

STATE OF SOUTH DAKOTA

WORKERS' COMPENSATION ADVISORY COUNCIL

MEETING

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Transcript of Proceedings
May 27, 2008

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BEFORE THE WORKERS' COMPENSATION ADVISORY COUNCIL,

- Dennis Daugaard, Chairman
- Pam Roberts, Board Member
- Paul Kinsman, Board Member
- Paul Aylward, Board Member
- Connie Halverson, Board Member
- Randy Stainbrook, Board Member
- Carol Hinderaker, Board Member
- Guy Bender, Board Member
- Jeff Haase, Board Member
- Chris Lien, Board Member
- Sarah Trebesch, Secretary

□

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1
above-entitled

2
700 Governors

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2008,

TRANSCRIPT OF PROCEEDINGS, held in the
matter, at the Kneip Building, Conference Room 3,
Drive, Pierre, South Dakota, on the 27th day of May,
commencing at 1 o'clock p.m.

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minutes after 1.

1 CHAIRMAN DAUGAARD: It's just a few

Bender is

2 I'm going to call the meeting to order. I know Guy

he will be

3 en route so he'll be a few minutes late, but I think

expect him.

4 here. Glenn Barber could not attend so I don't

But

5 otherwise I believe everyone's present.

roll.

6 so I'll ask the secretary to call the

7 MS. TREBESCH: Paul Aylward.

8 MR. AYLWARD: Here.

9 MS. TREBESCH: Randy Stainbrook.

10 MR. STAINBROOK: Here.

11 MS. TREBESCH: Carol Hinderaker.

12 MS. HINDERAKER: Here.

13 MS. TREBESCH: Connie Halverson.

14 MS. HALVERSON: Here.

15 MS. TREBESCH: Jeff Haase.

16 MR. HAASE: Here.

17 MS. TREBESCH: Chris Lien.

18 MR. LIEN: Here.

19 MS. TREBESCH: Dennis Daugaard.

20 CHAIRMAN DAUGAARD: Here.

21 Before we begin, I'd ask if there are any
additions or

22 corrections to the agenda. Anybody see anything on
the agenda?

23 All right. Well, then let's just follow
this agenda

24 as printed. The first item on the agenda is
approval of the

25 August 27 meeting minutes. I've reviewed them.
Anyone else
□

4

1 that has done so if you see any additions or
corrections.

2 Otherwise, a motion to approve would be in order.

3 MR. STAINBROOK: So moved.

4 CHAIRMAN DAUGAARD: Okay. Moved by Randy.
Is there a

5 second?

6 MR. LIEN: Second.

7 CHAIRMAN DAUGAARD: Second by Chris Lien.
Any

8 discussion?

9 Those in favor of approving minutes say
aye.

10 (All indicate aye)

11 CHAIRMAN DAUGAARD: Those opposed, nay.

12 (No audible response)

13 CHAIRMAN DAUGAARD: Motion carried. This
is our first

14 meeting of the workers' Compensation Advisory
Council. One of

15 the items that came up at our last meeting was
whether we should

16 be holding meetings elsewhere than in Pierre. And I
think we

17 can address that at the end of this meeting. So any
objections

18 to that?

19 Otherwise, I think we'll address that at
the end of

20 the meeting when we talk about future meeting dates.
Is that

21 agreeable?

22 I don't have any other opening remarks
unless anybody

23 else does.

24 Pam, do you or James?

25 SECRETARY ROBERTS: I don't. Our report
will be our
□

1 opening remarks.

2 CHAIRMAN DAUGAARD: Okay. Then let's
proceed to

3 item 5, Overview of the 2008 Legislative Session.

4 James.

5 MR. MARSH: As you know, last time we met
we had --

6 counsel had made seven recommendations to the
legislature for

7 consideration. Of those they were all submitted to
the 2008

8 legislature. Of those two ultimately were passed in
the form of

9 House Bill 1037, which has now become SDCL 62-4-1.1
through 1.3.

10 There are two main concepts in those. The
first bill

11 refers to the fact that a fine should be imposed
when an insurer

12 doesn't deny, pay, or request additional information
on a

13 properly submitted medical bill.

14 The second one established the fine at
\$500 and

15 allowed us to establish rules to determine what a
properly

16 submitted medical bill is.

17 And the third bill refers to requiring
releases from

18 employees when they have workers' Compensation
related records

19 and a release for information that is relevant to

those records.

20 And what was added during the session is a procedure
by which if
21 there are disputes over whether information is
relevant or the
22 release exceeds the scope of the law, we will be
called upon as
23 a Division to review those cases if requested.
24 So our judges would then make the call
about whether
25 individual records are relevant or not and whether
the release
□

6

1 is -- goes beyond the scope of what the law calls
for.
2 So that's basically what came out of it.
3 CHAIRMAN DAUGAARD: Any questions or
additions to
4 James's remarks about the legislative session?
5 Anybody? All right. Well, moving right
along, let's
6 move on then to the review of the state of workers'
Compensation
7 for the annual report.
8 James, you're on again.
9 MR. MARSH: Okay. Well, I guess the
overall message
10 is, apparently, that things are fine. Premium rates
will be

Insurance 11 rationed down again for the current year from the
slightly but 12 Division's filing. In both side risk will go up
understand it. 13 not enough to make a significant impact as we
14 And voluntary market rates will go down slightly.
are being 15 The injury rate, the number of claims that
we 16 filed from year to year, continue to go down, which
population, 17 understand to be a product of our, frankly, aging
and I don't 18 working population, as they become more experienced
perceptive 19 know if you'll call it get a little smarter or more
going to be 20 of potential workplace hazard the likelihood they're
things are 21 injured statistically decreases. So right now
22 looking pretty good.
lot of 23 Other than that, I don't know if there's a
24 detail to add.
25 (Guy Bender enters the room)

7

Guy Bender 1 CHAIRMAN DAUGAARD: Okay. we'll note that

you were on

2 has arrived. Glad to have you here, Guy. We knew
3 your way.

4 SECRETARY ROBERTS: welcome.

7. And

5 CHAIRMAN DAUGAARD: We just finished item

to the

6 unless there's any comments or questions, we'll move

we are

7 public hearing. I will make note that there are --

City site

8 connected by DDN to a Sioux Falls site and a Rapid

Sioux Falls

9 both. I think our screen right now is showing the
10 site.

offer public

11 But I'd ask that anyone who wishes to

just for the

12 testimony to give your name and where you're from

time.

13 record, and we'll just take public testimony at this

process in the

14 I think I should also mention that our

wishes to

15 past has been to identify issues that the Council

subsequent

16 address, and then we would publish those issues in

an

17 agendas so both sides of any given issue would have

taken or issues

18 opportunity to be aware that testimony was being

complete and

19 were being considered, and we think we have a more

20 evenhanded set of information for the Council to
consider.

21 So I propose that that is the course we
take again.

22 And, again, this first meeting then would help us
establish some

23 of those issues we want to consider at future
meetings. And we

24 can take some brief testimony if you'd like to
identify whether

25 or not it's something we want to pursue. But,
again, I think we

□

8

1 want to be sure we get both sides of an issue before
taking any

2 substantive action.

3 Is that agreeable to the Council members?

4 MR. HAASE: Yes.

5 CHAIRMAN DAUGAARD: I'm seeing nods all
around.

6 SECRETARY ROBERTS: Mr. Chairman, we were
just

7 discussing that I think you all received a copy of
the letter

8 that we got from Mr. Doug Pavel I believe is how you
pronounce

9 it. And I offered to allow him to go first on
public testimony

10 if that's okay with you because he did write ahead
of time and

11 ask for time. So I told him he could be first.

12 And after that we got a letter from Mark
Anderson, and

13 I did let Mark know -- and I see Mark in the
audience -- that he

14 could be number 2 and we would open it up for
anybody else who

15 had not, you know, kind of pre signed up. But I
think Mr. Pavel

16 is in Rapid City, the Rapid City office.

17 CHAIRMAN DAUGAARD: That sounds good.
Does anyone

18 object to following that first, second, and then
third?

19 Mr. Pavel, are you in Rapid City, sir?

20 SECRETARY ROBERTS: In Rapid City you need
to unmute

21 the mic. and speak, and then the cameras will come
up, and we'll

22 be able to hear you. But if Rapid City -- somebody
at the

23 Rapid City site would do that, then we could see the
Rapid City

24 folks.

25 Are we sure they're on? Were they on at
one time,
□

9

1 Dawn?

2 CHAIRMAN DAUGAARD: Rapid City, are you
there? Rapid
3 City? Well, let's take Mr. Anderson first then, and
I think
4 Monica left the room. She's going to call the Rapid
City site
5 and see if we can get Rapid City up. So, Mark, if
you want to
6 begin, I see you there in Sioux Falls.
7 All right. Now Rapid City is up. So,
Mark, I'll ask
8 you to go mute again, if you would.
9 MR. ANDERSON: We'll put ours back on mute
then.
10 CHAIRMAN DAUGAARD: Thank you, Mark. All
right.
11 Let's go back to Rapid City.
12 Mr. Pavel, is that how you say your name,
sir?
13 MR. PAVEL: As the old Altell commercial
goes, are we
14 coming through to you now?
15 CHAIRMAN DAUGAARD: Yes, you are, sir.
16 MR. PAVEL: Okay. Very good. Good
afternoon, ladies
17 and gentlemen. Sorry we can't be there in person.
I have
18 unfortunately some business to take care of here in
Rapid City
19 that wouldn't allow this to come up in time.
20 Also with me are my wife Carol to my right
and across
21 the table is our daughter. As you are probably

aware, you

22 received a letter from us concerning the death of
our son. The
23 accident actually occurred on October 30, and he
died on
24 November 1.

25 And the letter pretty much explains our
concerns and
□

10

1 such. And, as I spoke to Mr. Marsh, you know, after
-- in the
2 death process, there's no way you can write the
letter and truly
3 express your concerns or whatever because frankly it
was
4 probably going to be nothing more than yelling at
you people.
5 So finally after now several months I think we have
a document
6 that we can actually work from.

7 So that we don't go word for word on the
letter,
8 basically we have four major points that we request
to bring up
9 for discussion for your folks, for the Council's
consideration.

