

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

**Members Present**

Susan Veltman, Chair  
John Greenfield  
Rian Van Leuven  
Steve Millard  
Gardner Skinner  
Roy Galbreaith  
James Arnold  
Larry Kenck  
Dr. Paul Collins  
Mike Batten  
Jasen Carrier (for) Mike Haxby

**Members Absent**

James Alcorn  
Susan Rhoades  
Senator John Tippetts  
Representative Douglas Hancey

**Industrial Commission**

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

**Opening Remarks:**

Advisory Committee Chairman Susan Veltman opened the meeting and asked for introductions of Advisory Committee members and public attendees.

**Minutes:**

The Minutes of November 6, 2013 were reviewed. Chairman Veltman entertained a motion to approve the minutes as written. Upon motion by Roy Galbreaith, seconded by Rian Van Leuven and Steve Millard, the Minutes were unanimously approved as written.

**Industrial Commission Report**

➤ Member Vacancy Representative of Employer - Robin Sexton. Commissioner Baskin reported that Employer Representative Robin Sexton informed the Commission of her new employment situation. The Commission was concerned about the member balance on the Advisory Committee, pursuant to Section 4 of the Charter. The Commission advised Ms. Sexton that the membership imbalance would preclude her from remaining on the Committee as an Employer Representative. Chairman Baskin reported that the two remaining nominees continue to be interested in serving on the Advisory Committee. Chairman Baskin deferred to the Committee to consider an election of the two remaining candidates or to consider re-enacting the Nominating Committee to look at other candidates.

➤ Update: Medical Releases – St. Luke’s. Commissioner Baskin reported that the initial issue of the redaction of medical information by a St. Luke’s facility in Twin Falls is believed to be resolved. He stated that St. Luke’s was concerned about possible HIPAA

disclosure violations. Commissioner Baskin read St. Luke's response letter to the Committee and reported that the Commission is satisfied that this issue is resolved.

Commissioner Baskin reported that St. Luke's also expressed concern that the medical release language is too broad on the Commission's complaint form, as well as on other medical release forms they receive. Mr. Baskin reported that St. Luke's is reluctant to provide records created after the date the release is signed, and they have requested the Commission to review the language. He reported that St. Luke's has proposed the following new language on the medical release forms, "*The release is good for two years after the date of execution*" and "*The claimant is authorizing St. Luke's to release their medical records.*"

Commissioner Baskin reported that the Commission is meeting with representatives of St. Luke's in an attempt to resolve their concerns and will update the Committee of those discussions.

➤ Claims and Benefits Guidance Memorandum Re: Failure to Provide a Notice of Change of Status. Commissioner Baskin reported that the Commission conducted a search of the legislative history of §72-806 and §72-604; and, upon further reflection, amended its position and policy regarding the failure to provide a Notice of Change of Status. The Commission determined that it erred in relying on ancient case law. Commissioner Baskin reported that a revised guidance policy was posted to the IIC website for reference. Commissioner Baskin thanked Mr. Gardner for bringing this valid point to the Commission's attention.

➤ Formation of Subcommittee on Electronic Documents Filing Adjudication Paperless Initiative. Commissioner Baskin followed up on Mr. Arnold's inquiry that the Commission considers adoption of electronic documents filing for adjudication purposes and to form a subcommittee to vet the issues. He reports that the Federal Court has been doing electronic filing for some time, and the Supreme Court is working on a similar process. He requested that the Subcommittee's initial focus should be on filings of pleadings.

