

BWC BOARD OF DIRECTORS

GOVERNANCE COMMITTEE

THURSDAY, May 28, 2009, 9:00 A.M.

WILLIAM GREEN BUILDING

30 WEST SPRING ST. 2ND FLOOR (MEZZANINE)

COLUMBUS, Ohio 43215

MEMBERS PRESENT: Alison Falls, Chair
Larry Price, Vice Chair
James Hummel
William Lhota
Thomas Pitts

Members Absent: None

Other Directors Present: Charles Bryan, David Caldwell, Ken Haffey,
James Harris, Jim Matesich, & Robert Smith

Counsel Present: James Barnes, Chief Legal Officer & General Counsel

CALL TO ORDER

Ms. Falls called the meeting to order at 9:00 a.m. and the roll call was taken.

MINUTES OF APRIL 28 AND APRIL 29, 2009

Mr. Lhota moved to approve the minutes of April 28 and April 29, 2009. Mr. Price seconded the motion.

Mr. Lhota requested that the minutes of April 28 be amended to show that the meeting began at 2 p.m., not 4 p.m. He also requested that on page 2, ¶1, the remarks of Abe Tarawneh be amended to show that the reduction of frequency and severity of accidents “could” lead to lower premiums, not “will;” and that the executive session of the 12:00 p.m. meeting was convened and closed by unanimous roll call vote, not merely a unanimous vote.

Ms. Falls requested that the 2 p.m. meeting be amended to add that she had complimented Freddie Johnson, Director, Managed Care Services, on the comparison chart he created comparing old and new rules provisions. BWC staff should prepare similar charts for other rules.

The minutes were approved by unanimous roll call vote.

AGENDA

Mr. Hummel moved that the agenda be approved as submitted. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

NEW BUSINESS/ACTION ITEMS

LAUNCH OF BOARD SELF-ASSESSMENT

Ms. Falls launched the Workers' Compensation Board of Directors Self-Assessment process. The plan is to complete the process before new members are seated; however, this year the point is moot. The first issue is whether to keep the 2008 form. She reflected that the form was good at eliciting directors' views on board processes and formulating an action plan for key Board priorities going forward. A second issue to address is whether the form sufficiently addresses committees. Ms. Falls posed the question of whether each committee should also perform a committee self-assessment. Mr. Harris, Mr. Hummel, Mr. Price, Mr. Lhota, and Mr. Smith each commented that the inherent nature of the Workers' Compensation Board assessment was also to evaluate the committees. It was the general feeling of the committee that the current self-assessment adequately addressed the activities of the committees. Mr. Lhota requested that the assessment be re-titled to specify inclusion of the Workers' Compensation Board and its Committees.

Ms. Falls outlined the timeline for completion of the assessment. Under the proposed timeline, the Governance Committee would vote today on the assessment and she would submit it to the Workers' Compensation Board on May 29. There is a twenty-one day gap between the May and June meetings. Ronald O'Keefe, Fiduciary Counsel, will compile the responses and forward them to the Workers' Compensation Board. On June 18, the Governance Committee is expected to convene in executive session to review the compilation of the input for the Board and Committee Self-Assessment. Ms. Falls indicated that a Board self-assessment is not required by law, but the process is considered a best practice for board governance.

Ms. Falls moved that the Governance Committee recommend the Bureau of Workers' Compensation Board of Directors approve the Directors Self-Assessment process and form as presented here today. Mr. Price seconded and the motion was approved by unanimous roll call vote.

RULES FOR SECOND READING

METAL CASTING SAFETY RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123:1-7

Don Bentley, Director, Technical Support, Division of Safety & Hygiene recommended amendment of the safety rules for metal casting contained in Ohio Administrative Code Chapter 4123:1-7. He reported that technical advisors were present today to answer questions. He thanked Craig Mayton, Legal Counsel, and Joseph Sommer, Staff Counsel, Legal Division, for assistance in writing the rules. He described the publication and distribution of the rules after approval. The only change since the April meeting was a change of a typographical error. A lot of discussion was raised at the April meeting about the meaning of “guard” and “safeguard”. Safety & Hygiene is in the process of reviewing these terms and definitions with stakeholder input. This will take several months. Ms. Falls asked that consideration of the definitions of “guard” and “safeguard” be deferred to the August meeting for a full consideration of the potential ramifications and potential additional revision to the rules. Mr. Harris, who had initially raised the issue during the April meeting, agreed with that request. Mr. Caldwell noted that guard is a physical barrier, and safeguard is both a physical barrier and a term of art. The recommended process is to allow the rules revisions to proceed, but to provide for a future, more in-depth discussion and resolution of key issues.

