

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
November 12, 2014**

**Members Present**

Mike Batten, Chair  
Mike Haxby  
Susan Rhoades  
Roy Galbreath  
Craig Mello  
Larry Kenck  
John Greenfield  
James Alcorn  
Gardner Skinner  
Aaron White (for Rian VanLeuven)  
Dr. Paul Collins  
Susan Veltman

**Members Absent**

James Arnold  
Senator John Tippetts  
Representative Douglas Hancey

**Industrial Commission**

Thomas P. Baskin, Chairman  
R. D. Maynard, Commissioner  
Thomas E. Limbaugh, Commissioner  
*(late arrival)*  
Mindy Montgomery, Director

**Opening Remarks:**

Chairman Mike Batten opened the meeting and called for introductions of Committee Members and public attendees.

**Minutes:**

The Minutes of August 13, 2014 were discussed. Mr. Kenck moved to approve the minutes of August 13, 2014 as written, seconded by Mr. Galbreath. The motion passed.

**Subcommittee Reports:**

Firefighters Proposed Legislation IC §72-438 – Occupation Diseases. (Members: *Chairman Larry Kenck, Gardner Skinner, John Greenfield, Mike McPeek, Mike Kane, Phil Barber, Representative Phylis King, Rian VanLeuven, and Rob Shoplock. Ex-Officio for Firefighters: Attorney Richard Owen*) Subcommittee Chairman Kenck reported that the Professional Firefighters presented new legislation at the Advisory Committee's August meeting; the Committee consensus was to reconvene the PFFI Subcommittee and vet the proposed legislation. He reported that the Subcommittee met last month and members expressed general concern that the new legislation could be deemed unconstitutional. He further reported that the Professional Firefighters Association decided to review the language and return to the Committee with draft amendments to the new proposed legislation.

Mr. Kenck invited Mr. Shoplock and Mr. Owen to summarize the new draft legislation and provide a comparison analysis of the previous legislation presented at the last Subcommittee meeting.

Mr. Owen reported that he and Mr. McPeck met at the request of the Subcommittee following its last meeting and reviewed the concerns expressed of the Subcommittee members. He reported that the proposed language was not changed, only the bill's structure that created a new Section 72-438(A). He reported that the new section places the firefighter occupation disease in a separate stand-alone section and mirrors the existing 72-438 section; there is no presumption on causation. Mr. Owen summarized the new proposed language and reported that death or disability must still be proven was a result from one of the listed cancers. He also reported that the proposed statutory language benefits the Professional Firefighter because the Professional Firefighter will no longer have to prove that the occupational risk is greater. Mr. Owen stated that the Professional Firefighters want to work with the Subcommittee to address these issues expressed by the Subcommittee. Mr. Owen apologized for the lateness in providing the latest revised proposed statutory language; and thanked Commissioner Baskin for leading him through the concerns of the Subcommittee.

There being no further discussion, Mr. Kenck thanked Mr. Owen and Mr. Shoplock for addressing the concerns of the Committee; and recommended that the PFFI Subcommittee be reconvened to vet the proposed legislation as presented by Mr. Owen.

After discussion on the recommendation, Committee consensus was to reconvene the Subcommittee and return with a recommendation to the Advisory Committee at its next full meeting.

**Workplace Safety IC §72-720 through IC §72-723.** (Members: *Chairman Roy Galbreath, Jim Alcorn, Woody Richards, Steve Millard, Mike Batten, Kelly Pearce, Suzanne Budge, Pam Eaton, Jerry Deckard, Tony Poinelli, Leon Duce, Justin Ruen, Alex LaBeau, Stuart Davis, Keith Bybee for Senator Shawn Keough; Industrial Commission: Commissioner Tom Baskin, Commissioner R.D. Maynard, Commissioner Tom Limbaugh, Director Mindy Montgomery, Financial Officer Jane McClaran, and Deputy Attorney General Blair Jaynes*).

