

**2012 ANNUAL REPORT
OF THE
ADVISORY COUNCIL ON WORKERS' COMPENSATION**

Presented to:

The Honorable Mary Fallin
Governor

The Honorable Tom Colbert
Chief Justice, Oklahoma Supreme Court

The Honorable Brian Bingman
President Pro Tempore of the Senate

The Honorable T.W. Shannon
Speaker of the House of Representatives



COMMITTEE MEMBERSHIP

Michael D. Carter, Chair
Angela R. LeBlanc, Vice-Chair

Jim C. Curry
Rochelle L. Guinn
Bryce A. Hill
Dave Koeneke

Dan Simmons
Robert J. Wienecke, M.D.
Sterling Zearley

Presiding Judge L. Brad Taylor, Ex-officio Nonvoting Member
Court Administrator Michael Clingman, Ex-officio Nonvoting Member

Issued February 2013

COUNCIL STAFF
Oklahoma Workers' Compensation Court
Tish Sommer, Special Counsel

2012 ANNUAL REPORT OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION

I. INTRODUCTION

This is the 2012 annual report of the Advisory Council on Workers' Compensation, an advisory body on workers' compensation created pursuant to 85 O.S., §374. The report identifies the activities and progress of the Council during calendar year 2012.

Current members of the Council are Michael D. Carter, Chair; Angela R. LeBlanc, Vice-Chair; Jim C. Curry; Rochelle L. Guinn; Bryce A. Hill; Dave Koeneker; Dan Simmons; Robert J. Wienecke, M.D.; and Sterling Zearley; and Ex-Officio nonvoting members L. Brad Taylor, Presiding Judge of the Workers' Compensation Court and Michael Clingman, Workers' Compensation Court Administrator. Members serving in 2012 also included Ellen C. Edwards who was succeeded by Bryce A. Hill, and David Stockwell who was succeeded by Rochelle L. Guinn. A current membership list, including the appointing authority and expiration of term, is included in the appendices to this report. Staff for the Council is provided by the Workers' Compensation Court as provided in 85 O.S., §374(I).

II. STATUTORY DUTIES

The duties of the Advisory Council are set forth in 85 O.S., §374, a copy of which is included in the appendices to this report. These duties include analyzing and reviewing the workers' compensation system, reports of the Court Administrator, and workers' compensation trends. The Council has the authority to recommend improvements and proper responses to developing trends, and to consult with the Workers' Compensation Court on oversight of independent medical examiners. The Council has the additional responsibility of issuing a report to the Workers' Compensation Court Administrator on Oklahoma Treatment Guidelines for the Spine produced by the Oklahoma Physician Advisory Committee as provided by law. The Physician Advisory Committee is an advisory body to the workers' compensation system created pursuant to 85 O.S., §373.

III. 2012 ACTIVITIES

Review of Legislative Activity and Trends in the Field of Workers' Compensation

During the first half of 2012, the Advisory Council on Workers' Compensation monitored workers' compensation legislation. Approximately thirty-four measures pertaining to the workers' compensation system were tracked, reviewed and discussed as they advanced through the legislative process. Among them were HB 2155 and SB 1378 creating the Employee Injury Benefit Act as an alternative to coverage under the Workers' Compensation Code. The Council sought input on these opt out bills. Representatives from National American Insurance Company testified at the Council's April 5, 2012 meeting and voiced opposition to the measures. The bills failed to advance through the Legislature.

Ultimately, four bills affecting the system were enacted. SB 1060, SB 1246 and SB 1321 concerned fraud identification and/or prosecution, and HB 2258 addressed the intentional

misclassification by contractors of employees as independent contractors. All of the measures became effective November 1, 2012, except for SB 1060 which became effective May 1, 2012.

In addition to reviewing legislative activity, the Advisory Council also discussed changes to the experience rating calculation which were recommended by the National Council on Compensation Insurance (NCCI) on August 2, 2011, and approved by the Oklahoma Insurance Department on August 24, 2011 for implementation effective January 1, 2013. A representative of NCCI explained the changes at the Council's September 13, 2012 meeting and responded to questions of Council members. Experience modifiers affect premium computation.

Oklahoma Treatment Guidelines for the Spine

Oklahoma adopted the Work Loss Data Institute's *Official Disability Guidelines* (ODG) as the standard for determining the scope and duration of medical treatment in workers' compensation, effective March 1, 2012. In SB 878 (2011), the Legislature also directed the Physician Advisory Committee (PAC) to develop and approve Oklahoma Treatment Guidelines for injuries to the spine (OTG-Spine) covering treatment not addressed by the current edition of the ODG or addressed but not recommended by the ODG. The OTG-Spine were made subject to a multi-tiered review process which includes a public hearing and review of the guidelines by the Advisory Council on Workers' Compensation and the Council's subsequent issuance of a report to the Workers' Compensation Court Administrator.

The PAC worked on the OTG-Spine throughout 2012. The Advisory Council continuously monitored the PAC's efforts. On February 9, 2012, the Advisory Council heard testimony on a proposed draft. The PAC disapproved that draft on March 9, 2012 and worked thereafter to revise the guidelines. On October 19, 2012, following a public hearing, the PAC approved the OTG-Spine proposal that was referred to the Advisory Council for review. The Council held a public hearing on November 19, 2012, then met immediately thereafter to review the guidelines. During the review process, concerns were raised about the safety and efficacy of using bone-morphogenetic protein (BMP) in view of recent medical research associating its use with various medical complications, and because of related Congressional inquiries. The Advisory Council noted use of BMP as recommended in the PAC's proposal is FDA approved, and, so, endorsed the guidelines and referred them to the Workers' Compensation Court Administrator for further review as provided by law. However, the BMP concerns prompted the Council to direct a letter to the PAC requesting it to review use of BMP and to amend the BMP portion of the low back section of the OTG-Spine, if appropriate. The letter was mailed to the PAC on November 28, 2012. A copy of the letter is included in the appendices of this report. Notice of the Court Administrator's action regarding the guidelines is expected at the Council's February 7, 2013 meeting.

Treatment guidelines are intended to prevent over-utilization by outlining a standard course of treatment for a workers' compensation injury. The guidelines also are intended to promote optimum recovery and return to work, while containing workers' compensation costs.

IV. PUBLIC MEETINGS

The Council scheduled and held six meetings and one public hearing in 2012. A copy of the agendas and minutes for each is in the appendices to this report. The public hearing and all

meetings, except the February 9, 2012 meeting, were held at the Workers' Compensation Court's Oklahoma City location. The February meeting was held in the Auditorium of the Oklahoma Judicial Center, 2100 N. Lincoln Boulevard, Oklahoma City, Oklahoma.

Upcoming regular meetings of the Council for calendar year 2013 are scheduled at 2:00 p.m. in the 2nd Floor Courtroom of the Workers' Compensation Court's Oklahoma City location, 1915 N. Stiles Avenue, on the following dates:

February 7, 2013	May 9, 2013
March 7, 2013	September 12, 2013
April 4, 2013	November 7, 2013

V. CONCLUSION

The Advisory Council on Workers' Compensation is pleased to submit this report. We appreciate the opportunity to contribute towards efforts to improve the state's workers' compensation system.

Appendices

Oklahoma Statutes Citationized**Title 85. Workers' Compensation****Chapter 17 - Miscellaneous Provisions****Section 374 - Advisory Council on Workers' Compensation**

Cite as: O.S. §, __ __

- A. There is hereby created an Advisory Council on Workers' Compensation.
- B. The voting membership of the Advisory Council shall consist of nine (9) members. Any member serving on the effective date of this act shall serve the remainder of his or her term. The Administrator of the Workers' Compensation Court and presiding judge of the Workers' Compensation Court shall be ex officio nonvoting members.
1. The Governor shall appoint three (3) members representing employers in this state, one of whom shall be from a list of nominees provided by the predominant statewide broad-based business organization;
 2. The Speaker of the House of Representatives shall appoint three (3) members representing employees in this state, one of whom shall be from a list of nominees provided by the most representative labor organization in the state; and
 3. The President Pro Tempore of the Senate shall appoint three (3) members, two who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims, one of whom shall be an attorney who primarily represents claimants, and a medical doctor or doctor of osteopathy actively engaged in the treatment of injured workers.
- C. The term of office for appointees shall be as follows:
1. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2012;
 2. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2013; and
 3. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on March 1, 2014.
- D. Thereafter, successors in office shall be appointed for a three-year term. Members shall be eligible to succeed themselves in office.
- E. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term.
- F. The chair and the vice chair of the Advisory Council shall be appointed by the Governor.
- G. Members shall receive their traveling and other necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.
- H. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. The presence of five (5) voting members constitutes a quorum. No action shall be taken by the Advisory Council without the affirmative vote of at least five (5) members.
- I. The Administrator shall provide office supplies and personnel of the Court to carry out any of the duties that have been entrusted to the Advisory Council.

