

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007

Thursday, December 11, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (Telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Bryce Rucker	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims Department
	Melinda Poppe	Chief Administrative Law Judge
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present and explained that the Commission meeting will be recessed after the second agenda item, regarding the Evidence Based Medical Treatment Guidelines, and the Commission meeting will move to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. Also in attendance were Jason Weber from Snell and Wilmer. A list of attendees who chose to sign in for the Evidence Based Medical Treatment Guidelines agenda item is attached.

Discussion and/or Action regarding the Development and Implementation of a Process for the Use of Evidence Based Medical Treatment Guidelines, Where Appropriate, to Treat Injured Workers. This Agenda Item will include Discussion and/or Action regarding the December 1, 2014, Document Drafted and Approved by the Director's Advisory Committee on Evidence Based Medical Treatment Guidelines Addressing the Process for the Use of Evidence Based Medical Treatment Guidelines.

Ms. McGrory explained the history of the 2012 legislation (HB 2368) that requires the Commission to develop and implement a process for the use of evidence-based treatment guidelines, where appropriate, to treat injured workers. She explained that to ensure stakeholder involvement a Director's Advisory Committee on Evidence Based medical Treatment Guidelines was established in 2012, which includes representatives from the major stakeholder groups (provider, payers, patients) She identified and acknowledged the Committee members - Donald Dearth, D.C., Marjorie Eskay-Auerbach, M.D., J.D., Dennis Kurth, Attorney, Chris Labban, D.O., Bill Lewis, M.D., Todd Lundmark, Attorney, Sydney Standifird, State of Arizona Risk Management, Patricia Treharne, M.D., Cathy Vines, CopperPoint, Steve Weiss, Attorney. Along with herself and Melinda Poppe, (who also served on this committee) she stated that the Committee held its first meeting on August 27, 2012, and has held regularly scheduled meetings since that time.

She identified the Committee's objectives and agreed upon recommendations to make to the Commission. She stated that after months of work, which included a comprehensive study and evaluation of evidence based medical treatment guidelines, a stakeholder survey, and input from a

multidisciplinary panel of respected specialists, including Robert Jones, M.D., Carol Peairs, M.D., Randal Prust M.D., Jeffrey Scott, M.D., and William C. Thompson, M.D., the Committee recommended to the Commission that the ODG Guidelines be adopted in the treatment and management of chronic pain and in the use of opioids for all stages of pain management. These recommendations were adopted by the Commissioners on May 22, 2014.

She explained that for over 12 months, the Committee had worked on the development of a process for the use of treatment guidelines, and that the Committee reached a consensus with respect to a preliminary draft, which provided a framework for a pre-authorization and dispute resolution process. This preliminary draft was made publically available, and the public was invited to share their views, the Committee's July 28, 2014, meeting. She explained that this meeting was well attended, and that the Committee received constructive feedback from different participants in the workers' compensation system.

She stated that at subsequent meetings, the Committee reviewed and discussed the public comments that were received at the July 28, 2014, meeting and considered additional feedback from the foregoing physicians, as well as from the following industry professionals who agreed to serve on a Claims Adjuster workgroup:

Pam Baca, Senior Claims Adjuster, Copperpoint Mutual
Debbie Baker, Consultant, B3WC Consulting, PLLC
Diana Dugger, Senior Claims Adjuster, Arizona School Alliance
Heidi Johnson, Workers Compensation Claims Supervisor, Lumbermen's Underwriting Alliance
Molly Jones, Claims Supervisor, Corvel Corp.
Gloria Molinar, Senior Claims Adjuster, Valley Schools Insurance Trust
Kathy Oster, Risk Management Consultant, AON
Katelin Richardson, Phoenix Division Workers' Compensation Manager, Safeway, Inc.
Ruby Tate, Claims Supervisor, Copperpoint Mutual
Keith Woebeking, Senior Claims Adjuster, Banner Health

She stated that, in response to this additional feedback, and after numerous revisions, the Committee reached a consensus on a final draft of the process, which was been provided to Commissioners along with flow charts for the Payer Review and Payer Reconsideration Processes, and the Fast Track ALJ Dispute Resolution Program Agreement.

She explained that the Committee's draft represents, on some issues, a compromise of the Committee members. On those issues that generated the most discussion, Committee members worked hard to find a middle ground that, for purposes of the document, everyone could agree to.

She described the major sections of the draft, and that subject to approval by the Commission, successful implementation of the process would require additional steps. She described those additional steps.

