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**Bobby Jindal**, Governor  
**Curt Eysink**, Executive Director

## Office of Workers' Compensation Administration

### WORKERS' COMPENSATION ADVISORY COUNCIL

Meeting Minutes  
3-17-10  
9:30a.m. – 12:00p.m.  
LABI

#### Members present:

Chris Broadwater – chair  
Chuck Davoli  
Jim Patterson  
Greg Hubachek  
Ken Hawkins  
Dickie Patterson  
Cherie Pinac  
Eddie Crawford  
Troy Prevot  
Clark Cosse  
Julie Cherry  
Denis Juge

#### Members absent:

Michael Morris  
Dr. Mark Kruse  
Dr. Dan Gallagher  
Dr. Joe Laughlin  
Dr. Jim Quillin

#### OWCA Staff:

Larry White, Deputy  
Sheral Kellar, Chief Judge  
Pauline Williams, 2<sup>nd</sup> Injury Dir.  
Kaye Fournet, Fraud Mgr.  
Tina Darensbourg, Attorney  
Ingrid Johnson, Attorney  
Teresa Boeneke, Assistant

**2<sup>nd</sup> Injury Fund Proposal** – Chuck Davoli goes over changes of draft #4 – 3-16-10. Director Broadwater states that the purpose of what is trying to be accomplished to re-vamp the fund, from the administration’s perspective, it needs to be much more intentional and targeted in its approach. The specific issue being worked through is whether or not affidavits completed years after the fact, whether not that is sufficient is proving that knowledge component. The most conservative approach would be a document or form completed prior to the date of the subsequent accident, there is no question there is knowledge there. The liberal construction in order to approve knowledge is years later submitting an affidavit, saying that they knew all those years ago and intended 20 years ago to maintain that person. The concern on the back end affidavit is it’s a very broad approach to showing knowledge. On the flip side, trying to get small businesses to have a notarized affidavit prior to date of injury is unreasonable. Options: 1. Using a standard form for the affidavit, adding a fraud statement at the bottom of the form. 2. Knowledge element proven by employer.

**Public Comment -**

Gary Knoepfler, RCI – To bring the statutory language in line with the actual practice, he suggested the change on the meetings. (1373 page 3 about meetings) It is not an important issue and doesn’t have to be changed.

Terri Collins – On page 8 paragraph B refers to a form provided by the OWCA. Concern is what about the employer who doesn’t use the form, but has another form, and then what about someone who is hired before this effective date of July 1.

Jan Barber, attorney for injured workers. Questions Section C. Refers to registry maintained by the LWC, any thoughts or comments on how that would work.

Director Broadwater – The LWC already operates a system where every other employee that comes through the LWC system except workers compensation claimants, is put into a system that helps target them for re-training or other job opportunities.

Chuck Davoli – motions to approve pre-filed bill, not move yet, with an understanding that work is still being done to iron out issues.

Denis Juge – Seconds motion.

Unanimous vote . No opposition. Motion carries.

**Return to Work Fund**

Chuck Davoli - motions to table bill at the present time.

Ken Hawkins – Seconds motion.

Director Broadwater – The issue that the Council has to address, the average disability duration is 34 weeks, our system of getting people back to work does not work. From a policy perspective, this issue is important. This issue was proposed over a year ago, came to the Council, and it was tabled with an agreement the Council would work on it this year. No one came up with a solution within the year. Director Broadwater encourages the Council to find a solution, with a focus on how does this decrease our average disability duration and take people that need jobs and get them back into the workforce.

Vote taken. No opposition to table bill. Motion carries, bill is tabled.

Dickie Patterson - motions for Director to set up a sub-committee of the Council, to study the issue and report back to the Council within 120 days of today.

Eddie Crawford - Seconds motion.

Clark Cosse - Substitute motion to report back to Council by December 1, 2010 not 120 days.

Dickie Patterson – Yields to substitute motion.

No opposition to motion. Motion carries.

### **Confidentiality Provisions**

Director Broadwater goes over draft. There is more work needed on language. Bill is not filed yet.

Ken Hawkins – motions to pre-file bill but work on language.

Jim Patterson – Seconds Motion.

