



WORKERS' COMPENSATION
ADVISORY COUNCIL MEETING
January 26, 2017

Members Present:

Sheral Kellar
Charles Davoli
Julie Cherry
Shannon Dartez
Shannon Lindsey
Dr. Daniel Gallagher
Edwin Murray
Michael Morris
Pierce Nunley, MD
"Bray" Williams
Maria Losavio *[late]*

Members Absent:

Alejandro Perkins
Mark Kruse
Dr. James Quillin

MINUTES

- I. WELCOME AT 9:36AM
- II. MINUTES
 - Motion to accept: Shannon Dartez
 - Second: Dr. Gallagher/Julie Cherry
- III. 2715 MEETING (time stamp 11:00:45)
 - a. Transcripts from town hall meeting
 - b. Michael Morris
 1. Changes in regards:
 - to tacit denial/payors not responding to 1010 in 5 days
 - new evidence
 - Allow attorney to file
 2. Try to make changes clean and process still move quickly
 - c. Another meeting scheduled for Monday, January 30th
 1. Send any other concerns to Director
- IV. ACTION ITEM: FINALIZE BY-LAWS (time stamp 11:05:27)
 - a. Shannon Dartez motion for any references to "co-chair" be consistent and labeled "vice-chair".
 1. Davoli second
 2. All in favor/ motion passes
 - b. Shannon Dartez motioned- Article III Section 16 (page 2) remove "the" before "each" and change "commission" to "council".
 1. Davoli second
 2. All in favor/ motion passes
 - c. Julie Cherry moved to adopt by-laws
 1. Shannon Dartez second

2. Michael Morris dissent based on majority/super majority issue
3. By-laws are adopted (9-1)

**Vice-Chair Davoli wanted new members to introduce themselves

- 1) Maria Losavio
 - Plaintiff attorney
 - Small business owner
- 2) Dr. Pierce Nunley
 - Orthopedic doctor

V. LEGISLATIVE PRIORITIES (time stamp 11:10:32)

- a. Rule for 10 Point Safety Plan
 1. 2015 Resolution No. 55 by Representative Broadwater
 2. Needed in state contracts
 3. Safety Taskforce
 - Come up with legislation
 - Possible executive order
 - No communication with DOA
 - Report at next WCAC meeting
 - Process & legislation proposal
- b. 1123 IME (time stamp 11:15:43)
 1. Requires OWCA Director to appoint IME physician in cases where there's a dispute on the employee's condition/ability to work. It shall be prima facie evidence.
 2. Sometimes attorney's use this to continue a pending 1008 hearing
 3. **Chair Kellar**- looking at legislation to allow 1123 IME only when there's no pending 1008
 4. **Dr. Dan Gallagher**- how often does this happen?
 - **Chair Kellar**- often. There is also a 1124.1 IME which allows the judge handling pending 1008 to set one. Usually the judge makes the parties agree on a doctor. Example: An old case showed where staff was not familiar with doctors in that area. They asked a doctor about necessity of discogram when he was actually the only doctor in the area that did discograms so of course he thought it was necessary.
 5. **Michael Morris**- 1123 was amended to not allow decisions on medical necessity. Director appoints are usually random but judge appointed IMEs are not random.
 - **Chair Kellar**- IMEs should be random but even compiling list has shown shortage in doctors willing to do IMEs.
 6. **Shannon Lindsey**- choice can be reviewed?
 - **Chair Kellar**- judges come up with a list and parties agree from that list. Nothing written requires them to do that.
 7. **Shannon Dartez**- agree with moving IME to judge in pending 1008
 - Possible issue is regarding what the dispute is for review
 - In practice, medical necessity and causation are discussed at IME
 - Also, OWC Medical Director gives decision then payor doesn't pay based on SMO which may be contrary to MD.
 8. **Dr. Pierce Nunley**- ensure proper specialty is doing IME/follow guidelines
 - Some many failures to success is delay
 - **Chair Kellar**- A judge would have more control over specialty assigned to IME. *Sparnecht v. Amar Oil Company*, 2011-1986 (La. App. 1 Cir. 6/1/12) held that you don't have to have the same specialty for IME.
 9. **Maria Losavio**- agree a judge would have better control of time delays
 - Educate IME people what not to do
 - Subspecialty may be needed (for example: orthopedics vs hand)
 10. **Dr. Dan Gallagher**- order not that specific; look at instrument
 - Spine vs back pain

11. **Chair Kellar**- parties have more say when judge appointed
 - Review how often used to circumvent; give judge more control; issues not in 1123 may be used
12. **Shannon Lindsey**- evidentiary clarification for 1124.1
13. **Shannon Dartez**- see increase in IME requests
 - Director seen 1123 increase?
 - No. SMO is outside purview of OWC
14. **Bray Williams**- How many 1124.1 IME from judges?
 - Depends on district since some prefer one type over the other

