

**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**  
**AS CUSTODIAN OF THE PATIENT'S COMPENSATION FUND**

**IN THE MATTER OF DETERMINING )**  
**PATIENT'S COMPENSATION FUND )**  
**SURCHARGE RATES )**  
\_\_\_\_\_ )

**Docket No. 21-0004-PCF**

**ORDER SCHEDULING HEARING TO DETERMINE**  
**PATIENT'S COMPENSATION FUND SURCHARGE RATES**

The New Mexico Superintendent of Insurance, in his capacity as Custodian of the New Mexico Patient's Compensation Fund ("Custodian"), pursuant to the statutory mandates of NMSA 1978, § 41-5-25(A), (D), and (F), **FINDS AND CONCLUDES:**

1. Pursuant to NMSA 1978, § 41-5-25(D), the Custodian contracted for an actuarial study of the patient's compensation fund ("PCF").
2. Pursuant to NMSA 1978, § 41-5-25(F), surcharges shall be set by October 31 and beginning in 2021, the surcharges shall be set with the intention of bringing the fund to solvency with no projected deficit by December 31, 2026.
3. The Custodian believes that it is in the best interest of the PCF to adopt PCF surcharges based on evidence and comments presented at a public hearing open to all interested persons.
4. The Custodian has jurisdiction over the subject matter and the parties in this proceeding pursuant to NMSA 1978, § 41-5-25, et seq.

**IT IS THEREFORE ORDERED:**

- A.** This Docket is opened for the purpose of considering PCF surcharge rates pursuant to NMSA 1978, § 41-5-25(D) (the "Surcharge Case").
- B.** A virtual public evidentiary hearing shall be held on October 7, 2021 at 1:00 p.m.

**Join via Video: <https://us02web.zoom.us/j/2916274744>**

**Join via telephone: 1 312 626 6799**

**Meeting ID: 291 627 4744**

C. The hearing will be governed by the procedures specified in Rule 13.21.4 NMAC – Administrative Hearings. Only parties shall be allowed to offer evidence or argument at the hearing. Any person interested in participating as a party must request intervenor party status pursuant to Rule 13.21.4.9(D) NMAC no later than 4:30 p.m. on September 21, 2021.

D. The Custodian designates the PCF Advisory Board as the hearing examiner to preside over this Surcharge Case.

E. The designated hearing examiner shall have the following duties and powers:

**1. Powers.** A hearing examiner shall possess all powers necessary to conduct full, fair, and impartial public hearings and to take appropriate action to maintain order and avoid unnecessary delay in the disposition of proceedings, including the following powers:

- (1) to administer oaths and affirmations;
- (2) to order subpoenas issued and to provide for other methods of discovery;
- (3) to issue orders to show cause regarding proceedings before the hearing examiner;
- (4) to receive evidence and rule upon all objections and motions which do not involve final dispositions of proceedings, and to recommend to the Custodian rulings on objections and motions which do involve final dispositions of proceedings;
- (5) to order parties and staff to hold appropriate conferences before or during the public hearing, provided that the hearing officer shall not take part in any settlement conference unless his or her participation is agreed to by all parties and by staff;
- (6) to regulate the course of public hearings and preliminary hearings, including the scheduling, recessing, reconvening, and adjournment thereof, unless otherwise provided by the Custodian.

**2. Duties.** The hearing examiner shall have the following duties:

- (1) to conduct full, fair, and impartial public hearings and to take appropriate action to maintain order and avoid unnecessary delay in the

disposition of proceedings;

- (2) to follow and apply the policies of the Custodian as enunciated in previous orders and rules, and to comply with the Administrative Procedures Act, the PCF Rules and any other applicable law;
- (3) to recuse himself or herself at any point where his or her impartiality might be or is reasonably impaired;
- (4) to render a recommended decision subject to the Custodian's review by October 20, 2021;
- (5) to file the recommended decision in the Surcharge Case and provide copies to the Custodian, all parties including staff and any advisory staff so designated by the Custodian;
- (6) to strictly refrain from, in any proceeding to which he or she has been assigned, consulting with any party on any substantive issue unless notice is given and an opportunity afforded all parties and staff to participate and respond.
- (7) to take such other action as may be necessary and appropriate to the discharge of his or her duties, as directed by the Custodian, and consistent with the statutory authority or other authorities under which the Custodian functions and with the rules and policies of the Custodian.

**F.** All documents shall be filed by mail or electronic mail by 4:30 p.m. on the filing due date to:

**Patient's Compensation Fund**  
**Attention: Freya Tschantz, PCF Docketing Manager**  
**PO Box 1689, Santa Fe, New Mexico 87504-1689**  
[Freya.tschantz2@state.nm.us](mailto:Freya.tschantz2@state.nm.us)

Electronic signatures must conform to federal and state court requirements. All filed documents shall also be served promptly via email to all parties and the hearing examiner.

**G.** All submissions are deemed filed as of the date and time stamped on the original submission by the PCF Docketing Manager.

**H.** Any individual with a disability who is in need of a reader, amplifier qualified sign language interpreter, or any other form of auxiliary aid or service to participate in the hearing, should contact Melissa Gutierrez at melissa.gutierrez@state.nm.us no later than September 17, 2021.

**I.** This Order is effective immediately.

**J.** OSI's Office of Legal Counsel shall send this Order to the persons subscribed to the Patient's Compensation Fund Newsletter.

**K.** Copies of this Order shall be served via email to all persons listed on the attached Certificate of Service.

**DONE AND ORDERED this 24<sup>th</sup> day of August, 2021.**



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**HON. RUSSELL TOAL**  
**PCF Custodian**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Order* was sent by email to the following individuals, as indicated below, on this 24<sup>th</sup> day of August, 2021.

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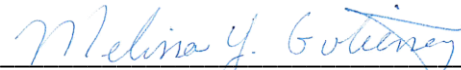
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