10 And the first one is we're wondering about the
design of the law

11 in South Dakota, what the original intent was of the
law

death 12 pertaining to compensation and particularly in a
13 situation.
Comp 14 Second of all is training for workman's
15 representatives.
and necessary 16 Third is a consideration for reasonable
17 compensation to a family.
legislation perhaps 18 And the last is a provision in the
19 for regular review of funeral expenses and such like
that.
we're just 20 Going back to the first one, you know,
and totally 21 common, every day folks like most people and working
22 unaware of workman's Comp because we have
fortunately never had
23 to deal with it ourselves through our employment.
But our son 24 was killed while working for a South Dakota company.
And I'm
25 not even going to mention the company unless
somebody needs to
□

11

This is more of 1 know it because really that's beside the point.
2 a process issue than anything.

3 But in this particular matter the company
that he was
4 working for did not utilize fall protection as
required by OSHA.
5 They did not have any of the harnesses, lifelines,
netting, or
6 anything on that order. And, unfortunately, he then
fell
7 through a roof while they were doing some repairs,
fell about
8 30 feet onto concrete, received two skull fractures,
four
9 fractured vertebrae in the neck, and then he died
about 48 hours
10 later.
11 while we were in the hospital we were
approached by a
12 young lady who was -- who claimed to be a
representative not
13 necessarily of the insurance carrier of the company
but
14 apparently a contractor who wanted to sit down with
us and
15 identify some potential reimbursements and such.
And we were
16 under the impression that because we had to travel
to
17 Sioux Falls, which we would have done anyway again,
that we
18 should keep our receipts and such because for the
family there
19 may be some compensation allowed. And it was only
later than
20 that we discovered, no, that really isn't true

because when our

21 everything died

son -- when they pronounced our son deceased

have a

22

with him including our rights because Brian did not

in the law.

23

spouse or dependent children, which is very specific

way that --

24

Going back to the design of the law, the

find out what

25

and we have contacted attorneys and everything to

□

12

down to is we

1

our legal rights were, and basically what it comes

rise to a level

2

have no legal rights because this matter did not

3

of intentional tort.

to be an

4

And I am not an attorney. I don't pretend

thing figured

5

attorney. We're just people trying to get this

6

out.

rises to the

7

But as was explained to us, unless it

dependent

8

level of intentional tort and absent of a spouse or

simple, zero.

9

children, there is absolutely nothing, plain and

told that

10

And that's what we learned later, even after we were

meals, and 11 there may be some compensation for travel, motel,
12 such while we were at the hospital.
13 And that really began to make me wonder --
make all of 14 us wonder what the original intent of the law was.
If it has to 15 rise to the level of intentional tort -- I'm a
retired law 16 enforcement officer. I've been in public safety in
South Dakota 17 for 33 years. And I was a detective for quite a
while and 18 sergeant in investigations in wrongful death cases.
If it rises 19 to the level of intentional tort as the law -- the
documents 20 that were shown first by attorneys is intent
poignantly means 21 intent.
22 And if that be the case, ladies and
gentlemen, why did 23 we even worry about OSHA? We should have just
called the 24 state's attorney in the county that Brian died in
and said we 25 want a criminal investigation because if this matter
was
□

1 intentional, we want somebody arrested because that
apparently
2 according to the design of the law for compensation
to a family
3 absent of a spouse or dependent children is what's
required.
4 Intent means intent. And intent -- and I
checked with
5 a prosecutor friend of ours and asked him was I on
track?
6 Really am I on target? He thought whether it's a
death benefit,
7 whether it's a tort, whether it's -- for us to
receive any
8 rights at all we have to have been able to prove
that not only
9 did whatever the employer do or lack of -- or not
do, they had
10 to intend to injure Brian which then eventually led
to his
11 death, which to us is completely absurd.
12 You know, if we want to resort all of this
in a
13 willful act criminal case, then that's what we
should tell the
14 general public. And don't misunderstand us, folks.
we're
15 Christian people. In fact, we prayed long and hard
about
16 whether or not we would even want to bring tort
action against
17 the company. It's a good company. We have no ill
feelings
18 toward the company.

do 19 They did not do what they were supposed to
they were 20 according to OSHA. And because they did not do what
21 supposed to do, our son died.
problems with 22 Besides all of that, we saw some real
somebody drive 23 the process. And, I mean, you know, we can have
and they'll 24 through an intersection recklessly, kill a motorist,
bring in 25 settle for a million dollars. We can have a company
□

14

\$25 million 1 pet food from China, for God's sake and settle for
2 to pet owners. Not people. Pets.
in the State 3 But when you have a situation of a worker
4 of South Dakota -- and I might also add this is not
just 5 South Dakota, it's many other states, that if you
cannot prove 6 intent that the employer intended to cause that
injury, 7 essentially, ladies and gentlemen, the way that we
feel is 8 workman's Comp laws tells Carol, Katie and I go
away, why 9 bother.

really the 10 That's the first point and really is that
be all 11 intent of the law? Is that what it was supposed to
South Dakota 12 about? According to a cite that links off of the
OSHA's got some 13 Department of Labor -- and we talked to OSHA.
we've already 14 other issues. OSHA oftentimes takes things -- and
States 15 talked to them when we were talking to the United
16 Department of Labor about this as well.
inaccurate. It 17 The OSHA report that we received as
investigation. 18 included very few details of the death
rights than 19 it spent more time talking about the employer's
There's inaccurate 20 covering how the accident actually happened.
training in fall 21 information. They claim that Brian received
document we 22 protection, and the proof that they gave us was a
to blank his 23 don't know if he signed it or not because they had
John Smith's 24 name out of because of confidentiality. It may be
to see our 25 document. we don't know because we're not allowed
□

15

1 son's name in our reports.

document we 2 But the proof they offered us was a

breathing 3 believe our son signed for training on personal

protection. 4 protection and eye protection but nothing on fall

received fall 5 And that's what OSHA accepted as proof that he

bore you with 6 training. That's another issue. I'm not going to

through the 7 the details of all of that. We're handling that

8 Bismarck office and through Washington.

oftentimes use 9 But the point is is the attorneys will

was willful 10 the OSHA report to determine whether or not there

OSHA that 11 action on the part of the employer. We learned from

that can be 12 oftentimes they will not issue all the citations

save time 13 issued or they will take a lesser avenue so they can

insinuation, 14 in Federal Court. Because the intuition -- or the

too tough, 15 rather, that we got from OSHA was if they made it

16 they would have to spend too much time in court.

spoke to a 17 And yet right after Brian's accident we

General 18 gentleman with the South Dakota Association of
19 Contractors who expressed his dissatisfaction,
disappointment or
20 whatever, in trying to get South Dakota companies to
wake up to
21 safety issues because, as he put it, is South
Dakota's not at
22 the bottom of safety records but they can see it.
23 And the second point he made is he just
cannot get
24 people to wake up because employers are, in his
opinion, too
25 willing to take chances with their employees. Our
son, I think,
□

16

1 obviously unfortunately in our personal situation is
probably
2 proof of that.
3 One of the statements, and we don't know
if it's true
4 or not because it was never put into the report,
although we
5 were told by an investigator, is the company chose
not to use
6 anything for fall protection because the job wasn't
going to
7 take that long.
8 So these are the things that we're running
into. And

9 in order to get it to willful it's one half of one
percent of
10 the time in 2007, and the number of citations that
are issued
11 never reached that willful category. The OSHA
investigators
12 were point blank with us and said to get a willful
citation
13 issued is very, very difficult. Not only do they
have to have a
14 serious offense first, they have to then offer them
a repeat.
15 If a second incident happens, they then
call that a
16 repeat. If a third offense happens, they call that
a second
17 repeat. Then they can finally perhaps go to the
willful
18 category. And if that's the standard that families
have to live
19 by, whether it be for a death benefit, our day in
court, so to
20 number 3,
speak, our rights, or even as we're bringing up
what,
21 reasonable and necessary compensation, then you know
general
22 ladies and gentlemen, we might as well just tell the
daughter or son
23 public in South Dakota that if you have a young
better get life
24 in the construction industry in South Dakota you
from workman's
25 insurance on him because do not count on anything
□

17

1 Comp. It's not going to happen.
2 Point 2, the training for the
representative. We
3 actually called her back to see if we were missing
something.
4 when she said keep all of your receipts, you can
probably get,
5 you know, maybe some compensation offered, we even
asked what
6 would happen if Brian survived but was disabled as a
definite
7 possibility because of his broken neck and
everything else. And
8 she relayed to us that workman's Comp would probably
pay to
9 remodel our house and everything else.
10 You know what? We don't believe that. We
have
11 absolutely no doubt that if we would have reached
that position,
12 they would tell us again to just go away, we're not
paying
13 anything other than the 60 percent or maybe of that
and then
14 probably not even that.
15 when we called her back to say, okay, did
we miss
16 something when you mentioned this, then she
admitted, well,

17 we're not really trained too well.

18 Ladies and gentlemen, why not offer these
people a
19 checklist. If we weren't going to be able to get
any benefits
20 up front with us, tell us that while we were in ICU.
We were
21 receiving enough bad information the way it was that
would not
22 have shocked us anymore.

23 what was shocking to us is after we buried
Brian and
24 everything else and had the funerals and then we
went back to
25 find out that what she told us wasn't accurate.

□

18

1 The third point then if you -- pretty much
follows the
2 whole what we've been talking about so far. what
would it
3 take -- you know, the insurance company that covers
this
4 particular employer tells their e-mail site or their
website
5 that in 2007 how well they did. And, you know, we
just heard
6 the rates are going down and (Inaudible).

