

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

February 14, 2018
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Todd Johnson; John Pulgini; Mickey Long; Stephen Joyce; Teri McHugh; Stephen Falvey; Michael Kelley; James Steenbruggen; and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Judge Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Robert Cronin, Director of Investigations; Paul Przystarz, Regional Manager; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRI); Eveline Radeva; Workers' Compensation Research Institute; and Kathleen Fisher; Workers' Compensation Research Institute.

Advisory Council Staff: Maureen O'Connell, Executive Director; Rose Osterofsky, Project Coordinator II

Absent: John Regan; Frank Ruel; Aaron D'Elia; John Murphy; Executive Office of Housing and Economic Development; and Executive Office of Labor and Workforce Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Senior Judge Omar Hernandez
- Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner

Action Items

- November 8, 2017
- December 13, 2017
- January 10, 2018

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Good morning. We don't yet have a quorum, but it's a little after 9:00 am so we are going to get started. We are one vote shy of a quorum. Before we get started we have a couple of guests from the Workers' Compensation Research Institute (WCRI), welcome.

Let me turn to Senior Judge Omar Hernandez to get started.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez wished everyone a Happy Valentine's Day. Our conference queues are in pretty good shape. The February 2018 conference queue is 694 cases, which is down when compared to the January figure of 929. Currently, the average waiting period for a conference is between 12 and 16 weeks. Queues between conciliation and conference are three months, except for Worcester which is at four months. The February 2018 hearing queue is 365, which is down when compared to the January figure of 443.

There are currently 27 cases in the Opioid Pathway Treatment Program, at different stages of treatment. The care coordinator list is online.

With respect to the hearing decisions, we are trending downward with only four cases overdue. There is one case in the 6-9 month range that should come off this list by the next Advisory Council meeting, a positive trend. Chairman Johnson said great job.

On Thursday March 29, 2018, the Worcester County Bar Association Workers' Compensation Committee is holding a conference at 2:00 pm (*Opioids: The Legal Issues and Medical Alternatives*) at the Worcester Registry of Deeds with respect to opioids and issues surrounding this topic. Senior Judge Hernandez will be speaking along with District Attorney Joseph Early, State Representative Hannah Kane, Michael Pringle of Windham Group and Dr. Roberto Feliz of Hyde Park Pain Management. Everyone is invited to attend.

With regard to the impartial roster, we are in the process of adding a few more physicians. At present, we are in a good spot with the roster.

Finally, Judge Solomon is going to officially retire on Friday March 2, 2018. Later on in the spring there will be an official gathering. Judge Solomon has been here at the DIA since 1988 and has been in state government since 1981.

A nominating panel will convene for two judicial reappointments - Judge Bean and Senior Judge Hernandez. The interviews will take place on March 28 and March 29, 2018. Hopefully it will be timed for the Advisory Council's April 11, 2018 meeting.

Vice-Chair Pulgini asked Senior Judge Hernandez if there would be a nominating panel for Judge Solomon. Senior Judge Hernandez said that he is confirming with the Governor's office on Judge Solomon's position.

Without further questions, Chairman Johnson directed the floor to Mr. Taupier.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for January 2018.

With respect to the hearing queue trending downward, Council Member Kelley asked about the cause of the downward trend. Senior Judge Hernandez said that there was a full roster of judges.

The review board inventory is 66 which is slightly down when compared to January's figure of 72. The impartial medical examinations were 2,314; the number of fee waivers granted was 38 and \$1,030,616 was collected in examination fees.

With respect to Stop Work Orders (SWO), 142 were issued in the month of January (4 were defaults) for a total of 1,011 for FY 2018. Fine collection for the month of January was \$48,771 with a FY2018 total of \$518,764. For FY 2017 a total of 1,909 SWOs were issued with total fines collected at \$1,067,449.

Council Member Falvey commented that the number of SWOs have decreased since last year. Director Bob Cronin said that the Office of Investigations is waiting on a few investigators to be hired and that the process is still pending with Human Resources.

Mr. Taupier provided the following statistics on Enforcement & Compliance: for the month of January 2018, 6,540 compliance checks were conducted (3,393 - office compliance checks and 3,147 - field compliance checks), with an estimate of 3,124 workers brought under workers' compensation insurance coverage. During FY 2017, it was estimated that the number of workers was 5,945.

