

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 14, 2018**

Members Present

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

Members Absent

Craig Mello
Brian Whitlock
Dr. Paul Collins
Dave Anderson

Industrial Commission

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

Opening Remarks and Introductions:

Chairman Dane Higdem opened the meeting at 9:00 a.m. and led with introductions. Mr. Higdem next requested introductions of Committee members and public attendees. Mr. Higdem announced there would be change in order of the agenda to move the PTSD discussion to right after the “outworker definition.”

Minutes of August 8, 2018:

The minutes of August 8, 2018 were presented for review and approval. Upon motion of Mike McPeek, seconded by Ms. Shellie Martin the minutes of May 9, 2018 were approved with the correction. The minutes were adopted by unanimous vote.

Subcommittee Report(s):

➤ Outworker Definition. Deputy Attorney General Blair Jaynes reported on the subcommittee meeting on outworker and independent contractor definitions. Mr. Jaynes state that the subcommittee looked at potential legislative changes to outworker and independent definition because of issues we had with outworker definition. Mr. Jaynes stated that telecommuting is growing in Idaho making this an issue. Mr. Jaynes stated the subcommittee will be meeting in the future.

Other Issues/Announcements:

➤ PTSD Benefits First Responder Legislation. Rob Shoplock, Professional Firefighters Association, along with several representatives of the first responder community explained the need for PTSD benefits for first responders. Mr. Shoplock stated that the night before last

another Idaho firefighter committed suicide; this is the second firefighter to end their life in the last month. Mr. Shoplock stood for comments and questions.

Mr. McPeek asked why the most recent draft of the legislation made reference to DSM III when the first draft made reference to the DSM V. Mr. Shoplock indicated that change was based on legal counsel's recommendation. Mr. McPeek stated there was a problem with using an earlier version when there is a more recent version available. Mr. McPeek inquired as to why they chose to include dispatch officers when they did not meet the diagnosis criteria in the DSM III. Mr. Shoplock indicated that in the Subcommittee there was litigation found about a dispatch officer being denied PTSD so they felt it was the right thing to do. Mr. McPeek asked why the causation standard was changed in the latest draft. Mr. Shoplock stated they were willing to go back to counsel about the wording. Mr. McPeek also inquired about language excluded in the third draft; the current draft eliminates clear and convincing evidence. Mr. Shoplock stated that it is hard to determine what is "normal" in PTSD. Mr. Shoplock indicated this was based on input from counsel and the Subcommittee. Mr. McPeek asked why this physiological issue only carved out police officers and firefighters leaving all other occupations uncovered when PTSD could cover other people. Mr. Shoplock indicated that public safety officers were 5 times more likely to commit suicide, "we are following a nation trend, putting emergency responders first."

Ms. Shellie Martin inquired what in-house treatment looks like and what insurance covers that. Ms. Martin also asked what benefits they anticipated getting that they don't already get. Boise Fire Chief Dennis Doan stated he has been a firefighter for 11 years and has watched many members leave due to prescription drug use that he believes arose from PTSD. Mr. Doan stated that they do have resources to help them; where it comes in is when they need long term treatment, workers' compensation could cover that. Mr. Doan stated that there was a firefighter who had to use his sick leave to seek treatment. It cost the fire department a large sum of money to recruit and train a new employee. It saves time and money to help them seek treatment. Ms. Martin opined it was shifting the burden from the company to taxpayers. Mr. Doan stated it was not, it is shifting it from the individual to workers' compensation. Ms. Martin stated they did have long term disability as an option. Mr. Doan stated it only covers 66%. Ms. Martin reminded them workers' compensation only covers 67%.

Public Comment: Mr. Chris Wagner commented that he was a former EMS in a rural area and understands what happens with emergency hazards. Mr. Wagner also stated he knows that they have the Employer Assistance Program which could be expanded to address PTSD. The City of Boise may cover that but municipalities will not. Mr. Wagner stated they are looking at outliers, essentially changing the law for one person. Most firefighters work a few days on, than a few days off, and they could use those days to seek treatment. Mr. Wagner indicated that if workers' compensation is processing it, they will designate their provider. Mr. Doan stated they have their own designated physicians they can go to. Mr. Wagner asked why this needs to be law change instead of an expansion of the existing program. Mr. Doan stated that if they need long-term treatment they may need to leave the state and that is not covered in their four days off. Mr. Doan stated it caused the opposite effect when we want them to seek treatment.