She stated that from the beginning, the Committee engaged in an open, transparent process. She explained the efforts of the Committee in this regard. She explained that while every stakeholder may not support the recommendations of the Committee, the Committee has worked very hard to consider the different views and perspectives presented by the stakeholders. She stated that she fully supported the Committee's work product and recommended that the Commission adopt it. She invited questions from the Commissioners.

Chairman Parker asked if any of the Commissioners had questions for Ms. McGrory. There were none. Chairman Parker then explained that while today's meeting is not a public hearing, he appreciates everyone who came today and public comment would be accepted. He provided some guidance on length of the public comment.

Ms. Dee-Dee Samet, an attorney from Tucson who represents claimants, stated that she appreciated the hard work on the Committee, but that the Committee did not contain an actual claimant. She explained her concerns with the composition of the Committee. She also explained her concern with the "ODC," and that it is made up and written mostly by insurance company people. She explained the original purpose of the process was to address supportive care pain, but that the way it is written it can address anything. She provided examples. She also stated that the process should include penalties against payers who deny pre-certification, and then change their mind. She explained the hardship on claimants when this happens. She explained that the process should include more requirements addressing the IME process. She explained that she has not been closely involved in the Committee's work, but that this is a bad time of year to hear this issue. She stated that she hoped that the Commission would not make a decision today, but provide more time to address the issues. She stated that there is no real definition of chronic pain in the process and explained why. She stated that she thinks that the Committee tried hard to reach some compromise, but doctors that she has talked to feel that this is going to be very difficult, and most doctors will get out of treating industrial claimants for that reason. She explained the federal restrictions for prescribing pain medications and that many doctors have lost their licenses because of that. There are already a lot of restrictions, and she stated that one more that is not needed.

Barry M. Aarons, a lobbyist representing the Arizona Association of Lawyers for Injured Workers and other associations, asked Ms. McGrory to repeat the list of things that the Commission would do to implement the process (he could not hear that part of her presentation). Ms. McGrory responded to his question. Mr. Aarons then thanked the committee for the hard work that they did and explained his involvement with the legislation in 2012. He stated that he believed the committee did a great job of trying to accomplish a lot and trying to compromise. He explained that although the Committee's recommendation represents a consensus, he wanted to touch on three items recognizing that there may be further debate down the road on these issues. He explained the first issue, which concerns the automatic authorization for ODG-approved treatment if the payer does not respond to a request for pre-authorization within ten days. He stated that the Committee's final report does not allow automatic authorization which seems to emasculate the requirement of a medical basis for the denial presumptively approved. He explained that the second issue is not allowing carriers to avoid applying ODG guidelines when a treatment is presumptively approved by opting for IME. He stated that two of their members who served on the committee, though not representing the association, sent the Commissioners a letter that outlines these issues, and he is using their letter as a talking point because it is quite effective and because the association believes the letter captures some of the deficiencies very effectively. He stated that the third issue is that other guidelines, such as ASIPP- American Society for Interventional Pain Physicians, might be more appropriate in the context of opioids and pain managements. He explained that he supports the rulemaking process and that the association and other three clients look forward to participating in whatever further process and development of those rules, formal or informal would be.

Chairman Parker stated that if anyone wanted to provide written comments of the statements as well it always helps.

Jeff Gray, a lobbyist representing the Arizona Self Insured Association (ASIA), presented a letter from ASIA as well as Property Casualty Insurers Association of America and CopperPoint

Mutual Insurance Company. He thanked the Committee for their hard work and stated that these organizations were supportive of the initial legislation. He explained that there was give and take in the committee process, and that these organizations are looking forward to seeing the process implemented. They do not believe rulemaking is required to implement the process. He also stated that they would encourage the Commission to set a date, no later than a year after the process has become effective, to consider reviewing the process as to its effectiveness and pending the outcome of that review to consider other appropriate areas of treatment for evidence based medicine treatment standards beyond chronic pain and opioid use. He stated that there was one recommendation as it relates to the implementation explaining that there are no time lines for the provider and injured worker to request first or second level review by the payer, while payer have 10 days response time. He stated that there should be a similar time frame requirement for requesting a first level review by the payer or second level review by the ICA.

Steve Weiss, a claimant attorney from Phoenix, and a member of the committee explained the letter that he with Dennis Kurth submitted. He explained that he agrees with some of the concerns raised by Ms. Samet (which are addressed in the letter sent to the Commissioners). He disagrees with the idea to table this matter or to delay a vote, and explained why that is not practical. The Committee spent two plus years on this and has come up with the best work product that it can.

