

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

March 12, 2003
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Thomas M. Jones. CM: Antonio Frias (Inez Leonardo); Robert Banks; Frank Fanning; Alan S. Pierce; Carol Falcone; Joan Lenihan (Department of Labor and Workforce Development).

Also Present: DIA: Deputy Commissioner John Chapman; Senior Judge Dan O'Shea; Richard Morris, Acting Director of Administration; Karen Gibbons (WCRIB); Ken Owens (Commerce and Labor Committee); Kevin Mulvey (State Auditor's Office).

Advisory Council Staff: Andrew Burton; Ann Helgran.

Absent: Vice Chairman William H. Carnes; CM: Jeanne-Marie Boylan; Edmund C. Corcoran, Jr.; Bruce Cochrane; Stephen Sampson; John Perry; Department of Economic Development.

Agenda:

DIA Update

Budget Subcommittee Update & Discussion

Action Items

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Executive Director Update

Miscellaneous

Chairman Jones conducted today's meeting. The Chairman suggested that Council Members introduce themselves to the new Deputy Commissioner.

DIA UPDATE

Senior Judge O'Shea updated Council Members on current judicial statistics. Conference Queue: 553; Hearing Queue: 2,331; Review Board Inventory: 152; Impartial Exams: 2,767 (67 waivers).

Discussion followed. Chairman Jones inquired about the impact the increased fee structure had on the recruitment of impartial physicians. The Senior Judge informed the Council that the increased fee for impartial physicians had been beneficial in recruiting new doctors and renewing existing contracts. Senior Judge O'Shea stated that all of the impartial contracts would expire in June but that a hundred physicians had already renewed their contracts. The roster of doctors now stands at 226.

In answer to a Council Members' inquiry regarding judicial appointments, Senior Judge O'Shea stated that he had been in contact with the Governor's Office and will be meeting in a couple of weeks with the Chief Legal Counsel to discuss judicial appointments.

Council Members expressed concern that it was now taking a longer time to go from Conference to Hearing and thereby creating a problem with impartial exams. Senior Judge O'Shea noted that the older an impartial exam becomes, the more likely a judge will be compelled to allow additional medical evidence. It was suggested that Section 11A be made optional with the presiding judge. The Senior Judge stated that he has sent out an advisory memorandum to all judges to clarify the language of Section 11A.

Stop Work Orders

Richard Morris updated Council Members on the stop work order statistics. Total Investigations for February: 605; Total SWO's Issued: 223; Total Fines Collected: \$27,693; Total Fines Billed: \$22,500. Mr. Morris indicated that stop work orders had decreased due to several factors. He explained that the decline occurred because the Investigations Unit was down one investigator due to injury, there had been a number of Chapter 169 opt-outs, and weather related problems in February. Mr. Morris noted that although collections were down this month, they had increased from the previous year.

Chairman Jones voiced a concern brought to his attention on whether or not an employee could sue an employer who has chosen to opt-out. Mr. Morris stated that the Department was in the process of doing a study on opt-outs and would report back to the Council when it had been completed.

Personnel Issues

The newly appointed Deputy Commissioner, John Chapman, addressed Council Members. Mr. Chapman stated that he would like to take this opportunity to inform Council Members that the Commissioner's Office would like to improve communications between the Department and the Council. The Deputy Commissioner also stated that he looks forward to working with the members of the Council in improving the workers' compensation system.

Mr. Chapman then updated the Council on the personnel statistics that were included in Council Members' packets (attached to minutes). Total DIA positions filled as of February 2003: 292.

Council Member Pierce suggested that the Advisory Council recognize Alice Crotty, Director of Personnel, for her 48 years of service to the DIA. Council Members agreed to formally acknowledge her service and asked the Executive Director to take the appropriate actions.

Mr. Chapman stated that Alice Crotty was retiring on March 28th and that the Department would also formally acknowledge her contribution to the DIA in May. Chairman Jones thanked the members of the Department for their input.

BUDGET SUBCOMMITTEE UPDATE & DISCUSSION

Council Member Falcone updated Council Members on the Budget Subcommittee Meeting that took place on March 6th. She informed the Council that she attended this meeting along with Chairman Jones, Andrew Burton, Richard Morris, John Chapman, KrisAnn O'Herron, and Joan Endres. Ms. Falcone explained that the subcommittee carefully reviewed the Governor's Fiscal Year 2004 Budget Recommendations along with Fiscal Year 2003 spending projections (summary attached to minutes). She stated that the Deputy Commissioner reinforced the fact that there would be open communications between the DIA and the subcommittee regarding budget issues.

