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**Meeting Transcript**

**Certification of Claims Examiners  
Advisory Committee Meeting  
June 13, 2016, 1:30 pm  
Room F, Labor & Industries Building, Salem Oregon**

**Attendees:**

Barb Reich, Asante Work Health  
Dan Schmelling, SAIF Corporation  
Doris Bain, ComPro Inc.  
Jay Fraser, SAIF Corporation  
Jennifer Flood, Ombudsman for Injured Workers  
Jerry Keene, Oregon Workers' Compensation  
Institute  
Larry Bishop, Sedgwick CMS  
Luana O'Dell, Liberty Mutual Insurance  
Mary MacDuffy, Integrity Medical Evaluations  
Melissa Kooyman, CCMSI  
Mike Van Leuven, Integrity Medical Evaluations  
Paul Altstadt, Matric Absence Management  
Sean Warren, SAIF Corporation  
Sheila Hansen, CorVel Corporation

**WCD attendees:**

Adam Breitenstein  
Barbra Belcher  
Chris Clark  
Daneka Karma  
Donita White  
Fred Bruyns  
Kara Null  
Larry Bishop  
Myra Aichlmayr

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THE WORKERS' COMPENSATION DIVISION OF

THE STATE OF OREGON

CERTIFICATION OF CLAIMS EXAMINERS

ADVISORY COMMITTEE MEETING

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 13th day of June, 2016 at 1:30 p.m., before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

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INDEX

DISCUSSION AMONG PARTIES

1 - 46

1  
2  
3  
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11  
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## TRANSCRIPT OF PROCEEDINGS

MR. BRUYNS: Hello. Thank you very much for coming. I think you all know me, but my name is Fred Bruyns and I coordinate the rulemaking process. I appreciate you coming down this afternoon to talk about the rules governing the certification of claims examiners. This is not a very large division. It certainly hasn't been open for substantial changes in a long time. I think there was a couple of required changes due to some statutory changes, but they were very minor and just something that we had to take care of along with some other rules. So they really needed a look, and so we have an issues document today that includes not only kind of our central issue that was the subject of a petition, but a number of other issues as well that have been outstanding for this, Division 55 rule.

So if you don't have an agenda with the attached issues document, we have some extra copies on the back table. We have name tents back there as well. And if you are joining us by telephone, the agenda is on our website. If you just go to the Laws and Rules page, you'll find a link there to Meetings and Hearings, and then you'll quickly find it under today's date for this meeting. So I'd encourage you to get that.

Advisory Committees are quite informal. I think you've pretty much all been involved in them before. It's a discussion, really, and the Division staff is mostly here to listen, but we'll help provide information and let you know if we think there's any limitations, things that we really can't do maybe by statute or for other public policy reasons. But as we're going along, if there's anything that's going to have a fiscal impact on you or the people that you represent, we really need to know about that because we have to estimate those impacts when we file proposed rules

1 with the Secretary of State. So please keep that in mind. Could be a positive  
2 impact, a negative impact, anything at all that affects the bottom line for you or your  
3 clients, so...

4 I've introduced myself. I'd like us to go around the table. Oh, just a  
5 quick word about telephone protocol. If you're on the phone with us today, please  
6 don't put us on hold unless you're certain that you don't have any background music  
7 or background messages that we'd hear because it's impossible for us to turn those  
8 off. So you can actually leave the conference and then rejoin as many times as  
9 you'd like. So with that, I'd like to begin with the folks on the telephone, have you  
10 introduce yourselves to the Committee, and then we'll go around the table. Anyone  
11 on the telephone?

12 MR. SCOTT: This is Paul Scott with Matrix Absence Management.

13 MR. BRUYNS: Welcome, Paul.

14 MR. SCOTT: Thank you.

15 MS. O'DELL: Hi. This is Luana O'Dell (phonetic) with Liberty Mutual.

16 MR. BRUYNS: Welcome, Luana.

17 MS. O'DELL: Thank you.

18 MS. KOOYMAN: This is Melissa Kooyman with CCMSI.

19 MR. BRUYNS: Welcome, Melissa.

20 MS. REICH: Hi. This is Barb Reich from Asante.

21 MR. BRUYNS: Welcome, Barb.

22 MS. HANSEN: Sheila Hansen, CorVel.

23 MR. BRUYNS: Welcome, Sheila. Anyone else on the phone? Okay.  
24 I guess not. With that, I'm going to turn to my left and ask Chris to introduce himself.

25 MR. CLARK: Sure. Hi, everyone. My name is Chris Clark. I am the

1 new policy analyst for the Workers' Compensation Division. I'm supporting the  
2 performance section, which covers a lot of areas in the rules including claims  
3 examiner certification.

4 MS. FRASER: Oh. Jaye Fraser. SAIF Corporation.

5 MR. KEENE: Jerry Keene. Oregon Workers' Compensation Institute.

6 MS. BAIN: Doris Bain, ComPro.

7 MR. VAN LEUVEN: Mike Van Leuven, Integrity Medical Evaluations.

8 MS. MACDUFFEE: Mary MacDuffee, Integrity Medical Evaluations.

9 MS. KARMA: Daneka Karma, policy analy-- Or policy manager with  
10 the Workers' Compensation Division.

11 MS. HALL: Barbara Hall, interim SIRR manager, Workers' Comp.

12 MS. WHITE: Donita (phonetic) White, auditor with Performance.

13 MS. BELCHER: Barb Belcher, audit manager.

14 MR. BISHOP: Larry Bishop, Sedgwick.

15 MR. SCHMELLING: Dan Schmelling, SAIF.

16 MR. WARREN: Sean Warren, SAIF Corporation.

17 MS. NULL: Kara Null and I'm the conference and training coordinator  
18 for the Division.

19 MS. AICHLMAYR: Myra Aichlmayr. I actually approved the curriculum  
20 for the continual education credit for--regarding IMEs.

21 MR. BREITENSTEIN: Adam Breitenstein, interim performance section  
22 manager.

23 MS. FLOOD: I'm Jennifer Flood, ombudsman.

24 MR. BRUYNS: Okay. And welcome to you all. Thank you very much  
25 for taking your time to come down here to help us with these rules. And with that,

1 I'm going to turn over the conduct of the meeting to Chris today to take you through.  
2 He worked on the agenda and developed it, so he's going to know it best. And it is--  
3 Again, remember, it's very informal. If you think of things that should have been on  
4 the agenda but are not, or if you have related questions, some-- You know, some  
5 things we might hold to the end because we do want to get through our agenda, but  
6 I don't think we're going to have any trouble with time today. We allotted up to three  
7 hours for this and we'll take as much time as necessary, but I don't anticipate we'll  
8 take that much time, so-- Chris?

9 MR. CLARK: Great. Well, yeah. Like Fred said, thank you, everybody  
10 for being here. We have a pretty short agenda. There's only six issues that we  
11 currently have raised. Like Fred said, feel free to bring anything else up, but I'll just  
12 go ahead and start with number one and run through them.

13 So the first issue is in regards to the definition of "process claims" in  
14 Rule 5(6). The definition is different than the definition currently used in Division 50,  
15 and we are wondering if one of the definitions should be amended to make the rules  
16 more consistent. The rule currently states that "process claims" means the "receipt,  
17 review and payment of compensation for workers' claims." The definition used in  
18 Division 50 was very similar until it was expanded in 2012. I'm sorry. I'll skip around  
19 a little bit. You can read the longer definition there that is used in the Division 50  
20 rules.

21 That revision was made after "a worker's attorney raised the issues  
22 that, in some cases, time-loss payments mailed from processing locations outside of  
23 Oregon take an unreasonable amount of time to reach workers. Because Division  
24 55 is concerned with the certification of claims examiners, and not claims processing  
25 itself, there may be reasons why the division may, or may not, wish for the

1 definitions to align.”

