

**Management Labor Advisory Committee
IME Subcommittee
Thursday, December 9, 2004
Labor and Industries Building, Conference Room 260**

Subcommittee Members Present:

Brad Witt, Oregon AFL-CIO, Salem, OR
Ken Hector, CNF Service Company, Portland, OR
Lon Holston, AFSCME, Grants Pass, OR
Sheri Sundstrom, Hoffman Construction Company, Portland, OR

Staff Present:

Lou Savage, Director's Office
Teri Bledsoe, Director's Office
Nathan Johnson, Information Management Division
John Shilts, Workers' Compensation Division
Jerry Managhan, Workers' Compensation Division
Nancy Bieber, Workers' Compensation Division
Dan McNally, Workers' Compensation Division
Jan Miller, Workers' Compensation Division
Barbara Smith, Workers' Compensation Division
Travis Wall, Injured Worker Ombudsman

MEETING CALLED TO ORDER

The meeting was called to order at 1:04 p.m.

SELECTION OF SUBCOMMITTEE CHAIR

Brad Witt moved that the subcommittee be co-chaired by one labor and one management representative. He volunteered to co-chair representing labor along with Ken Hector representing management.

OVERVIEW OF OREGON MEDICAL ASSOCIATION (OMA) MEETING

John Shilts, Workers' Compensation Division, gave an overview of a recent Oregon Medical Association (OMA) meeting he attended wherein the IME study was discussed. The OMA asked that John provide some of their feedback to the IME subcommittee. The OMA is willing to review the subcommittee's recommendations and give their perspective. This is not intended to be an endorsement of any recommendations at this point from the OMA. They are waiting to review the subcommittee recommendations.

There was discussion at the OMA meeting regarding limiting travel distance to an IME and managing worker's expectations of the IME process. They felt that if communications with the worker about what to expect and general education of the worker about the IME process were improved, there may be fewer complaints about distance traveled. If travel distance limitations were recommended, there would need to be some exceptions considered such as physician availability.

The OMA also discussed educating the worker on how the IME differs compared to their relationship and a typical exam with their attending physician. Suggestions to educate workers included: letters sent to workers, a brochure or videotape developed to explain the process, telephone calls prior to the exam to educate the worker and to answer questions. The OMA is not endorsing these particular options at this time, but is providing input for the subcommittee to consider.

The OMA also discussed oversight and training of IME physicians. IMEs should be profitable for physicians, which could get more practicing physicians involved.

IME STUDY OVERVIEW

John Shilts asked Nathan Johnson to come forward and give the committee information on the statistical validity of the IME study. In addition, committee members and the public were invited to ask for any clarification about the statistical validity of the study. The following is a brief summary of the major points of the information provided:

- 1,200 of the 3,500 injured workers who had IMEs in the 6 months prior to the study were randomly selected for the survey. 450 responses were received. This provides a 95% confidence level that the responses reflect the whole. This is based on generally recognized statistical standards.
- The surveys were sent to all of the IME vendors, who were asked to distribute them to the IME physicians. There were 407 IME physician surveyed.
- The surveys were sent to all of the attending physicians in specific specialty areas who were available in the WCD data system.
- For all three surveys follow-up letters and phone calls were made to non-respondents to get a response level that would make the data statistically valid.
- There was no separation of data based on a denied claim or an accepted claim.
- No mathematical equation is provided to quantify bias toward workers or insurers
- No data was captured about the purpose of the exam
- There may be some bias based on who chose to respond to the survey and who chose not to respond.
- A cover letter was included with the survey to the worker, which stated that this was a survey regarding their most recent IME.

IME RECOMMENDATIONS FOR CONSIDERATION

John Shilts, Workers' Compensation Division provided the following areas of recommendation:

1. To address bias and quality of exam: WCD would develop an authorization or certification program that would require IME doctors to attend a training/orientation program, developed by the department and OMA. The training would include information on professional standards, standards for impartiality, and conflict of interest agreements. Doctors would be required to take the training in order to do workers' compensation IMEs in Oregon. WCD would maintain a list of authorized/certified doctors that would be available on WCD's web site and insurers would have to choose doctors from the list.
2. To address complaints and worker expectations: The department would inform workers of what to expect and track feedback on their IMEs by developing a brochure and an evaluation form.
3. To address distance of travel: Replace wording ORS 656.325(1) that workers are required to attend exams at a time "and place" reasonably convenient for the worker, with exceptions granted for specialty needs and availability. Injured workers would have appeal rights. We would need to develop an expedited appeal process.
4. To address attending physicians' review of the IME report with their patient: Have insurers add wording to their concurrence form, such as "I have reviewed this IME report with my patient and I Concur or Do Not Concur with the report.

