicate who you are representing for the purpose of our record of the proceedings.

Our first speaker is Randall Prust, M.D.

Dr. Prust, welcome.

DR. PRUST: Thank you very much.

So I am Randy Prust. I am a board certified pain management specialist in Tucson, Arizona representing Rincon Pain Management. I was one of the six physicians that was appointed by Laura McCrary to the physician advisory board that made suggestions to the actual board that would make a final decision on which guidelines would be adopted. The six physicians all voted against ODG, and part of it was because of this authorization process.

Ken Eichler is the CEO of ODG, and he came and talked to us a number of times. Most of his talks were about the success stories about using and implementing the guides and how this was done successfully in other states. The State of Arizona ultimately decided not to adopt those recommendations of Dr. -- or Mr. Eichler. Specifically, the evidence-based medicine guidelines that -- let's just take my example of, let's say, an epidural steroid injection. There is a section, and it's evidence-based medicine on the
criteria the patient needs to meet in order to qualify for that procedure.

There is a separate section, the Utilization Review Advisement, which was not adopted by the State, but recommended by Mr. Eichler, because this takes out the authorization process when the patient meets all that criteria, so you don't incur that 10-day delay or more. It gets the patients -- Mr. Eichler showed that patients get back to work faster, because they get treatment earlier. They have better outcomes, and of course, the cost is less.

So I'm suggesting that you use this evidence-based medicine portion of the guidelines, the Utilization Review Advisor. It's very easy to use. If the patient meets those criteria and then you look up the procedure and diagnosis, it will have a colored box. The only one I'm interested in today is the green box. The green box is an automatic "go."
The others, "yellow" as an example, we would require some more utilization review, and then there is a black box.

So there's different colors that definitely you would have to contact the adjuster and work it out, but for those procedures, where the doctor has determined that they meet all the evidence-based medicine guidelines, I would suggest using that utilization review advisor that the CDG already has in their framework. So use that total package as part of the streamlining of the authorization process. Thank
you.

CHAIRMAN SCHULTZ: Any questions for Dr. Prust?

Okay. Thank you very much.

Our next speaker is Kris Yonker, is it?

MR. YONKER: I signed up for one of the other agenda items.

CHAIRMAN SCHULTZ: Oh, okay. We will be continuing our meeting upstairs, third floor, and you all are invited if you wish to join us for the rest of our agenda.

MR. YONKER: Okay.

CHAIRMAN SCHULTZ: We will see you upstairs. Thank you.

David Danowski?

MR. DANOWSKI: I'm with Kris.

CHAIRMAN SCHULTZ: Same? Okay. We are getting through this stack in a hurry here.

David -- is it -- what do you think, Robin?

MS. ORCHARD: Parker.

CHAIRMAN SCHULTZ: Dave Parker. I've heard of you.

MR. PARKER: I guess my handwriting needs a little more work, too.

CHAIRMAN SCHULTZ: Yeah, well, it's me, too, Dave.

Sorry.

MR. PARKER: Thank you, Chairman Shultz, Commissioners, Director Ashley, for the opportunity to
provide my thoughts on a topic that is of statewide
significance to employers, employees --

CHAIRMAN SCHULTZ: For the record, you're
David Parker and --

MR. PARKER: David Parker, representing myself.

CHAIRMAN SCHULTZ: Thank you.

MR. PARKER: Of significant statewide interest to
employers, employees, insurers, and even the Special Fund.

My name is David Parker. I speak today from the
perspective of a risk management practitioner, worker's
compensation administrator, regulator, insurer, industry
association member, and at times, injured worker. I will
keep my comments to the conceptual and policy level and leave
specific application to those who work in the process daily
and administer claims daily.

The objective of post-injury medical care is to
return an injured employee as far as possible, as fast as
possible. The objective has additional benefits of helping
to manage costs, but the best outcome possible is what we're
looking for.

There is a general recognition that worker's
compensation contains significant frictional costs and
delays, much of it caused by disagreements on compensability
or treatment plans. The uncertainty and extremely long tail
and claim costs exacerbates this issue, and as you're reading
the process, we can see that we have this piece of time, and
then you have this piece of time, and this piece of time, and
it's conditioned upon which parties can agree to play, so it
delays the care and ultimately the outcome.

