

**Workers' Compensation Advisory Council**  
**Feb. 13, 2013**  
**Minutes**

**Voting members present**

Keri Nelson for Walter Frederickson  
Elaine Garry  
Jason George for Glen Johnson  
Russell Hess  
Andrew Kepper for Susan Olson  
Shar Knutson  
Robert Lux  
David Olson  
Edward Reynoso  
Robert Ryan  
Dawn Soleta  
Gary Thaden

**Nonvoting members present**

Rep. Andrea Kieffer  
Rep. Tim Mahoney

**Nonvoting members absent**

Sen. John Pederson  
Sen. Dan Sparks

**Staff members present**

Ken Peterson  
Kris Eiden  
Kate Berger  
John Rajkowski  
Jessica Stimac  
Lisa Wichterman  
Sandy Barnes

Phil Moosbrugger  
Karen Kask-Meinke  
Donna Olson  
Chris Leifeld  
Jim Vogel

**Visitors present**

Carla Ferrucci; MN Association for Justice  
Karen Ebert; MCIT  
Gary Hall; WCCA  
Tammy Lohmann; Commerce  
James Heer; WCRA  
Peter Thrane; Leonard, Street & Deinard  
Meg Kasting; SFM  
Matt Marquis; MG, LLP  
Susan Giguere, RN; MAPS  
Heather Keenan; MAPS  
Trevor Oliver; Mn House  
Rob Otos; Alaris Group  
Suzanna Konnosy; Leonard, Street & Deinard  
Stacy Bauman; Heacox Hartman  
Dawn Carlson; Almeida Public Affairs  
Anna Thompson; Medtronic  
Patricia Milun; WCCA  
Dan Wolfe; MN APTA  
Deb Sundquist; MDLA – WC Committee  
Joe Schindlet; MHA  
Micki Mathiesen; SFM  
Ray Bohn; WCRA  
Carl Cummins, WCRA

The Workers' Compensation Advisory Council (WCAC) meeting was called to order at 9:45 a.m. by Commissioner Ken Peterson. Roll was called and a quorum was present.

**II. Announcements**

Peterson noted the meeting started late because the employee and employer groups were caucusing in an effort to get approval for a legislative package. Although there was no agreement yet, he congratulated both parties for working on it, with special thanks to David Olson and Shar Knutson. Peterson commended them for their work to improve the workers' compensation system.

Peterson announced this year's Workers' Compensation Summit will be Sept. 12, 2013, at Crowne Plaza Hotel – St. Paul. It will be a one-day seminar.

Peterson noted the department's research study, *Workers' Perspectives on Settlements and Hearings*, was available online at [www.dli.mn.gov/RS/Pdf/settlement\\_study.pdf](http://www.dli.mn.gov/RS/Pdf/settlement_study.pdf). The department will review the results and may come back to the WCAC with recommendations.

Peterson pointed out a two-page information sheet in the meeting packets about spinal fusions and asked members to review it. The information sheet is available on the Department of Labor and Industry (DLI) website at [www.dli.mn.gov/WC/Pdf/fact\\_sheet\\_lumbar\\_fusion.pdf](http://www.dli.mn.gov/WC/Pdf/fact_sheet_lumbar_fusion.pdf).

### **III. Approval of the Oct. 10, 2012, and Dec. 12, 2012 minutes**

*Robert Lux made a motion to approve the minutes from the Oct. 10, 2012, and the Dec. 12, 2012 meetings. Gary Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.*

### **IV. Approval of the agenda**

*Lux made a motion to approve the agenda. Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.*

