

## **WC COUNCIL MEETING APRIL 13, 2018**

Our meeting was conducted by conference call, via UberConference through and by <https://www.uberconference.com/jayson2> or (517) 234-3318.

Present via UberConference were the following: Chairperson Tim Esper, Director Mark Long, Commissioner David DeGraw, Jayson Chizick, Jeffrey Kirschner, Phil Frame, John Combs, Vice Chairperson Dennis Flynn, Chris Westgate, Danial Hebert, Rick Lovernick, Sean Shearer, Dan Zolkowski and Andrea Hamm.

Guest speaker – Chris Moore.

Chairperson Tim Esper called the meeting to order at 9:03 am.

1. Secretary's Report – Andrea Hamm – Chairperson Esper noted to the members that the minutes from our March 2, 2018 meeting were already adopted.
2. Treasurer's Report – Rosa Bava – Chairperson Esper identified the financials sent previously by Mrs. Bava to all council members by email and called for any discussion. No council member moved for discussion; therefore, Chairperson Esper called for a vote to adopt the emailed financials as the Treasurer's Report. Dan Zolkowski so moved, Phil Frame seconded and the Motion passed without objection.
3. Director's Report – Mark Long – Director Long noted that not a whole lot of new information on any rules with the exception of the fee schedule on air ambulance was set at 140% of Medicare. He noted this rule was implemented due to the fact there is litigation throughout country on this issue. Not a ton in Michigan but they felt they needed to schedule it. They are currently working on new rules for telehealth and telemedicine but it is mostly on the reimbursement level.
4. Chief Magistrate's Report – Lisa Klaeren – not present.
5. MCAC Report – Dave DeGraw - Commissioner DeGraw noted that they have closed 15 cases this year with seven being substantive and the other seven on motions and the remaining case was dismissed. However, during this same time, they received 16 new appeals. Unfortunately, they have one commissioner leaving in a few weeks and they do not know how fast the governor is going to appoint a new commissioner. They have two people learning the job from retiring the administrative assistant. They currently have seven cases written and are in the review process and six or seven opinion in the writing process.
6. Legislative/Rules Update – John Combs/Jayson Chizick – Jayson Chizick informed that they are working on telemedicine but sounds like reimbursement based and have no additional information beyond what Director Long advised.

7. Newsletter – Jayson Chizick - Chairperson Esper requested that his firm name be corrected in future editions. He also requested a possible special edition a month ahead of Summer Meeting to hopefully encourage greater attendance. Phil Frame suggested an article clarifying Medicare's new defining terms on conditional payments. The terms of art that the government is now using are notice of interest letter and case closure letter. Jayson Chizick suggested contacting Douglas Klein about writing an article.
8. MSA allocation/pro-ration issues—Sean Shearer – Sean Shearer noted that it is much ado about nothing and we merely have to add language to our long affidavits that the allocation will not necessarily be abided by the federal government. Sean Shearer recommended and Chairperson Esper endorsed tabling the discussion until Chief Magistrate Lisa Klaeren can be part of the discussion. Director Long advised that the calculations are different than our allocation because the federal government uses the terms exclude and deduct. Director Long also advised that he and Chief Magistrate Lisa Klaeren have discussed this extensively and the only change he plans is to remove the SS designation from the allocation portion of the Redemption Order. He advised that the allocation needs to stay on the form because other entities utilize the allocation such as pensions and disability benefits. STD, LTD, etc. In response to Sean Shearer, Director Long advised there will be no language added; the only change would be to remove SS designation from the allocation portion of the Redemption Order. Jeffrey Kirschner argued that the Redemption Order is accepted because it is official and signed by Magistrate. Again, Chairperson Esper noted this discussion is going to be tabled until the next meeting so Chief Magistrate Klaeren can be part of the discussion. Director Long stated that due to the fact he and Chief Magistrate Lisa Klaeren have had detailed discussions on this topic, he noted her concern is what is excludible and deductible and the fact a Magistrate cannot bind the federal government. Director Long went on to say that the POMS actually say that they look at the allocation and then credit the claimant for what is excludable and deductible. Again he recommended adding language to affidavit that the allocation might not be adopted.

