

MINUTES OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION
100 WEST RANDOLPH STREET – ROOM 9-031 CHICAGO, IL
HELD ON JULY 24, 2012 AT 2:00 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 Charles DeVriendt
Commissioner Kevin Lamborn
Commissioner Daniel Donohoo

IWCC staff present were:

Mr. Ron Rascia, General Counsel
Ms. Susan Piha, Manager of Research and Education
Ms. Kim Janas, Secretary of the Commission
Ms. Lola Dada-Olley, Deputy General Counsel
Ms. Dennie Zankel, Deputy General Counsel

Chairman Mitch Weisz called the meeting order and noted that a quorum was present. The Workers' Compensation Medical Fee Advisory Board was also called to order by Chairman Weisz, who explained that the meetings were posted as concurrent meetings of the Commission and the Medical Fee Advisory Board.

The Medical Fee Advisory Board and the Commission first heard testimony regarding a proposed rule addressing the National Drug Code (NDC) to be used for billing when a repackaged prescription is dispensed outside of a licensed pharmacy. Chairman Weisz noted that there were a large number of attendees at the joint meeting and to facilitate the discussion, he asked that the attendees complete witness slips registering their support or opposition to the proposed rule. A copy of these witness slips are appended to these minutes.

Chairman Weisz explained that both the Medical Fee Advisory Board and the Commission had discussed the proposed rule at their previous meetings. Thus, to ensure that the meeting moved along in a timely manner, Chairman Weisz asked for a limited number of proponents and opponents to speak to the proposed rule and to limit their comments to five minutes each. Speaking as proponents for the proposed rule was Greg Gilbert, Joe Paduda, Dr. Bonner, and Donald Lipsy. Speaking as opponents for the proposed rule was John O'Connell, Dr. Steve Schlambert, and Amanda Attaway

Mr. Gilbert remarked on the need for cost controls to address rate abuse for physician-dispensed pharmaceuticals. He stated that Concentra dispenses pharmaceuticals and will still be able to do so if the proposed rule is adopted. The real issue in dispute is the business model between a repackaging organization and the provider. Repackagers often include a fee for the billing service in connection with its relationship with providers who actually dispense the repackaged drugs. A reduction in reimbursement for repackaged drugs

could lead to a lower billing service fee. Mr. Gilbert concluded by noting that he is a member of the Medical Fee Advisory committee in Georgia and a similar regulation was implemented in April of 2011.

In opposition to the proposed rule, Dr. Schlambert noted that from a provider's standpoint, physician-dispensing is critical to ensuring that injured workers are able to receive their prescribed medication. He noted that about two-thirds of his workers' compensation patients only speak Spanish. Oftentimes, they are unable to fill prescriptions for a variety of reasons, such as the pharmacy not giving them the prescription or they cannot get to a pharmacy. Without proper medication usage, treatment is delayed, which in turn delays an employee's return to work.

Mr. Paduda next spoke in favor of the proposed rule. Mr. Paduda represents Comp Pharm, which is a consortium of worker's compensation pharmacy benefit managers. Mr. Paduda stated that the recently released report from the Workers' Compensation Research Institute ("WCRI") indicates that physician-dispensing grew the fastest in Illinois compared to other states over the latest study period. Mr. Paduda also described a similar rule enacted in California. Prior to the implementation of that rule, 56% of workers' compensation prescriptions in California were dispensed by a physician. After the rule, 53% of drugs were physician-dispensed. Thus, dispensing continued in California even after price controls were implemented. Mr. Paduda concluded his remarks to the Board and the Commission by stating that there was no clear data indicating that physician dispensing shortened disability duration for patients.

Next, Mr. O'Connell, representing Automated Healthcare Solutions, spoke in opposition to the proposed rule. Mr. O'Connell presented two major points. First, Mr. O'Connell stressed that there was strong legislative intent to indicate that the manufacturer's wholesale price was not to be included in the reimbursement for prescription drugs dispensed outside of a licensed pharmacy, as that language was ultimately not included in the final version of HB 1698. Second, the WCRI report cited by previous speakers in support of the rule does not include per claim data, but rather only focuses on per-pill pricing. Because this report was released only a short time before the joint meeting of the Advisory Board and the Commission, there has been no time for any significant scrutiny of its findings.

Dr. Robert Bonner, International Medical Director at The Hartford, a workers' compensation carrier, spoke next in support of the proposed rule. Dr. Bonner opined that physician dispensing often circumvents the safety checks available through a retail pharmacy or a pharmacy benefit manager, such as drug interactions and incompatibilities. This lack of safety checks also factors heavily into the abuse of narcotics.

