

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

May 9, 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; Frank Ruel; Michael Kelley; John Regan; James Steenbruggen; and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Sheri Bowles, Director of Operations; Judge Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; John Murphy, Massachusetts Insurance Federation; Aaron D'Elia, CFO; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB); Kathleen Fisher, Workers' Compensation Research Institute (WCRI); Evelina Radeva, Workers' Compensation Research Institute (WCRI); Dr. John Burress, OccMed; and Dr. Jennifer Christian, Webility.

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: Alan Green, Deputy Director of Investigations; Robert Cronin, Director of Investigations; Executive Office of Labor and Workforce Development, 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

Action Items

- April 11, 2018

Communication

Executive Director Update

Miscellaneous

- Dr. John Burress and Dr. Jennifer Christian

CHAIRMAN'S WELCOME

Good morning. Chairman Johnson said that it appears that we have a quorum, seven votes in the room. Since there are some time constraints among two of the Council members I am asking my colleagues to take two items that require votes be taken out of order.

Council Member Falvey made a motion to suspend the regular order of business. Council Member Joyce seconded the motion and without opposition the motion was approved.

Chairman Johnson indicated the first item of business requiring a vote is the April 11, 2018 minutes that were circulated by the Executive Director. A motion was made and seconded and without opposition the motion was approved. The second item of business requiring a vote is the draft Annual Report for Fiscal Year 2017.

Chairman Johnson directed the floor to Executive Director O'Connell who provided the update to the report. All revisions were made as a result of the Advisory Council's April 11, 2018 meeting with minor edits made to hyperlinks.

Council Members reviewed the draft annual report and Chairman Johnson reminded the Council that they had an opportunity to review the report and provided commentary at the April 11, 2018 meeting. Council Member Joyce made a motion to approve the annual report; Council Member Falvey seconded that motion. With seven voting members present, six Council Members were in agreement to approve the report; however without a quorum the report was not approved.

Council Member Long expressed his concerns and said that he was not satisfied with the new version/format of the annual report.

Chairman Johnson directed the floor to Mr. Bill Taupier.

DIA UPDATE

Vital Statistics

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

Mr. Taupier said that the May 2018 Conference queue is in great shape - 510 cases, which is up when compared to the April figure of 401. Currently, the average waiting period for a Conference is between 8 and 18 weeks. Council Member Kelley asked about the waiting period of 18 weeks. Senior Judge Hernandez indicated that the Worcester office is running about four months and that he wanted to use Judge Solomon's seat to address the Worcester need.

The May Hearing queue is 352, which is down slightly when compared to the April figure of 368. Fluctuations in the Conference queue will depend upon number of cases being referred to Conciliation, Judges scheduling cycles, and regional variations.

With regard to the Pending Hearing Decisions, there were three in the month of April and zero in the 12-36 month range. Council Member Kelley commended Senior Judge Hernandez for the job well done in this area. Mr. Taupier said that when this started there were 27 cases in this range.

The Review Board inventory is 72; this number is down when compared to the April inventory of 78. The Impartial Medical Examinations were 3,340; the number of Fee Waivers granted was 56 and \$1,593,879 was collected in examination fees.

Without questions, Mr. Taupier continued with the Compliance and Enforcement statistics: with respect to Stop Work Orders (SWO), 198 were issued in the month of April (14 were defaults) for a total of 1,507 for Fiscal Year 2018. Fine collection for the month of April was \$68,875 with a Fiscal Year 2018 total of

\$740,047. For Fiscal Year 2017 a total of 1,909 SWOs were issued with total fines collected at \$1,067,449.

Mr. Taupier provided the following statistics: the DIA conducted 8,240 total compliance checks in the month of April. As a result of these efforts an estimated 4,567 workers have been brought under workers' compensation insurance coverage during the current fiscal year. During Fiscal Year 2017 we estimate 5,945 workers were brought under workers' compensation coverage.

The DIA Investigations have visited the island of Nantucket, resulting in 766 compliance checks and issued 18 Stop Work Orders (SWOs). Mr. Taupier said that the reason Deputy Director Alan Green is not with us today at the meeting is due to the hearings being held on the island today.

Council Member Long asked if a compliance check was being done because there was some reason to indicate the company was not compliant. Mr. Taupier said that a company that is in the view of the Investigation Unit could be subject to a compliance check. General Counsel O'Leary further added that when the investigators canvas the area they will conduct a compliance check on said business. Brick and mortar businesses are easier to check since the name of the business is out front. The Investigations Unit put the police department on notice.

Without additional questions, Mr. Taupier offered the following statistics on cases filed within DIA: The number of Cases filed for April 2018 was 892. First Report of Injury (FRIs) filings for April were 2,468. Total FRIs filed for Fiscal Year 2018 is 28,443. The total number of FRIs filed for Fiscal Year 2017 was 33,854. Total cases filed for Fiscal Year 2018 is 9,726. The total cases filed for Fiscal Year 2017 was 11,924. **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 April 2018 with 94 uninsured persons reporting injuries. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims are \$5,711,964. The WCTF made \$8,484,448 in payments against open claims during Fiscal Year 2017.

With respect to the recovery efforts, Mr. Taupier continued with statistics against uninsured employers: for Fiscal Year 2018 \$930,393 has been recovered by the Civil Litigation Unit and WCTF.