2 So and there’s an example here of the definition of temporary claims  
3 examiners requires them to have at least two years prior claims processing  
4 experience. And the expanded definition in the Division 50 rules may cause an  
5 inconsistency there.

6 6:56: And just so you all know, the rules are attached to this agenda.  
7 They’re just-- They’re the current rules. There’s nothing marked on these. It’s not a  
8 draft. It’s just the current rules.

9 7:08: Chris, I have a couple of--

10 7:10: Yeah.

11 7:10: --issues or questions on it.

12 7:11 Oh, sure.

13 7:12: The first one is that was--I was interested to see that there’s a  
14 comment here that it’s implied that temporary claims examiners have to have  
15 Oregon experience because the rule has never said that. And I’ve always thought,  
16 well, I think it would be a good idea, but I don’t think it is required anywhere in the  
17 rules, and if you’re going to make that implication explicit, it’s probably not a bad  
18 idea because it would make sense.

19 More importantly, I don’t think this definition or the -050 rule definition  
20 seems to contemplate or be aware that self-insured employers can, in fact, process  
21 claims from outside Oregon and pay claims from outside Oregon. And this rule, this  
22 definition doesn’t seem to allow room for that, although it is explicitly stated in -055-  
23 02301. And that’s by statute, which is 656.455. So probably any rewrites need to  
24 leave room for the fact that it won’t apply to self-insured employers who’ve obtained  
25 permission from the Department to process claims from outside Oregon.

1 8:13: Thank you, Jerry. That's very helpful. Any other comments or  
2 concerns?

3 8:29: It just seems like maybe they're purposely different because  
4 what the insurer is doing for the claims examiner is managing, giving two different  
5 things. And just because the claims examiner and their adjuster is working here in  
6 Oregon and making compensability decisions here in Oregon doesn't necessarily  
7 mean that that mail needs to be mailed from here in Oregon. I mean, that's really  
8 not part of the claims processing. That's what the insurer does as a business  
9 practice.

10 And so in Division 50 where it's talking about checks being mailed from  
11 out of state or mail centers being out of state, both receiving and mailing letters, that  
12 seems different than what the claims adjuster is doing, which is what's spoken to in  
13 Division 55. So I don't think those two definitions should be the same.

14 9:28: Okay. So I'm hearing the general consensus that there's  
15 probably not a need for them to be the same, but we should maybe look at both of  
16 them to make sure that they're providing for self-insured employers.

17 9:38: I'll just comment that I have the same sort of kind of apples-and-  
18 orange feeling about it--

19 9:43: Uh-huh.

20 9:44: --that he's expressing here.

21 9:45: Okay. Well, good. Well, if there's no other comments, then we  
22 can move on to issue number two. This issue is in regards to Rule 8(3). And it's  
23 primarily concerning some tricky wording on whether the determina-- I'll start at the  
24 beginning. Should the Workers' Compensation Division remove the provision in  
25 Rule 8(3)(d) that provides that an administrative order issued in response to a

1 request for administrative review will specify “whether the determination constitutes  
2 a final order or whether an aggrieved party may request a hearing?”

3 That section states that in response-- Well, there’s that. So skipping  
4 down to the second paragraph of the background, the construction of the rule may  
5 be read to imply that if the order is final, it cannot be appealed. Under  
6 656.704(2)(a), a party is entitled to request a hearing on any matter not concerning a  
7 claim, so the rule appears to be in conflict with statute. In addition, under the  
8 Administrative Procedures Act, a "final order" means a final agency action  
9 expressed in writing, but does not preclude further agency consideration of the  
10 subject matter.

11 Similar provisions have already been removed in the division 009, 010,  
12 030, 050, and 060 rules because the process for requesting appeal is established in  
13 division 001. So deleting this section may-- Subsection may create more internal  
14 consistency throughout the rules.

15 And I will say in general, we are also looking at creating some more  
16 standardized language in the hearings requests. So this may go beyond just  
17 changing the subsection but kind of creating more clear and consistent rules  
18 throughout.

19 MR. KEENE: This is Jerry Keene. I think it’s a good idea. Going back  
20 over the language is removed from some of the other sections. We’d run into this  
21 and we’d get a letter with no appeal rights or there’d be a question. And I would just  
22 basically just write the Department a letter and say, “Please issue this again with  
23 appeal rights,” and they would. So but if you didn’t know to do that, it could be  
24 confusing.

25 12:19: I think SAIF sort of would agree with that. It’s to us like a

1 housekeep-- Almost a housekeeping issue at this point that needs to be cleaned up.

2 12:35: Okay. Any other comments, concerns? Okay. Bear with us.

3 We're getting to the exciting ones, I swear. All right. Issue three is in regards to  
4 Rule 70(6). This is also a bit of a housekeeping rule. It's just should the rule be  
5 amended to make it clear that the insurer is responsible for renewing claims  
6 examiner certification and rewriting it in more active voice so...

7 13:20: The service company will still be able to do that on behalf of  
8 the insurer as we currently do?

9 13:27: That is a good...

10 13:28: As we do everything else for the insurer except filings.

11 13:34: Yeah. If that is the current practice, I am-- I see no reason  
12 why that would change.

13 13:41: So Larry, are you saying to make it clear that the insurer or  
14 service company...

15 13:44: Yeah.

16 13:45: Yeah. That would be better.

17 13:46: That's fine if you need to put it in--

18 13:49: The definition...

19 13:50: --due process claims. That's what you do and that's...

20 13:52: It's in the-- Yeah, it's...

21 13:53: It's in the definition.

22 13:54: It's in the definition of insurer?

23 13:55: I think insurer includes-- I'm sorry to keep monopolizing this.  
24 I've got a couple of issues for you on it.

25 14:04: Sure. Okay.

1                   14:06: This whole idea of renewing certification has been one that has  
2 caused confusion. Just so you know, outside of SAIF and ComPro, I think I probably  
3 have certified everybody in Oregon who took my class. It's because people keep  
4 dropping from the--by the wayside. So I get these calls and I get these questions  
5 about renewals, and there did not seem to be a way for it to happen officially in the  
6 rules. There was never a piece of paper people could have, and so they would just--  
7 They'd just write me or call me and say, "I need something that says I'm renewed."  
8 Either the claims examiner would or the service company would, and so I just started  
9 ginning up renewal documents, and I said in my cover letter, "This has no legal  
10 effect whatsoever, but if it makes you feel better, you know, I think you've got the  
11 right number and hours of credits for your renewal."

12                   And this should probably dovetail-- Right now what happens is this  
13 dovetails with your provision-- Your Issue 6 is, you know, this says they're supposed  
14 to be-- Insurers are-- do certify and should also recertify. But then Issue 6, it refers  
15 to the OAR where essentially insurers acknowledge certification, and those two  
16 mean basically the same thing. When I certify someone through my class and they  
17 pass the examination, I--as part of their packet, I give them a big piece of paper for  
18 the Workers' Comp insurer that they're working for to sign that acknowledges that  
19 they accept the course and exam as sufficient, and I give them a description so they  
20 can do due diligence. And it's just an acknowledgment. And it has the beginning  
21 date and the renewal date, which is what the rule provides an acknowledgment must  
22 do. And I would say that this issue dovetails with 6 and could easily be solved by  
23 simply adding into the requirement that insurers acknowledge the initial certification,  
24 that they also review their own records they're supposed to be keeping track of for  
25 their own folks and acknowledge renewal in the same way. Just a simple

1 acknowledgment that says as of this date, "renewed and expires in three years."

2 16:08: Here's your new certificate.

3 16:12: Yeah. Basically. I mean,--

4 16:13: Yeah.

5 16:14: --that's all I do is just issue the certificate over again, but it says  
6 "renewed" instead of "original."

7 16:17: That's what we do.