Discussion:

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A comment was made that part of the reason for bringing Nurse Practitioners into the groups as providers was to address the issue of travel from rural areas.

There would need to be some exceptions around availability, particularly if the worker lives in a rural area and there is a need for a specialist.

Concerning quality assurance, there has not been any investigation into the issue of originality or plagiarism of reports.

Worker Requested Medical Exams were briefly discussed. These exams have only been available for less than two years and workers are not often making use of them. There may need to be some education. The criteria for the worker to request an exam are very specific and that may be a deterrent.

IME facilities could be asked to provide information to the committee on the issue of workers who are "no shows" to IME physician appointments.

The Medical Advisory Committee has received a copy of the study. Their next meeting is in January. John Shilts will report to the committee any discussion of issues relating to the IMEs.

BREAK

PUBLIC COMMENT: In general the committee would like to limit public comment at each of the meetings to two of the eight issues identified in the IME study. At this meeting the committee requested that if possible the testimony be limited to the first two issues. Latitude will be allowed at this meeting because some members of the public may have come prepared to discuss other issues.

Dr. Joseph Eusterman, Western Occupational/ Environmental Medicine Services (WOEMS), provided written testimony. His written testimony is part of the record. He was asked to elaborate on his statement that IME exams are not equivalent to Arbitrator Medical Exams (AMEs). Dr. Eusterman felt that IMEs are more directed by the caseworker because specific questions are asked in their letter to the IME physician. Insurers want to know if treatment has been appropriate and want additional recommendations for treatment.

Brad Garber submitted written testimony. His testimony is part of the record. His main areas of comment were IME physicians' bias toward insurers, ex parte communications, and contracts with insurers. He also made the following recommendations: 1) Random selection of IME physicians through the department, 2) Coordinate with DCBS and the Board of Medical Examiners (BME), to require all physicians to treat injured workers to also participate in the random selection process and perform IMEs, 3) Create examination standards that must be observed by both attending and IME physicians, 4) Uniform notice developed by DCBS in consultation with the BME to educate the worker, 5) MLAC review Opinion & Orders and Orders on Review in which the IME reports and opinions were found to be most persuasive, 6) MLAC investigate the legitimacy of injured worker complaints.

Chris Davie, SAIF Corporation, provided a packet of materials to the committee and offered the following preliminary observations. SAIF Corporation supports MLAC and will probably be supportive of the conclusions of this subcommittee. Mr. Davie raised these additional points: If an IME provider contacts the insurer to request clarification on a question, that should not be considered ex parte

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communication. Some questions that are posed by the caseworker could be reworded to provide the information that the insurer needs without being leading. To put pressure on those doctors who are semi-retired may be unfair to the doctor who is still well trained and well qualified. Contracts with IME facilities help address the issue of cost. Between 1993-2003 the number of IMEs SAIF and Liberty performed went down. The average cost went up 2 percent per year. Medical inflation has been outrageous, but the IME cost has been relatively well controlled. If the system were biased against workers a higher percentage of reports would be more favorable of the insurer. Mr. Davie did not offer solutions but expressed a desire to work with the subcommittee to help raise the level of integrity of IMEs as part of the system.

Danny Johnson, WMCI Prime Evaluations, provided written testimony to the committee. His written testimony is made part of the record. He also submitted comments from Dr. Klecan. Mr. Johnson testified that bias towards insurers is limited to a few individuals and encouraged the committee to work to address the non-compliance of those individuals. His major recommendation was to reinstate the Medical Director position with a supporting medical advisory panel of six other specialists.

Bob Hudlow, WMCI Prime Evaluations, submitted to the committee a summary of responses to a survey conducted in 2003. The questionnaire was given to claimants to fill out at the end of their exam. The survey summary is included as part of the record.

Vern Saboe, Chiropractor, Albany, Oregon, Mr. Saboe gave the committee a summary of his involvement in workers' compensation. He is supportive of the idea of a certification program for providers wishing to do IMEs. He provided a copy of the certification program used in California. He encouraged the committee to allow the trade organizations to develop the training and have the state qualify the training. He provided a list of points to be considered by the committee. One of his main recommendations was to have a state certified pool of IME physicians and have an administrator select the IME physician to eliminate bias.