Chairman Johnson mentioned the outstanding year in 2017 with recovery efforts and asked what recoveries were on the horizon. General Counsel O'Leary mentioned that there were a few cases that have not come in yet, but that he expects the recovery amounts to increase. Even though recoveries are coming in, they are paying out less in uninsured claims.

Council Member Falvey asked how much of a drop that was in relation to Fiscal Year 2017 monies. Council Member Long asked Director Fabiszewski what the likelihood was that the employer (on the outstanding recovery claim) would pay back the money, she responded by saying that it was too early in the claim process.

Mr. Taupier provided statistics on the Second Injury Fund: \$16,333,209 in payments. The budget for this fund was \$31,000,000. The COLA reimbursements were \$5,251,501. A new batch was submitted to Accounting and Finance unit for approval. 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 Fiscal Year 2018: \$3,508,629. Lastly, Mr. Taupier provided statistics on the assessment collections: Fiscal Year 2018 \$62,866,593.

Chairman Johnson asked about the COLA figures. Mr. Taupier expects to be closer to the \$25,000,000 range before the end of the fiscal year. The accounting books close on August 31 of the fiscal year.

Without additional questions for Mr. Taupier, Chairman Johnson apologized to Senior Judge Hernandez and offered the floor.

Before Senior Judge Hernandez begins, Council Member Falvey brought up that he will be out of town until the September meeting due to family commitments and asked Council Member Long to reconsider the motion to approve the Advisory Council Fiscal Year 2017 Annual Report. Council Member Long made the motion to reconsider relative to the annual report and it was seconded by Council Member Falvey. With nine voting members now present at 9:24 am, eight approved the report, one opposed.

Without additional questions on the annual report, Council Member Falvey made a motion to approve the annual report, it was seconded and with eight voting members approving the report, one opposition, the Workers' Compensation Advisory Council Annual Report for Fiscal Year 2017 was approved.

Judicial Update

With respect to reappointments, Judge Bean met with the Administration last week while Senior Judge Omar Hernandez will meet this afternoon. The Opioid Pathway Treatment Program is doing well, 30 candidates in the program with good success stories. At a conference in Waltham, MA last week, Senior Judge Hernandez said that he was approached by a Care Coordinator who is handling four cases in Western, MA and mentioned that she is seeing great results. The judges are writing and it's been pretty quiet.

Council Member Kelley asked about Judge Solomon's open position and whether any other positions would be opening soon. In late summer, early fall, Senior Judge Hernandez said that Judge Preston, Judge Williams, and Judge Harpin's position will be up for reappointment.

Vice-Chair Pulgini asked if applicants would convene from the existing pool of applicants, Senior Judge Hernandez said that he was not sure, but has expressed his thoughts with the Administration.

Council Member Falvey thanked Senior Judge Hernandez for his good faith effort on reducing the number of Pending Hearing Decisions. Senior Judge Hernandez commended his judges for doing the great work. Council Member Falvey reminded the Council of the publicity surrounding the backlog at the DIA many years ago and requested that a follow-up story be done on the positive outcome.

Without additional questions for Senior Judge Hernandez, Chairman Johnson offered the floor to Director Turner.

Director Update

Director Linda Turner recognized two DIA employees, Judge Dennis Maher and Dele Edebiri, Conciliation Manager who were nominated by Massachusetts Association of Trial Attorneys (MATA). Judge Maher

received the Emily Novick Award for Judicial Excellence and Dele Edebiri received a Distinguished Service Award. Director Turner added that the DIA does not run itself; it is staffed by very knowledgeable and professional people.

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

Executive Director Update

Executive Director O'Connell provided Council Members with a packet that included the guest speakers' presentation. A brief update on the legislative bills was provided. House Bill 2360 has been referred to House Steering Policy and Scheduling.

Rose Osterofsky has moved on from the Advisory Council and the job for Program Coordinator II has been reposted. Executive Director O'Connell said that updates will be provided to the Advisory Council during the candidate process.

Chairman Johnson mentioned the quorum problems and traffic issues and asked about changing the meeting time to 9:30 am. Council Member Steenbruggen offered an earlier meeting time at 8:00 or 8:00 am.

Without commentary, Chairman Johnson indicated that the meeting would remain the same, 9:00 am.

Council Member Long asked for clarification on changing the meeting time and made a motion to start the meeting at 8:00 am. Chairman Johnson asked the DIA if they could make this work, Director Turner said that they would accommodate the new time. Without opposition, the quorum of seven voting members voted to change the meeting time to 8:00 am and it was approved.

Communications

No communications.

Without additional questions for Executive Director O'Connell, Chairman Johnson offered the floor to Guest Speakers, Dr. John Burress and Dr. Jennifer Christian.

Guest

Dr. John Burress of OccMed Consulting & Injury Care LLC and Dr. Jennifer Christian of Webility MD had a discussion surrounding the medical rates and offered suggestions to update the workers' compensation system by providing reward/incentivize performance and have better communication with all parties and injured workers. Further discussions surrounding early risk identification and interventions to improve outcomes. Dr. Christian highlighted the Washington State COHE (Centers of Occupational Health and Education) program and mentioned that \$67 Million grant has become available for 6 states to adapt COHE for their systems.

A packet was provided to Council Members and includes Dr. Burress and Dr. Christian's presentation.

The next meeting of the Advisory Council is tentatively scheduled for **Wednesday, June 13, 2018 at 8:00 A.M.**, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017. **Please note the time change to 8:00 am.**