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LIEUTENANT GOVERNOR

## **MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL**

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**JOHN A. PULGINI**  
CHAIR

**TODD R. JOHNSON**  
VICE-CHAIR

**MAUREEN O'CONNELL**  
EXECUTIVE DIRECTOR

September 9, 2020  
Department of Industrial Accidents  
Lafayette City Center, 2 Avenue de Lafayette  
Boston, MA 02111 - 1750

**Attendees:** John Pulgini; Todd Johnson; Mickey Long; Steve Joyce; Teri McHugh; James Steenbruggen; Michael Kelley; Bernie Mulholland; Patrick Walsh; Sheri Bowles – DIA Interim Director; Bill Taupier – DIA Director of Administration; Senior Judge Omar Hernandez – DIA Senior Judge; Kevin O'Leary – DIA General Counsel; Karen Fabiszewski; Dennis Johnson; Maryann Brunton; Vinnie Lopes; Shamia Monroe; Diane Neelon; Dan Judson – WCRIB of MA; Ginny McCarthy – WCRIB of MA; Evelina Radeva of WCRI; Kathy Fisher of WCRI; Roman Dolinschi of WCRI; John Burrell, MD; Attorney Deb Kohl; Dr. Okoroghski; Dr. Dietz; and Maureen O'Connell.

### **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

### **EXECUTIVE DIRECTOR'S UPDATE**

### **ACTION ITEMS**

- Minutes – June 10, 2020

### **COMMUNICATIONS**

**MISCELLANEOUS** – Dr. John Burrell, OccMedClinic

## **CHAIRMAN'S WELCOME**

Chairman John Pulgini called this meeting to order at 9:06am. The Council is without a quorum.

## **DIA UPDATE**

### **Judicial Update**

Senior Judge Hernandez discussed the in-person hearing procedure, three courtrooms will be open, in DIA regional offices only two courtrooms. For safety measures, a limited amount of people will be in court room – face shield to determine credibility will be required, and morning and afternoon hearings will be available. Senior Judge Hernandez is encouraging all parties to look at their cases, all of the cases cannot be tried, had meeting with Massachusetts Bar Association. Introducing mediation/conference week to the Judge's schedule, timelines are on track, commended his staff for their work. A committee has been formed, in collaboration with MATA and MBA in order to conduct virtual hearings, cannot have another setback with trials, guidelines should be up on the DIA website by the end of September. DIA staff is remote until December 2020. Week of October 13, 2020, Cloverhound will be in effect to streamline the process, conferences will be throughout the day. Overdue cases have decreased to ten and still are trending downward. Feedback has been great according to Senior Judge and the Massachusetts Bar Association. A new judge has been appointed, Tamara Ricciardone will begin at the DIA Boston office on October 13, 2020, Governor's office is aware of existing vacancies. Credit goes to MBA for their cooperation with DIA.

Council Member Michael Kelley made a statement about receiving knowledge of new judge, he requested a renewal of this request.

Without comments on the above, Chairman Pulgini requested information about Agenda items from Executive Director Maureen O'Connell. Executive Director O'Connell indicated that all voting members were present and a vote needed to be taken on the June 10, 2020 minutes. Motion for approval of minutes was made and seconded, all voting members voted to approve June 10, 2020.

Chairman Puglini directed the floor to John Burress, MD, owner of OccMed Clinic who was present to discuss front-line injury care, code 99203 (middle of the road injury) in Massachusetts which has a \$100 reimbursement fee. There's no quality metrics about documentation or communication, no effort to facilitate care coordination, both of which has proven to be important, and other states have these available. According to WCRI this fee is 13% below the Medicare rate. There is no viable economic model to take care of large groups of people and there is a need to look at the standard care. Dr. David Dietz mentioned that this is a longstanding public policy problem both in/outside of Massachusetts. Dr. Dietz confirmed that there is no real assessment of care delivery to injury workers and no worthwhile benefits for doctors to care for injury workers. Reimbursements need to be addressed specifically for front-line care. Attorney Deb Kohl requested to speak from the employee perspective adding that reimbursement rates are so low that it almost prevents injured worker from receiving adequate care, with delays in the system costs are higher to the insurer. Attorney Goodrich requested to speak about the fee schedule and his opinion that the medical professionals will stop treating injured workers.

Vice-Chair Todd Johnson asked Director of Administration Bill Taupier to provide a status update on the fee schedule process. According to Mr. Taupier, the regulation is done by EOHHS, not governed by DIA, but they are working toward some new regulation, discussions are underway with a MOU.

Council Member Mickey Long asked for clarification on regulations and that we are all on board, but what can be done, can the Advisory Council write a letter to agency or legislature, voting members are in attendance and a vote was taken to draft a letter on this matter. Council Member Steve Joyce made a motion for an expedited hearing on this matter. All voting members are in attendance and with a quorum the vote was taken.

Vice-Chair Johnson asked Dr. Burress to explain other entities that this subject/conversation had taken place/been discussed. Dr. Burress has been advocating for this with MassCOSH and annual occupational medicine meetings. Dr. Burress mentioned Washington State and their process.

