

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
May 9, 2018**

Members Present

James Arnold, Chairman
Ray Anchustegui
Dave Anderson
Richard Burleigh
Brad Cederblom
John Greenfield
Dane Higdem
Mike McPeek
Gardner Skinner¹
Shellie Martin
Joe Maloney
Ex-Officio: Senator Jim Patrick
Ex-Officio: Representative Scott Syme

Members Absent

Dr. Paul Collins
Craig Mello
Brian Whitlock

Industrial Commission

Thomas E. Limbaugh, Chairman
Thomas P. Baskin, Commissioner
Aaron White, Commissioner
Mindy Montgomery, Director
Kamerron Monroe, Secretary

Opening Remarks and Introductions:

Chairman James Arnold opened the meeting at 10:30 a.m. and led with introductions. Mr. Arnold next requested introductions of Committee members and public attendees.

Introduction of New Members:

Mr. Arnold requested the new members of the Advisory Committee introduce themselves; Joe Maloney, Brad Cederblom, and Richard Burleigh. Their background and professional qualifications were summarized.

Minutes of February 14, 2018:

The minutes of February 14, 2018 were presented for review and approval. Dave Anderson moved to approve the minutes of February 14, 2018 as written; seconded by Mr. Dane Higdem. The minutes were adopted as written.

Subcommittee Report(s):

➤ Idaho Code § 72-451. Commissioner Baskin reported on the Subcommittee on Idaho Code § 72-451 regarding Post Traumatic Stress Disorder (PTSD) in first responders. The Diagnostic Statistic Manual V (DSM V) already looks at cumulative events injury trauma versus sudden event trauma. The Subcommittee meeting looked at how we can change the statute to address this concern. The Subcommittee did not have proposed legislation yet; there was some

¹ Mr. Gardner was incorrectly marked as present.

discussion during the Subcommittee meeting about PTSD being better addressed outside workers' compensation. Concern was raised about defining a first responder and if the change should apply to everyone in the workforce. The Subcommittee will be looking at legislation from other states at the next meeting. There were no comments.

Introduction Commission Report:

Chinden Campus Relocation. Director Mindy Montgomery informed the Committee that the Industrial Commission will be moving to the HP Chinden Campus in Spring, 2019. The Industrial Commission is moving with the Tax Commission. The two agencies will have some shared meeting space.

Senator Jim Patrick asked if our lease was up at this location. Director Montgomery stated it was up in June and had been extended until the move.

Mr. Mike McPeck asked if the Industrial Commission will be paying rent at the Chinden Campus. The Industrial Commission will be paying rent but the amount is unknown.

Shellie Martin asked if the ICRD will be moving out there. Director Montgomery indicated they would not.

➤ 2018 Rules and Legislation. Chairman Limbaugh reported on the Industrial Commission's 2018 Rules and Legislation. A handout of the Negotiated Rulemaking Manual from the Department of Administration was provided. Chairman Limbaugh explained negotiated rulemaking and how the Commission has used it in the past to be transparent. Negotiated Rulemaking is an informal process to invite interested parties to participate and reach a consensus. As this process is informal, these dates/meetings are not required to be published the Administrative Bulletin. The Commission will have meeting dates on the website. The Commission will also put draft language on the website. Chairman Limbaugh stated that the following Notice to Intent to Promulgate Rules have been published:

- Average Weekly Wage: Chairman Limbaugh explained this issue was brought to us by a constituent to look at TPD/TTD and average weekly wage calculation when a claimant has had multiple injuries within 52 weeks.

- Attorney Fees on MSAs: Commissioner Baskin explained that we are looking at Claimant's Attorney Fees on Medical Set-Aside (MSA). Commissioner Baskin used the example of a denied claim where a Claimant has a Hearing and prevails. Then the Claimant settles; the Surety can leave the medical portion open and create an MSA. Claimant's Attorney has no way to get paid from MSA. Claimant's Attorney helped obtain that benefit for that Claimant, how does Claimant's attorney get paid for their work in securing that? Fees can not be taken from a CMS MSAs; there is a penalty to underfunding an approved set-aside. This came up because lump sums were being taken from funds for an MSA. The Commission is looking at a possible additional payment or having the Surety pay the fees to the Claimant's Attorney.

- Electronic Payment Transfers: Chairman Limbaugh stated that constituents had asked the Commission to look at electronic payment of TTDs.
- Average Impairments: The Commission had a proposed temporary rule last year that didn't go in front of the Legislature. The Commission received many comments about it from the Claimant's Bar and decided to hold it another year. Senator Patrick stated the negotiated rulemaking was important in getting a rule passed.

The Commission also informed the Advisory Committee that the Idaho Supreme Court recently adopted rules on electronically submitting appeals. Records will also have to be electronically submitted on CDs. The Commission is considering a rule change to comply and a rule change that requires the parties to submit one set of joint exhibits.

Mr. McPeck asked if the Commission is set up for electronic filing. Commissioner Baskin stated that we are in the process.

Updates:

➤ Medical Fee Study-Negotiated Rulemaking: Benefits Administration Manager, Patti Vaughn reported the Medical Fee Study RFP that was issued in December was closed. The RFP only received one response and was above budget, therefore it was canceled. Negotiated rulemaking on Medical Fees will be on June 20th at 2:00 p.m. NCCI is working on a data analysis project that would cover the same data as the Commission was hoping to access with the RFP but it would not be available in the immediate future. Ms. Vaughn asked for questions. There were no questions.

➤ EDI Housekeeping: Ms. Vaughn indicated that the Commission would be conducting negotiated rulemaking on IDAPAs that are inconsistent with EDI to clean them up for uniformity. There is a scheduled meeting July 17th at 9:00 a.m. We will continue to work on technical updates. If anyone is having difficulties with EDI they are encouraged to email ISO. Ms. Vaughn asked if there were any questions. There were none.

Other Issues/Announcements:

➤ Website Update. Public Information Specialist Nick Stout announced that the Commission launched our new website. If there are any kinks or suggestions, please let Mr. Stout know.

➤ August Elections. The upcoming August elections were announced. As there were several vacancies on the Nomination Committee, several new members were chosen: Dane Higdem (Chairman), Shellie Martin, Dave Anderson, and Brad Cederblom. Advisory Committee Members whose terms were expiring are Dane Higdem, Richard Burleigh, and Brian Whitlock. The Nomination Subcommittee will get together before the August meeting.

Preparation for Future Meetings:

Richard Burleigh asked for a Subcommittee to be formed to look at Idaho Code § 72-435. A subcommittee was formed: Richard Burleigh (Chair), James Arnold, Mike McPeck, John Greenfield, Brad Cederblom, Joe Maloney, Commissioner Baskin, Patti Vaughn, and Andrew Marcham.

Chairman Limbaugh asked for interested people for the Average Weekly Wage meeting: Lisa Kerns, Mike Haxby, Shellie Martin, Cindy Weigel, James Arnold, Dane Higdeman, Stephanie Butler and Representative Scott Syme. Mr. Maloney asked Chairman Limbaugh to explain what the issue was for people who aren't as familiar with workers' compensation; Chairman Limbaugh explained. Mr. Maloney would like to sit in on the meeting.

The next meeting will be August 8th. Dane Higdeman made a motion to adjourn; seconded by Dave Anderson. The meeting adjourned at 11:20 a.m.