

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

October 14, 2015

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

Council Members Present: John Regan; Todd Johnson; John Pulgini; Stephen Falvey; Frank Ruel; Bill Corley; Bernie Mulholland; Michael Kelley; Steve Joyce (by phone).

Also Present: Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Tattan, General Counsel; Bill Taupier, Deputy Director of Administration; John Riordan, Deputy General Counsel; Roody Herold, Manager, Information Technology; Marc Joyce, Senior Regional Services Manager; Alan Green, Acting Director of Investigations; Bob Ford, CFO, Melissa Butts, Program Coordinator, Council on the Underground Economy; Christine Cronin, Worker' Compensation Rating and Inspection Bureau; John P. Murphy, Massachusetts Insurance Federation, Dr. Simon Talbot, Brigham and Women's Hospital; Donna Ward, Brigham and Women's Hospital.

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

Absent: Teri McHugh; Mickey Long; 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 – William Taupier, Deputy Director of Administration
- Update on Regulatory Review Process – General Counsel William Tattan
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – August 12, 2015
- Minutes – September 9, 2015

Executive Director Update – William Monnin-Browder

Upper Extremity Transplantation in Workers' Compensation Cases – Dr. Simon Talbot, MD

Miscellaneous

CHAIRMAN'S WELCOME

Vice Chairman John Regan welcomed everyone and asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Hernandez stated that the average wait times between conciliation and conference are approximately two and a half to three months in all regions.

The Senior Judge stated that each month he sends out a report to all judges requesting that they explain any late hearing decisions. He noted that there were 69 decisions that met his criteria for being a late decision in February of this year and that there are currently 29 such decisions—a decrease of approximately 60%.

The Senior Judge reminded the Council that the Tri-State Conference (Massachusetts, Rhode Island and New Hampshire) is coming up on October 23, 2015.

Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for October 2015. He offered the following statistics: Conference Queue: 442; Hearing Queue: 617; Reviewing Board Inventory: 113; Impartial Exams for FY'16 (to date): 1,078 (8 waivers); Exam Fees Collected for FY'16 (to date): \$520,182; 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 September: 212 (18 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'16 (to date): 591; fine collection for September: \$103,382; total fines in FY'16 (to date): \$276,007; SWOs issued in FY'15: 1,938; total fines collected in FY'15: \$1,188,541; compliance checks for September: 6,703; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 1,362 in FY'16 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in September 2015: 1,120; total cases filed in FY'16 (to date): 3,185; total cases filed in FY'15: 11,837; total First Report of Injury Forms (FRI) filed in September 2015: 3,389 (3,002 filed electronically: 89%); total FRIs filed in FY'16: 9,376; total FRIs filed in FY'15: 33,353 (29,290 online). In September 2015 the number of employee claims filed: 965; number of employee claims filed in FY'16 (to date): 2,718; number of discontinuances filed: 153; the total number of discontinuances filed in FY'16 (to date): 453; the number of third party claims filed: 2; total number of third party claims filed in FY'16 (to date): 14.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'16 (to date): 36; total amount of §65 claims paid by the Trust Fund in FY'16 (to date): \$1,420,183; 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): \$376,300; 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): \$2,699,288; total amount paid on these claims in FY'15: \$30,682,389; total COLA reimbursements to insurers in FY'16 (to date): \$225,727; total COLA reimbursements to insurers in FY'15: \$14,344,261.

Mr. Taupier reported that as of September 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 234 (181 DIA employees, 53 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'16 (to date): \$900,646; total referral fees collected in FY'15: \$3,888,246; total assessment collections in FY'16 (to date): \$21,047,748; total assessment collections in FY'15: \$70,934,257.

Regulatory Review Process

General Counsel William Tattan explained that the Agency has begun its review of existing regulations as required by Executive Order 562. Mr. Tattan explained that the Secretary of Administration and Finance has set up a platform for each agency's review, which includes steps and timeframes. He explained that the Agency has already had to submit a work plan, which it has done. He explained that the review must be completed by the end of February 2016 and requires the publishing of notices and the holding of public hearings.

Mr. Tattan stated that Judge Hernandez is moving right along on the first section of the regulations, the Adjudicatory Rules. Mr. Tattan noted that DIA regulations make up eight sections of the Code of Massachusetts Regulations and seven of those sections are actually populated.

Senior Judge Hernandez stated that he met with a group of stakeholders the previous day to discuss the Adjudicatory Rules section of the Agency's regulations. He explained that the group includes a cross section of stakeholders including employee representatives, insurer representative, Administrative Judges and Administrative Law Judges. He explained that there is also regional diversity in the group. He said the group is going through each section and subsection to make sure the regulations are consistent with case law and striking any redundancies.

Mr. Tattan explained that, throughout the regions, the Agency is in the process of hosting informational sessions on the regulations. He explained that the final session is scheduled in Boston on November 5, 2015. He stated that the sessions are open to anyone.

Vice Chairman John Regan suggested that this be kept on the agenda for the next couple of meetings.

