

**Management Labor Advisory Committee  
IME Subcommittee  
Tuesday, December 14, 2004  
Hearing Room 343 State Capitol Building  
Salem, OR**

**Subcommittee Members Present**

Ken Hector, CNF Service Company, Portland, OR  
Brad Witt  
Sheri Sundstrom, Hoffman Construction Company, Portland, OR  
Lon Holston

**Staff Present**

Lou Savage, Director's Office  
Myrna Curzon, Director's Office  
John Shilts, Workers' Compensation Division  
Jerry Managhan, Workers' Compensation Division  
Cara Filsinger, Workers' Compensation Division  
Jan Miller, Workers' Compensation Division  
Travis Wall, Injured Worker Ombudsman

Ken Hector called the meeting called to order at 1:05 p.m.

**Review Minutes from December 9 Subcommittee Meeting**

This item was put on hold until the committee has time to look at the minutes.

**Public Testimony Regarding IME Physician Bias Towards Insurers**

**Dr. Vern Saboe, Chiropractor** - Dr. Saboe submitted written materials to the committee. He suggested a single blind system in which an administrator selects the IME examiner randomly. Dr Saboe questioned the appropriateness of a "scratch a name off" system.

**Committee Discussion:**

The committee discussed whether a blind study would be logistically difficult since in Oregon the report must go back to the treating physician for concurrence. There was further discussion about looking at the possibility of recommending 5 doctors, with each party striking one and the department choosing from the remaining three. 85% of the practitioners responding to the IME study maintain a private practice. 65% of those treat injured workers as well, in addition to doing some level of IMEs.

**Dr. Joseph Eusterman, IME Physician** - Dr. Eusterman submitted written materials to the committee. He expressed concern about some of the conclusions reached concerning bias of IME physicians. Dr. Eusterman stated that IME physicians are highly trained in doing disability and impairment evaluations, which is now a medical subspecialty. Disability and impairment evaluations are a specialty that has its own journal and its own courses and credentialing system. Dr. Eusterman stated that he is in favor of a credentialing system for IMEs in Oregon. He feels that the choice of the IME physician being administered by WCD would be the fairest way to reduce or eliminate bias. Both in a medical arbiter exam and an IME exam the claimants are supposed to be declared medically stationary, which means there is less than 3% change likely during a year. . The committee could consider changing the name to Disability Impairment Evaluation. Most attending physicians may not be

as experienced in dealing with injured workers as someone who has specialized in disability and impairment findings may. The IME exam is much more detailed than the medical arbiter exam.

Committee Discussion:

The committee discussed the similarities and differences between a medical arbiter exam and an IME exam.

**Ernie Delmazzo, Injured Worker Alliance** - Mr. Delmazzo submitted written testimony, including exhibits, to the committee. Mr. Delmazzo read his testimony and gave examples of IME bias towards the insurer. He recommended a system like the medical arbiter system. He also requested severe penalties for fraud and perjury. Mr. Delmazzo feels that the Board of Medical Examiners (BME) does not have sufficient authority to take action against IME physicians because there is no doctor patient relationship.

**Andi Easton, Oregon Medical Association (OMA)** - Ms. Easton submitted written testimony to the committee. She encouraged the committee to develop plan that includes random selection of physicians. OMA has a Workers' Compensation Advisory Committee; it is comprised of twelve physicians who are either attending or IME physicians.

**Scott Gallant, OMA** – Mr. Gallant testified that the perception from workers and others that there is a bias that needs to be corrected and addressed. The issue has been around for at least 24 years, and is one that harms the system significantly. Many physicians limit the number of workers' compensation cases they see because physicians view how complicated it is to treat patients under the workers' compensation system. There is a lot of time spent addressing what are essentially legal issues. The small percentage of the physicians in the state who were surveyed by the IME study emphasizes the need to have more practicing physicians involved. Can the system be streamlined to encourage a larger base of physicians? The OMA takes allegations of improper behavior by a physician very seriously. The association has been very aggressive in insuring that the licensing body for physicians has broad authority to investigate physicians.

