

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

March 12, 2014

Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Stephen Joyce, Chairman; Stephen Falvey; Teri McHugh; Bill Corley; Bernie Mulholland; Dennis Hines; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; William Taupier, Deputy Director of Administration; Ray Marchand, Director of Investigations; John Riordan, Civil Litigation Manager; Karen Fabiszewski, Trust Fund Director; Rex Gerlach-Brown, Deputy Secretariat Director of Diversity; Christine Cronin, Workers' Compensation Research and Inspection Bureau (WCRIB).

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan.

Absent: John Regan, Vice-Chairman; Edmund Corcoran, Jr.; Antonio Frias; Mickey Long; John Pulgini; Todd Johnson; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Quarterly Update on FY' 14 Initiatives

Action Items

- Minutes – November 13, 2013
- Minutes – January 8, 2014
- Minutes – February 12, 2014

Discussion of the Draft FY' 13 Annual Report

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Stephen Joyce began the meeting at 9:00 A.M. The Chairman asked Director George Noel to provide an update on the DIA.

Director George Noel thanked the Chairman and stated that he was delighted to have been named the Director of the Department of Industrial Accidents and grateful to Governor Patrick and Secretary Kaprielian for their confidence in him to lead the organization.

Director Noel introduced Linda Turner, who is joining the DIA as the new Deputy Director, and Karen Fabiszewski, who is the new Trust Fund Director.

Director Noel noted that at the last Council meeting, there had been some discussion regarding cases against the DIA currently pending before MCAD. Director Noel stated that during that discussion Council members had requested that public information regarding those cases be shared with the Council. The Director explained that, while the organization is committed to transparency, the Agency has been informed by the General Counsel of MCAD that the information is not public while the investigation is ongoing. Therefore, he explained, the Agency is unable to disclose the information about pending MCAD cases or discuss them with the Council.

Director Noel stated that on March 5, 2014, the DIA, along with several current and former employees, were served with a summons to answer a complaint in Suffolk Superior Court where a former employee alleges that the DIA unlawfully terminated his employment and violated his civil rights. Director Noel explained that the Agency's General Counsel is consulting with the Attorney General who will represent the Agency and answer these claims.

Council member Dennis Hines asked about the financial impact of these cases, particularly whether a major judgment against the DIA would impact the Agency's budget or whether the cost would be absorbed in some other aspect of the Commonwealth's budget.

General Counsel William Tattan explained that there was a special encumbered fund for such matters with the Treasurer and the money does not come out of the Agency funds.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that both the conference queues and the hearing queues are down. He explained that the wait time between conciliation and conference has improved. The Senior Judge noted that the average wait times in Boston and Lawrence are 3.5 months; Fall River is 2.5 months and Springfield and Worcester are 2 months. He noted that the Agency is working to address the longer waits in the Boston and Lawrence offices.

Senior Judge Omar Hernandez stated that he expects the Impartial Unit and the Central Scheduling Unit to be merged by late April or early May, which should help streamline the process between conference and hearing.

Senior Judge Hernandez explained that when he first became the Senior Judge, the number of physicians on the impartial roster was fewer than 100. He explained that the roster has grown and currently includes 143 physicians. He stated that by merging the Impartial Unit and the Central Scheduling Unit, Diane Neelon, who currently manages the Impartial Unit, would be freed up to spend more time recruiting physicians and less time managing operations.

Senior Judge Hernandez informed Council members that all the applications for judicial appointment/reappointment have been submitted. The Senior Judge noted that the Agency is waiting to hear from the Governor's Office about when to proceed with the Nominating Panel interviews.

The Senior Judge stated that, with respect to conciliations, they were up to a 45% resolution rate. He explained that the more cases that are resolved at the conciliation stage, the fewer need to proceed to conference.

Senior Judge Hernandez stated that Judge Heffernan intends to retire next year. The Senior Judge explained that Judge Heffernan would finish out the conferences and hearings that he has scheduled

through March 31, 2014. After that, the Senior Judge explained, no new cases will be assigned to him. Senior Judge Hernandez stated that Judge Heffernan was going to be part of his new walk-in lump sum program. The Senior Judge explained that he plans to designate a judge in each region (Judge Heffernan in Boston and rotating judges in the other regions) to review and approve lump sums in cases where no judge has been assigned.

Vital Statistics

Deputy Director of Administration Taupier updated Council members on the information contained within the DIA's vital statistic report for March 2014. He offered the following statistics: Conference Queue: 757; Hearing Queue: 766; Total scheduled conciliation: 1,060; Total resolved at conciliation: 477; Reviewing Board Inventory: 55; Impartial Exams for FY' 14 (to date): 2,857 (22 waivers); Exam Fees Collected for FY' 14: \$1,312,050; Impartial Medical Examinations in FY' 13: 4,838 (51 waivers); and Exam Fees Collected in FY' 13: \$1,771,021.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in February: 167 (12 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 14 (to date): 1,566; fine collection for February: \$77,887; total fines in FY' 14 (to date): \$849,752; SWOs issued in FY' 13: 2,621; total fines collected in FY' 13: \$1,351,266; compliance checks for February: 6,634; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 4,018 (FY' 14).

Chairman Joyce requested that the Agency provide the Council members with a report that compiles the industries that the §65 uninsured employees are coming out of.

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in February 2014: 934; total cases filed in FY' 14 (to date): 7,824; total cases filed in FY' 13: 12,174; total First Report of Injury Forms (FRI) filed in February 2014: 2,724 (2,333 filed electronically; 86%); total FRI filed in FY' 14: (to date): 20,950; total FRI filed in FY' 13: 29,791 (11,937 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 14 (to date): 71; total amount of §65 claims paid by the Trust Fund in FY' 14 (to date): \$4,902,344; total §65 claims filed in FY' 13: 126; total amount of §65 claims paid by the Trust Fund in FY' 13: \$5,920,979; total recovery efforts against uninsured employers FY' 14: \$562,030; total recovery efforts against uninsured employers FY' 13: \$1,368,849.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 14 (to date): \$16,217,455; total amount paid on these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$6,608,063; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of January 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 245 (191 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$2,434,202; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$69,950; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$36,069,828; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$849,752; total SWO fines in FY' 13: \$1,351,266.

EXECUTIVE DIRECTOR UPDATE

Executive Director William Monnin-Browder stated that on Monday, he, along with Chairman Joyce and Vice-Chairman Regan, met with Secretary Kaprielian to discuss the Council and its activities. The Executive Director stated that the Secretary was very receptive to the issues discussed and that she hopes to attend a future Council meeting.

MISCELLANEOUS

Meeting Adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, April 9, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.