

**Massachusetts Workers' Compensation
Advisory Council Minutes**

August 11, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne.

CM: Robert Banks; Edmund C. Corcoran, Jr.; John A. Pulgini; Mickey Long, Carol Falcone, Kenneth J. Paradis, Jr., Joan Lenihan (Department of Labor).

Also Present: DIA: Acting Commissioner John Chapman; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; Marlene McGarry (Commerce & Labor); Karen Gibbons (WCRIBM), Louise Borda (Mass General Orthopedics), Christine Simmons (Mass General Orthopedics).

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Jeanne-Marie Boylan; Antonio Frias; Bruce Cochrane; Department of Business and Technology.

Agenda:

DIA Update

Action Items

- Minutes - July 14, 2004

Amendment to WCAC Judicial Guidelines

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones opened today's meeting. He announced that Senior Judge Daniel O'Shea was unable to attend due to a previously arranged speaking engagement.

DIA UPDATE

Judicial Update

Bill Taupier, Deputy Director of Administration and EDP updated Advisory Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 1,851; Hearing Queue: 2,012; Reviewing Board Inventory: 144; Impartial Exams: 152 (3 waivers).

Mr. Taupier stated that the number of conferences is expected to improve once the agency has their full compliment of judges on board. He noted that there are still two open slots, one slot is for an Administrative Law Judge (ALJ), and the other slot is for an Administrative Judge (AJ). Mr. Taupier explained that Judge Levine is seeking an appointment to an AJ position. He stated that this move would leave two vacant ALJ positions and one AJ position. Mr. Taupier noted that the Governor's Council has rejected two of the new candidates submitted by the Governor.

The Council inquired if there had been an increase in the number of impartial physicians on the 'impartial roster' since the authorization of the fee increase for the impartial exams. Council Members had hoped that the fee increase would help enlist more physicians with diverse medical backgrounds. The subject of revisiting the fee schedule was discussed.

The Executive Director, Andrew Burton, stated that he would examine the impartial physician roster, before and after the fee increase, for comparison purposes.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached report). Total stop work orders issued: 19; total compliance investigations completed: 1,372; total fines collected: \$10,143. For FY'04, the total SWO fines collected are \$345,528. Mr. Taupier reminded Council Members that the figures the Advisory Council was receiving are not final numbers since the books do not close until August 31, 2004.

Council members expressed interest in the compliance investigation process. They requested that Mr. Taupier provide a brief synopsis of this procedure.

Mr. Taupier explained that a compliance investigation begins when the investigator enters a suspected company's name into a WCRIBM database to see if they have insurance. The investigator will research whether the employer has employees and a valid workers' compensation policy. Mr. Taupier noted that in many cases the investigation will close when the investigator finds out that the employer is a sole proprietor or is in a partnership. He stated that the investigators will often visit the worksite to assist the investigation process. After an investigation, a stop work order is issued when a company fails to comply to the law.

Mr. Taupier explained that the opt-out form (Form 153) has been actively used (at least 200 p/month) since the regulation change in 2002. Mr. Taupier noted that the small corporations are taking full advantage of this exemption.

Both CM Banks and CM Falcone requested that a repeat offender list be provided for Stop Work Orders for the next meeting.

Mr. Tynan stated that from the period of 7/1/02 to 4/30/04, there were three repeat offenders. Mr. Tynan reviewed in detail the three companies and their stop work order history.

Council members requested the department provide a list of repeat offenders for both SWO and Section 65 offenders, including company names and their principals, preferably for the last two years.

Mr. Tynan stated that the Section 65 list should be completed by next month's meeting.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for July 2004: 1,193. Total number of cases filed for July 2003: 1,479. Total number of cases filed for fiscal year 2004: 16,394. A downward trend in cases filed continues. Total number of First Report's filed for July 2004: 2,296. Total number of First Report's filed in fiscal year 2005 (to date): 2,296. Total number of First Reports filed in fiscal year 2004: 36,739. Total number of First Reports filed on-line using the DIA's Information Portal on the Internet: 1,226.

Richard Morris stated the DIA is attempting to convert more forms, which they anticipate will be available online soon. He stated that the DIA is modeling their system after New York, which is virtually paperless, allowing for more efficient court proceedings. Mr. Morris noted that the judges in New York have laptops on their benches which provides them with access to all documents necessary to each case.

