

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Friday, September 9, 1994

Meeting Location: State Building
107 South Broadway
First Floor Auditorium, Room 1138
Los Angeles, California

Commission Members present:

Chairman Tom Rankin
Commissioner Jim R. Green
Commissioner Leonard McLeod
Commissioner Gerald O'Hara
Commissioner Kristen Schwenkmeyer
Commissioner Robert Steinberg
Commissioner Gregory Vach

Commission Members absent:

None (One Commissioner position is currently vacant)

Department of Industrial Relations personnel present:

John Howard, Chief of the Division of Occupational Safety and Health
Len Welsh, Attorney with the Division of Occupational Safety and Health
Christine Baker, Interim Executive Officer of the Commission
Linda Kerrigan, Grants Coordinator and Special Assistant

Actions of the Commission

Welcome and Announcements

The meeting was called to order at 10 am by Chairman Tom Rankin.

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Chairman Rankin announced due to the anticipated length of this meeting, the presentations from grant applicants would commence in the afternoon. Those grant applicants from out of town would be scheduled first and the remainder may need to be scheduled for the next Commission meeting on Friday, October 14, 1994 in Los Angeles.

Chairman Rankin then introduced John Howard, Chief of the Division of Occupational Safety and Health (DOSH) who was invited by the Commission to speak on three issues: the status of the Workers' Compensation Reform Legislation regarding Loss Control Services, the High Hazard Industry and Target Inspection Program, and the Proposed Ergonomic Standard. John Howard introduced Len Welsh, an attorney and the Regulatory Coordinator for DOSH.

Loss Control Services

Len Welsh of DOSH reported on the status of loss control services. The Division of Occupational Safety and Health has adopted a regulation to implement Section 11721 of the Insurance Code which was created by the Workers' Compensation Reform Legislation. That regulation specifies criteria that governed the certification of workers' compensation insurers to provide Loss Control Consultation Services to their insureds.

Mr. Welsh stated that the biggest problem that DOSH faced was how to put together a program which would effectively carry out what the Legislature had in mind; i.e. focusing on those employers in the state which are the "worst actors" and are the most in need of loss control consultation services. During the development of the regulations, several issues emerged in the workers' compensation community.

The regulations adopted by DOSH requires the insurance carrier to identify those employers being targeted for their Loss Control Consultation Services. This caused a fair amount of controversy in that the insurance carriers did not want to divulge that information. The insurance carriers felt that DOSH should be aware of the types of employers they were targeting but not the identities of the individual employers. However, DOSH felt that they needed to know who the bad actors in the state are in order to target their resources toward them.

In effect, this has created a tripartite system - the insurance carrier's consultation, Cal-OSHA's Targeted Consultation, and Cal-OSHA's Targeted Inspections - to go after this pool of employers who are probably creating the biggest problem in terms of workers' compensation losses.

The loss control regulations also require the carriers to offer one level of service to targeted employers and another level of service to employers who have requested

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their consultation services. There was some opposition from the insurance carriers who wanted to provide the same service to an employer, whether targeted or not.

A third issue is the question of what is it that DOSH is certifying when an insurance carrier requests certification for their Loss Control Consultation Service. DOSH is looking at the whole program rather than certifying individuals such as industrial hygienists who provide those services. Mr. Welsh reported that those carriers who have become certified are providing loss control consultation services in-house with some outside help. Out of the approximately 300 workers' compensation insurance carriers in the state, 106 of them have been provisionally certified.

DOSH has established an ongoing unofficial advisory committee to review the implementation process. The first meeting will be on September 15, 1994 in San Francisco.

High Hazard or Targeted Inspection and Consultation Program

John Howard reported that the High Hazard or Targeted Inspection and Consultation Program was created by the workers' compensation reform legislation. When appropriate regulations are adopted, the Department of Industrial Relations will assess those insureds that have a workers' compensation experience modification rating of 1.25 or higher and the monies will go into the Cal/OSHA Targeted Inspection and Consultation Fund. In the interim, Dr. Howard said that \$4 million had been loaned to DOSH from the General Fund to get the program started.

DOSH is to focus on those insureds with the highest rates of injuries. DOSH is establishing a program, with help from other agencies like the Department of Insurance, to identify such employers. A major problem is that workers' compensation data is collected for workers' compensation purposes and not for safety and health purposes. For instance, in the workers' compensation data, the employer's address is frequently the headquarters of the company and not the site(s) where the injuries occur. There will be a large conference in Dallas during October 3-5, 1994 to deal with these issues.

