

Rehabilitation Review Panel

Thurs., Jan. 5, 2012

Voting members present

Dr. Joseph Sweere
Margaret Kasting
Carl Crimmins
Michael Hawthorne
Shirley Muelken
Steven Hollander
Alissa O'Hara
Dr. Calandra Theisen
Dr. Russell Gelfman
Scott Van Binsbergen (by phone)

Nonvoting members present

N/A

Department staff members present

Gary Hall Kate Berger
Laura Zajac Brian Zaidman
Mike Hill

Call to order

Dr. Joseph Sweere called the meeting to order at 1:08 p.m.

Introductions

Approval of minutes

Shirley Muelken made a motion to approve the Oct. 6, 2011 minutes. Carl Crimmins seconded and the minutes for Oct. 6, 2011, meeting were unanimously approved. Don Ostenson pointed out there was no mention of the settlement study in the minutes. Gary Hall indicated he would address the study today.

Approval of agenda

The agenda was approved with no additions.

Assistant commissioner's update

Brian Zaidman, DLI Research and Statistics, reported the department had looked at doing a rehabilitation outcome and settlement study. While the rehabilitation study was found to be cost-prohibitive, the department determined a settlement study was feasible. A study group, made up of DLI staff members, has been developing a survey to send to injured workers who settled their claims.

Voting members excused

Sue Mauren
Dawn Soleta

Nonvoting members excused

William Martin

Alternated excused

Nellie Munn

Alternated present

Don Ostenson

The survey questions are being developed to answer questions posed by the Office of Legislative Auditor's report whether voluntary settlements were in the best interest of injured workers, to track settlement terms and outcomes. This will help to determine if settlement criteria should be adjusted before settlements are approved.

About 1,500 surveys will be sent with the assistance of Minnesota Management and Budget's Management Analysis and Development unit, which helps state agencies conduct surveys. The 10-question survey is scheduled to go out in March and will have a comments section. The survey will also include claimants who did not settle, but went to a hearing; those results will be compared to workers who settled. A draft of the survey will be forwarded to RRP members.

In response to Dr. Joseph Sweere's question, Brian Zaidman stated DLI doesn't have the resources to look at files that have settled years later. This is, in part, due to a problem with the Data Practices Act and some statutory barriers.

Carl Crimmins suggested that if the panel had survey questions to offer, they need to let the researchers know as soon as possible. Alissa O'Hara indicated rehabilitation plans are sometimes interrupted due to a settlement and suggested DLI follow up to determine if the employee completed their retraining plan. Meg Kasting asked if the survey was just for full, final and complete settlements. Brian Zaidman indicated all kinds of settlements would be considered.

Rehabilitation-related

Dr. Joseph Sweere introduced new members Dr. Calandra Theisen, Michael Hawthorne and Dr. Russell Gelfman.

Election of the RRP vice chairperson was tabled until the next meeting.

Laura Zajac, DLI's Office of General Counsel, reminded RRP members that if responding to Brian Zaidman's email message with the settlement survey to be mindful of the open meeting law and not to create a circular discussion about it. She then went on to discuss data practices and records management for the RRP.

Traditionally, RRP has been listed on the Department of Labor and Industry's records retention schedule for the commissioner's office. Laura Zajac suggested the RRP discuss any issues they have with the schedule. She indicated that for the purposes of data categories, classifications and records, the panel is an independent entity from the department. And, while DLI does provide help with the records and data, the panel should have its own documents.

The current records retention schedule is five years. Laura Zajac recommended it be changed to 20 years. Don Ostenson asked if everything was kept electronically. Laura Zajac indicated DLI keeps both a paper copy and recorded copy of meeting minutes.

Carl Crimmins asked if Minnesota Statutes 176.102 required the files to be retained for 20 years. Laura Zajac indicated there were no specific timelines. Shirley Muelken asked if it would make sense to reduce the retention practice from 20 years down to five years. Laura Zajac indicated DLI maintains records for other boards and retention has been either 20 years or permanent.

Gary Hall reminded the panel members the panel is represented by the Attorney General's office so, if they needed a legal opinion about the length of time, to contact it for advice. Laura Zajac indicated a revised retention schedule would need to go before the Minnesota Historical Society, legislative or state auditor and the attorney general, all of which would have to approve the schedule. She also reported that if a document series is not listed as permanent, that records are destroyed at the end of their term. Don Ostenson made a motion to approve the recommended records retention schedule. Carl Crimmins seconded it with the motion unanimously approved.

Laura Zajac next discussed the data categories and classifications document, which is a public document to inform the public what type of data the panel is maintaining, specifically what types of nonpublic data. The panel has been complying with the statutory requirement through DLI. However, because the panel is an independent entity, it is recommended it have its own documents for purposes of data practices.

The two important statutes that govern the panel's data are Minnesota Statutes 13.791 (for individuals who apply for rehabilitation services, their data is considered private with the exception of summary data) and Minnesota Statutes 176.231 (nonpublic data). Carl Crimmins asked if a rule change was required. Laura Zajac stated no, but noted other boards within DLI had made the change and it would be appropriate that the Rehabilitation Review Panel do so as well. Don Ostenson made a motion to approve the changes to data categories and classifications. This was seconded by Shirley Muelken, with the panel unanimously approving it.

Proposed resolution appointing authority and records management officer: Laura Zajac stated the RRP does not have an appointed responsible authority person for data practices or a records management officer. This person would handle public requests for RRP data so that public and nonpublic data is sorted and appropriate materials released.

The RRP secretary is currently performing many of those duties, including maintaining records. The records management officer would be responsible for destroying records at the end of the 20 years and to complete necessary related reports.

Laura Zajac recommended the RRP designate the assistant commissioner of the Department of Labor and Industry's Safety and Workers' Compensation Division, or his or her designee – which at this time is Mike Hill who works with the panel closely – to fulfill these functions. Shirley Muelken made a motion to designate the assistant commissioner as the responsible authority and records management officer. Don Ostenson seconded and the motion was unanimously approved.

Status of 5217 rule revision with the MSRB: Laura Zajac distributed a document used to solicit comments from stakeholders when new rules or rule revisions are being considered. The first step has been undertaken by asking the public for comments. At this time, there have only been two responses, regarding changing the RRP/MSRB's meeting schedule, and both only requested drafts of the proposed rules when they are ready. Laura Zajac indicated that if panel members had comments about changes, to provide those suggestions to Dr. Joseph Sweere.

Laura Zajac noted past discussion about the RRP adopting bylaws for its operation, which could be considered. The bylaws could have general categories, such as officer positions, officer duties, elections, officer terms and vacancies, meeting frequency, etc. It was noted that bylaws are more flexible because formal rulemaking isn't required to make changes.

Laura Zajac indicated the next step would be to draft any changes to the proposed rules, specifically to address the monthly meeting issue before the April RRP meeting and to determine if there are any public comments. She will present this to the panel at the next meeting. Dr. Russell Gelfman asked if the panel ever wants to go back to monthly meetings would it have to change the rule. Mike Hill indicated the proposed RRP/MSRB rule revision would reference a statute that allows continued meetings, special meetings and emergency meetings. Dr. Joseph Sweere asked if there was any provision for ad hoc committees. Laura Zajac reported she didn't think there was any language pertaining to it, but would look into it before the next meeting.

Before closing, Dr. Joseph Sweere encouraged the panel members to contact him with any agenda items.

Carl Crimmins made a motion to adjourn the meeting. Dr. Russell Gelfman seconded and the motion was unanimously approved.

The meeting was adjourned at 2:32 p.m.