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MAUREEN O'CONNELL
EXECUTIVE DIRECTOR

MINUTES

November 13, 2019
Department of Industrial Accidents
Lafayette City Center
2 Avenue de Lafayette
Boston, MA 02111-1750

Attendees: Todd Johnson; Stephen Joyce; Teri McHugh; Bernie Mulholland; Michael Kelley; James Steenbruggen; Steve Falvey; Sheri Bowles, Interim Director; Bill Taupier, Director of Administration; Omar Hernandez, Senior Judge; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; Peter Vitale, DIA Lawrence Regional Manager; Aaron D'Elia, Chief Financial Officer; John Murphy, Massachusetts Insurance Federation; Ginny McCarthy, Legal Counsel for Workers' Compensation Rating and Inspection Bureau (WCRIB); Maureen O'Connell and Halina Poliszczuk.

AGENDA

Chairman's Welcome

DIA Update

- DIA Judicial Update - Senior Judge Omar Hernandez
 - Conference | Hearing | Reviewing Board Queue
- Impartial Medical Exams | Physicians
- DIA Vital Statistics - Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- Director's Update - Sheri Bowles, Interim Director
- Financial Update - Aaron D'Elia, Chief Financial Officer

Executive Director Update

- IAIABC Conference update

Action Items

- Minutes – October 31, 2019

Communications

- N/A

Miscellaneous

- Impartial discussion

CHAIRMAN'S WELCOME

Chairman John Pulgini was unable to attend the meeting and Vice Chairman Todd Johnson called the meeting to order at 9:02AM. We have five voting members and do not expect anyone else, therefore we are without a quorum and are unable to take any formal actions or votes. For purposes of this meeting it will be more informational. Let's turn it over to the Senior Judge Omar Hernandez for the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez opened the meeting with the judicial update stating that we are in good shape with respect to conferences. Our queues are turning out a lot of conferences. Our hearing queues are up a little bit, but we are in good shape with respect to that number. Timeframes are anywhere to two to three months. Lawrence is down to about one and half months. We are in good shape, Judge Viera retired as of November 1, 2019 and Judge Harpin has retired. The Judges are doing what they are supposed to do.

Vice Chairman Johnson asked when Judge Viera retired and if there were any unwritten decisions? Senior Judge Hernandez responded that they started early and have it under control. Any cases she felt she couldn't write she let us know ahead of time and we started farming them out to the other judges down there. At the time we had five judges in Fall River with Judge Viera there so there was enough time to spread them out between Judges Williams, Bergheimer, Braithwaite and O'Neill. Pending hearing decisions went down dropping to five with numbers trending down.

Vice Chairman Johnson asked with respect to Senior Judge Hernandez regarding judicial nominations, my conversation with the Governor's office looks that they will be wrapping up all the interviews this week or the beginning of next week. Vice Chairman Johnson addressed whether or not they will be interviewing the names of the people we sent up and Senior Judge Hernandez responded that he believes that they will be interviewing all of the candidates.

Mr. Kelley inquired about the Impartial process. Senior Judge Hernandez believes that the Impartials are holding steady, we can always use more physicians, but this is an ongoing challenge due to number of reasons, one being that they are tied to the regions where the employees reside. We try to recruit the best physicians. There was one recent decision from the Review Board regarding a physician that Googles the employees before he examines them. I will inform that physician about this and why it can't be done.

Mr. Kelley mentioned the length of time for Impartials. His company has sent injured workers to physicians at the end of October and those workers will not be examined until February. Senior Judge Hernandez indicated that one of reasons could be that there isn't enough orthopedic physicians in that specific location. In Boston there are physicians available, areas such as Lawrence and Springfield area are more difficult. In the Fall River area workers can go into the Rhode Island location. Senior Judge

Hernandez said that he will have a discussion with the Medical Board.

Vice Chairman Johnson asked Senior Judge Hernandez about the impartial exam fees and whether he thought the fees are appropriate as they were adjusted recently. According to Senior Judge Hernandez mentioned bringing the fees from \$650 to \$850 or \$1,000 and by bringing up the fee would help attract more physicians and widen the pool. Mr. Kelley stated that something has to be done, to go from October to February for an injured worker to be examined is concerning.

