

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

March 14, 2012  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*Council Members Present:* Edmund C. Corcoran, Jr., Vice Chairman; Stephen Falvey; Stephen Joyce; David Powell (Kevin Hurstak); Dennis Hines; Todd Johnson; Bernard Mulholland.

*Also Present:* Philip L. Hillman, Director; Omar Hernandez, Senior Judge; Reuben Kantor, Director of Operations; William Tattan, General Counsel; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Marc Joyce, Senior Regional Services Manager; Bob Ford, Budget Director, Executive Office of Labor and Workforce Development; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual Insurance Company; Dean M. Hashimoto, Partners HealthCare System and Chair of the Health Care Services Board; David C. Deitz, Liberty Mutual Insurance Group.

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

*Absent:* Mickey Long, Chairman; William Corley; Teri McHugh; John Pulgini; Antonio Frias; John Regan; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

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## *Agenda:*

Vice Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration

Discussion of DIA Reorganization – Philip Hillman, Director, DIA and Alan S. Pierce, Attorney, Pierce, Pierce & Napolitano

Discussion of Prescription Narcotics Use in Workers' Compensation – Dean Hashimoto, MD, JD; David C. Deitz, MD, Ph.D.

FY'13 Budget Discussion – Bob Ford, Budget Director

Executive Director Update – William S. Monnin-Browder

Miscellaneous

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## **VICE CHAIRMAN'S WELCOME**

Vice Chairman Edmund C. Corcoran, Jr. began the meeting at 9:00 A.M. Vice Chairman Corcoran asked the Senior Judge to provide the judicial update.

## **DIA UPDATE**

### Judicial Update

Senior Judge Omar Hernandez informed members that the conference queue is holding steady and

the hearing queue has decreased. The Senior Judge noted that, since being appointed Senior Judge, he has worked aggressively to reduce the hearing queue.

The Senior Judge reported that the Agency is waiting for some additional sign-offs on the proposed impartial fee increase and that, once those sign-offs are received, a public hearing will be held. The Senior Judge indicated that he is hopeful that the fees would be increased by July and that they will be able, through the recruiting process, to enlist a more diverse group of physicians, as well as to get back a group that was lost in Rhode Island.

Senior Judge Hernandez reported that the Governor's Chief Legal Counsel, Mark Reilly, had met with two of the judicial candidates for reappointment. The Senior Judge indicated that none of the new candidates have yet been contacted by Mr. Reilly.

### Vital Statistics

Mr. Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for March 2012. He offered the following statistics: Conference Queue: 749; Hearing Queue: 704; Reviewing Board Inventory: 26; Impartial Exams for FY' 12 (to date): 2,881 (34 waivers); Exam Fees Collected for FY' 12: \$1,030,327; Impartial Medical Examinations in FY' 11: 4,295 (48 waivers); Exam Fees Collected in FY' 11: \$1,560,963.

Mr. Taupier updated Council members on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in February: 235 (21 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 12 (to date): 1,714; fine collection for February: \$102,225; total fines in FY' 12 (to date): \$900,532; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,836,225; compliance checks for February 2012: 4,965; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 5,827 (FY' 12).

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in February 2012: 1,242; total number of cases filed in FY' 12 (to date): 8,320; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in February 2012: 2,873; total number of FRI filed online in February 2012: 818 (28%); total number of FRI filed in FY' 12: (to date): 19,775; total number of FRI filed in FY' 11: 30,820 (9,482 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following numbers: total number of §65 claims reported in FY' 12 (to date): 77; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$4,694,842; total number of §65 claims filed in FY' 11: 118; total amount of §65 claims paid by the Trust Fund in FY' 11: \$7,668,940; total recovery efforts against uninsured employers FY' 12: \$722,298; total recovery efforts against uninsured employers FY' 11: \$1,242,706.

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' 12 (to date): \$10,344,633; total amount paid on these claims in FY' 11: \$22,299,988; total COLA reimbursements to insurers in FY' 12 (to date): \$3,669,891; total COLA reimbursements to insurers in FY' 11: \$15,632,451.

Budget Director Bob Ford indicated that the Council should expect the COLA reimbursement number to increase significantly, as there is about \$8 million in COLA reimbursements in the process of being paid.

Mr. Taupier reported that as of February 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 246 (195 DIA employees, 51 WCTF employees). The DIA is authorized to have 258 payroll positions (including all full and part-time positions).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'12 (to date): \$2,370,955; total referral fees collected in FY'11: \$3,730,233; total first report fines in FY'12 (to date): \$72,700; total first report fines in FY'11: \$137,905; total assessment collections in FY'12 (to date): \$59,325,043; total assessment collections in FY'11: \$81,610,102; total SWO fines in FY'12 (to date): \$900,532; total SWO fines in FY'11: \$1,836,225.

