

**WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE**

**SUBCOMMITTEE ON HB 2418/ SB 507**

**Labor & Industries Building, Room 260  
350 Winter Street NE, Salem, OR**

**Friday, March 22, 2019  
9 a.m. – 11 a.m.**

***MLAC Members Present:***

Tammy Bowers  
Alan Hartley  
Kimberly Wood  
Aida Aranda  
Kevin Billman  
Jill Fullerton  
Diana Winther  
Cameron Smith, *ex officio*

***Staff:***

Theresa Van Winkle, MLAC Committee Administrator  
Adonia Stevens, MLAC support

***Attendees:***

Nelson Hall, Attorney  
Sam Hutchinson, City of Portland Fire and Police Disability Retirement Bureau  
David Barenberg, SAIF Corp.  
Kathy Gehring, SAIF Corp.  
Jaye Fraser, SAIF Corp.  
Elaine Schooler, SAIF Corp.  
Troy Clausen, Oregon State Sheriff's Association  
Patrick Sieng, Association of Oregon Counties  
Jennifer Flood, Ombudsman for Injured Workers  
Jack Dempsey, Oregon State Firefighters Council  
Andrew Graham, Attorney  
Hasina Wittenberg, Special Districts Association  
Scott Winkles, League of Oregon Cities

**Agenda Item**

**Discussion**

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Opening  
(00:00:00)      Called to order by Kevin Billman.

Introductions

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**00:00:30**

- Nelson Hall reviewed proposed amendments to SB 507:
    - o Volunteers would be excluded from the definition so only paid personnel are covered. Volunteers vs. non-volunteers as used in the definition in the current cancer provision
    - o The definition of “trauma” is not stand alone disorders. Uses the DSM-5 definition
    - o The amendments will correct a typo in the dash 3 amendment, on page 3, large capital B removes the work “unrelated to.”
    - o Under subsection 5(h) of this section, terms and be included in public safety personnel.
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**00:06:56** More introductions

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Kevin Billman asks about what they will let go from bill.

Sam Hutchison: Support but not as drafted. Make changes to subsection 7 and wants wording very narrow so it just applies to this bill.

Andrew Graham: Standard for the rebutting of presumption. As it is written now it doesn't seem like it is rebutted. Reactive attachment disorder, disinhibited social engagement disorder, adjustment disorder have no bearing on adults so why are they listed.

Compensability standard what does in material part mean. *Mays v Comcast* said something of fact of great consequence, but has been tweaked by the board and now is being used as basically anything, at most a minor contribution, that means any contribution no matter how small a fact of consequence. That will make it almost impossible for the employer to rebut the claim and the bar is way too low.

Hasina Wittenberg: concerned that with the bill being retroactive this doesn't exclude preexisting conditions.

**00:12:21** Kevin Billman asking if any of the other opponents want to speak on the same issues, then move on to the proponents.

Elaine Schooler (SAIF): concern that the language says “including but not limited to” is not a limited list of conditions. Believes it is an open door to more conditions being claimed not just the highlighted ones in the bill. Referring to the 5<sup>th</sup> addition of the DSM as a diagnostic tool should be taken out and having it read the “current diagnostic tool,” as such publications are updated. Elaine also said the definition of “emergency service personnel” and who that includes stating it needs to be very defined so as to not open the bill up for litigation in the future. For example, does it cover only State of Oregon

emergency personnel, or does it cover emergency room doctors and nurses, fire fighters and emergency workers that are also with private companies.

With the watering down in the courts of the phrase “fact of consequence” it is a concern that this is making it very difficult for any employer is rebut a stress related claim if any amount of work related stress could be causing PTSD or other such disorders.

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**00:16:20** Kevin Billman asking if there is language that could solve the addition to the DSM-5 being the only diagnostic tool used.  
Andrew Graham responds that there are other states that use the language that states: DSM-5 or the latest addition.  
Nelson Hall and the members from SAIF were agreeable to this.

