

Workers' Compensation **Focus**

Medical Advisory Committee

by Nancy Bieber

The Medical Advisory Committee is charged with advising the director on matters related to the provision of medical care to workers. A newly reorganized Medical Advisory Committee began meeting monthly in May.

Membership and statutory charge of the Medical Advisory Committee changed with the passage of Senate Bill 222 during the 1999 legislative session. Prior to SB 222, statute required specific providers be appointed to the committee, including, for example, a dentist. The new statute allows the director to appoint medical providers that most represent the health-care services provided to injured workers, and "one representative of insurers, one representative of employers, one representative of workers, one representative of managed care organizations ..."

Following passage of SB 222, the former Medical Advisory Committee developed bylaws, including committee membership. The former committee determined that medical providers must constitute a majority of the committee and should include providers involved in primary care, specialty care, and ancillary care. The bylaws state that: "In addition to their ability to represent the perspective of their profession, members will be selected for their ability to represent the interests of the community at large."

WCD appreciates the sacrifice and commitment made by the following new Medical Advisory Committee members:

Medical providers

- Tamara Arthur, D.O. (new member)
- Joseph Eustermann, M.C. (second term)
- Frank Prideaux, D.C. (new member)
- David Silver, M.D. (new member)
- Thad Stanford, M.D. (second term)
- Tom Williams, P.T. (new member)

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The ABCs of WCD

Terms and abbreviations in this issue

Compensable injury

Accidental injury or accidental injury to prosthetic appliance, arising out of and in the course of employment, requiring medical services or resulting in disability or death.

Disabling — entitles the worker to compensation for permanent disability or death.

Non-disabling — requires medical services only.

Medical service

Any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulance, other related services, drugs, medicine, crutches, prosthetic appliances, braces, supports, and physical restorative services.



Medically stationary

The point at which no further material improvement would reasonably be expected from medical treatment or the passage of time.

Non-disabling claim

A claim without time loss or permanent disability that requires medical treatment. Also called “medical only.” ■

Key telephone numbers and Web address

WCD general information: (503) 947-7810

TTY: (503) 947-7993

Workers' Compensation Infoline: (800) 452-0288

Fraud Complaint Hotline: (800) 422-8778

Ombudsman for Injured Workers: (503) 378-3351

TTY (503) 947-7189, (800) 927-1271

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Administrator's notebook

Governor establishes a new MLAC for the coming legislative session

by John L. Shilts, Administrator

With the 2001 legislative session just around the bend, the governor appointed a new Management-Labor Advisory Committee on workers' compensation. Committee members were confirmed by the Senate in September.

The advisory committee, originally known as the "Mahonia Hall Group," was created by Governor Goldschmidt to draft the 1990 workers' compensation reforms. The Management-Labor Advisory Committee (MLAC) was then put into statute in SB 1197 as a 14-member committee to advise the director and the legislature on matters concerning workers' compensation. The committee was reduced to 10 members with SB 369, which passed during the 1995 session. The members, appointed by the governor, include five labor and five management representatives.

MLAC provides a forum for business and labor to come together to explore and resolve issues involving workers' compensation — a system intended to benefit these

Comments for the committee's consideration can be sent to the

Department of Consumer & Business Services
Director's Office
350 Winter St NE
Salem, OR 97301-3878

Phone: (503) 947-7867
Fax: (503) 378-6444.

two parties. The committee is charged by law with studying the workers' compensation system in areas such as court decisions with a significant impact, adequacy of benefits, medical and legal costs, adequacy of assessments paid into the department's reserve programs, and operation of programs funded by the

Workers' Benefit Fund. The committee also reviews the evaluation of permanent disability and advises the department on proposed changes in programs.

This past spring, the governor chose to not renew MLAC appointments in order to put together a special advisory committee on workers' compensation to assess the 1990 reforms, identify areas in the current system needing improvement, make recommendations for legislative changes. The advisory committee was also asked to review the MLAC format and membership.

The advisory committee made no recommendations to change MLAC; so Governor Kitzhaber appointed

10 members. Five of the members served previously on the committee: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Lisa Trussell, and Brad Witt. Their participation on the committee will help maintain continuity of issues and decisions.

The management representatives:

Kenneth Hector, workers' compensation supervisor, CNF Service Co., Portland.

Hector has been with CNF since June 1997. He has a strong background in risk management, claims management, and safety.

James McClain, personnel manager, Columbia Helicopters, Lake Oswego.

McClain has worked in personnel/human resources for more than 20 years, with responsibility for workers' compensation, labor relations, safety, and compliance with all Equal Employment Opportunity rules and regulations.

Sheri Sundstrom, insurance claims manager, Hoffman Construction Company of Oregon, Portland.

Sundstrom has overseen Hoffman Construction's national and international claims-management programs since 1992.

Lisa M. Trussell, vice president, Associated Oregon Industries, Salem.

Trussell has been a lobbyist specializing in workers' compensation since 1993. She has more than 20 years' experience in workers' compensation. She worked for NORPAC Foods Inc. as human resources manager from 1972 to 1993.

James "J.L." Wilson, state director, National Federation of Independent Business, Keizer.

Wilson has served as director of NFIB since December 1999. He has a strong business and political background. He worked for the legislature from 1996 to 1999 and is currently a city councilor.



Administrator's notebook continued on Page 20

National Insurance Fraud Forum

by Martin Gall

In June, the National Insurance Fraud Forum convened in Washington, D.C., a cooperative effort by three major anti-fraud groups: the Coalition Against Insurance Fraud, the National Insurance Crime Bureau, and the International Association of Special Investigation Units.

As the WCD's investigation manager, I attended along with insurance company claims executives and investigations managers, state and federal law enforcement personnel, prosecutors, insurance regulators, consumer representatives, and researchers. Participants helped develop a five-year plan for combating insurance fraud. Representatives from the three sponsoring groups continued work following the forum on a report to be published in September, detailing proceedings and recommendations to reduce insurance fraud in this country.

The primary areas discussed included legislative and regulatory issues, public awareness of fraud, private/public partnerships, measuring fraud and quantifying results, and emerging issues in the 21st century.