No opposition, motion carries.

### **SB 17 – Sen. Murray**

Frank Bruno, New Orleans attorney, representing of the NFL Union, makes his presentation for the bill.

No vote taken. The Saints, or their insurer are invited to come to the next council meeting (3-25-10) to present their side.

### **SB 42 – Murray**

Chuck Davoli - Motions to move support to approve bill as filed.

Denis Juge – Seconds motion.

Public Comment – Dale Cronin – LMA – This is something done automatically. Sees this as a clarification of what the courts are already supposed to be doing.

Jim Patterson – Substitute motion to defer one week to the next Council meeting.

Cherie Pinac – Seconds motion.

No opposition to substitute motion and bill is tabled until March 25 Council meeting.

### **Mediation**

Since the draft last week, Judge Kellar has worked on an additional draft that has not been circulated yet. There are language issues that still need to be worked on.

## **Public Comment –**

Dale Cronin, LMA, - Could the 1008 form be revised to allow for the filing of dispute for the purposes of seeking mediation as opposed to changing the jurisdictional requirements?

Robin Krumholt – Possibly can be a similar form to 1090.

Ken Hawkins motions to pre-file the bill, with an understanding that the language needs to be worked on before moving bill.

Jim Patterson – Seconds motion.

Greg Hubacheck - Opposes. Would like to have opportunity to meet with Judge Sheral Kellar and work with her on the language.

Director Broadwater – The intent would be to get an instrument that is germane to the topic and provides a vehicle for additional work to fit clearly within via an amendment to that, but not moving any bill that everybody has not agreed upon. Encourages Council to take some action today.

Chuck Davoli – abstains

No opposition. Motion carries to pre-file Judge Kellar’s version of the bill.

## **Compliance/Fraud Penalty**

Director Broadwater does not have a draft yet for consideration. The penalties calculation needs to be worked out.

Jim Patterson – motions to pre-file the bill, with an understanding to work out language.

Julie Cherry – Seconds motion.

No opposition. Motion carries.

## **HB 170 – Rep. LeBas**

Kevin Cunningham, Southern Strategy – Representative LeBas will re-draft the bill to Title 23 instead of Title 22.

Jim Patterson motions to oppose HB 170.

Chuck Davoli Seconds motion.

Denis Judge - Call to question.

No opposition. Motion carries to oppose bill.

## **HB 365 – Rep. LeBas**

Dickie Patterson motions to take no position with the understanding that any individual member whose constituency wishes to take an issue either in support or opposition to that certainly can do so.

Chuck Davoli – Seconds motion.

No opposition. Motion carries.

Public Comment –

Dale Cronin – LMA – Would adding an 18<sup>th</sup> member to the Council cause a problem? Questions what are the tie breaking mechanisms in the Council.

Director Broadwater – Under the current structure, the Director votes when there is a tie.

Tom Spradley – This bill calls for an independent pharmacist.

## **Other Business**

Chuck Davoli – Discusses proposed legislation as disincentive to employers hiring undocumented and/or illegal workers.

Clark Cosse – Motions to table for now but with understanding to work on language.

Troy Prevot – Seconds motion.

Ken Hawkins, Julie Cherry and Chuck Davoli – opposes to table bill.

Director Broadwater – Motions to get sub-committee set up to report back to the Council by December 1, 2010.

Dickie Patterson – Seconds motion.

## **Public Comment –**

Heather Doss – Small business owner – Lafayette - medical staffing and CPR training company. There are competitors in her market who are treating their nurses as independent contractors as imposed to employees. There is an unfair advantage with independent contractor companies, as they don't have the payroll overhead as her company has, nor do they have the unemployment claims that their business has. It is a workers compensation issue, an unemployment issue, and a professional liability issue. These independent contractors are operating without workers compensation, unemployment insurance and without professional liability, which is not being covered by the hospital until there is a claim by the nurse on a workers compensation issue. Her business is at risk, she is losing nurses and clients. She is in talks now with a legislator to specifically define healthcare staffing for companies in Louisiana to treat their workers as employees.

Clark Cosse – motions to adjourn.

Dickie Patterson – Seconds motion.

## **Adjourned**