While most claims resolve quickly with little cost,
only 10 percent of the claims that will eventually reach the
excess insurer level were identified early on as catastrophic
claims, and 90 percent of the claims that will ultimately get
to excess layer were never identified as claims that were
likely to become bad. They just never resolved.

A full five years will pass before insurers receive
notification of just 50 percent of the claims that will
ultimately get to their layer. So it's an issue that's
important for the injured worker, who has got a claim that's
continuing, and the payors, who are trying to resolve those
claims.

The general tenet of worker's compensation is that
we take employees they way that we find them. Some will be
more fragile than others, some will be more resilient.
Employees come with all types of comorbidities, that while
they are not the responsibility of the employers or worker's
compensation insurer, will influence the extent of injury and
recovery from that injury.

Evidence-based medicine is founded on peer review
research that has documented effective treatment protocols
for specific conditions and injuries. The guidelines document what works well for many people, hopefully most people, and provides reasonable expectations and rehabilitation and recovery. Because of the length of time that it takes to perform and publish peer-reviewed research followed by the time until that research is reviewed and incorporated into updated guidelines, E.B.M. guidelines may lack the most current science and medicine. So E.B.M. guidelines provide a body of consensus, but they are not exhaustive in their content.

I would like to use an analogy. In the same way that in education we teach the way that most students learn, but not all students, E.B.M. documents what works well for most people, but not all people.

Essentially, E.B.M. says that if an injured worker has a specific diagnosis, then a defined range of treatment should result in a certain prognosis or outcome. Employees should not languish in their care or recovery. I think we've all seen ones that just hung on so long you wondered why. That should not happen.

The logical corollary to E.B.M. suggests that an employee who is not progressing, may have an incorrect diagnosis or unidentified comorbidities, or this employee may just not respond well to that treatment or that range of treatment.
So in the same way that a teacher must identify another way for some students to learn, the system, including physician, patient, employer, and insurer, must have a means to identify early the treatment isn't working for this employee and to identify a plan that will succeed.

We must also recognize that science and medicine will not progress if everyone keeps doing just the same old thing, even if that seems to work well for most. Treatment recommendations in the guidelines should not be the only authorized path of care.

However, the guidelines have proven to be effective for most people. While not necessarily presumptive, the approval process for care consistent with the guidelines should be as streamlined or automatic as practicable. The guidelines become a tool comparing an employee's progress to expectations, helping to insure that the employee's recovery does not languish. If not progressing as expected, the treatment plan should be reevaluated.

When medical providers want to follow another treatment plan, they should document the reason for deviation, the proposed care and expected outcomes, and how they will measure outcome and anticipated cost. Arizona's Worker's Compensation process relies upon good communication, knowledgeable professionals, and a flow that needs to have very little regulatory action. Essentially, we deal with the
exceptions, and those exceptions need to represent a very small percentage.

The E.B.M. approval process should follow the same principles. Almost all treatment that is consistent with adopted guidelines should proceed without need for approval when an injury has been identified as compensable. The process should facilitate communication, and early identification of injured workers who are not progressing as expected. The process should also facilitate agreement on an alternate treatment plan, where conventional treatment has not been effective, or where the physician can reasonably anticipate that the alternate treatment is reasonable, necessary, technically feasible, and cost effective.

A regulatory approval process should resolve conflicts when necessary, but without adding additional burden, delay, or frictional cost to most care. Also, it would be easy to see this issue as just impacting the providers and payers, but injured workers must also have a reasonable opportunity to be heard and participate in the decision-making process.

Ultimately, I am pleased to see the treatment guidelines have been successfully implemented and am looking forward to a broader implementation of treatment guidelines. I think it will be good for all.

I'd like to end with one thing. I had lunch at my
favorite downtown restaurant today, got my fortune cookie, and this is a good one. It says, "A difference, to be a difference, must make a difference." That's what we want with E.B.M. Thank you.

CHAIRMAN SCHULTZ: Thank you, Mr. Parker.