Commissioner Baskin proposed the Committee authorize formation of a small Subcommittee group and suggested the Subcommittee include the following members: *Robert Butler, IT Manager for the Commission; Commission Referees Cheri Ruch and LaDawn Marsters; Attorneys James Arnold and Alan Gardner.*

➤ Formation of Subcommittee on EDI Rules. Commissioner Baskin presented for the Committee's consideration the formation of a Subcommittee on EDI 3 Rules. He reported that the Commission has been diligently working on rules to present in the next legislative session to implement EDI Release 3 and wanted the rules vetted through the Advisory Committee for guidance. Commissioner Baskin reported that EDI Release 3 has been implemented in other jurisdictions and understands it will improve the quality of data and decrease the amount of paper. Commissioner Baskin requested that Committee members in the industry consider sitting on this Subcommittee to meet a couple of times prior to the April

Advisory Committee meeting. Commissioner Baskin suggested Commissioner Maynard and Mr. McDougall participate on the Subcommittee.

➤ Formation of Subcommittee on Claims & Benefits Rules. Commissioner Baskin reported that Benefits department alerted the Commission to address proposed changes in the general adjusting rules. He reported the Commission had anticipated these changes to be “housekeeping” in nature but after further review determined the proposed changes be vetted through a Subcommittee for recommendations to the full Committee. Commissioner Baskin summarized the proposed amendments: (1) IDAPA 17.02.04.241 clarifies that medical evaluations can only be performed by a physician under IC §72-424, specifically for PPI evaluations; (2) IDAPA 17.02.07.061 clarifies the payment of medical evaluations or treatment of subsequently denied claims that can result in the case being a one year case or a five year case; (3) IDAPA 17.02.10.012.03 amends the authority for claims adjusting must be vested in an in-state adjuster and that full authority now equals the authority to make any payment less than \$25,000, pursuant to IC §72-305; and (4) IDAPA 17.02.10.051 proposes enacting some guidelines on initial compensability determinations for prompt claims servicing.

Commissioner Baskin indicated that Mr. McDougall had an interest in chairing that Subcommittee and that Mr. Haxby and Mr. Stevens were contacted and agreed to serve on the Subcommittee. The Commission is requesting a representative of the defense and claimants bar to also serve on the Subcommittee.

Commissioner Baskin summarized the amendments to IC §72-301 – Security for Compensation and provided a brief summary of the Subcommittee session meeting for Workplace Safety IC §72-720.

Commissioner Baskin had no further Commission business to report and called for questions of the Committee.

Chairman Veltman inquired of the Commission’s process for verifying the filing date of the Notice of Claim Status (“Notice”) for statute of limitations relevance. Mr. McDougall explained the Commissions’ database entry process and also explained that the conformed Notice would be returned to the sender of the Notice. Mr. Arnold stated he would like the system “shored up” to provide more specificity for statute of limitations purposes.

### **Subcommittee Reports:**

Workplace Safety IC §72-720 through IC §72-723. Mr. Galbreath reported that the Subcommittee on Workplace Safety held its first meeting with good attendance, including representation from the logging industry. He reported that the statute was written pre-OSHA and created some ambiguity and differing interpretation in the statutory language that would require, and allow for, the annual inspections of political subdivisions. He reported that the Subcommittee learned that there are 876 political subdivisions of the state of Idaho affected by this statute.

Some of the questions raised by the Subcommittee included: (1) Does the statute “require” the inspections of political subdivisions or “allow” for those inspections? If so, is it appropriate for the Commission to be the inspecting entity? (2) What is the funding source? (3) Does the Commission have the responsibility for these annual inspections; and if no annual inspections are conducted of these public buildings, is the Commission liable? (4) Should annual inspections of political subdivisions or public buildings be required, or should they be inspected only upon request? and (5) Are these types of inspections “safety inspections,” “building inspections” or both?

Mr. Galbreath reported that the Subcommittee consensus is the statute is ambiguous and needs amending. The Subcommittee will propose amended language to the statute and will report to the Advisory Committee at the next scheduled meeting. The Subcommittee reconvenes @ 9:00am on February 21, 2014.

