

**Workers' Compensation Board
Tuesday, June 18, 2019
10:00 a.m.**

Meeting Minutes

Present: Connie Wold, Board Chair
Sally Curey, Member
Barbara Woodford, Member
Steve Lanning, Member
Roger Ousey, Member
Roger Pearson, Managing Attorney
Joy Dougherty, Presiding ALJ
Terry Bello, Administrative Services Division Manager
Greig Lowell, Project Manager
Autumn Blake, Board Review Staff
Jaye Fraser, SAIF

Call to Order

Chair Wold called the meeting to order.

Approval of Agenda and Order of Business

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

Approval of Past Minutes

Member Curey moved for approval of the April 30, 2019 meeting minutes. Member Lanning seconded. Motion carried.

Reports of Administrative Staff

Administrative Services Division: Bello reported that Hearings Division is now fully utilizing the Pendleton office. She is currently working with the lessor to erect adequate signage. She is also working with Umpqua Community College in Roseburg to update our contract to hold hearings.

The lease holder for the Salem office is planning to begin painting and carpet cleaning the last two weeks of August. Bello will work with management to minimize the impact this may have on day-to-day operations.

Bello indicated that Amanda Mendiola accepted a job rotation with Central Services at WCD. In her place ASD has hired a temporary worker to help in the

mailroom. Recruitment for a receptionist is active and the next step will be face-to-face interviews.

Administrative and support staff from all offices held a successful all-day team building and training activity on May 20.

DAS is finalizing the new transcript contract to take effect on July 1. WCB will have three new vendors. Of the two current vendors, one did not bid on the new proposal and one decided not to sign the new contract.

Hearings Division: PALJ Dougherty stated that a well-attended retirement celebration was held in Medford in honor of Linda Priebe's 40 years of service.

Board Review: No report.

Unfinished Business

No report.

New Business

Consideration of the advisory committee report regarding OAR 438-007-0020(6)(b), which addresses rule concepts concerning obtaining "individually identifiable health information" through a subpoena duces tecum and the information/notice to be included in such a subpoena regarding objections to the subpoena and where/when to send the information in case of an objection.

PALJ Dougherty reported on the findings of the advisory committee. They divided their findings into three categories: the language of the subpoena; the process of issuing the subpoena; and the form in which the information is returned.

The advisory committee suggested language to use in subpoenas to clarify the current confusion expressed by some medical record providers about how to respond to record requests. This language comes directly from the governing rule; it would simply be provided to the records custodians in each subpoena. Also, including a clear outline within the subpoena document concerning the period for compliance would be helpful to the records custodians.

While other forums have their judges review subpoenas before issuance, the committee felt that it would be overbroad for WCB's purposes.

When records must be reviewed by an ALJ after an objection and then distributed to the parties, the committee agreed that paying a nominal fee to obtain a disc of electronic records would be preferable to having paper records.

Chair Wold thanked PALJ Dougherty and the committee for their work and the report they provided. No public comment was offered and the Members proceeded with their discussion.

Member Lanning thanked Dougherty for the report. He stated that the proposed rule language would be a simple fix assuming providers are reading the whole subpoena. He agreed that having ALJs review all subpoenas would be excessive.

Member Ousey expressed concern with the proposed language. He suggested adding a parenthetical “or their attorney” to the rule describing the notice to the medical provider that must be included in the subpoena. *See* OAR 438-007-0020(6)(b).

Chair Wold suggested clarifying the language regarding timeframes.

Discussion was held whether to propose amendments to OAR 438-007-0020(6)(b) to address the committee’s recommendations.

After discussing comments from Member Ousey and Chair Wold, as well as the proposed language of the rule from the Advisory Committee, the Members agreed to change the proposed amendment as follows.

“THE CUSTODIAN OF THE RECORD SHALL PROVIDE THE RECORDS IN THE MANNER PRESCRIBED. THE RECORDS SHALL BE PROVIDED NO SOONER THAN 14 DAYS AFTER ISSUANCE OF THIS SUBPOENA, BUT NOT LATER THAN 21 DAYS AFTER ISSUANCE.”

The Members also agreed to add “(or the party’s attorney)” to the rule/subpoena notice as an individual who may submit a timely objection to a subpoena to the medical provider.

Member Woodford moved to submit the proposed amendments to OAR 438-007-0020(6)(b) as modified to a rulemaking hearing. Curey seconded. Motion passed.

Public Comment

As above.

Announcements

None.

Adjournment

There being no further business, the meeting adjourned.