

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
August 10, 2011**

Members Present

Mike Haxby	John Greenfield
Rian Van Leuven	Gardner Skinner
Roy Galbreath	James Alcorn
James Arnold	Steve Millard
Jasen Carrier	Clay Atwood
Dave Whaley	Paul Collins
Representative Jeff Nessel	

Members Absent

Senator John Andreason
Linda J. Sams
Glenna Christensen

Industrial Commission

Chairman Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Commissioner R. D. Maynard
Director Mindy Montgomery

Minutes

The Minutes of May 11, 2011 were reviewed. Upon motion by Dave Whaley, seconded by Gardner Skinner, the Minutes were approved as submitted.

Subcommittees

PFFI Legislation – (Roy Galbreath Chairman, Dave Whaley, Paul Collins, Ex-officio: Rob Shoplock, Mike Walker, Commissioner Baskin, Michael Kane, Kent Day, Woody Richards, Alan Gardner, and Richard Owen) Subcommittee Chairman Roy Galbreath presented the draft legislation to change Idaho Code §72-438, *Occupational Diseases*, that the Professional Firefighters of Idaho are proposing for the 2012 legislative session. The changes would require certain diseases and injuries to be presumed to be caused by employment for certain firefighters. Mr. Galbreath reported that subcommittee meetings will be scheduled in September and October to review and discuss the proposed statute changes.

Attorney Richard Owen, who has been assisting the PFFI in drafting this legislation, reviewed the proposed changes and answered questions from the members. Mr. Owen noted that changes in this bill are not huge from the last draft and he looks forward to discussing the changes and any new changes with the subcommittee members.

Security for Compensation – (Chairman Rian Van Leuven, Roy Galbreath, Mike Haxby, Linda J. Sams, Dave Whaley, Jasen Carrier, Ex-officio: Jane McClaran, Woody Richards, Kent Rock, Bob Erickson, Lynn Thompson, Kelly Paananen, Jeanne James, Tim Tucker, Bruce Hock, and Steve Kahn. Rian Van Leuven reported that in May, June, and July, Security for Compensation subcommittee meetings were held to discuss the latest changes to IDAPA 17.02.11, *Security for Compensation – Self-Insured Employers*. Mr. Van Leuven stated that all of the self-insured employers in Idaho were invited to participate in this process and those who

did participate worked well together to agree on the current proposed changes. Mr. Van Leuven reviewed some of the changes and deferred to Jane McClaran to review the remaining changes. Ms. McClaran explained each of the substantive changes made to the rule and answered questions from the members.

Mr. Haxby stated that the subcommittee meetings were very productive and he was impressed how the parties on both sides worked together and were able to give and take to come up with an acceptable rule. He noted that all of the changes to this rule were well vetted with all the participants with no objections to move forward. Mr. Haxby asked for consensus from the Advisory Committee to recommend the Commission move forward with the proposed changes to IDAPA 17.02.11. **The Advisory Committee reached consensus.** The Commission will submit the proposed rule by August 31st to be published in the Administrative Bulletin on October 5, 2011 for review by the 2012 legislature.

Industrial Special Indemnity Fund – (Chairwoman Glenna Christensen, Dave Whaley, John Greenfield, Mike Haxby, James Alcorn, Roy Galbreaith, Ex-officio: Jim Kile, Woody Richards, Lynn Darrington, Lynn Luker, Kent Day, Maggie Karpuk, Michael Kane, Blair Jaynes, and Brad Eidam) Industrial Special Indemnity Fund (ISIF) Manager Jim Kile reported that in May and July the subcommittee met to discuss not only the possible devolvement of the ISIF, but eight different proposed scenarios to change accessibility or funding of the ISIF in an effort to reduce what is deemed as the ISIF's unfunded liabilities that continue to increase. Mr. Kile indicated that there was not much support from the members of the subcommittee to move forward with any of the suggested ideas submitted at this time. Mr. Kile reported that without support from industry, the impetus is to leave the ISIF as it is. Therefore, Mr. Kile stated that there will be no proposed legislative changes presented to the 2012 legislature, and he recommends inactivating the subcommittee until industry decides it is time to make changes.