### **Updates:**

#### Second Injury Fund (James Kile):

Mr. Kile provided a handout of the Second Injury Fund’s 2013 Annual Report. He reported that ISIF by statute is required to provide an annual report to the Commission and summarized the operations of the Second Injury Fund and the notice of filing process, pursuant to IC §72-334. Mr. Kile reported that for the past four years monthly payouts have increased 50%. He reported that litigation is more active but legal costs are trending downward. He further reported that assessments from 2009 have increased 37% from the previous year. He stated that the State Insurance Fund has 50% of the business but ISIF does not expect that trend to continue upward. Mr. Kile explained the assessment formula and provided the ISIF website address for general information purposes and called for questions of the Committee. The ISIF website address is [www.admin.idaho.gov/inddennity](http://www.admin.idaho.gov/inddennity).

#### Adjusting Issues (Mike Haxby):

Chairman Veltman reported, on behalf of Mike Haxby, that members of the adjusting community met with the Commission’s Claims and Benefits staff on December 10<sup>th</sup> at the Commission offices. She reported that the meetings’ purpose is to enhance communication and obtain clarification and consistency between the Commission and the adjusting community. Ms. Veltman reported the following topics:

- A. Lump Sum Settlement Approval Process. The consensus of the adjusters is the Commission’s recent change in the lump sum settlement approval process is working well, including mediated settlements, and the time frame for approval has decreased.
- B. Mediation - Pro Se Claimant. The Commission confirmed that occasionally they may contact a pro se claimant to verify that the settlement is in the best interest of the parties, particularly for pro se claimants.

- C. Mediator. In the absence of Mr. Burks, the Referees are available for mediations. Mr. Arnold, Mr. Skinner and Mr. Greenfield all indicated that Mr. Burks responds usually within a few hours, even on occasions when he is out of the office.
- D. Commission Webcam. The Commission's webcam interface system is available for hearings and mediations when travel is burdensome for parties.
- E. Gap Period – Voluntary Payments of PPI Benefits When Lack of Income Source. The adjusters were concerned about the gap in time between PPI benefits payments to claimants who have no income source, when treating physicians decline to assign a PPI rating. The adjusting community agreed that most adjusters voluntarily initiate some amount of PPI payment to a particular class of claimants, pending receipt of a PPI rating from treating physicians. Ms. Veltman reported it was a good discussion and there is no set rule or procedural guideline for this situation.
- F. Compliance Audits. The adjusters agreed that compliance audits are helpful to adjusters.
- G. Blanket Approval of Medical Bills – Out-of-State Adjusting. The question raised by adjusters: What does or does not constitute out-of-state adjusting? The group discussed the review process for payment of medical bills of workers' compensation claims and reviewed the Commission's in-state adjusting requirements guidance memorandum that is located on the Commission's website as a reference tool.

Chairman Veltman had no other information to present and called for delegated items.

#### **Vote on Member Vacancy – Employer Representative:**

Nominations Subcommittee Chairman Rian Van Leuven reported to the Committee that he and Mr. Galbreath met and discussed the vacancy for the Employer Representative. He also reported that Mr. Haxby, also a member of the Subcommittee but who could not attend today's meeting, conveyed his comments to Mr. Galbreath. Mr. Van Leuven reported that the Nominations Committee recommended and moved to accept and place into nomination the two remaining candidates, Ms. Jamie Haun of Rosauers and Mr. Craig Mello of Agri-Beef, and to hold the election by sealed ballot, at today's Advisory Committee meeting, seconded by Mr. Galbreath.

After review and discussion, the motion passed.

***Break taken.***

#### **Other Issues/Announcements:**

Future Medical Trends, Observations and Concerns; Epidural Steroid Injections ("ESI") and Spinal Cord Stimulators (Paul Collins, M.D.):

Dr. Collins provided a Power Point presentation on the study of outcomes for Epidural Steroid Injection, Spinal Cord Stimulators and other general medical procedures that he observes is a growing trend. He is concerned about cost containment and outcomes for patients. Dr. Collins reported that he is a consultant to the State Insurance Fund, and the data contained in his presentation is generated by the State Insurance Fund and no other state source. Dr. Collins stressed that the study was done in 2012 to view “outcomes” for ESI procedures. He reported that the average cost for an ESI was \$1,000 per injection. He reported that the total cost to the State Insurance Fund for ESIs in 2012 was \$600,000. He reported that the American College of Occupational and Environmental Medicine does not recommend ESIs, unless a patient has had success with oral steroids.