Debra Baker, private consultant, explained her career in the Arizona workers' compensation system. She stated that she has worked with evidence based medical guidelines in other states and is profoundly grateful for the committee and their work in developing these guidelines. She explained the difficulty and hardship of chronic pain cases and opioid addiction. She stated that she was taught to follow the law, do the right thing, and make sure that the injured worker got the best medical treatment possible and promptly as possible. The ODG guidelines will promote that and prevent additions which is a win win for all parties. She thanked the committee members and stated that she does not support delay making the decision.

Jim Stable, CopperPoint, stated that he did not have anything to add.

Chairman Parker thanked all of the parties that came together to find a solution they believed would be good for the state. He explained what he has seen in workers' compensation programs in other states. He explained that while a huge fan of evidence based medicine, he was concerned with the original legislation as introduced. He appreciated that the opportunity to work on a process that would work in Arizona. He explained that treatment guidelines should not be prescriptive, but may be presumptive, which is where the Committee came out. He explained that evidence based medicine identifies what works well for most people, but it may not work well for everybody. One of the things that this process should do is help us to identify those for whom certain things that work for many people are not working well for this person and identify this early. He stated that, at the same time, if all we do is what we did in the past, we will never have new better ways of doing things. The answer cannot always be "no," because it is not in the guidelines. He stated that he thinks the committee did a nice job of balancing that. He likes the peer review process to help move things quickly, explaining that it is voluntary because it does not have to be used, but it is a way for everybody to get finality. He stated that he also appreciates the way that people have looked to find methods and processes to accelerate resolution and thinks that is also going to work well, but as several have said, he explained that we are coming at this a little differently than other states and we are going to need to come back and look at it again. He provided suggested timeframes.

He thanked everybody on the committee and on the subcommittees. He stated that it is hard to sit back for 27 months and then wait longer for the rulemaking process. He stated, though, that he thinks Arizona will have a model that other states will look to.

Chairman Parker asked Ms. McGrory about the process-should the Commission receive the Committee's report, or adopt the report. He also asked about the rulemaking process, noting that one comment was received that rules are not necessary. Ms. McGrory responded that the rulemaking analysis will be presented to the Commissioners when staff brings the rulemaking packet to the Commissioners, which she anticipates would be the early part of January. With respect to the Committee's recommendations (found in the draft provided to the Commissioners) she explained that if the Commissioners are comfortable with the recommendations, then they could take action today to adopt the report. That would allow staff to begin moving forward the implementation.

Mr. Sanders stated that there is another meeting next week and that he is comfortable with allowing the opportunity for additional information for that meeting and taking a further look at it then. Mr. Hennelly stated he would not have an objection to Commissioner Sanders' proposal. Chairman Parker agreed, stating that this agenda item will be considered next week and that the meeting would be held in the third floor conference room, not the auditorium. He explained that additional written comments would be received and asked that people try to submit them in the next couple of days, so that Commission members can review them in light of what has already been presented.

Chairman Parker announced that the Evidence Based Medical Treatment Guidelines part of the meeting was completed at 1:39 p.m. Chairman Parker recessed the Commission meeting to move the remainder of the Commission meeting to Conference Room 308.

The Commission meeting reconvened at 1:49 p.m. in Conference Room 308.

Approval of Minutes of December 4, 2014 Meeting.

The Commission unanimously approved the Minutes of the December 4, 2014 Regular Session on motion of Ms. Stickler, second of Mr. Sanders.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 1. 2C14/15-0596 Horizons For Refugee Families
 2. 2C14/15-0559 T&R Designs – Fine Jewelry, L.L.C.

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. The Procter & Gamble Company

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and/or Action regarding Legislation.

Ms. McGrory stated nothing for today. She noted that Scot Butler is scheduled to report at the next meeting.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated there was nothing new to report.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaint.

14-2603-06 - Donald Hobley vs. The Tonto Verde Association

William Warren presented a summary of Mr. Hobley's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find a causal link between the exercise of any protected activity and any adverse action. Mr. Warren and Bryce Rucker responded to questions from the Commissioners. Chairman Parker summarized his view of the matter. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Mr. Hennelly.

14-3633-17 - Kathryn Dagnon vs. Datepac, LLC

William Warren presented a summary of Ms. Dagnon's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter and he explained why. Chairman Parker summarized some of the facts that he considered particularly pertinent, including that Ms. Dagnon had reportedly identified some legal and safety issues, one related to immigration status and hiring practice, one related to a health plan that allegedly discriminates against protected groups, one that she believed violated the ADA and other laws, and then the safety issue of the overturned forklift. Mr. Sanders agreed with Chairman Parker and commented on Ms. Dagnon's job description. Chairman Parker added that the orientation and the records are all directly related to safety. Mr. Sanders commented on the negative atmosphere and Ms. Dagnon's comments on the employer's business practices. Mr. Sanders commented on the training issues and the number of accidents. Mr. Warren responded that the employer may have been over recording and including the first aid cases as other reportable cases. Chairman Parker noted that it seemed as though the employer was telling Ms. Dagnon that safety is not her issue, to just take care of HR, but her view was that workers' compensation is her issue and is directly related to safety.