VI. MEDICAL TREATMENT GUIDELINES (time stamp 11:42:18)

- a. Office visit- **Dr. Pierce Nunley**
 1. Already established patients
 2. A couple payors holding to rule that every office visit needs a 1010; needs consistence
 3. Adds effort & cost
 4. If patient shows up but still needs approval
 - Dilemma since ethically & legal liable to see patient but won't get paid
- b. 1010 Form
 1. **Michael Morris**- first 1010 filed once over \$750, then approved for 12 visits or 1 year. Once hit that mark, 1010 approved in minimum blocks of 4 visits

VII. URINE DRUG SCREEN (time stamp 11:47:04)

- a. Pharmacy law requires drug screen done so often; however, under WC is not paying for them
 1. **Michael Morris**- Rule does not provide level/frequency of testing
 - Initial screening of a wide variety drugs then follow-up test is for a wide variety creates a cost issue
 - IAIABC gives best practice guidelines
 2. **Chair Kellar**- DHH has urine drug test rules that differ
 - No consistency of cost
 3. **Dr. Dan Gallagher**- when guidelines were implement (about 9yrs ago) urine drug screens were not common practice
 - Board of Medical Examiners have strong guidelines but not statutory

VI. MEDICAL TREATMENT GUIDELINES [revisited] (time stamp 11:53:18)

- c. Approval does not guarantee payment: **Vice-chair Charles Davoli**
 1. Exception if found out not compensable
 2. ~~1010 form~~ 1009 decision says not guarantee payment
 3. **Chair Kellar**- R.S. 23§1204 states no liability admitted
 - Why go through process if no guaranteed payment?
 4. **Dr. Dan Gallagher**- Why was payment denied?
 - **Chair Kellar**- 4 results could happen after MGD decision
 - Payor says not compensable
 - SMO is different than MGD decision
 - Doctor provide treatment then not get paid
 - Healthcare provider staff sends subsequent 1010 with MGD decision but not get approved
 5. **Michael Morris**- look at 2715 to put teeth in MGD decision after 1008 appeal time lapse
 6. **Shannon Dartez**- change to R.S. 23§1204
 - Currently- Insurers send approval with note that it doesn't guarantee payment
 7. **Edwin Murray**- can statement on form be changed?
 - **Michael Morris**- group health also uses that statement. May be need order from WC judge to say treatment due from MGD decision.
 - **Chair Kellar**- allow payment while still under investigation; claim compensability or lose it?

8. **Bray Williams**- could you keep protections of 1204 but amend to say if choose not to appeal then that becomes guarantee of payment but not admission of compensability?
 - **Chair Kellar**- amend L.A.C. 40:2715 but not R.S. 23§1203.1 or R.S. 23§1204
 - **Shannon Dartez**- may need to amend R.S. 23§1204
9. **Julie Cherry**- are there more 1009s filed because 1010s are being denied or not answered?
 - **Dr. Jason Picard** [*audience*]- because they are being denied
10. **Michael Morris**- compensability timeframe to be raised is statutory
11. **Maria Losavio**- also seeing approval by Medical Director and UR but adjuster denies
12. **Bray Williams**- preserve R.S. 23§1204 protection to avoid causing knee jerk reaction of denying compensability of all claims from the start

VIII. RESTRUCTURE FRAUD UNIT (time stamp 12:20:08)

- a. 4 resignation/retirements from WC fraud unit
- b. Executive Director, Ava Dejoie, & Governor Bel Edwards requested more proactive in employer fraud
- c. UI audited 1% of LA employers and was able to collect about \$923,000 in additional UI taxes due to misclassification
- d. Add attorney to fraud to criminally prosecute
- e. Share data with U.S. Dept. of Labor and Louisiana Dept. of Revenue
 1. Found employees listed as 1099 so no taxes collected
 2. Collected taxes but didn't report

IX. OTHER BUSINESS (time stamp 12:24:09)

- a. 7th Annual WC Educational Conference- Feb. 2nd-3rd
- b. Next meeting is Thursday, February 23rd
 1. Free parking at Welcome Center parking garage
- c. Records Request form(s) promulgation

X. PUBLIC COMMENT (time stamp 12:28:04)

- a. Jill Leonard, LWCC [*audience*]- 1010 form & UR process
 1. 1010 combined medical necessity, UR & compensability
 - Don't disrupt good process for the few bad players
- b. Jenny Valois, claimant attorney [*audience*]-
 1. Is the 2715 meeting open to public? Can it be?
 - **Chair Kellar**- No. Will check with OWC attorney.
 2. 1009 MGD decision has payment statement
 3. Does 2715 discussion address variance standards?
 - **Chair Kellar**- Reviewing that. Please send suggestions to Director.
 4. Can Medical Treatment Guidelines have page numbers & working table of contents?
 - Reference L.A.C. Title 40 for page numbers
 5. Should be a change in causation statute; other states have short time periods; can't go backwards
 6. R.S. 23§1123 change is good
 - Judge strikes MGD decision but sends it to IME
 - **Chair Kellar**- address with OWC Chief Judge

XI. ADJOURNMENT at 11:16am

- a. Dr. Pierce Nunley motioned/all agreed