8 16:18: Yeah. So anyway I think the two dovetail and could be solved  
9 by the same thing, but the acknowledgment could be the--

10 16:25: Yeah.

11 16:26: --recertification because I think they are anyway. And I can  
12 give you this. That's my certification packet that I give to everybody that passes the  
13 test, and I actually a hundred million years ago reviewed that with the Department,  
14 and they said that it was okay. I think maybe Adam might have been involved or I  
15 can't remember, but I made sure the Department had signed off on it, and I saved  
16 the email in case anybody ever wanted it. I guess everybody dies over these.

17 16:53: Yeah.

18 16:54: And so that might give you an idea of what-- That's what's  
19 happening--

20 16:58: Yeah.

21 16:59: --from the stuff-- The people that I'm involved with, which is  
22 pretty much all of the non-SAIF people now and people who don't have in-house  
23 training.

24 17:09: So for the other people in the room, is the-- Does the process  
25 sound relatively similar? You--there is a physical certificate and the records are

1 maintained.

2 17:20: Well, I don't want to leave the wrong impression. I actually--  
3 I'm glad to see this because I think some of the smaller insurers and service  
4 companies, I think they actually do not review or maybe even keep the records of  
5 their claims examiners the way they should. It's rarely audited. And by  
6 strengthening this, I think you would maybe reengage some of the smaller  
7 processers that-- And say, "Oh, but you're-- Just remember, you're supposed to  
8 keep the certification records, not just the claims examiner. You're supposed to  
9 keep it for all the people who are processing claims for you, and you're supposed to  
10 review them every three years." And that might reinforce that requirement with  
11 people because I think it was contemplated, but I don't think it actually happens from  
12 any of the insurers. So I think it would be a good idea for that reason.

13 18:06: Jerry, are you suggesting that you can re-- Or that you do  
14 review and certify and then let the-- We'll call it the employer of the claims adjuster  
15 know, hey, they've met the requirements, here it is?

16 18:20: Do I do or...

17 18:21: Yeah.

18 18:22: When I do it, yeah. I give it to them. Whoever needs to see  
19 this-- here's something from me that says, "In my opinion, that's good enough." And  
20 I think that the--by accepting that as sufficient, their employers and the claims  
21 examiners themselves are saying, "Look, I think this meets the requirements of the  
22 rule. I've got my hours."

23 18:42: Okay.

24 18:43: They're accepting my certification. That's why they come to me  
25 to ask. And all I do is look and see, do you have 24? Are four of them update

1 credits? Are three of them IME credits? Yes. This looks right to me. They're all  
2 within the right dates. That's all I can say. That's all the rules require. So therefore,  
3 you're renewed.

4 18:58: Okay. I guess I always read it that it was the insurer/service  
5 company's responsibility--

6 19:04: Uh-huh.

7 19:05: --to do that on an initial certification on an ongoing basis.

8 19:09: Oh, it is. This--I'm sorry. I should be clear. On the packet. I  
9 give it to the claims examiner,--

10 19:13: Uh-huh.

11 19:14: --and it's got a space for their employer to sign it. And by doing  
12 that, they're accepting the documentation.

13 19:20: Yeah.

14 19:21: So you're reviewing what they've done and sort of putting  
15 yourself in the shoes...

16 19:28: I bless it and then they accept my blessing.

17 19:29: And they accept your blessing?

18 19:30: Yeah.

19 19:31: And they're ultimately blessing what you--

20 19:33: Yes, they are ultimately a blessing, but the thing is, the rules  
21 have not been clear that the insurer was supposed to do that. The rules say a  
22 renewal will be provided. There's no active voice.

23 19:40: Well, that's their problem. No active voice.

24 19:44: Yeah. Yeah.

25 19:45: And that's why...

1                   19:45: Yeah. And so I've interpreted it to say, well, if push comes to  
2 shove, claims examiners, you're kind of on your own under these rules. If you want  
3 to protect your own certification, get something that says you've got the right hours.  
4 I go officially into the rules. You just take care of it yourself and make sure you've  
5 got the right documentation. If you want some backup or some comfort level, here, I  
6 look at it and I think it meets it, too. And then together, they've got something which  
7 if the Department ever audited it, I thought, here, I've got all the right hours and  
8 somebody else thinks so, too. I did due diligence. What else could I do?

9                   20:16: Yeah.

10                  20:18: And with this now, it will be what else you can do is get--  
11 actually get your employer to actually certify. One more issue on this. Not to tie this  
12 up too much, but the other issue that is not provided by the rules is this whole issue  
13 that you can't be a certified claims examiner unless you're a claims examiner, and  
14 the Department contemplates that you can't be a claims examiner unless you're  
15 actually processing claims. So what about all of the people that are unemployed  
16 that want to keep their certification renewed? There's not going to be an insurer to  
17 do that for them. And that's the other reason why I got involved is that if and when  
18 they ever go back to work in claims and it matters, they have something that kept  
19 them current while they were away from being able to get it.

20                  20:57: We--yeah. We talked about that.

21                  20:58: Do you think that with the additional language that they're  
22 suggesting in Issue Number 6,--

23                  21:01: Uh-huh.

24                  21:02: --it was removed previously.

25                  21:05: Yes.

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21:06: That (3)--

21:07: Is that (3) and (4)? Yeah.

21:16: Well, is there actual language in (3)? I'm sorry.

21:18: No. It was removed, which is Issue 6,--

21:19: Oh.

21:22: --is that it was an inadvertently moved...

21:23: Oh, yeah. I know about that.

21:24: Yeah.

21:25: And by reading of (b) is that that gives the insurer the opportunity to verify from their own records or those presented by the claim examiner, the requirements for initial. So not to jump ahead, but my assumption in 6 was for those folks that are not employed or working for an employer, let's say the Workers' Compensation Division, that isn't qualified to certify them, that if they maintain their continuing ed, they could then present that to their employer or the insurer upon, you know, being hired and say, had I been employed by an insurer that could have certified me, you can verify that everything's there along the way similar to what you're doing now for adjusters.

22:15: I think so except that the language just needs to be tweaked.

22:17: Yeah. It needs to be cleaned up.

22:19: Maybe tweaked. Yeah, it needs to be tweaked.

22:20: Well, it needs to be tweaked to not only include accepting an initial certification but accepting subsequent--

22:21: Renewals.

22:22: --renewals.

22:23: Yes.

1 22:24: Yeah.

2 22:25: So I'm-- So this just talks about, I mean, for people that have  
3 had an initial one and need someone else to accept it. But we also need it so that if  
4 they've got documentation of adequate renewal, when there--

5 22:33: Yeah.

6 22:35: --was nobody to approve it, that will also suffice.

7 22:39: Yeah.

8 22:40: So that's-- Yes, I do.

9 22:43: I would be in favor of that.

10 22:54: If there's a phrase that will help you, I've used the phrase for  
11 people, "You are certification eligible." And that gets around you. "I can't be  
12 certified. I'm not a claims examiner. The Department says I can't be a certified  
13 claims examiner." I go, "I know. That's because they think you have to be working  
14 for somebody. We'll call you certification eligible. And if it ever comes up, I don't  
15 think that they will fight with you over the fact that it was okay, you just weren't  
16 employed at the time." And so far I've never heard of anybody ever having that  
17 problem.

18 22:25: It would be nice to have something in the rules that specifies  
19 that you can keep track of your hours and present them should you choose to go  
20 back to it.

21 22:34: I think certification eligible should be recognized as a status--

22 22:37: Yep. I would agree.

23 22:38: --for people that aren't in a position to have contemporaneous  
24 approval.

25 22:39: Yeah. SAIF would agree with that.

1                   22:44: But then if they want to get-- If they want-- I mean, they're  
2 going to have to take a chance. They're going to say, "Okay, I think I'm certification  
3 eligible. My renewal has come and gone." There's still no way for them to come to  
4 me and get an a informal blessing, you know, to have a security level on whether  
5 their hours pass muster. So that is a gap.

