

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

July 9, 2003
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Thomas M. Jones. *CM:* Robert Banks; Frank Fanning; Edmund C. Corcoran, Jr.; Alan S. Pierce; Carol Falcone.

Also Present: DIA: Commissioner Angelo Buonopane; Deputy Commissioner John Chapman; Senior Judge Dan O'Shea; Richard Morris, Acting Director of Administration; Bill Taupier, Deputy Director of Administration and EDP; Gregory White, General Counsel; Karen Fabiszewski, Assistant General Counsel; Catherine Farnam, Executive Director (Office of Health Policy); Deborah DiBella, Clinical Coordinator; Fran Clarke, EDP Programmer; Ken Owens (Commerce and Labor Committee); Attorney Mickey Long.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan; Ann Helgran.

Absent: *CM:* Jeanne-Marie Boylan; Bruce Cochrane; Stephen Sampson; Tony Frias; John Perry; Department of Economic Development; Department of Labor and Workforce Development.

Agenda:

DIA Update

Action Items

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Compensation Review System (CRS)

Workers' Compensation Legislation Discussion

Executive Director Update

Miscellaneous

Chairman Jones conducted today's meeting and proceeded with the topics on the agenda.

DIA UPDATE

Representing the Department of Industrial Accidents at today's meeting were Commissioner Buonopane and Deputy Commissioner Chapman.

With the assistance of Mr. Bill Taupier, the Advisory Council was given an update of all monthly statistics in the form of a PowerPoint slide presentation (please see hardcopy attached to minutes).

Judicial Update

Senior Judge O'Shea began the presentation by updating Council Members following the format illustrated in the DIA's handout. Conference Queue: 568; Hearing Queue: 2,545; Reviewing Board Inventory: 139; Impartial Exams: 4,710 (127 waivers).

Although the number of impartial physicians under contract at this time remains the same as last year, the Department has also received approximately eighty-five new applicants. Only a handful of those applicants are from the western part of the state. A higher number of applicants are from the cape region and a few applicants are from out of state. The Senior Judge suggested that the one problem may be in the process. There is a 3-page application coupled with a 40-page contract the physician must fill out.

Stop Work Orders

Utilizing overhead charts and graphs, Mr. Taupier updated Council Members regarding the status of the Stop Work Orders. Total Investigations for June: 466; Total SWO's Issued: 179; Total Fines Billed: \$18,900; Total Fines Collected: \$53,146.

The charts and graphs displayed a significant decline in last months stop work orders. Mr. Morris indicated that the reason for the drop-off in stop work orders was due to the fact that the DIA is currently focusing on quality instead of quantity.

Commissioner Buonopane implied that the Department would be targeting those contractors that were not paying workers' compensation insurance and evaluating what it is costing the Department to collect fines. He is interested in focusing on enforcement. Members of the Department informed Council Members that there would be a number of changes made in the methods used in the collection of fines.

Mr. Chapman explained that the DIA was currently addressing ways to improve any flaws in the system. He explained that the intention of the DIA is to take a proactive role through criminal and civil actions, which will enable them to shorten the process. Council Members applauded the efforts of the Department and Commissioner Buonopane also praised the Council for their level of support.

Mr. Chapman stated that the Department was considering a variety of ways to improve collections and suggested that this be discussed more in-depth at a future meeting.

Chairman Jones requested that the actual number of claims brought against the Trust Fund be included in the DIA's monthly report. Mr. Chapman stated that this information would be provided to Council Members.

Council Members inquired about the availability of the First Report of Injury List to the general public. Questions remain as to what is covered under the Public Records Law regarding the rights of the public to request certain personal information regarding an injured employee. After much deliberation, it was noted that attorneys were using the First Report of Injury List as a way of soliciting business. The Department explained that they had taken steps to ensure that the lists would no longer be available for this purpose. In May 2003, the DIA withheld its first list. Currently, this decision is being appealed.

At this time, Chairman Jones took the opportunity to introduce Attorney Gregory White, General Counsel, to those members who were not at the last Advisory Council meeting. Attorney White gave a brief synopsis of his legal background and work history.

Budget/Personnel Issues

Mr. Morris addressed Budget and Personnel Issues. Total DIA Positions Filled as of June 30, 2003: (290). Mr. Morris congratulated Mr. Burton on his appointment as Executive Director of the Advisory Council. Mr. Chapman informed Council Members that by the next Council Meeting the Department will have filled the position of Director of Administration and that a request has been made to post for two attorney positions and two investigator positions.

Chairman Jones thanked members of the Department for their presentation and update.

Assessment Audit

Ms. Karen Fabiszewski addressed the Council regarding the Assessment Audit. She distributed the Assessment Review statements (attached to minutes) and proceeded to update the Council on the information. Ms. Fabiszewski referred to page one of the assessment audit conducted by Parent, McLaughlin & Nagle. The final report of Hanover Insurance indicated that the Department was underpaid \$202,722. Ms. Fabiszewski continued to review other underpayments and other collection activities on the report.

With respect to assessments made on Liberty Mutual, Ms. Fabiszewski stated that Liberty Mutual has submitted written objection to the findings of the audit report and have provided the DIA with additional

documentation indicating that they do not owe the amount accredited to them. The Department is carefully reviewing all material pertaining to this matter and will make a determination at a later date.