Subcommittee Chairman Galbreath reported that the Subcommittee met on October 14<sup>th</sup>; and was attended by DBS, IIC Commissioners and staff, and public stakeholders. Mr. Galbreath reported that proposed legislation resulted from the discussions of the scope of the inspections and the funding of the inspections. DBS agreed to inspect other subdivision buildings, upon request from that subdivision, potentially including courthouses, counties or cemetery districts, or tool sheds. He reported that DBS and IIC drafted the bill that was distributed. The Subcommittee consensus was to reconvene if needed; however, no input has been received on the proposed legislation. Mr. Galbreath recommended discussion of the proposed legislation.

Chairman Batten opened the floor for discussion of the proposed amendment.

Commissioner Baskin reported that the outstanding issue is the treatment for inspections of political subdivisions. He reported that the proposed draft legislation is more complex in 67-2601A subsection (4) making inspections of political subdivisions optional at the request of the subdivision in question and anticipates a fee schedule will be created. He stated that DBS, IIC and the Subcommittee members agreed to keep inspections of political subdivisions optional. He

reported that the Governor's office will be monitoring this legislation. Commissioner Baskin opined that IIC and DBS are agreeable with the proposed language.

Mr. Galbreath reported that the Subcommittee is pleased with the compromise and is recommending Committee consensus on the proposed bill language.

Mr. Haxby expressed concern on the funding and the impact of funding the inspections for insurers; and further inquired about where to locate the fiscal impact.

Commissioner Baskin reported that there is no anticipated change to IC §72-519 for funding the various DBS programs and deferred to IIC Financial Officer Jane McClaran to address the question of funding impacts, if any.

Ms. McClaran informed the Committee that for the past eight years the Commission has had an appropriation to DBS of \$1.1M in trustee benefits; and for each of those eight years DBS has used a portion of those funds which the Commission has reverted. Ms. McClaran opined that there is an inconsistency in the current statute; and the proposed language would result in a neutral fiscal impact. She reported that the fiscal impact is not currently published.

After further discussion, Mr. Kenck moved to concur with the recommendation of the Subcommittee. Chairman Batten called for consensus on the proposed statutory language. Mr. Haxby stated that so long as the fiscal impact demonstrates a neutral impact, then he is in support of the proposed language.

The Committee consensus supports the proposed statutory language, pending publication of a neutral fiscal impact.

**Future Medical Trends – Cost Containment.** (Members: *Chairman Paul Collins, M.D., Angela Harter, James Arnold, Mike Haxby, Mike McPeck, Mike Batten, Woody Richards, Representative Doug Hancey, Rian VanLeuven, Steve Millard, Teresa Cirelli; Industrial Commission: Commissioner Tom Baskin, Deputy Attorney General Blair Jaynes, Scott McDougall, and Patti Vaughn*).

Subcommittee Chairman Collins reported that the Subcommittee met on October 16, 2014 and had a lively discussion on other states' models of evidence-based medicine guidelines. The Subcommittee agreed that a small group comprised of attorney members be convened to address Idaho's statute and statutory authority of the Commission. He reported that the Small Group will meet and report to the Subcommittee for further discussion of the issues; and make their recommendation to the full Committee at the Commission's direction. Dr. Collins opined that Idaho will need to address this issue sooner than later, similar to Washington and Colorado. Dr. Collins thanked the Subcommittee participants for their research and opinions.

There was no public comment or discussion.

**Subcommittee on Physician Depositions and Opinions.** (Members: *Chairman James Arnold., Alan Gardner, Mike Haxby, John Greenfield, Woody Richards, Rian VanLeuven, Teresa*

*Cirelli; Industrial Commission: Commissioner R. D. Maynard, Patti Vaughn and Terrisa Wyatt).*

Due to Mr. Arnold's absence, no report was provided to the Committee.

### **Industrial Commission Report:**

Commissioner Baskin thanked members and public attendees for weathering the icy roads and attending today's meeting. He informed the Committee that he and other Commission staff attended the IAIBC Conference; and Commissioner Maynard was elected as the President-Elect to the International organization of the IAIABC and will take office next year.

Paperless Initiative – Adjudication. Commissioner Baskin reported that attending these jurisdictional meetings affords an opportunity to talk with others in the same position as Idaho on the paperless initiative and evidenced-based medicine guidelines, such as Ohio and Pennsylvania. He reported that several jurisdictions are well down the road in adjudication rules in the paperless initiative. He further reported that the Commission met with our IT manager and Commission referees to explore the paperless process and provide better service to our customers, similar to Idaho's district court and Supreme Court. He reported that the Subcommittee on Paperless Initiative is meeting on December 1, 2014 to begin vetting the process.