According to Mr. Kile, he is fairly certain that the projected assessment for 2012 for the ISIF will be a decrease of about two percent.

Public Comment: Barbara Jordan questioned that since some of the initial impetus to change the ISIF came from the Governor's office, she asked if the Governor's office still had a desire to make changes. Mr. Kile responded that he has not spoken with the Governor's office about this proposal, but his boss at the Department of Administration has indicated that without the support of industry, there is no reason to move forward.

Attorney Fees §72-432, Independent Medical Evaluations, and Indemnity Benefit Notification – (Chairman James Arnold, Roy Galbreaith, Mike Haxby, John Greenfield, Gardner Skinner, Ex-officio: Dan Bowen, Darin Monroe, Scott McDougall, Commissioner Baskin, Woody Richards, and Brad Eidam)

Attorney Fees -- James Arnold reported that the Attorney Fee Subcommittee that met yesterday has morphed into how to obtain attorney fees for denied or indecisions on prospective medical care for small claims. It is difficult for an injured worker to find an attorney to represent him on medical only claims since there is no fund from which to receive payment for the attorney's services when successful. The type of claim being looked at would be medical

procedures at a maximum of \$2500. Mr. Arnold noted that proposed changes would be for doctor prescribed care that claimants are unable to afford because they have no other insurance. The subcommittee may look at changing the process to be similar to a change of physician that would expedite the process. The time period being considered would be 45 days after a procedure had been requested with no decision, an attorney could request a Commission hearing to be held within 30 days. Mr. Arnold believes that decisions will be more forthcoming with this type of process probably before the hearing is actually held.

The subcommittee also discussed the difficulty in a claimant finding an attorney when the claimant's 5 year statutory limit for indemnity benefits has passed and the claim is a medical only. If there was a fee of some sort involved, the claimant would have better access to the program. So, the subcommittee is looking at the possibility of initiating some sort of fee of about \$500 to pay for the attorney fees when successful.

Mr. Haxby stated that he would like to see the insurance industry be involved in these discussions, and a draft of the proposed changes vetted to insurers. Gardner Skinner noted that some of the changes discussed could result in a savings to sureties by not making unnecessary TTD payments when a decision on medical care is delayed.

Mr. Arnold reported that the subcommittee has been working to devise a plan to compel physicians who currently won't participate in depositions or give testimony, to do so for a reasonable fee. The subcommittee would like to draft a letter with the help of Dr. Collins that might get the attention of the doctors who are willing to treat injured workers, but won't commit to participate in depositions or testimony. The subcommittee is working on establishing deposition and testimony fees of physicians into the medical fee schedule to try and contain some of the exorbitant fee charged by some physicians.

Indemnity Benefit Notification – The members decided it would be best to have a separate subcommittee for this topic which Jasen Carrier will chair. The subcommittee mission will be to decide if it is appropriate to notify claimants and if so, how to notify a claimant of the five year statute of limitations for indemnity benefits without causing confusion or overstepping legal boundaries. Members of the subcommittee are Chairman Jasen Carrier, Roy Galbreath, Steve Millard, Mike Haxby, and James Arnold.

Independent Medical Evaluations – Mr. Arnold reported that the subcommittee briefly discussed ways to better ensure an IME is more neutral and not swayed by who pays. Commissioner Baskin discussed that Idaho Code provides the ability for the Commission to order and pay for a medical evaluation if requested by the parties. The Commission may be able to budget for IME payments when the Commission deems it necessary due to a dispute. These are items to be discussed in the subcommittee which will be a separate subcommittee entitled §72-432, Medical Services. Members will be subcommittee Chairman Mike Haxby, Rian Van Leuven, James Arnold, Paul Collins, John Greenfield, Gardner Skinner, Steve Millard, and ex-officio members: Woody Richards, Paul Jackson, Jennifer Poole, Patti Vaughn, Commissioner Maynard, and Commissioner Baskin.