Without additional questions on investigations, Mr. Taupier offered the following statistics on cases filed within DIA: the number of cases filed for January 2018 was 1,026. First Report of Injury (FRI) filings for January were 3,513. Total FRIs filed for FY 2018 is 20,483. FY2017 was 33,854. Total cases filed for FY 2018 is 6,892. This is tracking a bit higher.

Please note: a case is an employee claim, an insurers request for discontinuance, or a third party claim/lien.

Mr. Taupier offered the following statistics: the Workers' Compensation Trust Fund (WCTF) ended the month of January 2018 with 66 uninsured persons reporting injuries. This number is tracking lower than FY2017. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims are 3,479,130. The WCTF made \$8,484,448 in payments against open claims during FY2017.

With respect to the recovery efforts, Mr. Taupier continued with statistics against uninsured employers: for FY 2018 \$651,042 has been recovered by the Civil Litigation Unit and WCTF. General Counsel O'Leary indicated that an additional \$250,000 will be coming in.

Chairman Johnson asked General Counsel O'Leary if that additional recovery was related to one particular case, he responded no and added that it reflects several cases, including Attorney Tim Foley who received a 99% recovery on one case.

Mr. Taupier provided statistics on the Second Injury Fund: \$11,160,812 in payments. The budget for this fund was \$31,000,000. The COLA reimbursements were \$4,275,158. The budget for the COLA was \$15,400,000.

Mr. Taupier continued with a personnel update: 223 employees.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$2,489,125.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY2018 \$50,727,796.

Without additional questions for Mr. Taupier, Chairman Johnson directed the floor to Director Turner.

Chairman Johnson mentioned the last two presentation slides. Mr. Taupier said that they involved the presentation of Stetson Marshall, Director of Internal Audit. Chairman Johnson indicated that this presentation was under the miscellaneous section of the agenda, however asked if Mr. Marshall could present at this time.

Chairman Johnson indicated that Mr. Marshall's presentation was a follow-up to a previous discussion of the Advisory Council's and directed the floor to Mr. Marshall.

Mr. Marshall provided information to the Advisory Council in answer to their question on insurance companies, self-insured companies, and self-insurer groups.

Mr. Marshall provided an explanation to the two presentation slides: Employers are required to pay an annual assessment to the Workers' Compensation Trust Fund. This assessment is paid to workers' compensation insurance companies, whom in turn remit quarterly assessment payments through Form 50 filings. The rate applied to premiums for calculation of assessments are calculated by Deloitte and issued by the DIA in July. Self-insured companies are licensed by the DIA Office of Insurance. Self-insurers remit quarterly payments based on the annual premium filings and issued assessment rates. Self-Insurer Groups (SIGs) are licensed and primarily governed by the Division of Insurance (DOI). Assessments are paid by the SIGs based on rates applied to annual premiums filed. Rates used to determine the assessment amounts for Self-Insurer Companies and SIGs are also calculated by Deloitte and made available by the Office of Insurance in July of the fiscal year.

In answer to the Advisory Council's concern related to SIGs and what is being done to validate the quarterly assessment amounts being paid, Mr. Marshall explained the process flow. The current state: accuracy and timeliness of assessment liabilities paid by insurance companies is validated by the Executive Office of Labor and Workforce Development (EOLWD) and Moody Famiglietti and Andronico (MFA) through agreed upon procedures. Currently there is not a process to validate accuracy and timeliness of assessment liabilities paid by SIGs. The next step: create a working group to establish a timeline, define process for selecting insurance companies to review, and to establish the process for ensuring the assessments paid by the SIGs is accurate. The future state: a process to select insurance companies for review that is more streamlined and defined, and a process that validates the accuracy and timeliness of assessment liabilities paid by SIGs.

Council Member Kelley recommended that the working group be established and start work on this immediately.

Council Member Long asked Director Turner who was in charge of establishing the working group. Director Turner indicated that in the past she worked with the companies and Karen Fabiszewski, Director of the Workers' Compensation Trust Fund. Director Turner said that the process worked well in the past.

Council Member Long asked if it was the DIAs responsibility to audit the SIGs. Chairman Johnson said that it was the Division of Insurance who has statutory authority over SIGs.

Council Member Long asked if 60 days was enough time to get the working group together, Director Turner said that it was possible and that the DIA will do it as soon as we are able to.