### **V. Agenda items**

#### ***WCRA legislative proposal***

Carl "Buzz" Cummins, president of the Workers' Compensation Reinsurance Association (WCRA), noted he gave a presentation regarding the WCRA's legislative proposal at the WCAC December meeting. He pointed out the one-page summary in the meeting packets. He noted that this proposal changes how the WCRA can charge premium to its member insurers and self-insurers and would remove the unfunded layers. This change would result in a slight increase in cost now to its member insurers and self-insurers as soon as the law goes into effect, but over time it would save them a considerable amount of money. Cummins stated this proposal is supported by the Minnesota Chamber of Commerce, the Minnesota Self-Insurers' Association, the Minnesota Insurance Federation and the NFIB. Commissioner Peterson has expressed his support for it to be a sound way to keep the WCRA on good financial footing. Cummins pointed out this provision is not part of the WCAC legislation and was separately introduced in the senate and the house in the last week. However, he was seeking approval from the WCAC. Olson asked if amendments would be allowed. Cummins responded that they asked the authors to resist any amendments if at all as possible and noted they do not want this legislation to become a vehicle for other workers' compensation related issues.

*Edward Reynoso made a motion to endorse the WCRA's legislative proposal with no amendments. Knutson seconded the motion. All voted in favor of the motion and it passed on a voice vote.*

#### ***Department housekeeping bill***

Peterson noted the department's housekeeping bill was presented at a past meeting. Copies of the language for the proposal and a summary were in the member's packets and available to the public. Deputy Commissioner Kris Eiden was introduced and she briefly reviewed the eight sections in the proposal.

**Section 1.** Currently, the commissioner is required to investigate all complaints that are filed against qualified rehabilitation consultants (QRCs) and rehabilitation vendors. The proposed amendment gives the commissioner the discretion whether to investigate a complaint.

**Section 2.** The department has the authority to hold administrative conferences and issue decisions involving medical requests where the amount involved is \$7,500 or less. The amendment would remove this cap when the medical issue being disputed is whether the provider's charge for a service or product is excessive. Thaden asked if the cap were removed whether DLI would still have discretion about whether to take some of those disputes. He was concerned DLI might be overwhelmed. Eiden responded her understanding was the department has the discretion to forward issues to OAH under certain circumstances.

**Section 3.** Clarifies that orphans and dependent parents would get cost-of-living adjustments so that all dependents and beneficiaries get the cost-of-living increases. Thaden noted, per lines 29 and 30, we would be backdating this to injuries after 1975. Eiden stated the effective date would be reviewed and revised.

**Section 4.** This amendment arises out of a lawsuit for DLI and the Special Compensation Fund (SCF) involving Home Insurance Company. Home was a writer of workers' compensation insurance in Minnesota and filed for bankruptcy. Under Minnesota law, the Minnesota Insurance Guaranty Association (MIGA) picked up the payments so injured workers never missed a payment. MIGA then filed a claim with Home. MIGA received some distributions of Home's assets to make up for some of the payments it had made. Home then came to the SCF to seek reimbursement for supplementary benefits and second-injury benefits they claimed they reimbursed MIGA for. Home was successful. This provision would prevent a bankrupt insurance company from seeking reimbursement of second-injury payments and supplementary benefit payments from the SCF. Thaden asked if this amendment was to reduce litigation and thought the current law would give more assets to Home that they could have paid to the workers. Eiden noted it gave more assets to Home that it could use to pay its general creditors. She clarified DLI's position is that MIGA was the entity paying the benefits. MIGA and the SCF have a relationship where MIGA does not pay assessments or get supplementary benefits and second-injury reimbursements. Thaden asked what would happen if any insurance company does not make the payments for the special assessments and whether they could still get reimbursed if they were not bankrupt. Eiden said no, they have to be current in their assessments. Thaden asked why that did not kick in; if they did not pay the special assessment, how could they claim reimbursements? Eiden said that was an argument that was made in the lawsuit and the court said as long as they paid any overdue assessments they could get reimbursed. This provision would eliminate that possibility.