Workers' compensation industry estimates show that between 10 and 20 percent of all claims may be fraudulent. Because there are a number of techniques for measuring fraud, percentages vary depending on the method used. The five-year plan will include a more clearly defined method to use in measuring fraud.

A key tool in combating insurance fraud is increased public awareness. This includes identifying specific fraud crimes, changing attitudes toward fraud, and establishing specific behaviors toward fraud.

Pennsylvania, New York, Arizona, and Florida have established strong public awareness programs. In these states, printed ads, television and radio commercials, and public education programs explain to the public the effect of fraud on consumers. These programs have proven to be very effective. Claims examiners play a key role in the detection of insurance fraud, as they often are the first to discover potentially fraudulent incidents.

Insurance fraud is growing. The five-year plan from the National Insurance Fraud Forum tackled tough questions to help curtail this growing trend. This was a great opportunity for the Investigation Unit to be at the forefront on fraud issues. You can contact the unit with questions or concerns about potential fraud issues, (800) 422-8778.

Martin Gall is the manager of the Investigation Unit in the Compliance Section.

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Request for reconsideration form revised

by Lisa Murphy

The Appellate Review Unit has revised the Request for Reconsideration, Form 2223 (last revised August 1998) to provide better communication with our customers.

The revised form includes the following new language:

I have special language needs: Yes No
If yes, please identify:

If you have supplies of old forms, you *DO NOT NEED TO REPRINT*. However, please use the revised form when you place your next printing order. You may download a copy of the Microsoft Word 97 form from the Bulletins page on the Workers' Compensation Division's Web site: www.cbs.state.or.us/wcd.

The Appellate Review Unit is developing three additional products to better serve our customers: a brochure, "Welcome to the Appellate Review Unit — Understanding the Reconsideration Process and How to Request Reconsideration"; Appellate Review Unit information under the Dispute resolution topic on WCD's Web site; and the Spanish version of the brochure, "What is a Medical Arbitrator Examination?"

Questions should be directed to the Appellate Review Unit of the Dispute Resolution Section, (503) 947-7816? ■

Lisa Murphy is a worker liaison for the Appellate Review Unit of the Dispute Resolution Section.

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Schwabe appointed section manager of Benefits and Policy Services Section

by Randy Moser

Mary Schwabe (formerly Mary Dora) has been appointed manager of the Benefits and Policy Services Section, the position formerly held by John Shilts, the division's new administrator. Mary's considerable experience in workers' compensation made her a top candidate for the post. She has held a number of positions with WCD, most recently serving as the assistant manager of the section. Her other positions have included acting section manager, supervising executive assistant and public information coordinator for the division's administrator, field audit supervisor, and compliance auditor.

Mary began her insurance career at age 16 with Aetna Cravens & Dargon Insurance Company in Los Angeles, California, where she was a workers' compensation underwriting assistant and internal premium auditor. In 1977, she joined Unigard Insurance in San Diego, California, where she had similar responsibilities within the commercial casualty lines. She completed her bachelor's degree in business management at California State University, Fullerton. In 1982, she moved to Oregon, and in 1983 began her public career with WCD.

Mary is recognized throughout the division for her training skills. She frequently provides management skills, team building and process improvement training to agency and division staff, and has served her fellow workers as formal mentor and informal coach. Mary is also one of 40 state employees completing the inaugural Certified Public Management program co-sponsored by Willamette University's Atkinson Graduate School of Management and the state of Oregon.

The Benefits and Policy Services Section consists of four units that provide benefit consultation services, claim closure/disability determinations, and return-to-work assistance and incentives. Also, through its Policy Consultation Unit, the section facilitates and coordinates policy development among staff and managers throughout the division. ■

Randy Moser is the acting manager of the Evaluation Unit in the Benefits and Policy Services Section.

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Medical Advisory Committee *continued*

Other members:

Dennis McConkey, Weyerhaeuser, worker representative (new member)

Cathy Olson, Safeco, insurer representative (new member)

Marsha Sorum, JeldWen, employer representative (second term)

Frank Wong, M.D., managed care organization representative (new member)

Division administrative staff:

Nancy Bieber, manager, Dispute Resolution Section

Janis Checchia, assistant manager, Dispute Resolution Section

In June, the committee selected David Silver, M.D., as chair, and Kathy Olsen of Safeco, as vice-chair.

Issues under review include a medical fee study being conducted by DCBS, some proposals in the labor-management agreements that affect the medical community, and other issues, such as the appropriateness of payment to non-licensed providers.

Readers may contact Nancy Bieber, (503) 947-7731, or Janis Checchia (503) 947-7796, if they have issues that may be of interest to the Medical Advisory Committee. ■

Nancy Bieber is the manager of the Dispute Resolution Section.

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Tips on Notices of Closure

by Carol Helton

The summer *Focus* article about notices of closure (NOCs) covered four common errors that require special attention. This article focuses on date errors on the notice of closure: medically stationary date, date on which a claim qualifies for closure (“administrative” closures), and last treatment date. Although Division 030 rules (Claim Closure and Reconsideration) are being revised to reflect claim closure solely by insurers, many aspects of the process remain the same. Among them are the medically stationary status/date and the date the claim qualifies for closure.

According to OAR 436-030, **all** claim closures require either a date when the worker’s condition reached maximum recovery (medically stationary) **or** a date when the claim qualified for closure according to other criteria. When a worker completes treatment, his attending physician writes a report stating that the worker is medically stationary. The date should be set by the date of the last examination, *not the date of the report*. Also, rules prohibit physicians from “projecting” a medically stationary date without an examination or appointment to ensure recovery is as anticipated.

When a medically stationary date — and/or objective finding of impairment — is set by a consulting or independent medical examiner, a response from the worker’s physician must be sought before claim closure can take place. Inconsistencies in the information provided by these two sources must be clarified. The medically stationary date given by the attending physician vs. a preponderance date for closure likely would be different due to the time required to secure feedback on the consultation/independent medical report from the attending physician.

The term “qualifies for closure” is used in cases where treatment ceases for reasons within the worker’s control without a medically stationary date being set by the doctor. This date is not to be construed as a medically stationary date; it is a date calculated by comparing the circumstances in the claim to criteria in OAR 436-030-0034. Nor can the last treatment date be interpreted as the medically stationary date because the physician has not provided a report of maximum recovery based on an examination of the worker.