J. The Advisory Council shall analyze and review the workers' compensation system, the reports of the Administrator, and trends in the field of workers' compensation. The Advisory Council may recommend improvements and proper responses to developing trends. The Advisory Council shall report its findings annually to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

K. In addition to other duties required by this section, the Advisory Council shall consult with the Court regarding oversight of independent medical examiners as provided in Section 29 of this act.

L. The Advisory Council shall review the Oklahoma Treatment Guidelines as provided in the Workers' Compensation Code, and report the findings of such review to the Administrator as provided in the Workers' Compensation Code.

Historical Data

Added by Laws 2011, SB 878, c. 318, § 74.



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Appointed Pursuant to 85 O.S., §374

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**COUNCIL MEMBERSHIP
AS OF FEBRUARY 7, 2013**

Name	Appointment Source	Expiration of Term
Michael D. Carter	President Pro Tempore	March 1, 2013
Angela R. LeBlanc	Governor	March 1, 2014
Jim C. Curry	Speaker of the House	March 1, 2015
Bryce A. Hill	President Pro Tempore	March 1, 2015
Rochelle L. Guinn	Governor	March 1, 2013
Dave Koeneke	Speaker of the House	March 1, 2013
Dan Simmons	Governor	March 1, 2015
Robert J. Wienecke, M.D.	President Pro Tempore	March 1, 2014
Sterling Zearley	Speaker of the House	November 1, 2010

Advisory Council on Workers' Compensation

85 O.S., §374

NOTICE OF REGULAR MEETING

February 9, 2011 at 2:00 p.m.

Auditorium, Oklahoma Judicial Center

2100 N. Lincoln Boulevard, Oklahoma City, Oklahoma

NOTE: Parking for the meeting is available in the South parking lot of the State Capitol Building. The Oklahoma Judicial Center has a security screening station which all attendees must go through. Please enter the building through the West entrance. The auditorium is in the basement.

AMENDED AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action on minutes of the November 17, 2011 regular meeting of the Advisory Council.
5. Discussion and possible action regarding approval of the 2011 Annual Report of the Advisory Council on Workers' Compensation.
6. Review and discussion of workers' compensation related measures introduced for consideration during the 2012 Oklahoma legislative session.
7. Report by the Advisory Council Subcommittee on the public hearing process for the Council's review of Oklahoma Treatment Guidelines proposed by the Physician Advisory Committee.
8. Review and discussion regarding Oklahoma Treatment Guidelines (OTG) proposed by the Oklahoma Physician Advisory Committee (PAC), with a presentation by Robert L. Remondino, MD, PAC Vice-Chairman; and Randall L. Hendricks, MD.
9. Review and discussion regarding the Work Loss Data Institute's Official Disability Guidelines (ODG), with a presentation by Trang Nguyen, MD, MPH; and Dave Randolph, MD, MPH.
10. New Business.
11. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON FEBRUARY 9, 2012 in the Auditorium of the Oklahoma Judicial Center, 2100 N. Lincoln Boulevard, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Jim Curry; Rochelle Guinn; Dave Koenke; Dan Simmons; Robert Wienecke, M.D.; Sterling Zearley and ex officio non-voting member, Michael Clingman

OTHERS PRESENT:

David Randolph, MD; Trang Nguyen, MD; Barbara O'Brien; Robert Fuxa; Tonya Lee, Medtronic and IMPAC; Rachele Owings; Paul D. Nelson, CompChoice; Jami Longacre; Randy Hendricks, MD; Mike Seney, State Chamber of Commerce; Sheila Dowler-Harless, Oklahoma Spine and Brain Institute; Linda Chandler, EEOC; Patti Phillips, Loves; Robert L. Remondino, MD, Physician Advisory Committee; Patrick Gaines; LeRoy Young, DO, Physician Advisory Committee; Sherri Georgio, Medtronic; Cheryl King; Erin Sullivan, Neurosurgery Specialists; Ryan Shirley, Loves; Tish Sommer, Workers' Compensation Court.

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:09 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Ellen Edwards and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: Chairman Michael Carter welcomed Rochelle L. Guinn, Assistant General Counsel of Sonic Corporation, to the Council. She was appointed by Governor Mary Fallin to fill the unexpired term of David Stockwell who resigned.

Discussion and Possible Action Regarding Minutes of the November 17, 2011 Regular Meeting of the Advisory Council: Jim Curry moved to approve the minutes as written. The motion was seconded by Dan Simmons. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Discussion and Possible Action Regarding Approval of the 2011 Annual Report of the Advisory Council on Workers' Compensation: Chairman Mike Carter moved to amend the report to include Rochelle L. Guinn's name where appropriate as determined by staff. The motion was seconded by Jim Curry. There was no debate. The motion was adopted by unanimous consent of all members present. Dave Koenke then moved to approve the report as amended. The motion was seconded by Jim Curry. There was no discussion or debate. The motion was approved by unanimous consent of all members present, and the report, as amended, was declared adopted.

Report by the Advisory Council Subcommittee on the Public Hearing Process for the Council's Review of Oklahoma Treatment Guidelines Proposed by the Physician Advisory Committee: Without objection, Chairman Mike Carter postponed consideration of legislative matters per Item 6 of the

agenda and advanced to Item 7 for a report by Dave Koenke, Advisory Council Subcommittee member. Mr. Koenke reported that he and other subcommittee members (Mike Carter, Angela LeBlanc and Jim Curry) met a couple of times to address how the Council might best respond to its duty to review Oklahoma Treatment Guidelines (OTG) produced by the Physician Advisory Committee (PAC). The subcommittee determined it would be helpful if the OTG were presented to the Council by a representative of the PAC and the Official Disability Guidelines were discussed by a representative of the Work Loss Data Institute. Chairman Mike Carter indicated that the day's meeting was a result of the subcommittee's suggestion. He asked if there were any questions of subcommittee members. There were none.

Review and Discussion Regarding Oklahoma Treatment Guidelines (OTG) Proposed by the Oklahoma Physician Advisory Committee (PAC), with a Presentation by Robert L. Remondino, M.D., PAC Vice-Chairman; and Randall L. Hendricks, M.D.: Dr. Remondino was recognized and thanked the Council for the invitation to appear before it. He gave a brief history of the Physician Advisory Committee's development of the draft OTG and introduced the OTG's main author, Dr. Randall Hendricks. Dr. Hendricks thanked the Council for the opportunity to address the issues and gave a short introductory statement. He discussed the draft OTG as proposed, but not yet adopted by the PAC, and responded to questions of Council members. Dr. Remondino and Dr. Hendricks were thanked for their presentations.

Review and Discussion Regarding the Work Loss Data Institute's Official Disability Guidelines (ODG), with a Presentation by Trang Nguyen, MD, MPH; and Dave Randolph, MD, MPH: Drs. Nguyen and Randolph were recognized to discuss the Official Disability Guidelines (ODG). Dr. Nguyen thanked the Council for inviting her and Dr. Randolph to appear before it. They discussed the ODG, including matters not addressed or recommended by ODG, and responded to questions of the Council. Both physicians were thanked for their presentations. Dr. Randall Hendricks asked to be recognized and commented on certain matters discussed. There were no further questions of any of the physicians.

Review and Discussion of Workers' Compensation Related Measures Introduced for Consideration During the 2012 Oklahoma Legislative Session: Chairman Carter referred to a summary of pending legislation. Jim Curry suggested that discussion of the measures be passed until after the committee deadline. There was no objection.

New Business: Chairman Carter asked that the Council's March 8, 2012 meeting include an agenda item for discussion of the Council's duty to review Oklahoma Treatment Guidelines once adopted by the Physician Advisory Committee, and a discussion of alternative coverage bills pending before the legislature. There was no objection.

Adjournment: A motion was made and seconded to adjourn. The motion was adopted by unanimous consent of all members present. The meeting adjourned at 4:20 p.m.



