

**Massachusetts Workers' Compensation
Advisory Council Minutes**

June 14, 2006

Division of Industrial Accidents

600 Washington Street

Boston, MA 02111

Present: Chairman Paul Byrne; Vice-Chairman Thomas M. Jones. CM: Robert Banks (William Corley); Mickey Long; Robert Fitzsimmons; John Pulgini; John D. Boyle; Ken Paradis; Jill Brown; John Ziemba, Director of Labor. Also Present: DIA: Jack Tynan, Deputy Commissioner of Administration; William Taupier, Deputy Director of Administration and EDP; Soledad Johndro, Director of Finance & Accounting; Gayl Mileszko, Chief of Staff (DOL); Dr. Dean Hashimoto, HCSB; Tony Salido, WCRIB; Mike Kelly, AIM Mutual Insurance Company; John A. Myers, AIM Mutual Insurance Company; Terry McCue, Boyle, Morrisey & Campo, P.C.; Justin Cantor, Intern OEVR.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Jeanne-Marie Boylan; Tony Frias; Edmund C. Corcoran; Bruce Cochrane; Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

Judicial Update - William Taupier, Deputy Director of Administration & EDP

DIA Vital Statistics - William Taupier, Deputy Director of Administration & EDP

Action Items

- Minutes - May 10, 2006

Public Records Subcommittee Update

WCRI Benchmarks Report on the MA Medical Fee Schedule

Stacey Eccleston, Report Author (WCRI)

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Paul Byrne began today's meeting at 9:00 a.m. The Chairman requested that the Executive Director brief the Advisory Council on the status of judicial appointments.

Executive Director Burton reported that on June 7, 2006, the Governor's Council unanimously confirmed Judge Douglas Bean for another six-year term as an Administrative Judge. The Executive Director explained that the Governor's Council refrained from taking a vote on Judge Omar Hernandez. Mr. Burton referred to an article that appeared in State House News that singled out at least one Governor's Council Member who believed that Judge Hernandez was biased against labor.

Council Members expressed frustration that Judge Hernandez was unfairly being portrayed as biased against labor. The Executive Director explained that he had received numerous phone calls from both labor and business representatives of the Council stating this portrayal as untrue. Council Members were in agreement that a letter should immediately be sent to the Governor's Council clarifying that Judge Hernandez received a unanimous vote between business and labor for a rating of "Highly Qualified" on February 15, 2006.

Motion made to immediately send a letter of clarification to the Governor's Council on the qualification of Judge Hernandez.

MMS - Passed.

Chairman Byrne requested that Deputy Director William Taupier proceed with the judicial update.

DIA UPDATE

Judicial Update

Deputy Director William Taupier updated Council Members on the information contained within the DIA's vital statistic report for June of 2006 (see attached). Conference Queue: 1,059; Hearing Queue: 1,570;

Reviewing Board Inventory: 139; Impartial Exams for FY'06 (to date): 5,036 (93 waivers). In fiscal year 2005 there were 4,779 Impartial Medical Examinations (119 waivers).

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for May of 2006 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations initiated during May: 1,885; total SWOs issued in May: 21; total SWOs issued for FY'06 (to date): 191; total number of SWOs issued for FY'05: 173; total fines collected for May: \$17,656; total fines collected in FY'06 (to date): \$185,877; total fines collected in FY'05: \$267,061.

Vice-Chairman Tom Jones inquired if the DIA had any data supporting the effectiveness of the new advertising campaign.

Mr. Taupier explained that the Department had no figures at this time, but he would be willing to study this issue and discuss it with the Office of Investigations. Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for May: 1,566; total number of cases filed for FY'06 (to date): 14,502; total number of cases filed for FY'05: 16,276; total number of First Reports filed: 3,261; total number of First Reports filed for FY'06 (to date): 34,537; total number of First Reports filed for FY'05: 37,461. For FY'06, a total of 8,580 First Reports were filed online using the DIA's Information Portal on the Internet (25% of FRI filings). Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims filed for FY'06 to date: 229; total amount of §65 claims paid by the Trust Fund for fiscal year 2006 (to date): \$5,629,507; total number of §65 claims filed for FY'05: 247 (with 201 actual uninsured injuries); total amount of §65 claims paid by the Trust Fund for fiscal year 2005: \$5,733,606.