According to the provisions of OAR 030-0034, a claim can be closed without a medically stationary date if the worker fails to seek treatment for more than 30 days, fails to keep an appointment or attend a mandatory exam, returns or is released to work after last examination, or fails to advise of intent to seek further treatment. In each situation, the date the claim qualifies for closure (used on the notice of closure itself) is the latest or most recent of the possible dates and is computed based on the circumstances specific to that claim. For example, a worker was last treated on 3/1/00 and was to be seen again 4/3/00, but failed to keep the appointment because he returned to regular work on 3/27/00. On 4/5/00, the insurer advised the worker by certified (“bug”) letter of the need to seek treatment or face probable claim closure. The worker left the insurer a voice-mail message on 4/11/00 regarding his return-to-work. Thirty days from the last treatment is 3/31/00. Medical follow-up was projected for 4/3/00. The date this claim qualifies for closure is the **latest** possible date — 4/19/00 — 14 days after the certified letter to the worker. (While 4/11/00 might appear to apply, current rules require a *written* response from the worker.)

Ensuring accurate dates on notices of closure can significantly reduce the number of advisory letters or requests for correcting notices of closure. Greater accuracy means smoother claim processing for insurers as well as increased worker confidence in the insurer’s order. ■

Author’s note:

This article was written with assistance from Dave Fisher, field auditor, Compliance Section, and Larry Kroesing, analyst, Policy Consultation Unit.

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Who's Who in WCD



Kim Duncan, Medical Review Unit

by Pat Yancey

If you haven't had a medical treatment dispute lately or aren't a physician needed in the dispute-review process, you haven't experienced Kim Duncan's warm southern charm.

Kim came to WCD in 1995 and worked in a variety of support positions. In December 1998, she volunteered for a job rotation to start a new program for the Medical Review Unit. At that time, the Medical Review Unit had a shortage of doctors willing to perform examinations and file reviews necessary to medically evaluate whether care recommended for an injured worker was appropriate. In addition, MRU had some difficulty in tracking reports and getting timely appointments scheduled.

Kim to the rescue! Bringing her creativity and strong organizational skills, Kim accepted the challenge. She quickly had the process running smoothly. In the past

two years, she has contacted more than 100 physicians with information about the medical review process and has added 35 new physicians to MRU's active physician review list. Her goal is scheduling 90 percent of all examinations within two to four working days. She has continued to meet or exceed this goal. MRU averages about 100 physician reviews a year.



In addition to her major duties, Kim also provides MRU with technical support, helping develop and improve word-processing templates and doing other projects. She is also involved in a process development/improvement project team that is exploring a team approach to resolving some disputes.

"Other than this, my life is boring," Kim says.

That's probably not true from most perspectives. On a recent vacation, she traveled with her son and church members to Mexico to help workers at an orphanage build a school. True to her southern heritage, Kim enjoys watching the Atlanta Braves win. She is also a busy soccer mom. ■

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Error found on Bulletin 319

WCD recently published Bulletin 319, "Authorization of non-member primary care physicians (PCPs) to treat within a managed care organization (MCO). "(Rev.)" was printed in the heading of the bulletin just after "319" indicating the bulletin was

revised. This was an error. Bulletin 319 has not been issued previously. We apologize for any confusion this error may have caused.

Return to Work

Dear RRU:

Frequently Asked Questions about the new Division 120 Rules

by Andre Allen

Since new Division 120 rules for vocational assistance to injured workers went into effect on June 1, 2000, RRU has received many rules questions from counselors and insurers. Here are some of the questions we hear most often:

Q I understand that counselor certification is now granted for five years. My certification was issued on August 9, 1999, and was granted until August 9, 2001. Under the new rules, will my certification be extended by an additional three years?

A Yes. OAR 436-120-0003(4) states: "The renewal period of a vocational counselor certified on the effective date of these rules is extended for three years, at which time the vocational counselor must meet the continuing education requirements set by these rules. . . ." Your current certification is extended until August 9, 2004.

Q OAR 436-120-0820(1)(b) requires that to maintain my vocational rehabilitation counseling certification, I receive at least seven and a half hours of training in "ethical practices." What does this mean? Where can I get such training?

A This requirement refers specifically to ethical practices in providing vocational rehabilitation services. The International Association of Rehabilitation Professionals, and Portland State University will provide ethical practices training in the coming months. Also, the WCD Oregon Workers' Compensation Educational Conference will offer "Ethical Challenges and Resolutions," and Oregon Association of Rehabilitation Professionals plans to include a workshop in ethical practices at its fall conference.

Q OAR 436-120-0320(1)(d) states the insurer is required to determine eligibility for vocational assistance if the worker is granted a permanent disability award. However, OAR 436-120-0320(2)(b) says: "The insurer is not required to determine eligibility if the worker

has returned to regular or other suitable employment with the employer-at-injury or aggravation ..." If a worker returns to suitable employment with the employer-at-injury and is later granted a permanent disability award, is the insurer required to determine eligibility?

A No. None of the "triggers" for determining eligibility provided in OAR 436-120-0320(1)(a) through (d) apply if the worker has returned to regular or other suitable employment with the employer-at-injury or aggravation, or if eligibility has previously been determined under the current opening of the claim, or if the worker's claim is closed with no permanent disability award. In the latter case, even if the worker is later awarded permanent disability on reconsideration, the insurer is not required to determine eligibility if the worker has returned to suitable employment with the employer-at-injury, or if the worker's eligibility was previously determined under the current claim opening.

Q A worker was determined eligible for vocational assistance; however, an order on reconsideration took away his permanent disability award. I believe he is no longer eligible for vocational assistance under OAR 436-120-0350(1), which states that a worker's eligibility ends when the worker does not or no longer meets the eligibility requirements as defined in OAR 436-120-0320. However, "evidence that the worker has permanent disability" is not included under this rule as an eligibility requirement. Therefore, which rule should I cite in the required notice of end of eligibility for vocational assistance?

A OAR 436-120-0350(1) is the correct rule cite. Even though "evidence that the worker has a permanent disability" is not specified in OAR 436-120-0320 as an eligibility requirement, it is clear from the context that an eligible worker must receive a permanent disability award to remain eligible for vocational assistance.

