

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

January 13, 2016

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

Council Members Present: Steve Joyce; Steve Falvey; Bernie Mulholland; Teri McHugh; Frank Ruel; John Pulgini; Michael Kelley.

Also Present: Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Karen Fabiszewski, Acting General Counsel; Pasqua Scibelli, Civil Litigation Manager; Marc Joyce, Senior Regional Services Manager; Bob Cronin, Director of Investigations; Bob Ford, CFO; Ellen Keefe, Worker' Compensation Rating and Inspection Bureau (WCRIB); Virginia McCarthy, WCRIB; John Murphy, Massachusetts Insurance Federation; Jim Dunlop, Mass. Bay Self-Insurers Group; Dr. Michael Shor, Managing Director, Best Doctors Occupational Health Institute.

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

Absent: John Regan; Mickey Long; Todd Johnson; Bill Corley; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – Bill Taupier, Director of Administration
- Update on Regulatory Review Process – Karen Fabiszewski, Trust Fund Manager
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – August 12, 2015
- Minutes – September 9, 2015
- Minutes – October 14, 2015
- Minutes – November 18, 2015
- Minutes – December 9, 2015

Discussion of FY'15 Annual Report

Executive Director Update – William Monnin-Browder

New Proposals to Address Opioids in Workers Compensation – Omar Hernandez, Senior Judge

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce began the meeting at 9:00 and asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that the average wait times between conciliation and conference are approximately 2.5 months in Fall River and Boston; and 2.5 to 3 months in Springfield, Worcester and Lawrence. He noted that two judges plan to retire this summer, so he has started to adjust their schedules so that they have time to close their pending cases. The Senior Judge stated that he is working with the Governor's Office to determine when to begin the appointment/reappoint process, but that no timeframe has been set at this time.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for January 2016. He offered the following statistics: Conference Queue: 619; Hearing Queue: 739; Reviewing Board Inventory: 70; Impartial Exams for FY'16 (to date): 2,142 (46 waivers); Exam Fees Collected for FY'16 (to date): \$1,013,137; Impartial Medical Examinations in FY'15: 4,146 (94 waivers); and Exam Fees Collected in FY'15: \$1,967,550.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in December: 162 (8 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'16 (to date): 1,095; fine collection for December: \$96,925; total fines in FY'16 (to date): \$549,624; SWOs issued in FY'15: 1,938; total fines collected in FY'15: \$1,188,541; compliance checks for December: 5,861; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 2,613 in FY'16 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in December 2015: 1,048; total cases filed in FY'16 (to date): 6,076; total cases filed in FY'15: 11,837; total First Report of Injury Forms (FRI) filed in December 2015: 2,817 (2,527 filed electronically: 90%); total FRIs filed in FY'16: 17,131; total FRIs filed in FY'15: 33,353 (29,290 online). In December 2015 the number of employee claims filed: 862; number of employee claims filed in FY'16 (to date): 5,122; number of discontinuances filed: 182; the total number of discontinuances filed in FY'16 (to date): 930; the number of third party claims filed: 4; total number of third party claims filed in FY'16 (to date): 24.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'16 (to date): 62; total amount of §65 claims paid by the Trust Fund in FY'16 (to date): \$3,457,824; total §65 claims filed in FY'15: 99; total amount of §65 claims paid by the Trust Fund in FY'15: \$7,620,855; total recovery efforts against uninsured employers FY'16 (to date): \$549,534; total recovery efforts against uninsured employers FY'15: \$1,556,069.

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'16 (to date): \$7,977,221; total amount paid on these claims in FY'15: \$30,682,389; total COLA reimbursements to insurers in FY'16 (to date): \$1,648,808; total COLA reimbursements to insurers in FY'15: \$14,344,261.

Mr. Taupier reported that as of December 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 237 (181 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'16 (to date): \$1,937,431; total referral fees collected in FY'15: \$3,888,246; total assessment collections in FY'16 (to date): \$41,474,890; total assessment collections in FY'15: \$70,934,257.

Regulatory Review Update

Ms. Fabiszewski stated that as part of its regulatory review process, the DIA has forwarded draft revised regulations to the Executive Office of Labor and Workforce Development for review. She explained that once the Secretariat has completed its review, the proposal will be forwarded to A&F for further review. She explained that after that, the proposal will be forwarded to the Secretary of State's office to go through the public process.

Director's Update

Director Turner stated that with respect to the building lease, the DIA has been told by the management company that construction will not begin on this section of the building for five years. She explained that there would be a lot of construction going on in the area, but that DIA would remain here for the duration of the lease. Director Turner stated that the DIA would begin looking for new space in approximately two years.

