

Draft Minutes
Management Labor Advisory Committee
IME Subcommittee
Thursday, January 6, 2005
Hearing Room 357 State Capitol Building
Salem, OR

Subcommittee Members Present

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

Staff Present

Lou Savage, Director's Office
John Shilts, Workers' Compensation Division
Cara Filsinger, Workers' Compensation Division
Jan Miller, Workers' Compensation Division
Nameun House, Workers' Compensation Division

Ken Hector called the meeting to order at 8:10 a.m.

Committee will take public testimony and do the work session on the item # 7 and 8 first, then the item # 3 in the agenda.

Review and Approve December 14, 2004 and December 15, 2005 Meeting Minutes

On page 1 of the December 15 meeting minutes, corrected Mr. Morris Haine, WCI Prime Providers as "**Mr. Morris Haney, WMC Prime Evaluations**". Motion carried to approve the minutes as corrected.

WCD Update on Assignments Given at December Subcommittee Meetings

A. WCD's response to a request for information on IME, testified by Jan Miller, WCD:

Jan submitted written materials and Exhibits A to I in response to a request for information on the IME study per subcommittee as follows.

- **Certification & components:** Items 1 through 4 of the handout. May need statutory change.
- **Witness at exams:** Rule changes likely.
- **Travel time to exams**
 - SB 369 legislative history: Lisa may contact Jerry Keene to find out the history on removal of the language, "and place." See Exhibit B.
 - Recommended language to ORS 656.325 (1) (a): See underlined section of the Exhibit C
 - No statutory changes are needed to allow an exception for failure to determine acceptance/denial of claims: Currently, when an insurer asks for a suspension of the benefits, it automatically extends the 60 days.
 - Map out current time frames within WCD: The time frame for MRU to approve additional IMEs will be reported to the group later. Investigation and Sanctions unit uses

the 20 calendar day decision time for suspension of benefits and the unit's time frame for making the final determination on rule violation is 60 days.

- Medical Director: Ken expressed concern as to whether WCD has an appropriate staff/unit to handle mediation or dispute resolution on some medical issues. . Suggested hiring a medical director. The fiscal impact will be determined later.
- **Insurer claims processing issues**
 - Delivery of diagnostic records outside the insurer's control: Insurer can request help from the division to get the medical records to them if needed. The Medical Advisory Committee may have other suggestions.
 - Type of pressure felt by IME physicians: Survey asked this question, responses were submitted as Exhibit E. As to ways to prevent exparte communications, Michael Clampitt, who manages the Medical Arbiter program in WCD provided input as Exhibit F.
- **Education to workers about IME process**
 - WCD and the Ombudsman for Injured Worker have already met to discuss Options.
 - Will only require rule changes if insurers are required to send these educational materials.
- **Complaint Process:** It will require statutory changes for WCD to have regulatory authority over IMEs. John Shilts and Lou Savage will meet with Board of Medical Examiners (BME) for input.
- **Monetary penalty for workers if no show, no call, no reason for not attending IME exams**
 - See Exhibit G, for sample language.
 - Will require a statutory change. Will need rules to specify how to collect the fee/penalty.
 - See Exhibit H for current language requirement on appointment letters. If a benefit suspension is requested and the insurer did not explain the purpose of the IME, the Investigation and Sanctions Unit won't allow it. The division may explain the meaning of suspension of benefits so that injured workers understand it includes payment of medical bills.
 - See Exhibit I, samples of insurer letters to injured workers.

B. Meeting with OMA on IME, testified by John Shilts, WCD: John Shilts testified that he and Lou Savage met with Andi Easton, OMA. The OMA interested in working with MLAC and supports the subcommittee's concept for improving the IME process. However, OMA will not commit until there are specific proposals. John testified on the following input from OMA.

- The physician should have the opportunity to appeal the removal of IME certification.
- Complaint investigation: This could be done by a non-physician, but the findings should be given to a physician to make recommendation or provide a direction for further investigation.
- A physician has the expertise to review another physician's work.