Dear RRU *continued on Page 9*

Dear RRU *continued*

Q I am determining eligibility for a truck driver who has never lived in Oregon, even though he worked for an Oregon-based company when he was injured. Does he have to move to Oregon or to within commuting distance of Oregon to be eligible for vocational assistance?

A No. Under OAR 436-120-0320(8)(b), the requirement that a worker be “available in Oregon for vocational assistance” is waived for workers who lived outside of Oregon at the time of injury.

Q OAR 436-120-0007 provides instructions for determining a suitable wage “as defined in OAR 436-120-0005(12)(a) and (b).” However, I can find no “(12)(a) and (b)” under OAR 436-120-0005. Is this a mistake?

A Yes. You have sharp eyes. The definition of suitable wage is provided in OAR 436-120-0005(10)(a) and (b).

Q Under OAR 436-120-0350(4), the insurer cannot end a worker’s eligibility if the worker refuses an offer of suitable employment after beginning a training program. What if a worker refuses a suitable job offer after the training plan ends? There appears to be no rule that addresses this situation.

A Under these circumstances, the insurer may end the worker’s eligibility under OAR 436-120-0350(2), “The worker’s lack of suitable employment is not due to the limitations caused by the injury or which existed before the injury.”

Q OAR 436-120-0350(13) states that a worker is ineligible for vocational assistance if the worker enters into a claim disposition agreement and no notice regarding end of eligibility is required. Is the insurer required to send RRU a vocational closure report (Form 2800) under these circumstances?

A Yes. As provided in Bulletin No. 124, the insurer is required to submit a vocational closure report to the department whenever it ends a worker’s eligibility for vocational assistance.

Q A worker has successfully completed a training plan, and it’s time for me to send her an end of training notice. However, I can’t find a rule to cite as the reason for ending her training. What should I do?

A OAR 436-120-0004(8) is the correct rule to cite in an end of training notice to a worker who has successfully completed a training plan. ■

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Preferred Worker Program questions

by Barbara Smith

Q Can worksite modification be done through the Preferred Worker Program for regular employment? What about premium exemption and wage subsidy?

A Worksite modification can be done for regular work if the worker needs the modification to address permanent, injury-caused limitations that would create an obstacle to doing the job. An RAU consultant will help with the modification and provide the same services that would be provided if the job were not regular employment. The cost of the modification can be paid from the Workers' Benefit Fund within the limitations of the administrative rules, whether or not it is a "substantial modification."

Only if the modification is a "substantial modification," however, can the employer use premium exemption and wage subsidy. Workers are eligible for the Preferred Worker Program (including premium exemption and wage subsidy) because they can't return to regular employment. If they can do their regular job, except for minor "fixes," they aren't eligible for the program.

Only WCD is authorized to determine whether modifications for regular employment are extensive enough to be "substantial modifications." A modification is substantial if it changes how the worker performs essential job duties, reduces the physical exertion required for the job, and/or affects the employer's work process. Other factors may be considered, depending on the facts of the case.

Modifications that are used to provide greater working comfort, such as ergonomic chairs, slant boards, and antifatigue mats are not by themselves substantial modifications. Nevertheless, these items can be provided, with or without other items that are substantial modifications, if medically justified.

When a worksite modification is installed and in use, an RAU consultant visits the worksite to verify that it is complete. At that point, the worker can offer premium exemption and wage subsidy to the employer and use obtained employment purchases. If the worker already has a Preferred Worker identification card, and the card

is filled out, signed, and submitted to RAU, premium exemption becomes effective the date on which the modification was completed. If the worker doesn't yet have a card, the RAU consultant will issue a card to the worker. If activated by the worker and employer, premium exemption will be effective the date the card was issued. In either case, if a wage subsidy request is approved, the subsidy becomes effective the same day as premium exemption.

Keep in mind that there is a 90-day period in which premium exemption and wage subsidy must be activated. We know the process and time frames can be very confusing.

The best thing to do if you have questions is to call RAU. Phone numbers and FAX numbers are as follows:

Salem

(503) 947-7588

(800) 445-3948,
toll-free in Oregon

Fax (503) 947-7581

Medford

(541) 776-6032

(800) 696-7161
toll-free in Oregon

Fax (541) 776-6246

Q I hired a Preferred Worker several years ago and had a good experience with the program and with the worker. Now she has moved to another job and I'd like to find another Preferred Worker to hire in her place. Can RAU send applicants my way?

A Unfortunately, after trying to provide this service informally soon after the Preferred Worker program was created, RAU concluded it was not staffed to provide a job-match service.

Several years ago, the Employment Department agreed with WCD to accommodate employers looking for Preferred Worker applicants. Preferred Workers, like other job seekers, can register with the Employment Department. If the Preferred Worker indicates Preferred Worker status on the application and shows his/her identification or eligibility card, the Preferred Worker status is entered into the applicant database.

Preferred Worker Program questions *continued on Page 11*

Worksite Modification

Vacuum lift attachment for crane or forklift

by Barbara Smith

Worker disability:

A 40-year-old punch press operator fell and fractured his left wrist. A residual carpal tunnel syndrome resulted in left-hand weakness and reduced range of motion in his left wrist. He was restricted from lifting more than 35 pounds.

Work setting:

The worker found a new job as a door and window installer. His job was at a large construction site where his employer was contracted to install large plate-glass windows.

Obstacle:

Much of the heavy lifting could be done with a forklift, but manual manipulation of the windows was frequently necessary during the installation process. It was sometimes necessary for two workers, sometimes on ladders, to lift windows into place. Because of the worker's left hand weakness and limited range of motion, he could not safely lift large windows into place.