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**00:16:56** Andrew Graham: At the Senate Workforce Committee one of the witnesses for the proponents caused him to think about preexisting conditions. How does it play a roll in the PTSD itself. The other issue is sub section 2 in the -3 page 2 line 9, that will take away the ability of the employer or insurer to accept a combined condition. If the person has a preexisting anxiety or depression disorder and the are treated for the PTSD. Under the current statute, how it is written, an employer wouldn't be able to issue a ceases denial for the treatment of the PTSD.

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**00:20:36** Scott Winkles: Is not sure of the need for the bill and explains his positon. City County Insurance had 43 claims in the last 10 years where PTSD has been the main component. Saying that the “combined claims” had to do with a physical injury with the PTSD. He commented on the Springfield shooting where firefighters where shot and PTSD was part of the diagnosis. Six of those claims were excepted, 11 were rejected. 292 claims over the last decade dealing with over all mental health, 205 of those claims were generally accepted.  
Scott is feeling that this might not be the best route to address mental health issues. The EAP program is culturally competent or is there another way that provides anonymity to the public safety employees that provides rapid assistance. Not sure we are ready to negotiate the bill if we are not ready to agree this is the best approach.

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**00:22:45** Sam Hutchison talking about the hearing and people saying that they were waiting too long to seek treatment and waited until it was almost to late.  
Sam doesn't feel that this bill taking in to account the need for right now, and how to help right now. And that the bill is dealing with the tail end of a problem that should have been addressed earlier.

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**00:24:50** Diana Winther: doesn't see this bill preventing all of the other things such as prescreening, EAP. What if all of those things happen and a person still gets to

this point. If anything what is happening on the front end should lessen the need for workers' comp.

Scott Winkles: feels this is about effective risk management and avoiding paying future workers' comp claims. He doesn't believe we have seen claims data or case analysis that we aren't taking care of people that have legitimate claims. Even some of the cases we've denied there could have been a settlement, and just because it isn't in workers' comp doesn't mean that it can't be resolved.

Kimberly Wood: the problem with the data is that there is none on people who are not willing to file. Things being done on the front end are great, and she supports it, but that isn't the bill. She wants to support the people who are being left out, and wanting to help those that are needing help.

Sam Hutchison: culture, filing a claim, claim investigation, people not willing to file claims of any type. Talking about the culture of being macho and that is the reason people are unwilling to file. Feels that is some of the reason that the language in the bill is the way it is so that if a doctor says it is PTSD then they don't have to share it. It is the issue of making the claim being to personal and causing issues with investigations. Not being able to get a fair shake from the workers' comp system is another reason that claims are not getting filed.

Kimberly Wood: I don't believe this bill would prevent them from investigating.

Sam Hutchison: This is why people don't come forward. They don't want to be put in the system. They don't want to talk about what is happening with them from the trauma. This bill would make it very difficult for the claim investigators to get any information and it makes it very difficult for them to rebut what the diagnosis if there is no way to investigate.

Many of the members feel that if they file a claim it will be denied. That is the other reason they don't come forward.

**00:31:44** Kimberly Wood asks if some of the concern is getting into private matters, is there a way the provider can be given the questions to ask that the claim investigator would normally ask. So they aren't having to tell the story over and over.

Sam Hutchison stated that he hears back that any claim filed would be denied. Of all the stress claims he received only 2% of them were denied. There is a strong feeling from the members that they can't get any benefits from the workers' compensation system. And that tone has shaped the way people feel about filing the claim and the reason why many don't.

**00:34:02** Jill Fullerton: said it seems that what we are doing here isn't going to help. How could the verbiage be less daunting or more approachable for that worker who is wanting help?

Sam Hutchison: We have people, firefighter or police officers, that we pay half of their salary to do the interviews that have experience in those traumatic situations, or maybe an interviewer that has a different skill set to get the person to open up. But if they don't want to open up, they aren't going too. And we can't force them.

**00:35:55** Kimberly Wood: If they are going to have to file a claim, they would have had to see someone, and be treated by a professional. Is there a way the provider is given the list of questions and is able to ask in the safe environment to get the information.

Sam Hutchison: getting just any provider to make the diagnosis isn't always good. That can cause more issues and a longer investigation. If any provider is asking the questions but are not qualified to make the diagnosis then it can really be a mess in the claim process.