Lou Savage commented that the concept of a fee structure was discussed, but there were no specific proposals. John stated that there has been no regular fee schedule discussion in the past but the OMA talked about increasing education requirements, certain processes, or other ways to structure higher fee for the physicians who meet all the criteria and perform IMEs.

Committee Discussion: There was general discussion about the importance of having a quality medical director to resolve disputes on IMEs. In the past OMA agreed with the concept of having a medical director. John Shilts explained that the reason for abolishing the medical director position was due to reducing the budget during the 1999-2001 legislative session. John also stated that bringing in someone as a consultant in this biennium would enable WCD to demonstrate the value of having the position in place in future biennium.

Public Testimony Regarding Item #7, Attending Physicians Not Going Over IME Reports With Their Patient

Larry Cleland, Claims Examiner, SRS – Mr. Cleland testified about the importance of encouraging doctors to review the IME reports with their patients because many concerns and disputes on worker side seem to diminish, regardless of the exam results.

Work Session – Item #7: Attending Physicians Not Going Over IME Report With Their Patient

Require attending physicians review IME reports with their patient

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- Wouldn't necessarily need a statutory change. Rule change should do it. Lou will discuss this with WCD and report back to the committee.
- Ask WCD to check with OMA to see if they would like to encourage physicians to review IME reports with their patients as an ethical obligation. If this becomes a requirement, it may not be supported by doctors.

Committee recommendations:

- Include in the concurrence letter an acknowledgement by the attending physician to sign off "I have reviewed with ___."
- Education to workers that they can ask their AP to discuss the report with them.

An extra IME report (with the possible exception of a psychological report) be sent to AP to give to the injured worker.

Public Testimony Regarding Item #8, Diagnostics Not Available for IME

Dan Johnson, president of WMCI Prime Evaluations - Mr. Johnson testified that the company tracks every record. The percentage of the actual diagnostics, x-rays, scans that are available (in addition to the report) is very high and disagrees with the DCBS survey result.

Work Session – Item #8: Diagnostics Not Available For IME.

Requiring diagnostics and studies:

- Will make the process more thorough although it may take more time and work.

- Although all the radiology, MRI, CAT Scans are available to the treating physicians in some hospitals, it is important to ensure the studies are received on time when certain facilities are reluctant to respond to the request or lose them.
- For the facilities, tracking diagnostics should start when an IME appointment is made.
- Need a sanction against certain facilities that procrastinate.

Committee Recommendation:

All diagnostics should be provided to IME physician or facility five days prior to exam, including medical records and diagnostic studies.

Public Testimony Regarding Item #3, Professional/Ethical Standards for IME Physicians

Hasina Squires and George Goodman, IMEA (Independent Medical Examination Association) – Mr. Goodman testified that IMEA felt that the WCD’s IME study result was based on biased perceptions against IMEs and they opposed the WCD’s recommendations on the selection of IME physicians; the regulation over which IME facilities workers are sent to; the mandate of the no off record between IME doctors and claims/defense lawyers; setting of an IME appointment; and a fee schedule upon IME doctors. Mr. Goodman stated that the medical arbiter exam wouldn’t be feasible for the IME process in nature and explained the misuse of the word, “bias” in the WCD’s IME surveys. However, he stated that the association supports the WCD’s recommendation of have claimants fill out satisfaction surveys after their IME.

Ken Hector acknowledged that the meaning of term, “bias” can be interpreted accordingly, depending on the context and various groups involved in the process.

Dr. Joe Eusterman, WOEMS - Dr. Eusterman presented the addendum to his written testimony regarding the item #3 and suggested the followings: 1) all parties sign conflict of interest disclaimer, 2) minimize monetary reward or threat of job loss or other pressure, 3) assign examiners from the QME list, 4) reinstate the medical director position, 5) remove any QMEs from the list who exhibit repeated or chronic bias toward any of the involved parties, 6) Develop a standardized history questionnaire for injured/ill worker impairment/disability evaluation to be sent by mail and completed in advance by the examinee, 7) adopt a new definition of “objective findings.”