Questions for Mr. Parker? Okay. Thank you.

MR. PARKER: Thank you.

CHAIRMAN SCHULTZ: Cathy Vines.

MS. VINES: Good afternoon. Cathy Vines with Copperpoint. First, good afternoon, Chairman, Commissioners, Director Ashley.

I'd like to add my own personal support to the comments that were submitted by Todd Lundmark, fellow committee member for those many months and evenings, where we had some lively debate and dialogue as to the necessity for evidence-based medicine. That was after we identified what evidence-based medicine even was, how it could benefit Arizona, and then ultimately the arduous process of developing a process and a form and a system. I can agree with Todd. We did have debates about automatic authorizations. As a group, we did not feel that that was the approach that was necessary to take at that time.

I don't know that we have evidence that says anything has changed since then, so personally, my support for the comments that were submitted by Mr. Lundmark.
I am here this afternoon representing collective comments that were submitted earlier today to the Commission by a group of business and industry stakeholders. We, as a group, appreciate the opportunity to provide a unified business and industry perspective on this most important issue.

The inclusions of the provisions in Senate Bill 1332 was really in response to concerns raised by some of the stakeholders involved in our process with the intent that the process could be improved. We're offering the following concepts and do believe that there is an opportunity to enhance the existing process.

First, we would request that providers requesting authorization be required to do so, required to do so, using a standardized, simplified form. Currently, the requests for authorization come to payors and adjustors in a variety of formats. Sometimes there is a fax. Most often, it's included within page 5, 6, or 7 of an electronically generated medical report. Adjustors may not necessarily see these routine medical reports as a priority document. So we would suggest that a standardized form would more easily be identifiable as a priority, and the issues could be addressed in an expedited fashion.

Secondarily, we would request that the number of mandatory fields that exist in the current commission form be
reduced. There are some that are probably of minimal
administrative benefit, but really do not work to expedite
the process, so review and development of a simplified form
would be recommended.

Lastly, if the commission were to require the use of
a standardized, simplified form, we would support shortening
the time period that the payor or the adjuster has to respond
to this request from the current 10 days to a 7-day period.

CHAIRMAN SCHULTZ: Cathy, would that be business
days or calendar days?

MS. VINES: I would suggest business days.

CHAIRMAN SCHULTZ: Thank you.

MS. VINES: We would also note that what is
currently referenced in the statutory directive applies only
to the authorization process associated with treatment that
is within the evidence-based treatment guidelines, pursuant
to the rules that you have referenced. We would support and
think it's a reasonable time period currently, to expand the
applicability of the treatment guidelines to address the
additional body parts and conditions.

Were the Commission to proceed with this
consideration of this issue, each of the undersigned, the
group that is supportive of these recommendations, would be
able to produce material and detailed information supporting
the proposition to expand, and then indicating that this will
improve medical treatment for injured workers, make treatment
and claims processing more efficient and more cost effective,
and if the guidelines, and the fact that the guidelines do
adequately address many additional body parts and conditions.

We consider implementation of evidence-based
medicine guidelines within the worker's compensation system
to be essential to the sustainability of our system that
improves medical treatment to injured workers in an efficient
and cost-effective fashion.

To the extent that certain stakeholders have raised
issues regarding the authorization process, we do believe
that the suggestions that I've mentioned today, certainly do
address these concerns. The guidelines do address the
additional body parts and conditions that we all frequently
see in worker's compensation injuries, and we would all
welcome the opportunity to provide additional comments in
support of expanding the treatment guidelines. Thank you.

CHAIRMAN SCHULTZ: Thank you. Questions?

MS. ORCHARD: Thank you for your perspective.

Cathy, I have a question, and I feel like I should know this.
I'm sorry, but I don't. Is there a current form that you'd
like to see streamlined, or would you like to see development
of a brand-new form?

MS. VINES: Probably the best answer is both. If we
are looking at expanding the process and the rule and the
applicability, I would recommend a review of the existing
form. If we're looking at assisting in authorization of
routine treatments that are not currently part of the form, I
would suggest that it would be helpful for the Commission to
publish a form, very simple, certainly not as complicated as
what is out there, because adjustors do get this information
in various forms and fashions now. It just isn't always
recognized in document management systems or mailrooms as
something that was urgent, expedited, and there is a time
frame from which to respond.

