

**Workers' Compensation Advisory Council**  
**March 9, 2011**  
**Minutes**

**Members**

David Olson  
Edward Reynoso  
Gary Thaden  
Glen Johnson  
Mike Bredeck  
Rep. Andrea Kieffer  
Rep. Tim Mahoney  
Robert Lux  
Ryan Holmes  
Sen. Ken Kelash  
Sen. Ted Lillie  
Shar Knutson  
Susan Olson  
Wayne Ellefson

**Absent member**

Elizabeth Shogren

**Visitors/DLI staff members**

Brad Lehto  
Brian Zaidman  
Buzz Cummins  
Carey Demaris  
Carla Ferrucci  
Carol Pankow  
Carolyn LaViolette  
Cecilia Retelle  
Charlie Feenstra  
Dan Wolfe  
David Wulff  
Dean Margolis  
Dee Torgerson  
Donna Olson  
Doug Brown  
Elizabeth Wefel  
Gary Hall, assistant commissioner  
Greg Schmidt  
Jay Hartman  
Jessica Stimac  
John Rajkowski

**Visitors/DLI staff members**

Karen Ebert  
Kate Berger  
Kathryn Berg  
Kathy Smith  
Kelly Rodieck  
Ken Peterson, commissioner  
Kris Eiden, deputy commissioner  
Laura Mund  
Lisa Wichterman  
Mark McCrea  
Mary Christenson  
Mary Krinkie  
Meg Kasting  
Michelle Mathiesen  
Mike Hill  
Mike Wilde  
Phil Moosbrugger  
Ray Bohn  
Ray Krause  
Ray Peterson  
Wendy Legge

**Opening**

The meeting was called to order by Commissioner Ken Peterson at 9:40 a.m. Commissioner Peterson welcomed the council members and thanked visitors for attending. Instead of roll call, council members introduced themselves and a quorum was present.

*Gary Thaden made a motion to approve the minutes from the Feb. 17, 2011 meeting. Mike Bredeck seconded the motion. All voted in favor of the motion; it was passed on a voice vote.*

*Ryan Holmes made a motion to approve the agenda as presented. Glen Johnson seconded the motion. All voted in favor of the motion; it was passed on a voice vote.*

**Discussion**

Assistant Commissioner Gary Hall gave an overview of the draft language for the proposals approved at the previous meeting. The proposals: require that de novo hearing be held before a different judge than the judge who held the initial proceeding; prohibit the use of ALJs and contract judges except in rare circumstances; and require settlement conferences be held within 180 days or earlier. A fourth proposal

would have required coordination of scheduling calendars between OAH and the Bar, but OAH and the attorney groups asked the council if this proposal could be withdrawn based on an understanding that OAH would implement this change without the need for legislation. Additionally, at the most recent meeting, the council approved the department's proposal to allow the use of the "wholesale acquisition cost" standard for calculation of fee schedule limits on pharmaceuticals.

Assistant Commissioner Hall stated he, Judge Tim O'Malley from OAH, representatives from the Minnesota Defense Lawyers Association and representatives from the Minnesota Association for Justice met to draft the statutory language necessary to implement the changes previously approved by the council. At that meeting the work group agreed on the general outline of the language for two of the four proposals, agreed to ask the council to withdraw one proposal and could not agree on the fourth. They also agreed to jointly request that the council accept an amendment to Minnesota Statutes 176.307 instead of the previously approved repeal of that section and to withdraw the proposal to coordinate calendars. After the meeting the group continued to refine the language by email. The draft language has been thoroughly discussed and reviewed by the work group. Despite the lack of agreement about the fourth proposal (prohibiting the use of ALJs and contract judges except in rare circumstances), the department believes this final draft language to be a fair and accurate representation of what was previously approved by the council (including amendment requested by the work group and pending before the council today). Additionally, an error was noted on page 11, line 5 of the draft: "workers' compensation judge's job" should be underlined, because it is new language.

Assistant Commissioner Hall explained the draft language section by section (*Draft Legislation on OAH Hearing and Draft Language on Remodeling and Pharmacy Fee Schedule*) with emphasis on the reasons for housekeeping changes, and the need for all administrative conferences and settlement conferences to have de novo judge assignments. The housekeeping changes were needed to conform the amended statutory sections to existing law, as changed by the Legislature in 1998, but never codified. The requirement for all administrative and settlement proceedings to have de novo judge assignments was consistent with the council's previous approval of that concept for discontinuance conferences; therefore, the language was drafted to include medical rehabilitation and settlement conferences. The language for the pharmaceutical fee schedule change was explained by DLI General Counsel Kate Berger.

The council went into caucuses at 10:05 a.m. and reconvened at 10:35 a.m. Commissioner Peterson asked the council to vote on each proposal separately.

***Shar Knutson moved for approval of the draft language as presented. David Olson approved the motion if the word "available" was added on line 18, page 11, between "all" and "regularly." It was agreed upon. David Olson seconded; the motion passed on voice vote.***

Approval of \$600,000 case management systems: Susan Olson and Robert Lux asked for more information about this proposal, such as what OAH has done in selection, prices, options, etc. Chief Judge Krause reminded the members that his request was addressed a couple of years ago and, at that time, it was \$1.5 million for a custom-built system. In the meantime, he said OAH and OET have been working together surveying needs, exploring court systems in other states and comparing vendors. OAH has found there is an "off the shelf" product that will work and allow easier integration with DLI's imaging system. The price for this product is \$600,000 or less. Gary Thaden wanted to review a copy of OET's report. Chief Judge Krause agreed to provide the report and supporting documentation to the council, including the legislative members.

*A motion was made by Gary Thaden to review the report and approve to respective chairs. The motion was seconded David Olson; it was approved on a voice vote.*

## **Housekeeping**

- a. Pharmacy fee schedule – Kate Berger explained the pharmaceutical fee schedules. The department would like the authority to amend the rule by proposing the following: replace the “average wholesale price” standard in the workers’ compensation pharmacy fee schedule with “wholesale acquisition cost” standard to establish equivalent maximum fees.

*Gary Thaden made a motion to approve. Shar Knutson seconded the motion; it was approved on a voice vote.*

- b. Remodeling of residence – David Olson made a motion to use the word “are” in line 21 instead of *are not*, assuming keeping lines 37, 38 and 39 as a way to keep costs down. Shar Knutson stated labor needed more time to discuss.

*A motion was made by Gary Thaden that if the two chairpeople can come to an agreement about the language brought forth, then it will be added to the bill. If not, it will not be added. The motion was seconded by Wayne Ellefson; it was passed on a voice vote.*

It was also discussed that the initial proposal requiring electronic deposit of benefits for injured employees will be further explored throughout the year. Some of the TPAs (third-party administrators) were concerned about the costs of implementing the proposal.

Representative Mahoney asked what the best way is to schedule a meeting with the council and the public seeking his assistance. It was advised to contact the commissioner.

## **Conclusion**

The commissioner advised that the third annual Workers’ Compensation Policy Summit is currently being planned for Sept. 13 and 14; more information will follow.

Commissioner Peterson canceled the April 13, 2011 meeting. The next WCAC meeting will be June 8, 2011.

## **Adjournment**

*Gary Thaden made a motion to adjourn at 11:05 a.m. Wayne Ellefson seconded the motion. All voted in favor of the motion; it was passed on a voice vote.*

Respectfully submitted,

*Carey Demaris*

Carey Demaris, Executive Secretary