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NOTICE OF REGULAR MEETING

March 8, 2012 at 2:00 p.m.

**2nd Floor Courtroom, Workers' Compensation Court
1915 N. Stiles Avenue, Oklahoma City, Oklahoma**

AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action regarding minutes of the February 9, 2012 regular meeting of the Advisory Council.
5. Review and discussion of the Advisory Council's statutory duty to review Oklahoma Treatment Guidelines adopted by the Oklahoma Physician Advisory Committee.
6. Review and discussion of workers' compensation related measures under consideration by the 2012 Oklahoma legislative session.
7. New Business.
8. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON MARCH 8, 2012 in the 2nd Floor Courtroom of the Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Jim Curry; Dan Simmons; Sterling Zearley and ex officio non-voting member, Michael Clingman

OTHERS PRESENT:

Tonya Lee, Lee Consulting; Tish Sommer, Workers' Compensation Court.

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:08 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Ellen Edwards; Rochelle Guinn; Dave Koeneke; Robert Wienecke, M.D.; and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: Persons in attendance introduced themselves. Chairman Michael Carter announced that the Physician Advisory Committee is scheduled to meet on March 9, 2012 at the Workers' Compensation Court's Oklahoma City location for possible action on its proposed Oklahoma Treatment Guidelines.

Discussion and Possible Action Regarding Minutes of the February 9, 2012 Regular Meeting of the Advisory Council: Jim Curry moved to approve the minutes as written. The motion was seconded by Dan Simmons. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Review and Discussion of the Advisory Council's Statutory Duty to Review Oklahoma Treatment Guidelines Adopted by the Oklahoma Physician Advisory Committee: In anticipation of the Physician Advisory Committee's March 9, 2012 adoption of its proposed Oklahoma Treatment Guidelines (OTG), the Council tentatively scheduled a public hearing on the OTG for March 16, 2012 at 1:00 p.m. at the Workers' Compensation Court's Oklahoma City location, with a special meeting following immediately thereafter to discuss public comments made and development of a report to the Court Administrator as required by law. A special meeting to review and take final action on the report also was tentatively set for March 28, 2012 at 2:00 p.m. at the Workers' Compensation Court's Oklahoma City location. Chairman Carter said the Physician Advisory Committee's meeting will be monitored and Council members notified of the hearing and meeting dates as appropriate.

Review and Discussion of Workers' Compensation Related Measures Introduced for Consideration During the 2012 Oklahoma Legislative Session: Chairman Carter recognized Tish Sommer to review pending legislation. She distributed an updated summary of select legislation for the current legislative session and highlighted those measures with recent action. Michael Clingman discussed pending measures permitting qualified employers to opt out of the Workers'

Compensation Code. For purposes of initiating discussion of the alternative coverage option, Mr. Clingman suggested the Council may wish to invite an Employee Retirement Income Security Act (ERISA) expert to review ERISA issues generally. It also was suggested that an advocate and an opponent of the opt out proposals could be invited to make presentations to the Council.

New Business: Jim Curry moved that the April 5, 2012 regular meeting agenda include discussion of the opt out measures, with a presentation by an advocate and an opponent of the proposals. The motion was seconded by Sterling Zearley and was adopted by unanimous consent. The motion was declared adopted. Chairman Carter asked that the agenda also include an update of other pending legislation. There was no objection.

Adjournment: A motion was made and seconded to adjourn. The motion was adopted by unanimous consent of all members present. The meeting adjourned at 2:51 p.m.



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NOTICE OF REGULAR MEETING

April 5, 2012 at 2:00 p.m.

**2nd Floor Courtroom, Workers' Compensation Court
1915 N. Stiles Avenue, Oklahoma City, Oklahoma**

AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action regarding minutes of the March 8, 2012 regular meeting of the Advisory Council.
5. Review and discussion of HB 2155 and SB 1378 (Oklahoma Employee Injury Benefit Act) under consideration by the 2012 Oklahoma Legislature.
6. Review and discussion of additional workers' compensation related measures under consideration by the 2012 Oklahoma Legislature.
7. New Business.
8. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON April 5, 2012 in the 2nd Floor Courtroom of the Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Rochelle Guinn; Dan Simmons; Robert Wienecke, M.D.; Sterling Zearley and ex officio non-voting member, Michael Clingman

OTHERS PRESENT:

Pat Gilmore, National American Insurance; Ryan Gilmore, National American Insurance; Patty Phillips, Loves; Richard Phillips, Medtronic; Wade Christensen; and Tish Sommer, Workers' Compensation Court

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:01 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Jim Curry, Dave Koeneke, and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: Persons in attendance introduced themselves. Chairman Michael Carter advised Ellen C. Edwards resigned from the Council and that her successor had not yet been appointed by the Senate President Pro Tempore. He also reported the Physician Advisory Committee (PAC) met on March 9, 2012. The PAC approved its Oklahoma Treatment Guidelines (OTG) on Schedule II drugs at that meeting, but disapproved its Oklahoma Treatment Guidelines on the Spine. The latter are subject to further review and revision by the PAC. Court Administrator Michael Clingman said he approved the PAC's OTG on Schedule II Drugs and they became effective April 2, 2012. The Advisory Council is not required by law to review those guidelines.

Discussion and Possible Action Regarding Minutes of the March 8, 2012 Regular Meeting of the Advisory Council: Sterling Zearley moved to approve the minutes as written. The motion was seconded by Dr. Wienecke. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Review and Discussion of HB 2155 and SB 1378 (Oklahoma Employee Injury Benefit Act) Under Consideration by the 2012 Oklahoma Legislature: Michael Clingman updated the Council on the status of the legislation. Chairman Michael Carter announced individuals from National American Insurance Company (NAIC) who oppose the measure are present to testify, but representatives of the Oklahoma Injury Benefit Council (OIBC), the lay sponsor of the measure, did not respond to Council requests to appear. To assure both sides of the issue are heard, the Council will renew its request of the OIBC. Chairman Carter then introduced Patrick Gilmore, NAIC General Counsel, and Ryan Gilmore, NAIC Associate General Counsel. Mr. Patrick Gilmore distributed a packet of materials to Council members. The materials identify issues related to the legislation, compare provisions of HB 2155 with SB 1378, and compare benefits under an employee benefit plan per the measure with statutory benefits under the Workers' Compensation Code. Mr.

Patrick Gilmore addressed the Council and responded to questions of Council members. The Council thanked him for his presentation. A discussion on whether the Council would respond officially to the legislation followed. It was suggested that a formal response may not be possible recognizing the legislature's upcoming adjournment, the Council's meeting schedule, and that representatives of the OIBC had not yet presented their views. It was noted that individual Council members may discuss their personal views of the measure informally with others.

Review and Discussion of Additional Workers' Compensation Related Measures under Consideration by the 2012 Oklahoma Legislative Session: Chairman Carter recognized Tish Sommer to review pending legislation. She distributed an updated summary of select legislation for the current legislative session and highlighted those measures with recent action. A discussion of certain measures followed.

New Business: Chairman Carter asked that the Council's May 10, 2012 agenda include a presentation by the Oklahoma Injury Benefit Council (OIBC) and a discussion of Oklahoma Treatment Guidelines on the Spine which may have been proposed by the Physician Advisory Committee. Mr. Clingman announced Michael Carter was recently appointed by the Senate President Pro Tempore to the Workers' Compensation Self-Insurance Guaranty Fund Board.

Adjournment: A motion was made and seconded to adjourn. The motion was adopted by unanimous consent of all members present. The meeting adjourned at 3:09 p.m.



ADVISORY COUNCIL ON WORKERS' COMPENSATION
Appointed Pursuant to 85 O.S., §374

MICHAEL D. CARTER
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**EX OFFICIO NONVOTING
MEMBERS**

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Michael Clingman
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TISH SOMMER
Special Counsel
Workers' Compensation Court
1915 N. Stiles Avenue
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NOTICE OF REGULAR MEETING

May 10, 2012 at 2:00 p.m.