7 Now understand that's our opinion. I know
there's a

8 lot of people receiving benefits. Don't get me
wrong. Don't
9 get any of this wrong. But the point remains you
have people
10 who are suffering from the death of their loved
ones, and this
11 is how we're seeing the workman's Comp laws in South
Dakota is
12 it's -- well, let me finish, and then I'll close up.
13 The other matter then -- perhaps, like I
said, we can
14 consider some reasonable and necessary
reimbursements for travel
15 for the family. I'm not talking spouse. Brian was
single. He
16 never had kids. But we have Katie across the table.
And she
17 left her job where they were living, a very well
paying job, to
18 move closer to home to be with us because she's now
our only
19 child.
20 Oh, yeah. Some people would look at that
and go sad
21 story. Do you want to know something? That's real
life.
22 That's how things happen, especially when we begin
to face some
23 of the things that we begin to face here. There are
people
24 affected by these situations beyond spouses and
beyond children
25 of the injured or killed worker. Parents and
siblings of those

□

19

1 workers should not just be put out to pasture, so to
speak, and
2 just hope they never show up again. So could there
be some
3 reasonable and necessary compensation.
4 The fourth point is our funeral expenses
were
5 admittedly quite -- we had two funerals mainly
because there was
6 really two sets of people. They grew up out here in
the Hills.
7 They went to high school out here in the Hills, and
they went to
8 college east river and worked east river, and so
consequently we
9 had two funerals just because we had so many people.
But it was
10 really wonderful.
11 I don't expect workman's Comp to cover all
of those
12 costs. That would be unreasonable in itself. But
from my
13 understanding in talking to Mr. Marsh -- and Mr.
Marsh can sure
14 clarify this if he wishes. It's our understanding
that the
15 allotment -- that the State statute for
reimbursement for

16 funerals hasn't been reviewed for a number of years.
17 And going on to the website we noticed
that there's a
18 lot of states they use a formula method, average --
you know, a
19 portion of average equal allowance or -- can we
consider
20 something like that?
21 And then, finally, you know, basically
workman's Comp
22 is really nothing different than any other business.
If you go
23 to a department store and you receive good business,
good
24 customer service, and even if things don't turn out
quite the
25 way you wanted them, the customer's willing to give
the benefit
□

20

1 of the doubt.
2 But, ladies and gentlemen, if they receive
poor
3 customer service -- we wrote also and we called the
adjuster
4 asking her if there was any way to consider
reasonable and
5 necessary compensation because this representative
said that
6 some companies do "out of the goodness of their
heart."

7 So we tried to contact the company. I
left two phone
8 messages and wrote her a letter. We have not heard
anything
9 back. We have gotten absolutely no response.
That's poor
10 customer service. You get poor customer service
that if you're
11 already dealing with a bad situation that just makes
you more
12 angry, and here we are.
13 So thank you for allowing me to ramble.
Honey, do you
14 have anything to add? Katie?
15 Thank you very much, ladies and gentlemen.
16 CHAIRMAN DAUGAARD: Thank you, Mr. Pavel.
Let me
17 first say that I am very sorry for the death of your
son. I
18 can't imagine how I would feel if something like
that happened
19 in our family. And I'm very sorry for your loss.
20 If I understood you correctly, you're
looking at four
21 different points, and I'm going to try and just
restate them
22 back to you. You correct me, if I'm understanding
it correctly.
23 The first point that you're making is
whether the
24 Council or the legislature should reconsider the
intent of
25 South Dakota Law and whether that as it exists at

the death of
□

21

1 an employee who has no dependents, should there be
some cause of 2 action that lies on the part of our family members
short of a 3 willful situation.

4 Is that a correct statement of the first
point?

5 MR. PAVEL: Yes, sir. You got it. Thank
you.

6 CHAIRMAN DAUGAARD: The second point that
you made was 7 you were disappointed in the training that the
person who you 8 first interacted with and that their misstatement of
the 9 situation concerning travel, reimbursement of travel
and lodging 10 expenses to be with your son was cause for some
consternation on 11 your part and then if that had not been misstated to
you, it 12 would have been better at the outset.

13 MR. PAVEL: Yes, sir. That's it.

14 CHAIRMAN DAUGAARD: And then the third
question is

15 whether South Dakota Law should provide that its
worker's Comp

beyond 16 insurers be required to reimburse family members
circumstances. 17 dependents for traveling in these kinds of
emphasize 18 MR. PAVEL: Yes, sir. And I want to
breaks an arm, 19 reasonable and necessary. I mean, if somebody
But when 20 they shouldn't turn that into a family vacation.
talking 21 someone is in ICU, imminent death, that's what we're
injury you're 22 about, at that level, if that helps.
23 CHAIRMAN DAUGAARD: In cases of serious
24 saying.
25 MR. PAVEL: Thank you. Yes, sir.

□

22

point was the 1 CHAIRMAN DAUGAARD: And then the last
be looked 2 statutory provision for funeral expense, should that
letter, 3 at as much as it hasn't been changed since, in your
4 1999.
what Mr. Marsh 5 MR. PAVEL: Yes, sir. I believe that's
you're there, 6 told me. I might be wrong on that. Mr. Marsh, if

7 perhaps you can clarify. I think it was 1999, but I
might be
8 wrong on that. There was a lot of information that
I was
9 getting at the time. It hasn't been in some time.
That's for
10 sure.

11 CHAIRMAN DAUGAARD: Mr. Marsh is nodding
yes, he
12 agrees with you. That's the correct date.

13 MR. PAVEL: Just a quick additional to
that, sir. The
14 reason also for this is in a spouse situation they
would
15 probably handle all the affairs. We had to handle
all of
16 Brian's affairs. We had to pay all of his bills. I
know we
17 could have probably just left all of his bills hang.
We're not
18 that kind of people. We paid everything. That's
just an
19 additional reason I guess for these things to be
considered.
20 I'm sorry. Thank you.

21 CHAIRMAN DAUGAARD: Well, I'd just reflect
back to you
22 that makes sense to me. It's an honorable thing
where a family
23 member steps forward and volunteers to assume the
expense. I'm
24 assuming your son, Brian, was an emancipated adult.

25 MR. PAVEL: Yes, sir. He was.

□

23

1 CHAIRMAN DAUGAARD: In that case really
there was no
2 legal obligation on the part of the family to come
forward for
3 the funeral expenses. Yet obviously you did that.
4 MR. PAVEL: We're not asking for Workman's
Comp to do
5 that either. But somebody had to handle his
affairs, and again
6 in absence of a spouse, which is perhaps again the
intent --
7 absence of a spouse that's when family members --
you know,
8 parents take over or siblings.
9 CHAIRMAN DAUGAARD: All right. Well,
these are all
10 good points to raise, and certainly when there's
problems that
11 arise that's when opportunities for improvement
arise. And so I
12 guess what I would like to do is propose putting
some of these
13 things on our agenda for the next meeting, and if
people have
14 attitudes about one side or the other of these
things --
15 Some of these are relatively straight
forward.

16 Obviously the last point, should the funeral expense

rate be

already

far

action

where a worker

more far

more

the funeral

□

17 raised or not, that's pretty straight forward. It's

18 existing law.

19 Some of these others are a little bit more

20 reaching, the question of whether or not a cause of

21 should lie on the part of a parent or a sibling

22 is killed and leaves no dependents. That's a little

23 reaching. And I would expect we'd have a little bit

24 interest by many more parties on that issue than on

25 expense matter.

24

be of

information and

discussed it over

Brian. You know,

accept his death

further about any

1 MR. PAVEL: And, sir, also offer if we can

2 anymore assistance, you know, in providing other

3 whatever, talking to folks, we're here. We

4 Memorial Day weekend, which is appropriate for

5 we could let this matter die with him and just

6 and leave it at that and not have to worry any

7 questions that come up.

do that 8 And we decided as a family that we can't
matter what. 9 necessarily, that the questions are still there no

provide 10 So we're available to meet with additional folks,
11 additional information, whatever we can do.

Mr. Pavel. 12 CHAIRMAN DAUGAARD: All right. Thank you,

son myself 13 And, again, I am so sorry for your loss. I have one
even want to 14 and I try to put myself in your shoes and I don't

we express 15 think about it. So on behalf of all of us, I know
16 our sympathy for you and your family.

17 Thank you.

the Council 18 CHAIRMAN DAUGAARD: Any other input from
raised? 19 members on those four points that Mr. and Mrs. Pavel

as items. 20 I guess I'm not sure how to lay them out

interested in 21 You know, oftentimes we have individuals who are
specific 22 the worker's Comp law come forward with very

easiest means for 23 legislative proposals, and that's probably the

legislative committee 24 us to address these issues as if we were a

25 dealing with a specific bill that proposes an

amendment or a new
□

25

1 statute.

2 And some of these points are not brought
forth in that

3 form. And so I guess I'm not sure if any of the
Council has any

4 thinking about how to present them as an agenda item
for future

5 meeting.

6 SECRETARY ROBERTS: Mr. Chairman, in the
past the

7 Department of Labor has put together basically the
Statement of

8 Fact and explained, you know, what the issue was
about and then

9 maybe threw out some of the statutory information
and maybe some

10 of what the other states have done. If you would
like that, if

11 the Council would like that, we could do it again
for these four

12 issues and then put that on the website so when our
agenda comes

13 up we'll say, okay, the explanation of facts is here
and so

14 interested parties would know what we're discussing
and could be

15 available then.

discuss it

8 further at our next meeting.

Pavel and

9 All right. Thank you again, Mr. and Mrs.

10 the whole family. Appreciate your input.

Sioux Falls.

11 Let's move now to Mark Anderson who's in

would, please,

12 I'd ask the Rapid City site to go on mute, if you

mute, you're

13 and we'll take Mark Anderson. If you'd come off

14 on.

Governor. I

15 MR. ANDERSON: Thank you, Lieutenant

had dealing

16 submitted pretty much most of the information that I

it would be

17 with this issue. But maybe the best way to address

the WILG

18 to kind of read into the record the conclusion from

19 report. And I think that's what I'll do.

last

20 But first I'd like to say that I think the

enough

21 legislative session was pretty clear that we've had

going to try

22 taking away from workers, and now I think if we're

to take a

23 to maintain and control costs in work comp, we need

report as

24 little different tact. So I'd like to use that WILG

quite frankly

25 kind of a jumping off point on another issue which

□

27

1 is fraud.
2 So I'm going to read that conclusion.
"The law of 3 unintended consequences may be catching up with
insurance 4 companies, employers, lobbyists, public relation
firms, and 5 others for the past 20 years have been attacking
injured workers 6 with a fraud bath.
7 "As ethical fraud units in various justice
departments 8 are discovering, white collar crime dwarfs the
amount of 9 claimant fraud in the workers' Compensation system.
All states 10 are encouraged to adopt an aggressive policy for
uninsured 11 employers and others who try to cheat. Effective
systems need 12 to be put into place to guarantee that required
policies are 13 purchased, that annual audits of employers are
conducted, and 14 that fraud investigations are authorized to shut
down 15 construction sites and other places of employment
where the 16 employer has not purchased insurance.

blower 17 "Each state should also adopt the whistle
efforts 18 statute, similar to what California has done. These
neutral for 19 will keep costs down and keep the playing field
20 employers."

