

# COMPNEWS

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## SC tackles narcotics use

The S.C. Workers' Compensation Commission has appointed an ad hoc committee to study narcotics use prescribed for injured workers and determine what steps the commission should take to manage the problem.

The committee, which will hold its first meeting on July 10, is headed by Greenville attorney Ric Davis and includes several board members of the South Carolina Self-Insurers Association. Tosca Walls, president of the self-insurers' association, is representing the group, while board members Heather Ricard, John DeLoache, and Brian Teusink are representing municipalities, counties, and hospitals, respectively.

There is widespread agreement opioids are mismanaged, and prescribed more often. A recent study by NCCI found the percentage of medical claims receiving narcotics within one year after injury increased from 8% in 2001 to 13% in 2008. The Workers' Compensation Research Institute is among those sounding the alarm over poor follow-up by prescribing physicians. WCRI notes although treatment guidelines recommend patients who receive ongoing narcotics prescriptions be actively monitored and given psychological evaluations, that is often not the case.

"Few longer-term users of narcotics received the recommended services for monitoring," WCRI concluded, based on its study of 17 states.

In March this year, the American College of Occupational and Environmental Medicine (ACOEM) in partnership with the Reed Group, released its Opioid Treatment Guidelines. Based on a review of more than 950 clinical trials and published works, these guidelines are centered around the appropriate use of opioid therapy with an emphasis on morphine equivalent dosage (MED) limits in both acute and chronic pain conditions.

Below are some key points from the ACOEM:

- 80-94% of opioid trials have industry conflicts (funding and/or conflicts of interest in the trials).
- People in safety sensitive jobs should not take opioids. A systemic review found all 12 studies of motor vehicle crashes supported an elevated risk of crashes among drivers taking opioids. Other guidelines currently on the market don't include this warning, and/or do not back it up with scientific review.
- The guidelines suggest a 50mg morphine equivalent dose is the appropriate limit. Prior guidance used elsewhere and based mostly on expert opinion has been 100-120mg, possibly allowing fatalities to occur.
- No comparative trials show that an opioid is superior to another medication (out of 28 trials).
- Most patients in opioid trials do not tolerate opioids and drop out in various phases of the trials.
- No evidence shows the long-term efficacy of opioids - the longest placebo-controlled trial lasted only 4 months

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### Senate confirms commissioners

The state Senate recently confirmed Commissioner Scott Beck for a new six-year term, and as chairman until June 30, 2016. The senate also confirmed new terms for commissioners Avery Wilkerson, Jr. and Aisha Taylor.

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## Judicial Notes by Mike Chase

### Increased exposure from back Injuries

A recent South Carolina Court of Appeals case could result in increased exposure to SC employers for spinal injuries with radiculopathy.

In *Beckman v. Sysco Columbia, LLC*, Op. No. 5205, Ct. App. March 19, 2014, the Court of Appeals held Claimant was entitled to consideration of a wage loss award pursuant to Section 42-9-20 rather than only a scheduled member award pursuant to Section 42-9-30. Claimant received a 10% impairment rating to the back and a 5% impairment rating to the SI joint.

The Commission limited the claimant's award to 25% permanent partial disability of the back under 42-9-30. Claimant had a normal EMG but also had continued subjective complaints of pain in the buttock, hip, thigh and foot. On appeal, the South Carolina Court of Appeals reversed, and found Claimant sustained injuries to more than one body part and was thus entitled to consideration of a wage loss award under 42-9-20.

As the case stands, Claimants could be entitled to wage loss awards for multiple body parts as a result of injuries to the back due to symptoms in the arms or legs based only on subjective complaints. In the past, radiculopathy had been considered a symptom of the back injury and included in the impairment rating to the back. This limited the claimant to one body part and recovery under the schedule rather than a wage loss award. However, with this new opinion, Claimants may have an easier time proving two body parts stemming from the original back injury, which in turn could lead to a much higher wage loss award.

Therefore, employers should be prepared for higher awards for back injuries where there is a radiculopathy component, which could include the legs or hips for a low back injury, or the arms for a neck injury.

To combat this new opinion, Defendants may want to consider deposing the treating physician when separate impairment ratings are given, since radiculopathy is to be considered as part of a back rating according to the AMA Guidelines. In the meantime, employers should consider back injuries with radiculopathy as potential multiple-body part injuries with potential wage loss exposure.



MIKE CHASE  
Legal Advisor, SCSIA

*This case law summary is not intended to be legal advice. Contact your SC WC defense attorney if you need an opinion on how this case may impact your situation. For comments, you can reach Mike at [mchase@turnerpadget.com](mailto:mchase@turnerpadget.com) or 227-4241.*



*President's note*

TOSCA WALLS  
President

## Topics, speakers for 2015

Earlier last month we concluded one of our most popular annual conferences ever and we will soon begin planning the 2015 forum. I am inviting you to send us ideas for topics and speakers next year. In particular, we are looking for suggestions for the opening day's keynote address, which typically lasts 90 minutes or so but could be shorter.