Mr. Price asked how BWC knew whether the stakeholders were approving the changes if a face-to-face meeting was not held. Mr. Bentley responded that he had email responses from each of the stakeholders. Mr. Price asked that copies of those responses be included in the Board material.

Mr. Harris added he had attended the stakeholder meeting on the workshops and factories rule review group and was very comfortable with the process and its thoroughness. BWC received input from safety professionals representing the stakeholders.

Mr. Lhota asked about the restriction in Rule 4123:7-11(A)(1) prohibiting employers from requiring workers to work under the molds. Michael Ely, Safety Technical Advisor, reported that molds move around by crane and can fail. Mr. Lhota commented that maybe the rule should generally prohibit workers from working under molds. Mr. Ely replied that such a change would be material. This provision is not required by the Occupational Safety and Health Administration (OSHA). Mr. Pitts reported that directing an employee to work under a mold is a violation; if, however, there is a willful act by the injured worker, then he will not be able to apply for a safety violation award. Ms. Falls asked if BWC could strike “require.” Mr. Ely reported then BWC would have to go back to stakeholders for approval.

Mr. Price moved that Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-7 of the Administrative Code, the Metal Casting Safety Rules. The motion consents to the Administrator amending one rule and retaining without change thirteen rules of the Metal Casting Safety Rules as presented here today. Mr. Hummel seconded and the motion was approved by unanimous roll call vote.

STEEL MAKING, MANUFACTURING & FABRICATING SAFETY RULES, OHIO ADMINISTRATIVE CODE RULE 4123:1-9

Mr. Bentley recommended approval of changes to Chapter 4123:1-9 on steel making, manufacturing, and fabricating.

Mr. Pitts moved the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-9 of the Administrative Code, the Steel Making, Manufacturing, and Fabricating Safety Rules. The motion consents to the Administrator amending the five Steel Making, Manufacturing, and Fabricating Safety Rules as presented here today. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

LAUNDERING & DRY CLEANING SAFETY RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123:1-11

Mr. Bentley recommended approval to changes in Ohio Administrative Code Chapter 4123:1-11 concerning Laundering and Dry Cleaning. BWC formed a standing committee of twelve representatives from both management and labor associations. The committee will be holding a June meeting for further changes. The rules as submitted comply with OSHA standards.

Mr. Price moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-11 of the Administrative Code, the Laundering and Dry Cleaning Safety Rules. The motion consents to the Administrator amending two rules and retaining without change two rules of the Laundering and Dry Cleaning Safety Rules as presented here today. Mr. Lhota? seconded and the motion was approved by a unanimous roll call vote.

ELEVATOR SAFETY RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123:1-1

Mr. Bentley recommended approval of the changes to Chapter 4123:1-1 of the Administrative Code on elevators. The changes conform to OSHA guidelines. The review committee consisted of five representatives from the Ohio Department of Commerce, Division of Industrial Compliance, two additional industry representatives, and one each from management and labor associations.

Mr. Pitts moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendation on the five year rule review of Chapter 4123:1-1 of the Administrative Code, the Operation of Elevators Safety Rules. The motion consents to the administrator amending two rules and retaining without change three rules of the Operation of Elevators Safety Rules as presented here today. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

RUBBER & PLASTICS SAFETY RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123:1-13

Mr. Bentley recommended approval of the changes to Chapter 4123:1-13 of the Administrative Code on Rubber and Plastics Safety Rules.

Mr. Price moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-13 of the Administrative Code, the Rubber and Plastics Safety Rules. The motion consents to the Administrator amending one rule and retaining without change three rules of the Rubber and Plastics Safety Rules as presented here today. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

WINDOW CLEANING SAFETY RULES, OHIO ADMINISTRATIVE CODE RULE 4123:1-17

Mr. Bentley recommended approval of changes to Chapter 4123:1-17 of the Administrative Code on Window Cleaning Safety Rules. The changes correct typographical errors and omissions. The rules confirm to OSHA regulations.

Mr. Pitts moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123:1-17 of the

Administrative Code, the Window Cleaning Safety Rules. The motion consents to the administrator amending five rules and retaining without change two rules of the Window Cleaning Safety Rules as presented here today. Mr. Price seconded and the motion was approved by unanimous roll call vote.

Mr. Bentley reported that the five year rule review for workshops and factories are on schedule to meet the August deadline.

REHABILITATION OF INJURED AND DISABLED WORKERS, OHIO
ADMINISTRATIVE CODE RULE CHAPTER 4123-18

Freddie Johnson, Director, Managed Care Services, and Karen Fitzsimmons, Rehabilitation Policy Unit Manager, recommended amendment to the Vocational Rehabilitation Rules of Administrative Code Rule Chapter 4123-18. The stakeholders include the Labor-Management-Government Advisory Council, the rehabilitation services associations, the Ohio Association for Justice, and the MCO League. The rules comparison chart contains new comments from the MCO League.