Issues:

Deposition and Testimony Fee Guidelines in Rule – Mr. Arnold reiterated that he has not met with much success in eastern Idaho in reigning in the outliers when it comes to deposition and testimony fees charged by physicians. Mr. Arnold will draft a letter that he hopes will get the physicians attention, but may need to look at fee maximums in the medical fee schedule.

Election of Advisory Committee Members:

Chairman Mike Haxby reviewed the nominations for the members whose term on the Advisory Committee had expired and introduced the two nominees in attendance for the Attorney Representing Employers position. Nominees were recommended by various groups around the state including current members who volunteered to serve another term. Dave Whaley nominated Jasen Carrier for Chairman to be voted on by the members. Voting by secret ballot took place and the results are as follows:

- 1 Representative of Workers – Rian Van Leuven, USW #608
- 1 Representative of Employers – Roy Galbreath, J.R. Simplot Company
- 1 Representative of the Insurance Industry – Mike Haxby, Intermountain Claims, Inc.
- 1 Attorney Primarily Representing Employers – Susan Veltman, Gardner Law Office
- 1 Attorney Primarily Representing Workers – James Arnold, Petersen Parkinson & Arnold
Chairman – Jasen Carrier, City of Boise

The Advisory Committee's recommendations for membership will be submitted to the Industrial Commission for final approval.

Industrial Commission Report:

Proposed Independent Contractor Legislation - Commissioner Limbaugh reported that the proposed statute changes drafted by the Advisory Committee's subcommittee and Commission adding to the independent contractor definition and adding employer compliance penalties have been rejected by the Division of Financial Management (DFM) and Governor's office. Commissioner Limbaugh noted that the Department of Labor also submitted statute changes to the definition of an independent contractor and the Commission is waiting to see if their proposals go forward. If the Department of Labor's statute changes pass, then the Commission may proceed with its changes to mirror that of DOL.

DFM stated that the penalties in our changes were too excessive to be able to pass the legislature. It may be possible to have a better outcome if the penalties are based on what premiums should have been paid rather than a penalty maximum of up to \$10,000.

Public Comment: Woody Richards mentioned that an endorsement to move forward on compliance penalties and independent contractor definition changes is supported by several employers in the area because some employers are intentionally not carrying workers' compensation insurance as the penalties are currently too low.

Annual Seminar – Megan Holbrook, Public Information Specialist, announced the date of the Commission’s Annual Workers’ Compensation Seminar being held October 27, 2011. Ms. Holbrook stated that all registrations are 100% online this year, and a new feature will be that attendees will receive a small notebook for note taking rather than the bulky binders containing all the presentation information. The presentations will be accessible online after the seminar. Those wanting credits for attending the seminar will still need to sign the attendance forms at the seminar reception desk. Certifications will be sent out electronically after the seminar. It was suggested that an email prompt be sent out a couple of weeks prior to the seminar to remind people to sign up and attend.

Medical Fee Schedule Update – Director Mindy Montgomery reported that Medical Fee Schedule Analyst Patti Vaughn is finishing up her educational meetings with medical providers on the new hospital and ambulatory surgery center medical fee changes that become effective on January 1, 2012. Ms. Montgomery stated that the Commission is considering a few changes to the medical fee schedule, but do not plan to propose any rules for pharmaceuticals this legislative session.

Topics for Discussion at the Next Meeting:

- PFFI Proposed Legislation
- Attorney Fees – James Arnold
- Independent Medical Evaluations
- Indemnity Benefit Notification

Miscellaneous Issues:

Mr. Haxby reported that some self-insured employers that he represents have expressed their concern regarding letters from the Commission that are somewhat harsh in their tone regarding not reporting claims timely. Commissioner Limbaugh suggested that the Commission undertake the possibility of addressing in-state adjusting as that is what some of these issues stem from.

Roy Galbreath asked that the new list of advisory members including whom they represent and the subcommittee titles and their members be sent out to all the Advisory Committee members.

There being no further business, the meeting was adjourned.