

# REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

Thursday, August 23, 2018  
1:30 p.m.  
Commission Chambers  
1915 N. Stiles Avenue, 2<sup>nd</sup> Floor  
Oklahoma City, Oklahoma  
[www.wcc.ok.gov](http://www.wcc.ok.gov)

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## *AGENDA*

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**CALL TO ORDER .....Chairman Mark Liotta**

**ROLL CALL.....Chairman Mark Liotta**

OPEN MEETING ACT STATEMENT

### **MINUTES**

The drafted minutes of the July 19, 2018 public meeting of the Commission will be considered for approval.

**THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION. PUBLIC COMMENTS ARE LIMITED TO THE AGENDA ITEMS LISTED.**

**1. Discussion and Consideration of Distribution of Surplus Monies to Members of the Oklahoma Automobile Dealers Self-Insurance Association.**

Oklahoma Automobile Dealers Self-Insurance Association, a group self-insurance association, is requesting a partial distribution of surplus monies back to its members in the amount of \$4,500,000 which will be payable from fund years FY 17-18 (\$1,000,000), FY 16-17 (\$1,000,000), FY 15-16 (\$1,500,000), FY 14-15 (\$1,000,000). The partial distribution will be made to all of the current active or otherwise qualified members which participated in those fiscal years.

Commission Rule 810:25-11-10 states that any surplus monies may be declared refundable by the association's board. The date and manner of the distribution shall be declared by the association's board and shall be in accordance with the association's bylaws. The board shall submit the distribution request to the Commission, with all supporting documents. The Commission will consider

approving the distribution of surplus monies to members of the Oklahoma Automobile Dealers Self-Insurance Association.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, approving some, all or none of the distribution of the surplus monies to the members of the Oklahoma Automobile Dealers Self-Insurance Association.

**2. Proposed Commission Approval of Group Self-Insurance Application for New Membership:**

Commission Rule 810:25-11-3 states that a new membership to a self-insurance group may not become effective without Commission approval. All applications for membership are filed with the Commission. The application includes evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by Commission Rule 810:25-11-15, with signed approval of the applicant by the association, and is accompanied by a current balance sheet and income statement and estimated standard and discounted premium the applicant will pay during the period between the application effective date and the association's renewal.

The Commission will consider approving the application of **#886 Cooper Lincoln of Edmond, LLC** for new membership to the **Oklahoma Automobile Dealers Self-Insured Association (#75058)**.

The Commission will consider approving the application of **#887 Blue Badger investments of Perry, LLC dba Seth Wadley Ford Perry** for new membership to the **Oklahoma Automobile Dealers Self-Insured Association (#75058)**.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or approving or not approving the applications for new membership.

**3. Discussion and Consideration of Releasing the Security Deposit of Beaver County Memorial Hospital Own Risk Permit#13070**

Pursuant to Commission Rule 810:25-9-19, a security deposit posted with the Commission as required by Commission Rule 810:25-9-4 must remain in place, at its existing amount, for two years after an individual own risk employer voluntarily leaves self-insurance. A security deposit may be reduced or released at the Commission's discretion after the two-year waiting period upon application by the employer and submission of current financial statements and workers' compensation loss runs. The Commission will consider releasing the security deposit of Beaver County Memorial Hospital.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or releasing or not releasing the security deposit of Beaver County Memorial Hospital a former own risk employer.

**4. Proposed Approval of Independent Medical Examiners and a Medical Case Manager for the Commission**

Title 85A O.S., § 112 requires the Workers' Compensation Commission to create, maintain and review a list of licensed physicians who shall serve as independent medical examiners (IME). The Commission shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured workers. The period of qualification for physicians shall be two (2) years. Likewise for case managers, 85A O.S., § 113 requires a list of qualified case managers be developed, maintained and periodically reviewed by the Commission. The period of qualification for case managers is two (2) years.

The Commission will consider approving the list of physicians and case manager presented at the meeting that have been vetted by the Medical Director and recommended to have their applications approved.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or approving some, all or none of the physicians and/or case manager for the Commission.

**5. Discussion of Mileage Reimbursement Rates**

The Commission will discuss and consider an appropriate mileage reimbursement rate for its employees and non-state employees who perform substantial and necessary services for the State. Under 74 O.S. § 500.4(B)-(C), reimbursements for the "use of privately owned motor vehicles may be authorized by the agency head," and "shall not exceed the amount prescribed by the Internal Revenue Code of 1986 . . . ."

The Commissioners will consider whether the Commission—as a nonappropriated state agency—can set its own reimbursement rate or must use the reimbursement rate established by OMES under 74 O.S. § 85.45I (which states that OMES "shall publish a schedule of reimbursement rates for state employee travel.").

**Possible Action:**

Possible action may include but is not limited to: taking no action, approving an appropriate mileage reimbursement rate; deferring to OMES's set mileage reimbursement rate; continuing the matter.