WILG's annual 21 There are several -- if you look at that
second paragraph 22 conference report and you go to Section 3, the
insurance fraud 23 there lists different areas, that employer and
specifically 24 comes in many varieties. And those are quite
close look 25 listed there. And I would ask the Council to take a
□

28

in the law. 1 at that and maybe consider some ways to address that
and kept 2 Now I know the State of Missouri has done
areas of fraud 3 track, quite frankly, of what insurance -- what
employees, 4 there are in the law when it comes to employers,
information 5 lawyers, doctors, whatever. And I do have that
something I think 6 available if you would like that. But that's

7 that you need to take a hard look at.

8 Now I submitted the information request to
the -- it
forwarded
9 would have gone to the Department of Labor, and they
then I got
10 me on to the Department of Revenue & Regulation, and
Department
11 a response on that request from the director of the
12 of Insurance.

13 And in his response he says, "we do not
track fraud
14 referrals in a manner that would allow us to provide
data on any
15 number of such fraud referrals." So I think the
State of South
16 Dakota needs to take a hard look at maybe developing
a program
17 to do that. So I guess that's pretty much what I've
got to say
18 about it unless anybody's got questions.

19 CHAIRMAN DAUGAARD: Any questions from any
of the
20 Council members?

21 SECRETARY ROBERTS: Maybe if I could get
you to
22 outline -- you had two issues and specifically what
they are so
23 that we can get that ready for next time.

24 MR. ANDERSON: Certainly. I think there
are -- when
25 it comes to employer fraud, there are two ways that
probably

□

29

1 stand out from other things, and that is
classifications to
2 independent contractors, misuse of that, and maybe
3 misclassification of an employee, the job he's doing
or
4 whatever. And those two particular areas.
5 And then I don't know if there's written
into the
6 statute whether employers are required to have work
Comp
7 insurance and what the penalty is if they don't. So
I guess if
8 there's a statute that covers that, I'd like you to
maybe take a
9 look at that and explain that a little bit to the
Council.
10 CHAIRMAN DAUGAARD: Mark, I have a
question. What is
11 this WILG? I'm not familiar with that.
12 MR. ANDERSON: well, it's attorneys that
-- it's a
13 group of attorneys that deal with work Comp maybe is
the best
14 way to explain it. So they have an annual
conference and
15 obviously look at issues throughout the country.
Not just in
16 our state but all over.

17 CHAIRMAN DAUGAARD: Okay. Okay. So again
restating
18 the issues you would like addressed is how often
employees are
19 classified as independent contractors versus truly
recognizing
20 them as employees? Is that one issue?

21 MR. ANDERSON: Yep.

22 CHAIRMAN DAUGAARD: And then somewhat
under that same
23 heading, classification of an employee as a
different kind of
24 employee, maybe -- I'm not sure I got that second
part.

25 MR. ANDERSON: Well, you know, you could
be
□

30

1 classified -- this is probably an extreme example,
but say you
2 classified an electrician as a secretary. Obviously
your work
3 Comp rate would be lower. Or if you classified
somebody as a
4 warehouseman rather than a truck driver. Something
like that.

5 CHAIRMAN DAUGAARD: And how does that bear
upon a
6 workers Comp claim?

7 MR. ANDERSON: Well, it would tend to

lower the cost

8 to the employer.

they're --

9 CHAIRMAN DAUGAARD: Okay. I see. Because

10 MR. ANDERSON: Misclassified.

entirely on

11 CHAIRMAN DAUGAARD: The premium's based

12 wages, is it not? Or am I wrong?

13 SECRETARY ROBERTS: Yeah. It is.

times the

14 MR. AYLWARD: Based on the classification

15 wages. Different classes have a different rate.

misclassify them

16 CHAIRMAN DAUGAARD: Okay. I see. So

17 to avoid a higher premium.

often do

18 Okay. And then your second point was how

don't and get

19 employers who under the law should have insurance

choose that

20 away with that versus those who are self-insured and

21 route.

22 MR. ANDERSON: Correct.

would be

23 CHAIRMAN DAUGAARD: Yep. I wonder if it

hear from the

24 appropriate as part of exploring these issues to

first place

25 Insurance Division Fraud Unit. Because that's the

□

31

1 to which you resorted for information and really
didn't get good
2 information back that would help you. But I wonder
if it would
3 help to revisit the Insurance Fraud Unit and see
what they're
4 doing in the way of fraud detection and combatting
fraud. would
5 the Council like that?
6 we did receive such a presentation a few
years back,
7 but it's been a few years. And I wouldn't mind
being refreshed
8 on that, if the Council thinks that would be worth
exploring.
9 And I'm seeing nodding heads.
10 All right. Let's maybe do that. And then
someone
11 handed me a note that the WILG stands for workers
Injury Law and
12 Advocacy Group. Workers Injury Law and Advocacy
Group is what
13 that WILG acronym is. And I think, again, as Mark
pointed out,
14 it's a lawyers' association.
15 well, does the Council have any other
input on those
16 issues, or is that something we want to explore then
as part of
17 our agenda for the next meeting? we could have
James and the

18 department put together some information on that.

19 MR. STAINBROOK: I think so.

20 CHAIRMAN DAUGAARD: Any objection to that?
okay.

21 well, that's -- Mark, is that a fair situation then
in your view

22 that we'll go ahead -- just as we did with the
issues raised by

23 the Pavel family, we would again try and flesh out
these items,

24 post the information on the internet so all parties
who are

25 interested would have a chance to weigh in as you
would again.

□

32

1 Is that agreeable?

2 MR. ANDERSON: That sounds reasonable to
me.

3 CHAIRMAN DAUGAARD: Okay. Pam and James,
do you feel

4 like you've got a good enough handle on the issues?

5 SECRETARY ROBERTS: Yes.

6 CHAIRMAN DAUGAARD: Okay. Very good.
Thank you,

7 Mark. Any questions of Mark? All right. Thank
you. All

8 right.

9 Now there were a couple of other pieces.
The overview

welch. Was 10 of workers' Compensation in South Dakota by Edward
Anderson. Be 11 that your information, Mark? I should say Mr.
12 more respectful.
right. We 13 MR. ANDERSON: Mark is quite fine. That's
14 used that in the last legislative session to kind of
let 15 legislators know where the work Comp system in South
Dakota was 16 at.
17 CHAIRMAN DAUGAARD: Okay. So that's your
piece. And 18 then the other pieces that were in the agenda packet
was the 19 letter from James to Senator Turbak Berry.
20 SECRETARY ROBERTS: James Leach.
21 CHAIRMAN DAUGAARD: Excuse me. Was that
yours also, 22 Mark?
23 MR. ANDERSON: Yes.
24 CHAIRMAN DAUGAARD: And the Commonwealth
of 25 Massachusetts order was also part of your
information?
□

33

1 MR. ANDERSON: Yes. And that will give
Page 47

you kind of an

dealing with

2 idea of what another state has done, you know,

3 these fraud issues.

right.

4 CHAIRMAN DAUGAARD: Okay. Very good. All

information

5 well, those were -- then that constitutes all the

so now I

6 the Department received prior to this meeting. And

we'll take

7 would guess it's more of a first-come, first-served.

8 other public testimony.

who wishes

9 Is there any other member of the audience

like the

10 to bring forth an issue or a concern that they would

11 Council to consider?

12 MS. JOHNSON: Mr. Chair.

I can't see.

13 CHAIRMAN DAUGAARD: Yes. Where are you?

City?

14 I can hear you. Are you in Sioux Falls or Rapid

15 MS. JOHNSON: Rapid City.

your video

16 CHAIRMAN DAUGAARD: If you keep speaking,

17 will come up, I think. Would you identify yourself.

with the

18 MS. JOHNSON: Thank you. I'm Fern Johnson

(Inaudible).

19 South Dakota (Inaudible) I'll address and

closer to the

20 CHAIRMAN DAUGAARD: Fern, could you get

location? I 21 microphone and then turn the volume down at your

22 think you're overwhelming the microphone there.

mute, if you 23 And then, Sioux Falls, if you're not on

24 please would be so. And if you are, thank you.

25 MS. JOHNSON: Can you hear me now?

□

34

1 Yes. That's better. Thank you.

the House 2 MS. JOHNSON: All right. Four issues is

but I see you 3 Bill -- wait and see if you are going to address the
4 administrative rule in regards to House Bill 1037,

5 haven't addressed that. I'm going to address that.

amendment on 6 The second issue is AMA guidelines for

7 that to bring those up to economic standards.

limits. 8 The third is the Advisory Council term

complaints of 9 The fourth and last is most two driven

of 10 injured workers in this state is one being the lack

promptly being 11 administration, enforcement of the claims process

manage care 12 done at the administrative level, and the second is

13 providers.

14 Going back to House Bill 1037, I requested
a copy of
15 the proposed Administrative Rule, and I have not
received that
16 so I don't have any way to address what was the
process and if
17 we get done here, maybe you can elaborate on that,
Mr. Marsh,
18 elaborate what that proposed bill was, what the
status is of it
19 and the committee members of interim committee who
will be or
20 has heard that.

21 The second issue is --

22 CHAIRMAN DAUGAARD: Fern, excuse me.
Before we leave

23 that, just to clarify, is there an Administrative
Rule proposed
24 for House Bill 1037 yet?

25 MR. MARSH: Yes.

□

35

1 CHAIRMAN DAUGAARD: And is it available to
the public
2 yet?

3 MR. MARSH: It's on our website.

4 CHAIRMAN DAUGAARD: Okay. Have you seen
it on the

5 website, Fern?
6 MS. JOHNSON: We have not, and I want to
elaborate a
7 little bit further. According to statute under
Administrative
8 Rules, that hearing that was held on the 20th is
supposed to
9 have been publicly advertised at least 20 days prior
to the
10 hearing.
11 And visiting with the eastern part of the
state
12 workers, individuals and also western region here,
we have not
13 seen anything advertised for any public input so
they would have
14 the opportunity to submit anything in opposition or,
you know,
15 as a benefactor for that whatsoever. So we don't --
I have no
16 idea what was going on with it other than the
meeting on the
17 20th. I don't even know what --
18 CHAIRMAN DAUGAARD: And the meeting you're
referring
19 to was the first hearing on the Administrative Rule
proposal?
20 And was that May 20? Is that what you were talking
about? Or
21 is that an upcoming meeting?
22 MS. JOHNSON: That's already passed. And
I'll
23 reiterate that there was supposed to be 20 days

advanced notice

interested 24 to the public and at least three newspapers giving
produce 25 parties an opportunity to either attend the hearing,
□

36

I've understood 1 some data or input, whatever, and as far as what
in that 2 is there has been no notice whatsoever to the public
3 aspect.