**2nd Floor Courtroom, Workers' Compensation Court
1915 N. Stiles Avenue, Oklahoma City, Oklahoma**

AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action regarding minutes of the April 5, 2012 regular meeting of the Advisory Council.
5. Review and discussion of workers' compensation related measures under consideration by the 2012 Oklahoma Legislature.
6. New Business.
7. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON May 10, 2012 in the 2nd Floor Courtroom of the Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Jim Curry; Rochelle Guinn; Dan Simmons; Robert Wienecke, M.D.; and ex officio non-voting member, Michael Clingman

OTHERS PRESENT:

Tish Sommer, Workers' Compensation Court

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:06 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Angela LeBlanc who arrived immediately thereafter, Dave Koeneke, Sterling Zearley and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: Chairman Michael Carter advised that Physician Advisory Committee (PAC) member Robert Remondino, M.D., was working on proposed Oklahoma Treatment Guidelines (OTG) for the Spine. He indicated a special meeting of the Advisory Council might be necessary during the summer depending upon whether the PAC completes its work on the OTG. The special meeting would be at the call of the Chair. The Chairman also reported that the HB 2155 (opt out from workers' compensation insurance) failed to advance during the legislative session but the issue might be considered next year.

Discussion and Possible Action Regarding Minutes of the April 5, 2012 Regular Meeting of the Advisory Council: Dan Simmons moved to approve the minutes as written. The motion was seconded by Rochelle Guinn. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Review and Discussion of Workers' Compensation Related Measures Under Consideration By the 2012 Oklahoma Legislature: Chairman Carter recognized Tish Sommer to review pending and enacted legislation. She distributed an updated summary of select legislation for the current legislative session and highlighted those measures with recent action. A discussion of certain measures followed.

New Business: Michael Clingman advised the National Council on Compensation Insurance recently changed its experience modifier formula, effective January 1, 2013. Chairman Carter asked that the issue be placed on the Advisory Council's next agenda and that efforts be made to have an NCCI representative there.

Adjournment: A motion was made and seconded to adjourn. The motion was adopted by unanimous consent of all members present. The meeting adjourned at 2:26 p.m.



ADVISORY COUNCIL ON WORKERS' COMPENSATION
Appointed Pursuant to 85 O.S., §374

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NOTICE OF REGULAR MEETING

September 13, 2012 at 2:00 p.m.

**2nd Floor Courtroom, Workers' Compensation Court
1915 N. Stiles Avenue, Oklahoma City, Oklahoma**

AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action regarding minutes of the May 10, 2012 regular meeting of the Advisory Council.
5. Discussion and possible action regarding experience modifier changes developed by the National Council on Compensation Insurance (NCCI) effective January 1, 2013, with a presentation by Roy Wood, State Relations Executive, NCCI.
6. Discussion and possible action regarding possible legislative issues affecting workers' compensation, including workers' compensation insurance opt out and establishment of an administrative system.
7. New Business (any matter not known about or which could not have been reasonably foreseen prior to the time of posting).
8. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON September 13, 2012 in the 2nd Floor Courtroom of the Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Bryce Hill; Dan Simmons; Robert Wienecke, M.D.; and ex officio non-voting member, Michael Clingman

OTHERS PRESENT: Patrick Gaines, Gaines Government Services; Roy Wood, NCCI; Brad Hermes, Loves Travel Stops; Cyndi Norris-Hays, Claims Admin. Services, Inc.; Julie Bayless, Southwest Orthopedics; Tish Sommer, Workers' Compensation Court

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:05 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Jim Curry, Rochelle Guinn, Dave Koenke, Sterling Zearley and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: Chairman Michael Carter welcomed Bryce Hill as a new Council member succeeding Ellen Edwards who resigned. He also announced Jim Curry's reappointment for a successive term. Others in attendance introduced themselves.

Discussion and Possible Action Regarding Minutes of the May 10, 2012 Regular Meeting of the Advisory Council: A motion was made and seconded to approve the minutes as written. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Discussion and Possible Action Regarding Experience Modifier Changes Developed by the NCCI Effective January 1, 2013, with a Presentation by Roy Wood, State Relations Executive of NCCI: Roy Wood of the National Council on Compensation Insurance (NCCI) was recognized. He distributed a document entitled, "Experience Rating Item E-1402: Proposed Changes to the Split Point," discussed the recent change to the experience rating calculation, and responded to questions of Council members. The experience rating calculation change was recommended by NCCI on August 2, 2011, was approved by the Oklahoma Insurance Department on August 24, 2011, and becomes effective January 1, 2013. The Council thanked Mr. Wood for his presentation. Mr. Wood encouraged members to contact him if he could be of further assistance.

Discussion and Possible Action Regarding Possible Legislative Issues Affecting Workers' Compensation, Including Workers' Compensation Insurance Opt Out and Establishment of an Administrative System: The Chairman said likely legislative topics include workers' compensation insurance opt out and development of an administrative system, but no proposed bills were yet available for review. Also pending is review of the Physician Advisory Committee's (PAC) proposed Oklahoma Treatment Guidelines – Spine. The PAC's public hearing and meeting on the guidelines is set on October 19, 2012. Staff was asked to forward a copy of the proposed guidelines

to Advisory Council members in advance of the public hearing. The Council discussed its duty to set a public hearing and meet to review the guidelines once approved by the PAC. Mr. Simmons moved to set the Council's public hearing on November 8 at 1:30 p.m., with a regular meeting immediately thereafter. The motion was seconded by Mr. Hill. There was no discussion or debate. The motion was approved by unanimous consent of all members present and was declared adopted.

New Business: Chairman Carter advised that the Council would set its regular meeting schedule for 2013 at its next meeting.

Adjournment: Dr. Wienecke moved to adjourn. The motion was seconded by Mr. Hill and adopted by unanimous consent of all members present. The meeting adjourned at 2:55 p.m.



ADVISORY COUNCIL ON WORKERS' COMPENSATION
Appointed Pursuant to 85 O.S., §374

NOTICE OF PUBLIC HEARING

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The Advisory Council on Workers' Compensation will hold a Public Hearing on **Monday, November 19, 2012 at 2:00 p.m. in the 2nd Floor Courtroom, Workers' Compensation Court, Denver Davison Building, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma.** The purpose of the public hearing is to receive public comments regarding the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines - Spine. The public hearing is per 85 O.S., §373.

The proposed guidelines, as adopted by the Physician Advisory Committee on 10/19/12, and a document showing how they differ from the Work Loss Data Institute's *Official Disability Guidelines*, are available on the Workers' Compensation Court's web site at:

http://www.owcc.state.ok.us/whats_new.htm

Comments on the proposed guidelines are encouraged and are asked to be submitted in writing at or before the public hearing. Submit comments to the Advisory Council c/o Workers' Compensation Court, ATTN: Tish Sommer, 1915 N. Stiles Avenue, Oklahoma City, OK 73105, or electronically to TSommer@owcc.state.ok.us.

AGENDA

1. Call to order.
2. Opening remarks by the Chairman of the Advisory Council on Workers' Compensation.
3. Receive public comments regarding the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines - Spine.
4. Closing comments by members of the Advisory Council on Workers' Compensation.

REGULAR MEETING IMMEDIATELY FOLLOWING SAME LOCATION

**2ND Floor Courtroom
Workers' Compensation Court
Denver Davison Building
1915 N. Stiles Avenue
Oklahoma City, Oklahoma**



ADVISORY COUNCIL ON WORKERS' COMPENSATION
Appointed Pursuant to 85 O.S., §374

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NOTICE OF PUBLIC HEARING

ON PROPOSED OKLAHOMA TREATMENT GUIDELINES – SPINE

The Advisory Council on Workers' Compensation will hold a public hearing on **Monday, November 19, 2012 at 2:00 p.m. in the 2nd Floor Courtroom of the Workers' Compensation Court, Denver Davison Building, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma.**

The purpose of the hearing is to receive public comments regarding the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines - Spine. The public hearing is per 85 O.S., §373.

The proposed guidelines, as adopted by the Physician Advisory Committee on October 19, 2012, and a redline version showing how the proposed guidelines differ from the Work Loss Data Institute's *Official Disability Guidelines* (ODG), are available on the Court's website at:

http://www.owcc.state.ok.us/whats_new.htm.

Comments on the proposed guidelines are encouraged and requested to be submitted in writing at or before the public hearing. Submit comments to the Advisory Council on Workers' Compensation c/o Workers' Compensation Court, ATTN: Tish Sommer, 1915 N. Stiles Avenue, Oklahoma City, OK 73105, or electronically to TSommer@owcc.state.ok.us.