Circular Letter #348

Director Turner welcomed Karen Fabiszewski as Acting General Counsel and asked her to provide a brief update as Chair of the working group meeting on Circular Letter #348.

Ms. Fabiszewski stated that the working group established under Director Turner's direction is close to completing the draft of the form being developed by the DIA's IT Department. Ms. Fabiszewski stated that they will be distributing a draft soon to ensure that the paper format is consistent with the working group's discussions. She noted that once everybody in the group agrees that this is what was discussed, then all recommendations will go to Director Turner for review and she will decide on any changes to the process.

DISCUSSION OF FY'15 ANNUAL REPORT

Executive Director Monnin-Browder informed members that their packets include the latest draft of the Advisory Council's FY'15 Annual Report. He noted that changes were minimal from the version previously circulated, but that Director Turner had some suggestions that were incorporated in the draft.

EXECUTIVE DIRECTOR UPDATE

Mr. Monnin-Browder noted that he had sent an email to members about the Workers' Compensation Rating and Inspection Bureau's (WCRIBMA's) rate filing. He explained that the WCRIBMA has filed for a 6.4% increase and that Division of Insurance (DOI) had scheduled a hearing for January 29, 2016 to obtain public comment on the filing. Mr. Monnin-Browder noted that he would attend the hearing. Mr. Monnin-Browder also noted that DOI would also be holding a hearing on the WCRIBMA's proposed revisions to the Federal Employers Liability Act (FELA) and Admiralty programs on January 20, 2016. He stated that he would attend that hearing as well.

Mr. Monnin-Browder also informed the Council that there was a bill recently referred to the Joint Committee on Labor and Workforce Development that has workers' compensation implications. He explained that the bill would reward whistleblowers for alerting the Council on the Underground Economy, or another enforcement agency, for violations of certain labor and employment laws, including Section 25A of M.G.L. c.152. He explained that that is the section which requires employers to obtain workers' compensation insurance. Mr. Monnin-Browder stated that the bill would give anyone who provides information that substantially contributes to the prosecution of a violation 10% of the proceeds recovered in the action and settlement of the claim.

NEW PROPOSALS TO ADDRESS OPIOIDS IN WORKERS' COMPENSATION

Opioid Diversion Program

Senior Judge Omar Hernandez explained that in recent years, the negative societal and health consequences of opioids have come into focus. The Senior Judge stated that in order to address the issue in the context of workers' compensation cases, the Senior Judge and other stakeholders had convened a committee with insurer representatives, employee representatives and Administrative Judges. He stated that the group discussed what could be done within the confines of M.G.L. c.152 (the Workers' Compensation Act). The Senior Judge explained that they developed a pilot Opioid Diversion Program (ODP). The Senior Judge explained that this pilot program would be voluntary and, at the outset, would involve only post-lump sum cases where medical treatment is at issue.

The Senior Judge explained that often, in situations where an injured worker has lump summed their claim, but is a long term opioid user, an insurer will file a complaint to discontinue medical treatment. He explained that the complaint would then go to conciliation and then to conference. He explained that at conference, most judges are reluctant to discontinue medical treatment without an impartial exam. He explained that by the time the complaint gets to hearing, the process may have taken a year. The Senior Judge explained that the ODP is an attempt to avoid those time frames.

The Senior Judge stated that the new program would allow parties to fill out a form to enter the ODP if both parties agree to do so. He explained that the case would then be referred to a mediating judge. He explained that the mediating judge will bring the parties together to try to develop a treatment plan. He explained that the parties will assign a care coordinator to help track the worker, line up appointments and identify providers. At this mediation, the Senior Judge explained, the employee will sign off on all medical releases. He explained that if at any point the negotiations break down, the parties can go back before the mediating judge to help resolve issues. He explained that if the parties are unable to resolve their issues, the case can move back into the DIA's normal dispute resolution process.

Multi-Disciplinary Opioid Assessments

The Senior Judge explained that, in addition to the DIA's efforts, a Medical Subcommittee of the Workers' Compensation Safety Task Force had worked to develop a program to provide multi-disciplinary opioid assessments. He explained that would allow an injured worker to be evaluated by medical professionals from a variety of disciplines such as a pain specialist, behavioral specialist, psychologist, physical therapist and a rehabilitation specialist in order to develop a treatment path. He stated that a report would be issued as a result of the evaluations. The Senior Judge noted that these assessments could be used as part of the ODP or independent of it.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, February 10, 2016, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.