6                   23:59: So I am hearing, though, that in general, if someone can show  
7 that they have met the training requirements for renewal, there should be a provision  
8 to let them carry that certification from one employer to another. Is that...

9                   24:21: Yes. But I think what you want to do is make sure that the  
10 insurer-- It's one of those things where the insurer may.

11                   24:27: May. Right.

12                   24:30: Because I don't think you want to...

13                   24:31: Yeah.

14                   24:32: To tell us that, "Oh, you have to just because they have  
15 presented the hours." We may look at them and say, "Eh, we don't like them so  
16 much."

17                   24:38: Yeah.

18                   24:39: Or "we think there are other things you need to do." So give  
19 the insurer the...

20                   24:43: Well, that's-- Okay. I guess they have to push back a little bit  
21 because the original intent of this rule was that if a person had already obtained  
22 initial certification, which was back then through the Department, that that couldn't  
23 be second-guessed by someone else down the road who said, "Oh, we looked at  
24 this, and even though somebody originally thought this was good enough, we don't  
25 think it is." And then they are caught in this, "Okay, so I was never certified as far as

1 you're concerned?"

2 25:10: Well, except when we hire someone who comes to SAIF, we  
3 do look to see their experience and we would always look and make a decision on  
4 whether we wanted them to pursue additional training classes. And Sean, you could  
5 probably speak to that better than me.

6 25:26: Yeah, absolutely. You know, we have people who come  
7 through your class, Jerry, and from a timing standpoint, you know, they may have  
8 come through five months ago, six months ago, whenever. We still require them to  
9 go through our process and take a certification exam, even though you give them an  
10 exam, in order for us to feel good about certifying them, and so we still require that.

11 25:48: I was aware of that, but I was--just figured it was a matter of  
12 your personnel and training and hiring policy,--

13 25:53: Yes.

14 25:54: --not a matter of the law.

15 25:55: Yes, it is. You're right.

16 25:56: But nothing about this would keep you from being able to do  
17 that. It's just that you-- Someone can't be-- It makes a difference because  
18 originally, it was the Department doing it.

19 26:04: Yeah.

20 26:05: If the Department had done it, then somebody--the people had  
21 to accept it--

22 26:05: Yeah.

23 26:07: --down the road.

24 26:08: Which I guess is the point, is we don't want somebody telling  
25 us what our personnel hiring practices are.

1 26:12: Which I don't know but...

2 26:14: Yeah. I know what you mean.

3 26:17: But that's different than someone just saying-- You can always  
4 decide whether to hire somebody.

5 26:23: Uh-huh.

6 26:24: But because insurers certify under this rule now and not the  
7 Department, I don't think it's right for somebody who is declared certified by one TPA  
8 or insurer to go to a new one and now be declared, "You were never certified."

9 26:38: Oh, I-- Yeah. I see what you're saying.

10 26:40: Okay.

11 26:42: I think more of the term as I understand it from the perspective  
12 of the person who may believe that they have-- May have a certification from one  
13 company, and they go to a different company and are told, "That's not-- That  
14 doesn't meet our standard, so we're not going to consider it." The person may say,  
15 "Well, they're saying I'm not certified," whereas to split that hair, they're not saying  
16 you're not certified, just like we don't tell workers, "Well, you're not injured." (laughs)  
17 Right?

18 27:15: (laughs)

19 27:16: We say, "Well, you may be certified there, but it's-- But it  
20 doesn't meet our certification requirements."

21 27:18: Oh, I know that. And it really isn't a...

22 27:20: Yeah.

23 27:21: It's "what is audit going to do?"

24 27:22: Yeah. Right.

25 27:23: What is audit going to do?

1                   27:25: So they're not going to be-- I mean, until they get the  
2 certification of the place that they're working at, they're not going to end up working.

3                   27:33: But if the insurers make this decision and a subsequent insurer  
4 says, "You were never certified," does that undo the certification from the auditor's  
5 perspective?

6                   27:42: We would have to see if they were never certified.

7                   24:43: Yeah. Right.

8                   27:44: Did they meet their original--

9                   27:45: Right.

10                  27:46: --requirements for certification or not?

11                  27:47: Now, I think we're getting to the nub of this. If it's a matter of  
12 opinion.

13                  27:51: Uh-huh.

14                  27:52: And I think...

15                  27:53: And we've already gotten an opinion from somebody that the  
16 law says-- The law says the insurer certifies, not the Department.

17                  28:01: Well, they would be bringing that transcript of their--  
18 From their prior employer, right,--

19                  28:05: Yeah. Right.

20                  28:06: --with their history of certifications, recertifications.

21                  28:09: I was talking about an instance where we've actually never  
22 been previously certified.

23                  28:13: Yeah.

24                  28:13: Right. You don't have enough hours. Yeah.

25                  28:15: Or they left their--

1 28:15: Lapse.

2 28:16: Lapse.

3 28:17: --certification lapse to where it's been three or four years. We  
4 may go back and say, "Yep, you could have been certified all along because you  
5 met the continuing ed. We will certify you." But we want to be able to say, "Look,  
6 you let it lapse. And we're not real sure if you really maintained your 24 continuing  
7 ed." This is here, so the must where I think our issue is.

8 28:44: Yeah.

9 28:45: If they were certified and they're still certified and reemployed,  
10 there's no question there. You know, they left Sedgwick. They come to work for  
11 SAIF. They had a year left on their certification. I wouldn't think we would say,  
12 "We're not going to recognize your certification."

13 29:01: No.

14 29:02: But if it's been four years and it's lapsed, that's where I think at  
15 least in Issue 6, we're saying it should be a may. We may go back and look at your  
16 continuing ed, and had you maintained absent an employer that can certify you, you  
17 would have been certified. We're going to go ahead and accept that.

18 29:25: Yeah. I don't think that's where the issue is on the idea of  
19 lapsing. I've always figured the Department took a very, very tight look at that and  
20 that's-- I don't think that's been an issue as far as they're concerned. My concern  
21 is-- Take it from a different perspective. The Department comes in and audits  
22 records. And some of them were initially certified and then renewed and then  
23 renewed. And this-- And now the Department audits. Can the Department go back  
24 and say, "You were never certified when that documentation was accepted by an  
25 insurer in the first place." And can they fine the employer for having an uncertified

1 claims examiner? Just to switch it around a bit.

2 I'm trying to say that the-- There's got to be a line in the middle here  
3 somewhere, but the claims examiner can't be whipsawed between people approving  
4 or not approving it. The Department doesn't provide a binding opinion unless and  
5 until there's an audit. There's got to be a sense of job security for people that have  
6 relied on someone approving their documentation and then let the Department deal  
7 with the employer that looked at it and said it was okay, not the claims examiner. Do  
8 you see what I'm saying? I mean, we're talking about people's occupations, you  
9 know.

10 So I guess I can go over something, but I think to some extent, there  
11 needs to be a situation past which the Department will not second-guess prior  
12 certification decisions. There's got to be, you know, due diligence, lacking  
13 reasonable effort. Some reasonableness line that says that past a certain point,  
14 certification determinations won't be reopened.

15 31:16: Well, I guess, what are you using-- And I think we're kind of  
16 talking by each other because certification is something that the Department would  
17 come to look to make sure that the adjuster had the certification. And I think what  
18 we get a little concerned about is someone comes to us with that certification, and if  
19 we make a determination internally that we want additional internal work, we just  
20 don't want an adjuster saying, "Well, you hired me and I'm not going to do that."

21 31:49: Right.

22 31:50: Well, yeah.

23 34:51: Correct.

24 31:52: I don't think we're...

25 31:53: Because it says here that you have to accept--

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31:53: Right.

31:54: --my certification. That's all, we don't want to--

31:56: We accepted-- the Department would accept you as certified.

