

WORKERS' COMPENSATION
ADVISORY COUNCIL MEETING 2-25-16

Members Present:

Sheral Kellar (Chair)
Chuck Davoli
Denis Juge
Clark Cossé, III
Michael Morris
Joe Shine
Julie Cherry
Troy Prevot
Mark Kruse
Ray Peters
Dr. Dan Gallagher
Joseph Jolissaint

Members Absent:

Dr. Jim Quillen
Bob Israel
Greg Hubachek
Eddie Crawford

MINUTES

- I. Call to Order at 9:35am
- II. Roll Call
 - Dr. Hank Eiserloh resigned
- III. Status of the 1002 Process in light of Arrant v. Acree, et al.
 - Case Opinion included in packet
 - Judge's rule can't supersede a statute
 - No longer granting exception of prescription is appeal is more than 15 days due to statute having 1-3years prescription.
 - **Denis Juge:** agree with dissent by J. Crichton
 - **Clark Cosse:** Will you change the rule?
 - **Response by Sheral-** we are awaiting a decision from the 1st Circuit first.
 - No public comments
- IV. Medical Director Position and 1009 Process (**timestamp 11:03:32**)
 - **Jan Clary, Medical Services Manager**
 - 3 contract positions who are rendering decisions but they have other obligations as well.
 - Currently over 400 MGDs pending
 - Medical Services have sent out numerous letters to submitting parties to confirm if MGD is still valid
 - A number have been withdrawn due to some being approved or communications between parties.
 - Currently looking for a Medical Director.
 - Announcement now closed and Executive Secretary will be looking at applicants as soon as administratively possible.
 - **Chuck Davoli:** Anything in statute that is inhibiting in recruiting a Medical Director?

- **Response by Sheral-** It is hard to find a suitable candidate to give up lucrative practice to work full time with the state.
- **Ray Peters:** How do candidates look so far?
 - **Response by Sheral-** Good.
- **Denis Juge:** Would it be more attractive position if only thing prohibitive is Workers' Compensation practice?
 - **Response by Sheral-** It's really the full time requirement that's a main issue.
- **Troy Prevot:** a part time medical director will not be practical, unless you have multiple, due to volume. 50% (generalization) of your income goes to overhead when you have a practice. Maybe increase pay for fulltime and have part-time help. However, there are statute issues since it states associate needs to be full time.
- **Julie Cherry:** what rate do MGDs come in?
 - **Response by Jan Clary-** a large number are rejected due to no 1010, past deadline, etc. We get about 250 MGDs are submitted a month.
- **Dr. Dan Gallagher:** Chris Rich says he didn't feel it needed to be a full time position.
 - **Sheral Kellar-** Dr. Chris Rich wasn't a full time Medical Director.
 - **Troy Prevot-** Dr. Lee's fulltime job was meeting with MAC and maintaining with guidelines.
 - **Dr. Gallagher-** many surgeons stopped operating and only work three ½ days a week to see their old patients and keep up with literature. Some applied for the position six months ago but they would have had to give up their 12hrs of practice. 90% of guidelines are orthopedics.
 - **Michael Morris-** physician would have to insure not financially invested due to group practice. Nurse wouldn't give decision but many help set up review.
 - **Dr. Gallagher-** maybe see what Dr. Rich thinks is a reasonable time to work on MGDs.
- **Sheral Kellar:** please send an email on changes to Medical Director while keeping in mind it may require statute change.
- **Rhonda Coffee [audience]:** When OWC receives a 1009, how long does it sit there or do you notify submitting party that you have obtained it?
 - **Response by Jan Clary-** a notice of receipt of filing is immediately sent out to all parties. Many times this is how an insurance company is made aware of the 1009 since the provider had not sent it yet.
- **Rhonda Coffee [audience]:** Are you putting a clause in the notice to let the parties know there is a delay in decision?
 - **Response by Jan Clary-** yes. There is a standard paragraph explaining the delay.
- **Rhonda Coffee [audience]:** How long is the 1009 good while they are waiting for a decision?
 - **Response by Sheral Kellar-** pending 1009s are being followed up with letters to confirm if 1009 is still necessary. If there is not response, it is still good. It's just awaiting a response.
 - **Response by Joe Jolissant-** Statute says Medical Director shall issue a report within 30days of receipt of 1009 so day 31 I'm filing a 1008.
- **C. Ray Murray [audience]:** What is statutory authority to be hiring contract physicians when we don't have a Medical Director? Who is hiring the contract Medical Directors/determining who can be contract?
 - **Response by Sheral -** hiring process is like any since these are employees of the agency

*Privilege- Introduce New Executive Secretary of LWC (timestamp 11:19:24)

Sheral Kellar: Meet Ms. Ava Dejoie. If council members could state their name and seat.