Chairman Johnson mentioned that the second part of Council Member Kelley's question pertained to the self-insured companies. Chairman Johnson received clarification that the DIA was looking at all of the entities - Insurance Companies, Self-Insured Companies, and Self-Insured Groups. The Advisory Council wants to look at this at the micro-level. Self-insured entities are licensed and insured through the DIA, Self-Insured Groups are licensed by the Division of Insurance.

Council Member Falvey asked about the relicensing procedure, Mr. Taupier indicated that it was conducted by the Division of Insurance.

Chairman Johnson asked if Director Turner would keep the Advisory Council apprised of new developments on the audit process, Director Turner confirmed that she would continue to update the Advisory Council.

Without additional questions, Chairman Johnson offered the floor to Director Turner.

Director Update

Director Linda Turner welcomed Kathleen Fisher and Evelina Radeva from the Workers' Compensation Research Institute (WCRI). Director Turner thanked WCRI for their research on opioids. Director Turner also welcomed the addition of Rose Osterofsky, Program Coordinator II.

Director Turner mentioned that Massachusetts has one of the lowest medical rates in the country for workers' compensation. Director Turner said that the DIA is in the process of getting a group together to analyze these rates in hopes of increasing the rates in the future (the rates have not increased since 2009). Director Turner mentioned that she has started working with Health and Human Services (HHS) and will keep the Advisory Council updated.

Director Turner mentioned the *CompScope* benchmark study (18 states participated) from WCRI and indicated that Massachusetts is one of the lowest in study states.

Council Member Joyce asked what the effects would be to the injured worker if medical rates increased. Senior Judge Hernandez said that a few doctors do not want to take on injured workers using these rates, so if DIA can get better quality care for the injured worker raising the medical board rates may be necessary.

Vice-Chair Pulgini mentioned that the higher quality insurance companies address what you just mentioned Senior Judge Hernandez. These companies will negotiate the fees.

Council Member Mulholland commented on the issue post-lump sum settlement. The negotiation process is difficult once the injured worker has received a lump sum settlement.

Council Member Long asked who sets the medical board rates. Mr. Taupier responded by saying that the board rates are established by the Executive Office of Health and Human Services (EOHHS) through their regulatory process.

Mr. Taupier said that a working group has already been established and that he and Diane Neelon (Office of Health Policy) will be representing the DIA, Robin Lee of EOHHS, and a public consulting group, contracted by EOHHS will conduct the review of all the rates. During the process the group will be reaching out to the stakeholder community. Draft regulations should be available by July 2018, with the rates being implemented in January 2019. This is the current timeline, but could change.

Council Member Joyce commented on the discussion. The assessments have been lowered, the compensation received by injured workers is good, but the medical board rate topic is concerning and unconscionable that we are in this position.

Mr. Taupier indicated that the working group was exploring escalated clauses in the medical board rates.

Council Member Long commented and echoed Council Member Joyce's position and asked Director Turner if market rates would be discussed.

Vice-Chair Pulgini mentioned the medical provider issue and how this was addressed at previous Advisory Council meetings.

Council Member Kelley mentioned the studies conducted by WCRI with the lowest medical rates; however they also mention the highest satisfaction rate among injured workers and the treatment they are receiving. Massachusetts is considered to be a high benefit state at low cost.

Mr. Taupier indicated that the working group would be looking at all of the medical rates (tens of thousands). The aim is not to raise all of the rates. Some rates within that range may not change because they are currently at market-level rates. They will be looking for deficiency in those rates, Medicare or below-acceptable rates, in the hope of making it a more equitable process.

Council Member Joyce made note that it is obvious that some individuals are being left behind due to the medical board rates.

Chairman Johnson said that it has been a long tradition of this Advisory Council to express a commonality among issues being present at the monthly meetings. That is pretty clear among the conversation today. The takeaway today is power is in the information and consistent updates on the medical board rate activity.

Chairman Johnson mentioned that Dr. John Burress spoke before the Advisory Council recently (one year or so) about this exact topic. Dr. Burress has asked to speak before the Advisory Council on a slightly different matter and we will entertain this by extending an invitation to Dr. Burress. The Advisory Council understands that this is not a quick fix with respect to the medical board rates.

Mr. Taupier indicated that DIA has been in contact with the Human Resources Division (HRD) and they are anxious to cooperate during the process.

Without additional questions, Chairman Johnson offered the floor to Executive Director O'Connell.