Posted 10-25-12

**MINUTES OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION'S
NOVEMBER 19, 2012 PUBLIC HEARING REGARDING THE PHYSICIAN ADVISORY
COMMITTEE'S PROPOSED OKLAHOMA TREATMENT GUIDELINES - SPINE**

PRESENT: Michael Carter; Angela LeBlanc; Dave Koeneke; Rochelle L. Guinn; Sterling Zearley; Dan Simmons; Jim Curry; and ex officio non-voting member, Michael Clingman

OTHERS PRESENT: John McCormick, Patrick Gaines, Kevin Blaylock, Robert Fuxa, Ryan Shirley, Dr. LeRoy Young, Margaret Erling, and Tish Sommer

Call to Order: The public hearing was called to order by Chairman Michael Carter at 2:03 p.m. The Secretary of State's Office was notified of the public hearing and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site. All members were present at the public hearing, except for Bryce A. Hill, Dr. Robert J. Wienecke and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend.

Opening Remarks by Michael D. Carter, Chairman of the Advisory Council on Workers' Compensation: Mr. Carter made some introductory comments. Thereafter, Workers' Compensation Court Administrator Michael Clingman was asked to comment on the Council's duties regarding review of the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines for the Spine (OTG-Spine) as directed by the Legislature. Mr. Clingman discussed the review process and responded to questions of Council members.

Public Comments Regarding the Physician Advisory Committee's Proposed Oklahoma Treatment Guidelines - Spine: Mr. Carter solicited comments from those in attendance. Kevin Blaylock, Chief Executive Officer, Oklahoma Spine Hospital, was recognized. He offered comments on behalf of Dr. Robert J. Wienecke, Advisory Council member and physician of Oklahoma Spine Hospital, who was unable to attend. Mr. Blaylock also responded to questions of Council members.. A request for further comments was made. There were none.

Closing Comments By Members of the Advisory Council on Workers' Compensation: Mr. Carter asked that written comments received from the American Insurance Association and the Property Casualty Insurers Association of America be made part of the public hearing record. There being no further comments, the public hearing adjourned.

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BEFORE THE ADVISORY COUNCIL
ON WORKERS' COMPENSATION

* * * * *

TRANSCRIPT OF MINUTES
OF PUBLIC MEETING HELD
2:00 P.M., NOVEMBER 19, 2012
2ND FLOOR COURTROOM
WORKERS' COMPENSATION COURT
DENVER DAVISON BUILDING
1915 N. STILES AVENUE
OKLAHOMA CITY, OKLAHOMA

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ORIGINAL

REPORTED BY: JUDY PORTER, CSR, RPR

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Board Members Present:
Mr. Mike Carter, Chairman
Ms. Angela LeBlanc, Vice-Chair
Mr. Dave Koeneke, Board Member
Ms. Rochelle L. Guinn, Board Member
Mr. Sterling Zearley, Board Member
Mr. Dan Simmons, Board Member
Mr. Jim Curry, Board Member
Mr. Michael Clingman, Administrator, Workers'
Compensation Court
Ms. Tish Sommer, Special Counsel, Workers'
Compensation Court

* * * * *

1 on something called Oklahoma Treatment Guidelines
2 Involving the Spine, which work with the ODG Guidelines
3 on everything else. This was passed by the legislature
4 almost two years ago now.

5 You are here to get comments and then weigh
6 whether or not you want to recommend to me to adopt and
7 send them to the legislature or reject.

8 The way I read the statute, I can't really
9 amend the guidelines that they've done; I can just
10 either say, yes, we'll move them to the legislature or,
11 no, we will not. And I'll hold a public hearing on
12 that issue on December 12th as well.

13 CHAIRMAN CARTER: And, Administrator, do you
14 believe this Council has any authority to recommend
15 changing the ODGs as they're -- as passed by the
16 Physicians Advisory Committee?

17 ADMINISTRATOR CLINGMAN: I don't believe so.
18 I believe you can recommend you adopt or not adopt and
19 go into as much detail as you want on those issues.

20 CHAIRMAN CARTER: Ultimately, if the ODGs
21 were not adopted, would they need to go back to square
22 one with the Physicians Advisory Committee?

23 ADMINISTRATOR CLINGMAN: It would. It would
24 go back to them to decide what they want to do, whether
25 they even want to have Oklahoma Treatment Guidelines,

1 which have been mandated by the legislature, but it
2 would be back in their court, yes.

3 CHAIRMAN CARTER: All right. Anybody have
4 any questions of Administrator Clingman before we
5 proceed?

6 BOARD MEMBER ZEARLEY: If you adopt, then the
7 legislative body would have to approve?

8 ADMINISTRATOR CLINGMAN: They'd have to
9 disapprove. They would have to disapprove.

10 BOARD MEMBER ZEARLEY: Okay. So if we adopt,
11 it would send it back to the legislative body? Is that
12 what you said?

13 ADMINISTRATOR CLINGMAN: You would recommend
14 to me whether I should adopt or not.

15 BOARD MEMBER ZEARLEY: Okay.

16 ADMINISTRATOR CLINGMAN: I have a public
17 hearing. I either adopt or I do not.

18 BOARD MEMBER ZEARLEY: Okay.

19 ADMINISTRATOR CLINGMAN: And then it's sent
20 to the legislature, and they can, during this next
21 session, decide whether to reject --

22 BOARD MEMBER ZEARLEY: Okay.

23 ADMINISTRATOR CLINGMAN: -- that or leave it
24 alone. If they leave it alone, it will become the law
25 after -- after the session, in late May.

1 BOARD MEMBER ZEARLEY: Gotcha.

2 CHAIRMAN CARTER: Any other questions?

3 well, I'd like to open the floor for public
4 comments in regard to the Physicians Advisory
5 Committee's Oklahoma Treatment Guidelines on the Spine.

6 I believe -- does everybody have a copy of
7 what the Physicians Advisory Committee has passed? I
8 believe there are copies, if you don't have one,
9 outside on the table.

10 I have a list in front of me. And it appears
11 that we do have a request for speaking from Kevin
12 Blaylock.

13 Mr. Blaylock?

14 MR. BLAYLOCK: Thank you, Committee. I'm
15 kind of a stand-in today for Dr. Wienecke, a member of
16 this Committee, I believe. He was scheduled to be out
17 of town, but he asked that -- that I show up in his --
18 well, not in his place, but to make comments on his
19 behalf, and in particular with regard to a letter
20 from -- I think it's American Insurance Association.
21 He only got that today. And -- but he wanted -- I
22 believe it's dated today.

23 And he wanted me to make the point that some
24 of their comments are addressed to the consultants that
25 the Physicians Advisory Committee availed themselves

1 of. And at a minimum, you know, he said -- and they
2 said that they would like an opportunity to respond
3 because they felt like some of the comments that were
4 made were -- they don't agree with; and it -- it would
5 take them a couple of weeks to respond to those in
6 writing.

7 And, second, one of the points made by the
8 American Insurance Association was that --
9 paraphrasing, they felt like the ODG Guidelines, the
10 official Disability Guidelines, should have been
11 adopted in whole.

12 well, that was a decision made by the
13 legislature two years ago. Their decision was that
14 they -- that there was to be an alternate for the ODG,
15 specifically for spine, and so the point there being
16 that that question has been addressed by the
17 legislature. And, indeed, they have instructed that
18 there are alternatives to the ODG in spite of the AIA's
19 suggestion that the ODG should be adopted in whole.

20 So those are the two comments that
21 Dr. Wienecke asked me to make on his behalf.

22 Thank you.

23 CHAIRMAN CARTER: Does anyone have any
24 questions of Mr. Blaylock?

25 Is there anyone else that would like to make

1 a public comment in regard to the proposed Oklahoma
2 Treatment Guidelines?

3 I had a question for Ms. Sommer.

4 We did receive written comment. And is it
5 appropriate for us to ask that those written comments
6 be made a part of the record?

7 MS. SOMMER: Oh, absolutely.

8 CHAIRMAN CARTER: I would -- I would make
9 that -- I don't think that's a motion I can make, but
10 we'll have those be made a part of the record today as
11 well.

12 And absent any other requests for comment or
13 unless there are any other written submissions to make,
14 I'll just open up the floor to the Committee and ask if
15 there are any comments that the Committee members would
16 like to make before we adjourn this hearing and call to
17 order our meeting of the -- our actual meeting of the
18 Advisory Council.

19 BOARD MEMBER CURRY: I have a -- I guess a
20 question. It would take two weeks to respond to the
21 American Insurance paper?

