

Workers' Compensation Advisory Council  
October 14, 2015 - Minutes

**Members Attended**

Gary Thaden  
Jason Bartlett  
Walter Fredrickson  
Bobbi Pearson  
Ed Reynoso  
Robert Ryan  
Russell Hess  
Bill McCarthy  
Robert Lux  
Elaine Garry  
Douglas Loon

**Non-Voting Members Attended**

Representative Tony Albright

**DLI Staff**

Commissioner Ken Peterson  
Sandy Barnes  
Kate Berger  
David Berry  
Jon Brothen  
Tom Hanson  
Ralph Hapness  
Deb Heisick  
Mike Hill  
Karen Kask-Meinke  
Chris Leifeld  
David Musielewicz  
John Rajkowski  
Jessica Stimac  
Lisa Wichterman  
Brian Zaidman  
Laura Zajac

**Visitors**

Kevin Adams – MCIT  
Craig Anderson - MWCI  
Scott Bremer - SFMIC  
Dawn Carlson – Almeida PA  
Lynn Carroll - WCRA  
Susan Gigiere – MAPS  
Tom Hanson – W&W  
Shep Harris – MSIG/MCIT  
Suzanna Kennedy – Stinson Leonard Street  
Shar Knutson – AFL-CIO  
Brad Lehto - AFL-CIO  
James McClean – Health Partners  
Patricia Milun, Judge WCCA  
Phil Moosebrugger, Commerce  
Tom Mottaz – Mottaz Law  
Laura Mundt – Mayo Clinic  
Joe Schindler – MHA  
Lise Schmidt, WCCA  
David Sullivan – MN House of Representatives  
Phil Vigliaturo, Commerce  
Dan Wolfe – MN APTA  
Joe Twomey - MDLA

**I. Call to Order and Roll Call**

Commissioner Ken Peterson called the meeting to order at 9:45 a.m.

Roll Call was taken and a quorum was present.

### **III. Approval of the Agenda**

Robert Lux moved to approve today's agenda and Gary Thaden seconded the motion. All voted in favor and the agenda was approved.

### **IV. Approval of Minutes**

Gary Thaden moved to approve the minutes from the April 8, 2015 meeting. Russell Hess seconded the motion. All voted in favor and the minutes were approved.

### **V. Agenda Items**

- a. Introduction of new members and acknowledgement of departing members.

Commissioner Ken Peterson introduced Bill McCarthy as the new President of the Minnesota AFL-CIO and explained that Bill began his new role yesterday, October 13. Bill was previously with the Minneapolis Regional Labor Federation and has extensive experience in negotiations and leadership. The commissioner then introduced Douglas Loon as the new President of the Minnesota Chamber of Commerce. Doug was the regional director of the U.S. Chamber of Commerce of the Midwest and began his new position the day after Labor Day this year. Both Doug and Bill are very experienced professionals and the commissioner is happy to have them join the WCAC.

The Commissioner acknowledged two members that are leaving the WCAC, Bill Blazer and Shar Knutson. Bill has done a great job as the Interim President of the Minnesota Chamber of Commerce for the past year. He has been instrumental in helping to pass legislation introduced by the WCAC and is greatly respected as a public policy expert. Shar Knutson has been with the WCAC for the past seven years and has been instrumental in working with various parties passing a number of workers compensation bills and providing leadership to the WCAC. Shar and Bill will be missed for their experience and leadership skills. The commissioner thanked them for their contribution.

- b. Workers Compensation Court of Appeals

The Commissioner introduced Chief Judge Patricia Milun and Lise Schmidt of the Workers' Compensation Court of Appeals (WCCA). He explained that the WCCA is an appellate body of the Workers' Compensation system that reviews cases from the Office of Administrative Hearings. From the WCCA, the cases can then be appealed to the Minnesota Supreme Court. The commissioner explained that Chief Judge Milun will present the WCCA legislative proposal, answer any questions from the members, and perhaps her proposal will be voted on at the next meeting in December.

Chief Judge Milun described proposed clarifications to Minn. Stat. § 176.511, which governs disbursements and taxation in cases before the WCCA. The changes provide that

attorney's fees of \$3000 or \$3500, depending on whether there is oral argument, are presumed reasonable for an attorney's work on a case before the WCCA. These amounts would be adjusted annually based on the adjustment provided in Minn. Stat. § 176.645. A party may petition for attorney fees above or below these amounts. The proposed changes to Minn. Stat. § 176.081 clarify that the section applies to the WCCA's review of attorney fees in cases where a party is dissatisfied with the fees awarded by compensation judges at the Office of Administrative Hearings or by DLI, and eliminates the requirement that a hearing be held in every appeal about attorney's fees. The changes to Minn. Stat. § 176.471 eliminate the requirement that a cost bond be filed with the WCCA in every case, although a party could still file a motion requesting one in extraordinary circumstances. These changes will eliminate confusion by making the WCCA cost bond procedures consistent with the judicial Rules of Civil Appellate Procedure.

A question was raised as to how many cases would be involved if the changes were to be made. Judge Milun explained that 88% of the cases are appellate cases and also the numbers fluctuate depending on changes to the law. Changes to the law typically spur more appeals so the numbers can go up and down. Judge Milun will send recent data that includes statistics to the Commissioner and he, in turn, will provide this information to the WCAC members. Mr. Reynoso asked if the WCAC could hear from anyone opposed to such changes. He said it would be helpful to get some input from attorneys, workers, and business and/or others who would be impacted by these changes to the statutes prior to making a decision on the court's proposed changes. The commissioner suggested that for the next meeting, the WCAC have attorneys present who are able to answer the questions the members may have on these statutory changes.