CM Corcoran stated that it was frustrating for a judge and the parties to be in the courtroom and have an important piece of paper missing. He stated that he hopes to see the Oracle system to one day provide all documents electronically so that case-specific information can automatically be called up by the judge.

Chairman Jones suggested that the DIA meet with the WCRIBM and insurers to encourage all parties to utilize the online forms. He noted that if the principal insurers are educated about the existence of the on-line forms, this would boost the utilization dramatically.

CM Paradis proposed that Mr. Taupier consider contacting Mr. Robert Satchel who was instrumental in converting the forms in New York.

Mr. Taupier continued with his update. Estimated uninsured claims (§65) filed for fiscal year 2005: 16. Uninsured claims paid by the Trust Fund for fiscal year 2005: \$320,989. Total number of Section 65 claims filed for fiscal year 2004: 213. Of those cases, 194 were actual uninsured injuries. Total number of uninsured claims paid by the Trust Fund for fiscal year 2004: \$4,331,754.

CM Banks asked what percentage of the \$65 million expended by the Trust Fund was recoverable? Mr. Banks suggested that the DIA consolidate the amount into a five-year period detailing the amount of the money recovered.

CM Long requested that the Department provide a list of the 194 uninsured companies and the principals of those companies to all members of the Council. He suggested that this list be provided on a monthly basis.

The DIA stated that they would provide such a list each month and the receivable information as soon as possible. Mr. Tynan noted that they have begun working on the receivables for the Trust Fund and expect to complete this project in approximately 6 months time. Mr. Tynan anticipates, by that time, he will be able to offer the Advisory Council a complete picture of the financial history of the Trust Fund as it pertains to §65 claims.

Mr. Taupier continued with the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 25. Number of §37/37A petitions paid in fiscal year 2005: 0 (including quarterly payments). The amount paid on these claims in fiscal year 2005: \$0. Number of §37/37A petitions filed in fiscal year 2004 (to date): 365. Number of §37/37A petitions paid in fiscal year 2004: 460. The amount paid on these claims in fiscal year 2004: \$19.8 million.

Mr. Tynan reminded the Council that the DIA is going through a major conversion of their MMARS system. He also noted that the fiscal year does not end until August 31, 2004.

CM Corcoran inquired about the status of the §37/37A petitions. He stated that there has been an increase in both the claim activity and amounts expended by the Trust Fund. Mr. Corcoran specifically inquired about the Mid-Act cases (1986-1991) in which the Statute of Limitations (SOL) is being questioned.

CM Paradis stated that the Court of Appeals has not made a firm decision on what they want to do regarding the SOL issue.

Mr. Taupier proceeded with the vital statistics. COLA reimbursements to insurers in FY'05 (to date): \$0. COLA reimbursements to insurers in FY'04: \$19,737,956. Mr. Taupier anticipates this figure to reach approximately \$20 million in FY'04.

Budget/Personnel Issues

Mr. Taupier stated that the DIA has hired one new Administrative Law Judge and one employee has resigned. The total number of positions filled by full-time employees at the DIA (including the WCTF) as of July 2004: 274 (241 DIA employees, 33 WCTF employees). Mr. Taupier stated that the DIA has no contract employees. He explained that four temporary employees are being utilized within the DIA as of this report.

Chairman Jones explained to the Advisory Council members that Phil Wiswell, Manager of Information Technology, had sent him a letter expressing his pleasure in working with the Council and thanking them for their support through the years.

Council members asked how the resignation of Mr. Wiswell would affect the ongoing Oracle project.

Mr. Tynan stated that he did not believe the departure of Mr. Wiswell would have an impact on the Oracle project. He explained that Mr. Taupier would assist in managing the department. Mr. Tynan noted that they have an outside person that they have brought in to help manage the systems development in Mr. Wiswell's absence.

Chairman Jones invited Kenneth J. Paradis, Jr., Claimant's Bar Representative, to introduce himself to members of the Council. CM Paradis stated that he is a principal at Crowe, Paradis & Albren, LLP. Mr. Paradis explained that his company does claimant's work with respect to people seeking SDI benefits and the submission of §37 claims. CM Paradis stated that he hopes to be able to offer valuable insight into some of the issues with respect to §37 claims.