22 MR. BLAYLOCK: Yes. Well, that's what they
23 told me this -- this -- back about 15 minutes ago. And
24 they -- possibly they could do it sooner, but that's
25 what they asked. I mean, if the Committee needed a

1 quicker response, I could contact them and see how
2 quickly they could. But they were -- I guess they were
3 hoping they could get that much time.

4 BOARD MEMBER CURRY: That's all I have.

5 CHAIRMAN CARTER: Any other comment?

6 Do I need to ask for a motion to adjourn? Or
7 can we just adjourn?

8 MS. SOMMER: No, no, you can just adjourn.

9 CHAIRMAN CARTER: Well, absent any other --
10 this going-going-gone, any other comment in this public
11 hearing in regard to the proposed Oklahoma Treatment
12 Guidelines, then I will adjourn this public hearing.

13 (END OF PROCEEDINGS)

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CERTIFICATE OF COURT REPORTER

I, JUDY PORTER, Certified Shorthand Reporter within and for the State of Oklahoma, and the officer before whom the foregoing record was taken, do hereby certify that I reported in machine shorthand the proceedings and testimony contained herein; that the foregoing transcript is a full, true, and correct transcript of the proceedings; and that I am not related to nor attorney for any of said parties or witnesses, nor otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 29th day of November, 2012.



JUDY PORTER, CSR, RPR
Oklahoma CSR No. 1902

Judy Porter
Oklahoma Certified Shorthand Reporter
Certificate No. 1902
Exp. Date: December 31, 2012



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November 19, 2012

Advisory Council on Workers' Compensation
c/o Workers' Compensation Court
ATTN: Tish Sommer
1915 N. Stiles Avenue
Oklahoma City, OK 73105
Via Electronic Mail: TSommer@owcc.state.ok.us

Re: The Physician Advisory Committee's Proposed Oklahoma Treatment Guidelines—Spine

Dear Members of the Advisory Council on Workers' Compensation:

The American Insurance Association appreciates the opportunity to comment on the Physician Advisory Committee's proposed modifications to the Oklahoma Treatment Guidelines—Spine. The AIA urges the Advisory Committee to recommend that the Workers' Compensation Court Administrator *not adopt* the modifications to the Oklahoma Treatment Guidelines—Spine recently proposed by the Physician Advisory Committee.

The Physician Advisory Committee proposes the Oklahoma Treatment Guidelines depart from the Official Disability Guidelines (ODG) for the treatment of certain injuries. Specifically, the Physician Advisory Committee would change the ODG treatment recommendations for bone-morphogenetic protein (BMP) and discography for low back injuries and discography for neck and upper back injuries. The Physician Advisory Committee would also modify the ODG's Summary of Medical Evidence for spinal fusion treatment of low back injuries.

The Physician Advisory Group's suggested modifications to ODG are unwarranted and should be rejected by the Advisory Council. The Advisory Council should recommend the Workers' Compensation Court not adopt the modifications because: (1) state-based modifications to nationally-recognized, evidence-based treatment guidelines defeat the purpose of adopting nationally-recognized, evidence-based guidelines; (2) the medical evidence does not support the proposed modifications; and (3) unlike the ODG, which is updated continually based on the most recent medical research, it would not be feasible for the Physician Advisory Council to continually update their recommendations to the most current medical research.

• Nationally-Recognized, Evidence-Based Treatment Guidelines Should Not Be Modified Based on Individual Preferences

The Official Disability Guidelines are nationally-recognized, evidence-based treatment guidelines developed by a comprehensive review of the most current medical research. The

critical benefit of adopting ODG, or any other nationally-recognized, evidence-based treatment guideline, such as the American College of Occupational and Environmental (ACOEM) guidelines, is that they are expert-based and culled from a complete review of all available scientific research. Adoption of national standards, based on the most recent medical research, ensures both that Oklahoma's injured workers receive the most effective and high quality treatment for their injuries and Oklahoma employers pay only for the most appropriate and efficient workers' compensation medical treatments. Failure to adhere to these national, evidence-based treatment standards will add unnecessary medical costs to the Oklahoma workers' compensation system while denying the best treatment practices to Oklahoma's workers. It is simply inconsistent with the purpose of adopting nationally-recognized evidence-based treatment guidelines to then depart from those nationally-recognized recommendations based on the individual preferences of certain persons seeking to modify those guidelines.

• **The Medical Evidence Does Not Support the Proposed Modifications to the ODG**

Bone-Morphogenetic Protein (BMP) for Low Back Injuries: The ODG provides that BMP is not recommended for low back injuries. The ODG's summary of the medical evidence illustrates why BMP is not recommended. The ODG cites to the Carragee 2009 study indicating that "there is a lack of clear evidence of improved outcomes with BMP, and there is inadequate evidence of safety and efficacy to support routine use." Likewise, the ODG cites to a Carragee 2011 study that "there is a strong association between treatment with BMP and the incidence of a wide variety of cancers, based on a large lumbar fusion study." Significantly, the Physician Advisory Committee's suggested change to the treatment guidelines to allow the use of BMP for certain treatments of the low back references no medical research studies whatsoever in support of its proposal.

Discography for Low Back Injuries: The ODG does not recommend discography for low back injuries. The ODG summary of medical evidence cites to numerous scientific studies, including four separate studies performed by Carragee in 2000, as well as Bigos in 1999, ACR in 2000, Resnick in 2002, Madan in 2002, two additional Carragee studies completed in 2004, Maghout in 2006, Pneumatics in 2006, Airaksinen in 2006 and Manchikanti in 2009, indicating that discography "is of limited diagnostic value." Moreover, discography may cause disc degeneration, disc herniation, loss of disc height and signal and the development of reactive endplate changes. A 2009 Carragee study indicates that "the injection procedure itself is not completely innocuous and a recalculation of these demonstrated risks versus hypothetical benefits should be considered." A 2012 study by Gruber indicates that discography "may cause disc degeneration."

In changing the recommendation for discography from ODG's "not recommended" to recommended for certain indications, the Physician Advisory Committee cites to scant medical evidence. Indeed most of the studies referred to in the Physician Advisory Committee's summary of medical evidence actually raise concerns about the use of discography. For example, while the Physician Advisory Committee's summary does cite to a Chou study in 2009 and an Ohtori study in 2009, the Committee's own narrative states that these studies criticize discography for "a high false-positive rate, increased risk of complications, and the potential for introgenic disk injury and degeneration." Likewise, the Guyer 1995 study and the Walker 2007

study cited by the Committee in its narrative indicate "Discography has been historically associated with certain risks including infection (including diskitis and epidural abscess) vascular, and spinal cord injury." Other than these few references to scientific studies, the Physician's Advisory Committee's proposed summary of medical evidence consists mostly of simply deleting references to the numerous discography studies set forth in the ODG summary of medical evidence.

Discography for Neck and Upper Back Injuries: The ODG does not recommend discography for neck and upper back injuries. The ODG summary of medical evidence cites to several scientific studies-- Carragee (2000), Carragee2 (2000), Bigos (1999), Grubb (2000), Zeidman (1995), and Manchikanti (2009)--that condemn discography's use "as a preoperative indication for IDET or Fusion, and indicate that discography may produce symptoms in control groups more than a year later, especially in those with emotional and chronic pain problems." Notwithstanding this medical evidence, the Physician Advisory Committee proposes changing the guideline from "Not Recommended" to "Recommended for Certain Indications." The Physician Advisory Committee cites to no additional medical studies in support of its proposal to reverse the ODG's recommendation.

Fusion for Low Back Injuries: While not altering the recommendation of the ODG regarding fusion for low back injuries, the Physician Advisory Committee proposes modifications to the ODG's summary of medical evidence regarding the treatment. The Committee proposes deleting the sentence "Until further research is conducted there remains insufficient evidence to recommend fusion for chronic low back pain in the absence of stenosis and spondylolisthesis, and this treatment for this condition remains 'under study.'" No scientific studies or other medical evidence is offered by the Committee to explain its proposed deletion of the ODG's sentence. Thus it would appear that the original sentence is accurate and should remain in the summary of medical evidence. The Committee also proposes adding language to the summary of medical evidence for fusion of the lower back to state that patients with chronic low back pain should not be excluded from lumbar spinal fusion if they meet the Patient Selection Criteria for Lumbar Spinal Fusion." This statement is unnecessary and somewhat confusing because the ODG already includes this patient selection in its own criteria and, thus, should not be added to the medical evidence narrative.

