

# **Louisiana Property and Casualty Insurance Commission**

## **Minutes of the Meeting of the Commission**

**Wednesday, February 1, 2017 @ 10:00 A.M.**

**Department of Insurance – Plaza Hearing Room**

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Present were the following:

Members: Commissioner Donelon, Lou Fey (Chairman), Jeff Albright (Vice Chairman), Rep. Huval, Rep. Talbot, Ray Aleman, Shawn Collins, Marc Carter, Jamie Bourg (for Paul Buffone), Ricky Edwards (for Sheriff Champagne); Will Grubbs Jr., Michael Guy, Chris Haik, Director Sheral Keller, Ron Henderson, Leslie Sallean, Mike Baron (for Dr. Katara Williams), Ann Metrailler.

Commission Staff: Tom Travis and Ron Williams.

LDI Staff: Charles Hansberry, Patrick Bell, Danielle Blanchard, Rich Piazza, Gayle Raby, Latoya Middleton.

Others: David Marcase (House Insurance Staff), Chuck Davoli, Jennifer Marusak, Kevin Cunningham, Gary Patureau, Andy Condrey, Wanda Freedman, and Phyllis Perron.

The Chairman called the meeting to order at 10:00 a.m.

The Director called the roll and reported the presence of a quorum.

The Chairman welcomed everyone in attendance.

Presentation and Discussion on Opioids:

Sheral Keller, Director, Office of Workers' Compensation Administration (OWCA), Louisiana Workforce Commission

Director Kellar discussed alternatives to a closed pharmacy formulary for addressing the large number of prescriptions of opioids in workers' compensation. She presented information from the National Council of Compensation Insurers (NCCI) on opioid spending in Louisiana and nationwide. She also presented her perspective as the director of the OWCA and ensuring that any pharmacy program works with the medical treatment guidelines adopted in Louisiana.

## Discussion and Vote on Recommendations for 2017

1. Maintain or strengthen the Uniform Construction Code.

Mr. Fey and Rep. Huval each spoke briefly in support of building codes and the benefits derived from them in windstorms.

Mr. Huval moved adoption of the recommendation and Mr. Haik seconded. The motion was adopted without objection or abstention.

2. Distracted driving—ban the manual use of handheld electronic devices.

Mr. Travis directed the attention of the members to California's recently enacted AB 1785 that prohibits a person from driving a motor vehicle while holding and operating a handheld wireless telephone or electronic wireless communication device. Director Kellar asked about exceptions to which Mr. Travis replied that the exceptions were limited to certain public safety personnel. Mr. Baron of the La. Highway Safety Commission (LHSC) pointed out the difficulty of enforcing Louisiana's current laws addressing the use of handheld devices.

Mr. Grubbs moved adoption of the recommendation and Mr. Baron seconded the motion. There being no objections or abstentions, the motion was adopted.

3. Reduce civil jury threshold.
4. Repeal or amend direct action statute.

The Chair sought a motion in support of and to combine the vote on these issues. Rep. Talbot so moved and Mr. Henderson seconded. Dir. Kellar voted NO and Ms. Bourg abstained. The recommendations were adopted.

5. Opioid abuse—enact workers' compensation closed pharmacy formulary.

Jennifer Marusak of the Louisiana State Medical Society addressed the commission in opposition. She stated that the experience of Texas with a closed formulary has not been good. Several of the reforms in Louisiana workers' compensation were only recently fully implemented and should be given a chance to work.

Chuck Davoli, Vice Chairman of and labor representative on the Workers' Compensation Advisory Council, addressed the commission in opposition. He stated that a closed formulary denies medications to injured workers and creates a dual standard of care—one for injured workers' and another for everyone else. He stated that Texas is not the success story that some claim, and that many are not able to get the care they need under the current system. He

stated that in group health and Medicare, most people are subject to some type of formulary, so his objection is not to formularies in general but to the closed formulary in Texas.

Andy Condrey, claims operations manager of Gray Insurance, a Louisiana domestic insurer. He spoke on the experience of Gray Insurance, which has a substantial book of business in Texas. He stated that the implementation of the Texas closed formulary has worked quite well and that Gray Insurance has paid for alternative, non-opioid pain treatments. The doctors in Texas seldom prescribe the N-drugs and are prescribing Y-drugs or other therapies. He related his own experience with a brief use of opioids for four days and the difficulty he experienced in withdrawal.

Rep. Talbot moved the adoption of the recommendation and Rep. Huval seconded. The motion was adopted. Director Kellar voted NO and Ms. Bourg abstained.

#### Discussion and Vote on Recommendations for 2017

Director Kellar moved the adoption of the listed study topics:

1. Sharing economy
2. Cybersecurity and insurance
3. Driverless vehicles
4. Private flood insurance and NFIP reauthorization
5. Federal involvement in and effects on insurance and its regulation
6. Third party litigation funding
7. Bad faith damages
8. Collateral source rule

There being no opposition, the study topics were adopted.

Mr. Grubbs raised the issue of punitive damages for distracted driving and moved to add that to the list as a ninth topic. Director Kellar seconded the motion and there were no objections.

#### Annual Report, Future Meeting Topics, and Other Matters

Mr. Travis briefly discussed the content of the 2016-17 Annual Report and solicited comments from the members.

Mr. Travis stated that he is working on setting up a future meeting on driverless cars that may require a special meeting date to accommodate the presenters. He is also going to work on a meeting on flood insurance and an update on federal issues. He asked if the members were satisfied with the current regular meeting times.

Commissioner Donelon addressed the members on the subject of flood insurance, particularly the reauthorization of the NFIP.

There being no objection, the Chairman adjourned the meeting at 11:50 a.m.