31:58: Yes.

31:59: But to work as a SAIF examiner, you're going to have to do this.

32:01: Right. You're going to have to do more.

32:02: Okay. So I'm--it's only the first part that I'm concerned with.

32:04: Right. I got it. I got it. So good luck (laughs).

32:10: Yeah. And it did sound like there are maybe issues there. So there is a rule that says "the insurer must provide documentation and certification upon request or upon termination." And so I think Jerry, what you're saying, is that if the employee or ex-- The examiner carries that documentation to their next employer, you're concerned that the Division may not recognize that?

32:44: Might not recognize the original certification.

32:45 Right. Yeah.

32:47: The previous certification. Yeah. And I think that there's-- I'm saying that upon renewals, at the renewal point, within each renewal point, that's...

32:54: Yeah.

32:55: You know, that's all-- And that particular renewal. But going back more than one, there was a policy basis for the original rule that was inadvertently, you know, taken out.

33:05: Right.

33:06: And the policy basis was that people would be able to rely on those certifications notwithstanding different opinions about what certification takes

1 by new people that they go to work for down the road.

2 33:17: Okay. Yeah. I think-- And we can discuss that more when we  
3 come to that, to Issue 6, but I do think I understand what you're saying. And my  
4 understanding from SAIF's perspective then is just you do not want to see a rule that  
5 compels an insurer to accept certification from another insurer.

6 33:38: Or maybe a rule that says, "This does not preclude an insurer  
7 from requiring additional training--"

8 33:40: Yes. Yes.

9 33:41: "--as a condition of employment."

10 33:42: That's that--splitting that hair.

11 33:43: Okay.

12 33:45: Splitting that hair. That's what happens when you get an  
13 appellate lawyer hanging out with you (laughs).

14 33:52: It's easy without,--

15 33:53: Yeah.

16 33:54: --you know, having an employer...

17 33:55: And there is a difference. There is...

18 33:56: Yeah.

19 33:57: It's a small difference but it's definitely-- And that is the  
20 second-- Is our issue.

21 34:04: Does anybody else have comments or concerns or...

22 34:12: Did I understand for Issue 3, everybody was agreeable to add  
23 insurer to clarify?

24 34:18: Yes. I think with the-- And that the definition of "insurer" does  
25 include service company.

1 34:27: Well, the definition--

2 34:30: Right.

3 34:31: Yeah.

4 34:33: And in fact, any time-- I will just say that any time you can use  
5 active voice, I'm thrilled about that, so yes.

6 34:43: I think the Division is under a requirement to...

7 34:48: There was once a year or a cycle where the majority of all the  
8 changes and all the rules were changing passive voice to active voice. I think it cost  
9 like \$600,000.

10 34:58: (laughs)

11 35:01: (laughs) That was before electronic-- Everything had to be  
12 mailed. Those active/passive voice changes were mailed to everybody in the  
13 system, and then it's a 90-day waiting period. It was so ridiculous. Sorry (laughs).

14 35:23: All right. Oh, no. That is why we're meeting today.

15 35:26: I should sat over there.

16 35:29: For me, that would be better (laughs).

17 35:30: (laughs)

18 35:35: Okay. I'm sorry. I apologize. What was the next...

19 35:37: No apologies necessary. Okay. So Issue 4. I am not going to  
20 read this entire background, but I will give a summarization here. So the Division  
21 "currently requires three hours of training related to interaction with IME providers as  
22 part of the certification renewal requirements. Should the required number of  
23 training hours be reduced?"

24 So under Rule 70, "to be certified as a claims examiner, an individual  
25 must pass an examination which demonstrates their familiarity with the Workers'

1 Compensation statutes and rules, capability to perform claim processing activities,  
2 and an understanding of activities related to interactions with IME providers.” And  
3 that require-- That includes all the components in Rule 85(2). So as you know, the  
4 certification must be renewed every three years by verifying that the  
5 examiner has completed 24 hours of training, including four hours of training on  
6 Workers’ Compensation statutes, three hours on training related to interaction with  
7 IME providers, and 17 hours on various topics including medical case management,  
8 communication, ethics and mediation, and claims processing.

9           There’s a history of why the three-hour training requirement was  
10 provided here for your reference, but essentially, a stakeholder petitioned us to  
11 review this issue again and recommended that we reduce the number of training  
12 hours from three to one on the grounds that the three-hour requirement is  
13 disproportionate and excessive. So moving forward with this, we’ve also received  
14 another alternative that we require three hours of training related to interactions with  
15 IME providers for the initial certification but reduce it for renewals.

16           In either case or any case the requirement for renewals were to be  
17 reduced, we would need-- We would also appreciate your input on how to allocate  
18 the two remaining hours, so if that two hours of training would go into the general  
19 requirement into the requirement on statutes and rules or allocate it in another way.  
20 So that was a very brief synopsis, but I’m sure you’re all pretty familiar with this  
21 issue. If anybody does have questions, I’d be happy to answer them. Otherwise,  
22 please feel free to comment.

23           38:24: We’ll, it’s my proposal.

24           38:29: I wasn’t going to call you out.

25           38:29: A stakeholder.

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38:30: A.

38:32: And it's just become ridiculous that every renewal, every three years, people are looking at the very same information all over again every single time because the IME rules have not changed since 2006. And so three hours to learn what they already learned before is just excessive and disproportionate to the importance or content or amount of the information that's involved. I've got people every three years, they read my chapter on IMEs, they take study questions, and they listen to my extremely boring lecture, and that's three hours. And they do it every three years.

39:08: They say it's boring?

39:11: They say the same thing. Well, I try not to be, but the information is challenging. And Myra, you and I have never talked because I got my materials approved, you know, a million years ago,--

39:23: Uh-huh.

39:24: --and nothing has changed. And the statute or the rules say "Until it changes, I don't have to get it reapproved."

39:27: Right.

39:28: So these poor people, by definition, are looking at the very same lousy step. And so I would say first of all, one year, even one year is probably too much, but politically, that's probably not a go. So one hour every three years keeps the information fresh, keeps it highlighted. Since 2006, the Department itself, their surveys show that people are over 80% satisfied with their IME experience, so the urgency of this problem has receded. The Department itself has quit giving out or requiring people to give out survey forms to everybody that gets an IME because they weren't getting any complaints. And so I think this is just a natural

1 accompanying move to lower the profile for education requirements.

2 I don't think that-- It's equally disproportionate and also kind of apples  
3 and oranges to move this hours requirement to the initial certification. There is no  
4 hours requirement for initial certification right now. It's just the exam and the exam  
5 has to include information on it. So I don't-- I think moving three hours of training  
6 would reopen the certification process in a way that when they privatized it, the  
7 legislature meant that the Department not get involved anymore. They wanted the  
8 Department to move--back away from that aspect of approving hours for anything for  
9 the initial certification. So I would recommend that you just reduce the hours to one,  
10 and if you need to reassign the value of those things, yeah, I have no objection or  
11 problem with just moving it to update because seven hours of update every three  
12 years is probably proportionate to the importance of the changes that happen in  
13 Workers' Comp every three years.

14 It would-- I think just about-- I think most people, their 24 hours, I  
15 would bet money that at least 10 or 15 of those hours are update hours now even  
16 though they don't have to be because that's just the nature of ongoing training. So  
17 make--saying seven hours after the update isn't going to burden anybody  
18 additionally except for just making sure that, you know, stuff they're already taking  
19 amounts to seven instead of four.

20 41:35: And I think SAIF generally concurs that the renewal process  
21 doesn't meet the full three for the same reasons that Jerry has articulated. I'm not  
22 sure that I agree that there aren't issues floating around out there around this  
23 politically. In fact, I know there are. In lack, subcommittee is looking at IMEs in the  
24 issue, so it's still something that I think is really important that adjusters are  
25 refreshed on the handling of the IME and what it means for workers and how it can

1 be. I mean, it's something that I think adjusters have to be really sensitive to, so--but  
2 generally, we would absolutely concur that cutting it back to the one would be  
3 reasonable.