Sam isn't sure if they make the process more friendly or easier if that would get people to file more claims. That this is a culture issue, and there isn't anything a bill could do to fix the attitude and the culture.

**00:40:52** Troy Clausen speaking that his issue with the bill is they are not sure if a problem really exists and is it really something that needs to be fixed. Can we monitor to focus on what can be done to help personnel. There has been a shift in the last 10 years that more people are willing to go speak with a mental health professional. We have begun to teach mental health first aid, and mental health wellness and this is helping to take care of the situation before it happens.

What happens once PTSD starts happening and when we get people to the right people before it goes to far. Not sure if this is the right solution. Is it about education and getting in front of the situation.

Troy commented that using the people who have a first hand knowledge of the issues that first responders face will make the diagnosis of PTSD much more plausible than just having a general practitioner making the diagnosis.

Looking at the definitions in SB 507 basically the people who are treating need to have specific knowledge of the profession in order to make a well informed diagnosis and not one from a general practitioner who doesn't have the hands on experience for the diagnosis.

**00:46:11** Kevin Billman: the question of we really need to be here has come up, the MLAC felt it was worth the time. I feel we are working on a way to change the culture, so that we can help out first responders. We don't want them to slip through the cracks, but some will.

Kevin said what he heard when listening to the hearing and the reason people were not reporting was for fear of the system. He would like to see us taking care of our first responders. Talking away the fear of not being able to get treatment, and while they are getting treatment remove the worry of the system.

**00:49:39** Nelson Hall: This bill does nothing to prevent PTSD from happening. This is a presumption, it has nothing to do with any of the preventive measures that are in place. Nelson continues describing changes to the amendments. The “included but not limited too” will be fixed in the -4 amendment so that it would strictly limit the coverage of specific disorders and removing the disorders that don’t relate to adults. One solution could be: in the 5<sup>th</sup> addition or current condition of the DSM. These are the diagnosis in that chapter of the DSM 5 that deals with trauma. We are not talking about children. We need to figure out stays in as an acceptable diagnosis and what goes, or do we leave it up to some professionals. Referring to the specialists would be the best way to clean up the language to see if they feel it is best to leave it general referring to the DSM manual, or if they think it should be more narrow and just be the PTSD and PTSI disorders.

**00:57:50** Hasina Wittenberg: Doesn’t think it would be solved by referencing the DSM-5 manual. We have been hearing this is about PTSD and PTSI, not reactive attachment disorder, it may be related to PTSD, but it needs to be narrowed. They are big diagnoses; they need to be called out to what they are.

Andrew Graham: not allowing a diagnosis for any stress that could happen, but specific trauma, or repeated trauma.

Kimberly Wood: if there is going to be a presumption, it should be a narrow presumption. That there is a specific trauma that you can link the diagnosis too. If we are going to allow a presumption that we have a clearly identified event and diagnosis that goes with that.

Andrew Graham: Not saying it should be limited to a single event, but repeated exposure to traumatic events. It is what the traumatic incidence are that need to be the focus for the diagnosis of PTSD and acute stress disorder.

Alan Hartley: So if we are going to have a presumption of some kind we need to have it be a narrow presumption and anything above that should follow the general workers’ comp guidelines.

Nelson Hall: Under -3 amendments trauma and stress or related disorders. This is specific for trauma related disorders. Nelson references the definition in the DSM 5. Stating that this is not going to capture general work place stress or stressors at home.

**1:03:40** Nelson Hall: the doctors would tell you that PTSD does not combine with other mental health disorders.

Tammy Bowers: So when a veteran who is now a first responder, and has a diagnosis of PTSD experiences a traumatic event in the course of their duties as a first responder, when does the responsibility go back to the federal government to continue treating for the preexisting PTSD?

Nelson Hall: Part of the problem for our first responders, it goes back to the claims processing and not wanting to file a claim. But it is the forensic teasing, and trying to break it down to where did the trauma happen and what caused the PTSD. If work in Oregon has had a significance to the diagnosis for PTSD, let Oregon own it, that they need treatment and have it treated. When the patient becomes medically stationary, then the claim can be closed.