13:27:59

MS. ORCHARD: So, currently, the Commission does not
have a standardized form?

13:28:30

MS. VINES: The current Commission I do not believe
has a form for authorizations beyond the chronic pain and
opioid narcotic medication.

13:28:56

MS. ORCHARD: Thank you.

MR. PORTER: Commissioner Orchard, the MRO office
does have a form. It's the MRO-1 form. As Cathy indicated,
it was designed for the process as it exists now and the
scope that it exists, so it does only pertain to pain
management and the use of opioids and all, but that form is
not required to be used. While the Commission in its F.A.Q.s
has strongly encouraged providers to use that form, for some
of the reasons that Cathy has outlined, our rules don't
mandate its use.
CHAIRMAN SCHULTZ: And explicit in your recommendation is that this would be a mandatory form? If you are going to be reducing --

MS. VINES: Yes. I believe that we do need a mandatory form, and yes, support it for the reduction of the number of days down to the 7 from the 10.

CHAIRMAN SCHULTZ: Thank you.

MS. VINES: Thank you.

CHAIRMAN SCHULTZ: Any other questions? Thank you, Cathy.

Debra Runbeck.

MS. RUNBECK: Mr. Chairman, members of the Commission, Director Ashley, Mr. Porter. My name is Debra Runbeck, and I am here speaking on behalf of the Arizona Association of Lawyers for Injured Workers. Thank you very much for inviting us all to be here today. We appreciate the opportunity.

This is an important topic for everybody concerned. The ICA had previously adopted the guidelines with the stated intention of providing a more efficient method of getting appropriate medical care to injured workers. Along those lines, it's crucial to get a rapid response to a doctor's request for authorization for treatment.

Many of the insurers now use the ODG under all circumstances to either authorize or deny treatment. The
problem that's being encountered is that many times the
treating doctor might request something that actually falls
within the ODG guidelines and is appropriate under those
guidelines, but they don't get a response to their
authorization request.

Often they'll wait a month or so with no response
until after repeated requests the treatment is finally
approved, which basically leaves the injured worker for that
amount of time without any treatment and possibly a worsening
condition. Often other times, they make their requests
repeatedly over the course of several months only to have it
eventually denied. At that point, a request for hearing must
be filed, and that often takes six months or more. All
together, that can leave the injured worker going for
eight months or more without any treatment. Again, not good
for the worker, not good for the carrier, and not good for
the ICA.

One suggestion that we had, which has been echoed by
a few other people here to ameliorate this problem is to
incorporate a provision of rules that would provide the
carrier with a window of we'd say five business days,
certainly, that's something that could be discussed, to
consider a request. They can still deny the request, within
an indication of why they are denying it, if it's under the
ODG, or they can authorize it, but if they don't respond at
all within the given time frame, and it's under the ODG, then
it would be considered automatically authorized. This would
result in quicker care for the injured worker, and it would
still follow the recommendations of the ODG, which was the
intent and hope of the Commission in adopting these.

Referring to Cathy Vines, her suggestions for the
standardized form I think are good. You know, we can
certainly discuss how that would play in and could be
incorporated into the auto authorization idea.

Over the past few years, the stakeholders in this
system have generally had great success in working together
and coming up with solutions that everybody can live with.
We would respectfully request that the current effort would
follow that procedure, and ask that -- you've already
indicated that there will be additional time to submit
written suggestions, and we would ask that there be allowed
enough time for the stakeholders to have some meetings and
see if we can come up with something that everybody can be
happy with.

We would love the Commission to be involved in these
meetings and would certainly be happy to keep you advised as
to where those meetings are held and have ICA input into it,
also.

Thank you very much for allowing me the opportunity
to speak. I'll be happy to take any questions.
CHAIRMAN SCHULTZ: Questions?