Mr. Jamie Arnold asked if the City of Boise is self-insured. Mr. Doan indicated that they are. Mr. Arnold explained that he believed his goals were good but there is a systematic issue.

Mr. Arnold is a claimant's attorney in Idaho Falls and has seen more denied claims since the City of Idaho Falls became self-insured, and that injured workers have to come see him. Mr. Arnold stated that he has a lot of experience with workers compensation and what they are asking for jumping into a system that may not ultimately meet your goals. Whereas if the city is already self-insured, if they cover workers' compensation it might be a bigger battle versus setting something up under their health insurance so they have the opportunity to fight a third party. Mr. Arnold advised it would be faster and better to put it more specifically under health insurance instead of farming it out to the workers' compensation system. In summary, Mr. Arnold advised that we should take a long hard look at what can be done in-house instead of through or with the workers' compensation system. Mr. Shoplock thanked Mr. Arnold for his comments.

Mr. Richard Burleigh inquired about the fiscal impact; it had been mentioned there would be a saving because you would be able to keep firefighters instead of hiring new employees. Mr. Burleigh inquired about an economic study or other analysis done to determine the cost. Mr. Burleigh is concerned it will cost the insurance industry more. Mr. Shoplock indicated they would not know the cost until they see the claims. Mr. Burleigh asked if any analysis had been done. Mr. Shoplock indicated that NCCI had done some analysis. Mr. Burleigh indicated that the NCCI analysis was weak and shows little impact. Mr. Shoplock compared Washington's fiscal impact which was estimated to be 10% and so far has only had a 5% impact. Mr. Burleigh understood that Mr. Shoplock was taking a wait and see approach.

Mr. Paul Jagosh stated that there are a lot of questions centering around why not include everyone. Mr. Jagosh indicated there was a difference in putting yourself purposely in harm's way. Mr. Jagosh indicated that you either believe PTSD is real is or not and if it happens on the job. Mr. Jagosh insisted that if it happened on the job workers' compensation should pay for it. They are willing to massage the language but overall they are trying to get their guys in public safety the help they need when affected by PTSD.

Public Comment: Mr. Wagner asked if there would be consideration preexisting conditions for outlier factors. It was indicated that there would be, and a visit to a psychologist. Mr. Wagner was concerned that the lists of events that can cause PTSD were vague.

Ms. Martin asked if there was a reason to not include medical staff and other occupations that see traumatic events. Why are we excluding them? Mr. Higdem concurred and asked why we don't take a holistic approach instead of carving out certain occupations. Mr. Jagosh indicated he is a lobbyist for cops and is paid to do so; if the doctors would hire him to lobby, he would lobby for them. Mr. Shoplock indicated they have been looking at his legislation since 1993; they are following a national trend. Mr. Higdem asked if there were any more questions.

Mr. McPeek remarked on the issues he foresees with carving out psychological problems for certain groups. Mr. McPeek indicated a problem in taking a condition that is so specific, PTSD criteria has 16 pages in the DSM IV, it can happen to anyone. Mr. McPeek was also concerned with unintended consequences; equal protection challenges; and the consequences for municipalities that are self insured. Mr. McPeek believed Mr. Arnold had good ideas to be explored outside of changing the law. Lastly, if we do it for one occupation, everyone should have it.

Senator Patrick opined that we did not have all the pieces of workers' compensation that we have now when workers' compensation started; this legislation will be the same. We will have to start out with some occupations or it will not pass. Senator Patrick indicated he was being realistic in that you have to take what you can get.

Mr. Ray Anchustegui represents a large employer who is self-insured who occasionally has first responders injured. Mr. Anchustegui indicated that their first responders are not professional and would have a higher PTSD rate than trained first responders. Mr. Anchustegui agreed there will be unintended consequences and indicated that more work needs to be done. Chairman Higdem also expressed concern about the legislation. Mr. Gardner Skinner asked if there was a realistic cost analysis. It was indicated that the only information on cost is what NCI provided in their analysis.

Senator Patrick opined that when it goes through the legislation process, specific numbers will be asked.

