

Minutes of Council of the Workers' Compensation Section November 7, 2014

Present via Fuze Meeting:

J. William Housefield
Chris Rabideau
Ella Parker
Tim Esper
Rosa Bava
John Combs
Matt Conklin
Dennis Flynn
Phil Frame
Andrea Hamm
Jayson Chizick
Jeff Kirschner
Mark Sessi
Kevin Elsenheimer

Chairperson Bill Housefield called the meeting to order at 9:05 am to address the following Agenda:

- 1) Secretary's report**
- 2) Treasurer's report**
- 3) Director's report**
- 4) MCAC report**
- 5) Magistrate's report**
- 6) Old business:**
 - A) Winter Meeting: 12/5/14 @ 8:30 a.m. Dimondale location.**
Phil & Andrea report?
 - B) Annual meeting location? Traverse City proposal from Grand Traverse Resort**
 - C) Subpoena issue regarding medical records**
- 7) New Business:**
 - A) Opioid Rules?**
 - B) Administrative rule status?**

C) 1 to 5 year plan: what can we do to make the practice better for members of our section? Any ideas for discussion

D)

Mr. Kirschner, seconded by Ms. Hamm, approved the **Minutes** from the September 16, 2014 Council meeting upon motion with one correction noted on page 2.

Mr. Esper submitted the **Treasurer's Report**. The Section has \$74,356.62 in funds as of August 30, 2014. Mr. Esper has not received an updated report from the State, who ended their fiscal year on September 30, 2014. Mr. Esper noted that the State inquired about the larger expenses in 2012 for speakers and was advised that it was due to the 100 year Anniversary. Upon motion by Mr. Flynn, and seconded by Ms. Hamm, the Treasurer's report was approved.

Chairperson Housefield mentioned the monthly expense of \$25.00 to Modern Firm to run the old website and send email blasts. The Council discussed that it was beneficial to maintain this relationship despite the new SBM Connect program.

Kevin Elsenheimer submitted the **Director's Report**. Director Elsenheimer addressed the public hearing scheduled for today at 9:30 am on new opioid rules and compounding medications. The proposed rules should be turned over to the Joint Commission next week. The Joint Commission can waive the 15 days that the rules need to be in the joint legislative session. If so, the rules could take effect this year. If they do not, and there are not 15 session days before the end of the year, they will not.

Director Elsenheimer indicated that the state was making good progress on the IT project and they have brought in an expert on staff to assist with getting the program implemented. The State will be conducting training for all pertinent parties.

Director Elsenheimer reiterated that the MAHS rules are separate from the rules that would be heard today. In regards to the MAHS rules, the 15-day waiting period was not waived by JCAR a couple of weeks ago at the meeting. Therefore, they must wait out the legislature to see if they serve 15 days before the end of the year. Director Elsenheimer indicated that if any of the section members wished to follow the rule process, they should Google Michigan Office of Regulatory Reinvention. They can then look at pending rules under LARA to review. If anyone has individual questions, they can contact Liz Smalley at ORR.

Director Elsenheimer indicated that the opiate rules have been under consideration for quite some time and he has discussed these at all the public meetings he has addressed in the past

one to two years. The rules were drafted by the Health Care Services Committee, of which one member is an attorney on behalf of labor in the state.

A lengthy discussion ensued regarding the uniqueness of Michigan's system in comparison to other states and whether the changes first to the statute and now with the rules is actually hurting or helping our state and injured employees. Director Elsenheimer indicated that the state's goal is to keep competitive in the marketplace. This results in a decrease in premium and attracts more business. Some of the decrease in premium may be because of the amendments to the Act, which codified case law decisions under the prior administration, and part may be due to the decrease in the industrial climate in Michigan. With the increase in business, they would expect there would be more cases in the future.

Mr. Wyatt was not present to present a MCAC report.

