

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

May 11, 2016

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

*Council Members Present:* John Regan; Steve Falvey; Bernie Mulholland; Teri McHugh; Michael Kelley; Todd Johnson; Mickey Long; Frank Ruel; Executive Office of Labor and Workforce Development.

*Also Present:* Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Karen Fabiszewski, Acting General Counsel; Marc Joyce, Senior Regional Services Manager; Pasqua Scibelli, Civil Litigation Manager; Robert Cronin, Director of Investigations; Alan Green, Deputy Director of Investigations; Melissa Butts, Council on the Underground Economy; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB); John P. Murphy, Massachusetts Insurance Federation.

*Advisory Council Staff:* Evelyn Flanagan.

*Absent:* Steve Joyce; Bill Corley; John Pulgini; Executive Office of Housing and Economic Development.

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## *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 – March 9, 2016
- Minutes – April 13, 2016

Legislative Discussion

Executive Director Update

Miscellaneous

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## **VICE-CHAIRMAN'S WELCOME**

Vice-Chairman John Reagan began the meeting at 2:00 P.M. The Vice-Chairman asked Senior Judge Omar Hernandez to provide his Judicial Update.

## **DIA UPDATE**

### Judicial Update

Senior Judge Omar Hernandez stated that the average wait time between conciliation and conference for Springfield is approximately two and a half months with all other regions at three months. The Senior Judge stated that with respect to pending hearing decisions there are 38, with some new pending decisions added and some decisions dropping off. He added that after reviewing the cases there appeared to be only three employees without benefits who are awaiting hearing decisions.

Vice Chairman John Regan requested that this information be tracked month to month. Mr. Regan stated that the snapshot addresses the issue of where we are today but if the administration could have two columns one for the previous month and one showing the status of the current month. Mr. Regan noted that he would leave it to the administration to how best show movement of the information.

Senior Judge Hernandez stated that with respect to the impartial physician roster the contracts have gone out and the roster remains healthy. The Senior Judge added that he had attended a two day workers' compensation seminar with Michael Kelley in Waltham and that they have received some really good feedback. He also mentioned that he would be participating in an MCLE Comp 101 seminar on Friday.

### Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for May 2016. He offered the following statistics: Conference Queue: 844; Hearing Queue: 778; Reviewing Board Inventory: 101; Impartial Exams for FY' 16 (to date): 3,375 (67 waivers); Exam Fees Collected for FY' 16 (to date): \$1,748,292; 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 April: 170 (9 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 16 (to date): 1,792; fine collection for April: \$102,970; total fines in FY' 16 (to date): \$927,531; SWOs issued in FY' 15: 1,938; total fines collected in FY' 15: \$1,188,541; compliance checks for April: 7,444; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 4,827 in FY' 16 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in April: 901; total cases filed in FY' 16 (to date): 10,040; total cases filed in FY' 15: 11,837; total First Report of Injury Forms (FRI) filed in April: 2,626 (2,328 filed electronically: 89%); total FRIs filed in FY' 16: 28,678; total FRIs filed in FY' 15: 33,353 (29,290 online). In April the number of employee claims filed: 752; number of employee claims filed in FY' 16 (to date): 8,443; number of discontinuances filed: 145; the total number of discontinuances filed in FY' 16 (to date): 1,565; the number of third party claims filed: 4; total number of third party claims filed in FY' 16 (to date): 32.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 16 (to date): 109; total amount of §65 claims paid by the Trust Fund in FY' 16 (to date): \$5,637,959; 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): \$1,119,550; 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): \$18,610,250; total amount paid on these claims in FY' 15: \$30,682,389; total COLA reimbursements to insurers in FY' 16 (to date): \$6,806,434; total COLA reimbursements to insurers in FY' 15: \$14,344,261.

Mr. Taupier reported that as of April 2016, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 230 (176 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 16 (to date): \$3,357,102; total referral fees collected in FY' 15: \$3,888,246; total assessment collections in FY' 16 (to date): \$63,584,052; total assessment collections in FY' 15: \$70,934,257.

#### Regulatory Review Update

Acting General Counsel Karen Fabiszewski provided an update on the regulatory review process. She explained that the status of the regulations was the same as last month and the DIA draft regulations are with the Administration and Finance Agency. She stated that they are reviewing the regulations and once the DIA gets the OK from them then they will begin the formal promulgation process.