MS. ORCHARD: Thank you for your time. This might be a question for both you and possibly Dr. Prust. I know of an example where a medication such as Wellbutrin is in the formulary both under green and under red. It's under green for depression, if that is related to the worker's comp injury, but it's under red for pain.

So what solution would you have in terms of you requesting auto auth, because it's under green, but it would be probably ordered, in this case, for pain, which would be red?

MS. RUNBECK: That probably is better addressed by Dr. Prust, because the doctors have certainly become more familiar with the guidelines. My knee-jerk reaction would be that if it falls within the guidelines of recommended use for it, then it would be subject to the auto authorization. Obviously, if it's not under the recommended use for it, then it would have to be considered whether it's appropriate anyway.

MS. ORCHARD: So that could be accomplished in the form, a section of the form?

MS. RUNBECK: Yes.

MS. ORCHARD: Okay. Thank you.

MS. RUNBECK: Anything else?

CHAIRMAN SCHULTZ: Yes. I actually have two
questions, and then Dr. Prust, if you would like to address
the question Commissioner Orchard asked.

My two questions are, it appeared that many of your
comments were sort of directed at what the processes will
look like if the ODG is expanded beyond it's current for pain
management and use of opioids. Am I correct in assuming that
you sort of were looking a bit ahead?

MS. RUNBECK: I apologize if I gave that impression.
We are certainly not recommending that they be expanded at
this time. We do think that we need more time with it in
trying to streamline the process before it would be expanded
to anything else. This would basically be designed to help
with the problems.

Many, many, many injured workers are going through
pain management procedures, and you know, they are into that
chronic pain area already. So it's a very, very common
problem to be dealing with. So many of the procedures that
are being requested fall within the ODG guidelines for the
pain management.

So our suggestion would be specifically geared
toward dealing with pain management and opioid use that we
use some kind of an auto authorization when things fall
within those guidelines and they meet the criteria for them.

CHAIRMAN SCHULTZ: Okay. Then my second question is
relative to our period of time of September 15. Would that
give you sufficient time to have any meetings you might wish
to have before submitting final comments to us?

    MS. RUNBECK: I'm looking up at Mr. Kendell, who
would obviously be -- and Suzy, who would obviously be
involved in the meetings. Just knowing how hard it is to get
such a large group of people together within a month, I
suspect that they may not be sufficient. We certainly would
like to be able to come up with something that everybody is
okay with before presenting it. So in order to have enough
time to have everybody get together and be able to hash
things out over a couple of meetings, I suspect it would end
up running longer than an month.

    CHAIRMAN SCHULTZ: I have concerns about that, I
think, as you and I have discussed before. I don't think the
Commission -- the Commission has a deadline to take an
action, and I don't want to be held hostage to calendars over
which I have no control, because I believe in the past
those series of those meetings have turned into a series of
meetings, because people were not available on common dates.

        So I would encourage you very strongly to do
whatever you can to get the group together, whoever you
believe you need to meet, and that's another issue is the
group seemed to expand over time.

        So I believe that September 15 is a fair amount of
time, and yes. It puts pressure on you to get together and
meet to give us your written comments or suggestions, but I do very much want to keep the Commission having the ability to take action as it needs to to meet its legislatively imposed deadline. So please do everything you can to get us that information. Have your meetings before that September 15 deadline.

MS. RUNBECK: Absolutely, Mr. Chairman.

CHAIRMAN SCHULTZ: Thank you.

MS. RUNBECK: We are already trying to gather people together and figure out dates and get everybody on the same page for dates. I think that the issue is just going to be how long it takes, how many of those meetings it takes for us. It's not always an easy sit down, and we all agree, but we are certainly going to work at meeting your deadline. Absolutely.

CHAIRMAN SCHULTZ: Thank you.

MS. RUNBECK: Thank you.

CHAIRMAN SCHULTZ: Dr. Prust.

DR. PRUST: Thank you. Very briefly, so the formulary for the ODG came about like any formulary with United Health Care, Blue Cross Blue Shield. There's not a lot of evidence-based medicine to it, because the Food and Drug Administration, as an example, has given authorization to use all these nonsteroidal anti-inflammatory, but the guides, half of them are red, half of them are green, and
it's relatively arbitrary, Ken said.