Modification:

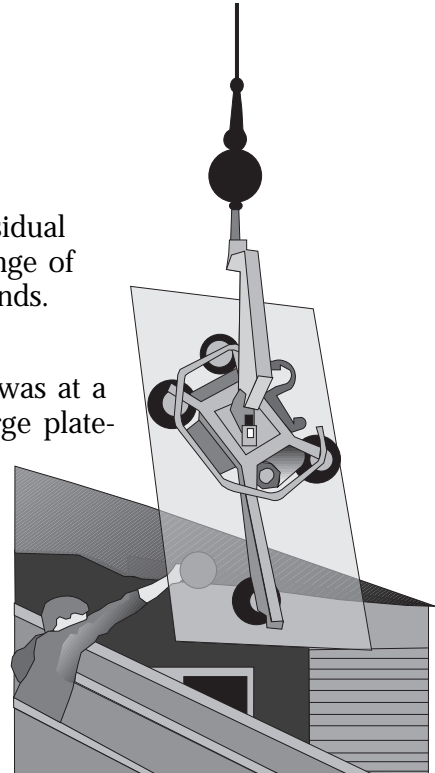
A vacuum lift attachment for the employer's forklift allows the worker to lift, hold and position plate glass (360-degree rotation and 90-degree tilt) without bearing the weight of the glass.*

Cost of modification:

Cost of the vacuum lift attachment is about \$3,200.

* In other settings, this type of lift could be attached to a jib crane or bridge crane. ■

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Preferred Worker Program questions *continued*

When an employer places a job order with the Employment Department, the employer can ask for Preferred Worker applicants. The job match could happen in one of two ways: If a staff person at the Employment Department is doing an applicant search for the employer, Preferred Workers could be identified and referred if qualified. Otherwise, as Preferred Workers themselves search through job orders, they will see requests for Preferred Workers applicants and ask for interview referrals.

These methods have worked well for some employers and not as well for others.

You may want to contact the private vocational rehabilitation organizations in your area with information about your job opening. Many of the Oregon injured workers they are helping with return-to-work are — or soon will be — Preferred Workers. You can find these organizations in the yellow pages or in Bulletin 151. Call the WCD Publications Desk, (503) 947-7627, to request Bulletin 151, or go to the Bulletin page on our Web site: www.cbs.state.or.us/wcd. ■

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Retraining winners

by Warren Patterson

Out of the woods...

John* is a 29-year-old man who was a logger in Alaska and Oregon. In 1996, John was in a logging accident and severely injured his left wrist and arm, which prevented him from returning to his job at injury.

On referral to his counselor in December, 1998, John was extremely cynical and distrustful of the workers' compensation process and of vocational rehabilitation endeavors. John displayed little hope for a successful outcome.

April, 1999, John began a plan that included a year of professional skills training in building-maintenance engineering at a local hospital. Classes and weekend workshops supplemented the training. John's initial cynicism, distrust, and lack of self-confidence began to disappear as he developed skills for a new career.

After completion of his training in April, 2000, John began working for a Portland hospital as a building engineer, earning \$13.78 an hour. He credits his vocational counselor for coaching him and for having faith and confidence in him.

Submitted by Jan Plummer of Liberty Northwest and Thomas Weiford of Weiford Case Management and Consultation.

The cooperation of the vocational professionals involved in these cases resulted in these success stories. Please send successful rehabilitation stories to Warren Patterson, c/o RRU, Workers' Compensation Division, 350 Winter St. NE, Rm. 27, Salem, OR 97301-3879, or send e-mail to warren.patterson@state.or.us. ■

**Names have been changed to protect the privacy of the workers.*

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I knew I could ... I knew I could ...

Susan* sustained a work-related wrist injury in December 1993. After retraining, she went to work as a dental assistant, but she re-injured her wrist a short time later. She required further surgery and became unable to return to work in the dental field.

Susan began a training program to develop skills as a receptionist and general office clerk at Southern Oregon Services to Children and Families in August 1999. Shortly after training began, Susan applied for an open position at the training site. She was offered the position, accepted it and went to work in October 1999, earning \$1,633 a month (\$9.39 an hour). Susan's job-at-injury wage was \$9 an hour.

Worksite modifications provided by SAIF included a computer, telephone headset, and other office items.

Submitted by Lynn Baxter of SAIF and Nancy Cummings of Vocational Resource Consultants.

RRU adds staff

Happily, the Rehabilitation Review Unit has added several new folks to its staff:

Dan Przybylowski was born and raised in northwestern Ohio. He has lived in Oregon since 1984. Dan received a bachelor's degree in liberal arts and sociology from the University of Toledo and a master's degree in rehabilitation counseling from Bowling Green State University in Ohio. Dan has worked in the field of rehabilitation since 1979 in Ohio, Michigan, and Oregon. His previous job titles include work adjustment counselor, vocational consultant, workshop specialist, and vocational work evaluator. For the past five years he has been vocational rehabilitation counselor for the Oregon Vocational Rehabilitation Division. He became a certified rehabilitation counselor (CRC) in 1981.

Eric Jones was born in Los Angeles, California, and moved to Oregon in 1978. He obtained a bachelor's degree in psychology from Western Oregon State College in 1981. Eric has worked for WCD since 1983 in various capacities. His jobs in WCD have included service coordinator, rehabilitation review specialist, wage subsidy and direct worker purchases reviewer, paralegal for the Non-Complying Employers Unit and most recently, a disability evaluation specialist. He has also worked as a volunteer stress management counselor at the Salem Rehabilitation Facility. Eric is on a job rotation with RRU as a rehabilitation review technician.

Rebecca Folz was born in North Carolina and raised in Southern California. She moved to Oregon in 1968. She served in the U.S. Navy for five years as a personnel specialist. She graduated from University of Portland with a bachelor's degree in psychology in 1981. Rebecca came to RRU from Community Services Consortium, a Job Training Partnership Act agency where she was the assistant manager (employment specialist II) of the Lebanon office. Prior to that, Rebecca worked as a vocational counselor for Stonebridge Rehabilitation in Portland for five years. Before working at Stonebridge, she worked as a claims adjuster for SAIF Corporation for two years. Rebecca was certified as a vocational rehabilitation counselor by the Oregon's Workers Compensation Division in 1994.

