

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

November 13, 2013

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

*Council Members Present:* John Regan, Chairman; Mickey Long; Stephen Falvey; Edmund Corcoran, Jr.; Bill Corley; Teri McHugh; John Pulgini; Mickey Long; Dennis Hines.

*Also Present:* Philip L. Hillman, Director; George Noel, Deputy Director of the DIA; William Taupier, Deputy Director of Administration; Ray Marchand, Director of Investigations; Bob Ford, Budget Director, EOLWD; Mark Joyce, DIA; Rex Gerlach-Brown, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIBMA); Michael Kelley, AIM Mutual; Jim Dunlap.

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

*Absent:* Stephen Joyce, Vice-Chairman; Todd Johnson; Dave Powell; Antonio Frias (Ines Leonardo); Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

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## *Agenda:*

Chairman's Welcome

DIA Update

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

Action Items

- Minutes – October 2, 2013

Discussion of Write Offs

Discussion of the Draft FY' 13 Annual Report

Discussion of Topics of Interest for Future Advisory Council Meetings

Executive Director Update – William Monnin-Browder

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman John Regan began the meeting at 9:00 A.M. Chairman Regan asked William Taupier to provide his update.

## **DIA UPDATE**

### Vital Statistics

Deputy Director of Administration Taupier updated Council members on the information contained within the DIA's vital statistic report for November 2013. He offered the following statistics: Conference Queue: 791; Hearing Queue: 897; Reviewing Board Inventory: 32; Impartial Exams for

FY' 14 (to date): 1,470 (9 waivers); Exam Fees Collected for FY' 14: \$642,675; Impartial Medical Examinations in FY' 13: 4,838 (51 waivers); and Exam Fees Collected in FY' 13: \$1,782,571. He noted that the average wait time for conference currently stands at 8 to 12 weeks.

Mr. Taupier introduced a new slide tracking claims resolved at the conciliation level. He offered the following statistics: Conciliations Scheduled September: 1,038; Conciliations Resolved September: 489; Percentage Resolved at Conciliation: 47%.

Council member John Pulgini asked if Mr. Taupier could find out what the percentage of claims were §36 cases and report back to the Council.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in October: 253 (19 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 14 (to date): 902; fine collection for August: \$146,880; total fines in FY' 14 (to date): \$519,784; SWOs issued in FY' 13: 2,621; total fines collected in FY' 13: \$1,351,266; compliance checks for October 2013: 7,573; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 2,143 (FY' 14).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in October 2013: 1,211; total cases filed in FY' 14 (to date): 4,138; total cases filed in FY' 13: 12,174; total First Report of Injury Forms (FRI) filed in October 2013: 3,054 (1,370 filed electronically; 45%); total FRI filed in FY' 14: (to date): 10,736; 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): 39; total amount of §65 claims paid by the Trust Fund in FY' 14 (to date): \$2,472,995; total §65 claims filed in FY' 13: 126; total amount of §65 claims paid by the Trust Fund in FY' 13: \$5,727,787; total recovery efforts against uninsured employers FY' 14: \$213,066; 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): \$7,766,912; total amount paid on these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$3,172,161; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of October 2013, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 245 (189 DIA employees, 56 WCTF employees).

EOLWD Budget Director Bob Ford explained that the Secretariat continues to consolidate its finance functions. He said fewer hours of labor are being charged back to DIA, which has resulted in a decrease of one FTE. Mr. Ford explained that they are not backfilling positions in finance.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$1,264,460; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$32,550; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$22,215,078; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$519,784; total SWO fines in FY' 13: \$1,351,266.

#### Quarterly Update of FY'14 Initiatives

*Conduct Outreach to Community Health Centers to Address Cost-Shifting in Workers' Compensation*

Deputy Director George Noel stated that the study that he had alluded to in the May Council meeting concerning workers compensation and community health centers was published in August 2013. He explained that the study indicated that 25-50% of the treatment costs for injured workers are being shifted away from workers' compensation.