Dr. Collins next presented his 2012 findings for spinal cord stimulators and reported that 90% of patients had no improvement after a year.

Dr. Collins reported that the patient numbers are increasing 60% per year for these types of procedures, as well as the costs for the procedures. Dr. Collins suggested that patients should pay for outcome and not for the procedure. Dr. Collins called for discussion.

***(Public Comment)***

Discussion held on a methodology of paying for procedures versus paying for patient outcomes.

Mr. McPeck raised the argument that there is a risk of being administratively attacked, if there is a finding that these procedures are inherently unreasonable, and there are no established criteria in workers’ compensation for these types of procedures. Commissioner Baskin reported that other workers’ compensation jurisdictions have established evidence-based medicine standards, such as Colorado and Montana, and it may be in Idaho’s future.

Mr. Millard stated that the issue of cost-containment is not confined to the workers’ compensation arena. He also stated that the U.S. healthcare system is a “fee-for-service” structure and, to his knowledge, no one has presented a plan to change the current healthcare system to a “fee-for-outcome” design.

Mr. Van Leuven requested forming a small informal group to meet and discuss the issue of cost-containment of these types of medical procedures, and determine the need, if any, for establishing a Subcommittee to further vet the issues and propose legislation for evidence-based medicine standards in Workers’ Compensation in Idaho. The small group would present their recommendations at the next Advisory Committee meeting. After additional discussion, the small group will meet on Tuesday, April 15<sup>th</sup> at the Commission office. Dr. Collins agreed to chair the small group.

The Small Group members: *Dr. Paul Collins, Chair; Rian Van Leuven, Jamie Arnold; Mike Batten, Mike McPeek; and Steve Millard.*

## 2014 Legislative Update:

Workplace Safety Subcommittee. Commissioner Limbaugh provided additional comments on the Workplace Safety Subcommittee. He invited members to read the handout that details the history of workplace safety and the Commission's role in workplace safety. He stated that the statutes -- IC §72-720, §72-721, §72-722 and §72-723 -- were designed for workplace safety for the public and private sectors, but OSHA regulations were not included until the re-codification of Title 72.

IDAPA Rules – Security for Compensation and Medical Fees. Commissioner Limbaugh reported that the IDAPA rules vetted by the Committee on Security for Compensation for Sureties and Self-Insureds and the IDAPA rules for Medical Fees for Pharmacies and Physicians were adopted by both the House and Senate Commerce and Human Resources Committees and are completed.

Other Legislation: Commissioner Limbaugh reported that the Commission is also monitoring the following bills and provided a summary for each:

- Senate Bill 1252 – IC §72-301. Part of the bill was vetted by this Committee that included a number of housekeeping revisions; however, our RS was not printed. Senator Davis' bill replaced the security for compensation on deposit with the state treasurer with a cost-reimbursement contract with the federal government and dealt with a specific part of the nuclear industry and their contractors.

Commissioner Limbaugh stated that the Commission is neutral on S1252.

### *(Public Comment)*

Discussion held on the issue of the "tail claims" and whether it could be addressed in the IDAPA rules. Mr. Greenfield indicated that the operative mechanism is the contract with the federal government.

Commissioner Limbaugh reported that the Commission also monitored the following additional bills: S1273 – Firefighters; S1320 - Education – State Board of Education; H396 – Registry of Controlled Substances; and H497 - Healthcare Transparency for Hospitals.

