

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

September 14, 2011  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*CM Present:* Chairman Mickey Long; Vice-Chairman Edmund C. Corcoran, Jr.; John Pulgini; Stephen Joyce; Stephen Falvey; Bernard Mulholland; Todd Johnson; David Powell.

*Also Present:* Director Philip L. Hillman; Reuben Kantor, Director of Operations; William Taupier, First Deputy Director of Administration; Jack Defina, CFO; Ray Marchand, Director of Investigations; Tim McMahan, Undersecretary of Administration, Executive Office of Labor and Workforce Development (EOLWD); Bob Ford, Acting Budget Director, EOLWD, Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Mike Kelley, AIM Mutual Insurance Company.

*Advisory Council Staff:* Evelyn Flanagan, Christina Peura.

*Absent:* CM: John Regan; William Corley; Dennis Hines; Antonio Frias; Teri McHugh; Department of Business Development, Maydad Cohen, EOLWD.

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## *Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update – Philip Hillman, Director
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes – July 13, 2011

Article 87 – Reorganization Plan – Tim McMahan/Bob Ford

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Mickey Long began today's meeting at 9:00 a.m. The Chairman introduced Todd Johnson, who would be replacing Peter Cook as the new insurance representative. Chairman Long also introduced Ms. Christina Peura, Legal Intern for the Advisory Council and third year law student at New England School of Law. Chairman Long asked Mr. Bill Taupier to provide the DIA Update.

## **DIA UPDATE**

### Vital Statistics

Mr. Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for September 2011. Conference Queue: 675; Hearing Queue: 598; Reviewing Board Inventory: 40; Impartial Exams for FY' 12 (to date): 306 (0 waivers); Exam Fees Collected for FY' 12: \$271,725. In fiscal year 2011 there were 4,295 Impartial Medical Examinations (48 waivers); Exam Fees Collected in FY' 11: \$1,560,963.

Chairman Long voiced concern regarding the increase in the time it takes to move a case from conciliation to conference. He noted that previously the time it took to move into conference had

been down to 6-8 weeks; whereas, the current average waiting time is now at 8-12 weeks. Chairman Long stated that he would keep an eye on the queue, watching the progress in the next few months.

Mr. Bill Taupier updated Advisory Council members on the Stop Work Order (SWO) and Caseload Statistics. The DIA issued 270 SWOs in August (27 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'12 (to date): 481. Fine collection for August 2011: \$103,250; total fines in FY' 12 (to date): \$204,100; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,228,525; compliance checks for August 2011: 4,679; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 7,384 (FY'12).

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in August 2011: 2,082; total number of cases filed in FY' 12 (to date): 2,082; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in August 11: 2,971; total number of FRI filed online in August 2011: 910 (31%); total number of FRI filed in FY' 12: (to date): 2,971 (910 online); total number of FRI filed in FY'11: 30,820 (9,482 online).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims reported in FY' 12 (to date): 20; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$914,509; total number of §65 claims filed in FY' 11: 118; total amount of §65 claims paid by the Trust Fund in FY'11: \$7,666,940; total recovery efforts against uninsured employers FY' 12: \$139,053; total recovery efforts against uninsured employers FY' 11: \$1,329,919.

Council member Stephen Joyce asked if the DIA had noticed any industry trends related to the §65 injuries. He wanted to know if this could be tracked, as well as tracking the extent of these injuries.

Mr. Ray Marchand, Director of Investigations, indicated that the investigations unit does track these cases and provides an analysis of what industries have the most injuries. Mr. Marchand further noted that most of the §65 injuries were in retail, small mom and pop stores. He explained that there were some construction claims but only a small portion of them were §65.

Director Hillman stated that he would provide a breakdown of the uninsured industries and the extent of those injuries at the next meeting.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'12 (to date): \$0; total amount paid on these claims in FY'11: \$19,582,396; total COLA reimbursements to insurers in FY'12 (to date): \$195,906; total COLA reimbursements to insurers in FY'11: \$14,917,381.

Mr. Taupier reported that as of June 2011, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 248 (199 DIA employees, 49 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Vice-Chairman Edmund Corcoran asked if the 283.2 approved payroll positions was the number used in line-item AA of the FY' 12 budget. He stated that he was also interested in knowing if the DIA had any intentions of decreasing their staff in the future or not filling some of the vacant judicial positions.

CFO Jack Defina informed the Council Members that the number of employees used in the FY' 12 budget was 261 employees.

Director Hillman added that the statute requires that the DIA have 21 judges and he would provide more information in his update.

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY' 12 (to date): \$613,535; total referral fees collected in FY' 11: \$3,730,233; total first report fines in FY' 12 (to date): \$22,900; total first report fines in FY' 11: \$137,905; total assessment collections in FY' 11 (to date): \$19,469,854; total assessment collections in FY' 11: \$80,880,887; total SWO fines in FY' 12 (to date): \$254,293; total SWO fines in FY' 11: \$1,836,225.

### Judicial Update

Chairman Long asked Director Philip Hillman for a judicial update.