Senior Judge Hernandez indicated he would bring this up to the Medical Board.

Vice Chairman Johnson provided commentary on the judicial candidate interviews in which candidates expressed their issue with the impartial process that the rate was either too low or the process for an exam was too long. This has opened the eyes of the stakeholders here and is an area of concern.

Senior Judge Hernandez stated that doctors were complaining about the number of documents. Many cases give too much information which is not warranted and that some of these documents can be condensed.

Mr. Kelly requested that Senior Judge Hernandez come back next month with a recommendation for this process.

Without any further questions for Senior Judge Hernandez, Vice Chairman Johnson directed the floor to Director of Administration Bill Taupier.

Vital Statistics

Director of Administration, Bill Taupier said that the November Conference queue is 388 cases, which is down compared to the October figure of 530. Currently, the average waiting period for a conference is 8 to 12 weeks. The November 2019 Hearing queue is 624. This is up when compared to the October figure of 579.

Mr. Taupier said that for the past three months the pending hearing decisions for the month of August was 11, for the month of September seven, and for the month of October was five.

Mr. Taupier said the Reviewing Board inventory of cases on appeal for the month of November is 59 cases. This is up when compared to the October inventory of 45. There were 1,268 Impartial Medical Exams scheduled, 22 Fee Waivers granted, and \$551,881 Exam Fees collected.

Mr. Taupier said the DIA issued 136 Stop Work Orders (SWOs) in the month of October for a total of 450 for FY 2020. Please note that 22 SWOs were reissued as the result of defaults of previous orders. Fine collection for the month of October was \$60,342 with a FY 2020 total of \$242,799. For Fiscal Year 2019 a total of 2,028

SWOs were issued and total fines collected was \$1,165,656.

Mr. Taupier mentioned that the DIA is down two (2) investigators, out of a total of 18.

Mr. Taupier said that the DIA conducted 6,182 total compliance checks in the month of October. As a result of these efforts an estimated 1,705 workers have been brought under workers' compensation insurance coverage during the current fiscal year. During FY 2019 we estimate that number of workers was 5,486.

Council Member Stephen Falvey asked about the discrepancy in the number of fines collected. Mr. Taupier clarified that the \$ amount reflects the money that has been entered in the MMARS system.

Mr. Taupier said that with regard to First Reports of Injury and Cases Filed with the DIA the number of Cases filed for October 2019 was 1,087. First Report of Injury (FRI) filings for October were 3,063. Total FRIs filed for FY 2020 is 11,437. The total number of FRIs file for FY 2019 was 34,169.

Mr. Taupier said total cases filed for FY 2020 is 4,152. The total number of cases filed for FY 2019 was 12,659. Please note: a case is an employee claim, an insurers request for discontinuance or a third party claim/lien.

Mr. Taupier said that as of October 31, 2019, 30 uninsured injuries have been reported to the WCTF for Fiscal Year 2020. For Fiscal Year 2019, a total of 117 new Section 65 injuries were recorded. Please note, claims may be determined to be insured or uninsured after they have been filed. As of this date, payments against open claims in FY 2020 stands at \$2,424,092, as of October 31, 2019. The WCTF made \$6,613,536 in payments against open claims during FY 2019. Recovery efforts against uninsured employers were recorded at \$489,517.

Vice Chairman Johnson commented on the trend of uninsured losses, trending really well.

Mr. Taupier said the WCTF Staff make every effort to recover monies owed. The Civil Litigation Unit utilizes the courts and the authority of M.G.L. Chapter 152 to recover money paid on uninsured claims by taking legal action against the employer in question.

Mr. Taupier commended David Michels on his effort to recover monies.

Mr. Taupier said that the Secondary Injury Fund Budget and Payments by Fiscal Year charts shows dollars paid for Section 37 /37A Claims (including quarterly payments and interest) by Fiscal Year. The budget for this was \$32,000,000 with

\$3,848,838 as paid.

Council Member Kelley asked about the Second Injury Fund, CFO Aaron D'Elia said that he'd address this during his presentation.

Mr. Taupier continued with the statistics for COLA reimbursements, \$14,400,000 was budgeted with \$405,782 being paid out.

With regard to the Personnel update, Mr. Taupier indicated that there were 213 staff members and said that staff are paid from either the General Appropriation Account or the WCTF depending upon their job. This number reflects FTEs and PTEs currently working for the DIA.