Ernie Delmazzo, Injured Worker Alliance, paralegal and professional researcher. Mr. Delmazzo testified that in the majority of cases where there is a complaint of physical or emotional abuse to the worker, the IME was performed by a physician that does IMEs full-time. In his opinion, this creates a conflict of interest. The reports should be unbiased. There were no comments that said they were biased toward the worker. A worker would not feel free to criticize a physician who has just performed an exam when the report has yet to be filed. Mr. Delmazzo referred the committee to SB 812 from last session, which would have allowed a witness to an IME exam. He recommended that the worker be allowed to video tape or audio tape the exam. He referred to materials about IMEs provided to the committee during the last session. Mr. Delmazzo expressed concern at long distances traveled by some workers for IMEs. He also raised the issue that there is no way to punish an IME physician who injures a worker because there is no doctor patient relationship. Mr. Delmazzo expressed support for the following recommendations that the IME subcommittee is considering: certification for IME Physicians, an alternative selection system, additional information to workers about what to expect at the IME, having the attending physician review the report with the worker (with documentation by the department and WCD to communicate with the worker), and a solution to the long distances traveled by the workers.

Linda Jefferson, Oregon Self-Insurers Association (OSIA) presented written testimony from OSIA to the committee. The written testimony is part of the record. She recommended that the committee look at data that may not be reported to the state. She also recommended that this committee have a medical advisory committee in evaluating the issues regarding IMEs.

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Response: Ken Hector commented that if the self insureds used a third party administrator, the data would be reported to WCD.

Dr. John Swanson, IMO, Astoria, Oregon. Dr. Swanson testified that most workers at the end of the exam are satisfied with the exam. It is after the worker sees the report with a result that they do not like that they become dissatisfied. He testified that in his experience, having practiced in five states, Oregon has a good system that may just need some tinkering. He generally supports the ideas of certification courses, quality assurance, and a solution to the long distances traveled by workers. He also feels that it is a problem that the IME physician does not see the diagnostics, but he does not see an easy solution to that problem. Dr. Swanson will send written testimony to the committee.

Kim Lawrence, injured worker, submitted written testimony to the committee. Her claim was in California. She presented her story to the committee because she was injured by an IME exam. She was given a list of three doctors and was asked to choose one. She chose the one closest to her because of convenience, but wished that she had not used convenience as the basis for her choice. Her written testimony is part of the record.

Dr. Steven Fuller, IMO, Orthopedic Surgeon. Testified that in his experience the IME process has moved from a simple process to a very complex one. He felt that some of the questions on the survey were poorly worded and perhaps a short version should be reworded and resent. The job of an IME physician is more complex than that of the attending physician because he has to look at the major contributing cause of the injury. The IME physician has to be extremely careful because he has to be able to defend his opinion. In his practice audio would be allowed but video would be very difficult. Both the IME physician and the attending physician need to have equal certification criteria.

Response: Lon Holston asked Dr. Swanson to give the committee information on how the examination is put down on paper as a report.

Dr. Swanson responded that the physician has a pain diagram that has been filled out by the worker. The physician asks questions to clarify the pain diagram and can make notes on the pain diagram. The report is dictated and then sent to transcription. The physician then reviews it to correct errors and reviews it a second time for final edits. It is then signed and sent out. The physician must address questions asked in the cover letter. Some are very pointed and some are worded very poorly.

Scott Wroot, Injured Worker Support Group-. Testified that the IME is a big part of the adversarial relationship that happens within Oregon's workers compensation system. He encouraged the committee to work to have a system that is less adversarial. Mr. Wroot expressed appreciation for the work that the committee is doing and asked the committee to also consider those workers who have closed claims who have continuing medical problems after claim closure. The medical community needs to get together and find a solution that is in the best interest of their patient.

Lon Holston submitted written testimony from Arthur Stevens of Black, Chapman, Webber, Stevens & Petersen, dated December 7th, 2004. Committee members will review the testimony and copies of the testimony will be provided at the next meeting.

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NEXT MEETINGS

The following meetings were scheduled, with each meeting being designated to address specific items from the IME study:

Tuesday, December 14, 2004 – Items one, two, and three

Wednesday, December 15, 2004 – Items four, five, and six

Thursday, January 6, 2005 – Items seven and eight

At these meetings public testimony will be taken with time limits on a specific item and then the subcommittee will go to a work session on the item.

ADJOURNMENT

The meeting was adjourned at 5:15 p.m.