

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

January 10, 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; Stephen Falvey; Michael Kelley, Frank Ruel, James Steenbruggen, and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Karen Fabiszewski, Director Workers' Compensation Trust Fund; Alan Green, Deputy Director of Investigations; Robert Cronin, Director of Investigations; Aaron D'Elia, CFO; Susan Sobolewski, Cove Risk; Christine Cronin, Workers' Compensation Rating and Inspection Bureau (WCRIB); and John Murphy, Executive Director, Massachusetts Insurance Federation.

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

Absent: Kevin O'Leary, General Counsel; John Regan, Teri McHugh, Executive Office of Housing and Economic Development and Diane Walsh, Administrative Assistant to Director and General Counsel.

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
- Workers' Compensation Trust Fund Update – Karen Fabiszewski, Director

Action Items

- November 8, 2017
- December 13, 2017

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

I don't think we have all of who are going to be present today, so out of courtesy to those who have made the trek in, welcome to everyone once again. Hope you had a great holiday season. Before we get going, I understand we have a new colleague, so I'm going to turn to our Executive Director and ask her to make an introduction to everybody.

Executive Director O'Connell welcomed Rose Osterofsky, who is my new assistant. She comes to us from the Senate Minority Leader, Senator Bruce Tarr's office where she was the Director of Intergovernmental Relations. It's a pleasure to have you, Rose.

Executive Director O'Connell said that it would be great if the Council members and everyone around the conference table could briefly identify themselves to Rose.

After the introduction, Director of Administration Bill Taupier turned over the floor to Senior Judge Hernandez.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez said everything is going well. At present, the timeline between conciliation and conferences is between three and four and a half months. A little uptick in Worcester, but we have addressed this by increasing the number of conferences with judges. The January 2018 Conference queue is 929 cases, which is slightly up when compared to the December figure of 906. The January Hearing queue is 443, which is down compared to the December figure of 503.

Regarding the impartial examinations, we have lost a few doctors in Springfield, one unfortunately just passed away, Dr. Wieneke and Dr. Linson retired. We are a little short out in Springfield and have reached out to the Hampden County Bar to recruit more physicians. It has been difficult because there are not many medical facilities in that area, and the ones that are located in that county, injured workers treat with them so it raises a conflict. As a result of this, more claims may be handled out of the Worcester area.

It has been a problem recruiting medical physicians and there has been some consideration in going outside Massachusetts into Connecticut, however these physicians may not be familiar with the Massachusetts workers' compensation system. If you go outside to New York State you run into the same issue of the physicians not being familiar with the workers' compensation system in Massachusetts.

Senior Judge Hernandez said that he would be focused on recruiting more physicians.

Council Member Ruel asked Senior Judge Hernandez what the current impartial rate was. Senior Judge Hernandez indicated that it was \$650.00. The rate was raised from \$450.00 to \$650.00 a few years back. Senior Judge Hernandez is meeting with the Massachusetts Bar Association at the end of January and he will discuss the impartial rate.

Chairman Johnson asked Senior Judge Hernandez if he thought there was an issue with Western Massachusetts because of the available medical physicians. Senior Judge Hernandez said that it was not as a result of the impartial rate that it was due to demographics.

Senior Judge Hernandez said that the impartial rate is at a point where it may want to be reviewed again. If the impartial rate were to increase you may get more high quality doctors.

Senior Judge Hernandez said that he was meeting with Attorney Marianne Swenson and Attorney Michael Reidy about what steps they would like to take in 2018.

Council Member Kelley mentioned the length of time it takes for this process. Senior Judge Hernandez agreed and said that the last process took more than one year from beginning to end.

Senior Judge Hernandez mentioned a meeting with the Executive Office would be scheduled in the future and the process of judicial reappointments.

Senior Judge Hernandez said that Judge Diane Solomon was retiring at the beginning of February, 2018. Council Member Kelley asked Senior Judge Hernandez if Judge Solomon would have her decisions written before her retirement, Senior Judge Hernandez said yes. Senior Judge Hernandez said that Judge Solomon would be greatly missed, as she was a mentor to many.

With regard to replacing Judge Solomon, Council Member Kelley asked Senior Judge Hernandez if the replacement would be selected from the pool of candidates. Senior Judge Hernandez indicated that would be discussed with the Administration in the upcoming months.

With regard to judicial reappointments in 2018, Council Member Kelley asked what judges were coming up on reappointments. Senior Judge Hernandez said that Judge Harpin, Judge Williams, Judge Preston, and Judge Bean and Senior Judge Hernandez from 2017.

Without additional questions, Chairman Johnson thanked Senior Judge Hernandez and 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 regard to Pending Hearing Decisions, there were four in the month of December, with two in 12-36 month range.

Chairman Johnson asked Senior Judge Hernandez if he was comfortable with the two in the 12-36 month range. Senior Judge Hernandez said that the Judges were working on completing these decisions and he was comfortable with that and further added that the pending hearing decisions are trending downward.

The review board inventory is 72 cases for the month of January 2018. This is unchanged when compared to the December 2017 inventory of 72. The impartial medical examinations were 1,941 for FY 2018; the number of fee waivers granted was 37 and \$889,804. For FY 2017, the impartial medical

examinations were 4,083, the number of fee waivers granted was 67 and \$2,032,886 was collected in examination fees.