Ms. Attaway, assistant director of Health Policy Research and advocacy, spoke for the Illinois State Medical Society. She stated that the main concern of the Illinois State Medical Society is that Illinois physicians receive fair reimbursement for medically necessary care and treatment. Because of some question about the vagueness of the most recent WCRI report, Ms. Attaway stated that the proposed rule requires more consideration.

Mr. Lipsy of Coventry Healthcare was the final speaker in support of the proposed rule. He also stressed the lack of safety checks in place for physician dispensing, as well as internal data compiled by Coventry noting the significant mark-up for physician-dispensed drugs.

After the Medical Fee Advisory Board and the Commissioners asked several questions of the speakers, the Medical Fee Advisory Board engaged in a discussion regarding the rule. The Medical Fee Advisory Board did

not advance a motion to recommend that the proposed rule regarding repackaged drugs be advanced by the Commission to the Joint Committee on Administrative Rules. The Medical Fee Advisory Board adjourned their meeting at 3:23 pm.

The first item of business considered by the Commission was the approval of minutes from the meetings held on May 23 and June 12. There was a motion by Commissioner Lamborn, seconded by Commissioner Tyrrell, unanimously carried to approve these minutes.

Next, the Commissioners discussed the proposed rule regarding repackaged drugs dispensed outside of a licensed pharmacy. There was a motion by Commissioner Basurto and seconded by Commissioner Lamborn to advance the proposed rule to the Joint Committee on Administrative Rules ("JCAR"). The following Commissioners voted "Yes": Commissioner Gore; Commissioner White; Commissioner Tyrrell; Commissioner Basurto; Commissioner Latz; Commissioner DeVriendt; Commissioner Lamborn; Commissioner Donohoo; and Chairman Weisz. Commissioner Dauphin voted no. With nine voting yes, one voting no, and none voting present, the motion carried and the proposed rule will be sent to JCAR for approval.

The next items of business considered by the Commissioner were two other proposed rules to be sent to JCAR. Ms. Janas explained that memoranda describing these changes had been sent to the Commissioners in advance of the meeting. The first proposed rule involves several changes to the Commission Review Board procedure. Ms. Janas summarized the major revisions to Part 7500 of the Commission's rules, noting that the most significant change made to these rules was to address an audit finding set forth by Auditor General William Holland in the audit directed pursuant to House Resolution 131 of the 97th General Assembly. Specifically, the audit stated that the Commission Review Board has failed to comply with Section 7500.10 of the Commission's rules, which requires the Commission Review Board to call a meeting within fifteen days of receipt of any complaint against an Arbitrator or Commissioner. Thus, the revised rule creates a process where the General Counsel of the Commission evaluates all communications received and determines whether the communication is a complaint within the meaning of the rule. Any complaints will then be considered by the Board during its next regularly scheduled meeting.

There was a motion by Commissioner Latz, seconded by Commissioner Gore, and unanimously carried to send the proposed changes to Part 7500 to JCAR for approval.

Ms. Janas then explained the second rule change to Section 7030.30 of the Commission's rules, which involves the bases for disqualification of a Commissioner or Arbitrator. Again, this rule revision was prompted by the findings of the Auditor General. Specifically, because Public Act 97-18 applied the Code of Judicial Conduct to the hearing and non-hearing conduct of Arbitrators and Commissioner, the Audit report noted that Section 7030.30 should conform with the disqualification provisions set forth in Canon 3 of the Code. In addition, the proposed rule change sets forth a formal procedure for the hearing of a Petition to Disqualify an Arbitrator or Commissioner.

There was a motion by Commissioner Tyrrell, seconded by Commissioner Latz, and unanimously carried to send the proposed changes to Section 7030.30 to JCAR for approval.

Chairman Weisz then directed the Commissioners to the next item of business on the agenda, the assignment of motions to a Commissioner. The Chairman explained that some downstate motions would be heard by one Commissioner, while the underlying case would be assigned to a different Commissioner. This causes a

disconnection of the case and he asked for the Commissioner's input on this matter. After discussion, it was concluded that the present system of assignment of downstate motions is still the most efficient and fairly distributed way to handle motions.

The final item of business addressed by the Commission was an issue involving remand language for Commission decisions involving the review of 19(b) decisions. Chairman Weisz asked that the Commissioners ensure that these 19(b) decisions be remanded back the Arbitrator who heard the case to ensure continuity, even if that Arbitrator had moved to a different zone. If this remand causes hardship to the parties, then the case could subsequently be reassigned by the Chairman.

There was a motion to adjourn the meeting by Commissioner Latz, seconded by Commissioner Basurto and unanimously carried. The meeting adjourned at 4:01 pm.