Chairman Pulgini mentioned a neurologist discussing before the Advisory Council in the past about negotiation process. Dr. Dietz confirmed the need for negotiation process.

Council Member Joyce asked for clarification of specialists, ER doctors, and physicians and what injured workers are seeing. Initial evaluation needs to be done with injured worker stated Council Member Michael Kelley. What is the percentage of people are not negotiating payments, asked Council Member Kelley and confirmed by Dr. Okorouhski that this rate is getting higher.

Without additional questions, Chairman Pulgini thanked Dr. Burress and the Health Care Services Board subcommittee members and directed the floor to DIA Director of Administration Bill Taupier.

### **Vital Statistics**

Director of Administration Bill Taupier provided an update on vital statistics. The period between conciliation and conferences have decreased, now at 8-12 weeks. Hearing queue is 1,289 which is up compared to August figure of 1,491. Pending hearing decisions have increased to 15. Review Board is 55. Exam fees collected was \$304,296.00.

Council Member Joyce asked about Pending Hearing Decisions and that the numbers are not accurate. Council Member Kelley mentioned that the Advisory Council has requested further clarification on this subject, but has not received said clarification. Senior Judge Hernandez provided an explanation of how cases are entered in system. Council Member Joyce was concerned that the numbers are heading in the wrong direction.

Stop Work Orders (SWOs) have stopped as of March 13, 2020 due to Covid-19 pandemic, but will resume issuing orders in August, 2020. Fine collection for the month of August was \$16,290 with a FY 2021 total of \$91,315.00. FY 2020 total of 1,049 SWOs and total fines collected was \$506,881.00. Office Compliance Checks were 4,641. Council Member Joyce expressed his frustration with construction as an essential service, but DIA investigators are receiving a different standard and are not allowed to investigate uninsured businesses. General Counsel Kevin O'Leary explained the office compliance check procedure and mentioned that investigators are on the road.

The number of cases filed in August of 2020 was 878, First Report of Injury (FRIs) was 3,015, fairly steady, total FRIs filed for FY 2021 was 6,028, FY 2020 was 34,031. Total cases filed for FY 2021 was 1,792, total number of cases filed for FY 2020 was 11,443.

As of August 31, 2020 the number of uninsured injuries reported to the WCTF was 23 for FY 2021. For FY 2020 this number was 93. As of this date, payments made against open claims in FY 2021 stands at \$386,754. The WCTF made \$7,408,179.00 in payments against open claims during FY 2020. Recovery efforts are \$171,583.00. The Second Injury Payments are \$26,524,739.00. COLA reimbursements are \$10,346,362.00.

Vice-Chair Johnson commented on the Second Injury Fund/COLA slide, consistency with reimbursements, close to five-year history. Assessment rate is leveled, 3.51, same as last year.

Council Member Kelley asked Mr. Taupier if the fiscal year was closed, he confirmed. Council Member Kelley asked why the COLA budge is still large, Mr. Taupier indicated that the DIA was concerned about pending litigation/potential liabilities.

Regarding Personnel, 208 current DIA staff, \$552,734.00 in Referral Fees, and \$13,031,064.00 in Assessment Collections.

Without any questions, Chairman Pulgini directed the floor to Interim Director Sheri Bowles.

### **Director Update**

Interim Director Sheri Bowles provided the DIA update and welcomed Raisa Alvarez to the DIA, newest member of the DIA Workers' Compensation Trust Fund, and thanked recently retired employees Carla Louise Consoli of OEVR, Evelyn Campbell of Claims, and Gary Kendall of Investigations. The DIA Lawrence office lease has been extended until June 2021. DIA reopening efforts are underway for in-person hearings effective September 28, 2020. Interim Director Bowles expressed her thanks to Mr. Taupier, administrative services team, EOLWD facility + finance team, regional managers, and vendors for their hard work and dedication to ensure safety for employees and injured workers.

Chairman Pulgini asked about safety protocols and whether plexiglass will be installed, Interim Director Bowles confirmed this process is ongoing.

### **Executive Director Update**

Executive Director Maureen O'Connell provided an update on the business sector vacancy on the Advisory Council and the interest in this vacancy and will update the Council Members when the Executive Office begins this process. The FY 2020 Annual Report process is underway, data is outstanding, and with respect to legislation, the only bills still in the Joint Committee on Labor & Workforce development are related to the Gig economy. HB 4739, presumption bill has left the committee. With respect to HB 5181, workplace safety bill, Attorney Goodrich mentioned Section 4 Paragraph D.

Senior Judge Hernandez mentioned the Kids Chance virtual fundraiser and will send the link to the Executive Director to forward to the Advisory Council members.

Vice-Chair Johnson commented on Dr. Buresse wanting a total overhaul of the workers' compensation system and said that although there are flaws in the system it is an exceptional system in Massachusetts. Vice-Chair Johnson added that as a member of the Council he is speaking as an individual and wanted to remind the group that the workers' compensation system in Massachusetts has been praised as exceptional across the country. Although he supports, conceptually, the medical issues that Dr. Buresse mentioned, Vice-Chair Johnson does not believe that the entire system should be revised.

Without further questions for Executive Director O'Connell, and with a motion to adjourn, Chairman Pulgini concluded the meeting.