Mr. Noel noted that his outreach to address the issue has focused on workers' centers and community health centers. Mr. Noel noted that since he last spoke to the Council, the DIA has begun working with a representative of the Immigrant Workers Center Collaborative, a multi-ethnic coalition of eight immigrant worker centers in Eastern Massachusetts and Rhode Island involved in educating and advocating for immigrant workers. Mr. Noel indicated that he is working to produce a presentation geared towards workers explaining the workers' compensation system. He also indicated that the DIA is currently producing explanatory materials in about nine different languages. Mr. Noel indicated that he has also conducted outreach to the Massachusetts League of Community Health Centers. He informed the Council that he had shared the study with the group's policy subcommittee and that discussions are ongoing.

Council member Dennis Hines explained that from the provider side, when someone walks into a doctor's office or hospital with their health insurance card, coverage can be electronically established. Mr. Hines noted that with workers' compensation, there are questions as to whether the claim has been filed and if so, whether it has been accepted or denied. Mr. Hines stated that if the claim is denied, the provider will not be reimbursed. He indicated that a problem might arise when the workers' compensation claim is denied, because too much time may have elapsed to seek payment from a secondary insurer. Mr. Hines stated that it can be too hard to validate workers compensation coverage.

Council member Mickey Long asked that the study be circulated to Council members. Mr. Long stated that his understanding is that the study has identified workers, injured at work, whose treatment is not paid through workers compensation. He indicated that the employer in these situations ought to be identified and held accountable.

Council member Ed Corcoran agreed with Mr. Long. He also noted that some employers are very conscious of the OSHA Standards of Safety. He observed that some good employers might shift claims away from workers' compensation when there is a reason to suggest other causes, not because they are bad actors, but because they see it as a gray area and they want to keep their numbers low.

In response to a question, Mr. Noel stated that the study does not quantify how much money is being shifted away from workers' compensation.

Chairman Regan stated that clearly this is an interesting topic and suggested that it be discussed again once everyone has had the opportunity to review the study.

#### *Impartial Medical Examiners Roster*

Mr. Bill Taupier updated the Council on the Impartial Medical Exam roster. Mr. Taupier explained that the Agency currently has 110 doctors on the roster, and 24 contracts are pending completion. Mr. Taupier stated that the Agency is focusing on adding more specialties. He noted that one of the reasons there is a problem with pending contracts is because the paperwork has increased since the last time this was done.

Director Hillman noted that the DIA had brought in someone to assist doctors with the contracts. He explained that if you have somebody who can actually go visit the doctor's offices, sit down and provide guidance, it is much more effective. Director Hillman also noted that the Agency has begun removing

underperforming physicians from the list. The Director stated that Diane Neelon has done an excellent job of attempting to build a stronger list.

*Write-Offs*

Mr. Bob Ford stated that the Secretariat is comprised of five departments and four out of those five departments have the responsibility of collecting fines or payments. Mr. Ford explained that last fiscal year the DIA went through a process and selected Allen Daniel, a debt collection agency, from a state contract.

Mr. Ford explained that DIA staff does a great job in collecting almost 90% of the SWO fines in the first 60 days. He indicated, however, that 10% is not collected. He explained that the DIA has changed the whole collections process. Now, Mr. Ford explained, Investigations has 30 days to aggressively pursue the SWO collection. After 30 days, the case is transferred to the legal department and a decision is made whether to send it to the debt collection agency or try to pursue it internally through the legal department. After another 30 days, on the 61<sup>st</sup> day, all the SWO fines that have not been collected are sent to the collection agency and both the legal department and the collection agency attempt to collect the debt for six months.

Mr. Ford stated that the collection agency will pursue the 10% of uncollected fines very aggressively and that at the end of eight months, the collection agency will return any that are not collectable. He noted that at that point the DIA would need to decide whether the debts should be written off. Mr. Ford informed the Council that \$900,000 was written off last month as uncollectable SWOs.