What they've done, though, is made provisions for that. So when you talk about using the antidepressants for pain, with neuropathic pain, there are provisions when you read through the formulary. As an example, if a patient fails other neuropathic pain agents like Gabapentin, Lyrica, then you can start going to the red drugs, so it does not say you cannot use them. It says, let's go the more traditional route first.

So that's the way the guidelines, that's the way I'm using them, and that's working for me, that's what Ken recommended. So the red doesn't mean absolutely no. It means, you know what, let's start out with what we feel is a better pathway, and if that doesn't work, then we can go to some of the drugs that are in red.

Does that answer your question?

MS. ORCHARD: It does. Can you speak to, as somebody who's very familiar with worker's compensation and has worked really well within our system, can you speak to the burden that a form -- one single form for authorization, poses for you or not?

DR. PRUST: There's two things. The electronic medical record is a curse and a necessary evil, and each one is different. I find it on the insurance side, I understand where they are coming from, because when I get records from a
primary care with a different electronic medical record than myself, they are never the same, never. The only thing that's the same is that at least at the end you have the discussion part, and you can go there.

So I think that in the submission of just a single form from every doctor, to have all that information on there and have to transcribe that to another form, and that's -- I mean, that's why my notes are particularly detailed and specifically make sure that I put all the evidence-based medicine criteria into my notes, and I don't know that another form that I have to fill out beyond that is going to really be that much more useful.

So I understand where Cathy is coming from, but I'm not so sure how to come up with a universal form that I could then -- that I would have to fill out, because I've already got all that information in my notes. So it would create another burden for my office and increase our costs also, but I do understand the problem, though. I get it.

MS. ORCHARD: Thank you.

CHAIRMAN SCHULTZ: By the way, Dr. Prust, I want to thank you very much for coming up from Tucson today to talk to us. We appreciate your effort and concerns.

DR. PRUST: Well, I appreciate it. I came up every third Monday for what, two years, three years, Cathy? It was a pleasure. Thank you.
MS. VINES: Mr. Chairman, let me just provide brief clarity. I do not believe that a simple authorization form would need to contain, nor should it contain, all of the clinical findings that would be within an examination report. We really need a single document that comes in code red, says we need "X" treatment authorized, and most of the time we see some of those referencing examination that occurred on 10/1.

So we would not at all be looking for duplication of that, perhaps it even comes with the report, but it's really more a flag to the adjuster that this does contain a request for treatment, should be handled quickly, and certainly can reference MRI dated this date or other documentation that has already been submitted.

MS. ORCHARD: Thank you.

MR. SCHULTZ: Thank you. And, Cathy, by the way, I very much appreciate what you are saying. We have the same effect here. So a medical report comes in. It may be your standard process that it gets attached to a file or filed, if there's a normal file review date coming up. So it might very well be several days or longer before that file gets reviewed unless you have this, the end, and I agree. I would envision this form to be something simple to start the process, and yes. You are still going to have to review other records before taking action. So I believe I understand the scope of what you are proposing.
MS. VINES: Thank you.

CHAIRMAN SCHULTZ: Any other questions? Okay.

Great. Having received no other slips requesting the opportunity to speak, this will conclude the public hearing concerning the issue of streamlining the authorization process for treatment that is within the evidence-based treatment guidelines.

As a reminder, although the oral proceeding has concluded, written comments will be accepted through Friday, September 15. That's close of business Friday, September 15.

Thank you.

We will now adjourn and move upstairs to the third floor for the rest of our agenda, and you are all invited. It is a public meeting, so please join us if you wish. Thank you.

(The proceedings concluded at 1:45 p.m.)

* * *
CERTIFICATE

I HEREBY CERTIFY that the proceedings had upon
the foregoing hearing are contained in the shorthand
record made by me thereof, and that the foregoing 30
pages constitute a full, true, and correct transcript
of said shorthand record, all done to the best of my
skill and ability.

DATED at Phoenix, Arizona, this 28th day of
August, 2017.

Vicki L. O'Ceallaigh, RPR
Certified Reporter
Certificate No. 50534