Ms. Strickler asked about available remedies should the Commissioner decide to pursue the matter. Mr. Wade stated that the Commission is welcome to go into executive session if the Commissioners would like to obtain legal advice. Ms. Strickler then made a motion to move into executive session so that the Commissioners could discuss this matter with legal counsel. Mr. Sanders seconded the motion. The Commission unanimously voted to go into Executive Session to consult with its attorneys. Executive Session Minutes are kept separately.

Upon return to General Session, Chairman Parker asked if there was discussion or a motion. Ms. Strickler made a motion to move with staff recommendation. There was no second. Chairman

*92921, 92924, *92925, 92928, *92929, 92933, *92934, 92937, *92938, 92941, 92943 *92944, 93653, 93654,*93655, 93656,*93657, 95017, 95018, 95076, *95079, 95782, 95783, 95907, 95908, 95909, 95910, 95911, 95912, 95913, 95924, *95940, *95941 adopted for use in the Arizona Physicians' and Pharmaceutical Fee Schedule effective October 1, 2014.

Ms. McGrory explained that the reimbursement values for the listed codes, which were added as new codes to the 2014 fee schedule, were entered incorrectly into the "New Procedure Codes Values" table reviewed and approved by the Commission last June. The affected codes are medicine codes, and include psychiatry, gastroenterology, cardiovascular, allergy and neurology codes. She provided the correct reimbursement values, based on the methodology approved by the Commission, along with the values actually approved by the Commission. She requested that that the Commission approve the corrected values, and subject to that approval staff will correct and update the fee schedule and provide notice to stakeholders of this correction. The Commission unanimously approved the corrections on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and Action regarding Appointment of Administrative Law Judge under A.R.S. §23-108.02.

Ms. Poppe stated that an Administrative Law Judge (ALJ) retirement is anticipated for March 31, 2015, and she requested approval to move forward with the recruitment to fill that position. Chairman Parker asked about the selection process and Ms. McGrory described the anticipated time-frames associated with the recruitment process. Mr. Sanders asked if those who had applied during the previous recruitment would need to reapply. Ms. McGrory explained that they would. Chairman Parker stated it would be an open recruitment. Ms. McGrory commented on the positive feedback on the recent ALJ appointments. The Commission unanimously authorized staff to begin the recruitment process for a new ALJ on motion of Mr. Sanders, second of Ms. Strickler.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory presented a retirement resolution.

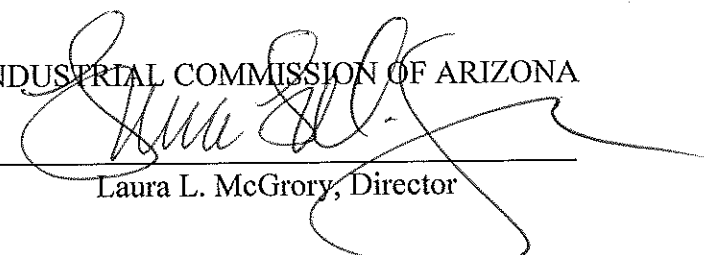
Chairman Parker confirmed the dates scheduled through February 2015 for future Commission meetings.

Ms. McGrory also confirmed that the agenda for next week's Commission meeting will contain an agenda item regarding the Evidence Based Medical Treatment Guidelines.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:49 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA
800 West Washington Street
Phoenix, Arizona 85007

ATTENDEES ARE INVITED TO SIGN IN

Date: Thursday, December 11, 2014
Time: 1:00 p.m.
Location: Auditorium

PLEASE PRINT

NAME	REPRESENTING
DE-JULIANI	Chairman
Tony Zuniga	Coventry Workers Comp
Deborah Baker	B-3WC Consulting
Cathy Vines	Copper Point
JEFF Curtis	Health Systems
Barry M. Agrons	AAIWP; IWP; AOTLA
Steve Weiss	EBM Study Committee
JEFF GRAY	ASIA
Jean Gage	Copper Point
Anthony Eskridge	Hoffman Kelley Lopez
Molly Jones	CorVel

ANYONE WISHING TO ADDRESS THE COMMISSION, PLEASE
FILL OUT A "REQUEST TO SPEAK" FORM