The subcommittee asked the OMA to ask its members why they do not participate in the IME process. . Mr. Gallant stated that the OMA workforce study is showing is that the state of Oregon has a physician shortage. In addition, physicians are balancing their patient payer types. The OMA believes that the physician shortage will continue to get worse as physicians retire.

The subcommittee asked how physicians would feel about a requirement that IMEs be a part of continuing education curriculum. Mr. Gallant felt that the physicians would not be very receptive of that idea. He felt that it would be better to have a clear outline of expectations than an education requirement, and then also include education to the worker.

**Dr. Steven Fuller, Orthopaedic physician and IME physician** – Dr. Fuller has been doing IMEs for about 15 years. Dr. Fuller expressed concern at the percentage of physicians who felt there is bias. Dr. Fuller recommended that if there is going to be an education requirement, the committee look at what is already available. He gave the committee an outline of IME training prepared by the American Academy of Orthopaedic Surgeons. He testified that he feels there is no need for an additional training requirement and feels there would be considerable resistance. Dr. Fuller testified that IME physicians are not making more money than the treating physicians. Treating physicians do not analyze causation. They are interested only in issues of treatment. There is no need to require that IME physicians also are treating physicians. If you impose that limitation you will lose experienced analytical doctors. Mr. Fuller is part owner in an IME company. The company has 10 physicians and may call up others for specialties. The physicians are all independent

contractors and are totally free to make up their own minds. They are not influenced by the business arrangement with the insurers.

**Chad Marcus, Impartial Medical Opinions** - Mr. Marcus stated that IME physicians make their own decisions-, regardless of any leading questions from the claims examiner. Regarding financial pressures, if a doctor does not provide an examination based on current medical opinion, he will quickly be unable to testify in court and then would not be hired by an insurer. Mr. Marcus suggested a statement signed by IME physicians stating that they will provide accurate an independent examination. In addition there could be a random review process. If an IME physician were found to not be performing accurate and independent examinations, they would be reprimanded or not allowed to perform IMEs. Mr. Marcus clarified that an advertising brochure included in a packet from Mr. Delmazzo is an old brochure. The statement regarding “understanding your business needs” referred to the insurer's need for a physician that is able to offer an independent analysis, business needs refers to being able to handle case load. .

**John Shilts, Workers' Compensation Division** – Mr. Shilts provided information to the committee on how the percentage was determined regarding perceived bias. Sampling methodology was used. Based on the sampling methodology the study reached a 95% confidence level. Mr. Shilts clarified that he has not said that there is a bias. He has said that there is a perception of bias. This perception also seems to exist among IME physicians themselves. Follow-up surveys would be useful. Over 50% of the respondents said there was some level of bias in the IME system. Mr. Shilts urged the committee to not miss opportunities to streamline. Physician shortage is also a very serious issue. Workers’ access to quality medical care is very important. In discussing fee schedules, the answer may be to increase fees to encourage more physicians to be involved. Continuing education should be designed to fit the doctor's schedule. It is used in the arbiter program. OMA and medical community ought to be involved in that discussion. For medical arbiters there is already training and follow up to provide coaching and removal as necessary. A telephone call protocol to the worker was implemented to educate the worker about what to expect. After doing that complaints about the arbiter program plummeted.

Mr. Shilts presented data to the committee in response to a request for information on the IME study differentiated by accepted and denied claims.

**Travis Wall, Injured Worker Ombudsman** – Mr. Wall testified that there should be further dialogue about how to get information about the IME process shared with all parties. Regarding the IME study itself, the Ombudsman’s office was part of the study; Information management Division was also part of the process. There was a multi-divisional relationship in the committee. Questions were shared with stakeholders for feedback before the surveys were sent out. The surveys indicate that there is a perception of bias, including physicians that are responsible for exams. Bias is the second largest complaint that we hear from workers.

#### **Work Session re #1**

##### Certification/ Credential Process with Continuing Education

Ask the department with help from physicians and the OMA to develop an education/certification process for IME physicians.