Council Member Falcone continued to review the summary that had been distributed to Council Members. She noted that the Governor's Budget appropriated the DIA nearly \$400,000 more than last year's final appropriation. Ms. Falcone state that this excess money could be used by the DIA to address the following cost-drivers in fiscal year 2004: lease renewals, appointment of judges, technology maintenance, sick time pay-outs to retirees, and additional staffing for the Office of Claims.

Council Member Falcone stated that the subcommittee had identified three major concerns. First, there was concern over the use of overtime-pay in fiscal year 2003.

Secondly, there was concern that the Governor's Budget did not stipulate any specific amount of money for the Safety Grant Program. Finally, there was concern over an outside section within the Governor's Budget that allowed the Advisory Council to release additional funds to pay for the agency's computer conversion project. Council Member Falcone stated that it appears this language is unnecessary since the DIA has explained on numerous occasions that there isn't a need for additional funds in the fiscal year 2004 budget for the completion of the conversion to Oracle.

Discussion followed. Council Members voiced various opinions regarding then subcommittees concerns. Council Member Pierce noted that the justification for overtime in the Office of Claims was likely for the

copying of files under the "Freedom of Information Act." Mr. Pierce suggested that the Council should review whether or not information contained within the First Report of Injury Form should be provided by this agency under the privacy laws. Other Council Members agreed the issue of privacy was a concern. Senior Judge O'Shea stated that privacy issues have long been a concern of the Department and needed to be addressed. He stated that this will be one of the topics that will be discussed as soon as a new General Counsel is appointed.

Chairman Jones inquired about how information obtained from the Compensation Review System (CRS) will be handled under both the Privacy Act and Freedom of Information Act. Deputy Commissioner John Chapman stated that he would meet with the Senior Judge to address these privacy issues and would update Council Members at the next meeting.

Council Members questioned the need of having an outside section allowing monies to be used for the continuation of the Oracle conversion. Joan Lenihan stated that she would report back to the Council on whether there is a need for this language in the budget. Chairman Jones thanked Carol Falcone for the Budget Subcommittee update.

Chairman Jones requested the DIA to update the Advisory Council on the status of the assessment audit at the next meeting. Council Member Banks informed the Council that he had received a letter from Ms. Karen Fabiszewski regarding his inquiry on the status of AIG Insurance and whether or not they were paying a fair share of assessments for the Big Dig construction project. He then proceeded to read the letter to those presents and stated that he would contact Ms. Fabiszewski and follow-up on this issue.

Inez Leonardo made a request to the DIA on the behalf of Council Member Tony Frias. Ms. Leonardo requested that the DIA provide the Council the amount currently in the Trust Fund along with how much had been paid out in this fiscal year. Members of the Administration agreed to provide this information at the next meeting.

ACTION ITEMS

Chairman Jones asked for a motion to accept the February 2003 Minutes.

Motion made to accept the February 2003 Minutes.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director updated Council Members that on March 1st, the WCRIB submitted a rate filing seeking an increase of 10.8% on average rates. The WCRIB has stated that the proposed increase is due

almost entirely to medical inflation. The Executive Director stated that he had spoke with Ann Conway from Tillinghast and informed Council Members that she would be able to present a draft of the rate-filing analysis at the April 9th Advisory Council meeting. Mr. Burton noted that a hearing at the Division of Insurance has been scheduled for April 4th and that the Attorney General's Office has announced that they plan to review the rate filing and submit their own rate recommendation within the next 2 months.

Mr. Burton also told the Council Members that he had attended an Oracle Phase II Subcommittee meeting and that there are no major setbacks to report at this time. Mr. Burton stated that the Department is working with Oracle to redesign the entrance to the Portal page. He also noted that the DIA is entertaining the idea of having a computer kiosk in the waiting rooms to allow both attorney's and injured workers access to their cases.

Mr. Burton then referred to the workers' compensation bill-summaries that he had included in Council Members' packets. He suggested that Council Members read the summaries and inform him of any comments they may have regarding the proposed legislation. He noted that the Commerce & Labor Committee was holding a hearing on March 24th to address all workers' compensation legislation.

MISCELLANEOUS

Chairman Jones stated that he would create an agenda item for the next meeting that addressed the privacy of claims in relation to Freedom of Information Requests. He asked that the DIA be prepared to discuss this matter. It was also requested that a status update be given on the Compensation Review System and the Trust Fund.

Council Member Falcone suggested that the Advisory Council should consider making Andrew Burton the permanent Executive Director of the Advisory Council.

Discussion followed.

Council Member Banks motioned to recommend Andrew Burton to the position of Executive Director, subject to the approval of the Director of the Department of Labor & Workforce Development.

MMS - passed.

Chairman Jones requested a letter be sent to the Director of the Department of Labor and Workforce Development and the Commissioner of the DIA informing them of the Council's vote.

Chairman Jones asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed.

Meeting adjourned at 11:20 a.m.

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