

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

June 13, 2007

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

*Present:* Chairman Edmund C. Corcoran, Jr.; Acting Vice-Chairman Mickey Long.

CM: John Pulgini; Tony Frias (Ines Leonardo); John D. Boyle (Teri McHugh);  
Robert Banks (William Corley); Jill Brown; Peter A. Cook (Karen Shanley);  
Tom Jones (Department of Labor).

*Also Present:* DIA: Commissioner Paul V. Buckley; Timothy McMahon, Deputy Commissioner of  
Administration; William C. Tattan, Deputy Commissioner/General Counsel; Martine Carroll,  
Senior Judge; William Taupier, Deputy Director of Administration and EDP; Robert Demetrio,  
OEVR; Morgan Sequeira; Mike Kelley, AIM Mutual Insurance Company.

*Advisory Council Staff:* Evelyn Flanagan; Andrea MacIver.

*Absent:* CM: John Regan; Jeanne-Marie Boylan; Ken Paradis; Department of Business and  
Technology.

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*Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update - Martine Carroll, Senior Judge
- Vital Statistics - William Taupier, Deputy Director of Administration & EDP

Action Items

- Minutes - May 4, 2007

Issue Papers - Workers' Compensation Fraud

Scar-Based Disfigurement Study - Scope of Services

Executive Director Update

Miscellaneous

### **CHAIRMAN'S WELCOME**

Chairman Edmund C. Corcoran, Jr., began today's meeting at 9:00 a.m. Chairman Corcoran introduced William C. Tattan who will be serving as the DIA's Deputy Commissioner/General Counsel. Chairman Corcoran then requested that Senior Judge Martine Carroll proceed with the judicial update.

### **DIA UPDATE**

#### Judicial Update

Senior Judge Martine Carroll updated Advisory Council Members on the information contained within the DIA's vital statistic report for June 2007 (see attached). Conference Queue: 275; Hearing Queue: 1,269; Reviewing Board Inventory: 141; Impartial Exams for FY'07 (to date): 4,754 (198 waivers). In fiscal year 2006 there were 5,374 Impartial Medical Examinations (95 waivers).

Senior Judge Carroll informed the Advisory Council Members that the time frame for a case to reach the conference stage is currently running between 6 weeks and 2.5 months. The Senior Judge indicated that this time frame allows the attorneys adequate time to submit necessary medical reports. The Senior Judge noted that the hearing schedule is presently under control.

Senior Judge Carroll reported that the Impartial Unit has recently issued 248 Impartial Physician contracts. The Senior Judge stated that of those 248 contracts, 215 have been approved and that 73 are for orthopedic surgeons. Senior Judge Carroll noted that the remaining contracts have been returned for incomplete or missing paperwork and that approximately seven Impartial Physicians have decided not to renew their contracts. The Senior Judge stated that the agency is looking to increase the number of Impartial Physicians on the roster.

Senior Judge Carroll stated that today was Judge Constantino's last day before entering retirement. She explained that this position would be filled once the final Nominating Panel list is complete. The Senior Judge also noted that today was Judge Heffernan's 21<sup>st</sup> anniversary on the Industrial Accident Board. Lastly, the Senior Judge informed the Advisory Council members

that Sandra Jutras, Manager of Impartial Unit, has returned from medical leave. The Senior Judge noted that in the absence of Ms. Jutras, Edna Smith has done a great job of keeping the Impartial Unit on-track.

The Advisory Council discussed the appropriateness of increasing the fee for the Impartial Physician Exams to fairly compensate the doctors for their work. Chairman Corcoran recommended the Advisory Council consider addressing the Health Care Services Board at their September meeting to discuss whether an increase is needed.

Commissioner Buckley reported on the recent flood damage to the DIA's Fall River Office. The Commissioner stated that the Department of Public Health had issued a lengthy report detailing various problems with the building but did not condemn its occupancy. Commissioner Buckley informed the Advisory Council Members that the DIA is working with the Department of Capital Asset Management to find a new space for the Fall River Regional Office.

#### Stop Work Orders/Caseload Statistics

Mr. Taupier updated Advisory Council Members on the Stop Work Order (SWO) and Caseload Statistics for May 2007 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations initiated in May 2007: 1,947; total investigations for FY'07 (to date): 21,634; total investigations for FY'06: 23,118; total SWOs issued in May 2007: 51; total SWOs issued for FY'07 (to date): 364; total number of SWOs issued for FY'06: 228; total fines collected in May 2007: \$35,866; total fines collected in FY'07 (to date): \$335,276; total fines collected in FY'06: \$230,465.

Mr. Taupier reported that the Investigations Unit continues to perform targeted regional sweeps. He stated that the Investigations Unit had conducted a sweep of Nantucket in mid-May that resulted in the issuance of 19 SWOs. Mr. Taupier reported that these sweeps are catching the attention of the public.

Vice-Chairman Mickey Long stated that there appeared to be an increase in construction companies on the SWO list. The Vice-Chairman stated that it is critical the employer fraud problem be addressed by the Legislature. Vice-Chairman Long stated that Senate Bill 1066 would allow the construction industry to police their own communities to ensure that workers are being properly covered by workers' compensation insurance. The Vice-Chairman recommended that the Advisory Council issue a letter to the Legislature and Governor to express the urgency of passing Senate Bill 1066.