• Any Adopted Treatment Modifications Would Not Remain Up-To-Date and Consistent with New Medical Research

Not only is there a lack of sufficient medical evidence to support the proposed changes to the ODG guidelines, but adopting the proposed modifications would create serious problems for workers' compensation medical treatment in Oklahoma. One of the critical benefits of adopting a nationally-recognized, evidence-based treatment guideline, such as ODG or the ACOEM guidelines, is that the treatment guidelines are constantly being updated based on the most current medical studies. The ODG is available on-line and the treatment guidelines are continually updated, as necessary, based on the most recent medical information. In contrast, updating the Physician Advisory Committee's proposed treatments to stay current with developing medical research would be highly problematic. Adopting the proposed revisions by the Physician Advisory Committee would essentially mean that the Physician Advisory

Committee must continue to meet and discuss the latest research on perhaps a monthly basis and agree upon and propose any appropriate modifications to its guidelines as necessitated by new medical research. Presumably, the entire process of approval of any modifications proposed by the Physician Advisory Committee would then need to be approved by the Advisory Council on Workers' Compensation, the Workers' Compensation Court, and then the state legislature. Absent this continual updating approach by the Physician Advisory Committee, the Advisory Council on Workers' Compensation, the Workers' Compensation Court and the state legislature, Oklahoma's injured workers would be subject to out of date treatment protocols no longer applied in states adopting nationally-recognized, evidence-based guidelines. It would be much better to rely on the ODG to ensure that Oklahoma's injured workers are receiving the most effective and efficient medical treatments for their injuries based on the most current and comprehensive medical research.

AIA again thanks you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Bennett", with a long horizontal flourish extending to the right.

Steven A. Bennett
Associate General Counsel
American Insurance Association



Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

Trey Gillespie
Senior Workers Compensation Director

November 15, 2012

Advisory Council on Workers Compensation
C/O Workers Compensation Court
Attn: Tish Sommer
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TSommer@owcc.state.ok.us

**Re: Proposed Oklahoma Treatment Guidelines- Spine
Public Hearing November 19, 2012**

To the Honorable Advisory Council on Workers Compensation:

Property Casualty Insurers Association of America (PCI) submits the following comments concerning the proposed Oklahoma Treatment Guidelines- Spine. PCI is an insurance trade association whose members write approximately 40% of the national property casualty insurance market including 41% of the private workers compensation insurance market. PCI comments do not necessarily represent the opinions of all member companies.

Attached hereto is a copy of the PCI written comments filed with the Physician Advisory Committee on October 18, 2012. PCI incorporates the content of those comments for consideration. In addition, PCI submits the following supplemental comments for additional consideration.

1. Bone-morphogenetic protein (BMP)

Comment: See PCI comments to PAC dated October 18, 2012. Since filing those comments, the United States Senate, Committee on Finance published the "*Staff Report on Medtronic's Influence on InFuse Clinical Studies*" (October 2012). Key findings of that study include the following:

Findings

- Medtronic was heavily involved in drafting, editing, and shaping the content of medical journal articles authored by its physician consultants who received significant amounts of money through royalties and consulting fees from Medtronic. The company's significant role in authoring or substantively editing these articles was not disclosed in the published articles. Medical journals should ensure industry role contributions be fully disclosed.
- Medtronic paid a total of approximately \$210 million to physician authors of Medtronic-sponsored studies from November 1996 through December 2010 for consulting, royalty, and other miscellaneous arrangements.
- An e-mail exchange shows that a Medtronic employee recommended against publishing a complete list of adverse events possibly associated with InFuse in a 2005 Journal of Bone and Joint Surgery article.

- Medtronic officials inserted language into studies that promoted InFuse as a better technique than taking a bone graft from the pelvic bone (autograft technique) by emphasizing the pain of the autograft technique.
- Documents indicate that Medtronic prepared Dr. Hal Mathew's remarks to the U.S. Food and Drug Administration (FDA) advisory panel meeting prior to InFuse being approved. At the time, Dr. Mathews was a private physician but was hired as a vice president at Medtronic in 2007.
- Medtronic documents show the company unsuccessfully attempted to adopt weaker safety rules for a clinical trial studying InFuse in the cervical spine that would have allowed the company to continue the trial in the event that patients experienced severe swelling in the neck.

The use of bone-morphogenetic protein (BMP) should remain a "not recommended" procedure until there is reliable evidence of safety and efficacy to support its use.

2. Discography

Comment: Discography should remain a "not recommended" procedure. See PCI comments to PAC dated October 18, 2012.

3. Fusion

Comment: See PCI comments to PAC dated October 18, 2012.

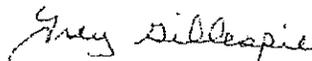
4. Recommendations

Comment: See PCI comments to PAC dated October 18, 2012.

The Council should only consider adopting deviations once there is expert-based, literature-supported, evidence-based medicine that supports that the deviation will produce improved return to work and health outcomes for Oklahoma workers.

Thank you for considering these comments.

Respectfully submitted,



Trey Gillespie
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512-366-5430
trey.gillespie@pciaa.net



Trey Gillespie
Senior Workers Compensation Director

October 18, 2012

Physician Advisory Committee
c/o Erin Butler
Oklahoma Workers Compensation Court
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Oklahoma City, OK 73105
EButler@owcc.state.ok.us

**Re: Proposed Oklahoma Treatment Guidelines- Spine
Public Hearing October 19, 2012**

To the Honorable Physician Advisory Committee:

Property Casualty Insurers Association of America (PCI) submits the following comments concerning the proposed Oklahoma Treatment Guidelines- Spine. PCI is an insurance trade association whose members write approximately 40% of the national property casualty insurance market including 41% of the private workers compensation insurance market. PCI comments do not necessarily represent the opinions of all member companies.

1. Bone-morphogenetic protein (BMP)

Comment: The use of bone-morphogenetic protein (BMP) should remain a “not recommended” procedure until there is reliable evidence of safety and efficacy to support its use. In an unprecedented editorial move, the entire June 2011 issue of *The Spine Journal* was dedicated to a review of industry-sponsored research that promoted the use of BMP in spinal fusion surgeries. The early industry-sponsored clinical research suggested that there were little or no complications associated with the use of BMP products as a substitute for harvesting bone from the patient’s hip for use in the spinal fusion procedure. However, more recent research has associated the use of BMP with various early inflammatory reactions, cancer, osteolysis, infection, implant dislodgement and occasional life-threatening complications. In addition, there appears to be some evidence of a higher incidence of male sterility than previously described by the industry-sponsored researchers. The risk of complications associated with a bone growth factor commonly used in spinal fusion surgeries is estimated to be at least 10 to 50 times greater than previously reported in industry-sponsored research studies.

A review of the findings and articles in the special issue of *The Spine Journal* lead to the publication of an editorial, co-authored by five spine experts, titled “A challenge to integrity in spine publications: years of living dangerously with the promotion of bone growth factors.” This has also become the subject of a Justice Department investigation and Congressional inquiries.

SB 878 (2011) was passed in order to effectuate improvements in the Oklahoma workers compensation system. This proposed deviation from the recommendations of the *Official Disability Guidelines* (ODG) is not likely to produce better workers compensation health outcomes in Oklahoma.

2. Discography

Comment: Discography should remain a “not recommended” procedure. Discography is not considered a reliable test to evaluate the necessity of spinal surgery to address a symptomatic disc. Discography can cause false-positive pain production in patients who do not have a back injury. In addition, discography has been found to be inaccurate in patients with chronic back pain and abnormal psychosocial

testing. The use of false-positive results from discography may partially explain the high incidence of spinal surgery procedures in Oklahoma.

3. Fusion

Comment: The proposed edits to the text of the ODG potentially promotes unnecessary spinal fusion surgeries by removing the qualifiers of "stenosis" or "spondylolisthesis" before recommending a fusion procedure. Unnecessary spinal fusions greatly increase the risk of the patient being unable to successfully return to the workforce on a continuous basis and greatly increase the risk of narcotic dependence.