Mr. Johnson reported the Labor-Management council was quite concerned about Ohio Administrative Code Rule 4123-18-03(H) (2), which sets forth criteria to consider when determining feasibility to undertake rehabilitation plan. The council was concerned that these factors have been used in the past to exclude injured workers from rehabilitation. The issue was discussed among Robert Coury, Chief, Medical Services and Compliance; Mr. Johnson, Ms. Fitzsimmons, Don Berno, Board Liaison, Mr. Pitts, and the BWC Legal Division, leading to a re-write for clarity and definition of "feasibility". Mr. Caldwell confirmed that he had been contacted by a member of the Labor-Management Council on this and various other issues. Mr. Johnson reported that he had not gotten feed-back yet on the changes because too little time has passed. However, there was agreement among the participants just noted that the revised language should address all the concerns. He thanked Mr. Pitts for his comments. Mr. Pitts added that the specific list of criteria had been deleted from the amended rule. To address BWC concerns, the specific criteria will be in training materials and policy directives for the MCOs.

Ms. Fitzsimmons reported on changes to Administrative Code Rule 4123-18-21(A) (3) regarding the job search requirement. The requirement has been modified to mirror the wage loss rule, Administrative Code Rule 4125-1-1.

Ms. Falls asked about comments of self-insurers on providing rehabilitation programs. Mr. Johnson replied that BWC and self-insuring employers agreed to disagree on this matter. Self-insuring employers must provide rehabilitation.

Ms. Fitzsimmons reported that BWC would hold in abeyance the issue of rehabilitation referrals to MCO affiliates. Mr. Johnson stated the goal is to discuss this issue in early autumn.

Mr. Pitts thanked BWC management, staff, and stakeholders for their efforts in revising the rehabilitation rules. The current version is much improved over the draft provided in the first reading. Mr. Price also indicated he was appreciative of the process, and commended the Administrator and staff for their efforts to involve stakeholders.

Mr. Price moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of Chapter 4123-18 of the Administrative Code, the Rehabilitation Rules. The motion consents to the administrator amending thirteen rules and rescinding four rules of the Rehabilitation Rules as presented here today. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

MISCELLANEOUS PROVISIONS RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123-5

Mr. Johnson and Kim Robinson, Director of Policy, recommended approval of amendments to Chapter 4123-5 of the Administrative Code on Miscellaneous Claims Provisions. Ms. Robinson reported that the stakeholders included the Ohio Association for Justice, the Ohio State Bar Association Workers' Compensation Committee, and the Ohio Self-Insurers Association.

Mr. Pitts moved that the Governance Committee recommend that the Bureau of Workers' Compensation Board of Directors approve the Administrator's recommendations on the five year rule review of chapter 4123-5 of the Administrative Code, the Miscellaneous Claims Rules. The motion consents to the Administrator amending four rules, rescinding one rule, and retaining without change one rule of the Miscellaneous Claims Rules of Chapter 4123-5, and amending related rules 4123-3-08 and 4123-3-09, as presented here today. Mr. Lhota seconded and the motion was approved by unanimous roll call vote.

Mr. Johnson thanked Director Pitts and the Board for their interest and involvement with the rule revisions. He is proud of his team, and the efforts they have made with this issue.

Mr. Bryan arrived at the meeting at 10:27 a.m.

RULES FOR FIRST READING

2009 PROVIDER & SERVICE FEE SCHEDULES, OHIO ADMINISTRATIVE CODE RULE 4123-6-08

Mr. Johnson recommended amendment of Ohio Administrative Code Rule 4123-6-08 on provider and service fee schedules. The changes reflect corrections to ICD codes, stakeholder feedback on covered procedures, and corrections of data conversion problems. The changes were published this month on the web page in order to obtain provider feedback.

Jean Graff, ICD-9 Analyst, Medical Policy, reported that BWC is proposing use of Medicare CPTs and Geographic Pricing Cost Index (GPCI). The conversion factor is unchanged and the formula for reimbursement will be Resource-Based Relative Value X GPCI X the conversion factor.

Mr. Harris asked if BWC had gotten feedback over the last two weeks from managed care organizations on the proposal. Mr. Johnson replied there was no feedback on the published rules, but BWC has other feedback regarding provider fees.

Mr. Bryan asked if BWC had made a comparison with private insurers to enhance provider participation. Mr. Johnson replied that BWC uses information from as many sources as possible, including private insurance.