AMENDMENT TO WCAC JUDICIAL GUIDELINES

Chairman Jones requested that Mr. Burton update Council Members regarding the amendment to the Judicial Guidelines. Mr. Burton explained that at the last Advisory Council meeting, Council Members recommended that language be drafted to amend Section F of the Council's "Guidelines for Reviewing the Qualifications of Judicial Candidates," to clearly distinguish the voting procedures for new candidates and those who are Sitting Judges.

The Executive Director reviewed the draft amendment with Council Members.

Mr. Burton suggested that upon approval, the Council could forward a letter to the Governor's Council with a copy of the new guidelines.

ACTION ITEMS

Chairman Jones asked for a motion to incorporate the draft amendment into the Council's Judicial Guidelines.

Motion made to incorporate the draft amendment into the Council's Judicial Guidelines.

MMS - passed.

Chairman Jones asked for a motion to accept the Minutes for July 14, 2004.

Motion made to accept the Minutes for July 14, 2004.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director stated that the 2003-2004 Legislative Session ended on July 31, 2004. He explained that on the day before the legislative session ended, the House enacted House Bill 4465 regarding judicial appointments at the DIA. Mr. Burton stated that before this legislation can be forwarded to the Governor it must be enacted by the Senate during

informal session. The Executive Director suggested that Council Members could submit letters to Senate members in an effort to move the bill forward.

The Executive Director referred to a letter that was mailed to the Governor's Chief Legal Counsel, Dan Winslow, requesting a legal opinion on the DIA's ability to release funds from the Special Reserve Account. Mr. Burton explained that he had received a response from Attorney Winslow stating that the matter had been referred to Harry Grossman, General Counsel at Administration and Finance (A&F).

Mr. Burton explained that the Office of Education and Vocational Rehabilitation (OEVR) had recently contacted the provider community to form an OEVR Advisory Group. Mr. Burton stated that the Council's OEVR subcommittee intends to meet before the initial OEVR Advisory Group meeting.

The Executive Director reminded Council Members that September's Advisory Council meeting will be held in Lawrence at the Frank Janas Training Center and the focus will be on safety issues in the Commonwealth.

MISCELLANEOUS

Chairman Jones referred to an MCAD case (MCAD vs. Life Care Associates), which had a direct effect on workers' compensation in Massachusetts. Approximately a year ago, MCAD ruled that an employer who has a return to work modified duty program under workers' compensation and does not have one under non-work related injuries is violating Chapter 151B, which is the Unlawful-Discrimination Law.

Chairman Jones stated that he was concerned that some attorneys may be sending out the wrong message by suggesting to employers that they get rid of all of their return-to-work programs. The Chairman noted that this would be bad news for employees who could receive the benefit of return-to-work programs. Chairman Jones also stated that it could have negative implications for workers' compensation insurance rates and medical costs. Chairman Jones stated that he is planning to meet with the General Counsel at MCAD in a couple of weeks to discuss this case further.

Richard Morris reported on the assessment figures for the DIA. As of 7/13/04, Moody collected \$1.4M at a cost of \$363,000, a gross margin of 74%; Parent McLaughlin collected \$1.8M at a cost of \$1.3M, a gross margin of 26.6%; combined collection of \$3.2M at a cost of \$1.7M, overall margin of 46%.

Mr. Taupier stated that he had researched five major states (California, Connecticut, Michigan, New York, Texas) in an effort to discover the most effective and efficient way to perform collections. He noted that California assesses directly from the insurer and the self-insured employers. Mr. Taupier explained that Connecticut has a similar assessed fund in which the Department of Treasury does the billing. He stated that Michigan is funded by General Appropriation, charging a \$200 fee on Lump Sums; charging \$100 fee to the injured employee; charging \$100 fee to the employer, self-insurer and insurance carrier. Michigan conducts direct billing and there is no indication of audits. Mr. Taupier stated that all other states only accept payments by checks. Mr. Taupier noted that Texas is the only state where workers' compensation is optional. He explained that Texas does not have an uninsured injury fund. The Workers' Compensation Commission in

Texas is funded by assessments on workers' compensation insurance policies limited to 2% of the gross premium. The money is collected by the Texas Comptroller.

Chairman Jones adjourned today's meeting at 10:55 a.m.

The next regular meeting of the Advisory Council is scheduled for September 21, 2004 at 10:00 AM, at the Division of Industrial Accidents, at 160 Winthrop Avenue, Lawrence, MA 01843.