### **DISCUSSION OF DIA REORGANIZATION**

Vice Chairman Edmund Corcoran introduced Director Philip Hillman and Attorney Alan Pierce. The Vice Chairman stated that Attorney Pierce was a practitioner at the DIA and a former member of the Advisory Council. Vice Chairman Corcoran stated that Attorney Pierce was here to discuss the concerns of attorneys who practice at the DIA about the reorganization and the potential negative impact that these staffing changes could have on the organization.

Director Hillman stated that the word “reorganization” is strong and that the word “redeployment” was a better description of the staffing changes at the Agency. Director Hillman indicated that there would be no reduction in the workforce, but that some personnel would be redeployed from their roles as judicial support staff to other positions that fit the Agency’s business needs. He reported that the ratio of administrative assistants to judges was changing from one secretary to one judge to one secretary to two judges. The Director noted that the DIA was able to select the secretaries best suited to work for two judges. He also noted that back-up systems are in place in case someone is out for vacation, illness or other reasons. By moving some staff into positions that address other business needs of the Agency, the Director believes that the changes will have an opportunity to bring down the assessment rate, while maintaining efficiencies.

Attorney Pierce explained that since the redeployment was announced, parties that practice at the DIA have been concerned, because they consider the dispute resolution process to be the front line of the Agency. He noted that the secretarial staff must administer the judge’s docket, deal with the scheduling, process orders and hearing decisions and perform other administrative functions. He is concerned that the efficiency of the department may suffer as a result of the redeployment. He expressed concern that redeploying the secretaries could make the judge’s job more difficult. He also questioned the impact that the staffing changes would have on the morale of the secretaries. He explained that, because of the merit-based decision process, the better performing secretaries are being rewarded with an increased workload and the other secretaries have been moved to a position that they do not really know.

Attorney Pierce stated that three comments made at the January stakeholders’ meeting stuck out to him. The first was that the DIA is one of the best, if not the best run agency in the country; the second comment was “if it ain’t broke, don’t fix it”; and the third, which was made by the Secretary, was “there is always room for improvement.” Attorney Pierce agreed that he believes each statement is absolutely correct. Attorney Pierce stated that he is not convinced, however, that the efficiency

everyone has come to expect from the dispute resolution process will be helped by this change and, instead, that it is more likely that these changes will impede the process. He added that the secretaries are already being burdened by the new electronic submission process.

Vice Chairman Corcoran asked how many Administrative Assistants would be affected by the redeployment and if the Agency had considered a trial basis with just one secretary.

Director of Operations Reuben Kantor stated that ten Administrative Assistants are being moved into new roles. He expressed concerns about the feasibility of increasing the responsibility of one secretary on a trial basis.

Council member Stephen Falvey stated that he agrees with Attorney Pierce and is very concerned about morale. Mr. Falvey noted that compensation can be a cure for a morale issue, particularly as workloads are being increased. He mentioned that change can be disruptive without meaning to and the most well meaning efficiencies can have morale implications.

Council member Stephen Joyce stated that he hoped the DIA was working with the union in a cooperative manner because you achieve the best solutions when everyone works together. Mr. Joyce added that he agreed with the adage “if it ain’t broke, don’t fix it,” but that he also thinks there are things that everybody can do better and should work together to do.

Vice Chairman Corcoran asked the Senior Judge to monitor the dispute resolution process to insure that it does not slow down because of the staffing changes. He noted that there have been some great results with the Agency’s success in servicing both employees and employers and that any signs of that going in the wrong direction are not good. He added that, in his experience with working closely with multiple states, Massachusetts stands out as a shining star and he does not want to see that slip away.

Council member Bernard Mulholland voiced concern with regard to the morale of the employees that have been moved out of judicial support positions and questioned whether there was a pressing need for them to be in a different department. He noted that while superior and districts courts have moved to a ratio of two judges to one administrative assistant, assistants to DIA judges do different work, including more of the writing and typing, than the assistants at those courts. He suggested that the impact of the staffing changes should be reviewed sooner rather than later.

Council member Dennis Hines noted that there are metrics that can be used to measure the outcomes. He indicated that he believes it is valid to make certain decisions administratively, as long as there is a commitment to evaluate those metrics. Mr. Hines noted that sometimes you make administrative decisions that are not popular, but it seems like the DIA is committed to monitor the impact of the changes.