4 42:24: I should mention, too, that I have authority to represent that the  
5 Board of the Workers' Compensation Claims Association, which is the largest  
6 organization of claims examiners, endorses the proposal.

7 42:35: Of reducing it to one and adding the two other hours to the  
8 rules?

9 42:40: Actually, all I have authority-- I didn't-- This alternative thing  
10 wasn't--didn't get--

11 42:44: Oh.

12 42:56: --floated to them in their process. They agree with reducing it  
13 to one. I suspect that we'd have no problem because most of their hours that they  
14 even present over the course of a year at their lunches would qualify for update  
15 credit, too, so I don't think it would be a problem.

16 43:00: And you did mean six hours, not seven; right?

17 43:03: It's four hours now. Oh, yeah, two. Yes. Thank you.

18 43:04: (laughs)

19 43:04: If I can-- okay--

20 43:05: It's simple math.

21 43:07: I could be--

22 43:09: Just for the record, so you don't add an extra hour onto the...

23 43:13: That's why they don't let me compute premiums or do PPD  
24 awards.

25 43:17: We would support having those extra two hours just to go back

1 through the general credits rather than with the rules.

2 43:24: Yeah.

3 43:26: And we've heard similar concerns at WCD all over the place. I  
4 know Kara's experience where she receives inquiries from claims examiners and  
5 other companies where they have a hard time meeting this requirement for renewal.  
6 She can speak to that experience.

7 43:40: With the rule credit in particular, I find that a lot of it-- I guess  
8 you would call them independent claims examiners that are unemployed do have  
9 trouble coming up with--in the four hours of rule credits sometimes. So that might be  
10 an issue to consider.

11 44:02: Really? They really have trouble with that?

12 44:04: We'll we--

13 44:05: Yeah (laughs).

14 44:08: So everything is on the web, though, for those people?

15 44:09: Yeah.

16 44:10: Most of the things on the web are not rule credit. They're  
17 mostly general.

18 44:18: They do come-- When I teach my class, they're in segments  
19 and I record them. And I--for like 35 bucks, I let people come in and sit in on them,  
20 and they get three hours of credit that is updated, because every time I give it, it's an  
21 updated version of the sections.

22 44:31: Yeah.

23 44:33: So that is the way people do it. But I mean, if you're  
24 unemployed, that's probably a financial burden, too, so...

25 44:37: Yeah. And those may-- It may just be that those are the

1 people I hear from most often because in particular during the economic downturn,  
2 there were quite a few desperate people that wanted to hang on to that  
3 certification,--

4 44:50: Uh-huh.

5 44:51: --and it was difficult for them to even spend the money for  
6 WCCA or--

7 44:55: Right.

8 44:55: --whatever to get that credit, so...

9 44:59: The insurers in the room, as you go through and review your  
10 records of your current adjusters with their renewals, what issues do you see  
11 surfacing on those? Are the hardest hours for them to accumulate or you have no  
12 issue with it?

13 45:14: The two other IME credits at the end of the three years.

14 45:17: Yes.

15 45:18: But...

16 45:20: That's usually the scream at that point. Yeah.

17 45:21: Okay. But you don't usually run into the issue with the four  
18 hours on the rules?

19 45:24: No.

20 45:26: Because we-- I mean, we...

21 45:27: Because we have a lot of training.

22 45:29: Yeah.

23 45:29: Usually, we do it quarterly.

24 45:30: Yeah.

25 45:31: We offer it one credit at a time.

1                   45:32: More of those independent people that we have. So are you  
2 thinking of putting more things on the web that might be rules-based that would be  
3 available? You're developing things for us.

4                   45:43: Yeah. Yeah. We--part of it is just having enough staff to do it,  
5 but yeah. But we are always happy to come out and do rules training at your  
6 business.

7                   45:53: Independents, you come to their home?

8                   45:56: Yeah. It's very personal.

9                   46:05: I need to tell the Department about the new compensability  
10 decisions (laughs).

11                  46:06: Yeah (laughs).

12                  46:08: So I am hearing general support for reducing the number of  
13 hours. I do want to give an opportunity for anybody that has concerns about  
14 reducing the number of hours a chance to speak. Anybody?

15                  46:25: If you're on the telephone, you can also speak up. In fact, you  
16 can speak up at any time because you don't have the advantage of being able to  
17 see, well, who's wanting to talk next or the eye contact and all.

18                  46:36: I would definitely support the reduction on the IME. It makes  
19 sense. And I don't have a problem with adding the two hours to rules and case law.  
20 I'm looking at my register of hours and credits, and we typically are over that easily,  
21 so that wouldn't be a burden.

22                  47:05: Okay. So I'm hearing about a split between that. Maybe I can  
23 work with you, Kara, and look at some of the approved curriculum, and maybe we  
24 can come up with a proposal from there.

25                  47:18: Before we move on, I guess the thing about putting the

1 addition-- The extra hours into more of a general function, it allows the adjuster or  
2 the claims examiner or their employer, who may be like us, making sure that people  
3 are having-- Have the opportunity to take the classes. If we want those to be rules  
4 because we see something that we need, we can have the curriculum to do that,  
5 whereas we may see other things that we really feel like we need to get our folks a  
6 little bit additional training. So it leaves us the flexibility.

7 47:57: And where I can appreciate that, if the concern is those  
8 adjusters who aren't in the field for a while, communication is always a really big  
9 thing, but knowing the rules and being able to apply it are pretty strong. And it is a  
10 three-year period, so if you're talking about four hours over a three-year period,  
11 that's one hour and some change each year, which I don't know about you guys, but  
12 we spend a whole lot more time doing rules than that. So I guess I would throw out  
13 just doing the whole-- Maybe not all on the rules. Split the baby and put one on...

14 48:46: Mediating the--

15 48:48: And one in the general.

16 48:49: I guess to borrow your language from before, not changing the  
17 required amount of training on the rules does not preclude people from spending  
18 additional time on the rules. So having that flexibility is generally positive for people,  
19 positive.

20 49:08: It's the folks that come in from out of state that--

21 49:09: Yeah.

22 49:11: --make it...

23 49:12: I guess I feel strongly that it--

24 49:14: Yeah.

25 49:12: --be-- If we're going to flip rules from an IME standard which is

1 rule-based, then it not go into the general and go on to the rule bucket. Bucket.

2 Okay. I said it again.

3 49:14: Yeah. Yeah.

4 49:16: Okay. Rule whatever (laughs).

5 49:27: Okay.

6 49:28: That's just my opinion.

7 49:30: But so adding that to the requirement, so would-- Would a split  
8 one and one be acceptable to you?

9 49:34: Yeah.

10 49:41: Would two?

11 49:42: Yeah--

12 49:45: Do you want the top half of the baby?

13 49:47: (laughs) No.

14 49:47: (laughs)

15 49:48: Oh, no, wait. Yeah (laughs). Hmm.

16 49:50: (laughs)

17 49:51 Of three fourths of one.

18 49:52: Greek mythology. Well, of course, we will be reviewing this,  
19 but we'll take all of that into account and hopefully come up with a proposal that's fair  
20 and acceptable to everyone.

21 50:07: So I wasn't opposing this.

22 50:09: Right.

23 50:10: I just thought it was more of a blanket.

24 50:11: Right.

25 50:12: Right. Yeah.

1                   50:13: But I'm totally-- I think they're beating up the adjustors to meet  
2 their needs as they proceeded. Well, I think most of the problem comes from people  
3 that come in here from out of state, naturally with the initial certification--

4                   50:21: Right.

5                   50:23: --needs to emphasize stuff and they do.

6                   50:25: Right.