Director Hillman informed the Council that Judge Bridget Murphy from the Springfield office planned on retiring on November 28, 2011. Director Hillman explained that this position would be advertised and a new application process would have to begin again. He mentioned that the pool had closed for the previous judicial vacancies. Director Hillman mentioned that the DIA had received approximately 24 to 26 names for the last round of candidates. He explained that the Nominating Panel is waiting for the Senior Judge to be in place before proceeding with interviews.

Director Hillman reported that the DIA had narrowed down their search for the position of the Senior Judge and have submitted two names to the Governor's Office. Director Hillman informed the Council members that the DIA is hoping to have the Senior Judge in place before the next Council meeting.

Director Hillman stated that the process for the position of the Executive Director is moving along. Currently, they are only waiting for the background check and DIA is hoping the new Executive Director will be on board before the next Council meeting.

Council Member Stephen Joyce asked if there had been any progress on making the Debarment List more usable by other agencies.

Director Hillman explained that IT was working on the coding and that he hopes to have more news next month.

### **ACTION ITEMS**

A motion was made to approve the July 13, 2011 minutes.

Motion Seconded and Carried.

### **ARTICLE 87 CONSOLIDATION PLAN**

Chairman Mickey Long asked Mr. Tim McMahon, Undersecretary for Administration at the Executive Office, to update the Council members on the process for the Article 87 Consolidation Plan.

Mr. McMahon introduced Mr. Bob Ford, Acting Budget Director, and explained that Mr. Ford would also be adding to the update. Mr. McMahon stated that the reporting structure was one of the first changes made to the Consolidation Plan. He explained that EOLWD had eliminated a number of positions and consolidated a few agencies, which will report directly under the Executive Office of

Labor and Workforce Development (EOLWD). Mr. McMahon reported that in order to implement these changes the Comptroller's Office assisted EOLWD to insure that the statute was followed.

Mr. McMahon explained that EOLWD had taken the backbone pieces of the agency and those areas were absorbed by the Executive Office becoming part of EOLWD. He reported that the first unit that was consolidated was IT. Currently they are consolidating Accounting and Finance, Facilities, and Human Resources. Mr. McMahon mentioned that this will allow the Executive Office to do more for different areas. EOLWD plans on only consolidating the infrastructure thereby allowing each agency access to greater resources, which will enable each department to be better served.

Mr. Bob Ford, Acting Budget Director, discussed the issue of charge-backs with the Council members. Mr. Ford provided an example by describing the recent early retirement package that was offered by the Executive Office. Mr. Ford reported that 64 individuals took advantage of this package. He stated that Finance lost three individuals to early retirement and one person transferred to another department. Mr. Ford noted that since there were no plans to replace those individuals, the Executive Office immediately brought two people from the DIA to be part of Finance.

Mr. Ford stated that the labor charges for those individuals would be changed and the DIA would be charged with 50% of the cost of those employees and then the other 50% would be charged across the whole department structure. Mr. Ford explained that this change would provide savings. He stated that just on the salary situation, the DIA should save approximately \$150,000 or more.

Chairman Long asked for further clarification noting that if the DIA is charged 50% of the employee's pay did that mean that these individuals would be doing 50% of their work for the purposes of the DIA?

Mr. Ford stated that this situation would have to be watched very carefully to make sure the workload is being handled correctly. He noted that the Executive Office has consolidated accounts payable and will be consolidating all the other areas in Finance. Mr. Ford reported that Mr. Bob Kenney's position is basically going to be eliminated because of the consolidation and Mr. Kenney would be moving into another position to head up implementation of new technology in finance.

Mr. Ford explained that the goal of the EOLWD is to begin with Finance. He informed the Council that the Executive Office had started with 72 people agency wide and he believes that within 12-13 months they should be able to reduce that to 60 people, resulting in about a 16% reduction and the DIA will be part of the reduction savings.

Mr. Ford reported that as part of the consolidation EOLWD has set up a print shop, which the DIA will start using for cost only. He added that the same thing will happen with the stock room. He stated that the stock room will buy in bulk all miscellaneous items and when the DIA needs something, the stock room will supply it at a substantial savings. He explained that they are looking at the whole cost structure and trying to bring it down to make sure every department shares in these deductions.

Chairman Long asked if the Advisory Council staff would have access to the names of the individuals who would be hybrid employees. The Chairman stated that this is a concern of the Advisory Council. Chairman Long noted that, if the employer is required to pay the bill for the operations of the DIA, which is a separate and distinct entity from the state budget, for legal and non-legal reasons, the Council would like to be assured that whatever the DIA is being billed, it is only for the operations of the DIA. He stated that the only way the Council members will know this information is through the Advisory Council staff, Evelyn and the new Executive Director. The

Chairman explained that he hopes the Council will not have to pull teeth to receive the names of those individuals performing at least 50% of the DIA work so the Council members can be assured that they have been doing at least 50% of the work and that the staff is comfortable with their observations and that they will send the information along to the Council members. Chairman Long informed the Executive Office that knowing the information is readily available to Council members and staff would make everybody more comfortable.