Director Hillman stated that he and the Senior Judge were also concerned about morale and would be looking at these and other issues going forward. Director Hillman explained that, in implementing the staffing changes, the Senior Judge personally visited each office and had discussions with each staffer who was impacted. The Director stated that with all the good things being said about the DIA, he would not like anything to go wrong under his watch. He explained that the Agency believes this is a good direction to go in, and if it proves not to be the case, the Agency can readjust fairly quickly.

**DISCUSSION OF PRESCRIPTION NARCOTICS USE IN WORKERS' COMPENSATION**

Vice Chairman Corcoran introduced Dr. Dean Hashimoto, Chair of the Health Care Services Board and Chief of Occupational and Environmental Medicine at Massachusetts General Hospital and the Brigham and Women's Hospital for the Partners HealthCare System.

Dr. Hashimoto thanked the Council and informed members that Dr. Deitz would be arriving soon. Dr. Hashimoto explained that Dr. Deitz is a good illustration of the type of members who serve on the Health Care Service Board. He stated that the Board has a diverse membership and that it serves as an important bridge to the medical community.

Dr. Hashimoto reported that the latest draft of the treatment guideline for chronic pain is replacing the outdated guideline adopted back in 1992/1993. He explained that although the new guideline has not been officially approved, there are some very important elements in it. He informed members that the guideline includes reasonable restraints on certain procedures that are commonly used in the area of chronic pain. He noted that the Board has a pain specialist that looked at various procedures in terms of which treatments are useful and which are not evidenced-based.

Dr. Hashimoto stated that another important aspect of the chronic pain draft is that it ties many of the treatments and evaluations to improvements in functions and treatments. Dr. Hashimoto noted that the concern of medical practitioners is that there have been certain abuses by practitioners delivering treatments without being tied to improvements in functions, improvements in response, or even tied to important evaluative procedures like imaging, which should be done beforehand.

Dr. Hashimoto stated that the new chronic pain guideline recognizes the social psychological context of chronic pain, which is an important area that insurers have been reluctant to allow. Dr. Hashimoto noted that chronic pain treatment should be delivered in an interdisciplinary context where the psychosocial element is taken into account. Finally, he noted that the Board took a look at the area of narcotics, which Dr. Deitz would be talking about.

Vice Chairman Corcoran introduced Dr. David Deitz, Vice-President and National Medical Director of Liberty Mutual Insurance Group, as well as a member of the Health Care Service Board.

Dr. Deitz thanked the Council and explained that from his perspective, the opioid issue is a national and societal problem and it is a mistake to look at it solely as a workers' compensation problem. He explained that a January issue of the CDC's Morbidity and Mortality Weekly Report described prescription drug abuse in the United States as a crisis. He explained that mortality from prescription drugs has increased exponentially over the last five years. He noted that the real burden of prescription drug abuse in worker' compensation is not in the cost of the drugs, but in ruined lives and increased claim duration.

Dr. Deitz stated that the Liberty Mutual Research Institute published a report on the impact of early prescription drugs and found that the people prescribed the highest quantity of narcotics early in the claim have the worst outcomes. He explained that this finding was reached after the study was adjusted to remove trauma cases, cases of catastrophic broken bones and cases where you expect people to need a lot of pain medication.

Dr. Deitz explained that the narcotics problem is not related to the majority of workers' compensation injuries, but is instead restricted to a minority of situations where patients early in the

claim wind up with a large quantity of narcotics and then become trapped. In some instances, he explained, the patients seek those drugs; in others, they find themselves in a situation they did not anticipate getting into; and in others, providers have adverse practice patterns, providing narcotics too liberally for injuries that probably do not warrant them.

Dr. Deitz noted that Massachusetts has upgraded its prescription drug monitoring program. He explained that similar programs have been implemented in approximately forty states and have been shown in studies to decrease mortality. He stated the program requires the physician and pharmacists to report Schedule II narcotic prescriptions to a central database on which they should also be able to check to see if the patient is already receiving narcotics from other sources.

Dr. Deitz stated that there needs to be a better way to handle pain and that chronic pain patients are not necessarily well served by being prescribed large quantities of narcotics. He explained that narcotics make patients dysfunctional, sleepy and make it difficult for the patient to return to work. Dr. Deitz stated that chronic pain needs to be addressed comprehensively and seen as a biopsychosocial disease, not just a medical problem. Dr. Deitz stated that detox alone is often insufficient treatment for prescription drug abuse and that there may be psychological, sociological, or emotional issues that need to be addressed.