A solution to this problem may be to obtain the insurer's First Reports of Injury electronically. DOSH staff can sort that data to identify employers at sites so that they can go out and conduct inspections and/or offer consultation services.

DOSH is currently looking at industries which are intrinsically high-hazard. It has developed a protocol for the electroplating industry and is in the process of completing a protocol for fall injuries. DOSH's next protocol will be for musculoskeletal injuries.

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DOSH is also developing a model injury and illness prevention program for ergonomics, currently in draft form. It is a two step process. The first is providing background information, educating employers and employees what ergonomics is and the second is a model program which takes an employer step-by-step through establishing and implementing an effective ergonomics program. DOSH is collaborating with a number of universities and employer groups.

Dr. Howard reported that DOSH has established two offices - one in the North and one in the South - that are exclusively devoted to the High Hazard Program. DOSH has about 15 or 16 compliance personnel in those offices now, and hopes to have a total of 35 in that unit.

Proposed Ergonomic Standard

Labor Code Section 6357 mandates the Occupational Safety and Health Standards Board to adopt ergonomics standards by January 1, 1995. DOSH, with input from several advisory committees over the years, drafted proposed ergonomic standards which went to public hearing and received 6,154 comments. DOSH revised the proposed standards and will submit it to the Occupational Safety and Health Standards Board in November 1994. If the Board does not approve the proposed standards, it will not meet the deadline.

DOSH has found it very difficult to determine how to put together a cost estimate that will satisfy both the Standards Board and the Department of Finance in terms of what the compliance impact of the regulation will be. Other issues include the question of medical management and control measures and feasibility. There has also been discussion regarding exempting the construction industry. The forthcoming Federal ergonomic standards were discussed as well.

Commission Budget and Staffing

Chairman Rankin called upon Christine Baker to present various alternatives for the budget and staffing levels for the Commission for 1994-95 and 1995-96. Ms. Baker presented four different alternatives, each based upon the current Commission staffing of one executive officer, one associate safety engineer, one associate governmental program analyst, and one office technician. Each of the alternative plans added at least one research program specialist II and another clerical position.

After discussing each of the alternatives, the Commission decided to adopt a staffing plan which added two positions - a research program specialist II and an office

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assistant - and upgraded the existing associate safety engineer position to a research program specialist II. Commissioner O'Hara moved that the staffing plan be adopted, Commissioner Schwenkmeyer seconded the motion, and the motion was carried by unanimous vote of the Commission.

Adoption of Minutes

Minutes of the Commission meetings on July 23, 1994 and August 18, 1994 were submitted for approval by Christine Baker. Commissioner O'Hara moved that both sets of minutes be adopted, Commissioner Vach seconded the motion, and the motion was carried by unanimous vote of the Commission.

Report on the status of California Appellate Court case: Beverly Hills Multispecialty Group, Inc. v. Workers' Compensation Appeals Board, International Rectifier et al.

At the Commission's request, Christine Baker reported on the status of the Beverly Hills Multispecialty Group (BHMGM) case. The case has to do with several employees of International Rectifier who were laid off in 1988 and 1990. In 1991, each of ten employees files a claim of industrial injury to multiple body parts through the last day of employment. In connection with these claims, each of the former employees received medical treatment and reports from BHMGM and the bills totaled \$157,906.50. BHMGM became a lien claimant on each of the employee's worker's compensation case.

However, BHMGM did not receive prior notice of mandatory settlement conferences in each case, nor were they served with the minutes of the conferences which listed various issues at trial. In some cases, fraud was listed as an issue. Each of the ten cases were then set for trial, but BHMGM did not receive only two notices of trial and did not appear in either of those two cases.

The workers' compensation judge issued separate decisions finding that each of the ten workers did not sustain cumulative injury as claimed. The judge also found conspiracies by the workers and their attorneys or representatives and found that BHMGM had committed fraud.

BHMGM petitioned for reconsideration at the Workers' Compensation Appeals Board (WCAB). The Board rescinded the findings of conspiracy to commit fraud because of due process concerns about notice. The Board also found that the claims were fraudulent and that BHMGM's medical reports were not prepared in good faith, its evaluation procedures and methodology were unreasonable and its doctor's conclusions were completely lacking in credibility.

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BHMG then filed separate petitions for writ of review to the Appellate Court on all ten cases contending that it had been denied due process because it had not been served with defense medical reports before trial and that it was not provided notice that fraud allegations against BHMG could be at issue. The Court of Appeal filed its consolidated opinion on all ten cases on July 7, 1994, and concluded that BHMG had been denied due process.

