

Minutes of WC Section Council Meeting—June 19, 2014

Members Present: Palmer, Housefield, Rabideau, Flynn, Parker, Combs, Esper, Conklin, Bava, Chizick, Frame and Hamm.

1. Chuck Palmer called the meeting at 4:00 p.m.
2. **Secretary's report:** The minutes of the May 9, 2014 meeting were discussed. Following a motion to accept the minutes, the motion passed.
3. **Past Presidents' Golf Outing:** The Council approved \$1,057.26 payment to University Club of MSU and \$330 to MSU Forest Akers West.
4. **Summer Meeting:** The Council approved \$482.62 payment to Lachman and Company for Hall of Fame plaques and Elected Chairman plaque. The Council approved the cost of airfare and lodging for the speakers and reimbursement to Dave DeGraw \$305.22 for golf outing prizes (golf balls). The Council discussed the final details of Thursday's cocktail party, dinner, Hall of Fame presentation, and Friday's business meeting.
5. **Nominating Committee:** Incorporated in these minutes is the electronic vote by the Council on May 15, 2014.

Members of the Nominating Committee included Teresa Martin, Rick Warsh, Dave DeGraw, and Themis Fotieo. The committee met on May 13, 2014 and nominated the following candidates for the SBM WC Section Council: Bill Housefield, Chair; Chris Rabideau, Vice Chair; Ella Parker, Secretary; and Tim Esper, Treasurer. Council: John Combs, Matt Conklin, and Jeff Kirschner.

On May 15, Chuck Palmer emailed all current Council members requesting a motion, second, and electronic vote on the Nominating Committee's nominations. Andrea Hamm moved that the Council approve. Chris Rabideau seconded the motion. All other members of the Council voted electronically in favor.

6. **Future Council Meetings:** Bill Housefield indicated that he would like to have more in-person meetings this coming year. Although meetings via Fuze have been very convenient, Mr. Housefield feels that the Council would benefit from members having more face-to-face communication with each other. He suggested some lunch meetings at the University Club of MSU in Lansing.

The meeting was adjourned.

Respectfully Submitted,

Christopher J. Rabideau, WC Section Council Secretary

Minutes of WC Section Annual Meeting–June 20, 2014

1. Chairperson Charles Palmer called the meeting at 9:00 a.m. He provided opening remarks and welcomed all in attendance.
2. **Deputy Director's report:** Jack Nolish talked about the Agency's implementation of HAWCS. He discussed the Agency's transition away from paper. Jack expressed the difficulty of this transition because of massive amounts of data involved and the current system that uses 1970s technology. Jack stated that in the future, parties and the magistrates will have electronic access to more information in a secure manner. Further, the calculator program will be a web version housed by the Agency and will not have to be downloaded each year. The new system will be better, faster, and cheaper to operate. He anticipates that it will be up and running by July 2015.
3. **Chief Magistrate's report:** Lisa Klaeren stated that the overall number of workers' compensation cases being filed is down and that resolution of cases has been quicker. In 95% of the cases that go to trial, the magistrates issue decisions within 42 days. Further, 85% of the time trials are completed from start to finish within 30 days of the start. On average, cases are taking 15-16 months from the time of pretrial to the trial date and 17-18 months from pretrial to a redemption. Once the Delphi cases are removed from these averages, the time periods will go down because these cases are about 5 years old. There are about 300 Delphi cases, mostly in Flint and Saginaw. The City of Detroit cases are coming out of await status and will be excluded from the bankruptcy. There are about 200 of these cases. Lisa noted that the MAHS rules are being changed in the coming months. Most of the changes she noted involved scheduling time periods for depositions, notices for calling expert witnesses at trial, and scheduling status conferences.
4. **MCAC report:** Jack Wheatley reported that the pending workers' compensation case load is about 90 cases with half ready to be assigned to commissioners. MCAC is rewriting its rules, but there will be very little changes to the rules involving workers' compensation. Jack indicated that MCAC is working on updating its website. Jack spoke of the passing of Commissioner L'Mell Smith. He noted that she had been involved with the workers' compensation system since 1987. She had been the longest serving magistrate—over 15 years. She will be missed as a valued colleague and friend.
5. **Evidence Based Medicine Discussion—Chuck Palmer, Moderator:** Ken Eichler of the Work Loss Data Institute and Michael Gruber of Pasternak, Tilker, Ziegler, Walsh, Staton & Romano had a lively debate about the pros and cons of evidence based medicine (EBM) and its application to work injuries. Mr. Eichler is a strong proponent of Official Disability Guidelines (ODG) and stated that, unlike

other guidelines, ODG is stringently evidence based. He stated that cost control is not and should not be the goal of EBM, but instead, improved care for injured workers, better results, and faster return to work. Although cost containment is not the goal of EBM, it is a by-product. Mr. Eichler said EBM guidelines are simply guidelines that apply to most cases, but exceptions are available on a case by case basis. Mr. Eichler noted that many states have already adopted EBM. The Texas model has lowered health costs and created a better environment for employers. He argued that the benefits of EBM include prompt payment of bills, improved medical outcomes, consistency in treatment, and transparency.

Attorney Michael Gruber offered a different opinion regarding EBM. He stated that it is not universally accepted that EBM is the gold standard for medical care. There are no convincing studies to support the position that doctors use of EBM results in better outcomes for patients versus doctors relying on their expertise and experience when determining treatment. Many of the studies supporting EBM have later been discredited. The EBM Guidelines (such as ODG) lack objectivity because they are for-profit organizations selling a product to states. Mr. Gruber argued that the EBM concept was never meant to be "cook book" medicine as it is being used with the implementation of guidelines. Individual judgment of trained medical providers is best for determining need for specific treatment, not EBM guidelines. He noted problems in Colorado because their guidelines were too rigid. This required amendments to the statute. In New York, if treatment is not in the guidelines it is deemed "not medically necessary" and the variance process is so difficult that it is essentially not allowed. The appeal process for a variance in the guidelines is with the Appeal Board and this can take a year. Mr. Gruber contended that a major problem with states implementing EBM guidelines is that health care providers are not being involved in the process. In New York, the cost of litigating variances is about three times the cost of the treatment. According to Mr. Gruber, the cost-savings argument is misleading. The medical treatment will happen and EBM guidelines simply shift the cost from the workers' compensation system to group health insurers, Medicaid, and Medicare. Finally, he stated that EBM guidelines take away the clinical judgement of doctors in favor of faulty studies.

6. **Law Update:** Marty Critchell provided a detailed update of the workers' compensation case law. Marty indicated that the Michigan Supreme Court's attention to workers' compensation cases is now over in light of the 2011 amendments, which validated prior case law.
7. **Secretary's report:** Chris Rabideau informed all members of the Section in attendance that all Council meeting minutes can be found on the State Bar of Michigan's website under the Workers' Compensation Section link.
8. **Treasurer's report:** Ella Parker provided the Treasurer's report. She indicated that the Section's funds were at about \$81,000.

9. **Election of Officers and Council members:** Joel Alpert moved that the Section adopt the Nominating Committee's slate of candidates. Rosa Bava seconded the motion. All voted in favor of the motion. New officers include: Bill Housefield, Chair; Chris Rabideau, Vice Chair; Ella Parker, Secretary; and Tim Esper, Treasurer. Council members elected include: John Combs, Matt Conklin, and Jeff Kirschner.

The meeting was adjourned.

Respectfully Submitted,

Christopher J. Rabideau, WC Section Council Secretary