Executive Director Update

Executive Director O'Connell provided the Council members a packet. The packet included a Certificate of Receipt of Open Meeting Law material, revised in October 2017. Executive Director O'Connell asked if Advisory Council members would sign the form acknowledging receipt and return before the end of the meeting. A discussion about questions surrounding the open-door policy was discussed.

There has been no update on a hearing for the Audit Noncompliance (ANC). Executive Director O'Connell attended the Division of Insurance (DOI) hearing on January 29, 2018. WCRIB Legal Counsel, Virginia McCarthy provided the Advisory Council with an update on the WCRIB rate filing with DOI. Representatives of the State Rating Bureau and the Office of Attorney General made statements at the DOI hearing. Evidentiary hearings on this matter will be scheduled in March 2018. According to Attorney McCarthy, there's an expectation that there will be a public hearing on the ANC filing, but at this time a hearing has not been scheduled.

With respect to Council Member Long's ANC letter to the Office of Attorney General, the Advisory Council has not addressed the matter. Since we have a quorum today, Executive Director O'Connell asked if the Council wished to take a position of this letter.

Chairman Johnson asked the Advisory Council if they had a chance to review the letter that had been circulated. A motion was made and seconded by the Advisory Council members. Without opposition, the letter would be sent to the Office of Attorney General Maura Healey.

Executive Director O'Connell mentioned a recent seminar where Dr. John Burress attended and asked if the Advisory Council be interested in having Dr. Burress speak at a future Advisory Council meeting. Without concerns from Council members, Executive Director O'Connell will extend an invitation to Dr. Burress and Dr. Jennifer Christian - Washington's COHE program.

Executive Director O'Connell discussed future interviews for Administrative Judge positions. A recommendation was to have the April 11, 2018 meeting move up one week to April 4, 2018.

Chairman Johnson explained that the option was to move the meeting up by one week in order to meet the statutory deadline. Without opposition, the April Advisory Council meeting has been moved to Wednesday April 4, 2018. Chairman Johnson mentioned that it is essential we have a quorum. The business meeting will be first followed by an executive session.

Moving to the legislative update, Executive Director O'Connell indicated that House Bill 1015 has been extended until May 2018.

Regarding the Advisory Council's Fiscal Year 2017 Annual Report, Executive Director O'Connell provided draft samples of the annual report for Council Members to review, comment, and make edits. While the discussion continued on the contents of the annual report, fraud was mentioned, and Council Member Joyce requested that the Insurance Fraud Bureau of Massachusetts (IFB) be invited to a future meeting to elaborate on premium evasion cases.

Chairman Johnson asked that members of the Advisory Council read the draft annual report provided by Executive Director O'Connell before drawing any conclusions. The takeaway today is the hope that everyone is engaged in the report and will offer input.

Chairman Johnson mentioned the feedback today that the Advisory Council needs to do a better job at calling out progress. The annual report needs to highlight successes and be freshened up a bit.

Council Member Long expressed his concern with the Open Meeting Laws as it relates to the discussion on the annual report.

Chairman Johnson said that a meeting to discuss the Fiscal Year 2017 Annual Report will be held on Wednesday April 11, 2018 at 9:00 am.

Council Member Long said that the Advisory Council should continue to mention the pending hearing decisions.

Executive Director O'Connell provided legislative bills for the Advisory Council to vote on: **House Bill 3151** and **Senate Bill 1011**. Advisory Council members opposed House Bill 3151 and Senate Bill 1011, and **Senate Bill 998** there was no consensus from the Advisory Council members and no vote was taken. Correspondence will be issued by Executive Director O'Connell to the Legislature regarding House Bill 3151 and Senate Bill 1011.

General Counsel O'Leary provided commentary to the Advisory Council on the language within Senate Bill 998.

Council Member Joyce provided commentary on Senate Bill 998 and regulatory guidelines.

Chairman Johnson brought up the minutes for November 8, 2017, December 13, 2017, and January 10, 2018. Motions were made and seconded. With a unanimous vote all three sets of minutes were approved.

Chairman Johnson mentioned that Aaron D'Elia was unable to attend today's Advisory Council meeting, but will present at the March 14, 2018 meeting.

Chairman Johnson said that since we have a quorum at the meeting today I am asking for a motion to adjourn. A motion was made and seconded and the February 14, 2018 meeting was adjourned.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, March 14, 2018 at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.