Chief Magistrate Klaeren submitted the **Magistrate's report** in writing, as follows:

There has been a recent shifting of responsibilities in the Upper Peninsula due to a decrease in the number of pending cases. Beginning in November 2014, Magistrate Woons will be covering all of the Upper Peninsula dockets. One month she will be in Baraga on Tuesday and Escanaba on Wednesday and Thursday. The following month she will be in Escanaba on Tuesday and Wednesday and in Sault St. Marie on Thursday. All of the files will be kept with Magistrate Woons in the Saginaw office. This will enable her to resolve issues that arise on any given case, in a timely manner, from any of her locations.

The Administrative Rules, governing all administrative hearings (including workers' compensation cases) in the State, are continuing through the adoption process. In October 2014, there was a hearing before JCAR, following changes that were made to the rules after the public hearing in July. Absent a waiver of the required session days, the rules may not become effective until February of 2015.

The most significant change will be the use of a scheduling order that sets deadlines for various actions that need to be completed prior to trial. The magistrates are developing a scheduling order to be completed by the parties and the assigned magistrate that identifies appropriate timeframes for completion of things such as IMEs, depositions, facilitations, etc. We will provide a blank copy of the order, once it is completed, so that everyone has an idea of what will be expected.

At 5:00 p.m. on January 26, 2015, the terms of seven of the fifteen magistrates will expire. It is anticipated that Governor Snyder will be making appointments to fill those

seven positions prior to that date. The current locations of those appointments include Detroit, Flint, Saginaw, Dimondale, Grand Rapids and Kalamazoo.

Old business:

In regards to the **Winter Meeting**, to be held on December 5, 2014 at 8:30 AM in Dimondale, the speakers and breakfast have been decided. Member Frame indicated that he and Magistrate Klaeren would need to meet with the security guards at the Dimondale Agency to develop a protocol for the members who will be attending the meeting.

A lengthy discussion ensued in regards to narrowing down the issues for our speakers, including whether they should be provided with a hypothetical set of facts, discuss exactly what a labor market survey is, acceptable authorities, good faith efforts, and perhaps having a Commissioner discuss what they consider a good faith effort.

Council next addressed the issue of the **annual meeting location**. We currently have a proposal from Shanty Creek and The Grand Traverse Resort. Chairperson Housefield will attempt to contact the Park Place Hotel in Traverse City directly since they have not responded to his email inquiries online. The quote for the Grand Traverse Resort appeared high and might discourage attendance. Chairperson Housefield would like to have this decision made by the December meeting. One topic proposed for a speaker was to perhaps have a lobbyist walk us through the legislative process in regards to changes to the statute or rules.

In regards to the **Subpoena issue** regarding job logs, Chairperson Housefield inquired in regards to whether anyone was aware of subpoenas for job logs or issues prior to trial. It was discussed that several Westside attorneys regularly provide the job logs to defense counsel to support their position that their clients are making a good faith job search.

In regards to **New Business**, members Matt Conklin and Jason Chizick advised that they have not had an opportunity to look into developing a 1 to 5 year plan in regards to what we as the Council can do to make our practice better for members of our section. However, with the new state website, Chairperson Housefield indicated that perhaps we could put a link to the website for the Office of Regulatory Reinvention or the Health Service Committee. Someone also suggested that we could have someone monitor the legislative websites and update the members. The issue of the Opiate rules and the Administrative rules was exhaustively discussed after Director Elsenheimer's presentation.

Member Chizick suggested part of our plan to help the Section might include monthly contact with Director Elsenheimer to discuss issues that concern our Section.

Finally, the Council discussed having the Section actively involved in the process of developing the scheduling order that will be utilized in the future. Chairperson Housefield indicated he would discuss this with Magistrate Klaeren.

Ms. Parker, seconded by Ms. Hamm, approved adjourning the meeting at 10:30 am, upon motion.

Respectfully Submitted,

Ella S. Parker, Secretary, Workers' Compensation Section