DIRECTOR'S UPDATE

Director Linda Edmonds Turner stated that following on the theme from information sessions, yesterday they had their first information listening session on the Assessment Collection Process. She noted that they had five insurers with them yesterday and the major comment that came up from that is that we should consider putting together a working group, which should include insurance companies to make sure everything is correct. The Director noted that they will have another session on Thursday, November 12, 2015 from 1:30 to 3:00 p.m. at the Hurley Building. The Director explained that what they are trying to do is to get everybody who has a comment on this process to say it so adjustments can be made, if needed.

Vice Chairman Regan asked if the suggestion for a working group is going to proceed. He stated that his understanding is that the industry is concerned that the DIA does not understand how the business works and because the Agency does not understand how it works, the DIA cannot figure out how to do the assessment reconciliation process properly. Mr. Regan stated that until that knowledge base increases the DIA is never going to get the appropriate outcome. Mr. Regan stated that he would urge that the working group be formed sooner rather than later.

The Director stated that they would be meeting on November 12th but, in the meantime, they are looking into putting together a working group.

COMMUNICATIONS

Executive Director Will Monnin-Browder stated that both he and Steve Joyce had received a call from Dr. John Burrell who is with Boston Medical Center. The Executive Director informed the Council that

Dr. Burress is an occupational medicine doctor who serves on the Health Care Services Board at the DIA. He explained that Dr. Burress was hoping to come in and talk to the Council at some point about the fee schedule for office visits. The Executive Director stated that he would work with Dr. Burress to schedule his presentation.

EXECUTIVE DIRECTOR UPDATE

Executive Director Monnin-Browder updated the Council members that they have been looking at a piece of legislation that deals with third party settlements. He stated that the SJC held oral arguments on the issue last week and that staff would continue to monitor the situation.

The Executive Director introduced today's guest speaker, Dr. Simon Talbot. He stated that Dr. Talbot is the Director of the Upper Extremity Transplant Program at Brigham & Women's Hospital and an Assistant Professor at Harvard Medical School. Dr. Talbot is a graduate of the University Of Auckland School Of Medicine and completed his residency in general surgery, plastic surgery at Harvard. He also completed a fellowship in hand and microvascular surgery at Beth Israel Deaconess Medical Center and is a Board Certified Plastic Surgeon with a subspecialty certificate in surgery of the hand.

UPPER EXTREMITY TRANSPLANTATION IN WORKERS' COMPENSATION CASES

Dr. Simon Talbot thanked the Council for the invitation. Dr. Talbot noted that his particular area of focus is upper extremity transplantation. He explained that there have been around 80-100 cases of hand transplants around the world now, with about 23 in the United States (four of which were done in Massachusetts).

Dr. Talbot emphasized the importance of upper extremities in both job functions and daily life. He stated that the psychological and physical isolation are major problems faced by amputees. He explained that these patients have phantom pain, feeling pain in a place that does not exist. He noted that more than half of these patients are suffering with pain on a regular basis. He explained that these patients are often taking opiates and seeing pain management specialist to try to manage this problem.

Dr. Talbot stated that there are options other than a hand transplant. He explained that one option is prosthetics. He indicated that one problem with prosthetics is their limited functionality, which limits a patient's likelihood of returning to work. Dr. Talbot explained that, from his experience, most prosthetics are left in the closet because they are cumbersome or in the shop for repair more often than not. Dr. Talbot explained that with a prosthetic there is a small upfront cost but higher lifetime costs and with transplantation there is a high upfront cost but that diminishes with time as the arm becomes more functional and a part of the patient.

On the issue of billing, Dr. Talbot noted that Medicare has started to cover some of the costs, such as rehabilitation, in-patient stays and many of the patient's physician appointments. Dr. Talbot noted that CMS was meeting this week to discuss coverage of these operations. He indicated that CMS has realized they are already covering a lot of equivalent procedures. He explained that what is involved in a hand transplant is recovering the limb, preparing it, and attaching it to the patient. CMS already covers equivalent procedures such as procuring, preparing and attaching a kidney or other organ then applying a code for it which includes the cost. He noted that it is really not much different to do a hand.

Vice Chair Regan asked if the initial response is to go with the prosthetic for a temporary period of time and then go with the transplant, if needed. He asked if the workers' compensation system would be bearing the costs for both procedures.

Dr. Talbot stated that the initial prosthetic cost is generally pretty low, especially when a prosthetic is \$10,000-\$20,000 compared to the cost of the transplant which is \$500,000 one-time cost. He explained that they are not fitting for a high end prosthetic since they have trial ones and a patient can try it to see if this works for them.

Council member John Pulgini asked how a regular insurance companies treat hand transplant surgeries.

Dr. Talbot stated that, so far, in some areas it has been covered, but coverage is not universal. He explained that it is a case-by-case negotiation. He noted that he has met with major insurance companies to discuss the procedure.

Mr. Kelley asked if there is a success/failure rate for the procedure.

Dr. Talbot stated that so far in the US there have been three or four of the twenty surgeries done that have not been successful. He stated that they are currently studying the predictors of success.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, November 18, 2015, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.