Dr. Hashimoto noted that prescription narcotics abuse is a headline public health issue and also a large Massachusetts issue. He stated that in a recently published report by the Workers' Compensation Research Institute, which looked at Massachusetts along with sixteen other states, Massachusetts was, unfortunately, among one of the highest states in terms of prescribing narcotics.

Dr. Hashimoto identified two additional issues of concern to the medical community. First, he indicated that the Health Care Services Board had voted to support a proposed increase to impartial fees. He indicated that it is critical to make sure that the impartial system functions well, as it helps reduce delays in the workers' compensation system. Second, he raised concerns about the impact of the low payment schedule for workers' compensation medical treatment. Dr. Hashimoto stated that Massachusetts ranks 50<sup>th</sup> among the states in terms of workers' compensation payments. He indicated that 16 occupational medical clinics have gone out of business over a two year period.

Vice Chairman Ed Corcoran thanked Dr. Hashimoto and Dr. Deitz for their time.

### **FY'13 BUDGET DISCUSSION**

Vice Chairman Corcoran asked Bob Ford to provide a summary from the budget subcommittee meeting. Vice Chairman Corcoran expressed appreciation for the very detailed analysis of the FY'13 budget that Bob had prepared for the Council.

Budget Director Bob Ford stated that during the Council's discussion on the reorganization, he heard two or three members mention that they had concerns about DIA employees being moved up to A&F or moved to another agency under the Secretariat. Mr. Ford explained that two of the four agencies under the Secretariat have had to reduce staff and that they do not have the budget to absorb any people from any other agency. Mr. Ford noted that after this week there would only be ten openings for all four of the agencies (representing about 1,300 staff) because of funding issues. He explained that the DIA was totally exempt from the upcoming staff reduction process, including the part of the DIA that had been consolidated into A&F. Mr. Ford informed the Council that Administration had

started a voluntary retirement program last week and three DIA employees had expressed interest in participating.

Mr. Ford stated that this year the operating budget was \$19.1M and the Agency is forecasting that spending will come in at about \$18.3M. Mr. Ford explained that the Governor submitted a budget of \$19.3M for FY' 13, which is slightly more than the FY' 12 budget. Mr. Ford indicated that the budget proposal includes 14 openings. Mr. Ford stated that in FY' 13, the Agency has to absorb the NAGE union increase for all NAGE employees, who will be getting four different increases.

Vice Chairman Corcoran noted that in FY' 12, the Agency budgeted for 282 positions and actually filled 245 positions. Vice Chairman Corcoran asked if the employee population was inflated so it could be funded to cover the union increase. He observed that the DIA, going back years, has never filled all of the budgeted positions.

Mr. Ford stated that he had met with senior staff at the DIA to find out the Agency's staffing requirements. He noted that if the DIA had stated that it only needed two more employees and not fourteen, the number would have been reduced. Mr. Ford explained that it is a big deal when you drop your FTEs, because it is very difficult to raise that ceiling again. Mr. Ford indicated that the number of FTEs included in the budget proposal appears to be the appropriate staffing level for the Agency.

Vice Chairman Corcoran stated that going back a few years, the Council had talked about involving the subcommittee in the earlier part of the budget process. Vice Chairman Corcoran explained that the purpose of the Council's involvement is mostly educational and that it is not trying to nitpick or do the budget for the Agency.

Council member Joyce suggested that it would be more effective to discuss the budget as a Council at the preparation stage, rather than after the budget has been filed. He indicated that the Council could be more helpful in making recommendations at that point.

Mr. Ford stated that the budget process actually begins in December, so if the Council wanted to have that dialogue, it could start in December. Mr. Ford also noted that he would discuss the assessment calculation with the Council or a subset of the Council sometime around May.

Vice Chairman Corcoran thanked Bob Ford for his time spent detailing the FY' 13 budget.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Will Monnin-Browder notified members that their packets contain a tracking list of pending legislation. He informed members that all bills supported by the Council and before the Joint Committee on Labor and Workforce Development were reported favorably and have advanced to either House or Senate Ways and Means.

Mr. Monnin-Browder stated that WCRIBM had submitted its rate filing to the Division of Insurance and the circular letter announcing the filing was included in the meeting packet. Mr. Monnin-Browder stated that the WCRIBM is recommending a 19.3% increase in average rates for industrial classes and a 20% increase for F-Classes. He informed the Council members that the hearing has been scheduled for 10:00 A.M. on March 30, 2012 at the Division of Insurance.

**MISCELLANEOUS**

The Executive Director reminded members that the next scheduled Advisory Council meeting will be held on Wednesday, April 11, 2012.

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

**The next meeting of the Advisory Council is scheduled for Wednesday, April 11, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**