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Testimony on *Federated Ins. Co. v. Summit Pharmacy*

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House Labor and Industry Committee

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Chairman Dawkins, Chairman Mackenzie, and Honorable Members of the House Labor Committee:

It is a great honor to be here today to discuss the issue of pharmaceutical fees in workers' compensation matters. My name is Daniel Siegel, and I am here to testify on behalf of the Pennsylvania Association for Justice, an organization of 2,000+ trial lawyers who represent injured workers across the Commonwealth. I have been actively engaged in the representation of medical providers and litigation concerning fee review hearings under the Workers' Compensation Act for the past decade. I am proud to note that through our efforts, we have made the fee review process more equitable for all stakeholders, including claimants, insurance companies, medical providers, and particularly pharmacies.

One significant area of contention has been the fees charged for pharmaceutical products. For many years, these products have been regulated under Act 57, enacted over 25 years ago. This act stipulates that pharmacies should be reimbursed at 110% of the Average Wholesale Price (AWP) of the product, a method that has functioned smoothly for many years. However, recently, some insurers have raised concerns about the equity of this process, notably since certain pharmaceutical costs have risen through no fault of the pharmacies.

It is also important to note that pharmacies serving injured workers are often small businesses that provide specialized services, such as mail-order delivery and proximity to healthcare providers. These pharmacies are often not large, national chains like CVS, Walgreens, and Rite Aid but rather smaller entities that cater specifically to the unique needs of injured workers by filling prescriptions in a timely manner and, most importantly, typically dealing with payment and insurance coverage after the fact.

The AWP method has allowed for a consistent and calculable price for pharmaceutical reimbursements. It is important to note that the Workers' Compensation Act prohibits any alternative method of calculation or payment, which presents a challenge when the AWP is questioned.

Suggestions have been made by some in the insurance industry to adopt reimbursement methods that would significantly lower the reimbursement rates, making it impractical for pharmacies to provide medications to injured workers, especially because many pharmacies bill after dispensing the drugs. This issue has been further complicated by the recent Commonwealth Court decision in the *Federated Insurance* case, which is currently on appeal to the Pennsylvania Supreme Court. This decision has caused a backlog of thousands of cases in the fee review process. It has led smaller pharmacies to refuse to fill prescriptions for workers' compensation cases because of uncertainty about reimbursement. I represent Summit Pharmacy in that case.

The case involves 69 prescriptions billed. The insurance company proposed paying the pharmacy a total of \$2,329.76, the NADAC value, plus 10 percent, i.e., \$232.98 as compensation for the cost of processing the prescription, dispensing the prescription, submitting bills for the prescription, for other overhead expenses, and profit. In other words, Petitioner proposed paying an average of \$3.38 per prescription above what Petitioner believes the medication cost the pharmacy. It is neither feasible nor economically possible for any business to stay in business at such reimbursement rates. In addition, despite the Commonwealth Court and the Hearing Officer's rejection of NADAC plus 10 percent as a reimbursement rate, counsel for the insurer is now advising clients to pay only NADAC, which has never been an accepted standard anywhere in the country.

AWP is used in other statutes, such as those for PACE and childhood vaccines, albeit at different variables from AWP. But if we are to have a meaningful discussion on pharmaceutical pricing, we must prioritize ensuring that injured workers receive their necessary medications. Following that, we must ensure there are mechanisms in place for pharmacies to be reimbursed at fair rates.

Additionally, it is essential to recognize that pharmaceutical reimbursement is not just about the cost; it is about ensuring that injured workers have access to necessary medications without undue hardship. This means that reimbursement rates must be fair and sufficient to cover the costs incurred by smaller pharmacies that provide essential services to injured workers.

Since the recent Commonwealth Court decision, we have seen thousands of cases stalled in the fee review process. Smaller pharmacies are increasingly refusing to fill prescriptions for workers' compensation cases because of the uncertainty surrounding reimbursement. If we are to have a meaningful dialogue on the pricing of medications under the Workers' Compensation Act, we must recognize that the primary goal is to ensure that injured workers receive their medications. After that, we must ensure that there are avenues for pharmacies to provide the medicines at fees that make it economically feasible for them to do so. The Bureau is free to use a new source of pricing. Under 34 Pa. Code § 127.131(b) (“Payments for prescription drugs and pharmaceuticals – generally”), the Bureau is required to “provide information by an annual notice in the Pennsylvania Bulletin as to which of the Nationally recognized schedules it is using to determine the AWP of prescription drugs.” It has not been done since 2024.

I am hopeful that this hearing will help demonstrate to the Department of Labor and Industry that it can and should begin the process of restoring a viable pharmaceutical

reimbursement system despite the pending legal challenge. Thank you for your time and consideration.