Mr. Ford explained that there were two things the Executive Office could do to help alleviate this concern, one of which is to provide an ongoing list of individuals, which will be updated every month. Mr. Ford's second recommendation is to add another slide to the DIA's monthly update detailing the impact of the Article 87 Consolidation Plan and the way the cost structure is moving.

Chairman Long stated that the Advisory Council wants to be comfortable with (a) there is transparency, and (b) that the cost associated with DIA operations are consistent with the line items in the Governor's budget.

Vice-Chairman Corcoran stated that he applauds the effort of the agency and believes this is where the private and public sector are working toward financial shared services. Vice-Chairman Corcoran explained that his concern regarding the consolidation is how the cost will be charged-back to the agency, since this system has multiple agencies tapping into it. Vice-Chairman Corcoran stated that this is a key component to the Advisory Council as an oversight body, knowing what the budget is all about and making sure it is properly assigned.

Mr. Ford agreed that this was a valid concern. He noted that labor, print room and stock room are easy to charge-back but that it is not the case when it gets to the rest of the infrastructure and the non-salary costs. Mr. Ford reported that EOLWD is planning to buy a system that will be able to track all non-personnel costs and show exactly how the money is allocated and the basis for the allocation. Mr. Ford explained that the overall costs for operations should come down. He stated that he knows the salary part is going to come down, it is the non-personnel costs that have to be watched carefully ensuring that the costs are shared equally and appropriately in every department. Mr. Ford explained that the Executive Office has done IT consolidation noting that the people side was easy compared to the non-personnel side, which EOLWD continues to work on. He explained that once the new system is up and running, there will be a system which feeds to the financial system.

Council member Stephen Joyce stated that with regard to sharing the cost that is great if there are savings and everything else. Mr. Joyce stated that his concern with the consolidation is whether or not everyone will get the services they need or would there be a pecking order. Also, since most IT systems are different will they be able to meet everyone's needs?

Mr. McMahon stated that all services are equal. The way it works is that he will have weekly meetings with the heads of the departments and everyone would be treated the same. He reported that on large projects, the secretariat would prioritize the projects. He explained that everything would be funneled up in terms of all priorities and then a decision would be made.

Mr. Ford informed the Council members that EOLWD must meet each of the departments needs. He explained that he does not anticipate any problems with the DIA but the smaller departments will have to be closely monitored since they have such small budgets and EOLWD must make sure that their commitment to them as a cost structure is not exceeded.

Chairman Long voiced concern at the access the Executive Office would now have to everything.

Mr. McMahon stated that he understood that the Council wants to know their costs the same way the federal government wants to know their costs for programs. Mr. McMahon reported that EOLWD is being audited all over the place to ensure that the money is being used for the intended purpose. Mr. McMahon explained that this consolidation has to be very tight in terms of the charge-backs.

Mr. Ford added that EOLWD has to submit a plan to the federal government next week providing their allocation plan for the next three or four years showing exactly and how EOLWD is going to allocate the cost based on the Article 87 Consolidation. He informed the Council that EOLWD had just finished the plan this week.

Vice-Chairman Corcoran congratulated Mr. McMahon on his new position as Undersecretary of Administration.

## **MISCELLANEOUS**

### **Electronic Data System Update**

Vice-Chairman Ed Corcoran stated that he had read an article on the next step in the DIA's electronic data processing system. The Vice-Chairman asked Mr. Bill Taupier to elaborate on where the DIA is going with that.

Mr. Taupier explained that the current project they are working on has to do with the Impartial Physician. He stated that the system would allow access to the Impartial Physician assigned to the case so they can review case records online. Mr. Taupier reported that the DIA currently mails the records as hard copies, which is extremely costly for the DIA and for the Impartial Physician since the hard copies must be stored by the Impartial Physician.

Mr. Taupier stated that the goal of the department is to have an online account for the impartial physician, the same as they do for the attorneys. He noted that this will allow the physician access to go online to view their cases, look at the documents, review them and if they want, they can print them out. Mr. Taupier stated that the documents would always be there for them and they could logon at anytime and review the documents without holding all the paper.

Mr. Taupier reported that the initial savings on mailing alone was about \$250,000, with the DIA still spending about \$130,000. He stated that a large bulk of that comes from mailing those documents. Mr. Taupier explained that another benefit to this system is that it will help expedite the review process by allowing the impartial physician assigned to the case immediate access. Mr. Taupier stated that access to the case is shut off to the impartial physician the moment the case is resolved.

Chairman Long voiced concern regarding the expired terms of some of the Council Members, as well as the Chairman and Vice-Chairman positions.

Director Hillman stated that he would review the situation.

Ms. Evelyn Flanagan reminded Council members that on July 28<sup>th</sup> an email was sent to them requesting comments on the "Draft Treatment Guideline: Chronic Pain." Ms. Flanagan stated that if anyone had any comments regarding the guidelines, they should forward them to Diane Neelon before the next scheduled meeting of the Health Care Service Board on September 24, 2011.

A motion was made to adjourn the meeting. Motion Seconded and Carried.

**The next meeting of the Advisory Council is scheduled for Wednesday, October 12, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**