4. Recommendations

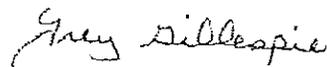
PCI recognizes that 85 OK Statutes §326 adopts the Official Disability Guidelines for the scope and duration of workers compensation medical treatment but allows the Physician Advisory Committee to adopt Oklahoma Treatment Guidelines and protocols for medical treatment not addressed by the current edition of the Official Disability Guidelines, or addressed but not recommended, in regard to injuries to the spine. That rule making authority is limited by 85 OK Statutes §373 which requires that the Oklahoma Treatment Guidelines be based upon evidence based medicine and scientifically based and nationally peer reviewed literature. The term "evidence-based" is defined in 85 OK Statutes §308 as "...expert-based, literature-supported and outcomes validated by well-designed randomized trials..."

Given this statutory mandate, it would be inappropriate for the PAC to deviate from the ODG with the adoption of consensus based treatment guidelines in place of scientifically valid evidence-based guidelines. There is no evidence cited in the proposed Oklahoma Treatment Guidelines- Spine that the proposed deviations from ODG will produce better outcomes for workers and employers in Oklahoma. In order to promote improved return to work and health outcomes for Oklahoma workers, PCI recommends that no deviations from ODG be adopted at this time.

The Committee should only consider adopting deviations once there is expert-based, literature-supported, evidence-based medicine that supports that the deviation will produce improved return to work and health outcomes for Oklahoma workers.

Thank you for considering these comments.

Respectfully submitted,



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NOTICE OF REGULAR MEETING

The Advisory Council on Workers' Compensation will hold a regular meeting in the 2nd Floor Courtroom, Workers' Compensation Court, Denver Davison Building, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma on **Monday, November 19, 2012** immediately following the Advisory Council's public hearing at 2:00 p.m. at the same location.

AGENDA

1. Call to order.
2. Roll call and determination of quorum present.
3. Announcements and introductions.
4. Discussion and possible action regarding minutes of the September 13, 2012 regular meeting of the Advisory Council.
5. Discussion and possible action regarding the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines - Spine.
6. Discussion and possible action regarding scheduling the Advisory Council's regular meetings for 2013 at 2:00 P.M. on **February 7, March 7, April 4, May 9, September 12, and November 7**, at the Workers' Compensation Court, Denver Davison Building, 1915 N. Stiles Avenue, Oklahoma City, OK.
7. New Business (any matter not known about or which could not have been reasonably foreseen prior to the time of posting).
8. Adjournment.

MINUTES OF THE REGULAR MEETING OF THE ADVISORY COUNCIL ON WORKERS' COMPENSATION HELD ON NOVEMBER 19, 2012 in the 2nd Floor Courtroom of the Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, Oklahoma

MEMBERS PRESENT: Michael Carter; Angela LeBlanc; Dave Koeneke; Rochelle L. Guinn; Sterling Zearley; Dan Simmons; Jim Curry; and ex officio non-voting member, Michael Clingman

OTHERS PRESENT: John McCormick, Patrick Gaines, Kevin Blaylock, Robert Fuxa, Ryan Shirley, Dr. LeRoy Young, Margaret Erling, and Tish Sommer

Call to Order: The meeting was called to order by Chairman Michael Carter at 2:15 p.m. The Secretary of State's Office was notified of the meeting and the agenda was posted at the Workers' Compensation Court's Oklahoma City and Tulsa locations and on the Court's web site.

Roll Call and Determination of Quorum: All members were present at roll call, except for Bryce A. Hill, Dr. Robert J. Wienecke and ex-officio nonvoting member Presiding Judge Michael Harkey, who were unable to attend. A quorum was noted.

Announcements and Introductions: There being none, the committee considered the next agenda item.

Discussion and Possible Action Regarding Minutes of the September 13, 2012 Regular Meeting of the Advisory Council: Dan Simmons moved to approve the minutes as written. The motion was seconded by Angela LeBlanc. There was no discussion or debate. The minutes were approved by unanimous consent of all members present and were declared adopted.

Discussion and Possible Action Regarding the Physician Advisory Committee's Proposed Oklahoma Treatment Guidelines - Spine (OTG-Spine): Mr. Carter asked Dr. LeRoy Young, Physician Advisory Committee Chairman, to describe the process the Committee used to develop the draft OTG-Spine, and to identify how the Work Loss Data Institute's *Official Disability Guidelines* differ from the draft OTG-Spine. Dr. Young responded to the request and answered questions of Council members.

At Mr. Carter's request, Mr. Clingman reported on the Court's efforts to implement an Electronic Data Interchange (EDI) program for data collection and on the status of the National Council on Compensation Insurance's (NCCI) medical data call. He also indicated CompSource Oklahoma might be a resource of data on medical treatment trends, including frequency of spine surgeries. Mr. Clingman said he would notify the Advisory Council when the NCCI information is available. Mr. Carter suggested the issue may be revisited at the Council's next meeting.

Mr. Carter entertained action on the proposed OTG-Spine. Mr. Curry moved to recommend approval of the Physician Advisory Committee's draft OTG-Spine for review by the Court Administrator as provided by law. The motion was seconded by Mr. Zearley. An amendment to the motion was suggested by Mr. Carter but was withdrawn. Concern was expressed about use of bone-morphogenetic protein (BMP). Following additional discussion, the motion was advanced and the vote was as follows:

Mr. Carter	aye
Mr. Curry	aye
Ms. Guinn	aye
Mr. Hill	absent
Mr. Koeneke	aye
Ms. LeBlanc	aye
Mr. Simmons	aye
Dr. Wienecke	absent
Mr. Zearley	aye

There being a majority of members voting in favor of the motion, the motion passed and was declared adopted.

Mr. Zearley then moved for the Council to submit a letter request to the Physician Advisory Committee to review use of bone-morphogenetic protein (BMP) and to amend the BMP portion of the low back section of the OTG-Spine, if appropriate. The motion was seconded by Mr. Curry. There was no discussion or debate. The motion was advanced and the vote was as follows:

Mr. Carter	aye
Mr. Curry	aye
Ms. Guinn	aye
Mr. Hill	absent
Mr. Koeneke	aye
Ms. LeBlanc	aye
Mr. Simmons	aye
Dr. Wienecke	absent
Mr. Zearley	aye

There being a majority of members voting in favor of the motion, the motion passed and was declared adopted. Staff was asked to prepare the letter. There was no objection.

Discussion and Possible Action Regarding Scheduling the Advisory Council's Regular Meetings for 2013 at 2:00 P.M. on February 7, March 7, April 4, May 9, September 12, and November 7, at the Workers' Compensation Court, Denver Davison Building, 1915 N. Stiles Avenue, Oklahoma City, OK: A motion to approve the schedule as proposed was made by Mr. Curry and seconded by Mr. Simmons. There was no discussion or debate. The motion was approved by unanimous consent of all members present and was declared adopted.

New Business: Chairman Carter discussed possible agenda items for the Council's February 7, 2013 meeting. Suggestions included a discussion of the issue of gathering data on use of spine surgeries and review by Mike Seney, State Chamber of Commerce, of measures filed for consideration by the legislature.

Adjournment: Mr. Koeneke moved to adjourn. The motion was seconded by Ms. Guinn and adopted by unanimous consent of all members present. The meeting adjourned at 3:00 p.m.



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November 28, 2012

LeRoy E. Young, D.O.
Chairman
Physician Advisory Committee
1211 Shartel Avenue
Oklahoma City, OK 73103

Re: Oklahoma Treatment Guidelines – Spine

Dear Dr. Young:

Per 85 O.S., §373, the Advisory Council on Workers' Compensation met on November 19, 2012, following a public hearing, to review the Physician Advisory Committee's proposed Oklahoma Treatment Guidelines – Spine.

During the review process, concerns were raised about the safety and efficacy of using bone-morphogenetic protein (BMP). The Council understands the use of BMP as recommended in the Committee's proposal currently is FDA approved. Accordingly, the Council endorsed the guidelines and referred them to the Workers' Compensation Court for further review as provided by law. However, in light of recent medical research associating the use of BMP with various early inflammatory reactions, osteolysis, cancer, infection, implant dislodgement, a higher incidence of sterility, and occasional life-threatening complications, and related Congressional inquiries, the Council respectfully requests the Committee to review the use of BMP and to amend the BMP portion of the low back section of the guidelines, if appropriate. The request is pursuant to a recommendation of the Council adopted unanimously by all members present at its November 19, 2012 meeting.

Sincerely,

Michael D. Carter
Chairman, Advisory Council on Workers' Compensation
For the Council

cc: Members of the Advisory Council on Workers' Compensation