State of South Carolina
Executive Department

FILED

SEP 20 2007

Mark Hammond
SECRETARY OF STATE 8

Office of the Governor

EXECUTIVE ORDER NO. 2007-16

WHEREAS, Article IV, Section 15 of the South Carolina Constitution states, in part, that "the Governor shall take care that the laws be faithfully executed"; and

WHEREAS, Article I, Section 3 of the South Carolina Constitution states, in part, that "the privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law"; and

WHEREAS, the South Carolina Supreme Court, in *Schwartz v. Mt. Vernon-Woodberry Mills, Inc.*, 206 S.C. 227, 237, 33 S.E.2d 517, 521 (1945), has stated that the South Carolina Workers' Compensation Commission (the "Commission") "is an administrative body belonging to the executive department of state government" (*see also* the opinion of the South Carolina Attorney General dated June 24, 2003: 2003 WL 21790884); and

WHEREAS, pursuant to Article IV, Section 15 and Article I, Section 3 of the South Carolina Constitution, the Governor has the constitutional obligation to ensure that the Commission and its individual commissioners, in carrying out their executive branch administrative functions, afford parties in contested cases that come before them due process of law; and

WHEREAS, the Supreme Court of South Carolina, in *Spruill v. Richland County Sch. Dist. 2*, 363 S.C. 61, 609 S.E.2d 524 (2005), has stated that deference is traditionally provided to an executive agency in its determination of how the agency's functions are carried out; and

WHEREAS, due process of law requires that the Commission and its individual commissioners, in determining contested cases of how an injury to a worker should be compensated, must make findings of fact and conclusions of law that guarantee fundamental fairness and justice, which includes, without limitation, basing their findings and conclusions on objective medical standards; and

WHEREAS, the South Carolina Supreme Court, in *Therrell v. Jerry's Inc.*, 370 S.C. 22, 633 S.E.2d 893 (2006), stated that the Commission and its individual commissioners should use "either the American Medical Association's 'Guides to the Evaluation of Permanent Impairment' [AMA Guides] or 'any other accepted medical treatise or authority'" in connection with making injury compensation awards; and

WHEREAS, 32 states in the United States require the use of objective medical standards in their workers' compensation systems and workers' compensation awards in South Carolina are currently 181% of the medical guidelines that are used by these states, and the workers' compensation premiums paid by individuals and businesses in South Carolina have increased by 66% since 2000, the highest rate in the Southeast and outpacing all other states but one; and

WHEREAS, pursuant to S.C. Code Ann. § 1-3-10 (2006), public officers have a duty to "immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities," a directive that is consistent with the constitutional authority found in Article IV, Section 17 of the South Carolina Constitution, which provides that "[a]ll state officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices..."

NOW, THEREFORE, I do hereby direct the Commission and each of its individual commissioners in all contested cases to strictly apply either AMA Guides or any other accepted medical treatise or authority in making their injury compensation determinations and for the Commission and each of its individual commissioners, on a quarterly basis, beginning on January 1, 2008, to provide written confirmation to the Office of the Governor that they have used, for the immediately preceding quarter, such objective standards in making such compensation awards.

This Order shall take effect immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA ON SEPTEMBER 20, 2007.

MARK SANFORD
Governor

ATTEST:

MARK HAMMOND
Secretary Of State