Update: Premium Tax Assessment of BEA. Commissioner Baskin reported that the Commission completed the process in a short period time of establishing a premium tax assessment for Battelle Energy Alliance, and briefly described the Commission's steps to develop some underwriting expertise. He thanked Mike Taylor of NCCI, James Alcorn of the State Insurance Fund and the Commission's Fiscal Officer Jane McClaran for their assistance in the underwriting process.

Update on IDAPA Rule 17.0209 - Medical Fee Schedule. Commissioner Baskin reported that the Committee had met and had proposed some increases in hospital fees; but the Committee did not propose any increases in physician fees. He reported that the Commission received requests from the public to hold a public hearing on the proposed physician fee schedule; the public hearing is scheduled for November 13, 2014 from 10:00 am to Noon to address the public comment.

Update: Benefits & Claims Newsletter. Commissioner Baskin reported that the upcoming Benefits & Claims Newsletter will address a change in the request for Commission claims files. Currently, the Commission allows requests as far back as 30 years. He reported that claims records from 2004 onward can be scanned and out to requestor without delay. He reported that records prior to 2004 are located on microfiche and the IIC system is not keeping up with current technology. The Commission was informed that the next windows application will no longer support the IIC microfiche readers. The Commission is exploring replacement of the microfiche machines. He further reported that this issue is no an immediate problem, but will need to be resolved before 2020; or those older records will no longer be accessible. He reported that the Commission will continue to explore a work-around to access those older claims records.

Revision to Medical Fee Dispute Process – Applicable Penalties. Commissioner Baskin reported that the Commission was informed of an issue that some payers are taking advantage of the medical fee dispute process as a way to delay payments. He summarized the Commission’s historical practice of applying the 30% penalty for disputed charges under the medical fee dispute process. He further reported that to discourage payers from abusing the process, the Commission has made a change in rule that after the motion for approval of disputed charges is filed then the 30% penalty will apply, unless the payer persuades the Commission that the disputed charge was too high.

Changes Internally to Requirements for Calculating the AWW. Commissioner Baskin summarized the requirements for calculating the AWW. He reported that the Commission was informed about the difficulty in calculating the AWW when the date of injury falls within the middle of the pay period. He reported that the Commission recommends starting the 52-week calculation by going back to the most recent complete pay period prior to the date of injury.

Appellate Subcommittee Meeting – Supreme Court. Commissioner Baskin reported that he attended an Appellate Subcommittee meeting of the Supreme Court. He stated that under IC §72-718, decisions of the IIC are final as to adjudicated matters. (*See Vawter and Jensen v. Pillsbury.*) The Appellate Subcommittee focused on appeals on the threshold issue of compensability for payments of benefits. He reported that the Court has scheduled another meeting to discuss alternatives going forward. Commissioner Baskin stated that he was very encouraged by the Supreme Court’s progress on the appellate rules and opined that the proposed rules changes will be helpful to all parties.

There was no public comment or discussion held.

**New Proposed Amendment – IDAPA Rule 17.0211.051 – Requirements for Maintaining Idaho Workers’ Compensation Claims Files (Mike Kane)**

Mike Kane, Representative of Property & Casualty Insurance Association, presented for the Committee’s consideration a rule change to the self-insured IDAPA Rule 17.0211.051. He provided a two-page handout of the proposed amendments and summarized the proposed rule changes to subsections .06 and .07. He reported that subsection .06 would be amended to provide for electronic mail correspondence from out-of-state processing centers; and that subsection .07 would be amended to allow for the mailing of checks from out-of-state processing centers. He reported that the proposed amendments would help streamline the process by making it cheaper and quicker for customers to receive their monies.

Public Comment:

Discussion held of the Commission’s check-writing waiver requirements and the kinds of automated correspondence that allows insurers to establish claims files quicker, such as the medical authorizations to injured workers.