#### Circular Letter #348

Ms. Fabiszewski stated that with respect to Circular Letter #348, the working group has forwarded their recommendations to the Executive Office and they are finalizing some of the points. She explained that they are moving toward the end of the process.

#### Director Turner Update

Director Turner stated that they were in the process of working with Human Resources (HR) to replace Will and get a pay adjustment for Ms. Flanagan. She stated that she would be meeting with HR after today's meeting.

The Director stated that she had received a very good report the other day from Bob Cronin and Alan Green's visit out to Lawrence. The Director asked Mr. Green to provide an update.

Mr. Alan Green stated that at the request of Representative Michael Moran they were part of a forum in Lawrence that was opened up to the public to educate and discuss workers' compensation laws. Mr. Green noted that the Senator from that area was also there. Mr. Green explained that they were there for about 2.5 hours to answer questions. He noted that they may set up another meeting because people were not really well informed when it came to workers' compensation compliance.

Vice-Chairman John Regan asked that in terms of the hiring process once the Executive Director position is posted what happens?

Director Turner noted that her understanding is that when the applications come in they are pre-screened by HR. The Director stated that after that a smaller group of applicants are forwarded to the subcommittee of the Advisory Council and the Council chooses a candidate from that smaller group and then sends their recommendation to the Secretary's office for approval.

Council member Mickey Long stated he did not want to make this a territorial issue, as he was sure the Director agreed, but his understanding is that all hiring decisions and termination decisions are under the Advisory Council's authority. Mr. Long explained as he understands it the last time this agency posted the position the Advisory Council screened all applicants and none of those were pulled by HR. He stated that the Council saw first-hand who was applying.

Mr. Long noted that this was a hot issue over jurisdiction last time and there was a lot of anger from the Council over the removal of the prior Executive Director. Mr. Long explained that he is trying to avoid this precedent setting that any administration has a right to come in and remove our staff and that the Advisory Council should be in control of the entire process.

Ms. Fabiszewski stated that just to lend some insight to the process when the administration talks about pre-screening what it involves is making sure the person applying for the position meets the minimum qualifications.

Mr. Long stated that the difference between any other position and this position is that this person is to serve and do what the Advisory Council says since this is a Council position. Mr. Long noted that he recognizes that the person is on the DIA payroll but this is a different process from how you screen your own folks. He explained that he wants to be able to trust the process and that the Council will be able to screen their own applicants.

General Counsel Michael Doheny stated that he did not know the minimum level of requirements but if the Council wants to have cooperative spirit they could certainly show the Advisory Council all the resumes that were determined by HR not to meet the requirements.

Council member Steve Falvey noted that last time all applicants were screened by Council members and the Council chose a select group which they all had agreed should be moved to the next stage.

Mr. Regan stated that since the posting has to be up for at least two weeks this conversation should probably be for the next meeting so we can collectively decide what we want to do. Mr. Regan stated that he was persuaded as Mr. Long said that it should be full review by the Council probably in Executive Session because we will be discussing a personnel issue. Mr. Regan suggested Ms. Flanagan distribute the resumes prior to the meeting and then the Council can figure out how many applicants they want to interview and set those up for a special meeting or the next regularly scheduled meeting.

Council member Todd Johnson suggested that as part of this process the Council can take some lessons learned and commit the process to writing as a road map for hiring.

Mr. Regan stated that the Council should let the minutes reflect what we think the process should be. He asked Ms. Flanagan to go back into the minutes to see how this was handled last time so the Council can structure the process.

#### Executive Director Update (Interim)

Ms. Flanagan stated that in the Council's package there was a copy of the letter sent to Governor Baker from Chairman Steve Joyce voicing concern regarding judicial nominations that members discussed during last month's meeting. Ms. Flanagan stated that with respect to legislation HB1705, "An Act relative to workers' compensation coverage for officers and non-profit associations" and HB3457, "An Act to clarify reimbursement of workers compensation insurers to prevent double recovery by injured workers in third party cases" were both referred to the House Committee on Ways and Means on May 9, 2016.

Ms. Flanagan stated that the Senate FY' 17 budget is scheduled to be released on May 17, 2016 and that she would keep them posted.

Meeting adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, June 8, 2016, at 1:00 P.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**