7                   50:29: I don't want to be on the record as opposing their proposal.

8                   50:34: Yeah.

9                   50:34: I totally go with that.

10                  50:42: Okay. Well, thank you. Thank you, everybody, for that  
11 discussion. We will move on to Issue 6, which is...

12                  50:54: Sorry. Five.

13                  50:55: Five. Oh, sorry. I think I-- Yes. Five. I got ahead of myself.  
14 So this is regarding Rule 100. Should the rule specify that insurers must follow all  
15 the criteria listed on the WCD claims examiner certification webpage when  
16 maintaining records? So Rule 100 requires insurers to maintain a list of certified  
17 claims examiners, claims examiner trainees and temporary claims examiners, and  
18 keep records sufficient to verify their certification and training. The rule does not  
19 specify what information those records should contain, but a list of information the  
20 insurer's records should include is provided at this website, which is also-- That  
21 website is available in an appendix right before the rules. WC--the staff  
22 members have noted that including specific criteria in the rule may-- Oh, that not  
23 including specific criteria in the rule, sorry, may cause confusion about  
24 what requirements are-- What records they are required to keep, and making the  
25 rule more consistent with program requirements may make it easier for insurers to

1 comply.

2 So essentially, it would be including specific items that must be  
3 included in the records, and whether that is all of these items included in this  
4 appendix or some of them is also up for discussion.

5 52:32: I would strongly recommend against putting it in the rules. The  
6 best comparison I can think of is that there are a lot of things in the rules now that  
7 have to require the notice of acceptance, but a lot of people, instead of looking at  
8 those rules, make use of the bulletin that has the Notice of Rights all printed out that  
9 the Department wrote to comply with the rules. I think that a bulletin that showed--  
10 That had a template for certification file requirements with an approach like SAIF to  
11 keep their own format requirements and things like that and individuals that aren't up  
12 to date on the specific rules and were kind of keeping notes for themselves, the  
13 bulletin would be more of a guideline about what needs to be there in some way in  
14 some fashion. Once you start putting it into the rules, it overly cements it.

15 I think that uniformity would be good for what needs to be generically,  
16 the information that needs to be provided because right now, I sometimes have trouble  
17 finding-- Every time update my course book, I actually copy that webpage and I put  
18 it in the back of my chapter on claims examiner certification so people have it. But  
19 sometimes I have trouble finding it. I have to remember how to find it again on the  
20 website.

21 53:38: I've never seen it before.

22 53:40: (laughs) She's never seen it before.

23 53:42: Yeah.

24 53:44: So I think a bulletin would heighten its visibility without the  
25 disadvantage of creating something that would-- You'd have to go through a whole

1 rules procedure every time you decide it needed to be modified.

2 53:55: And Jerry, thanks for saying "format"--

3 53:56: Yes.

4 53:58 --and "not required" because as I look through the list of things  
5 that the Department would like us to keep, why not just show us a form that would  
6 be sufficient?

7 54:10: Exactly.

8 54:10: Adjuster name, you know, original certification renewal date,  
9 next renewal date, number of CE hours in which areas, and then maybe attached to  
10 that is a list of all the syllabuses and trainings, but show us what you want so that we  
11 can, you know, keep it in a form and format that's easy for you guys to review and  
12 check, which isn't, you know, specifically stating it must be in this form and format.

13 54:40: Right. It's a question of what do you want, not how do you  
14 want it.

15 54:48: Yeah. Because it's easy to read what you want, but it's in what  
16 form do you want it?

17 54:54: I think also the samples and examples of things--

18 54:56: Yeah.

19 54:56: Yeah.

20 54:57: --that are in this, you know...

21 54:57: Exactly.

22 54:59: Because people who would have a-- Might not have a good  
23 comfort level, not knowing how to deal with difficult people would be looked at as an  
24 appropriate thing. Medical terminology, people might have a question if they're not  
25 thoroughly familiar with this whole history of this. That's a perfectly legitimate topic

1 for claims examiners. If you put that kind of stuff as an example on your-- Like you  
2 do now,--

3 55:17: Yeah.

4 55:18: --that that would be helpful to people and it's the perfect kind of  
5 information to be provided by the bulletin rather than a rule.

6 55:25: It might also have the unintended consequence of requiring  
7 those insurers that maybe aren't doing a good job of tracking certifications to now  
8 start tracking certifications because they would have one place where they could  
9 look and see and say, "Oh, your certification expires next month and you have three  
10 hours. We need to work on that."

11 55:50: Any other comments, concerns?

12 55:55: Are there any opinions about the list of the records required?

13 56:08: It's going to be Page 9.

14 56:21:SAIF could provide that to you now so we don't have an issue  
15 with it.

16 56:25: Yes.

17 56:26: Should there be more? Are there other things that aren't here?

18 56:31: Besides the stuff, the continuing ed that the adjuster had to  
19 meet their certification, I'm not sure what else.

20 56:38: Yeah.

21 56:41: Thank you.

22 46:41: But...

23 46:41: It's interesting on this list, I've never seen it before, the very last  
24 one is and renewals issued by the insurers. That's what's clear in the rules that the  
25 insurers do that, so it was clear to somebody at one point.

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57:05: Thanks.

57:08: So and the general consensus there was that people would like to maybe see that in a bulletin but not necessarily in the rules; is that generally correct? Okay.

57:23: Just the-- I'm just going to say one more thing about this. The difference between having an appendix that's referenced in rule and having a bulletin is they both give the Department the ability to sort of make some changes, but with the bulletin, I think people will actually see it.

57:43: Yeah.

53:44: And I think that's important.

53:47: And it sounds like there are at least several people in this room that had not previously seen this list, so that is good advice that we will take to heart.

(off the record)

58:11: Okay. So now we are to Issue 6, and I'm apparently very anxious to get to that.

58:16: Yeah. I think we already...

58:25: Okay. Yeah. We've discussed this a little bit, but just in case there are other comments, so Issue 6 is asking whether we should replace subsections 100--Rule 100(3) that were inadvertently deleted under Administrative Order 05-076. The two subsections are listed below in the text. There is no evidence that the deletion was intentional and we did not receive testimony about it at the time, but we have had comments about it since then subsequently and recently again asked to be reinserted.

1                   We have noted that (a) may no longer be relevant as those were  
2                   certifications as of 1999 and we're quite frankly not sure that those records still exist  
3                   or if they would still be useful if they did, but as our previous discussion about maybe  
4                   adding a provision to this that insurers may accept verification from other insurers  
5                   and from other sources may be more appropriate, so...

6                   59:45: And I opposed that.

7                   59:48: You oppose that?

8                   59:48: Yeah.

9                   59:49: Okay.

10                  50:50: I think that for purposes of determining whether or not they  
11                  were previously legally certified,--

12                  50:55: Yeah.

13                  50:55: --the shall should be there, that they have to--

14                  50:56: Okay.

15                  59:59: --accept prior renewals as their legal status.

16                  60:00: Right.

17                  60:04: But that that won't preclude an insurer from requiring additional  
18                  training in order for them to work for the current period.

19                  60:12: And I think the rule is written where you talked about striking  
20                  (a). I think you strike until the comma in (a).

21                  60:19: Yeah.

22                  60:20: Then you have (a), "any acknowledgment of current  
23                  certification issued by an insurer." So if an adjuster comes to us with current  
24                  certification for any employer, they should accept that,--

25                  60:33: Yeah.

1 60:33: --currently certified.

2 60:34: Yeah.

3 60:35: Yeah.

4 60:36: Yeah.

5 60:36: It's when they don't have a current certification, which is what I

6 view as (b),--

7 60:40: Yeah.

8 60:44: --then we may look at their prior certification, the continuing ed

9 that they hopefully have continued to keep up on over that time when they're not

10 certified, and in those situations, we may go ahead and recertify them.