Chairman Corcoran concurred with Vice-Chairman Long's assessment of the employer fraud problem in Massachusetts. The Chairman revisited past recommendations of the Advisory Council to increase investigative staff to help bring more employers into compliance. Chairman Corcoran reminded all participants that this problem is both a safety and health issue in which honest employers and employees suffer the consequences.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for May 2007: 1,522; total number of cases filed for FY'07 (to date): 13,921; total number of cases filed for FY'06: 15,957; total number of First Report of Injury Forms (FRI) filed for May 2007: 3,081; total number of FRI filed online for May 2007: 868 (28%); total number of FRI filed for FY'07 (to date): 30,855; total number of FRI filed online for FY'07 (to date): 8,210; total number of FRI filed for FY'06: 36,491; total number of FRI filed online in FY'06: 9,405 (25.7%).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'07 (to date): 180; total amount of §65 claims paid by the Trust Fund for FY'07 (to date): \$5,873,940; total number of §65 claims filed for FY'06: 245; total amount of §65 claims paid by the Trust Fund for FY'06: \$6,647,480.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total number of §37/37A petitions approved for payment in FY'07 (to date): 530; total amount paid on these claims in FY'07: \$22,961,209; total number of §37/37A petitions filed in FY'06: 490; total amount paid on these claims in FY'06: \$18,539,957; total monies recovered by the Trust Fund in FY'07 (to date): \$1,000,747; total monies recovered in FY'06: \$1,443,520; total COLA reimbursements to insurers in FY'07 (to date): \$8,957,022; total COLA reimbursements to insurers in FY'06: \$23.3 million.

#### Budget/Personnel Issues

Mr. Taupier reported that as of May 2007, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 259 (225 DIA employees, 34 WCTF employees). The DIA has no contract employees at this time. Thirteen temporary employees are being utilized within the DIA as of this report.

#### Office of Education and Vocational Rehabilitation (OEVR) Update

Mr. Taupier presented the OEVR statistics. Total referrals to OEVR in FY'07 (to date): 2,629; total referrals to OEVR in FY'06: 2,932; total mandatory meetings in FY'07 (to date): 2,131; total mandatory meetings in FY'06: 2,315; total referrals to insurers in FY'07 (to date): 653; total

referrals to insurers in FY'06: 747; total Individual Written Rehabilitation Plans (IWRP) approved in FY'07 (to date): 399; total IWRPs approved in FY'06: 433; total number of Return to Work (RTW) in FY'07 (to date): 154; total number of RTW in FY'06: 202; total number of IWRPs completed with no RTW in FY'07 (to date): 141; total number of IWRPs completed with no RTW in FY'06: 186.

### **ACTION ITEMS**

Chairman Corcoran asked for a motion to accept the Minutes for May 4, 2007.

Motion made to accept the Minutes for May 4, 2007.

MMS - Passed.

### **ISSUE PAPERS - WORKERS' COMPENSATION FRAUD**

Chairman Corcoran reported that he and Vice-Chairman Mickey Long had recently met with Representative Torrasi (House Chair of the Joint Committee on Labor & Workforce Development) to discuss the Advisory Council's legislative positions. Chairman Corcoran explained that the Advisory Council staff had prepared Issue Papers on "Uninsured Employers" and "Employee Misclassification" to help educate Chairman Torrasi and his staff on the growing problem of employer fraud (see attached).

Vice-Chairman Mickey Long informed the Advisory Council that he believed Chairman Torrasi fully understood the severity of employer-fraud problem and would be willing to support the Advisory Council's legislative recommendations. Vice-Chairman Long explained that Chairman Torrasi would be open to keeping this legislation as a stand-alone bill.

Mr. Tom Jones, Deputy Director/Legal Counsel for the Director of Labor, explained that the Executive Office of Labor & Workforce Development is currently putting together a comprehensive employment fraud package that could include language from Senate Bill 1066.

Chairman Corcoran reiterated the importance of having Senate Bill 1066 as a stand-alone bill based on past legislative attempts at amending the workers' compensation system.

### **SCAR-BASED DISFIGUREMENT STUDY - SCOPE OF SERVICES**

Chairman Corcoran stated that the Executive Director had drafted a Scope of Services to procure actuarial consulting services for a scar-based disfigurement study (see attached).

Specifically, the study would project and analyze the cost-impact of scarring awards under several legislative proposals. Chairman Corcoran stated that the results of the study would be shared with Representative Torrisi's office.

Chairman Corcoran asked Advisory Council members to review the Scope of Services within the next week and to contact the Executive Director with any concerns or amendments.

### **EXECUTIVE DIRECTOR UPDATE**

Ms. Evelyn Flanagan, Chief Researcher, stated that on May 15th, she and Andrew Burton attended the Workers' Compensation Legislative Hearing at the State House. She informed the Advisory Council that Mr. Burton had testified before the Joint Committee on Labor & Workforce Development to express the Advisory Council's legislative positions. Ms. Flanagan reported that Mr. Burton had been told that the Committee will be taking positions on these bills over the next couple of months.

### **MISCELLANEOUS**

Chairman Corcoran addressed a prior concern of the Advisory Council regarding the adequacy of the Medical Fee Schedule. The Chairman noted that the fee schedule has historically been low, requiring rates to be negotiated to keep good doctors in the system. Chairman Corcoran stated that he would like to see this issue revisited by the Advisory Council and possibly have a panel speak on this subject at a future meeting.

Ms. Karen Shanley, Cook & Company, explained that one of the problems that the Division of Health Care Finance & Policy (DHCFP) experiences when setting the fee schedule is a lack of insurance data on what amounts are actually paid for specific services. Ms. Shanley suggested that the Office of Health Policy's CRS report could be changed to capture this needed data which could assist the DHCFP in accurately setting the fee schedule.

Mr. Mike Kelly, AIM Mutual Insurance Company, indicated that this data is very delicate and could cause some insurers to lose their competitive edge if this information were made publicly available.

Chairman Corcoran thanked all parties for attending today's meeting.

**The next regular meeting of the Advisory Council is scheduled for Wednesday.**

**July 11, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street,  
7<sup>th</sup> Floor Conference Room, Boston, MA 02111.**