

NOTICE OF PUBLIC MEETING  
WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
May 18, 2007  
10:00 a.m. – 12:00 p.m.

Conference Room 260  
Labor & Industries Building, 350 Winter Street NE, Salem, OR  
(A map is available upon request)

**Committee Members Present:**

Sheri Sundstrom, Hoffman Construction Company, Portland, OR  
Bob Shiprack, Oregon Building Trades Council, Portland, OR  
Tracy Brill, Port of Portland, Portland  
Ellen Cutler, Harry and David, Medford, OR  
Lon Holston, Grants Pass, OR  
Linda Jefferson, City of Portland, Portland, OR  
John Kirkpatrick, IUPAT District Council, Portland, OR  
Greg Miller, Gunderson LLC, Portland, OR  
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR

**Committee Members Excused:**

Lisa Trussell, Associated Oregon Industries, Salem, OR  
Cory Streisinger, Department of Consumer & Business Services, Salem, OR

**Review Minutes**

A motion was made and seconded to approve the minutes of the April 20, 2007 Full MLAC meeting as submitted. The following members voted aye: Ellen Cutler, Tracy Brill, Linda Jefferson, Lon Holston, Sheri Sundstrom, Mike O'Rourke, and Greg Miller. (Bob Shiprack was not in attendance at the time the vote was taken.)

**Proposed legislation**

LC 1050 – Attorney fee lien on worker settlement

The legislative concept and an analysis were provided and are part of the record.

Randy Elmer, Attorney, Oregon Trial Lawyer's Association

Mr. Elmer gave the committee a brief review of the content of the proposal. OTLA considers this bill as part of a fix for the problem of the inability of injured workers to obtain representation.

Discussion: Concern was expressed about the criteria and fairness of determining when the attorney has done enough to earn a fee. The proposal from OTLA is that the Workers' Compensation Board would, through rulemaking, establish criteria for determining whether the attorney is deserving of the lien. The proposal would be that the dollar amount would come out of the subsequent award to the worker. There was a question about the time limit for filing a lien. A request was made for clarification about whether this applies to situations in which the attorney has decided to no longer represent the client.

Roger Pearson, Workers' Compensation Board

The board would need to adopt procedural rules regarding what needs to be filed, the time period for filing, criteria for determination, etc. The Board recommendation is that the language be modified to clarify some of the limits in accordance with the testimony presented by Mr. Elmer.

John Fowler, Liberty Northwest

Mr. Fowler provided written testimony. The written testimony is part of the record. Liberty does not oppose the concept but presented some concerns. Mr. Fowler's testimony focused on questions that might need to be addressed either as amendments to the bill language or in rulemaking. He requested that the first five questions in the written testimony be included as amendments to the concept to provide important clarification. The five questions deal with the following: specific amount for the lien, increase in the total fee for a case, lien for a specified time period or compensation award, and specified time for filing the lien.

Response from Randy Elmer

Mr. Elmer agreed that the claim would have to be filed timely. He discussed briefly some of the scenarios that would cause an attorney to file a lien.

Committee Discussion: A comment was made that this may give incentive to the worker to keep the relationship intact with the attorney even though there may be some frustration with the process.

Action: A motion was made and seconded to approve the bill. The following members voted aye: Ellen Cutler, Linda Jefferson, Greg Miller, Sheri Sundstrom, Tracy Brill, Lon Holston, and Mike O'Rourke. Nay vote: Bob Shiprack

George Okulitch, OTLA Lobbyist

The committee asked Mr. Okulitch regarding what bill would be used as a vehicle for the concept. Mr. Okulitch indicated that a decision on that had not been made yet.

SB 253A – Administrative Law Judge approval of claims disposition agreement – review amendments  
A copy of the bill, an analysis, and a statement of fiscal impact were provided and are part of the record.

Randy Elmer, Attorney, OTLA

Mr. Elmer summarized the amendment to the claims disposition bill. The amendment removed paragraph 4 on pg 2 of the original bill.

Roger Pearson, WCB

Mr. Pearson indicated that the provision that was removed created ambiguities. The Board will establish the necessary procedures through the rulemaking process.

Action: A motion was made and seconded to approve the amendments to SB 253A. The following members voted aye: Ellen Cutler, Tracy Brill, Linda Jefferson, Lon Holston, Sheri Sundstrom, Mike O'Rourke, Greg Miller, and Bob Shiprack.

HB 2943 – IME Standards – review amendments

The A-2 amendment, and a copy of the A engrossed bill were provided and are part of the record.

John Shilts, WCD

Mr. Shilts gave a brief review of the bill and the amendment that changes "shall" to "may". The amendment clears up a problem mentioned in the Senate hearing regarding inappropriate delegation of authority. There will be a public rules process for adopting standards.

Action: A motion was made and seconded to approve the amendment to HB 2943. The following members voted aye: Ellen Cutler, Tracy Brill, Linda Jefferson, Lon Holston, Sheri Sundstrom, Mike O'Rourke, Greg Miller, and Bob Shiprack.

## **Update on legislative activity**

John Shilts, WCD

Mr. Shilts provided a document summarizing action on bills that MLAC recommended for approval to the legislature. The document is part of the record. Mr. Shilts gave a brief summary of the status of the bills.

Committee Discussion – There was brief discussion on the task force created by HB3357 and the current status of SB780.

Other Business: Linda Jefferson has taken a new job and will not be continuing with MLAC. Chair Sundstrom expressed appreciation for her service on the committee.

## **Discussion of possible interim projects**

John Shilts, Workers' Compensation Division

Mr. Shilts provided a document titled "MLAC Possible Interim Topics" which is part of the record. He provided information on each of the topics regarding current law and the discussions that prompted the ideas for possible interim projects.

Committee Discussion: The items listed as Monitor/Data Tracking/Information will be completed by the department and a report will be given to the full committee. The committee made the following recommendations regarding the projects/studies:

Care providers in the MCO context – Members present did not have an interest in pursuing this as an interim topic, but the topic was left open for possible consideration by members not present.

Review of entire reconsideration process – Lon Holston, Greg Miller, and Bob Shiprack volunteered to participate on a subcommittee.

Supplemental disability and multiple job wage determinations – Tracy Brill and Sheri Sundstrom volunteered to work on a subcommittee.

Study of death benefits – Mike O'Rourke, Sheri Sundstrom, Ellen Cutler, and Lon Holston volunteered to work on a subcommittee

Review, report, and make recommendations on PPD benefit levels and standards – will be moved into the category of monitor/data tracking/information and the department will report back to the full committee.

Significant court cases – Will be a topic for review by the full committee.

Record retention – Mike O'Rourke and Ellen Cutler volunteered to work on a subcommittee.

Other business: There was general discussion regarding physicians who don't want to treat injured workers and physician reimbursement in the worker's compensation system. Mr. Shilts provided information on the fee schedule process and on the medical quality initiative. A report will be made to the committee at regular meetings regarding medical reimbursement.

Subcommittees will start meeting after appointments are made and confirmed in the fall.

Meeting adjourned at 11:35