4 MR. MARSH: If I could address that.

you respond to 5 CHAIRMAN DAUGAARD: Yeah. James, could
6 that.

notices of 7 MR. MARSH: We systematically send any
Rapid City 8 proposed rules hearings out to the Argus Leader, the
regional interest 9 Journal, and typically to a third newspaper of
Press and 10 such as the Aberdeen American News or the Yankton
11 Dakotan.

accordance with 12 we would have sent out that notice in
hours 13 those requirements. The law talks about at least 24

14 before the hearing is to be conducted, and we did

that in a

15 notice was well

timely way. And actually I think the advanced

16 Register.

in advance of that and was posted in the State

17 what is a

The rules simply go into the definition of

18 there are two

properly submitted medical bill. And basically

19 existing protocols

aspects of that, that it refers to following

20 or a pharmacy

for submission of a physician bill, a dental bill,

21 bill.

22 the Centers

For physician bills it is to comply with

23 using their

For Medicaid and Medicare Studies. So that includes

24 forms and their billing protocols, coding protocols.

25 National Council
□

For pharmacy bills it's done to the

37

under the

1 of Prescription Drug Companies and dental bills it's

2 standards of the American Dental Association.

3 explain with

After that it's required that the bill

4 records or

reasonable specificity and assistance with any

5 reports that should be attached with it to
understand how the
6 bill was -- what it was for and to what agree it's
connected
7 with a worker's compensation injury.
8 we did have the hearing on the 20th as
required. No
9 one attended. But we understood that -- I
understood from my
10 staff that the thing was appropriately published.
So I guess I
11 really can't speak to why you wouldn't have seen it.
12 SECRETARY ROBERTS: Let me just go back.
I will send
13 you all copies of the public notice, when it was in.
It's
14 prescribed by state laws of how we do our rules.
we'll make
15 sure we get you guys copies of what went out and
what was done
16 before the next meeting. How is that?
17 CHAIRMAN DAUGAARD: Fern, it sounds to me
as if James
18 feels that the notice requirements were complied
with, and I'm
19 going to give him the benefit of the doubt because
I'm -- I'm
20 also prone to miss things in the paper. It doesn't
mean they
21 weren't there. I'm assuming that they were in the
paper and
22 maybe you didn't happen to see that. But subject to
being
23 corrected, I'm going to assume that the notice

requirements were

24 met.

may differ
□

25

Now that doesn't change the fact that you

38

administrative

1 with some of the substantive provisions of the

something we can

2 rule. And if that's the case, you know, that's

them, then you

3 look at. If you haven't had a chance to look at

to look at

4 can bring it up at the next meeting and if we want

Council's

5 the substantive provisions, we certainly can, if the

6 open to that. I certainly am.

Chair?

7 Have you had a chance to see the rule?

8 MS. JOHNSON: Are you speaking to me, Mr.

9 CHAIRMAN DAUGAARD: Yes.

front of me.

10 MS. JOHNSON: I have the rule right in

Under

11 Under SDCL 1-26-4 the law is pretty clear cut.

notice of

12 Subsection 3 it states the agency shall publish a

at least

13 hearing in the manner prescribed by Section 126-4.1

14 20 days before the hearing.

15 Now if you go back to 4.1, it specifically
identifies
16 the interested parties that the notice and the
opportunity for
17 the proposed bill to be provided to them upon their
request.
18 That is also supposed to be provided in the notice.
19 However, under 126-4.1 it specifically
states the
20 interested parties, that would probably be the whole
State of
21 South Dakota, which justifies the publication in the
newspaper.
22 Now if they're saying that they have advertised that
in the
23 newspaper, then I would ask that the dates that
those were
24 advertised and specifically -- which papers those
were
25 advertised in so we can clarify that they did follow
the
□

39

1 administrative rules according to statutory
procedure.

2 SECRETARY ROBERTS: And we'd be happy to
do that.

3 CHAIRMAN DAUGAARD: All right. We'll do
that. Let's

4 assume that they did comply with it. Again, I'm
going to ask

5 you, do you have any issue with the substance of the
rules or --
6 and I'm not pressing you to make a blanket
endorsement or
7 condemnation of them if you haven't had a chance to
examine them
8 yet.

9 MS. JOHNSON: I can't. Because I
requested a copy of
10 the proposed rule to Mr. Marsh by e-mail and asked
if he would
11 e-mail that back to me, and I have not received a
response back
12 from him either by e-mail or by mail. So I cannot
at this
13 point -- maybe the next meeting I can elaborate
whether I oppose
14 or, you know, I can endorse it but without it in
front of me I
15 have no idea what it even says.

16 And as far as procedure, where it goes
from there if
17 it's already went to the Interim Review Committee
and the rest
18 of the process that goes on here, there may be
additional
19 hearings that may be required to address that. If
there are
20 some negativeness within that proposed rule and it
doesn't
21 adhere with -- claims and something that we
personally would be
22 willing to work with, then fine.

23 Otherwise, I would leave that work to be
open to the

24 next agenda once I receive the newspaper
clarifications when

25 those were advertised and exactly what the proposed
rule is,
□

40

1 what it states.

2 SECRETARY ROBERTS: And to go a step
further we

3 absolutely would like comments back from this
Advisory Council

4 and anybody else in the audience. And if you did
not get a

5 chance -- I mean, we want the rules to be good. I
think they're

6 pretty straight cut. I don't think they stray very
far.

7 They're pretty specific to what the statute says.

8 Obviously, we don't want to do this in a
vacuum, and

9 if anybody has comments on them, we can take them.
I'm going to

10 have James check into it as far as if they've all
been filed too

11 because maybe we can take a step back and make sure
everybody

12 has a chance to comment. Obviously, we want good
rules for the

13 system, and the more input we can get, the better.

are on the 14 CHAIRMAN DAUGAARD: And the proposed rules

15 DOL website.

of the 16 SECRETARY ROBERTS: Correct. For members

In 17 audience, that's how we communicate with the public.

requirements, we put 18 addition to following the required notice

copies to all of 19 everything on our website. And we can get hard

20 you folks on the Council just to make sure.

party describe 21 CHAIRMAN DAUGAARD: Can an interested

the DOL 22 to an RSS feed, that if you publish something new on

is there? 23 website, they'll automatically get notice something

24 Do we have that facility?

don't know 25 Ms. Dovry: I can check into that. I
□

41

1 offhand, but I can find out.

good. 2 CHAIRMAN DAUGAARD: I think that would be

people in Rapid 3 Because there's certainly a small circle, those

this room 4 City, those people in Sioux Falls, these people in

5 that would be interested if something comes up like
that. And
6 maybe it could be specific to worker's Comp and a
different RSS
7 feed for different aspects of the web page.

8 But I would think that would be a very
good way to
9 make sure the community has an opportunity to weigh
in on things
10 like that. Does that make sense to the Council?

11 All right. If you'd look into that, that
would be
12 great. Appreciate it.

13 SECRETARY ROBERTS: We will.

14 CHAIRMAN DAUGAARD: Fern, again, we'll get
an
15 investigation into the posting requirements and see
if they were
16 met properly, and we'll look at it the next meeting
as well.

17 And now thank you for allowing me to
interrupt. Now
18 your second point.

19 MS. JOHNSON: Okay. On the second issue,
to reinforce
20 the AMA guidelines under 62-1-1.3 the last time that
was amended
21 was in '93, which is the Fourth Edition.

22 I will be proposing for consideration my
23 recommendation of the Council to move that up to --
up to
24 standards to the Fifth Edition, and that's the 2000

year, for

25 the 2000 year.

□

42

1 CHAIRMAN DAUGAARD: And that was --

2 MS. JOHNSON: (Inaudible).

3 CHAIRMAN DAUGAARD: We're having a hard
time hearing

4 you, and the court reporter cannot transcribe.
Maybe we can

5 turn the volume up on our end, if you'll stand by
just a minute,

6 Fern. It's something we'll have to do.

7 (Discussion off the record)

8 CHAIRMAN DAUGAARD: All right. Let's try
it again.

9 Fern, thank you for your patience.

10 MS. JOHNSON: You bet.

11 CHAIRMAN DAUGAARD: Would you restate that
second --

12 well, let me feed -- reflect back to you I believe
what you were

13 saying is you would like the Council to examine
moving the --

14 moving to the Sixth Edition of the AMA -- and I'm
not sure what

15 the lingo is for that -- help me out, James. It's
the guides

16 to --

not the 17 MS. JOHNSON: No. It's the Fifth Edition,
18 Sixth.

And we are 19 CHAIRMAN DAUGAARD: Move to the Fifth.
20 behind one addition, I'm aware, and we've even
looked at that at
21 another meeting. We're using the Fourth Edition
now.

22 MR. MARSH: Yes.

considered at an 23 CHAIRMAN DAUGAARD: And the Council
24 earlier meeting whether we should move to the Fifth,
and we
25 elected not to move to the Fifth.

□

43

that 1 And, Fern, you are asking us to reconsider
2 decision. Do I understand that correctly?

way back in 3 MS. JOHNSON: Yes. That was considered

proposal, but the 4 2000, I believe. And the Senate passed that

would like 5 House killed it to move it to the Fifth Edition. I

Edition and not 6 to present that again for proposal for the Fifth

7 the Sixth Edition.

44

1 term limits -- to be a three-year term limit,
basically from
2 what the statute exactly says. It doesn't say
renewed. It
3 says, New appointments. However, what has happened
-- it
4 appears what has happened is that Council members
that are on
5 the Council have been there for many years, as much
as 10 years.
6 So my purpose of this is to either amend
the law, to
7 clarify it that the term limit is three years, not
to run in
8 perpetuity but to be run three years. There's a lot
of
9 interested parties out there, employers and
employees, that
10 would be very willing to participate and be on the
workers'
11 Compensation Advisory Council.
12 And they have good ideas, and I think they
should be
13 given the opportunity and the three-year fulfillment
of the term
14 according to what the statute requires, no more than
three on
15 each appointment.
16 So that would be a proposal to either
clarify the law

perpetuity, 17 in more specificity so it's not running in
more 18 three-year limit just like the law says and make it
reflecting 19 clarified.
20 CHAIRMAN DAUGAARD: All right. So, again,
proposal that 21 back, the question is would the Council look at a
three-year 22 would amend the current statute to clarify that a
serve after 23 term is the maximum term that a Council member may
service to the 24 which they must be removed or terminate their
25 Council and be replaced by someone else.

