

Rehabilitation Review Panel
Thurs., Oct. 6, 2011

Voting members present

Alissa O'Hara
Dr. Joseph Sweere
Carl Crimmins
Scott Van Binsbergen
Dr. Russell Gelfman
Shirley Muelken
Steve Hollander
Dawn Soleta

Voting members excused

Margaret Kasting
Sue Mauren
Dr. Calandra Theisen

Nonvoting members present

None

Nonvoting members excused

William Martin

Alternates present

Don Ostenson (by phone)

Alternates excused

None

Department staff members present

Wendy Legge	Mike Hill	Kate Berger
Phil Moosbrugger	Ralph Hapness	Gary Hall

Introductions

Call to order

Dr. Sweere called the meeting to order at 1:06 p.m.

Approval of minutes

Alissa O'Hara made a motion to approve the Jan. 6, 2011 minutes. Scott Van Binsbergen seconded the motion and the minutes were unanimously approved. Don Ostenson made a motion to approve the April 7, 2011 minutes. Carl Crimmins seconded the motion and the minutes were unanimously approved.

Approval of agenda

The agenda was approved with no additions.

Assistant commissioner's update

Phil Moosbrugger was introduced as the ombudsman for the department, which was launched Sept. 1, 2011. This is a separate office within the agency that reports directly to Deputy Commissioner Kris Eiden. The ombudsman's primary role is to resolve issues faced by employees and employers in the worker's compensation system. In February 2009, after studying this agency's oversight of workers' compensation, the Minnesota Office of the Legislative Auditor issued a report that encouraged the establishment of an ombudsman function to help the injured workers who are overwhelmed by the workers' compensation process. The agency also

thinks it's important to provide information to small businesses that are not sure what their rights and obligations are, not sure about their requirements to obtain insurance and not sure about what to do when an employee is injured. The ombudsman will work cooperatively with the Alternative Dispute Resolution unit and Compliance, Records and Training unit within the Safety and Workers' Compensation Division to try to provide a comprehensive set of solutions to help resolve disputes that arise in the system. Phil Moosbrugger then answered questions from the panel.

OLA related – settlement study proposal

Mike Hill addressed this topic for Gary Hall; the panel had asked the department if there would be a settlement study done. After the Office of the Legislative Auditor suggested a settlement study be done, the department created a committee in April 2010. It is currently working through several drafts of what the survey should encompass. It has been proposed that employees and employers be contacted only. Following this, Mike Hill answered questions from the panel.

Rehabilitation related

Election of chairperson and vice chairperson (Minnesota Rules 5217.0500)

Joseph Sweere asked for nominations for the post of chairperson. Carl Crimmins nominated Joseph Sweere; Scott Van Binsbergen seconded the nomination. No further nominations were made and, following the vote, Joseph Sweere was re-elected chairperson. Joseph Sweere asked for nominations for vice chairperson. Don Ostenson nominated Sue Mauren; Carl Crimmins seconded the nomination. No other nominations were made. Because Sue Mauren was not present to accept the nomination, Shirley Muelken made a motion to table the process until Sue Mauren was able to affirm. Scott Van Binsbergen seconded the motion and the panel unanimously approved it.

Suggested RRP meeting schedule rule revision (Minnesota Rules 5217.0600)

Mike Hill explained Minnesota Rules 5217.0600 requires the Rehabilitation Review Panel and the Medical Services Review Board (MSRB) to have meetings monthly. However, due to fewer matters needing to be resolved, meetings were informally changed to a quarterly basis. It may be appropriate for a formal rule change to be made about the panel meeting on a quarterly basis. It was further noted the rule could be revised to clarify what constitutes a regular meeting, special meeting, etc. If changes are made to the rule, the MSRB would have to be involved in the revision process. This is also a good time to see if any other parts of Minnesota Rules 5217 needs to be revised.

Kate Berger then explained the rulemaking process to the panel and provided three handouts, including a summary of the rulemaking process, certificate of the Rehabilitation Review Panel authorizing resolution and Minnesota Department of (name) requesting comments. The panel's authority to adopt rules is in Minnesota Statutes 176.102; the MSRB has similar authority in Minnesota Statutes 176.103. Those statutes authorize the board or panel to adopt joint rules of procedure. The panel's authority to adopt a rule includes the authority to amend a rule. Kate Berger further indicated a designated person from the panel, which is usually the chairperson, would need to be involved in the process. The individual would approve and sign the request for comments, work with the department's staff to take steps necessary to get the approval from the

MSRB, arrange for publication of the signed request for comments in the *State Register*, receive comments submitted, and then approve and sign the governor's preliminary proposal form.

Carl Crimmins made a motion to move forward with the certificate authorizing resolution and for Joseph Sweere to be the designated person from the panel. Shirley Muelken seconded the motion and the motion was unanimously approved.

Ralph Hapness addressed the panel about open RRP positions. Currently, there are four open positions, including two representatives from the insurance industry and two representatives from labor. The department has been advertising the open positions monthly on the Secretary of State's website, also on the DLI website and through items in health care provider organizations' publications. Ralph Hapness asked the panel members for any suggestions they might have and for names of individuals or organizations that could help fill these openings. Dawn Soleta indicated the Minnesota Self-insured Association or RIMS may have individuals who could be interested.

Wendy Legge provided training about the Data Practices Act. The following points, outlined in the handout, were presented.

- What is the Data Practices Act?
- Data is interpreted broadly
- Government data versus personal data
- Classification of government data
- When the data becomes inactive
- Government entity responsibilities
- Access to government data
- Time frame for inspection and copies
- Response to data requests
- Additional rights of individuals
- Tennessen warning
- Consequences of violating the Data Practices Act

Wendy Legge also provided a handout, A user's guide for encrypted messaging.

Mike Hill pointed out the Tennessen warning is nothing new, since the warning has been listed on required rehabilitation forms for a long time.

Joseph Sweere asked if there is a statute of limitation as it relates to the workers' compensation system. Wendy Legge reported there are many statutes of limitation that relate to the law. The general statute of limitation on lawsuits is six years and, most of the time, documents are usually saved six years. To know what the statute of limitations is, you really need to know specifically what the nature of the action is you are asking about.

Other business

2012 RRP meeting schedule: Shirley Muelken made a motion to change July's meeting date to July 26. Alissa O'Hara seconded the motion and the motion was unanimously approved.

The 2012 meeting dates are: Jan. 5, April 5, July 26 and Oct. 4.

Agenda items for the next meeting

Joseph Sweere raised the issue that there are some gaps in the law as it relates to the discipline of qualified rehabilitation consultants (QRCs). The decision was made that the discussion will be tabled until a later date.

Recommendations for agenda items should be directed to Joseph Sweere, who will forward them to Mike Hill.

Carl Crimmins asked when the settlement study proposal would be ready and whether there is a timeline. Mike Hill deferred an answer until Gary Hall could return and provide that information.

Dawn Soleta commented that the outline on the agenda and the changes that have been implemented in the past year really seem to work well. She feels there is more relevant discussions and topics brought to the panel.

Dawn Soleta made a motion to adjourn the meeting, which was seconded by Scott Van Binsbergen, and the motion was unanimously approved.

The meeting was adjourned at 2:44 p.m.