Chris Moore joined the meeting and Chairperson Esper introduced him as the attorney on the Donna Grit decision that started the allocation dilemma. Mr. Moore noted that this is a two part problem. Specifically, the claimant obtained SSD on her own and then redeemed her case workers' compensation claim. The first problem was when she was paid 70%, it created an overpayment of SSD benefits. POMS to use the formula that gives the greatest benefit to claimant, but they do it backwards from what we do in workers' compensation. The second problem is the last step was not taken. Specifically, Judge Grit just divided the gross over the life expectancy. Mr. Moore requested help from the Section in getting a faster decision from the Appeals Council and in particular writing to the Appeals Council and advising them that this issue is greater than

just one case. Director Long advised that he would reach out to his Maine counterpart to see if there is anything he can do (Maine adopted both our Statute and case law). Chairperson Esper asked Chris to send him what language he needs and then the Section will consider it. Director Long said he would be interested in sending a statement but needs to think about it.

9. Annual Meeting: tax issue; speaker; possible vendor attendance--Dan Hebert, Hall of Fame nominees; new officer/council candidates.

Tax issue - Danial Hebert said we should err on the side of caution and advise section members of possible tax consequences of not charging spouses or other family members. The council approved language proposed by Mike Brenton with one change so it would read: "The State Bar has informed us..." After the meeting was concluded, Chairperson Esper informed all council members that James Horsch, State Bar Director of Finance and Administration, proposed more concise language saying the same thing as the language we adopted. The language Esper will send to all section members via e-mail blast will read:

**"Complimentary meals and services provided to spouses, companions or children may be considered taxable income. Please consult your own tax advisor."**

Guest speaker – Chairperson Esper proposed that we invite a guest speaker from SSA, with the section covering travel expenses. Danial Hebert and Jeffrey Kirschner agreed it would be a good idea. Director Long advised that SSA employees have been on panels with him and they have been informative and knowledgeable.

Chairperson Esper proposed a panel discussion during the business meeting to include the three magistrates we have invited, Lisa Klaeren and Director Long, and our (hoped for) guest speaker from SSA.

Chairperson Esper proposed a Friday night dinner to be called "The New Chairperson's Dinner". He further proposed that the individual members be responsible for the cost of dinner and drinks. However, he proposed that the Section be responsible for a \$200 budget for appetizers prior to dinner. Dennis Flynn so moved, Dan Zolkowski seconded and the Motion passed without objection.

Chairperson Esper proposed a budget for the Wine Tour at \$1,000.00, the amount Michael Brenton estimated would cover the costs plus tip to driver. Jayson Chizick so moved, Dennis Flynn seconded and the Motion passed without objection.

Chairperson Esper proposed a budget of up to \$750.00 for the Thursday night after party at Michael Brenton's condo, to supplement donations from attendees, as needed. Rick Lovernick noted that we do not want to leave the costs on the

Brentons. Dan Zolkowski pointed out that proposed amount also included cleanup costs. It was also noted that \$750.00 was the same amount the council approved for last year's after party. Andrea Hamm so moved, Rick Lovernick seconded and the Motion passed without objection.

Daniel Hebert approached the MSA administration company whose presentation he had heard to find out if they were interested in making a presentation at the annual meeting. There was council support for Chairperson Esper's suggestion that we should not invite just one vendor. Rather than seeking a vote, Esper proposed that future chairpersons consider inviting vendors to annual meetings.

Hall of Fame nominees – Chairperson Esper noted that we need nominations and that we currently have only one nomination. We need to vote on them at the May 11<sup>th</sup> meeting.

Officers - Chairperson Esper is recommending that Jayson Chizick be recommended as Treasurer because his term expires in June.

Council candidates – Chris Westgate recommended Sam Larrabee, a Plaintiff attorney in the UP. He advised that all attorneys and Magistrates he spoke with had nothing but good things to say about Sam. Dan Zolkowski noted he would be an excellent addition to the Council and it goes well with our efforts to get the UP involved.

10. Past Presidents' Tiger Ballgame—Wed May 16—Chris Westgate - 16 confirmed attendees including 8 current council members and 8 past presidents.
11. New Business – Chairperson Esper called for any new business. No response.
12. Meeting adjourned – Chairperson called for the meeting adjourned. Andrea Hamm so moved, Chris Westgate and the Motion passed without objection. The meeting ended at 10:33 am.

#### Upcoming Dates:

May 11—Council Meeting 9:00 via UberConference

May 16—Past Presidents' Tiger Ballgame

June 14—Council Meeting 4:00 Hotel Indigo, Traverse City

June 14-15—Annual Meeting—Hotel Indigo