The WCAB and Argonaut Insurance has filed a petition for review. They are asking the Court to decertify the decision and opinion of the Court of Appeal for publication so that it may not be cited as precedent. It is expected that no response from the District Court of Appeal will be made until October 1994.

If the decision stands, it could have a noticeable impact in the operations of the WCAB district offices. Potentially, each case could have several trials, one for the employee and one for every lien claimant. The workload at each WCAB district office will be increased if each lien has to be tried in that manner and if notices have to go out to each individual lien claimant.

Overview of the status of Workers' Compensation Managed Care Certification Process.

At the Commission's request, Christine Baker reported on the status of the Workers' Compensation Managed Care Program which was created as part of the 1993 workers' compensation reform legislation. The Workers' Compensation Managed Care Fund was also created, allowing the administrative director of the Division of Workers' Compensation to establish a schedule of fees and revenues to be charged to certified health care organizations and applicants for certification to fund the administration of the program and to repay amounts received as a start up loan from the General Fund.

The Managed Care Unit's budget is for \$1.6 million with 22 staff positions. The current staffing is 11 filled positions out of 12.5 positions currently allocated for \$926,000.

The fee for application for certification is being considered at \$25,000. The Managed Care Unit has received six applications for certification and is expecting 22 more. Certification is a two step process whereby applicants are first authorized by the Department of Corporations (for HMOs) or by the Department of Insurance (for freestanding industrial medical clinics) and then are evaluated by the Managed Care Program. DWC's evaluation covers aspects of scope, adequacy, and access to the health care delivery system, quality of care review, grievance procedures, patient assistance and notification, contacts for the provision of health and medical care,

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workplace health and safety promotion, return to work coordination, and data reporting.

As an incentive for employers, increased duration of control of medical treatment was linked to the enrollment of employee's in HCOs. Under the Labor Code, employers may direct an injured worker to the health care provider of the employer's choice for the first 30 days of treatment unless the worker designates in writing a provided of his or her choice before an injury occurs. Employers who offer HCOs can extend this period of medical control to 90, 180, and up to 365 days, depending upon whether they offer no group health benefits (90 days), pay half or more of a group health benefit (180 days), or offer an HCO which includes an employee's personal physician under group health (365 days).

A key component of the legislation was the mandate that health care organizations provide data for an evaluation of the utilization of medical and health care service costs and of their effectiveness in returning injured workers back to work. Potential problem areas have been identified by Managed Care Unit staff, including the requirements for an employer to provide a minimum of two choices of HCO. The employers also see problems over medical control in monitoring the case during and after the 90 to 365 day period and the requirement for the employer to offer affirmative predesignation regarding the HCO and personal physician.

After some discussion, the Commission requested that Christine Baker explore the possibilities of getting some of the parties in this process, such as Linda Rudolph, the head of the Managed Care Unit, and representatives from HMO groups at the November meeting.

Overview of the Oversight Hearing of the Joint Committee on Workers' Compensation held in Sacramento on August 10, 1994.

At the Commission's request, Christine Baker reported on the Oversight Hearing of the Joint Committee on Workers' Compensation held in Sacramento on August 10, 1994. Ms. Baker stated that each of the Commissioners had been sent a briefing binder and the video tape of the hearing.

The committee members are Senators Steve Peace, Patrick Johnston, Bill Leonard, Nick Petris, and Senate President Pro Tem Bill Lockyer. From the Assembly the members are Juanita McDonald, Julie Borenstein, Jim Brulte, and Ross Johnson. Senator Peace chaired the hearing with Assemblywoman McDonald as Vice Chairwoman.

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Ms. Baker stated that the overall sentiment at the hearing was that the reforms set in place in 1993 are working and that there are concrete savings and reductions in the number of workers' compensation claims.

Fremont Insurance indicated that the insurance industry is reporting a \$2.2 billion reduction in the cost of claims and believes it to be a direct result of the fraud legislation and investigation resulting from the legislation.

Casey Young, Administrative Director of the Division of Workers' Compensation, reported on the department's accomplishments in carrying out the reforms. The revised medical fee schedule was promulgated effective January 1, 1993. The hospital inpatient schedule is scheduled to go out for hearing at the end of 1994 and the Industrial Medical Council (IMC) will be promulgating guidelines for common industrial injuries. The utilization review standards are currently under comment and the HCO program is underway. The twenty-four hour health care pilot has regulations adopted and has one approved pilot in San Diego. The IMC has a treating physician form out for public hearing and the Qualified Medical Exam has been crafted and given to 4,000 people. Vocational Rehabilitation had a new fee schedule adopted.