Public Comment: Mr. Andrew Marcham wanted to make the point that nationally we are trending towards this. In his experience, California is rolling back stress claims because it was being abused. Mr. Higdem indicated they also had locations in California and they are seeing these stress claims, making definition more specific. Looking at the DSM V is very specific.

Commissioner Baskin asked Mr. McPeek to explain his earlier comments. Mr. McPeek didn't see a rational basis for excluding medial staff; if a victim of a traumatic event is rushed to the hospital by first responders and are treated by emergency physician, where do you draw the distinction between EMT and medical staff. Mr. Arnold brought up the argument that not all first responders are licensed EMTs but they are taking care of the situation. Mr. Higdem stated that there are a lot of employers who employ nurses or healthcare professionals that are the first responders but do not fall into these first responder parameters. Mr. Anchustegui stated that it seemed to be shifting the burden from one system to another costing more money. There employees are already on healthcare system and to shift to workers' compensation. Those employees who are on a high deductible plan may use workers' compensation to pay instead.

Public Comment: Mr. Wagner, going off Mr. McPeek's comments, stated there needs to be a diagnostic basis or test to go off of. Mr. Wagner has seen cases where people game the system to get time off. Mr. Wagner stated that these specific outlier cases of PTSD are going to change the workers' compensation system.

Mr. Higdem in closing stated that given the nature of DSM V, he did not think it is necessary to carve out occupations. Mr. Higdem referenced Mr. McPeek's email that was provided as a handout. Mr. Brad Eidam also expressed concern there would be individuals who gamed the system.

Senator Patrick indicated that if this legislation was brought to his committee he would want all the information before making a decision.

Representative Syme indicated on the House side it was his understanding there would be testimony so they could be better educated.

Mr. McPeck sought guidance from the Industrial Commission about whether there could be a consensus vote on the legislation.

Chairman Limbaugh explained that a consensus from the Advisory Committee could be requested. Chairman Limbaugh explained that they would seek guidance from the Governor's office but it has been the directive in the past that agencies are to remain neutral on legislation that is not their own.

Chairman Higdem thanked Senator Patrick and Representative Syme. Chairman Higdem requested to take a consensus on the legislation on PTSD for first responders. There was no consensus.

Senator Patrick would like to see individuals work on the language with the first responders. Mr. McPeck remarked the Bar tried to help on the cancer bill and that did not work.

Chairman Higdem called for a 15 minute break.

Break

Chairman Higdem called the meeting back to order and opened up the floor for any last comments. Ms. Martin asked about death benefits for first responders who commit suicide, and stated that it had not been addressed in the NCCI analysis.

Industrial Commission Report:

➤ Proposed Rulemaking-EDI Housekeeping. Benefits Administration Manager Patti Vaughn updated the Committee on IDAPAs. The Commission will be going forward with EDI housekeeping rules published in the October 3rd Administrative Bulletin. The Commission did not receive any written testimony; Ms. Vaughn explained a couple minor changes that had been made to the language. Ms. Vaughn indicated that the rules were submitted as pending rules and will be published in the December 5th Administrative Bulletin.

➤ Proposed Rulemaking Electronic Payments. Ms. Vaughn explained there was a lot of interest in the issue. As a result of negotiated rulemaking, debit card language was added into the rule. The Commission had a public hearing on October 10th, there were no written comments. The rules were submitted and will as pending rules and will be published in the December 5th Administrative Bulletin. Ms. Vaughn asked if there were any questions related to the IDAPAs; there were none.

➤ Prompt Servicing Claims Memorandum. Ms. Vaughn stated that the Commission has noticed there seems to be some confusion about prompt claims servicing. Ms. Vaughn presented the Memorandum regarding prompt claims servicing dated August 15th, which is available on the

IIC website. The Memorandum clarifies the Commission's expectations for audit purposes. Ms. Vaughn asked if there were any other questions: there were none.

Preparation for Future Meetings:

There will be a legislative update at the February Advisory Committee Meeting. Mr. James Arnold inquired about electronic filing. The Commission is currently working on the issue and will provide an update at the next meeting.

Next Meeting Date: February 6, 2019

There being no further discussion and no further business, Ms. Martin moved to adjourn the meeting; seconded by Mr. Gardner skinner. The motion carried by unanimous vote.

The meeting adjourned at 10:32 am.