Referral fees for Accounting and Finance department were \$1,363,645 with Assessment and Collections totaling \$20,501,482.

Without any further questions for Mr. Taupier, Vice-Chairman Johnson directed the floor to Interim Director Bowles.

Director Update

Interim Director Sheri Bowles stated that at this time the following job opportunities were available: 7-9 Investigators, 2 Conciliation positions and 1 Claims position. These positions are to be back-filled, none of them are new positions.

Auditors from the Massachusetts Office of the State Auditors are in the process of auditing the Department of Industrial Accidents.

Regarding the SIGs audit, John McCormack of EOLWD should be in attendance at the December 11, 2019 meeting to provide an update.

Vice Chairman Johnson asked whether or not the move was done and completed to which Interim Director Bowles stated that at this time there are no major issues.

Without any further questions for Interim Director Bowles, Vice Chairman Johnson directed the floor to EOLWD Chief Financial Officer Aaron D'Elia.

Financial Update

CFO Aaron D'Elia provide his bi-annually financial update of the organization. Mr. D'Elia said that the DIA was in great fiscal health, the assessment rate had a recent reduction, this shows a favorable position fiscally, projecting a positive trend. When asked how EOLWD prepares its budget, Mr. D'Elia said that the COLA has a steady decline, with respect to Section 37, they added a cushion, \$12 million dollar

spending, budget more than what was spent in FY 2019, in case there are exposures. There is flexibility in lowering the rate. The FY 2020 budget has \$125.2 total revenue, \$92.1 in total expenses, \$33.1 Trust Fund Ending Balance, and with the assessment rate at 3.51%.

Council Member Kelley asked about the COLA expenses increasing.

Director of the Workers' Compensation Trust Fund Karen Fabiszewski mentioned two (2) big cases involving COLA, gateway cases, if the judgment comes down it wouldn't stop the operation of the trust fund department.

Council Member Kelley asked Ms. Fabiszewski for a summary of these two cases and she indicated she would speak to General Counsel O'Leary about this request.

Without any further questions for Mr. D'Elia, Vice Chairman Johnson directed the floor to Executive Director Maureen O'Connell.

Executive Director's Update

Executive Director O'Connell updated the Advisory Council on the conference she attended in Pittsburgh PA in October, the International Association of Industrial Accident Boards Commission (IAIABC). Threads throughout the conference were PTSD, the burden of proof is on the carriers, not the firefighters; the Opioid Crisis; Minnesota and their new drug formulary; Independent Contractors; Metrics for dispute resolution, if you can't measure it you can't manage it and if we have resolved the issue of timely payments this should lead to timely hearing decisions.

Deloitte Consulting LLP spoke about reframing the return to work language to return to function since the work environment has changed. Another thread was blockchain and how this allows stakeholders opportunities for sharing personal and medical information by providing a secure place to store and access data. Deloitte added that Workers' Compensation is a human service industry and the future will allow the industry to create a system where all agencies work together. Since positions may be eliminated in the future, Deloitte mentioned that employers should be proactive and look at their staff to see what people's skills and capabilities are and what their willingness is toward change.

Carnegie Mellon has worked closely with the state of PA and in the Secretary of PA session it was about remote work and how that will impact the workplace with more injuries occurring in the home.

Lastly, Bill Strickland was the opening presenter during one day at the conference, an inspirational leader whose life was transformed by his high school teacher. He co-wrote a book called Make the Impossible Possible.

With respect to the FY 2019 Annual Report, minor grammatical changes were made and are waiting for approval by EOLWD before it is placed on the Advisory Council website.

With respect to the legislative update, attached you will find an update to the most recent legislative bills in the Joint Committee on Labor and Workforce Development, including House Bill 1670, An Act to Protect Injured Workers that accompanied a new draft House Bill 4174.

Without a quorum, votes were not taken on the October 31, 2019

minutes.

Without additional questions, the meeting adjourned at 9:56am.

The next meeting of the Advisory Council is tentatively scheduled for December 11, 2019, 9:00am at the Department of Industrial Accidents, Lafayette City Center, 2 Avenue de Lafayette, Commons Conference Room, Boston, MA 02111-1750