**Section 5.** This section addresses genetic information in workers' compensation files at the department. "Genetic information" is defined in another section of the law and a recent Minnesota Supreme Court case broadly interpreted that definition so that, arguably, the information DLI has in its workers' compensation files could fall within the definition of genetic information. For example, if a worker goes to a physician and the doctor takes that worker's history and the worker says his family has a history of heart disease, under the Supreme Court's interpretation of genetic information that statement by the injured worker could constitute genetic information that DLI would be prohibited from collecting or retaining in its files. Eiden noted DLI has 50 years of workers' compensation files in its custody and if it had to go through

them to destroy those documents, it would be a huge project. She also said DLI does not believe the law was intended to address this kind of ancillary comment about family history. Mahoney asked how specific the exception was and noted there are two or three legislators who are very keen on data privacy and they are very sharp on it. Eiden clarified DLI tried to make the exception very narrow so it only pertains to genetic information that was collected by DLI in connection with a workers' compensation claim. Mahoney asked if this data would be covered under HIPAA laws or data-privacy laws in the state of Minnesota. Eiden responded she did not believe so; the workers' compensation law addresses these matters a little differently and she believes the level of protection is the same, if not tighter. Thaden suggested everyone should think about whether this section was going to send the bill, if it is approved, to civil law and the health committees. Also, he wondered if this exemption might be overly broad such that otherwise private information would no longer be private under the exception. Eiden responded that, if she was understanding his issue, it would still be private under the exception; the exception just allows DLI to have the information. Thaden agreed, but said the main statute has some privacy structure around it and the workers' compensation law would be exempt from that privacy structure so he is not sure if the workers' compensation structure is as private as it would be for the genetic information. Eiden said her understanding was the genetic information statute would prohibit DLI from even collecting this data. So this exemption would allow DLI to get the data and retain it as private. Thaden asked if there would then be no information compiled that would be an analysis of genetic data that would relate to some injury. Mahoney highly recommended DLI staff members sit down with a couple of the data-privacy people at the Capitol to make sure they go through the exception before it is brought to civil law. Peterson agreed that was a good idea and indicated the department would withdraw this proposal if it cannot work it out.

**Section 6.** Eiden indicated that when the SCF assumes responsibility for a claim because an employer was not insured, they send a notice to the employer at the commencement of making payments. As the claim progresses, the SCF also notifies the employer prior to settlement. The problem is a lot of employers do not engage; they do not object to a settlement or payment and only after the case is settled and the SCF seeks recovery from that employer does the employer object and claim, for example, the injury did not arise out their employment or the person was not really an employee. This amendment basically requires those uninsured employers to respond to DLI's notices so it has the information it needs to decide how to proceed with a settlement. If they do not respond to the SCF's notices or object, then they cannot raise those defenses down the road when the SCF seeks reimbursement. Elaine Garry expressed concern about the 10-day limit. It seems that with a lot of small employers the person handling workers' compensation probably deals with a lot of other jobs too, so when we put a limit of 10 days, it really does not allow those small employers to address the issue, understand it fully and have time to respond. Various time frames were discussed and Peterson indicated the department would attempt to move the deadline out so long as it did not delay payments to workers. Lux asked if it was possible to send a notice to the business owner that they were going to get some recourse back to them. It is just a piece of paper unless there is a dollar amount put to it. Eiden said DLI would make it clear the employer may end up paying that amount.

**Section 7.** Under existing law, the commissioner is required to periodically evaluate whether insurers and employers are providing DLI evidence of payment of compensation. The statute allows the commissioner to use a sampling of data to perform this evaluation, but requires he use

Six Sigma methodology. This amendment allows the commissioner to use any type of sampling methodology to perform the evaluation.