Warren Patterson is a native of Salem. He was employed for more than 20 years as a supervisor/manager for a local food-processing company, where he supervised and trained 150-200 employees and line managers during peak processing seasons. In 1990, following several work-related injuries, he completed his college education during evenings and on weekends at George Fox University and received his bachelor's degree in management of human resources. Before coming to RRU, Warren worked as an employment specialist for the International Association of Mechinists Center for Administering Rehabilitation and Employment Services' Project With Industry. He was certified as a vocational rehabilitation counselor by WCD in 1997. ■





Focus on

The Employer Compliance Unit

by Reg Gregory

Workers' Compensation compliance touches many aspects of Oregon law. The Employer Compliance Unit (ECU) ensures that subject employers have the required workers' compensation coverage. ECU was formerly known as the Noncomplying Employer Program; however, our role expanded to include educating the public and businesses **before** injuries occur. It is important that subject employers and workers have insurance coverage in place when it is needed, rather than after injuries occur.

In the last issue of *Focus*, you were introduced to the Employer Coverage Team, which handles the filings and maintains records of guaranty contracts, endorsements, cancellations, reinstatements, and extraterritorial certificates. ECU responds to and directs employer subjectivity issues. If the employer has Oregon subject workers, the employer is required to have workers' compensation insurance coverage. Often whether or not an employer **has** subject workers needs to be sorted out. ECU can help do that. Once subjectivity is determined, the Employer Coverage Team handles the filing documents.

The ECU's responsibilities include:

Employer indexing — The ECU staff readily responds to hundreds of e-mail and faxed requests as well as more than 1600 telephone inquiries monthly from persons seeking information on insurance coverage. However, injured workers reporting claim information to medical providers are often confused about their employer's legal name. If information is lacking, a call to the employer may be a better first-source for needed information. Once adequate information is available, the ECU staff can help identify the insurer.

Compliance investigations — ECU receives more than 10,000 claims a year requesting coverage information or investigation for possible noncompliance. ECU resolves about 94 percent of those investigations through electronic review of data. Those claims are then forwarded to the insurer for processing. About six percent of the claims require in-depth investigation.

In addition to claim investigations, ECU also investigates employers for compliance when no claim is involved. Referrals come from other agencies, associations, insurers, employees, anonymous tips, and competitors. ECU receives about 2,000 insurer guaranty contract cancellations a month. In all, ECU pursues about 2,400 investigations a month in which no claim is involved.

Public education — ECU provides classes and seminars, serves as a technical resource, and participates in business fairs throughout the state. For more information, please refer to "ECU teaches about employer issues" on Page 13 of the *Focus* for summer 2000.

The ECU staff includes four compliance clerks who answer initial calls from the public and search the database to find coverage. Five coverage investigators answer subjectivity questions and investigate compliance by telephone and correspondence. Seven field investigators around the state and one senior investigator conduct investigations and educational efforts including on-site visits and interagency investigations.

The costs of noncomplying employers in Oregon affect us all. Civil penalties issued in 1999 for noncompliance were more than \$9 million. A noncomplying employer (NCE) is held responsible for the claims and administrative costs of processing the claims. Officers, owners, and directors of NCE companies are held individually and severally liable for these costs and penalties. Bankruptcies do not absolve an individual NCE of responsibility. Money collected from an NCE goes into the Workers' Benefit Fund and claim costs are paid out of that fund. While efforts are made to recover these NCE costs, some are not recoverable.

You can reach a coverage investigator to get compliance information or to report possible noncompliance by calling (503) 947-7815 or by sending e-mail to wcd.employerinfo@state.or.us. ■

*Reg Gregory is the manager of the Employer Compliance Unit in the Compliance Section.
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Sanctions Unit can help with suspension requests

by *Sanctions Unit Staff*

Before considering its merits, Sanctions Unit representatives go over a suspension request carefully to ensure that the request is technically correct. Technical denials and requests that have to be withdrawn unnecessarily burden insurers and regulators.

In fiscal year 1998-1999, 39 percent of suspension requests for failure to cooperate with the investigation of a claim (ORS 656.262) were denied or withdrawn. The trend continues at 38 percent in fiscal year 1999-2000. For suspension of benefits for failure to cooperate with medical examinations or for injurious practices (ORS 656.325), 76 percent of requests were denied for technical reasons or withdrawn in fiscal year 1998-1999, and in fiscal year 1999-2000, 78 percent of these request were denied or withdrawn.

The Sanctions Unit of the WCD Compliance Section wants to reduce the number of needless errors in the suspension process.

With this in mind, Sanctions Unit representatives have created checklists for examining the technical aspects of notices to workers and suspension requests themselves.

Did you ever forget to notify the attending physician of a worker's IME, or leave out the first and last name of the attending physician on the notice to the worker, or fail to send the certified suspension request to both the worker and the worker's attorney?

These checklists can help you avoid some of the most common errors and allow all parties to focus on the merits of your request. The same checklists used in the Sanctions Unit, are available to you at no charge by calling (503) 947-7650.

Sanctions Unit staff will come to your office to present a program on how to properly request suspension of benefits. Call us. Part of our mission is to seek regulation through education. We're here to help. ■

*Sanctions Unit is part of the Compliance Section.
Phone: (503) 947-7650*

EDI Update

by *Gayle Parrish*

WCD held its first technology and Electronic Data Interchange workshop August 1 in the Labor and Industries Building. Insurance representatives and self-insured employers gathered to learn about WCD's plans to implement electronic reporting of coverage and claims data, and make coverage information available on the DCBS Web site.

The group shared questions, issues, and ideas for communicating EDI information to interested parties. Participants agreed that it was a valuable exercise and requested e-mail updates of relevant information and notification about additional workshops.

Planning continues for the EDI Proof of Coverage project at WCD. The division plans to begin testing

how we are electronically receiving coverage information with a volunteer insurer this fall. The data will be formatted according to the IAIABC Release 1 Proof of Coverage standard.

