



# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

**MAURA HEALEY**  
GOVERNOR

**KIM DRISCOLL**  
LIEUTENANT GOVERNOR

LAFAYETTE CITY CENTER  
2 AVENUE DE LAFAYETTE  
BOSTON, MASSACHUSETTS 02111  
(857) 321-7379 | [mass.gov/wcac](https://mass.gov/wcac)

**JOHN A. PULGINI**  
CHAIR

**TODD R. JOHNSON**  
VICE-CHAIR

**MAUREEN O'CONNELL**  
EXECUTIVE DIRECTOR

## MINUTES

May 8, 2024

Via WebEx

**Present:** Attendees: John Pulgini, Todd Johnson, Michael Hess, Teri McHugh, James Steenbruggen, Samuel Larson, Michael Kelley, Bernie Mulholland, and Stephen Falvey; Sheri Bowles - DIA Director, Bill Taupier – DIA Director of Administration, Omar Hernández - Senior Judge, General Counsel Philip Imbrescia, Jeanne Natale - DIA Director of Operations, Jon Solomon - DIA Director of Investigations, DIA Vinnie Lopes; Cara Toomey - WCRIBMA; Roman Dolinski- WCRI; MaryBeth McGrath - Human Resources Division; ;Attorney Kerry Nero - City of Boston; Christopher Stark - Massachusetts Insurance Federation; Dr. Michael Ackland, call-in user; and Maureen O'Connell.

**Date:** May 8, 2024  
**Location:** Department of Industrial Accidents - via WebEx  
Lafayette City Center  
2 Avenue de Lafayette, Boston, MA 02111  
**Time:** 9:00 A.M.  
**Notice:** All meetings are voice recorded to aid in preparing "hard copy" minutes.

### 1. CHAIRMAN'S WELCOME

### 2. DIA UPDATE

- A. DIA Judicial Update - Senior Judge Omar Hernández, Senior Judge
  - Conference/Hearing/Reviewing Board Queue
  - Impartial Medical Exams/Physicians
- B. DIA Vital Statistics - Bill Taupier, Director of Administration
  - Cases Filed with DIA
  - Workers' Compensation Trust Fund
  - Personnel Update
  - Enforcement and Compliance
- C. Director's Update – Sheri Bowles, Director

### 3. EXECUTIVE DIRECTOR'S UPDATE

- 2023-24 Legislative bills

### 4. ACTION ITEMS

- Minutes - April 10, 2024

### 5. COMMUNICATIONS

N/A

### 6. MISCELLANEOUS

N/A

Chairman John Pulgini began the meeting at 9:01am.

Senior Judge Omar Hernández provided the statistical update on the dispute resolution unit. The time between conciliation and conference look good, and the queues are in getting a bit longer (16 weeks) and we've been watching this on a weekly basis so we will be adding more conferences to the cycle to bring those numbers down - this will be happening soon. The conciliation numbers are in great shape thanks to Dele Edibiri and his team who are doing great work. Hearing decisions are not too old, outside forces like ADR, social security are a part of these delays. With respect to attorneys fees we will surpass last year.

Council Member Michael Kelley asked Senior Judge Hernández about the conferences. Senior Judge Hernández mentioned that last summer the unit went too low, and we've doubled back as it was too fast last year (average waiting period for a conference). Council Member Kelley also asked why the conference/hearing queues were so high on the FY'23 Annual Report to which Senior Judge Hernández said there must be an extra numbers added because the queues are in great shape. Council Member Kelley then asked about the impartial exams. Senior Judge Hernández mentioned that it all depends on the DIA regions, but at the rate of \$650, it is not easy to retain physicians. There is a move to increase the fees, but that is ongoing conversation. Senior Judge Hernández further explained that while he was in Newport RI he learned that the fees are much higher in RI and other states (\$1,200) and \$1,500-\$1,700 for IMEs (independent medical examinations). DIA is trying their best given the roster and hopes that a higher fee will help do better with recruitment and retention of physicians.

Vice Chair Todd Johnson asked Senior Judge Hernández for a reminder on the process of getting an impartial fee changed. Given the new administration, everything must run through the Governor Maura Healey's Office before the public hearing process can begin, this is an added element that we didn't have before. Secretary Lauren Jones is reviewing the process and then it will be passed onto the Governor Healey's Office. Once Senior Judge Hernández gets their approve the public hearing process can begin. We did this before approximately 11 years ago, put the notice out to the public, people came in and talked about it. We have the support right now with the Massachusetts Bar and members, and if we don't increase the fee the roster keeps dwindling. The recommended fee, indexing at the state average weekly wage, it will change each year.

Council Member Kelley asked about the impartial process and wanted to make sure that it was in process and not just a discussion. Senior Judge Hernández confirmed that the process has begun and he has been advocating for this change for awhile, it benefits everyone and is important. Council Member Kelley asked for a monthly update on how the process is moving along, Senior Judge Hernández confirmed that he would provide the Advisory Council with a monthly update.

Mr. Bill Taupier, Director of Administration presented the Monthly Statistical Report Card slide deck for the Department of Industrial Accident (DIA) units.

