



WORKERS' COMPENSATION
ADVISORY COUNCIL MEETING

October 25, 2018

Members Present:

Sheral Kellar
Charles Davoli
Marc Zimmermann, Ph.D.
Jerry Jones, PT
"Bray" Williams
Shannon Dartez
Michael Morris
Julie Cherry
Shannon Lindsey
Larry Stokes, Ph.D.
Maria Losavio [*Late*]

Members Absent:

Alejandro Perkins
Pierce Nunley, MD [resigned]
Edwin Murray
Mark Kruse, D.C.
Arielle Collins, Pharm.D.

MINUTES

- I. WELCOME** start at 9:30am
- II. MINUTES**
 - a. April, June, July, & September
 1. **Charles Davoli**- motion
 - **Shannon Dartez**- second
 - All in favor
- III. BARBER VS. LWC DECISION**
 - a. Moved to later in agenda
- IV. CHRONIC PAIN GUIDELINES: FOLLOW-UP**
 - a. Dr. Jason Picard (OWCA)
 - b. Letter was sent out to various stakeholders requesting written comment by December 20th
- V. CRPS GUIDELINES: NOI**
 - a. Jason Picard (OWCA)
 1. Address issue of procedure
 2. Meet via email
 - b. Public comment
 1. **Shannon Lindsey**- Preferred procedure from WCAC?
 - **Sheral Kellar**- Written comments
 - c. **Charles Davoli**- Take seriously and comment

- d. **Sheral Kellar**- La. R.S. 23:1203.1(H) regarding review
 - 1.First update since 2011
 - 2.Requires review; not necessarily update

Looking to start APA process for Chronic Pain Guidelines in February
CRPS to continue

Next is Carpal Tunnel

- e. MAC
 - 1.Expertise
 - 2.Tackle guidelines

VI. BARBER VS. LWC DECISION [moved from earlier]

- a. Erin Kenney, [Taylor Porter attorney]
 - 1.Lawsuit filed in 2015
 - 2.Appealed judgment
 - 3.Decision reversed trial court ruling
- b. 5 Constitutional challenges
 - 1.Tacit Denial [prevailed]
 - La. R.S. 1203.1(J)
 - L.A.C. 40:2715 (E)(2) & (H)
 - Statute gives authority and regulation fills gap & it furthers objective of timely medical
 - Was Wes Hataway’s (previous OWCA Director) rationale from preliminary testimony
 - 2.Request for Variance
 - Complaint was it violates due process by being vague
 - Reviewed previous Medical Director Christopher Rich’s preliminary hearing testimony (i.e. how it’s published & medical people know)
 - Ruled: may be difficult but not vague
 - 3.No covered treatment
 - La. R.S. 1203.1(M)
 - Real complaint La. R.S. 23:1203.1(D)(5)
 - How to find support in other state guidelines
 - 4.Review process
 - Procedural 1009
 - Injured worker option to object
 - Need new evidence, get copies
 - 1008 appeal
 - Confined to record
 - In administrative action; not required to be same as judicial
 - Private interest
 - State interest
 - Testimony
 - Clear & convincing confinement
 - Made sense
 - 5.Judicial interference
 - Involved:

- old cold cases being reviewed, and WC judges being reviewed in court
- Judges meeting
- Emails produced
- Only part affirmed: no one allowed to communicate with judges on pending cases
- c. **Shannon Lindsey**- was the 15-day prescriptive issue like HB 257 addressed?
 1. **Sheral Kellar**- *Barbar* case was ongoing when *Arrant* decision issued so no, not addressed
- d. **Sheral Kellar**- used “presumptive”?
- e. Next Step- could appeal to Supreme Court
 1. **Sheral Kellar**- never declared unconstitutional so no direct appeal
 2. Status quo remains except affirmed part
- f. **Maria Losavio**- How long tacit denial appeal can be filed?
 1. OWCA Medical Services gives 30 days since supporting documents start becoming “stale” afterwards
 2. **Sheral Kellar**- Will review process
- g. **Shannon Lindsey**- Will you file L.A.C. 40:2715 NOI appeal from 2017?
 1. **Sheral Kellar**- Committee disbanded. Wait until decision is final then start again
- h. Public comment
 1. **Alan Daigrepoint (LHA)**- 1009 not being sent to all parties
 - **Sheral Kellar**- aware of previously mentioned concerns. Will be addressed in L.A.C. 40:2715
 - **Alan Daigrepoint**- some 1010s go to wrong fax number
 - **Sheral Kellar**- do town hall meetings again when redo 2715 update

VII. OTHER BUSINESS

- a. 2019 meeting dates
- b. Mini-meetings in November & December with taskforces

VIII. PUBLIC COMMENT

- a. Shana Veade (House Labor attorney)
 1. Moved to House Commerce
 2. New House Labor attorney is Shayla Cockerham

IX. NEXT MEETING DATE

- a. January 24th
 1. LaSalle Building

X. ADJOURNMENT at 10:58am

- a. Julie Cherry- motioned
 1. Marc Zimmermann, Ph.D.- second