

Workers' Compensation Board
Thursday, August, 23, 2018
1:30 p.m.

Meeting Minutes

Present: Connie Wold, Board Chair
Sally Curey, Member
Barbara Woodford, Member
Steve Lanning, Member
Roger Ousey, Member
Joy Dougherty, Presiding ALJ
Terry Bello, Administrative Services Division Manager
Greig Lowell, Project Manager
Kayleen Atkins, Executive Assistant
Marcia Alvey, Attorney
Lisa Stalder, Paralegal
Keith Semple, Attorney

Call to Order

Chair Wold called the meeting to order.

Approval of Agenda and Order of Business

Member Curey moved for approval of the agenda. Member Woodford seconded. Motion carried.

Approval of Past Minutes

Member Ousey moved for approval of the June 26, 2018 meeting minutes. Member Lanning seconded. Motion carried.

Reports of Administrative Staff

Administrative Services Division: Greig Lowell provided an update regarding the portal. Added notifications have been activated which provide the status of briefing extension requests.

In 2013, the Board adopted a new rule regarding third party election letters. By statute, the Board is required to perform a five-year rule review. Part of that process is to follow-up with folks that were on the advisory committee to get input on whether the rule is working, achieving what was intended, etc. Accordingly, a letter will be sent to those who participated in that rulemaking process to get their feedback.

ASD Staffing - Bello indicated she is in the middle of recruitments for reception, personnel contact, as well as the new request positions. On August 1st Chantal Davidson was hired in the mailroom. Bello thanked Board Review and Hearings Division for their patience during the hiring process.

Advisory Committee - Bello gave kudos to Autumn Blake and Kathy Ocasio for assisting in the gathering of cost/staffing information for the advisory committee ALJ Bruce Smith is facilitating.

Facilities - Bello reported on the progress of the Salem office lease. First Premier will be installing bollards around the building, replacing handles/hardware, new blinds, and paint throughout the building. Those enhancements will take place in March 2019.

Roseburg - Bello and Dougherty will be traveling to Roseburg to tour the Umpqua Community College campus to view their conference rooms. Conference facilities in Roseburg are sparse, expensive, and cancellations are not well-received.

Eugene - Bello reported working on getting a hearing room in the Eugene office ADA compliant, which will require holding an open house to assist vendors in the bidding process.

Pendleton – Bello is beginning the negotiation process on the lease for the Pendleton office. That lease expires in January.

Bello provided copies of the “Community Engagement” report which is part of DCBS’s affirmative action plan. The report outlines a list of WCB’s outreach efforts in the community, as well as goals and plans for the next biennium.

Board Review: No Report.

Hearings Division: No Report.

Unfinished Business

No report.

New Business

Discussion of [rule concept](#) (submitted by Attorney Marcia Alvey) concerning OAR 438-007-0020(6), which concerns obtaining “individual identifiable health information” through a subpoena duces tecum. Specifically, the concept suggests including in OAR 438-007-0020(6)(b) the language prescribed in OAR 438-007-0020(6)(f) (which requires including in the subpoena a notice to the recipient that, if it receives a timely objection from the individual whose information is being subpoenaed, the information being sought shall be mailed to the Board’s Salem office).

Chair Wold opened the discussion regarding the rule concept submitted by Attorney Marcia Alvey.

Alvey spoke about subpoenas decues tecum (hereinafter “subpoena”) being too large and overbroad asking for “any and all” medical records. Alvey is increasingly having to object to the subpoenas, and discovering that the maintainers of the records do not know what to do with records when they get an objection. In addition, she relayed that more frequently medical providers do not wait the seven days for an objection before responding to subpoenas. Alvey did not believe the administrative rules give much direction, and voiced concern for the ALJs who must review 800 - 1,000 pages of documents (or a CD). If requests were narrowed down to a specific body part, there might not be an objection.

Member Curey questioned Alvey regarding her current practice when receiving a copy of the subpoena, whether a call is placed to the provider or whether she merely objects right away.

Alvey indicated that her firm does not always object. Particularly, if it is a smaller provider’s office, but typically objects with large providers such as hospitals.

Member Curey questioned whether Alvey calls insurance companies to try and resolve large subpoenas. Alvey indicated she does, but generally is contacted by opposing counsel to reach an agreement. Alvey has been trying to work with other attorneys to modify subpoenas.

Member Curey questioned whether there has been a significant increase in the “any and all” subpoenas. Alvey believed so, because obtaining records via subpoena is more cost effective, and defense counsel knows they will get the records.

Member Curey commented that subpoenas come at a cost regardless if they indicate “any or all” records, and agreed it is a problem.

Chair Wold clarified that it is large hospitals that may be confused on the seven-day wait before providing medical records. She concurred with its impact to the Hearings Division, and opened the discussion to others present to share information that would help analyze the concept.

Lisa Stalder, Alvey's paralegal, noted it is not only the large providers, but small medical providers who call periodically, indicating they have received an objection, after they have already sent the records.

PALJ Joy Dougherty relayed that the Hearings Division has seen a shift in the workload in the last 12 months from objections to subpoenas and the amount of records received from health care providers. Dougherty referred back to 2012 when she was an ALJ and had a 350-page record to review. Most recently, an ALJ had a 6,000-page record to review. Many records are submitted on thumb drives/disks which is a change from the past. ALJ's are questioning whether WCB is responsible for the cost of printing such records, to which the answer is yes, as it pertains to the cost of doing business. APALJ Marshall and Dougherty have discussed the matter a few times trying to come up with a solution. Dougherty believes that it is easier to copy and paste the record to a thumb drive instead of getting the original file ready and photocopied. The main question is whether health care providers have changed their practices. She believes it would be valuable to bring health care providers together to discuss the issue. Dougherty is contemplating purchasing software to do this electronically instead of printing out 6,000 pages. There would be many moving parts if it were decided to use Adobe Pro, as we would need to notify parties that it is the program we plan on using so parties can submit information in a compatible format. Dougherty would like to bring the health care providers together regardless of an advisory committee to get an understanding of their practices and moving forward.

Keith Semple echoed Alvey's concern regarding "any and all" subpoenaed records. Semple understands that sometimes it may be a reasonable request and relevant to specific cases. An idea of having the parties pay for the copying costs is a good starting point since it may discourage asking for every single record. Semple was supportive of Alvey's concept.

Chair Wold agreed that it does have an impact on the Hearings Division and the health provider community may be confused. She recommended an advisory committee and that Alvey be involved, as well as persons from the medical community.

Member Curey moved to forward the concept to an advisory committee. Member Lanning seconded. All in favor: Woodford, Ousey, Lanning, Curey, and Wold.

Public Comment

As above.

Announcements

None.

Adjournment

There being no further business, the meeting adjourned.