WCD plans to offer the option of electronic reporting of coverage information to all insurers after the successful completion of the pilot. If you want more information about this project or want to receive EDI updates by e-mail and be notified of workshops and other events, please contact Peter Threlkel, (503) 947-7602, peter.p.threlkel@state.or.us, or Gayle Parrish, (503) 947-7626, gayle.m.parrish@state.or.us. ■

*Gayle Parrish is WCD's data systems coordinator in the Operations Section.
E-mail: gayle.m.parrish@state.or.us
Phone: (503) 947-7626*

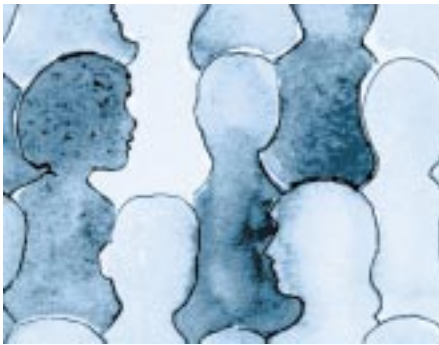
Compliance provides audit tips

by Mary McCarron

Following are examples of problems that Compliance Section field auditors commonly find while conducting compliance audits:

TPD and average weekly wage

Some workers work a regular eight-hour day during their employer's normal operating schedule, but consistently work overtime during periods of increased business. Claims adjusters appropriately calculate a 52-week average weekly wage (AWW) in order to include the varying wages.



When injured workers return to their "regular" eight-hour workday during the employer's normal operating schedule, adjusters sometimes don't calculate TPD payments.

This is because

adjusters think the workers have returned to "regular" hours and "regular" wages while released for modified work.

This mistake usually occurs when there is considerable time between the date that an adjuster calculates the AWW and the date the worker returns to modified work at his "regular" hours and "regular" wages. Until a worker in this situation receives a regular work release, he or she is entitled to TPD if the worker's post-injury wages during modified work are less than his or her pre-injury wages upon which the AWW was determined. See OAR 436-060-0030(2).

"Cyclical worker" and AWW

(The following is also addressed in Focus, fall 1999)

A "cyclic worker" is a worker who works a rotating shift at regular intervals and regular pay. An example is someone who works 10 hours for seven days, has seven days off, then repeats. He or she would be con-

sidered to have a 14-day cycle and a 35-hour workweek. When calculating the AWW, the worker's hours should be averaged over the entire cycle. The cycle has no scheduled days off in determining TTD or TPD owed.

Adjusters sometimes forget to make this kind of worker a seven-day worker for the AWW. See OAR 436-060-0025(5)(m).

Waiting period

Prior to June 7, 1995, the waiting period **was** payable if the worker was released to modified work within 14 days after the date of first time loss if the employer had no modified work available.

After June 7, 1995, because of the passage of SB 369, the waiting period **is not** payable if the worker is released to modified work within 14 days after the date of first time loss, even if the employer has no modified work available.

Five years after SB 369, compliance auditors are still finding that some claims adjusters apply the waiting period using pre-SB 369 standards. See OAR 436-060-0030(1). An insurer, self-insured employer or third-party administrator **may choose** to pay the waiting period; however, it is not required and the overpayment will be deviated for audit purposes.

DCS and medical provider notification

(The following is addressed in the Focus, fall 1999)

Medical providers that have billed for services but have **not been paid prior** to a disputed claim settlement must be **notified** of the terms of the settlement if they are not going to be paid in full. Adjusters sometimes forget to send a letter or a copy of the DCS to the medical provider to meet this rule requirement. A reference to the DCS with the provider's transmittal will be considered to meet this requirement. See OAR 436-060-0140(8). ■

Mary McCarron is a field auditor in the Compliance Section

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Phone: (503)947-7709

Reclassification requests

by Carol Helton

Through the years, one routine function of the Evaluation Unit was responding to requests for review of decisions about proper classification — disabling or non-disabling — of workers' compensation claims. Because Senate Bill 220 passed, the process for requesting review of claim classification has begun a metamorphosis. During this transition, the Evaluation Unit has worked to ensure that documentation is adequate to satisfy the statute.

Statute requires a worker (or a worker's legal representative) to direct the initial request for review of claim classification to the insurer. The insurer must provide a written response within 14 days, advising parties of its decision to retain or change the original classification and outlining the worker's appeal rights should they disagree. Although revision of applicable portions of OAR 436-030 has begun, procedural modifications have not yet been adopted. Here is how we are processing reclassification requests in the interim:

There are three basic circumstances presented in letters we receive.

- Worker/legal representative requests that we reclassify the claim to disabling. No evidence is provided that the insurer has been contacted with a request to reclassify.
- Worker/legal representative sends WCD a copy of his or her request that the insurer reclassify the claim to disabling. No specific request is made of WCD for action.
- Worker/legal representative requests that we reclassify the claim to disabling and provides a copy of their original request to the insurer and the insurer's response, if any.

In the first circumstance, Evaluation reviews materials to determine whether the request was previously made to the insurer according to statute. If not, evaluation advises workers representatives that we do not have jurisdiction to act without evidence of a previous request to the insurer and its refusal to reclassify the claim.

In the second case, we merely verify that WCD records reflect the claim and route our copy of the letter to be filed without taking any action.

There are two possible bases for the third circumstance. The request may have been denied or the insurer may have failed to respond within a reasonable time. In either case, we request a copy of the insurer's records and perform a review of the documents, ultimately issuing an order supporting the existing classification or changing it.

Occasionally, the worker's legal representative requests penalties be imposed for the insurer's lack of response or untimely response to its letter. While administrative rules allow for this, such requests must be investigated and ordered by a different unit. We forward these requests to WCD/Compliance, Sanctions Unit, for action.

If you have questions about reclassification of claims, please contact Carol Helton. ■

Carol Helton is the technical issues coordinator for the Evaluation Unit in the Benefits & Policy Services Section.

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Phone: (503) 947-7526

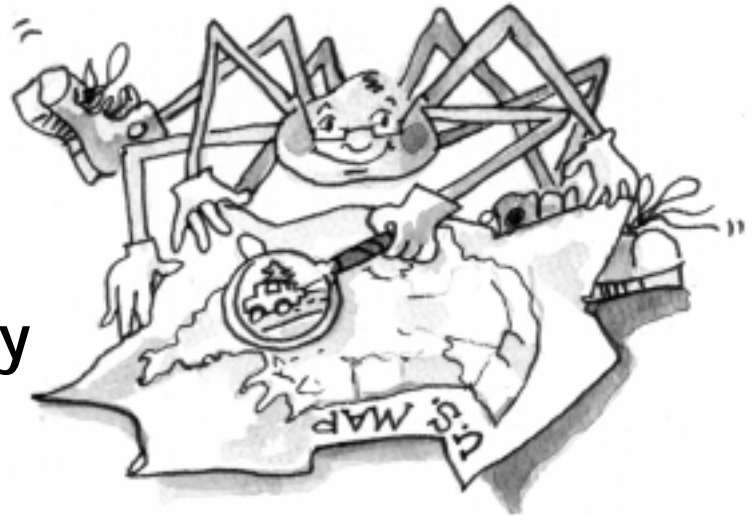


What's up on the Web

Extraterritorial reciprocity on the Web

by Ramona Barnwell

WCD is proud to offer extraterritorial reciprocity information for all 50 states in one place! A color-coded map at <http://www.cbs.state.or.us/wcd/docs/etmap.htm> tells you at a glance whether or not that state reciprocates or has restrictions. It also allows you to select a state and find contacts with mailing addresses, extraterritorial provisions, durations of provisions, governing statutes, and WCD's certificate of compliance requirements. You can also go directly to



<http://www.cbs.state.or.us/wcd/docs/etsummary.htm> to view the same information for all states in alphabetical order.