Council Member Ken Paradis asked what factors go into the decision on whether to prosecute cases against uninsured employers in a criminal or civil forum.

Mr. Taupier stated that the DIA utilizes both avenues depending on the details of each individual case. Mr. Taupier assured Council Members that the DIA aggressively goes after employers to recoup Section 65 payments made by the Trust Fund.

Vice-Chairman Tom Jones stated that he was concerned about the recent increase of Section 65 uninsured injuries. Mr. Jones asked whether the DIA was able to identify any particular industries that are utilizing the fund more than others so that the advertising campaign could be more targeted in an effort to increase compliance.

Council Member Mickey Long requested that the DIA provide a breakdown of the amount of money the agency has recovered opposed to what they have paid out in Section 65 cases.

Deputy Commissioner Jack Tynan stated that he would analyze the settlement information in a variety of different ways and would provide it to Council Members at the next scheduled Advisory Council Meeting.

Council Member Mickey Long recommended that a new subcommittee be created to examine methods of strengthening the statute to protect the Trust Fund and deter employers from operating without insurance. Mr. Long suggested that the subcommittee could examine making owners personally liable for the money owed and educating judges on the seriousness of noncompliance to the Workers' Compensation Act.

Chairman Byrne asked for a motion to create a subcommittee to examine the increasing caseload of Section 65 cases (Uninsured Injuries).

Motion made to create a subcommittee to examine the increasing caseload of Section 65 cases.

MMS - Passed.

Executive Director Andrew Burton stated that he would organize a meeting concerning this matter and notify Council Members with dates and times.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A).

Number of §37/37A petitions paid in fiscal year 2006 (to date): 462; amount paid on these claims in fiscal year 2006 as of March 31, 2006: \$14,698,318; number of §37/37A petitions filed in fiscal year 2005: 316; number of §37/37A petitions paid in fiscal year 2005: 530; amount paid on these claims in fiscal year 2005: \$25,299,116; COLA reimbursements to insurers in FY'06 (to date): \$15,580,655; COLA reimbursements to insurers in FY'05: \$16.1 million.

Budget/Personnel Issues

Mr. Taupier reported that as of May 2006, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 268 (234 DIA employees, 34 WCTF employees). The DIA has no contract employees at this time. Eleven (11) temporary employees are being utilized within the DIA as of this report. The Office of Legal Counsel is utilizing the services of 4 legal interns. Each intern works on a part-time basis (the total hours each week add up to one position).

ACTION ITEMS

Chairman Byrne asked for a motion to accept the Minutes for May 10, 2006.

Motion made to accept the Minutes for May 10, 2006. MMS - Passed.

Deputy Commissioner Jack Tynan updated Advisory Council Members on the assessment rate. He explained that KPMG had not issued their final report, but he was expecting to have it soon. Deputy Commissioner Tynan reported that he anticipates the rate to decrease again.

PUBLIC RECORDS SUBCOMMITTEE UPDATE

Vice-Chairman Tom Jones updated the Council Members on the Public Records Subcommittee meeting that was held June 1, 2006.

Vice-Chairman Jones explained that subcommittee members were concerned that various law firms were using the Commonwealth's Public Records Act to obtain the names and addresses of injured workers (contained in DIA Form 101) and using this information for commercial solicitation purposes. Council Member Jones explained that there is litigation pending at the Appeals Court level on whether information contained within Form 101 is considered "public records." Vice-Chairman Jones also noted that within the current legislative session, House Bill 4563 would exempt Form 101 from the Public Records Law. This bill is currently in "study."

Vice-Chairman Jones explained that the subcommittee's recommendation to the Advisory Council was to work closely with the Massachusetts Association of Insurance Agents (MAIA) and the Department of Industrial Accidents on drafting new legislation for the 2007-2008 Legislative Session. Specifically, the new legislation should be designed to exempt from the Public Records Law, the name, home address, and telephone number of any injured employee reported to any agency of the Commonwealth. Vice-Chairman Jones also stated that the subcommittee recommended that the DIA review the reasonableness of the current flat fee of \$25 charged for providing information under the Public Records Law .