Mr. Ford stated that when the process was started, the DIA had given the collection agency everything on the books that had not been collected since 2008. Mr. Ford noted that the collection agency will work on these items as well and, if the collection agency is unsuccessful, they will be taken off the books. Mr. Ford explained the collection agency charges the individual 20% of the collection amount.

Council member Long asked why out-of-state collections efforts could not be done in-house.

Director Hillman explained that General Counsel Bill Tattan would be in a better position to answer the question, but indicated that the DIA would need the AG's authorization to go outside the state to pursue collections, which they have not received.

Council member Long stated that even by using a collection agency, the DIA is going out of state, because the DIA is the client of the collections agency.

Council member Pulgini noted that the DIA has used outside bill collectors in the past. He indicated that he believed it stopped because the DIA found if they did this in-house, they were much more successful.

Council member Long stated that his concern, given some of the issues that arose in the past with the use of outside collection agencies, is how the Council can be sure that the new process continues, even when a new administration comes in.

Director Hillman stated that this is a financial process, which has been incorporated in the auditing process. Director Hillman stated that the procedure has been documented, so when the auditors come through, they will be looking for this process.

Mr. Ford added that the DIA will inform the Council when writing off bad debt.

Chairman Regan stated that to Mr. Long's point, if there is a regular reporting of how the contract is doing and how that bad debt trajectory looks, then the Council can evaluate whether or not this is working. Chairman Regan noted that regular reporting would help Council members understand whether the contract is working.

Chairman Regan suggested that, due to time constraints, the Council hold off on the balance of the initiatives until the next meeting.

### **ACTION ITEMS**

A motion was made to approve the October 2, 2013 minutes.

Motion seconded and carried.

### **DISCUSSION OF THE DRAFT FY'13 ANNUAL REPORT**

Chairman Regan asked the Executive Director to update the Council and talk about the draft of the FY'13 Annual Report, which we would like to file timely and then segue into a discussion of what topics the Council would be interested in talking about moving forward.

Executive Director Will Monnin-Browder stated that a draft of the FY'13 annual report has been provided, which includes everything except the Concerns and Recommendations section. Mr. Monnin-Browder noted that there was also an outline of the Concerns and Recommendations for review in the packets. The Executive Director requested that Council members provide comments on the draft and the Concerns and Recommendations by November 22<sup>nd</sup>, so that staff would have time to draft the Concerns and Recommendations section and make any changes to the draft report in advance of next month's meeting.

Council member Mickey Long stated that page 78 notes that the DIA's assessment rate decreased 21%, which is a significant amount. Mr. Long expressed surprise that the press does not pick up things like this. Mr. Long noted that the sentence should be highlighted in the annual report and the cover letter. He explained that there are people in the Legislature who read this report and this is an important fact for them to see, given that it is a historic decrease.

### **DISCUSSION OF TOPICS OF INTEREST FOR FUTURE ADVISORY COUNCIL MEETINGS**

Executive Director Will Monnin-Browder stated that he and the Chairman recently spoke about future meetings and what topics would be interesting to members. He asked members to reach out to him if there are any particular topics they would be interested in hearing more about.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Will Monnin-Browder stated that he, John Regan and Steve Joyce testified before the Joint Committee on Labor and Workforce Development ("Committee") in the beginning of October. The Executive Director noted that in addition to the Council, other groups testified in support of the burial allowance legislation, including MassCOSH, the Massachusetts Bar Association and the Massachusetts Academy of Trial Attorneys.

The Executive Director stated that the Committee reported seven of the eight bills that the Council endorsed favorably, noting that the burial benefit bill was amended. He stated the Committee redrafted

the bill to index the maximum burial allowance to eight times the State Average Weekly Wage, which works out to be about \$9,450 currently.

Chairman Regan stated that a copy of the draft would be sent to everybody and members would be kept informed if anything unfolds.

**MISCELLANEOUS**

Motion made to adjourn the meeting.

Motion seconded and carried.

**The next meeting of the Advisory Council is scheduled for Wednesday, December 11, 2013, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**