□

45

1 Is that a correct restatement?
2 MS. JOHNSON: Yes.
3 CHAIRMAN DAUGAARD: Yes. All right.
4 SECRETARY ROBERTS: Mr. Chairman, I would
say it's not 5 really a clarification. I think we tried to clarify
it this 6 last year. It would be a change in law and/or
policy. 7
the end of a 8 Because right now anybody can request at

8 three-year appointment -- anybody in South Dakota
could request,
9 send a letter to the Governor to request to be put
on this
10 Council, but ultimately then it's the Governor's
decision who he
11 chooses to put on.
12 And he chose to reappoint members this
last time
13 because obviously we have a lot of time and talent
invested --
14 or time invested in the folks around the table.
They have a lot
15 of information from being on the Council. And he
felt that it
16 was appropriate to reappoint those individuals and
just let them
17 continue on with their work. So ultimately it's the
Governor's
18 decision.
19 A change in law would, you know, make
everybody have
20 to go out -- I would, you know, not really go for
the policy. I
21 don't have a problem with discussing it, but I don't
know that
22 we really need it on the agenda to discuss further
at the next
23 meeting.
24 CHAIRMAN DAUGAARD: Any other Council
members want to
25 weigh in on this?

□

46

1 I agree that it would be a change in the
law. But
2 many of our other issues that we're considering
would involve a
3 change in the law. So the issue is whether or not
we want to
4 reconsider -- not reconsider. Consider that aspect
of the
5 workers' Comp law, which really doesn't go to the
substance of
6 the workers' Comp law but the substance of the
makeup of this
7 committee. So do we want to look at that as an
issue?

8 I don't have any objection to looking at
it. My term
9 is perpetual just because of the position I hold.

10 SECRETARY ROBERTS: As is ours.

11 CHAIRMAN DAUGAARD: Yeah. As is the
cabinet members.

12 MS. JOHNSON: May I, Mr. Chair?

13 CHAIRMAN DAUGAARD: Yes. Go ahead, Fern.

14 MS. JOHNSON: Well, I respectfully
disagree with

15 Secretary Roberts. The law is very clear it states
the members
16 shall serve until a new appointment is made by the
Government.

17 However, prior to that it says the length of the
terms is three

Members shall 18 years with no more than three expiring each year.

19 serve until a new appointment.

New means 20 A new appointment does not mean renewed.

appointment. 21 new. So that would mean that it is a new

of 22 Now I have seen in the paper there's a lot

committees under the 23 advertising for advisory councils and other

advertised. 24 Division of Insurance, other ones that are
I have

given the 25 never once seen an advertisement for people to be
□

47

petition to the 1 opportunity, interested parties, to submit a

them that 2 Government or Governor or however it's presented to

people that 3 they would like to serve. I know there are some

Council, 4 have presented an interest in being appointed to the

5 and they have never been considered.

already 6 So I respectfully disagree that the law is

new 7 very clear. So it's a matter of clarification that

8 appointments shall be made every three years and
they are not to
9 run in perpetuity. And I guess if the Council wants
to bypass
10 it, it is my intent to propose legislation to
clarify that they
11 are not running in perpetuity.
12 CHAIRMAN DAUGAARD: well, what are the
wishes of
13 Council on this?
14 MR. LIEN: Mr. Chair, Chris Lien speaking
to those who
15 are on the DDN. For me it was the original intent
of the
16 legislature to set up the terms and what their
desires were for
17 us, how we were to function and how long we're
supposed to
18 function as a Council.
19 I'm happy to discuss it, but it's
ultimately up to the
20 legislature to make that determination. So I don't
want to
21 waste time working through the process. If it was
their purview
22 to set our term limits, maybe it should go to them
to determine
23 what it is without us making the recommendation.
Because
24 you're kind of putting the cat in front of the mouse
in that
25 sense as well.

□

48

discuss it.

1 That's just my weigh-in. I'm happy to

and the

2 From my position it's totally up to the legislature

at his

3 Governor's purview. And I've always viewed I serve

4 pleasure, and I'll leave if he asks.

other Council

5 CHAIRMAN DAUGAARD: Other thoughts from

6 members.

7 MR. STAINBROOK: Very well said. I agree.

that this was

8 MR. AYLWARD: Mr. Chairman, I'm not sure

I've been on it

9 ever intended to be term limits of three years.

was going to

10 since it started, and I don't remember it being it

don't have

11 be a three-year term limit. If that's the wishes, I

12 any problem with that.

13 MR. LIEN: Agree.

review that

14 MR. AYLWARD: So, you know, if we want to

you want a

15 or send it to the legislature and let them say if

is a

16 term limit, that's fine with me too. However, there

Federation

17 provision in there that says the South Dakota State

to the
retained.
guess on
that
when I first
naive about
serving on the
□

18 of Labor gets to recommend two of the employee spots
19 Governor. So I would like to make sure that that's
20 CHAIRMAN DAUGAARD: Any other comments? I
21 the substance of the matter, some of my thinking is
22 experience is helpful on this committee. I know
23 came in I was and some would say remain very much
24 the workers' Comp laws.
25 But I do feel I've gained a lot from

49

and issues is
seems to me
people come
Council all
off, they
same time.
designed the

1 Council, and my ability to understand the language
2 much higher now than it was in the first day. It
3 the three-year business is more to ensure that as
4 off that there's not a wholesale replacement of the
5 at once, that people serve three years and they want
6 can get off but not everybody's going off at the
7 I think that would be my guess why it's

8 way it is. And typically when you have set terms
they expire in
9 a staggered fashion, again so you retain some
experience as
10 people leave. And I think it's arguable whether one
should
11 interpret it as being term limits or simply a
staggering system.

12 So, again, I think it's fine to discuss
it. I don't
13 know what we would do. I suppose we would endorse
-- if Fern
14 wants to put together a specific proposal to offer
to the
15 legislature, we could consider whether or not we'd
endorse it.
16 Again, it's sort of like putting the mouse in front
of the cat.
17 As much as the term of every member on the Council
will be
18 impacted, sort of like legislators voting on their
own term
19 limits. I guess they do that so I guess we could do
that as
20 well.

21 Shall we put it on the agenda for
discussion at the
22 next meeting?

23 MR. AYLWARD: Sure.

24 CHAIRMAN DAUGAARD: Is that agreeable?
what's the
25 wishes?
□

50

1 Jeff, do you prefer not?

2 MR. HAASE: well, I think we have more
important
3 things to work with.

4 CHAIRMAN DAUGAARD: Okay. Any other
thoughts?

5 MR. KINSMAN: If she wants to submit a
legislative
6 proposal, I don't see any reason why we couldn't
look at it.

7 But until we see what specifically is being offered,
I don't
8 think that we have a lot to discuss.

9 CHAIRMAN DAUGAARD: Any other thoughts?
Fern, do you
10 want to bring forth a specific proposal and then
we'll look at
11 it?

12 MS. JOHNSON: It will be very, very
narrow.

13 CHAIRMAN DAUGAARD: Okay. Let's do that.
Fern, if
14 you get it to the Department of Labor in time to be
placed on
15 the agenda for the next meeting, then we'll have it
on the
16 agenda.

17 MS. JOHNSON: I can do that.

18 CHAIRMAN DAUGAARD: All right. Is that

agreeable to

19 the Council?

20 MR. LIEN: Yes.

issue.

21 CHAIRMAN DAUGAARD: All right. Your last

for the

22 MS. JOHNSON: The last two are first is

Rules

23 Council to take into consideration Administrative

deadlines

24 regarding the enforcement of the time frames and the

Labor for their
□

25 when cases are brought before the Department of

51

1 adjudication.

legislative

2 You know, as I testified before the

takes an average

3 commission -- or the legislative committees, it

through the

4 of five and a half years for cases just to get

level.

5 administrative process. And that's at the lower

employers as

6 In the meantime that's a cost leader to

injured

7 paying for insurance premiums. It's a hardship to

from this is

8 workers. The only benefactors that are benefiting

they're 9 the legal council for the insurance company because
up to 10 dragging these cases out five and a half years clear
11 and 15 years.
level is 12 So my proposal is is at the administrative
guidelines on 13 under the scheduling orders to have some strict
the insurer 14 both parties, the claimant's attorney and as well as
scheduling 15 or the employers' attorney to comply with those
they're not 16 orders so that medical benefits are being paid or so
17 being delayed.
would help 18 This would just -- basically, you know, it
19 with the costs of insurance rates, period.
care 20 The second and final of that is manage
to injured 21 interference. The providers that are being assigned
doctors as 22 workers, the manage care providers, this comes from
complicated, 23 well as injured workers and this is the second most
their manage 24 most crucial complaint I get from workers is from
physician's care 25 care providers. They're interfering with the
□

52

1 with the treatment of their work-related injuries.
2 with that I'm going to end it with a
statement from 3 one of the injured workers.

4 He asked me to read this, and I can
provide this to 5 you by forwarding it to you by e-mail. He has not
signed it. 6 He just got out of surgery, and he had a doctor's
appointment 7 today. And if I could read that, Mr. Chair, and
that would 8 conclude the rest of my submission today.

9 CHAIRMAN DAUGAARD: Let's back up to that
-- your 10 request that Administrative Rules be drafted to
establish some 11 guidelines for enforcing time frames and deadlines
when cases 12 are brought.

13 I would ask the Department, don't the
administrative 14 law judges have the authority to establish time
frames and to 15 require compliance with them at the peril of those
parties who 16 don't comply?

17 MR. MARSH: Yes, they do. Our
Administrative Rules 18 call for scheduling orders to be issued which lay
out when

19 discovery has to be completed, when a prehearing
conference has
20 to be conducted, and at the prehearing conference
itself we set
21 a hearing date which we require the parties to
attend, identify
22 witnesses, complete depositions, identify experts,
all of those
23 things.

