

**MINUTES OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ROOM 197, ILLINOIS WORKERS' COMPENSATION COMMISSION OFFICE
4500 S. SIXTH STREET, FRONTAGE ROAD, SPRINGFIELD, IL 62703
HELD ON MAY 23, 2012 AT 12:00 PM**

Present at the meeting were:

Chairman Mitch Weisz
Commissioner Yolaine Dauphin
Commissioner David Gore
Commissioner Ruth White
Commissioner Thomas Tyrrell
Commissioner Mario Basurto
Commissioner Michael Latz
Commissioner Daniel Donohoo
Commissioner Charles DeVriendt
Commissioner Kevin Lamborn

IWCC staff present at the meeting were:

Ms. Kim Janas, Secretary of the Commission
Mr. Ronald Rascia, General Counsel

Chairman Mitch Weisz called the meeting to order at 12:00 pm. Upon motion made by Commissioner Lamborn, seconded by Commissioner Dauphin, and unanimously carried, the minutes of the Commission meeting held March 27, 2012 were approved.

Chairman Weisz started the meeting by providing an update of activities underway at the Commission. The Commission is in the process of destroying old documents and moving files to the Commission's offsite storage area. This involved obtaining the approval of an updated records retention policy with the State Records Commission. The Commission has also launched a new web search on its website which allows members of the public to search by Petitioner name and birth date from the web. Previously, this function was only available to Commission employees and on the Commission's computer terminals at its offices. This new search function means that the public will have easy, 24 hour access to this information and Commission employees can reduce the amount of time devoted to looking up names for the public. Finally, the Commission is starting to draft its annual report for publication at the start of the fiscal year. It will be distributed to the Commissioners for their comments within the next month.

General Counsel Ronald Rascia then informed the Commissioners about an issue with some confusing language on orders entered by the Commissioners in terms of whether the case is remanded back to the Arbitration call. There has been some situations where a decision by an Arbitrator has been affirmed and adopted by the Commission, but is then placed back on the Arbitrator's call. Commissioner Dauphin suggested that perhaps the template in the orders could be changed by the Commissioners' Administrative Assistants to indicate that the case does not automatically go back on the call.

Secretary of the Commission Kim Janas then provided the Commissioners with a legislative update. The Commission is continuing to monitor the publication of rules by the Department of Insurance implementing the Preferred Provider Programs introduced by House Bill 1698. Ms. Janas also updated the Commission on the Commission's appropriations hearings and also on the status of several workers' compensation bills pending before the General Assembly.

Next there was a motion by Commissioner Lamborn, seconded by Commissioner Gore, and unanimously carried to move into closed session pursuant to Section 2(c)(1) of the Open Meetings Act to discuss personnel matters.

There was a motion by Commissioner Basurto, seconded by Commissioner Lamborn, and unanimously carried to arise from closed session.

In the open session, Chairman Weisz provided his recommendation to the Commissioners that all the Arbitrators with terms expiring on July 1, 2012 be reappointed to a three-year term. These Arbitrators are: Peter O'Malley; Peter Akemann; George Andros; Douglas Holland; Jacqueline Kinnaman; Stephen Mathis; Neva Neal-Mundstock; Maureen Pulia; Nancy Lindsay; Gerald Granada; and Brandon Zanotti.

There was a motion by Commissioner DeVriendt, seconded by Commissioner Gore, and unanimously carried to appoint Peter O'Malley to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Lamborn, seconded by Commissioner Latz, and unanimously carried to appoint Peter Akemann to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Gore, seconded by Commissioner DeVriendt, and unanimously carried to appoint George Andros to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Tyrrell, seconded by Commissioner Lamborn, and unanimously carried to appoint Douglas Holland to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner DeVriendt, seconded by Commissioner White, and unanimously carried to appoint Stephen Mathis to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner White, seconded by Commissioner Lamborn, and unanimously carried to appoint Neva Neal-Mundstock to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Latz, seconded by Commissioner DeVriendt, and unanimously carried to appoint Maureen Pulia to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Basurto, seconded by Commissioner Dauphin, and unanimously carried to appoint Nancy Lindsay to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner White, seconded by Commissioner Donohoo, and unanimously carried to appoint Gerald Granada to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Dauphin, seconded by Commissioner Tyrrell, and unanimously carried to appoint Brandon Zanotti to a three-year term commencing on July 1, 2012.

There was a motion by Commissioner Tyrrell, seconded by Commissioner Lamborn to appoint Jacqueline Kinnaman to a three-year term commencing on July 1, 2012. The following Commissioners voted yes: Chairman Weisz; Commissioner Donohoo; Commissioner Gore; Commissioner White; Commissioner Tyrrell; Commissioner Basurto; Commissioner Latz; Commissioner Dauphin; and Commissioner Lamborn. Commissioner DeVriendt voted present. With nine voting yes, none voting no, and one voting present, the motion to appoint Jacqueline Kinnaman to a three-year term commencing on July 1, 2012 passed.

The next item of business discussed at the meeting was a proposed rule change regarding repackaged prescription drugs dispensed outside of a licensed pharmacy. Ms. Janas explained the background for the rule

change. It has come to the Commission's attention that prescription drugs dispensed outside of a licensed pharmacy are being significantly marked-up over the original National Drug Code (NDC) price for the same drug, despite the provision in HB 1698 which sets forth a specific reimbursement rate for these drugs in the Commission's Medical Fee Schedule. This mark-up occurs because companies repackaging drugs marketed for physician-dispensing are able to obtain a new NDC number, which will have a higher unit price for same prescription. The proposed rule specifies that for prescription drugs filled and dispensed outside of a licensed pharmacy, the original NDC number for the drug must be used if the drug is repackaged.

The Commissioners discussed the proposed rule change and considered whether there should be an effort to solicit input through the Medical Fee Advisory Board. There was a motion by Commissioner Latz, seconded Commissioner Tyrrell, and unanimously carried to advance the proposed rule to JCAR unless there was an objection by a majority the Medical Fee Advisory Board. In that event, the Commission will consider those objections.

The final order of business considered by the Commission was an issue involving structured settlements that use annuities as a method of providing compensation to a Petitioner and the requirements of Section 21 of the Workers' Compensation Act. Appearing at the meeting to present to the Commissioners were Dennis O'Brien of Livingstone, Mueller, O'Brien and Davlin, John McColloch of Integrated Financial Settlements, and Tom Adams of EPS Settlement Groups.

Mr. O'Brien explained that several Arbitrators will not approve a settlement with a structured settlement unless there is specific language stating that the Respondent must remain liable until the last payment of the annuity is made. According to Mr. O'Brien, the problem with requiring this language is that without discharging liability through the annuity, both the Respondent and the insurer must maintain a reserve on the claim. The Commissioners discussed several issues related to this topic, including the possibility that an annuity company could become insolvent, thus leaving the Petitioner without his or her benefits. There was testimony that in total, the annuity companies are stronger and more reliable than workers' compensation carriers. The Commissioners engaged in additional discussion concerning the merits of structured payouts and the importance of that option for the resolution of some workers' compensation claims. The Chairman concluded the discussion by noting that the Arbitrators have the discretion to interpret Section 21, subject to the precedent set by the Commission and the Appellate Court of Illinois. There has been no guidance from the Commission to reject settlement contracts that do not hold the Respondent liable until the last payment of the annuity has been made.

Upon motion made by Commissioner Lamborn, seconded by Commissioner Latz, and unanimously carried, the meeting was adjourned.