11 60:59: Yes.

12 61:04: But it needs a little bit of wordsmithing.

13 61:05: Yeah.

14 61:05: Yeah, it does. It definitely needs wordsmithing.

15 61:14: Okay. Any other comments or concerns there? Okay. That

16 brings us to the end of our agenda. Are there any other issues or topics that people

17 would like to discuss?

18 61:41: SAIF has a couple. And one of them, Jerry mentioned at the

19 very beginning, and it's like I wish I could have done a segue right into it because

20 we'd actually like to suggest that in the definitions for temporary claims examiners

21 that it that it referenced Oregon Workers' Compensation claims processing

22 experience because I mean, the way the rule reads today, not only does it not

23 necessarily have to be Oregon experience, it could be--

24 62:09: Life insurance.

25 62:09: --life insurance.

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62:10: It could be life insurance--

62:11: Health insurance. Whatever.

62:12: --as far as this Department is concerned. Be a life insurance person--

62:13: Yeah, so...

62:13: --in California. Come process Oregon claims (laughs).

62:17: And then the second item is that currently in Division 55, what is it? 01001(b), it limits temporary claims examiners to working for 90 days, and we think it would be beneficial to give them six months because that would give us time to bring somebody completely up to speed if they're coming in and we're trying to get them certified. So we think six months is really more realistic than 90 days.

62:52: Okay. And you're just talking about under the temp provisions?

62:55: Right. Right.

62:56: Where they're all we have?

62:56: Yeah. Yeah.

62:57: Okay. One thing just related to that that could probably—that could sandwich the rule, but I don't think previously certified Oregon claims examiners previously certified who have lapsed are then allowed to come in and process for a year as a trainee. I think that they only are-- Can only come in as temps.

63:18: Yes.

63:18: Yeah.

63:19: And that 180 days would allow us, if it doesn't coincide with one of our training classes, or if we use one of the vendors in the industry, if it doesn't coincide with their scheduled dates, the 180 days would provide us the opportunity

1 to bring that person on board, obtain their call it initial recertification renewal of what  
2 they previously had, whereas that 90 days...

3 63:47: That's really tight.

4 63:48: Well, as I understand it, temporary claims examiners don't have  
5 to work under the direct supervision of a certified claims examiner. In that situation, I  
6 think six months is kind of long.

7 63:57: Right. And in our view, we don't bring in a lot of temporary, but  
8 we might bring them in temporarily with the expectation that within 180 days, they  
9 obtain their certification.

10 64:10: Can I pull you away from your experience to the people who  
11 right now only have one claims examiner and they quit, and then they bring in a  
12 temp?

13 64:19: This would give them more latitude.

14 64:22: This would give them six months to have a person whose--

15 64:23: Yeah, but...

16 64:23: --certification has lapsed processing claims without certify--  
17 Without supervision.

18 64:29: Under the review of someone that is certified.

19 64:32: But temp doesn't require that.

20 64:34: Temp doesn't require direct supervision.

21 64:5: I don't think.

22 64:37: Under the definitions of temporary claims examiner, it does  
23 state who works under the direct supervision of a certified claims...

24 64:45: For temp?

25 64:45: Yeah.

1 64:47: Or trainee?

2 64:50: That is under temporary. That is under 005(7).

3 64:53: I may have misunderstood it. I'm sorry, then.

4 64:55: Yes. We have temp here.

5 64:58: Oh, I had that. I had that confusion on a--

6 55:02: I'm sorry.

7 55:02: -previous one.

8 55:03: I apologize again.

9 55:04: So they are under the direct super-- Okay.

10 55:07: Yes. So then six months isn't--

11 55:07: Yeah.

12 55:08: --a concern? You could see how it would be if they weren't.

13 55:09: Yeah.

14 55:09: Yeah.

15 55:0: Yeah. Oh, yeah. Oh, yeah.

16 55:12: (laughs) And Dan was getting dagger eyes from this.

17 55:19: But back to my original point. In terms of rewriting this, you

18 might want to clarify that people-- That trainees must be people who have not been

19 previously certified as Oregon claims examiners. That's a way to avoid your

20 certification and come back and work for them in a year as a trainee.

21 55:35: So the fact that mine was like back in 19 whatever, what was

22 the first certification?

23 55:40: I trust you with my claim with my life, Jennifer, but there's other

24 people out there.

25 55:42: No, I know.

1 55:44: We're not going to write rules--

2 55:44: No, that would be scary--

3 55:45: --on you.

4 55:46: --to go, "Oh, yeah, that's okay."

5 55:48: (laughs)

6 55:50: So anyway, so I think that this part is-- I support that change,  
7 but as part of that, I think it should be-- Because it hasn't been entirely clear. I've  
8 always told people, in my opinion, don't do it because it's not a good idea and they  
9 would probably disapprove it if they saw it, but people who let their certifications  
10 lapse need to become recertified, not work for a year as a trainee without being  
11 recertified. They should come in as a temp, and the maximum that a lapsed Oregon  
12 claims examiner can work processing current claims is currently 90 days and would  
13 now be six months, but they can't take advantage of the year. Just for example,  
14 definition of a temp, two years of prior claims experience and not have-- And not  
15 having previously been certified as an Oregon claims examiner.

16 66:46: I guess to personally interject, maybe that is something that  
17 should be expanded in the rules apart from the definitions just to make it more quick,  
18 but we can look at that.

19 66:58: Yeah. Under the definition of a temp.

20 67:06: We were going to let people know that we might do a little bit of  
21 reformatting in terms of in some of our rules. If you look at Division 1, we've  
22 combined some of those early rules about authority, purpose, applicability. Some of  
23 it's really essential that it be there. Some of it's not so essential like saying that the  
24 director has authority. Either the director does or doesn't have authority. So we did  
25 some combining. If you look at Division 1 as an example of what we've done, we

1 might do something similar here with Division 55 to combine perhaps applicability  
2 and purpose, and so we'd eventually have all of our rules done like that. But you'll  
3 have a chance to look at those, of course, when we propose the rules. Just wanted  
4 to let you know that we were thinking of that in addition to what Chris said about  
5 maybe perhaps doing some cleanup of rule it to try to make it-- To make the eight  
6 rules, there are usually eight, having to do with contested cases or administrative  
7 rule consistent throughout the chapter ultimately.

8 68:13: And I guess if-- Could we solicit written feedback or?

9 68:16: Well, yeah, if...

10 68:16: Oh.

11 68:20: If you have thoughts after the meeting and you'd like to send  
12 us-- And me, you probably have my email inviting you to this meeting. You can  
13 reply to me and I'll make sure Chris gets it and other people here in the Division. So  
14 if you have additional thoughts on any of these issues or anything else having to do  
15 with the claims examiner rules, please let us know. You know, it would be good to  
16 have it, you know, sooner than later. Maybe in the next week or two so that we can  
17 go ahead and get the proposed rules files because when you have a petition for  
18 rulemaking, there are some legal time frames that we have to meet, and so I believe  
19 we're scheduled probably to file these rules by the middle of July. Well, I'd have to  
20 go back and look. So we are under fairly tight time frames, so we have a little time  
21 to work with.

22 69:04: Thanks for having this meeting.

23 69:05: Thank you all for coming. We really appreciate it.

24  
25 (WHEREUPON, the proceedings were adjourned.)

**CERTIFICATION OF TRANSCRIPT**

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I, Amanda Knapp, as the transcriber of the oral proceedings at the 6/13/16 hearing before Administrative Law Judge Brunyns, certify this transcript to be true, accurate, and complete.

Dated this 29th day of June, 2016.



Transcriber

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I, Ashlee Kohan, as the proofreader of the oral proceedings at the 6/13/16 hearing before Administrative Law Judge Brunyns, certify this transcript to be true, accurate, and complete.

Dated this 29th day of June, 2016.



Proofreader