With respect to Stop Work Orders (SWO), 774 were issued in the month of December (4 were defaults) for a total of 774 for FY 2018. The number was low possibly due to holiday vacations. The trend in SWOs is fairly steady. Fine collection for the month of December was \$78,977 with a FY 2018 total of \$468,501. For FY 2017 a total of 1,909 SWOs were issued with total fines collected at \$1,067,449.

Mr. Taupier provided the following statistics for SWOs: for the month of December 2017: 6,258 compliance checks were conducted, and an estimate of 2,657 workers had been brought under workers' compensation insurance coverage. During FY 2017, the number of workers was estimated at 5,945.

Without additional questions on investigations, Mr. Taupier offered the following statistics on cases filed within DIA claims administration: the number of cases filed for December 2017 was 910. First Report of Injury (FRI) filings for December were 2,567. Total FRIs filed for FY 2018 is 16,970. Total cases filed for FY 2018 is 5,866. *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 WCAC Trust Fund ended the month of December FY 2018 year with 57 uninsured persons reporting injuries. This figure is trending lower than last year. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims are \$3,029,227.

Mr. Taupier continued with statistics on the recovery efforts against uninsured employers: for FY 2018 \$552,968 has been recovered by the Civil Litigation Unit and the Workers' Compensation Trust Fund.

Mr. Taupier provided statistics on the Second Injury Fund: \$31,000,000 in payments. The COLA reimbursements were \$2,692,403. These reimbursements generally come quarterly and the numbers will reflect this in the months to come.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$2,097,029.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2018 \$43,410,915 while the FY 2017 number was \$89,794,991.

Mr. Taupier continued with a personnel update: 223 employees. This number has remained fairly steady over the past few years. Mr. Taupier mentioned that there was one recent departure, Elaine Lydston, who handled public records requests and did a fabulous job completing these requests. Ms. Lydston retired after being at the DIA for 41 years. Mr. Taupier indicated that the DIA receives approximately 75 public records requests monthly.

Chairman Johnson asked Mr. Taupier about the current personnel update and whether those slots will be filled. Mr. Taupier indicated that there were about four to five backfill positions. There are no new positions available.

Mr. Taupier provided the following statistics on referral fees: \$2,097,029. Finally, assessment collections were \$43,410,915.

Without any further questions, Chairman Johnson thanked Mr. Taupier and directed the floor to Director Turner.

Director Update

Director Linda Turner said later this month the Workers' Compensation Research Institute (WCRI) is having their semi-annual council meeting. At this meeting, WCRI will present their most recent research and I will update you on their findings at the WCAC February 14 meeting.

Dr. Russo was also present at the most recent Healthcare Services Board meeting and Director Turner said that she would update WCAC at the February meeting.

Director Linda Turner said that with regard to the opioid procedures, they are moving ahead, but are still waiting to form the committee. House Bill 4033 was brought forth to the Legislative Committee by Governor Baker and it still has to be voted in. That whole process can take a while.

Council Member Kelley asked Director Turner about if she was referring to the treatment guidelines, and she indicated that it was the drug formulary she was referring to.

Director Turner said that she would forward House Bill 4033 to the WCAC.

Mr. Taupier said that there was a bill proposed by the Governor, referencing House Bill 4033.

Chairman Johnson asked Director Turner if House Bill 4033 could be circulated to the Advisory Council.

Director Turner mentioned that General Counsel Kevin O'Leary was not present today, but asked Karen Fabiszewski, Director of the Workers' Compensation Trust Fund if there was anything to report on in her department.

Director Fabiszewski mentioned a new attorney who started in December William Hanlon, who has significant workers' compensation experience. We are excited to keep building up in the department. Everything else is moving along.

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

Executive Director Update

Executive Director O'Connell provided the Advisory Council members a packet which included Council Member Long's draft letter regarding the audit non-compliance charge. Council Member Ruel provided feedback regarding this letter and edits were made with regard to the Insurance Fraud Bureau section. Any feedback is appreciated.

Executive Director O'Connell mentioned that she sent the draft letter via email with a hard copy in today's packet. When you have a moment, review the letter and if changes need to be made, send an email to either myself or the Chairman. Without a quorum today, the contents would not be voted on.

Council Member Long asked Executive Director O'Connell to make correction to the section on Page 3 "Our members" and have it reflect "Massachusetts employees". Council Member Ruel indicated that he mentioned this too in his edits to Executive Director O'Connell.

Council Member Falvey said that one sentence about premium evasion is buried too deep in the letter and should be moved to the first paragraph as this section is critical. This is a significant point that needs to be made.

Executive Director O'Connell said that the Division of Insurance hearing for the WCRIB rate filing is on January 29.

Council Member Long asked if the audit noncompliance charge was included in this hearing, Executive Director said that it was not and she confirmed with this with Daniel Crowley of WCRIB.

Christine Cronin was present at the meeting representing WCRIB. Ms. Cronin said that WCRIB filed with the Commissioner of Insurance, however they have not heard back regarding a hearing.