**6. Consent Agenda for Travel Vouchers Currently Outstanding**

Title 85A O.S. § 23 states that any Commissioner or employee of the Commission shall be entitled to receive his or her necessary traveling expenses as provided in the State Travel Reimbursement Act. The expenses shall be certified by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission. In accordance with this section, the Commission will consider a vote to approve the currently outstanding vouchers. All vouchers listed within this Consent Agenda have been made available to each Commissioner prior to today's meeting, are considered routine, and will be enacted by one motion of the Commission. If separate discussion is desired, that item may be removed from the Consent Agenda and voted upon separately.

**Possible Action:**

Possible action may include, but is not limited to: taking no action; approving some, all or none of the vouchers listed in this Consent Agenda; continuing the matter.

**7. Discussion and Consideration of the Effect of the Oklahoma Board on Judicial Compensation's Action Setting Judicial Salaries on the Compensation of the Workers' Compensation Commissioners.**

Pursuant to 85A O.S. § 19(B), "each Commissioner shall receive a salary equal to that paid to a district judge of this state; provided however, the commissioners shall not receive any increase in salary as a result of the provisions of Section 1 of [HJR 1096]." Passed in 2014, HJR 1096 set the salaries for district court judges, associate district court judges, and special district court judges at a specific amount beginning July 1, 2014.

Since that time, the Board on Judicial Compensation has recommended, and the Legislature has allowed, further pay increases for district judges. Commissioners' salaries have not been changed to reflect the changes made to district court judges' pay.

The Commission will consider both the Board's and Legislature's actions in the intervening years to determine whether Commissioners' salaries should be raised to match that of district court judges as stated in Section 19(B).

**Possible Action:**

Possible action may include, but is not limited to: taking no action; recognizing that the Board's action does not include the WCC Commissioners and that the Commission is not bound by law to accept the pay raise; recognizing that the Board's action does include the WCC Commissioners and that the Commission is bound by law to accept the pay raise; requesting the Attorney General issue an opinion under 74 O.S. § 18b(A)(5) as to whether the Board's action includes the Commissioners; or otherwise continuing the matter.

**8. Possible Executive Session Pursuant to Title 25 O.S., § 307(B)(1) for the purpose of discussing personnel issues:**

**A. Motion and Vote to enter Executive Session** under Title 25 O.S. § 307(B)(1). The Commission will discuss the employment and/or promotion of Andrea Delling to Chief Financial Officer; the employment of Candidate A to Division Director of Permitting Division; and reassignment of Stormy Moore from Division Director to Financial Analyst.

**B. Motion and Vote to Reconvene in Open Session**

**Possible Action:**

Possible action may include, but is not limited to: taking no action; continuing the matter; approving, approving as amended, or not approving any motions coming out of executive session.

**9. Discussion of Issues to be Referred to the Physicians Advisory Committee**

Under 85A O.S. § 17(B)(7), the Physicians Advisory Committee (“Committee”) shall provide general recommendations to the Commission on the issues of injury causation and apportionment. State Question 788, which legalizes use of marijuana in the State for persons who have a state-issued marijuana license, was passed by the voters on June 26, 2018. The Commission will discuss possibly referring requests for information to the Committee for its recommendation on workers’ compensation issues surrounding implementation of SQ 788.

**Possible Action:**

Possible action may include, but is not limited to: taking no action; not referring the requests for information to the Physicians Advisory Committee; referring the requests for information to the Committee as written; referring the requests for information to the Committee as amended during the meeting; or continuing the matter.

**10. Request to the Physicians Advisory Committee for Assistance in Accessing Medical Information from Scientific Literature**

Under 85A O.S. § 17(B)(9), the Physicians Advisory Committee shall “assist the Commission in accessing medical information from scientific literature.” The Commission will discuss requesting the Committee’s assistance in accessing scientific literature related to the use and ingestion of medical marijuana.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, not requesting assistance to access scientific literature related to medical marijuana, requesting assistance to access such scientific literature, or continuing the matter.

**11. Request to the Physicians Advisory Committee regarding utilization review**

Under 85A O.S. § 17(B)(1) the PAC shall “Assist and advise the Workers’ Compensation Commission regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary medical treatment, . . . .” The Commission will discuss and consider requesting the Committee to review whether medical marijuana is a reasonable and necessary medical treatment for any work-related injuries.

**Possible Action**

Possible action may include, but is not limited to: taking no action; requesting the Committee to review whether medical marijuana is a reasonable and necessary medical treatment; not requesting the Committee to undertake such review; or continuing the matter.

**12. Discussion and Consideration of Current Commission Policies**

The Commission will discuss and consider the following current Commission policie(s) and determine if any updates are necessary: the Personnel File Policy.

**Possible Action:**

Possible action may include, but is not limited to: taking no action; continuing the matter; approving; not approving; or approving a modified version of the one or more policies listed in the above item.

**13. Announcements**

The Commission’s next regularly scheduled business meeting is on September 20, 2018. The Commission’s next regularly scheduled appeals meeting is on September 21, 2018.

**ADJOURNMENT.....Chairman Mark Liotta**