24 CHAIRMAN DAUGAARD: And where is this five
and a half
25 year length of time coming from?

□

53

1 SECRETARY ROBERTS: That's what we wanted
to know too.

2 CHAIRMAN DAUGAARD: Fern, where are you
getting that
3 five and a half year average from? Where is that
number?

4 MS. JOHNSON: Mr. Chair, I have compiled
all the cases
5 that are on the internet from what I've been able to
have access
6 to. And if you take the date of the injury to the
date that it
7 was a hearing to the date of the decision that was
made, you
8 take all of those cases that run anywhere from nine
months to up

9 to 10, 15 years, that averages out to five and a
half years.

10 And I provided that to the legislators of
that

11 committee that I just mentioned, and this comports
with the NCCI

12 report where most of the Department of Labor, the
individuals

13 there, Mr. Marsh and the Secretary were there, and
some of the

14 union officials were there as well, that it comports
with the

15 NCCI report that average claims take an average of
five and a

16 half years. It's documented.

17 If you want that, I surely can provide
that to you. I

18 can also provide you the spreadsheets that gives you
the

19 accumulation of the time frame.

20 Now in reference to what Mr. Marsh is
saying, yes, the

21 judges do, they can control. But that's the
problem. They're

22 not controlling it. There's a lack of enforcement
for it. And

23 this is from both sides of the party, from the
Plaintiff's

24 attorney as well as the attorney for the insurance
company.

25 It's delayed, delayed five and a half years. It's
unacceptable.

□

54

1 So what I would propose is some stricter
guidelines
2 that the judges that make both parties adhere to
this because
3 this is a problem. It's a bleeding cost to insurers
-- for the
4 employers. It's a hardship for workers who want
their claim,
5 and it's a deviation from the intent and purpose of
a prompt
6 adjudication.

7 If it takes five and a half years, that's
just
8 absolutely unacceptable. Somewhere along the line
these judges
9 are going to have to put their foot down and say
this is it.
10 You've got to comply with it. If you don't comply
with it, well
11 you don't get your evidence in.

12 SECRETARY ROBERTS: Mr. Chairman, I need
to dispute
13 that we're dragging our feet and not trying to take
claims. We
14 deal with thousands and thousands of employees every
year, and
15 the whole goal of the Department is to assist those
claims to
16 get resolved. They're not dragging their feet.
They're not
17 trying to stop anything.

18 I just need to on behalf of my staff make
that
19 statement here. I can't just sit here and listen to
this. If
20 you guys would like for us as a Council to come back
next time
21 and just explain to you our process, we would be
happy to
22 explain that to you, maybe talk about some of the
delays.
23 I have no idea where five and a half years
came from.
24 I don't have no idea what cases she's talking to.
Is she
25 talking about a Supreme Court case, which is
possibly .1 percent
□

55

1 of every case that we see, if possibly those average
out to five
2 and a half years.
3 I just don't have any facts in front of me
to dispute
4 that, but we think it sounds pretty extravagant.
And we have
5 NCCI here. I never saw that in your report, Mike,
but --
6 CHAIRMAN DAUGAARD: would you come forward
and come to
7 the -- I guess the hanging mic. they can hear you
maybe.

8 Identify yourself, please.

Chairman, 9 MR. TAYLOR: Mike Taylor, with NCCI. Mr.

10 members of the committee, I'm not sure what report
that Fern was

11 referring to, but, Fern, if you let me know what it
is, I'll be

12 glad to go check it back out. We've done some
reports on what

13 average closure is at 24 months and 16 months and 18
months and

14 all of that. So I'm not sure exactly what report
you're

15 referring to, but I'll be glad to research it.

16 CHAIRMAN DAUGAARD: I wonder if --
essentially the

17 concern is timeliness of claim handling. And it
seems to me it

18 might be worthwhile for the Council to hear an
overview of maybe

19 the last year or two or three of how many claims
were filed, how

20 many were disposed of within six months, how many
were disposed

21 of within six months to a year.

22 You know, maybe break out some six-month
time brackets

23 and get a sense of how long it took the bulk of the
claims to be

24 handled. And those that did take longer maybe we
can figure out

25 why that was before we start drafting Administrative
Rules that

□

56

1 address a problem that we aren't sure exists.

2 Is that agreeable to the Council to get
some sort of

3 report from the Department like that?

4 SECRETARY ROBERTS: We'd be happy to
prepare that.

5 CHAIRMAN DAUGAARD: Randy, would that be
okay with you

6 or Paul?

7 MR. AYLWARD: Yes.

8 MR. STAINBROOK: I'd like to maybe see all
of the

9 results instead of just select results.

10 CHAIRMAN DAUGAARD: Yeah. The whole --
all claims

11 filed.

12 MR. STAINBROOK: When you say let's just
take select

13 results that leaves open a lot of scrutiny by people
so I think

14 you ought to include all of them.

15 CHAIRMAN DAUGAARD: Okay.

16 MR. LIEN: Mr. Chair, as a suggestion
maybe in the

17 interest of time if we do get those result in a
report form that

18 we can read beforehand, we won't feel the need to
Page 82

spend a lot of

next one if

based on the

me.

19 time taking away time from public testimony at the
20 we can have them in advance and address questions
21 written document. That would be of great help to

22 MR. ANDERSON: Mr. Chair.

23 CHAIRMAN DAUGAARD: Yes, Mark.

Falls. I think

24 MR. ANDERSON: This is Mark in Sioux

follow up on
□

25 if you look at the NCCI report maybe to kind of

57

in their

1 Fern's comments, I think she's talking about page 55

2 April 23, 2008 report.

are closed

3 It talks a little bit about when claims

4 just in that graph. So maybe that will be helpful.

was thinking

5 MR. TAYLOR: Thank you. That's where I

want to go back

6 it might be, but I wasn't sure what it said so I

committee as soon

7 and look at it, and I'll provide that to the

8 as I can get it off the internet.

mind

9 SECRETARY ROBERTS: If, Mike, you wouldn't

our report 10 providing that to us, and we'll just write that into

11 to you and explain that also.

12 MR. TAYLOR: Fine.

13 CHAIRMAN DAUGAARD: Thank you, Mark.

14 MR. ANDERSON: Thank you.

good on that? 15 CHAIRMAN DAUGAARD: All right. Are we

up was the 16 And then, now the last issue, Fern, that you brought

employees are -- 17 issue of concern regarding where managed care

of an 18 complained to have interfered with the medical care

19 injured worker.

20 Did I understand that right?

21 MS. JOHNSON: Yes, you did, Mr. Chair.

you would 22 CHAIRMAN DAUGAARD: And what is it that

23 propose we look at as a solution to that?

yesterday so -- 24 MS. JOHNSON: well, I just got this

this, and 25 and I know that there's been many complaints about
□

58

meeting is 1 it's just a matter since the hearing is -- or the

with some 2 today, leave this for next week, and I can come up
3 kind of proposals.

some ideas they 4 I've asked some of the injured workers
5 would have as far as how this could be remedied.
Some of them

6 don't know. This guy here has not answered back
because he's 7 just got done with his surgery and thought he was a
candidate.

8 But we can kind of leave that open for the next
meeting, and I 9 can and have a proposal addressing this problem.

10 CHAIRMAN DAUGAARD: All right. Well,
let's leave that 11 until the next meeting then, and if you want to
bring something

12 additional on that matter, then we'll be open to
hearing that.

13 Is that agreeable?

14 MS. JOHNSON: I'd like -- I would, but I
would like to 15 read this letter first so to give you some food for
thought

16 what's coming up at the next meeting.

17 CHAIRMAN DAUGAARD: All right. Before you
do that, is 18 there any other member who wants to offer public
testimony

19 today? Any member of the audience that wants to
offer public

20 testimony today?

21 All right. Then we'll conclude with Fern.
Go ahead.
22 MS. JOHNSON: Thank you, Mr. Chair. This
is to me.
23 "Fern: I am unable to attend the Advisory
Council
24 meeting as I have planned. Would you please read my
statement
25 for me. Thanks. Bill Bilger.
□

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1 "May 26, 2008. I am unable to attend the
Advisory
2 Council meeting due to a postsurgery doctor's
appointment. In
3 my place I am requesting and authorizing the
president of the
4 Coalition, Fern Johnson, to present my statement on
my behalf.
5 Thank you for hearing my statement.
6 My name is William Bilger. I am a 65 year
old widowed
7 male. I was injured in August of 1995. For the
past 12 years I
8 have learned to deal with my impairment and pain.
In July of
9 2007 I received a call from a nurse who said she was
assigned to
10 me by the insurance company to help me with any
medical problems
11 I might have. She asked me to meet her at a

restaurant in Rapid

12 City. When I met with her she said she had received
a lot of
13 old cases such as mine. She informed me that she
did not
14 approve of the treatment I was receiving. She also
said it was
15 her job to get me off the insurance company rolls.
And I should
16 be on drug medication to control my pain. If I
failed to follow
17 her directions, she would terminate all medical
benefits for
18 lack of compliance.

19 "I made a complaint to the insurance
company the
20 following day. I told them of her physical abuse,
verbal abuse,
21 unprofessional conduct, and asked for her to be
replaced as my
22 case manager. I was told they would look into it.
23 "Two or three months went by, and I made a
total of
24 three complaints with no results. I did file a
written
25 complaint with the nurse's supervisor requesting a
new case
□

60

1 manager and was denied. I was told by the
supervisor that the

particular 2 insurance company had specifically requested that
3 person to handle my case.
advocates? 4 "I asked her as a nurse were they patient
5 Her answer to my question was we are paid by the
insurance 6 company. I asked the same question again and was
7 told, no, we
8 are advocates of the truth.
live with 9 "The truth or the bottom line is I have to
10 my accident over and over again since last July. It
has caused 11 me a great deal of stress, additional pain, and the
12 cost of now
13 an attorney to represent me.
14 "Thank you. William Bilger, Rapid City,
15 South Dakota."
the 16 So with that, I thank you for giving me
17 opportunity to present these, and I'll get what I
can for the 18 next meeting. Thank you, Mr. Chair.
19 CHAIRMAN DAUGAARD: All right. Any
questions of the 20 Council -- or by the Council of Ms. Johnson?
21 Okay. Thank you, Fern. Thank you very
much.
we set our 22 That concludes the public hearing. Before
23 next meeting date, are there any other matters that

the Council

22 wants to discuss?