- **Joseph Jolissaint- Plaintiff's Bar**
- **Chuck Davoli- Labor**
- **Julie Cherry- Labor**
- **Mark Kruse- Chiropractic but help with PTs**
- **Dan Gallagher- State Medical Society**
- **Michael Morris- Group Self-Insurance Funds and Self- Insured Employers**
- **Joe Shine- LA Physical Therapy Associations**
- **Denis Juge- Defense Attorneys**
- **Troy Prevot- Employers Insurance Companies (At-Large)**
- **Ray Peters- Employers**
- **Clark Cossé- Hospitals (At-Large)**

V. MSJ New Scheduling Order (timestamp 11:22:02)

Judge Pamela Moses-Laramore

District 05-Baton Rouge

- MSJ = Motion for Summary Judgment; effective January 1, 2016.
- Biggest change for WC from statute is timing which is seen when calendaring dates at telephone conference.
- Approximately 60days after *Answer* filed, a telephone conference is set. This doesn't pertain to 1002 preliminary situation. At that time, a date for trial and mediation is set.
 - D5 has every case going to mediation.
- A way to get to hearing with Judge based on paper. Documents alone may prove that there is no genuine issue of material fact in the case and you should win without trial.
- New Timeline: "Motion and all documents in support shall be filed AND served on all parties not less than 65 days prior to trial".
 - It seems to go against WC policy to get case through in 6months.
 - If you filed and served on 65th day, it only allows 5 days to get MSJ hearing since there's also deadline of 30 days after filing but 30 days before trial.
 - This can cause problem if parties not getting along
- *Scheduling Order* requires mover to contact court to set hearing date.
 - Won't be signed but will meet requirement of service.
- New finite list of MSJ attachments:
 - Pleadings, Memorandum, Affidavits, Depositions, Answers to Interrogatories, Certified Medical Records, Written Stipulations, and Admissions.
 - Photos and video tapes may be able to be attached to an *Affidavit* or *Deposition*. May be a *Written Stipulation* (if other side agrees).
- WC court doesn't have electronic filing so submit by hard mail or fax file (with fax fee).
- Court can serve but we are not responsible to meet your deadline. Statute implies mover is responsible to serve timely.
- Court can extend deadlines if agreed to by all parties; not compressed.
- *Opposition* has to be filed with documents and served not less than 15 days prior to hearing which is why mover picking hearing date.
 - Must object in writing to any exhibits because you cannot object at hearing
- *Reply Memorandum* has no less than 5 days prior to hearing to be served.
 - Cannot have any documents attached.

- Sticky point on if no one objects (but should have)
 - 1st Circuit said Judge should not have let noncertified medical records in.
 - *Lilly v. Allied Health Care*, 2007-0590 (La.App. 1 Cir. 6/6/08), 991 So.2d 1096
- Now, court must orally or in writing issues reasons for granting or denying an MSJ
- MSJ hearing is only on issue(s) stated in Motion.
- If appellate court is thinking about overturning a denial, you will get a notice of the right to brief and oral argue.
- **Denis Juge**: Does MSJ Code of Civil procedure fit WC process in regards to time? There are parts in the rules that allow different procedures; for example, class actions are not allowed. Maybe we can all non-certified documents if neither party objects.
 - **Chuck Davoli**- statute allows flexibility for WC
- No public comments.

VI. Louisiana Supreme Court Rule XXX, Rule 3, Regulation 3.21 (timestamp 11:46:16)
 CLE credit for pro bono representation
 (Action Item)

