

Meeting Minutes
WORKERS' COMPENSATION ADVISORY COUNCIL

Missouri River Plaza, Sharpe Conference Room
123 W. Missouri Ave., Pierre, SD
July 26, 2018 1:30 p.m. CDT

Chairman Matt Michels called the meeting to order at 1:30 p.m. CDT, and roll call was taken by Patricia Saukel. A quorum was met.

Members Present: Chairman Matt Michels, Secretary Marcia Hultman, Russ Hohn, Randy Stainbrook, Jean Murphy, Kory Rawstern (Conference Call Line), and Daniel Tribby

Members Absent: Guy Bender and Pete Bullene

Others Present: Deputy Secretary Tom Hart, James Marsh (Conference Call Line), Deb Mortenson, Doug Abraham, Lynn Job, Carla Townsend (Conference Call Line), Susan Schulte (Conference Call Line), Amber Mulder, Chris Specht, Larry Klaahsen, Brad Wilson, Brian Zielinski, Adriane Weippert, Sue Simons, and Jennifer Andrisen Selzler

DDN locations: Aberdeen, Pierre, Rapid City, Sioux Falls and Watertown

Chairman Michels asked for a motion to approve the minutes of the October 30, 2017 meeting. Russ Hohn moved to approve. Randy Stainbrook seconded. **MOTION CARRIED.**

Deputy Secretary Tom Hart thanked James Marsh for his service and knowledge. Marsh retired in November 2017. Hart also introduced Patricia Saukel as the new Labor Program Assistant.

Hart provided an update on the State Workers' Compensation system. The system is functioning well and is competitive with the neighboring states. The average base rates for the voluntary insurance market decreased by 7 percent and the assigned risk pool decreased by 18.4 percent. This is the seventh year of decreases in the voluntary insurance market. Injury frequency continues to decrease as medical and indemnity severity increased just slightly. This leads to lower costs for businesses for workers' compensation rates and work place injuries may not be as significant as in the past.

At the October 2017 Workers' Compensation Advisory Council (WCAC) meeting, a discussion on the proposed Bad Faith legislation was brought forth by industry. It was addressed during the 2018 Legislative session and the Council did not take any action on the proposal. The legislation failed to come out of committee. HB1029 increased the self-insured fee to \$2,250 effective July 1, 2018, with no resistance from the industry. The renewal process is occurring at this time.

The Supreme Court case affecting workers' compensation this year was Lagler v. Menard. The Supreme Court ruled the lump sum payment was granted in error. Lagler v. Menard reversed the lump sum determination by the Department of Labor and the request for attorney's fees under Title 58. DLR is reviewing their current parameters in providing a lump sum payment for settlement. The Mordhorst decision, regarding insurance adjusters' review and medical opinion from a doctor when a denial is determined, was a bad faith insurance case confined to the bad faith arena. Lagler v. Menard asked for attorney fees to be granted under the unreasonableness and vexatious cause under Title 58. The third issue regarding the Supreme Court case will be

addressed by someone from the National Council of Compensation Insurance (NCCI) during the public comment period regarding the South Dakota Safety Council (SDSC) on the type of evidence or procedures required for a claimant to claim a reasonable work search under 62-4-53.

There were no further case updates, including the circuit court case constitutional challenge of SDCL 62-3-15 exempting farm and agricultural laborers from workers' compensation laws. There were no further updates on the constitutional challenge of Wheeler filed over 18 months ago. Chairman Michels asked for the procedural status of the Wheeler challenge for the next meeting.

DLR updated the medical fee schedule for workers' compensation payments and the conversion factor. The largest change was for physical and occupational therapists codes where Medicare deleted codes and replaced them with new codes at a much lower value. DLR appeared before the Interim Rules Committee and the new medical fee schedule was approved and is currently in place.

The annual report draft will be ready for discussion and approval at the next Council meeting in October when the NCCI new medical report is available.

Hart presented the South Dakota State University (SDSU) OSHA Extension report and the 2017 NCCI Medical Data Report. Carla Townsend from NCCI explained the annual workers' compensation claim data provided by NCCI to DLR. Susan Schulte, the NCCI Department of Labor Relations Executive, gave an overview of the data in the report and presented the 2017 Medical Data Report-Opioid Utilization Supplement Report.

Townsend said NCCI could get their report to DLR by the third week of September. Michels asked the Council to review the material by mid-October.

Sue Simons with Risk Administrative Services (RAS) Companies provided comments regarding the Lagler case, specifically the need for expert testimony when an individual is claiming to be permanently and totally disabled under the odd lot doctrine. Simons asked Hart to clarify the lump sum agreements. There were no other comments or public input.

The next WCAC meeting will be the second week of October 2018, with the date to be determined. The Council will receive an update on constitutional challenge of SDCL 62-3-15(2) on the Wheeler v. Cinna Bakers case and a summary of Lagler v. Menard for further discussion and public input on plaintiffs and defense. Chairman Michels' requested information on the case management after two years regarding prescription renewals. Council Member Jean Murphy will work with the SDSU pharmacy to track prescriptions.

Chairman Michels entertained a motion to adjourn. Randy Stainbrook moved to approve. Russ Hohn seconded. **MOTION CARRIED.**

Chairman Michels called the meeting adjourned at 3:28 p.m. CDT.