Mr. Kane reported that most providers and insurers are out of state; under the current system, insurers get the checks to Idaho, which are reprocessed and re-mailed directly from in-state.

Mr. Haxby inquired of Employers Insurance current practice of sending out correspondence to, for example, claimant's counsel would also come from out of state; or would that be done through an in-state office at that time.

Ms. Harter reported that Employers Insurance currently originates all correspondence from within our office. She reported that Employers would like to move some of that through our processing center located in Henderson, Nevada to free up time for adjusters to work the files, rather than doing administrative-type work. She explained that letters to attorneys come from our office, and then hard copies are mailed through the automated system. She reported that the Explanation of Benefits ("EOB") Check is the issue for Employers Insurance. She reported that Employers has an out-of-state check waiver in place. She stated she is interested in eliminating the extra steps to match the checks and bills so they are mailed together. She would like a more user-friendly, automated system to save time for adjusters and get providers their checks timely.

Mr. Kelley-Jones opined that the issue for Sedgwick is the inability for electronic funds transfers under the current rule language that references "checks." He stated that some vendors prefer electronic funds transfers. He opined that the rule language is a little bit behind the times; and would like more efficiency in the process for all parties.

Benefits Administration Manager Scott McDougall opined that Benefits is not concerned about the location for mailing; and suggested the language be mirrored in Section .10 for sureties. He indicated that Benefits is more concerned with approval authority for making the adjusting decisions. Mr. McDougall reported that there are other proposed amendments for next year's legislative session; and requested that Mr. Kane's proposed section changes be considered in the Benefits & Claims Subcommittee discussions.

Discussion held about the out-sourcing of processing centers to other countries, such as India.

Mr. Kane sought Committee approval to move forward with the proposed rule amendments for next year, which would relieve the Commission of the check waiver process.

Mr. Haxby opined that the waivers are a pretty powerful tool for the Commission to exercise of insurers; and is not overly burdensome for insurance companies to apply for that waiver and receive it. He requested the Commission's perspective on the value of the waiver.

Commissioner Baskin stated that the issue does periodically occur; and for more egregious cases the waiver is a useful tool for withdrawing the check-writing waiver, which gets a surety's attention to comply.

Mr. Haxby expressed agreement with Mr. Kelley-Jones' opinion; and requested inclusion of the EOB/EORs in the discussions of the Benefits & EDI Subcommittee.

Mr. McDougall injected that the waiver is an exchange of information that also provides third-party administrator information for updating the Commission's data system.

After further discussion, the Committee consensus was to convene the Benefits & EDI Subcommittee to include Mr. Kane's proposed amendments and discussion of the EOB/EORs and waiver. Mr. Kane will join the Benefits & EDI Subcommittee.

**(Break taken.)**

**Election:**

Election ballots and information on nominee Lisa Kidder Hrobsky were distributed to voting members of the Committee. Chairman Batten deferred to Mr. Galbreath to provide the Nominations Subcommittee report.

Mr. Galbreath reported that the Nominations Subcommittee was challenged by the Commission to nominate a replacement to complete Mr. Millard's term as Representative of Hospitals on the Advisory Committee. Mr. Galbreath reported that Mr. Millard retired from the Idaho Hospital Association and submitted his resignation from the Advisory Committee to the Commission. The Nominations Subcommittee recommended Ms. Lisa Kidder Hrobsky as Representative of Hospitals on the Advisory Committee to complete Mr. Millard's term.

Mr. Haxby expressed his congratulations on Mr. Millard's retirement; and appreciation of Mr. Millard's dedication over the several years in serving on the IIC Advisory Committee.

After discussion, Committee recommendation and consensus is to purchase a plaque in appreciation of Mr. Millard's many years of dedication and service to the IIC Advisory Committee.

**Preparation for Future Meetings:**

Next Meeting Dates:

**February 11, 2015**

**May 13, 2015**

**August 12, 2015**

**November 18, 2015**

**Other Issues/Announcements:**

Mr. Galbreath requested the Committee consider additional members from the defense and claimants bars to serve on the Nominations Subcommittee. Mr. Greenfield and Ms. Veltman volunteered to serve on the Nominations Subcommittee.

There being no further business, the meeting was adjourned.