Committee Discussion/questions to Dr. Eusterman:

- The difference between the arbiter exam and the IME exam: Primarily a medical arbiter exam assesses impairment issues but also allows an arbiter to give his/her opinion and judgment whether or not the final finding is valid. An IME can be very simple or complicated, depending on cases and what questions were being asked – that is the reason for Dr. Eusterman suggesting the fee schedule. There are similarities between them but he finds that the IMEs are more complex.
- Education requirement for IME physicians: With respect to an IME, the major contributing cause is not really about medical evaluation. IME physicians require a lot more education than just medical diagnosis.

- Necessity of having a specialized physician prior to have a specific surgery: Not always. But, if a doctor is not sure about a condition, he/she should refer the patient to a specialist.
- Exhibit 3 of Dr.'s packet, suggested language for ORS 656.323: Dr. Eusterman confirmed his support on the language.

Ernest Delmazzo, Injured Workers' Alliance - Mr. Delmazzo testified that there isn't any effective system in DCBS/WCD to impact the IME system being reformed and stated the BME would be inappropriate to investigate examiner behavior. He presented the New York IME Fraud Bill to the committee.

Committee Discussion:

- The item #2 of the New York IME Fraud Bill: A similar issue of eliminating/reducing any benefits due to an IME report was discussed by the Permanent Disability Committee.
- Time loss payment during 60 days to accept/deny claims: The committee found financial burdens on both injured workers and employers/insurers side. Also, reducing time to determine acceptance/denial from 90 days to 60 days may not be beneficial due to lack of investigation time. Brad responded that the WBF might be used and Sheri suggested using the WRME system to continue paying the time loss benefits.
- The statistics on WRME use, number of denials based on IME: How many claims have been overturned, # of denials overturned without WRME (just by the hearings' division). IMD of DCBS will do the analysis on denial claims and statistics on WRME use.

Association of Oregon Counties & League of Oregon Cities: The organizations submitted a written testimony to the subcommittee. No associate presented at the meeting.

Work Session – Item #3: Professional/Ethical Standards for IME Physicians

Criteria set up for physicians who participate in the IME process

- Certification, consistent with the current continuing education requirement.

Exhibit 2B of Dr. Eusterman's written testimony packet

- A good example of training and education model.
- The State of WA system could be appropriate model for Oregon.

Legal side of WC system education

- WCD should develop training.

OMA's interest in requiring CE for IME physicians, testified by John Shilts

- If it fit within their overall CE process, OMA will be interested in it and understands the needs for the CE requirement.
- Some of the IME vendors might be able to provide such trainings.
- Need to allow the current process to continue for IMEs while we introduce the new certification and processes.

Complaint process & mechanism

- Complaint should be directed to WCD first for investigation.
- Once it is completed by WCD, it can go to doctors for their review.
- The medical director should be the beginning point for the investigation. If a medical director were in place, the process would be easier. When the medical director sees the

case and removes a physician from the list, then there will be an appeal process (BME or OMA subgroup).

- The appellate body for handling the appeal process on physician removal should be determined among WCD, BME, IMEA, and OMA.
- Need to include who will be doing the investigation in the group's recommendation.
- On its policy side: John suggested the group include details on how the removal of physicians from the IME – such as how can they reinstate their qualification or would it be permanent once they were removed – in their recommendations. The committee wants to know OMA's thoughts on the issue.

John Shilts stated that the place holder bill, created by the Senate General Government Committee, specifies that the BME is involved in many of the items of the committee's work. The chairman concerned whether BME would be proper for having such roles.

The chairman asked Lou Savage to bring the list of all recommendations that the committee has made to motion to vote at the next meeting.

Meeting adjourned at 11:50 a.m.

Next Meeting: Friday, January 14, 2005, 8:00 a.m.

Labor & Industry Building, Room 260