Mr. Young spoke about his revision to the Permanent Disability Rating Schedule and his question to this Commission as to whether an entire alteration of the PDRS is in order. Mr. Young also spoke about the importance of the Information System that the division is developing. DWC has contracted with UC Data, a survey research group out of UC Berkeley, which is identifying the needs and existing resources and constructing a model information system.

Mr. Young also reported on the construction carve out which provides construction companies and unions an alternative type of dispute resolution. Seven applications have been filed, of which three do not meet the qualifications.

At the hearing, Chuck Bader from Californians for Compensation Reform reported that "although the reforms are working, there is still a bit of unfinished business." He felt that the HCO program was not off the ground and he wanted to see a more competitive health market. He also felt that the regulations went beyond the provisions of the law. He stated that both large and small providers should have easy access to the certification process. He also asked for a review of the WCAB procedures with regards to liens and a review of the ergonomic standard.

Casey Young reported on a lien project underway whereby the division has created an unit at the Santa Ana district office and will get another one started in Van Nuys to handle liens. The issue at the hearing was whether or not legislation was required to address the lien backlogs. Mr. Young stated that he believed that legislation was not needed at this time. Everyone present believed the current

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program being carried out by the division is working and most were against legislation and believed that the problem could be dealt with administratively. However, Chairman Peace voiced concern over redirection of resources at the expense of the injured worker and hoped that the timeliness of case handling would not decrease at the district offices.

A presentation on the fraud issue was made by the Department of Insurance and several district attorneys from around the state. The overall consensus was that the fraud tools and legislation are working and have made significant inroads in eliminating the medical mills. Some problems were identified with the funding and the timeliness of getting the funding to the district attorneys. All present reported positive results from the anti-fraud efforts.

Finally, the Oversight Hearing moved to the role of the Workers' Compensation Insurance Rating Bureau (WCIRB) with the elimination of the minimum rate. The WCIRB will no longer develop the minimum rate, but will develop pure premium rates for approval by the Insurance Commissioner. Pure premium rates have no provision for insurance company expenses and are not subject to review or approval by WCIRB committees. The pure premium rates are advisory only. Under the competitive rate law, insurers may choose to use the pure premium rate but the WCIRB will not review policies for applicable insurance rates. They will review policies for timely and accurate reporting of data and they will be involved in the administration of the experience modification rating plan. Premium disputes will not be resolved by the WCIRB with the exception of the promulgation of the experience modification, the reporting of data and classification issues.

The committee will continue to watch the lien issue to determine whether statutory language is needed and the consequence of the competitive rate law. They will also focus on the effect on costs and unnecessary treatment as medical reforms take place and will monitor the consequence to workers, the access to care and the adequacy of benefits.

After the presentation by Christine Baker, the Commission members discussed the role of the Commission vis-a-vis the role of the Oversight Committee. The Commission will stay in touch with the Committee on these issues to avoid unnecessary duplication.

Public Comments

There were no comments from the public.

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Presentations by Grant Applicants

A total of 34 grant applicants from Southern California were scheduled to give 3 minute presentations of their proposals. The attached meeting agenda lists those applicants. Those applicants who did not give presentations at this meeting were scheduled for the following meeting on October 14, 1994 in Los Angeles.

Other Business

Chairman Rankin requested that Christine Baker arrange for the department to publish a job announcement for a permanent Executive Officer for the Commission so that the Commissioners would have the applications before the next meeting.

Ms. Baker also announced that Administrative Director Casey Young wished to address the Commission on the Permanent Disability Rating Schedule at the next meeting.

Future Meetings

The Commission meeting on Friday, October 14, 1994 will be held in the Los Angeles State Building Auditorium.

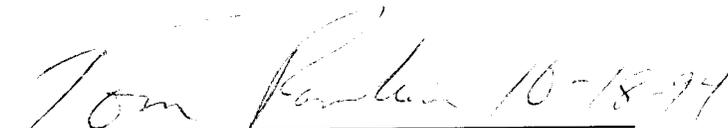
Adjournment

The meeting was adjourned at 4:30 pm by Chairman Tom Rankin.

Attachment: Meeting agenda

Approved:

Respectfully submitted,


Tom Rankin, Chairman Date


Christine Baker, Interim
Executive Officer