I would also like to know your thoughts about the two panel discussions we have featured on the program for the past few years: the employers' panel discussion on the first day, and the discussion with the commissioners on the concluding day. Is there a better way to structure these discussions? Should we expand the employers' panel to include a broader cross-section of our membership?

Next year we will again host our group dinner at Pawleys Plantation. Several of you noted our group was too spread out in the dining area this year and suggested we should close off some areas to give a more compact feel to the gathering. I think that is an excellent idea and we will make the change. The folks at Pawleys have also suggested some improvements. We will have a terrific event next year!

Until next time,

*Tosca*

## New opioid called dangerous

Attorneys general from 28 states, along with several advocacy groups and some U.S. senators, have asked the FDA to rescind its recent approval of Zohydro ER, a pure form of the painkiller hydrocodone.

The drug is approved for managing pain severe enough to require daily, around-the-clock, long-term treatment and for which alternative treatment options are inadequate. Critics say the drug will exacerbate the nation's prescription drug abuse epidemic.

Massachusetts Governor Deval Patrick banned Zohydro earlier this year after declaring a state of emergency to tackle the state's growing epidemic of opiate addiction. A federal judge recently struck down the ban, saying Massachusetts has no authority to overrule the FDA's decision to approve the drug.

The FDA acknowledges the potential for abuse and addiction and is requiring the drug manufacturer to study and monitor reports of addiction, overdose, and deaths associated with long-term use beyond 12 weeks. The agency notes the efficacy of Zohydro is based on a clinical study that enrolled over 500 patients with chronic low back pain and found the drug significantly reduced chronic pain compared to placebo.

The FDA approved the drug against the recommendations of its advisory board, which cited the potential for addiction. Continue reading below...Even though it is meant to release hydrocodone slowly over 12 hours, the pill could be tampered with to release a large dose all at once.

In its letter to FDA Commissioner Dr. Margaret Hamburg, the coalition called FED UP! noted the highest available dosage of Zohydro will contain 5-10 times more hydrocodone than Vicodin or Lortab. "Someone unaccustomed to taking opioids could suffer a fatal overdose from just two capsules. A single capsule could be fatal if swallowed by a child," the letter said.

According to *WebMD Health News*, Zohydro's selling point is it contains only hydrocodone, as opposed to hydrocodone plus acetaminophen (marketed as Lortab and Vicodin) or hydrocodone plus ibuprofen (Vicoprofen). The drug manufacturer says acetaminophen overdose is a leading cause of sudden liver failure in the U.S. Nearly two-thirds of those overdoses are attributed to medications that include hydrocodone and acetaminophen.

The CDC reports overdose deaths involving opioid pain relievers now exceed deaths involving heroin and cocaine combined. The number of deaths has increased in tandem with the increase in prescriptions for opioids. "These increases occurred despite

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# Calendar

- May 28, 2014** NCCI's State Advisory Forum. Hilton Columbia Center, Columbia.
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- Oct 12 - 15, 2014** 38th Annual Educational Conference on Workers' Compensation. Westin Resort & Spa, Hilton Head.
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- April 15-17, 2015** Members-Only Forum. SC Self-Insurers Association. Litchfield Beach & Golf Resort.

## COMP NEWS

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### EDITOR AND WRITER

Moby Salahuddin  
215 Holly Ridge Lane  
West Columbia, SC 29169  
E-mail: [msalahuddin@sc.rr.com](mailto:msalahuddin@sc.rr.com)  
Telephone: 803-794-2080

## Senate confirms commissioners

On April 16, the Senate confirmed the reappointment of Commissioner Scott Beck as Commissioner for a term beginning June 30, 2014 through June 30, 2020 and confirmed his appointment as Chairman for a term beginning on June 30, 2014 through June 30, 2016.

The Senate also confirmed the reappointment of Commissioner Avery Wilkerson, Jr. and Commissioner Aisha Taylor for a term beginning on June 30, 2014 through June 30, 2020.

## New opioid called dangerous *(continued from page 3)*

numerous warnings and recommendations over the past decade for voluntary education of providers about more cautious use," the agency notes.

It adds nearly three out of four prescription drug overdoses are caused by opioid pain relievers. The unprecedented rise in overdose deaths in the US parallels a 300% increase since 1999 in the sale of these strong painkillers.

The misuse and abuse of prescription painkillers were responsible for more than 475,000 emergency department visits in 2009, a number that nearly doubled in just five years. The substance abuse treatment admission rate in 2009 was almost six times the rate in 1999, according to the CDC.