An inquiry by Council Member Robert Banks again was made about the status of AIG Insurance and whether or not they were paying their fair share of assessments for the Big Dig construction project. Ms. Fabiszewski stated that AIG had paid an assessment on the project for the period that is being reviewed. She stated that AIG has paid a minimum of eight million dollars in assessments in the last four quarters. Mr. Morris offered to submit the exact figures that AIG has paid in assessments following the meeting.

Chairman Jones requested that Ms. Fabiszewski include under the "Comments Column" of the audit report more in-depth information on the status of the audit.

Compensation Review System (CRS)

Ms. Catherine Farnam, Director of the Health Care Service Board, offered an updated presentation on the status of the Compensation Review System (CRS). Ms. Deborah DiBella, Clinical Coordinator for the CRS program and Ms. Fran Clarke, EDP Coordinator of the CRS program, distributed handouts of their report (attached to minutes). Ms. DiBella summarized the highlights of the reporting process from the period covering January 2003 through June 2003, while Ms. Clark reviewed data analysis and the technical aspects of CRS. Both agreed that the collection of data has been challenging and time consuming, but the data is being submitted.

Council Members inquired as to if the entities had been complying. Ms. Farnam stated that they were cooperating. Ms. Farnam informed Council Members that by October all data will be converted into the new Oracle format and insurers will be able to enter data over the Internet.

Chairman Jones thanked Ms. Farnam and her staff for their report. He suggested that the Council be updated at the next meeting on the status of the utilization review certifications.

WORKERS' COMPENSATION LEGISLATION DISCUSSION

Chairman Jones referred to the legislation overview that had been included in Council Members' packets. He recognized Attorney Mickey Long who was present at today's meeting to discuss House Bill 2205 (Private Right of Action to Recover WC Coverage Payments) and Mr. Ken Owens from the Commerce and Labor Committee.

House Bill 2380 (Code of Judicial Conduct) was the first piece of legislation on the agenda to be discussed. Chairman Jones noted that it had not been drafted as the Council had supported it in the past. He suggested the Council offer an amendment that would substitute the American Bar Association's

Model Code of Judicial Conduct for State Administrative Law Judges, in lieu of the current language requiring the Code of Judicial Conduct, as promulgated by the Supreme Judicial Court.

Motion made to support House Bill 2380 with the proposed amendment.

MMS - passed.

Chairman Jones referred to House Bill 2924 (Judicial Appointments). The purpose of House Bill 2924 is to naturally stagger the terms of administrative judges and to provide a system of performance review.

Motion made to support House Bill 2924.

MMS - passed.

Council Members also reviewed House Bill 2382 (Scar-Based Disfigurement). Council Members agreed to endorse the bill providing it is not changed or attached to additional legislation.

Chairman Jones asked for a motion to endorse House Bill 2382.

MMS - passed.

The Executive Director informed Council Members that he had included Senate Bill 1705 (Debarment of Contractors from Public Contract Bidding) in Council Members' packets. The Executive Director explained that this bill is presently before the Joint Committee on State Administration and will become part of a study on Public Construction Reformation scheduled to take place this summer.

Chairman Jones asked for a motion to send a letter to the Joint Committee on State Administration endorsing this legislation.

MMS - passed.

Chairman Jones asked Attorney Long to address the Council regarding House Bill 2205 (An Act to Protect Honest Businesses and Employers).

Attorney Long explained that House Bill 2205 would allow private citizens to sue employers who illegally failed to pay workers' compensation premiums. He noted that the bill contemplates at least three occasions by which the insurance carrier may collect its premium. Attorney Long stated that this bill would allow ten persons to petition the Attorney General's Office to request the right to sue, depositing a portion of the money recovered into the DIA's Workers' Compensation Special Fund. The cost of recovery would entitle the 10 persons 25%, up to \$25,000 dollars, of the award that the Special Fund receives and an

additional equal amount as liquidated damages for a total not to exceed \$50,000, plus attorney fees and costs. Attorney Long stated that the bill was designed to reduce employer assessments and protect honest employers against fraud.

Discussion followed regarding additional changes that may be made to House Bill 2205. In conclusion, Chairman Jones asked for a motion to endorse House Bill 2205 in "concept" due to the fact that additional changes are expected to be made.

MMS - passed.

Andrew Burton, Executive Director, stated that he would draft the Council's testimony for the Commerce & Labor Hearing.

ACTION ITEMS

Chairman Jones asked for a motion to accept the minutes for the Advisory Council meeting on June 11, 2003.

Motion made to accept the minutes of June 11, 2003.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director updated Council Members on current issues.

Mr. Burton informed Council Members that on June 30th, Governor Romney submitted his budget vetoes to the Legislature. The DIA will end up with the Conference Committee's budget of \$18.7 Million. This budget represents only a 1.7% increase from last year's final appropriation. The Executive Director noted that the budget did not include language that allows for the Advisory Council to release sufficient funds from the Special Reserve Account to pay for added security and internal control measures.

Chairman Jones thanked all those who had participated in today's meeting and asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed.

Meeting adjourned at 12:15 p.m.

The next regular meeting of the Advisory Council: August 6, 2003 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.