Council Member Long cautioned that any legislation must be careful not to punish the legitimate use of this information from groups conducting research, such as the WCRI or AFL-CIO. Council Members agreed that the Executive Director should follow up on these recommendations and work with the MAIA and DIA on drafting legislation.

WCRI BENCHMARKS REPORT ON THE MA MEDICAL FEE SCHEDULE

Chairman Paul Byrne introduced Ms. Stacey Eccleston from the Workers' Compensation Research Institute. Ms. Eccleston is the author of a new WCRI report, titled, *"How Does the Massachusetts Medical Fee Schedule Compare to Prices Actually Paid in Workers' Compensation?"*

Ms. Eccleston reported that although Massachusetts has the lowest fee schedule in the nation, the Commonwealth's workforce, on average, reports better outcomes than states with higher fee schedules or no fee schedules. Ms. Eccleston explained that the average prices for physician services in Massachusetts were lower, although prices paid to surgeons were higher than the price in the median state. Ms. Eccleston also stated that one of the reasons the Massachusetts fee schedule is low is because rates are set at a level 10% below Medicare rates.

Ms. Eccleston noted that major surgical procedures were often paid above the fee schedule. For each major surgical procedure listed, the Massachusetts fee schedule level was significantly lower than all nearby state fee schedule levels. Ms. Eccleston explained that for non-surgical physician services, about 75% of the procedures were paid at or below the fee schedule levels. Continuing, Ms. Eccleston reported that the majority of payments for physical/occupational therapists' services and chiropractic services were paid at or below the fee schedule level due to the lower prices they receive. With a few exceptions, the fee schedule appears to be binding for most of the providers except for orthopedic surgeons.

Ms. Eccleston presented the results of the workers' outcome survey, which assesses the injured workers' recovery. Ms. Eccleston stated that the survey indicates that employers in Massachusetts and Wisconsin pay less than other states, but that the workers in Massachusetts report better outcomes. She noted that more workers are satisfied with their medical attention and the access to the medical care they need.

Finally, Ms. Eccleston explained that in comparing the severity of the injury, workers in Massachusetts reported better physical recovery. Workers' in Massachusetts were less likely to report that they didn't have a substantial return to work. The survey also indicates that the return to work could be faster. The low fees did not indicate that there was a lack of care.

Dr. Dean Hashimoto took a few minutes to explain the mission of the DIA and the Health Care Services Board. He stated that the reason surgeons are able to negotiate higher rates than providers who provide non-surgical conservative care is because they have more leverage as the date for surgery approaches. Dr. Hashimoto noted that the HCSB is concerned that there is a danger in creating too large a financial incentive for surgery as opposed to good conservative treatment. He noted that this is especially true since workplace injuries often receive better results with conservative treatment at a lower cost.

Dr. Hashimoto stated that there is concern that the fee schedule is becoming too irrelevant in terms of negotiation for surgeries. Dr. Hashimoto stated that perhaps a modest incremental increase to the fee schedule would be helpful so that insurance community can better predict what they will be paying for surgeries.

Chairman Byrne thanked both Stacey Eccleston and Dr. Dean Hashimoto for their input and participation at today's meeting.

EXECUTIVE DIRECTOR UPDATE

Executive Director Andrew Burton informed the Council Members that all three submitted budgets (Governor's Recommendation, House Budget, and Senate Budget) had appropriated \$20.4 M for the DIA's FY'07 budget. The Executive Director also stated that the Senate Budget included separate funding for the Department of Labor.

Executive Director Burton reminded the Advisory Council that there was no July Council Meeting in 2005. He noted that this was primarily due to scheduling conflicts because many people take vacation in July. Mr. Burton suggested that he could contact each Council Member offline to determine whether or not to hold a July meeting. At the very least, the Executive Director stated that the Council could use July for holding the subcommittee meeting to address the increase in Section 65 cases.

MISCELLANEOUS

Chairman Byrne thanked all parties for participating and asked for a motion to adjourn. Motion made to adjourn. MMS - passed. Meeting adjourned 11:30 a.m.

The next regular meeting of the Advisory Council is scheduled for Wednesday, August 9, 2006 at 9:00 AM, at the Division of Industrial Accidents, 7th Floor Conference Room, Boston, MA 02111.