

Medi Scene

Keeping You Up-to-Date with the Industrial Commission • October 2011

Occupational Hazard: The Deposition!

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Workers' compensation is a business which often deals with occupational hazards in the workplace. Industrial Commission specialist examiners should keep in mind that they too are potentially exposed to an occupational hazard arising out of the examining work performed for the agency—the deposition.

Ohio Revised Code Section 4123.09 specifically grants the Commission authority to approve deposition (interrogatory) requests. Specific deposition procedures are contained in Ohio Administrative Code Section 4121-3-09(A)(7) and 4121-3-15(D). Here's how it works: The Industrial Commission hearing administrator in the regional office determines the "reasonableness" of the request and also "whether the alleged defect or potential problems raised by the applicant can be adequately addressed or resolved by the claims examiner, hearing administrator or hearing officers through the adjudicatory process."

Deposition requests are few. Furthermore, an even smaller number are approved, invariably involving permanent total disability (PTD) examinations. Less than one-half of one percent of all PTD examinations result in a deposition or interrogatory.

When a deposition request is approved, the Commission examining physician should not view this proceeding as a personal assault on the examiner's professional ability or integrity. Obviously, the stakes are high for all the parties and the moving party is seeking to cast doubt on the conclusion reached by the Commission examiner. As a large number of workers compensation cases are "close calls" both medically and legally, it behooves the examiner to: 1) remain emotionally detached; 2) answer the questions fairly and honestly, and; 3) explain the medical basis for the opinion.

Certain attorneys can be adversarial, accusatory, condescending or downright unpleasant. The Commission physician should know his or her credibility is undermined if the emotions of the moment supersede those of professional, clinical detachment. Physicians should also recall that the Commission will send a staff attorney to the proceeding to ensure a basic level of legal decorum.

This discussion calls to mind a recent deposition involving an asbestosis case. The physician was obviously fatigued (and quite agitated) at the end of the deposition and proceeded to angrily vent strong feelings toward the tenacious, inquiring attorney. The doctor imperiously stated that "this is why everyone is always complaining about workers' compensation in this state." Fortunately, the deposition was over and the comments were off the record. The lesson however remains. Never let them see you sweat.

Meet the Chairman: Karen L. Gillmor, Ph.D.



With over three decades of dedicated public service, Karen brings a tremendous knowledge of workers' compensation issues to the Industrial Commission of Ohio.

A native of Ohio, she earned her diploma from Rocky River High School before earning a bachelor's degree with honors from Michigan State University and a master's degree and Ph.D. from The Ohio State University.

Her career shows a passionate interest in the fields of health care, labor relations and workers' compensation. From 1983 to 1986, Karen served as Chief of Management Planning and Research at the Industrial Commission of Ohio. In this position, she authored a study of self-insurance, which was incorporated into Ohio's omnibus workers' compensation reform law. After leaving the IC, Karen created the Physician Relations Program at The Ohio State University Medical Center in 1987 and served as its manager until 1990.

She later served as the employee representative to the Industrial Commission of Ohio's Regional Board of Review and the Ohio Bureau of Workers' Compensation Oversight Commission.

Before coming to the IC, Karen was elected to Ohio's 26th Senate District seat in 1992, 1996 and 2008. She chaired the Senate Insurance, Commerce and Labor Committee, was a member of the Unemployment Compensation Advisory Committee, and the Labor-Management-Government Committee. She served as vice chair of the State Employment Relations Board from 1997 to 2007 and was a consultant to the United States Secretary of Labor.

Nationally, Karen served on the Health Committee of the American Legislative Exchange Council, as well as on the Health and Human Services Committee of the Council of State Governments' Midwestern Region.

Karen was married to United States Congressman Paul Gillmor, who tragically passed away in 2007. They have five children, Linda, Julie, Paul Michael and twins Connor and Adam.

Continuing education review questions MediScene Oct. 2011

1. What percentage of Industrial Commission PTD IMEs result in a deposition or interrogatory?
 - a. 10%
 - b. 1%
 - c. 17%
 - d. <0.5%
2. The Industrial Commission will send an attorney to approved depositions to represent the deposed doctor.
 - a. True
 - b. False
3. The deposed doctor should be prepared to:
 - a. Defend personal assaults from the attorney regarding his professional ability and integrity.
 - b. Remain emotionally detached.
 - c. Question the legal basis of questions asked and refuse to answer objectionable questions.
 - d. Answer all questions fairly and honestly and explain the medical basis for his answers.
 - e. a. and c.
 - f. b. and d.
 - g. All of the above.

(Answers: 1. d.; 2. b.; 3. f.)