**Section 8.** This amendment deals with the approval of settlements and was suggested by the Workers' Compensation Court of Appeals (WCCA). Currently, if a matter is pending before the WCCA and parties reach a settlement during that period, the agreement would have to be approved by the WCCA. It becomes logistically difficult for them. The proposal is that any such settlement would go back to OAH where an administrative law judge (ALJ) would approve that settlement. WCCA Chief Judge Patricia Milun and Assistant Chief Judge Gary Hall were available for questions. Thaden expressed concern about the effective date and whether it should be 30 or 20 days after enactment to give the judges and attorneys some time to figure out that they should be doing things differently. Hall stated this would probably be for stipulations filed after the effective date and said the WCCA is comfortable with changing the effective date to anything the WCAC decided was best. Thaden thought 30 days after enactment is plenty of time and a July 1, 2013, effective date was agreed upon.

Peterson noted if any of these housekeeping provisions could not be worked out, DLI would pull those provisions out of the bill.

***Knutson made a motion to approve the department's housekeeping bill. Thaden made a motion to amend the motion to table this motion for inclusion in the full final bill.*** Thaden added the final bill is subject to final approval by the WCAC members. It was agreed a special meeting would be called if needed if there is an agreement between business and labor. Thaden clarified it was his intent to ensure the bill was not going forward automatically without the WCAC seeing it again because a number of changes to the housekeeping bill were discussed and, subject to discussions with the people about civil law, he was still not sure what the final language would be. Peterson said DLI would send the final housekeeping language to the WCAC members within the next week. If there are no objections, they will go ahead with it. If there are objections, they may have to call another meeting.

Peterson noted he would like to take care of some of these items, such as the genetic issues so DLI does not have to go through every file it has, so he would like this bill to go through. DLI will try to work the new language out consistent with the discussion at this meeting and send it out to the WCAC members for approval. If there are no objections, DLI will go ahead and have the housekeeping bill introduced. If there is agreement with labor and management, the items agreed to would be combined into one bill. If there is no agreement with management and labor about other issues, the housekeeping bill will just go ahead on its own. Olson asked for clarification that if he and Knutson do not reach an agreement, the housekeeping bill is it. Peterson said there will not be two bills; if there is a late agreement they will put them together. Knutson and Olson understood and agreed.

***Thaden withdrew his motion.***

***Knutson restated her motion to approve the department's housekeeping bill, subject to approval of new language by the WCAC members. Any agreement between labor and management would be brought before the WCAC and, if approved, be included with the housekeeping bill. Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.***

***Background: Amish request for exemption***

Kate Berger was introduced to give background that will be needed by the WCAC to review a request from the Amish for an exemption from obtaining workers' compensation insurance in Minnesota. Berger noted that at the Feb. 8, 2012, meeting of the WCAC, attorneys Phil Villaume and Lisa Lofquist presented a proposed amendment that would provide an exemption for certain religious groups from workers' compensation coverage because they conscientiously object to receiving aid from government programs: it would be a violation of their faith to accept such payments.

A March 22, 2012, letter from Eiden to attorneys Lofquist and Villaume summarizing issues raised by the WCAC at the Feb. 8, 2012, meeting and an Oct. 24, 2012, response from Villaume were included in the meeting materials. Lofquist and Villaume have requested the exemption issue be on the agenda at the next WCAC meeting.

Berger distributed an additional handout, *Protection of Religious Liberties under the U.S. and Minnesota Constitutions*, and gave an overview of constitutional laws governing freedom of religion.

Reynoso requested DLI's legal counsel provide a summary of what the WCAC should do with the Amish issue to move forward. Peterson indicated the department cannot provide a legal opinion about whether the current law is constitutional. The department can give the WCAC information and the WCAC can decide what to do. Thaden noted that in 2004 this issue came up because the Amish community was doing construction work and a competitor complained they were not paying workers' compensation premiums and this was causing unfair competition. He asked that the department provide the WCAC with the 2004 proposals and the Wisconsin statute.

***Garry made a motion to adjourn at 11:02 a.m. Thaden seconded the motion. All voted in favor of the motion and it passed on a voice vote.***

Respectfully submitted,



Debbie Caswell  
Executive Secretary

dc/s