Tammy Bowers: asks when your patient becomes medically stationary, it goes back to the Federal government for treatment?

Nelson Hall responds this could become aggravated again down the road. The claim could be reopened and looked at as an aggravation claim and more treatment could be given. But on the initial claim once the patient is seen as “medically stationary” the claim on the traumatic event as a first responder in Oregon is closed.

**1:09:09**

Elaine Schooler: thinks there is a distinction between the pre- employment PTSD and the PTSD that happens in the course of duties as a first responder. There needs to be a triangle of what is accepted when the PTSD is being treated as a whole under the presumption language. And be able to make a scale and rate it so that the employer can pay for the trauma that caused the work related PTSD and then not be responsible for the pre employment PTSD claim.

David Barenberg: Under the presumption any contribution of work even 2% the workers’ comp system would then own the claim?

Elaine Schooler responds yes.

Alan Hartley: comments that is the heart of it, what is the presumption we are willing to give?

Elaine Schooler: The conditions in the DSM manual there could be trauma and work related stressors, but not causing PTSD. What should be left to the general mental health statute.

Nelson Hall: table the debate on what diagnosis should be included or not. Nelson would like to speak with a doctor on that before the wording is set. Hearing from experts before this part of the discussion continues. The beauty of the DSM-5 is like referencing the manuals of orthopedics.

Alan Hartley: having a mental health professional speaking and giving more definition to the possible diagnoses. And if you are listing these 5 disorders then they are diagnosed by a professional who works with first responders and has great experience dealing with these types of professions.

Nelson Hall: Oregon does not have a subset of specialty mental health professionals for first responders. Page one has the definition of what people can make the diagnosis.

Troy Clausen: Agrees with getting the experts to help word the definitions to the five traumas listed. Definition for mental health professionals, also getting the experts to define who makes diagnosis.

**01:18:28**

Kimberly Wood: asked if he could help facilitate contacting those professionals so that they could speak at a subcommittee meeting and the members would be able to get more clarification.

Troy Clausen responded that he would be happy to.

Sam Hutchison: Reminds the members that psychologists can't diagnose. For claims they would need to be working along side a doctor, general practitioner, who would be able to diagnose and be part of the treatment for the claim to be accepted.

Hasina Wittenberg: Special Districts launched an EAP program with specialists of public safety specific counselors. Would be happy to bring a couple to testify at next meeting. The Special Districts provider list is not the same as Troy Clausen and Nelson Hall's list.

Nelson Hall: Comments on the burden of proof which is the same as in the cancer presumption. It is defined by the courts and should be used in this presumption. This should be used with cases that are currently pending, not old denied claims. You apply the law that was in effect of that claim and Mahonia Hall changed this. It was to apply to all currently pending claims.

**1:23:45**

Alan Hartley: Would like some better language than "material part," something that is more rebuttable.

Tammy Bowers asking how they came up with 7 years after the event they can still file a claim.

Nelson Hall responded that it was a concession. In his world it would not have a limit. You can't say when they might experience the break down from the trauma.

Alan Hartley asked about the two years and the repetitive stressors.



Nelson Hall: If on the first day the responder went through a major traumatic event they could file a claim, but would need to wait two years before filing a claim saying the repetitive job stress caused the PTSD.

Alan Hartley: asked about page one line nineteen, defining an emergency medical responder. Is there a definition for that?

**1:33:30**

Nelson Hall: It has been narrowed to emergency medical service provider excludes the emergency room nurse and doctor. It does include a dispatcher or 9-1-1 operator. A debate of language came up and the definition for “emergency medical service provider” and who that defines.

Alan Hartley and Kevin Billman both asked to have that defined. If it has been listed 3 different times, in three different ways it needs to have clarity.

Kevin Billman asks for any more questions be emailed in for the next meeting so that they can pull information together.

Nelson Hall believes pending claim is pending, and that no matter the state of pending it is included in the bill.

Kimberly Wood wants any language changes or questions before the next meeting and those should be sent in by Wednesday the 27<sup>th</sup> so that there is time to look them over before the next meeting on the 29<sup>th</sup>.

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**1:34:00 Meeting Adjourned**