This issue will be reviewed and discussed at the next WCAC meeting on December 9, 2015.

c. Rate Oversight Commission Duties.

The Workers' Compensation Advisory Council has Rate Oversight Commission responsibilities as required by Minnesota Statute. The commissioner pointed out that although the Council's chief responsibility is to make recommendations to the Minnesota Legislature, a second is to review Workers' Compensation rate premiums. He explained that there are presenters today from the Minnesota Workers' Compensation Insurers Association (MWCIA) and the Minnesota Department of Commerce who will explain how Workers' Compensation rates are calculated.

- i. Craig Anderson of the MWCIA spoke to the WCAC regarding the most recent rate making report published in August and approved by the Minnesota Department of Commerce. This report contains workers' compensation premium base rates derived from loss experience in Minnesota only. Mr. Anderson provided the WCAC members and visitors with a copy of Executive Summary of the Ratemaking Report and explained how the MWCIA collects, processes and analyzes data to provide this information to their insurer members and to the State

of Minnesota. Overall, the 2016 premiums reflect an increase of 2.0% from 2015. This change is based upon the review of policy years 2012 and 2013 and accident years 2013 and 2014 which indicates an increase of 1.8% and this also includes the automatic increase in PT benefits, with a 0.2% increase, resulting in 2.0% overall increase. Historically speaking, this is the only the second increase in the base rate in the last 10 years. The pure premium rate is still 22% lower than its level in 1983, more importantly the rate has been fairly steady. In conclusion, Mr. Anderson said a combination of benefit reforms from the 1990s, expansion of competitive rating creating incentives for work place safety, early injury management, and return to work programs, all have worked together for steady, predictable workers' compensation rate levels as indicated by the last 10 – 15 years.

A question was posed to Mr. Anderson asking how Minnesota compares to other surrounding states in its base rate. Mr. Anderson indicated he didn't have the comparable information right now, but would provide the base rates for the surrounding states and send the information to the WCAC members.

- ii. Phil Vigliaturo of the Minnesota Department of Commerce explained that he was there to provide his observations and insights into the MWCIA's 2016 Ratemaking Report. He explained that MWCIA uses methodologies that are similar to the remainder of the industry using financial data, the past two policy and accident years to set the overall rate level, and a variety of standard data for calculating these rates. It was Mr. Vigliaturo's opinion that the MWCIA 2016 Ratemaking Report has met the statutory requirement of not being excessive, inadequate or unfairly discriminatory. He indicated that at some point in the future he would like the WCAC to discuss the rating law to include loss adjustment expenses (LAE), which Minnesota does not include in its rating due to statutory limitations. The Commissioner said this topic (LAE) will be included in a future agenda item for more discussion.

d. 2013 Workers' Compensation System Report

David Berry of the Department of Labor & Industry presented an overview of the 2013 Minnesota Workers' Compensation System Report and explained that the primary data included in this report includes Department of Labor & Industry statistics and data from the MWCIA, among other sources. Copies of the report were included in the members' packets and made available for visitors. The report is also available online at [www.dli.mn.gov/RS/Pdf/wcfact13.pdf](http://www.dli.mn.gov/RS/Pdf/wcfact13.pdf).

e. Workers' Compensation Division Update

Assistant Commissioner Chris Leifeld provided an update to the members concerning the addition of a new manager of Vocational Rehabilitation, Jeanne Vogel, improvements in the outpatient reimbursement system similar to the MS-DRG system adopted for hospital inpatient billings, and the workers' compensation modernization project.

He reviewed the outpatient reimbursement system which was a result of 2015 hospital inpatient legislation. DLI is analyzing data and various approaches. In the coming weeks we will have some solid data from our research staff and our consultant, Eric Anderson of Optum. DLI will then begin to have dialogue with the hospitals, ambulatory surgery centers and the insurers.

The Assistant Commissioner also updated the members on the workers' compensation modernization project, which is a technology update to DLI's computer system. This project was approved by the legislature during the 2015 session and the department is moving forward now with a steering committee formed. There are over 300 item requirements for this project and the department will be prioritizing them in the coming weeks. DLI hopes to have a Request for Proposal (RFP) for implementation ready in the first few months of 2016.

Commissioner Peterson spoke to the group concerning a potential legislative issue with regard to the recent Supreme Court decision in Sumner. It now requires all intervenors to be present at OAH hearings when decisions are made. This has a dramatic impact on many state departments, including Labor & Industry and the Department of Human Services. There are also many private intervenors that are affected including hospitals, insurers, and others involved. DLI will be working with all the parties involved to review the issues and consider proposed legislative changes. The commissioner hopes to come back to the WCAC in December for further discussion on this issue and possible legislation.

#### VI. Other Business

Douglas Loon asked that meeting materials be sent electronically to the WCAC members prior to the meeting so they have time to review them. The Commissioner agreed and said that any items for future WCAC meetings be sent out electronically before the meeting, if they are available.

VII. A motion was made to adjourn the meeting, was seconded, and the motion carried. The meeting was adjourned.

The next scheduled meeting of the Workers' Compensation Advisory Council is scheduled for December 9, 2015.

Respectfully submitted,

*Patty Rutz*

Executive Secretary