

Rehabilitation Review Panel
Thurs., April 7, 2011

Voting members present

Alissa O'Hara
Dawn Soleta
Shirley Muelken
Anthony Ferraro
Sue Mauren

Voting members excused

Dr. Joseph Sweere
Steven Hollander
Carl Crimmins
Margaret Kasting
Scott Van Binsbergen
Dennis Ballinger

Nonvoting members present

Nonvoting members excused

William Martin

Alternates present

Don Ostenson

Alternated excused

Others present

Jocelyn Olson

Department staff members present

Donna Olson	Karen Ryba	Bill Bierman
Jim Vogel	Phil Moosbrugger	Kathy Hanson
Mike Hill	Gary Hall	Ken Peterson
Wendy Legge	Chris Leifeld	Chris Eiden

Announcements

Sue Mauren was appointed temporary chairperson, filling in for Dr. Sweere.

Mike Hill announced the panel was short one member for a quorum. However, as one of the purposes of the meeting was to do training about open meeting law and dealing with contested hearings, it was suggested they go forward with the training and plan to help the other panel members catch up.

Because Gary Hall was running late, it was also recommended the order of the meeting agenda be revised to allow the training, etc., to move forward.

Call to order

Sue Mauren called the meeting to order at 1:07 p.m.

Approval of minutes and agenda

Because there was not a quorum, both minutes and agenda could not be approved. They will be reviewed at the next regularly scheduled meeting.

Sue Mauren then had nonpanel members in the room introduce themselves.

Rehabilitation-related items

Donna Olson reported there have been two vacancies on the panel for health care providers for an extended period of time. However, the statute changed from medical doctor to licensed or registered health care provider (HCP). It was recognized stakeholders might not be aware of the change nor application process through the Secretary of State's website. To fill the HCP vacancies, the department took a proactive approach by sending an advertisement to the physical therapy and the occupational therapy associations March 7, 2011. At this time, DLI has not received any applicants as a result of the advertisement.

Open meeting law review

Wendy Legge, chief general counsel for the department, gave a presentation about open meeting law (OML). The following points, outlined in the handout, were presented:

- purposes of the OML;
- applicability to Rehabilitation Review Panel;
- types of meetings;
- meeting notices;
- closing meetings; and
- penalties.

More information can be found at the Information Policy Analysis Division's website at www.ipad.state.mn.us.

Sue Mauren asked if seven members (quorum) of the panel decided to have lunch before a meeting, strictly to discuss RRP business, if that would be a violation of the OML? Wendy Legge confirmed that would be considered a violation because it would constitute a special meeting. Wendy Legge then briefly discussed the issue of data privacy and that training could be provided about this issue in the future.

Sue Mauren, with agreement of the panel members, made a request for training about the Data Practices Act.

RRP contested case procedure training

Jocelyn Olson introduced herself as the assistant attorney general who will be representing the Rehabilitation Review Panel as its counsel on contested cases. Following this, Jocelyn provided a brief history of her legal experience since 1975, when she joined the Attorney General's Office.

Jocelyn Olson stated that in addition to the OML, the panel may also have specific statutes and rules that specifically cover meeting notice requirements, etc. She then went on to discuss the RRP's role, as outlined in the handouts, about making a final decision in contested cases after there has been a hearing before an administrative law judge (ALJ) and report issued with recommended findings of fact and conclusions of law.

Jocelyn Olson reported in a contested case that the Department of Labor and Industry would be represented by an attorney and is considered the prosecuting party. The attorney

would be from the Attorney General's Office, with the role to defend the department's actions.

As RRP's attorney, Jocelyn Olson does not have any contact with DLI's assistant Attorney General's counsel, due to their separate roles.

She went on to indicate each party has the right to present witnesses, offer documentary evidence and to cross examine the other side's witnesses. All of the testimony and exhibits have to be based on the record. The panel is to review the record, the ALJ's recommendations and determine and may: 1) adopt it in whole, 2) adopt in part and reject parts; or 3) may reject the whole thing and write its own decision.

Jocelyn Olson stated any party aggrieved by the decision could make an appeal to the Workers' Compensation Court of Appeals and then onto the Minnesota Supreme Court if still not satisfied. She noted the Minnesota Supreme Court has the ability to accept or decline to review the contested case.

The contested case process, after the hearing, includes:

- hearing;
- report of the Administrative Law Judge;
- exceptions to the ALJ's report;
- oral argument;
- final decision;
- appeal of right to Workers' Compensation Court of Appeals; and
- discretionary appeal to Minnesota Supreme Court.

Olson then cautioned the panel about "ex parte communications," which involves receiving a communication from one of multiple parties in a not-yet-decided contested case concerning the merits of the matter under consideration and without the knowledge of the other parties. She indicated procedural matters were not ex parte communications; however, any attempt by a party to discuss, explain or provide different information about why their side of the case is right or why the other side is wrong, or what you ought to do or what the implications are of this decision that you might be making, are ex parte communication and should be avoided.

Disqualification of board or panel member was then discussed. Olson indicated a handbook had been provided to panel members that included a whole section about conflict of interest and encouraged them to review this. She further suggested that if panel members had questions about possible conflicts of interest to contact her.

Assistant commissioner update

Gary Hall apologized for being late due to a Capitol committee hearing about the Workers' Compensation Advisory Council. He reported the bill passed through the first committee and has been referred to another committee.

As he had not been present at the last RRP meeting, Gary Hall introduced himself to the panel. Gary started with the department in 1984, as a compliance specialist in workers'

compensation. He then worked a few years as a staff attorney, then as a compensation judge before the judges were transferred to the Office of Administrative Hearings. For the past 20 years, he was a compensation judge – with the exception of one year when he came back to DLI as an assistant commissioner. Hall worked with Ken Peterson as a staff attorney for the department and is glad to be working with him again.

Gary Hall next discussed the reapplication of expired panel member positions and confirmed reappointment letters have been sent to those who reapplied.

With respect to the feasibility of a proposed study about settlements, Hall reported the commissioner has been working with DLI's Research and Statistics unit on a list of different studies. A study such as this would be very expensive to do because DLI doesn't have the data and would probably have to go through the individual files. He stated a similar study had been done in the 1980s using a private contractor. This is also an option dependent upon the budget and priority of other DLI studies. Hall projected an update at the next RRP meeting.

The Workers' Compensation Policy Summit dates are set for Sept. 13 and 14; a location has not been confirmed, so the dates may change. The department is seeking new ideas for proposed speakers or topics.

Other business

Agenda items suggested for the next meeting:

- election of chairperson and vice chairperson;
- RRP meeting schedule rule revision; and
- Data Practices Act presentation.

The next meeting is July 7, 2011, at 1 p.m., in the Minnesota Room.

Adjournment

Temporary Chairperson Sue Mauren adjourned the meeting at 2:15 p.m.