23 All right. Pam.

24
get the file

SECRETARY ROBERTS: Mr. Chairman, I did

25
know, I have a
□

on our Administrative Rules, and just to let you

61

all of you

1 Sworn Affidavit which is signed and notarized that

of April the

2 can look at right here which says that on the 29th

on file of

3 rules lists were sent to -- our lists that we have

4 about 300 people, and that happened.

News, the

5 I have the fax that went to the American

asking for

6 Rapid City Journal, and the Argus Leader on April 30

also have

7 our rules to be submitted in those three papers. I

were in

8 the paid bills and a copy of the advertisements that

requirements

9 each of those three papers with all of the notice

afterwards if

10 right here. You guys can come up and look at this

11 you'd like.

12 And I believe that's it. Just that -- and
Page 89

here are

13 Department of

the -- here's the notice that was posted up in the

14 in the

Labor according to time frames that we posted it up

15 the meeting

Department of Labor. And also then the minutes of

16 website.

which were also posted. All of it is also on our

17 to make sure

so I feel very comfortable now. I wanted

18 now I have

that was followed. I was comfortable it was. But

19 you members

all of the factual information right here for all of

20

that want to look at it. Thank you.

21 would like the

CHAIRMAN DAUGAARD: Thank you. I still

22 establishing an RSS

Department to look at the possibility of

23 parties. Because

feed that could be subscribed to by interested

24 the paper.

the reality of today's world is that I don't look at

25 find those
□

You don't look at the paper every day. And we don't

62

1

notices.

2

any more, and

It's not our main source of information

I think, is
methodology, and
Department
of help to
in workers'
should promote.

3 those notices are an acronym. And so what we need,
4 to acknowledge that modern times require modern
5 RSS feed is inexpensive and wouldn't cost the
6 anything to maintain. Yet it would be a real source
7 the interested public for those who are interested
8 Comp issues. And so I think it's something we

information
individuals
it's here for

9 SECRETARY ROBERTS: We'll come back with
10 on that. And also I have now the list of the 300
11 that had asked for copies of all of our stuff, and
12 you to look at too.

who are
of Labor
you send out

13 MR. KINSMAN: So you mailed out the 300?
14 SECRETARY ROBERTS: To the 300.
15 MR. KINSMAN: So you have a list of people
16 interested in your rules so whenever the Department
17 issues rules with regard to that particular subject
18 a copy of the notice and have the proposed rule?

19 SECRETARY ROBERTS: Correct.

20 CHAIRMAN DAUGAARD: Is Fern on that?

21 SECRETARY ROBERTS: Yeah. She is.

22 CHAIRMAN DAUGAARD: All right.

Box 3002. 23 SECRETARY ROBERTS: It went to Post Office
Is that 24 CHAIRMAN DAUGAARD: Post Office Box 3002.
go. 25 your address, Fern? You must be on mute. There you
□

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out? 1 MS. JOHNSON: That is. When was that sent
2 SECRETARY ROBERTS: On April 28.
3 MS. JOHNSON: When was that sent out?
4 CHAIRMAN DAUGAARD: April 28.
5 MS. JOHNSON: I did not receive that.
But, however, I 6 asked Mr. Marsh if he would e-mail that to me, and I
didn't get 7 an e-mail back. It would have been just as
convenient for him 8 to e-mail it to me. But I did not receive that in
the mail. 9 CHAIRMAN DAUGAARD: well, we're going to
try and 10 improve the communication medium. It seems to me if
the 11 Department is spending the time and effort to use
post office 12 mail, it would be a lot more efficient and probably
more helpful 13 to you to use an electronic means and we'll see if

we can move

14 to that.

15 MR. AYLWARD: Mr. Chairman, are the
Advisory Council

16 members --

17 SECRETARY ROBERTS: They are not on here,
and I just

18 said they should absolutely be on here.

19 MR. AYLWARD: Because I was going to say I
didn't get

20 the rules either.

21 CHAIRMAN DAUGAARD: Yeah. I didn't
either.

22 SECRETARY ROBERTS: And that was noted,
and we'll note

23 it again too. I think this is the list that
officially has --

24 and we should make sure that you guys get it
obviously. Sorry

25 about that. I apologize.

□

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1 MR. LIEN: Do you have e-mail lists on
that as well so

2 the feed would be easy to just transfer over with
those

3 addresses as well?

4 SECRETARY ROBERTS: We don't yet, but we
will. Okay.

5 CHAIRMAN DAUGAARD: All right. Anything
else for the

6 good of the Council?

7 All right. Our next meeting date is
scheduled for

8 August 21, and I'm just going to look at my
calendar. I show

9 that at 1 p.m. I might have just plugged that in.
What's the

10 preference of the Council? Is a 1 p.m. meeting a
good time to

11 have it? I know some of you drive further than
others. Is

12 1 o'clock good?

13 MR. LIEN: Yes.

14 CHAIRMAN DAUGAARD: All right. Well, the
object then

15 would be prior to August 21 to try and flesh out as
many of

16 these issues as possible and get them out to us so
that we can

17 look at it before we come to the meeting.

18 And Chris pointed out some of the things
we can digest

19 ourselves outside the group setting, and we can make
better use

20 of our time when we are together.

21 Other than that, I don't have anything
further except

22 to thank you all for your service and your time.
Some of the

23 issues are difficult to deal with, and I appreciate
the time you

24 spend on them.

25 MS. JOHNSON: Mr. Chair.

□

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1 CHAIRMAN DAUGAARD: Yes.

2 MS. JOHNSON: We have another member here
that would
3 like to make a short, brief presentation if she
could.

4 MS. JOHNSON: I have a question.

5 CHAIRMAN DAUGAARD: Yes. Unless the
Council objects.

6 We have time, do we not?

7 Go ahead.

8 MS. CHAMBERLAIN: My name is Cheryl
Chamberlain. And

9 I would like to ask Mr. Marsh at his presentation in
Sioux Falls

10 for the work Comp seminar he talked about
legislative changes

11 and willful misconduct. Is the Council going to
bring forth

12 another rule or law pertaining to that that was
discussed last

13 year? And are you going to do it at the 21st
meeting or when?

14 CHAIRMAN DAUGAARD: James, do you want to
respond?

15 MR. MARSH: well, I guess as far as my own
discussion

other than what

16 is concerned we don't intend to propose anything
17 the Council brings up in August.

that?

18 CHAIRMAN DAUGAARD: Cheryl, could you hear

19 MS. CHAMBERLAIN: Excuse me?

20 CHAIRMAN DAUGAARD: Speak up, James.

present to the

21 MR. MARSH: Yeah. We don't intend to

if you're

22 Council anything by way of legislative proposal. So
23 asking as far as the Department's concerned.

seminar

24 MS. CHAMBERLAIN: Okay. According to the

going to
□

25 paperwork that I printed out, it said that you were

66

discuss new

1 provide an overview of any legislative changes and

misconduct and

2 case law, that you would also speak on willful

3 how it plays out in the work Comp system.

would be

4 So I guess I read that to assume that you

same willful

5 presenting new legislation this year concerning the

6 misconduct situation that we talked about last year.

7 MR. MARSH: No. What we typically do in

the seminars

8 session, you

9 the meeting

10 changes. And

11 because

12 we're

13 There isn't

14 any agenda there.

15 the seminar,

16 any law

17 just asking.

18 So thank you.

19 question.

20 Anything else?

21 All right. Then again thank you for your

22 I'll declare the meeting adjourned.

23 (Discussion off the record)

24 CHAIRMAN DAUGAARD: Let's reconvene. It

25 seems to me
the benefit
□

is to go through what was done in the preceding

know, what new laws so that those folks who attend

can become aware of them in time for the July 1

then misconduct is simply a topic that we brought up

there had been a number of cases on this lately, and

trying to identify the group involved. That's all.

any agenda there.

MS. CHAMBERLAIN: Okay. I did not attend

and I just was wondering if there was going to be

proposed on it or administrative changes so I was

So thank you.

CHAIRMAN DAUGAARD: Thank you for your

Anything else?

All right. Then again thank you for your

I'll declare the meeting adjourned.

(Discussion off the record)

CHAIRMAN DAUGAARD: Let's reconvene. It

seems to me
the benefit
□
that we should try to make use of the DDN to achieve

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1 of travel avoidance if we can. If we move -- my
opinion is --
2 and I'll express my opinion. My opinion is if we
move, say, to
3 Sioux Falls, people like Jeff that have to travel
clear across
4 the state, it's -- it becomes problematic because we
know he's
5 coming to the meeting. Whereas the public we're not
sure who's
6 going to come.

7 And wherever we hold the meeting there's
going to be
8 people from other parts of the state that are going
to have to
9 travel. To have it in a central location seems to
me makes the
10 most sense and then have having a DDN connection
option for
11 those who are more remote and can't afford or the
time or
12 expense to travel.

13 I mean, it's not ideal. Obviously we had
some
14 communication problems. But I think the essence of
what we
15 needed we were able to get in the end.

16 And so unless there's some objection, I
propose that

17 we continue to hold our meetings here. It's
centrally located
18 for those who do want to be physically present no
matter where
19 they're from in South Dakota. It's kind of the most
central
20 location. And if it doesn't work, they can connect
by DDN. And
21 it's not ideal, but it's pretty good.
22 Is that agreeable to the Council? Is that
all right
23 with everyone?
24 And thank you for reminding me, Randy. I
apologize
25 for dropping that. All right. Well, then let's
proceed on that
□

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1 basis.
2 Thanks again, everyone.
3 (The proceedings concluded at 2:45 p.m.)
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1 STATE OF SOUTH DAKOTA)

2) :SS

CERTIFICATE

3 COUNTY OF HUGHES)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered

6 Professional Reporter, Certified Realtime Reporter

and Notary

7 Public in and for the State of South Dakota:

8
duly-appointed

DO HEREBY CERTIFY that as the

9 shorthand reporter, I took in shorthand the
proceedings had in

10 the above-entitled matter on the 27th day of May,
2008, and that

11 the attached is a true and correct transcription of
the

12 proceedings so taken.

13 Dated at Pierre, South Dakota this 10th
day of

14 June, 2008.

15

16

17

18

Cheri McComsey Wittler,
Notary Public and
Registered Professional

Reporter

19

Certified Realtime

Reporter

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