Mr. Pitts commented that provider participation is driven by more factors than just the remuneration provided under the fee schedule.

Mr. Harris asked if BWC used the schedule of other states. Mr. Johnson replied that when the fee schedule was compiled this year, BWC used data from fewer states than it did last year.

Mr. Johnson covered the impacts of the new fee schedule. The schedule will only raise costs to the State Insurance Fund by \$800,000.

Mr. Lhota asked for a one page description of the conversion factor for distribution to the Workers' Compensation Board.

NON-COMPLYING EMPLOYER RULES, OHIO ADMINISTRATIVE CODE CHAPTER 4123-14

Ron Suttles, Interim Director, Business Consulting, and Barb Ingram, Director of Accounting, recommended amendment of the rules for non-complying employers of Ohio Administrative Code Chapter 4123-14. The rules were thoroughly reviewed and changes have been proposed. There is a new definition for non-

complying employers. Based on a review of aged accounts receivable, this will affect 900 employers. The stakeholders did not want a broader definition and asserted that holding liens was an adequate method of collecting underpayments. However, BWC has found that mere collection procedures were inadequate to enhance full compliance.

Ms Ingram reported that Rule 4123-14-02 has been revised to reflect the services provided by the Attorney General in collection.

Mr. Harris asked how large the problem of employers who have no coverage was. Mr. Suttles replied there was a workgroup to identify the problems. The filing of non-complying claims identifies about one hundred employers per year.

Mr. Pitts asked about Administrative Code Rule 4123-14-01(B)(1) and types of non-complying employers and when they are determined. Ms Ingram replied determination is made as of date of payment. Mr. Berno reported that the \$1,000 penalty was added by HB100.

Ms. Falls asked Mr. Bryan to comment on the opposition by TPAs to broadening of the non-compliance definition. Mr. Bryan replied that in the private sector, insurers do not provide coverage if their bills are not paid.

Mr. Suttles reported there were no changes to Ohio Administrative Code Rule 4123-14-03. Rule 4123-14-04 provides notice through Information Technology. Rule 4123-14-05 provides for structuring payments. Rule 4123-14-06 incorporates the Kaizen process.

Mr. Bryan asked what BWC pays if an employee of a non-compliant employer is injured. Mr. Suttles replied BWC pays all medical and compensation and the injured worker retains the right to sue the employer. BWC attempts to recoup the expenses from the employer. Mr. Pitts commented that if the injured worker sues, the employer's defenses are barred, but the injured worker must prove negligence.

Mr. Harris asked about the twenty-four month repayment time. Mr. Suttles replied that was maximum time allotted for repayment on claims costs.

Mr. Pitts commented that in the event of employer bankruptcy, claims costs are dischargeable, but premium costs are non-dischargeable.

Mr. Bryan commented that employers make payments of premiums based on six months prior payroll, in order to get coverage for six months in the future.

Mr. Berno commented on the rules calendar. The workshops and factories rules could be considered as early as July, but more likely later. HPP rule sets will have merger of rules for State Insurance Fund (Chapter 6) and self-insuring employers (Chapter 7).

Mr. Berno reported that stakeholders have urged BWC to combine HPP rule deliberations so as not to lead to an unanticipated glitch in application of the rules. Staff will present the first reading of the rules over a three month period. Then, they will present the entire chapter to stakeholders. That will lead to a September or October second reading by the Committee.

Mr. Matesich left the meeting at 11:15 a.m.

CALENDAR

Ms. Falls reported that the June meetings will include the Board and Committee self-assessment compilation as well as a discussion of committee membership and leadership. Workers' Compensation Board director reappointments have already occurred in May, so the Workers' Compensation Board is able to accelerate the committee assignments July to June. With respect to Board committee assignments and leadership, Ms. Falls indicates the baseline is to recommend no change for the sake of continuity. Please contact Ms. Falls or Mr. Lhota within two weeks with comments on leadership and membership. With Board member input, a recommendation from the Governance Committee to the Chair will be considered at the June committee meeting.

Mr. Haffey asked who has authority to appoint committee members and leaders. Ms. Falls replied that according to the Governance Committee charter and the Board's Governance Guidelines, the Governance Committee makes recommendations to the Chair, who then makes recommendations to the Workers' Compensation Board for a formal vote.

Ms. Falls also reported that June also includes review of the Administrator's goals for FY 2010 and additional rules.

ADJOURNMENT

Ms. Falls moved to adjourn the meeting. Mr. Lhota seconded and the motion was approved by unanimous roll call vote of four ayes and no nays.

Prepared by: Larry Rhodebeck, Staff Counsel

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June 4, 2009