Ask the department with help from the insurers to develop an education process for claims examiners.

##### Arbiter Selection Process

The subcommittee did not reach a consensus on this item at this meeting.

##### Firewall against Undue Pressure

Ask the department to come back to the committee with suggestions.

Need to identify the source of the pressure.

#### Larger Physician Pool

Ask the department with assistance from physicians and the OMA to come back with suggestions on how to increase physician pool.

#### Witness at Exams

Allow worker to have a witness at the exam.

Include in the education to the worker that there may be sensitive questions asked at the exam. The worker would sign an acknowledgment that there may be sensitive questions that the worker will be asked. Notification to the witness that they are not a participant in the exam.

The physician may also have someone else in the room at the time of the exam.

The audio/ video recording issue should be referred to the medical advisory committee.

#### Examinee's Records Prior to the IME

Require that records in the control of the insurer need to be received by the IME physician at least 5 working days before the exam. Ask the department to make recommendations to facilitate better delivery of diagnostic records outside the insurer's control.

#### Information Packet to Worker Prior to the IME

Ask the department to develop an education tool that must be given to the worker prior to an IME-- possibly a brochure, or a video produced by the department with a video stream that could be downloaded online. It should be made clear to the worker that if they need advance payment for travel that they should request it. A form should be included for the worker to request reimbursement. The department should work out the details.

#### Quality Assurance

Ask the department to work with the medical community to develop quality assurance measures.

Require a statement at the end of the report that the physician must state that he/she performed the exam and dictated the report, including a statement about penalty of perjury for false statement. (Like CA, Ken will get example) Additional physicians participating in a panel must sign a statement saying that they participated in the exam and have read the report and concur.

### **Public Testimony Re #2 Process to Handle Injured Worker's Complaints Regarding IMEs.**

**Dr. Steven Fuller, Orthopaedic physician and IME physician** - Dr. Fuller suggested a standard exit poll with questions either formulated by the IME community or the committee and the department. The worker would complete and sign off as they leave the facility. . Dr. Fuller stated that the IME physician has no reason to hurt the worker. If the worker complains of extreme pain the exam is terminated and that is put in the report. At the end of the exam they are asked if they are all right. They are told before the exam that they can stop at any time.

**Dr. Joseph Eusterman, IME Physician** - Dr. Eusterman questioned how effective an exit survey would be because the worker would be hesitant to put down anything negative at that point in the process. Regarding doctor patient relationship in the IME setting, when an IME is performed the claimant is not given recommendations for treatment. IME physicians are not supposed to have a traditional doctor patient relationship.

**Ernie Delmazzo, Injured Worker Alliance** - Mr. Delmazzo expressed concern with the idea that the clinics themselves conduct the exit polls. He also expressed concern that the exit poll be used as evidence if they are later accused of mistreatments. He recommended that WCD conduct the exit poll. This would also allow WCD to keep track of data in the future.

**Bob Hudlow, WMCI** - Ernie brought up very good points. We will be changing the form to indicate what we do with those forms. Those forms are not present in the record for the physician to look at before the physician does his dictation of the report.

**Work Session re #2 Process to Handle Injured Worker's Complaints Regarding IMEs**

Include in the information packet a statement that if the worker is unhappy with the exam (give the worker specific parameters for "unhappy") they can send the complaint to WCD.

Ask WCD to provide an exit survey tool that the Insurer would send to the worker with the IME letter and a stamped envelope addressed to WCD.

WCD would investigate complaints as well as use the survey tool to continue to gather data.

Instructions on the exit survey that it must be sent to WCD not less than 5 and not more than 14 days after the exam.

Give an option of doing the exit survey online.

Include a statement that information will be kept confidential. (Unless subpoena?)

Department to work out the details.

Topic 3 regarding Professional/Ethical Standards for IME Physicians moved to the January 6<sup>th</sup> meeting.

Written testimony was received from Morris Haney, WMCI Prime Evaluations and from John Swanson, Impartial Medical Opinions.

Next Meeting Wednesday, December 15, 2004 at 8:00 am