With respect to conciliations, in March 468 cases were resolved and 529 were referred to conference (46.9%). The average waiting period for a conference is 10-16 weeks. **Dispute Resolution:** *fluctuations in the conference & hearing queues will depend upon number of cases being referred from conciliation, conference order appeals, judges scheduling cycles, continuance requests and regional variations.*

With respect to the conference queue, there are 705 (down from last month) with conferences scheduled:

816, conference queue - 895, there have been 4,611 continuances as of April 30, 2024. In April the Hearing queue: 1,747 and hearings scheduled: 487, Orders issued: 286, and Appeals to reviewing board: 5 (up from last month). Form 110 filed 50% of conferences and no 110 filed 88% while hearings were 78% with a Form 110 filed and 84% without a Form 110 filed. With respect to the pending hearing decisions, there were 9 (up from last month) - a new section was added to reflect 1, 2 and 3 year post hearing. Review Board inventory for April: 24, Fee waivers granted: 64, Exam fees collected: \$1,308,133, Attorneys fees: \$73,774,449, Referral fees: \$5,569,445, and Section 7/8 penalties: 0. **Note:** *Attorneys fees are not paid by the DIA, these fees are paid by the insurer to the claimant's counsel at certain stages of the dispute resolution process.*

First Report of Injury (FRI) filings for April were 2,485, down from last month. The number of Cases filed for April 2024 was 914 (up from last month). Cases filed by type: 8,810 total cases, 7,229 employee claims, 1,548 in Insurance discontinuances, and 33 third-party claims. Total FROIs in FY'24: 26,465 with 5,782 in sprains/strains (40%).

Mr. Taupier provided statistics on compliance and enforcement for FY'24: 15,415 compliance letters, 32,089 field checks, and 32,693 office checks. In April, there were 7,555 compliance checks, 271 field investigations conducted, 1,664 compliance letters sent, 408 more employees newly covered by workers' compensation for a FY'24 total of 3,363 employees covered by workers' compensation insurance. There were 125 Stop Work Orders, this includes 10 defaults - 1,149 SWOs issued year-to-date, and fine collection was \$978,839, **up from last month**. There were 89 uninsured injuries, with 27 laborer (occupation), 11 driver, 10 carpenter and 32 other occupation, while 35 were in the construction industry, 35 in construction, 8 painting, 5 transportation and 38 were in other industries.

Out of a budget of \$7,500,000 there were \$5,319,617 in payments against open claims and there was \$502,000 recovered by the Civil Litigation Unit, up from last month. ***Please note, the claims paid in the current fiscal year may have occurred in the prior fiscal year. The Civil Litigation Unit make every effort to recover monies owed by utilizing the authority of M.G.L. Chapter 152 to recover money paid on uninsured claims through legal action against the employer in question.***

With respect to the Workers' Compensation Trust Fund, these slides have been revised. For comparative reasons, the left hand side is benefits side with budget, and on the right hand side is civil recovery.

***Please note, claims may be determined to be insured or underinsured after they've been filed.***

The Second Injury budget is \$31,000,000 and payments made were \$22,018,485, up from last month. Chart shows dollars paid for Sec. 37 /37A Claims (including quarterly payments and interest) by Fiscal Year. Sec. 37/37A claims are filed by insurers who are seeking reimbursement up to 75% of benefits paid for a second injury per the statute. In addition, the numbers indicate final payments have been registered in the state accounting system known as MMARS. ***Additional payments may be in process and are not yet registered in MMARS at the time of this publication.***

COLA reimbursements were \$6,700,680 with a \$8,700,000 budget. These numbers lag throughout the fiscal year. *The dollar amounts indicate the final payments that have been registered in the state accounting system known as*

MMARS. Additional payments are often in process that have not yet registered in MMARS at the time of this publication.

Assessment collection budget is \$79,000,000 with a payment of \$68,645,130.

Personnel: As of April 30, 2024, there were 198 employees (66 Administration, 80 dispute, 14, legal, 28 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel. **Staff:** *paid from either the General Appropriation Account or the WCTF depending upon their job. These numbers reflect full-time and part-time employees as of the close of the month.*

Without questions, the floor was directed to Executive Director Maureen O'Connell.

With a quorum present, and with a motion Council Members voted on February 13, and March 14, 2024 minutes. Without opposition, the minutes were approved.

Without questions for Mr. Taupier the floor was directed to Director Sheri Bowles.

Director Bowles was not present at the meeting and there was no new DIA updates.

Good Morning, everyone. Thank you Chairman Pulgini. Executive Director O'Connell provided a status update on legislative bills.

There are a few bills whose status has changed since our last meeting that involve app-based drivers. HB 1868, SB 1148, SB 1158, SB 1161, and SB 1224, all of these bills had an extension order granted until today, May 8, 2024. HB 1949 involves workers' compensation protection for cannabis patients, and this bill had an extension order granted until July 3, 2024. There was a hearing on the app-based driving petition, and a discussion was held before the Joint Committee on Labor and Workforce Development about whether the drivers are employees or independent contractors and likely misclassified - these bills were granted an extension order until July 1, 2024 and likely after the trial begins with the Massachusetts Attorney General's Office. The AG lawsuit is seeking a court ruling that Uber and Lyft drivers are employees under the Massachusetts Wage and Hour Law. This lawsuit was brought before Suffolk Superior Court by then Attorney General Maura Healey. Executive Director O'Connell mentioned the Minneapolis threat by Uber to leave the city, and the Austin Texas case in May of 2016 where Uber stopped serving the Texas capital after voters upheld the city's new background checks for drivers.

The Monthly Statistical Report Card will be on the WCAC website under Publications later today. Should you need a copy of the legislative spreadsheet, please email me after the meeting. Thank you.

Without further questions from the guests, a motion was made to end the meeting, Chairman Pulgini ended the meeting at 9:18am.

Webex meeting recording: 2024 | April 10 Advisory Council meeting-20240410 1319-1

Password: YsJAdE3b

Recording link: <https://maureenConnell.my.webex.com/maureenConnell.my/jdr.php?RCID=b7cd2ac207d32867d798de49e9daf528>