Council Member Long asked Ms. Cronin whether the ANC was part of the WCRIB rate filing, she said it was not.

Chairman Johnson said we have no option without a quorum. We can't take any action. We have to have a physical quorum in the room. But this is important and I agree with you Council Member Long. It's important for the council to take action. Efforts have been made to have voting members in the room. I urge you as colleagues and equal partners in that endeavor to reach out to people, you know, we have to have the bodies here to take a vote. It's a courtesy issue in my opinion, at a baseline to the people who do take the time to be here, the administration, and most importantly, the public and those served by the council that we have to conduct our business. Quite frankly, I appreciate your concern Council Member Long. I share it.

Council Member Falvey asked Executive Director O'Connell that when the next notification is sent out for the February meeting, describe it as critical and that we need all voting members present for a quorum to approve legislation.

Executive Director O'Connell mentioned the revisions that were made to the public meeting law that Director Turner sent to me. For quorum purposes, the physical body of members has to be present in the room.

Executive Director O'Connell added that if the Council had a quorum today and there were three or four members that were outside, they could call in and add to it, but we have to have the physical body here. So it doesn't help really with quorum issues.

Council Member Long asked why WCAC is not able to establish a quorum in the past 36-48 months.

Council Member Kelley said that AIM was always present at the meetings, but Council Member Joyce said that it was not always John Regan present. Council Member Joyce mentioned proxies; however Chairman Johnson indicated that proxies were not allowed.

When asked how many positions were on the Council, Executive Director O'Connell answered: it is 11 members and 9 are voting. There are 2 that are non-voting members.

Chairman Johnson added that all Council members are appointed and should take on that role.

Council Member Falvey asked how many vacancies were on the Advisory Council. There are 10 voting positions, with one vacancy (Labor). There are currently 11 members on the WCAC, 9 are voting members, and 2 are non-voting. In order to achieve a quorum, 7 voting members are required to be present.

Chairman Johnson said that it puts even more pressure on those who are here. So I'm open to ideas. We've tried this before we, we suggested changing the time. The statute requires the quorum.

Executive Director O'Connell mentioned one last item: Senate Bill 1026. Council Member Falvey asked me to check on the status of this bill. The title of the bill is *An Act Relative To The Penalty For Failing To Provide Workers' Compensation* not only could be this apply to a misdemeanor, but it could be a felony. The sponsor on that bill was former Senator McGee who's now the Mayor of Lynn.

The original sponsor has gone. Rose Osterofsky was kind enough to make a call to the Joint Committee and a couple of things could happen with this bill. Once the original sponsor departs, a new sponsor could take over; however Senator McGee's staff was not aware of this occurring with their bills. The bill could be refiled with Senator McGee's successor; however this will not take place until the next legislative session. Lastly, no further action could take place. The bill is pending and I will continue to provide the Advisory Council with updates.

The legislative is expecting a push on Unemployment Insurance legislation.

An updated list will be provided at the February 14 meeting.

Council Member Falvey asked Executive Director O'Connell if she could provide the bill on assessment for avoided premium.

Chairman Johnson asked Executive Director O'Connell to circulate by email as she compiles a new list of legislative bill numbers.

Lastly, Executive Director O'Connell mentioned that she would be attending the DOI hearing on January 29 regarding WCRIBs rate filing and would provide an update at the February 14 meeting.

Chairman Johnson offered the floor to Aaron D'Elia, CFO. Mr. D'Elia said that he would provide his post-mortem presentation at the February 14 meeting. Mr. D'Elia said that COLAs would be a focus area. Spending and budgeting goes in our favor and is a positive event.

Council Member Kelley asked if the assessment rate for next year would be impacted by the pending WCRIB rate filing.

Mr. D'Elia is not sure that the rates would significantly impact rates for next year with CFO. There will be a significant balance at the end of this year which will drive the assessment rate to decrease. Things could change within the next six months, but the office will continue to work with Deloitte & Touche and Mr. D'Elia said that he will do some research on the assessment rates and the possible effects.

Council Member Kelley mentioned that there's going to be a significant decrease in overall premiums going forward so that will impact the assessments.

Council Member Long expressed his concern with the rates being the lowest in the United States because it impacts the amount of benefits the injured workers could be receiving. The employers are not saving what everyone thinks they are saving on a rate decrease.

Mr. D'Elia said we'll do our analysis. Council Member Long asked Mr. D'Elia if he could inquire within Deloitte & Touche whether or not they could do an analysis on employers and what effects were as a result of the rate increase or decrease. Deloitte & Touche is a value added into the process, but Mr. D'Elia said that he is not sure they could do this type of analysis.

Mr. D'Elia said that they look into the premium base, which is again the base that we are charged with the 4.56% and then they're basically telling us what revenue to expect.

Mr. D'Elia said that he would be doing a post-mortem presentation showing data for the first six months of the fiscal year, revenue and spending.

Council Member Long again expressed his concern that employers are negatively impacted based on the assessment rates.

Chairman Johnson thanked Council Member Long for his concerns.

Without a quorum, Chairman Johnson concluded the meeting.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, February 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.