- IC §72-212 – Exemption. Director Montgomery reported that the Commission was approached by Pro Tempore Brent Hill and Senator Dan Johnson to provide a fiscal impact for their proposed legislation amending IC §72-212. Ms. Montgomery reported that Senator Johnson's bill would provide an "opt-out" for family members of single member LLCs or PLLCs from workers' compensation insurance coverage. Ms. Montgomery reported that Legislative Services drafted the language, not the Commission, and requested

the Commission to provide language that would meet the Commission's needs. The Commission wanted the Advisory Committee aware of the proposed language and to provide any concerns with the proposed language. Ms. Montgomery deferred to Employer Compliance Manager Christi Simon to summarize the prepared fiscal impact.

Ms. Simon provided a handout of the proposed amendments to IC §72-212 and the draft fiscal impact that was presented to Senator Johnson. Ms. Simon summarized the two family-member exemptions that currently exist in the statute. Ms. Simon explained that Compliance's enforcement program relied on the 1960 Supreme Court Case of *Carter v. Carter*. Ms. Simon reported that although an LLC is recognized at the state level, the Internal Revenue Service does not recognize an LLC election for tax filing purposes.

Ms. Simon reported that Senator Johnson's proposed statutory language clarifies the family member exemption so that members of an employer's family dwelling in the employer's household are not required to be covered by workers' compensation insurance, so long as the employer is a sole proprietorship or is a single-member limited liability company, who has elected for tax purposes to be treated as a sole proprietorship. Ms. Simon also reported that the Commission lacks the data that identifies the number of LLCs and PLLCs employing family members and that created difficulty in preparing the fiscal impact. She further reported that the net result to collections of premium tax for the Commission could be as much as \$7,500 per year, if LLCs and PLLCSs (in the employer compliance database) elect not to carry workers' compensation insurance. Ms. Simon indicated that the premium tax loss would be a 2% rate to the Commission

The Committee discussed the potential loss in annual premiums generated from single-member PLLCs and LLCs that have a policy in effect.

**Proposed Legislation S1252, IC §72-301 – Security for Payment of Compensation**  
(Rian Van Leuven):

Mr. Van Leuven expressed concern about the cost-reimbursement contract language in Senate Bill 1252 that essentially nullified the intent of the Commission's original bill. His concern is whether or not the language guarantees the "tail," if a contractor terminates its cost-reimbursement contract. Mr. Van Leuven requested more vetting through this Committee. Mr. Batten also expressed concerns of the INL applying for self-insured status. Mr. Galbreath also questioned the language relative to the coverage of the "tail." Mr. Kenck commended the Commission, the Subcommittees and third parties for their work on the proposed language in the first section of the bill.

The Advisory Committee agreed that Section 2 of the bill does create a lot of legal issues. The Advisory Committee expressed concern about the liability and enforceability issues for payments to injured workers by the time-of-injury employer or the subsequent employer under the cost-reimbursement contract language in the bill. The Commission stated that the liability passes from contractor to contractor.

### **Formation of Subcommittees:**

Chairman Veltman called for the formation of the following Subcommittees:

- Subcommittee on EDI Rules: *Mike Haxby, Chairman; Scott McDougall; Tami Bremer; Dr. Paul Collins; Matt Vook; Claire Sharp-Minert; and R.D. Maynard.*
- Subcommittee on Claims & Benefits Rules: *Scott McDougall, Chairman; Mike Haxby; Mike McPeek; Dan Stevens; Gard Skinner; Darin Monroe; and Commissioner Baskin.*

Commissioner Maynard provided a historical summary of the formation of the Commission's Advisory Committee for new members' information.

### **Preparation for Future Meetings:**

Chairman Veltman called for agenda items for the next Advisory Committee meeting.

#### Topics for Discussion at Next Meeting:

Mr. Arnold requested that the subject of "Obtaining Opinions from Medical Providers" be added to the next Advisory Committee meeting agenda.

#### Next Meeting Dates:

**April 16, 2014**  
**August 13, 2014**  
**November 12, 2014.**

Chairman Veltman called for other issues or comments.

There being no further business, the meeting was adjourned.