- An action item since pro bono representation is a contentious point so this needs council's blessing to put regulation in action.
- It does something for indigent injured workers and attorneys who need CLE credit. Also feels aspirational goals of the Bar Association to provide pro bono services.
- There are people who need 1009 help but there is no attorney fees awarded so this would be an incentive.
 - May help an employer or provider as well.
- **Chuck Davoli**: Baton Rouge Bar Association has a Legal referral program which would qualify
- **Joe Jolissaint**: CLE credit should go to any 1009 including ones who would normally pay.
 - **Response by Sheral**- that would be up to the Supreme Court. I will mention it at the next "Access to Justice" meeting.
- **Robin Krumholt [audience]**: Does this apply to "Ask a Lawyer" or "Thirst for Justice" even if you're not representing a particular case. "Ask a Lawyer" is where you go to a library and answer legal questions for free.
 - **Response by Sheral**- Certain organizations can refer cases to you so that can apply. You can ask those organizations. Christy Kane, with Louisiana Appleseed, who instrumental in getting this to the Louisiana Supreme Court, said Workers' Compensation is recognized as a court.
- **Chuck Davoli**: Will it be the same reporting form as claiming CLE credits or special form?
 - **Response by Sheral**- the courts will come up form for representing hours to get CLE including pro bono for bar association
- **Joe Jolissaint**: is there a way to have the court appoint you for a person you believe is indigent?
 - **Response by Sheral**- Probably have a list to assign claimants at random. You should be able to ask to be appointed for an individual; however, that would be exception not rule.
- **Judge Pamela Moses-Laramore [audience]**: Individual can qualify for *Forma Pauperis* to prove indigent. How would you prove and employer or health care provider is indigent?

- **Response by Sheral-** Hearing section will have to come up with rules for this as well as forms. Probably form a committee of judges and staff.
- Hearing Section to move forward and implement: Clark Cossé motioned & Ray Peters seconded
 - **Ayes:** Unanimous; **Opposition:** none

VII. Legislative Agenda (**timestamp 11:56:18**)

- Prior to any Legislative session, we are required to report. This year LWC does not have an agenda.
- Any requests?
 - **Denis Juge & Ray Peters-** amend Medical Director statute to improve ability to recruit.
 - **Dr. Dan Gallagher-** willing to join committee to create draft of changes
 - **Troy Prevot-** you will have to also review Associate Director since that may have included language to bar hiring contract doctors.
 - **Chuck Davoli-** agency needs flexibility
 - **Mark Kruse-** attract better quality doctors
- **Dr. Dan Gallagher:** maybe meet with new legislators to explain process that includes OWC office and advisory council.
 - **Clark Cossé & Julie Cherry-** maybe have a joint committee meeting with house and senate labor, if Chairman agrees.
 - **Chuck Davoli-** it was up to Chairman of committees to send stuff to council
 - **Sheral Kellar-** new chairmen are Neil Riser and Patrick Jefferson
- **Shana Veade [audience]:** Bill request deadline for house labor is March 2nd by 5pm. May have organization meeting next week for agency to introduce heads of each office and give information.
 - **Michael Morris-** would like to attend meeting even if not agenda item
 - **Julie Cherry-** Filing deadline during session is April 4th by 6pm but only allowed 5.
- **Troy Prevot:** need to do something about opioid issue
 - **Chuck Davoli & Julie Cherry-** Health and welfare issue

VIII. Appointment of Members to Director's Advisory Council (**timestamp 12:09:41**)

- Only been used by one director even though on books since WCAC
- Will include defense attorney, doctor, a hearing staff, plaintiff attorney, public member. Not necessarily from WCAC
- **Denis Juge:** WCAC periodically appointed by whoever is governor. Will there be an official appointment by next meeting?
 - **Response by Sheral-** need some bylaws and rules. We will do appointments in usual process.
- **Ava Dejoie [audience]:** I will check with Boards & Commissions
- **Troy Prevot-** LWC Director chooses at large seats nominees.

IX. Other Business (**timestamp 12:14:25**)

- **Denis Juge:** Do we have a new chief judge?
 - **Response by Sheral -** No, we did announce the classified civil service position.

- **Denis Juge:** Asked for letter sent by former Judge Lowery to be emailed to council due to concerns expressed by Patrick Robinson.
 - **Response by SHERAL-** This may not be appropriate since it involves a current employee who hasn't waived his privacy rights.
 - **Denis Juge-** He hasn't resigned
 - **Response by Meredith Trahan [Attorney General Office]** - This is not an agenda item; therefore, it cannot be discussed. The Director was not notified. If personnel matter, the individual has to be notified 24hrs in advance. Normally these are held in discussion in executive session. Since the person has not waived privacy rights, it would be a violation of open meeting laws to discuss further.

X. Public Comment (timestamp 12:17:35)

XI. Date for Next Meeting (timestamp 12:17:38)

- Tentatively March 24th with location TBA
- Meetings will be regular during legislative session then review frequency of meetings

XII. Adjournment at 11:05am

- **Motion-** Chuck Davoli; **Second-** Michael Morris