If you have questions or comments, please contact Ramona Barnwell, (503) 947-7637. ■

Ramona Barnwell is WCD's Web editor in Administration.

E-mail: ramona.e.barnwell@state.or.us

Phone: (503) 947-7637

Operations introduces Rae Howe

by Gayle Parrish

Rae Howe joined WCD on June 7 as the new manager of the Claims Coding Unit of the Operations Section. Rae is responsible for supervision of claims coders and quality control personnel who receive first reports of injury and other filings from insurers and process them for inclusion in the division's central data base.

Rae comes to WCD after 15 years as director of operations for a wholesale Christmas tree supplier, a large operation with warehouses in five states.

Rae's goal for the unit is offering training for insurers. She started contacting insurers immediately to determine their training needs and will be scheduling in-house sessions in September.

If you have questions on claims reporting, notices of closure, or notices of acceptance, or if you would like to schedule training at your facility, call Rae, (503) 947-7619, or send her an e-mail: rae.howe@state.or.us. ■

Gayle Parrish is WCD's data systems coordinator in the Operations Section.

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Please visit our Web site

for more information on Oregon's workers' compensation system.

www.cbs.state.or.us/wcd

Focus seeks reader input



Focus is intended to provide information to the workers' compensation community for a better understanding of the Oregon workers' compensation system. We would appreciate your help in letting us know if we are providing the information you need.

Please fill out the following survey and mail or fax it to: Billie Healy, Workers' Compensation Division, 350 Winter St. NE, Room 27, Salem, OR 97301-3879 or fax it to, (503) 947-7514.

1. What is your level of **interest** in reading the following regular features?

	Little interest		High interest	
	1	2	3	4
ABC's of WCD	1	2	3	4
Administrator's Notebook	1	2	3	4
Focus on (unit of WCD)	1	2	3	4
Outside Oregon	1	2	3	4
Return to Work				
Q & A's	1	2	3	4
Success Stories	1	2	3	4
Worksite modifications	1	2	3	4
Treasures from the attic	1	2	3	4
What's up on the Web	1	2	3	4
Who's Who in WCD	1	2	3	4

2. What is your level of **satisfaction** with the information in the regular features?

	Not satisfied		Very satisfied	
	1	2	3	4
ABC's of WCD	1	2	3	4
Administrator's Notebook	1	2	3	4
Focus on (unit of WCD)	1	2	3	4
Outside Oregon	1	2	3	4
Return to Work				
Q&A's	1	2	3	4
Success Stories	1	2	3	4
Worksite modifications	1	2	3	4
Treasures from the attic	1	2	3	4
What's up on the Web	1	2	3	4
Who's Who in WCD	1	2	3	4

3. What level of **importance** do you place on the articles? (Do you count on this information to help with your work?)

Not important		Very important	
1	2	3	4

4. What is your level of **satisfaction** with the articles? (Are you receiving information that is helpful for your work?)

Not satisfied		Very satisfied	
1	2	3	4

5. Are you satisfied with the **length** of the articles?

Too short		Too long	
1	2	3	4

6. Are you satisfied with the **clarity** of articles?

Not satisfied		Very satisfied	
1	2	3	4

7. Are you satisfied with the **timeliness** of the articles?

Not satisfied		Very satisfied	
1	2	3	4

8. What is the level of **importance** you place on receiving *Focus* to stay informed on workers' compensation issues?

Not important		Very important	
1	2	3	4

9. What is your level of **satisfaction** with *Focus* keeping you informed?

Not satisfied		Very satisfied	
1	2	3	4

10. What topic(s) you are most interested in reading about?

11. What is your area of work:

- Insurer Self-insured Employer
- Medical services TPA HR manager
- Attorney Vocational provider
- Other _____

Thank you for your comments.

The labor representatives:

John Kirkpatrick, IUPAT District Council #5, Portland.

Kirkpatrick's background is in workplace health and safety. He serves on OR-OSHA's educational advisory committee. He is a previous member of MLAC, having served from 1994 to 1996.

Dennis McConkey, AWPPW, Weyerhaeuser Company, Springfield.

McConkey is an electrician and emergency-response team captain. He has a strong medical background and presently serves on the workers' compensation medical advisory committee. He also trained as a certified claims examiner.

Patrick "Mike" O'Rourke, Plumbers & Steamfitters UA 290, Tualatin.

Patrick has been with Plumbers and Steamfitters since 1989. He has been involved in workers' compensation issues through work and union affiliation for more than 30 years. He is also a previous member of MLAC, having served from 1998 to 2000.

Bob Shiprack, union official, Oregon Building Trades Council, Tualatin.

Shiprack has been a member of the Building Trades Council since 1986. He formerly served as state representative in the Oregon Legislature and was a member of the International Brotherhood of Electrical Workers from 1974 to 1986.

Bradley K. Witt, secretary/treasurer, Oregon AFL-CIO, Salem.

Witt has been secretary/treasurer of Oregon AFL-CIO since 1991. He served on MLAC from 1991 to 1994 and was a member of the OR-OSHA educational advisory committee. Brad has a strong background in both workplace safety and health and workers' compensation.

The Workers' Compensation Division looks forward to working with the committee to ensure a fair, effective, and responsive workers' compensation system. ■

John Shilts is the administrator of Workers' Compensation Division.

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