

**BEFORE THE
BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF THE SUPREME COURT OF OHIO**

CLEVELAND BAR ASSOCIATION,	:	
	:	
Relator,	:	SUP. CT. CASE NO. 04-817
	:	
	:	CASE NO. UPL 02-04
v.	:	
	:	
COMPMANAGEMENT, INC, ET. AL.,	:	<u>FINAL REPORT ON REMAND</u>
	:	
Respondents.	:	

I. PROCEDURAL HISTORY

This matter originally came before the Supreme Court of Ohio Board on the Unauthorized Practice of Law (“the Board”) upon the Complaint filed by the Cleveland Bar Association (“Relator”) on April 15, 2002, against CompManagement, Inc., Robert J. Bossart, Jonathan R. Wagner, and Bobbijo Christensen (individually referred to as “Respondent CMI”, “Respondent “Bossart”, “Respondent Wagner”, “Respondent Christensen”, and collectively as “Respondents”).¹ Relator’s Complaint alleged that Respondents had engaged in the unauthorized practice of law *inter alia*, by acting as oral advocates of employers in adjudicative matters before the Industrial Commission of Ohio upon issues related to workers’ compensation, and managing the defense of claims of those employers through various means so as to minimize economic losses upon workers’ compensation claims.² See Cleveland Bar Assn. v. CompManagement, Inc., et al., 104 Ohio St. 3d

¹ It should be noted that Relator’s original Complaint set forth claims against Timothy Toth, an attorney licensed and in good standing with the Court. The claims against Mr. Toth were dismissed by this Board for lack of jurisdiction.

² It should be noted that in Relator’s Complaint, and related motions and/or briefs, more specific examples of

168, 2004-Ohio-6506; *see also*, Relator’s Compl., and Relator’s Post-Remand Brief, incorporated by reference herein.

Pursuant to Gov.Bar. R. VII of the Supreme Court of Ohio’s Rules for the Government of the Bar, a hearing was held on Relator’s Complaint on May 21 and 22, 2003, and subsequently completed on August 22, 2003. The Board Report was issued on May 18, 2004 (hereinafter “Board Report”). The Board Report recommended that the Supreme Court of Ohio find that Respondent CMI and Respondent Christensen had engaged in the unauthorized practice of law. Further, the Board’s report recommended that the Court issue an order prohibiting Respondent CMI and Respondent Christensen from engaging in the unauthorized practice of law in the future, and reimburse costs and expenses to both Relator and the Board. *See, CompManagement, supra*, at 4.

On December 15, 2004, the Supreme Court of Ohio issued its decision as to the Board’s recommendation.³ The Court rejected the Board’s recommendation, and held, in pertinent part, that “non-lawyers who appear and practice in a representative capacity before the Industrial Commission and the Bureau of Workers’ Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the unauthorized practice of law.”⁴ *Id.*, at 71. On December 15, 2004, the Supreme Court of Ohio issued an Order remanding Cleveland Bar Ass’n. v. CompManagement back to the Board to determine whether Respondents had engaged in the unauthorized practice of law with respect to conduct prohibited by Ohio Industrial Commission Resolution No. R04-1-01. *See*, Supreme Court of Ohio Order, issued December 15, 2004, incorporated by reference herein.

alleged UPL were set forth. The summary set forth herein is not intended to be inclusive of those examples set forth in Relator’s pleadings, or those instances in which this Board held that Respondents had engaged in UPL.

³ Prior to the Court’s decision, and pursuant to Gov.Bar. R. VII, §19(A), Relator and Respondent timely submitted objections to the Board’s decision. Those objections were reviewed by the Supreme Court prior to its decision.

⁴ On June 2, 2005, the Industrial Commission of Ohio issued Resolution No. R04-1-01.

Following the Court's remand of this case, and in accordance with Gov.Bar R. VII, §7, a three-person hearing panel ("the Panel") was appointed by the Board.⁵ The Panel issued an Order allowing Relator and Respondents the opportunity to submit post-remand briefs and reply briefs. A hearing date was set for July 29, 2005, to determine the specific remanded issue of whether Respondent CMI and Respondent Christensen had engaged in the unauthorized practice of law with respect to conduct prohibited by Industrial Commission Resolution No. R04-01-01.⁶ All parties were represented by counsel.

II. FINDINGS OF FACT

The Panel incorporates by reference all findings of facts as set forth in the Board's original recommendation submitted to the Ohio Supreme Court on May 18, 2004.⁷

III. CONCLUSIONS OF LAW

1. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; Royal Indemnity Co. v. J.C. Penney Co. (1986), 27 Ohio St. 3d 31, 501 N.E. 2d 617; Judd v. City Trust & Savings Bank (1937), 133 Ohio St. 81, 10 O.O. 95, 12 N.E. 2d 288.

2. The unauthorized practice of law consists of the rendering of legal services for

⁵ The three-person Panel included Commissioners Ervin, Polito, and DeSantis. Commissioners Ervin and Polito are the only remaining Board Commissioners who presided over the original hearing in this matter. Commissioner Polito was appointed Chairperson. Commissioner Richard R. Hollington recused himself prior to the Board's consideration of the Panel Report in this matter.

⁶ Respondents Bossart and Wagoner both submitted Briefs seeking their dismissal from the Remand action because the Board did not find that they had engaged in the unauthorized practice of law in its recommendation to the Court on May 18, 2004. After careful review of the written argument of all parties, the Panel dismissed Respondents Bossart and Wagoner.

⁷ No new evidence was submitted by either party. The Parties were limited to the submission of written briefs only as to the limited issue on remand.

another by any person not admitted to practice in Ohio. (*See* Gov.Bar R. VII, §2(A)).

3. A corporation cannot lawfully engage in the practice of law, and cannot lawfully engage in the practice of law through its officers who are not licensed to practice law. Cincinnati Bar Assn. v. Clapp & Affiliates Financial Services, Inc. (2002), 94 Ohio St. 3d 509; 2002 Ohio 1485; 764 N.E.2d 1003; Disciplinary Counsel v. Lawlor (2001), 92 Ohio St. 3d 406; 750 N.E. 2d 1107; Union Savings Assn. v. Home Owners Aid, Inc. (1970), 23 Ohio St. 2d 60; 52 Ohio Op. 2d 329; 262 N.E. 2d 558.

4. The Panel finds that based upon the evidence presented, Respondents have in some instances engaged in the unauthorized practice of law as it pertains to the Court's remand order. Several weeks following the issuance of the original Board Report, the Ohio Industrial Commission issued R04-1-01. The Resolution (R04-1-01) contains both permissible and impermissible activities as determined by the Industrial Commission and adopted by the Court. In the original Board Report, the Board set forth seven categories of the unauthorized practice of law based upon the Realtor's complaint and the evidence presented by the parties. *See CompManagement, supra*, at 5; *see also*, original Board Report, dated May 18, 2004. The original findings of fact in the original Board Report are analyzed against the Industrial Commission's R04-1-01 as ordered by the Court. Pursuant to the Court's remand, those seven instances are answered below, and identified by letters (A) through and inclusive of (G).

(A) **“Preparation, signing and filing of documents in handling claims before the Industrial Commission on behalf of employers.”**

The Panel finds that Respondents CMI and Bobbijo Christensen have not engaged in the unauthorized practice of law with respect to conduct prohibited by R04-1-01. The Panel finds that

the breadth of activity sanctioned pursuant to R04-1-01 includes Respondents ability to prepare, sign, and file documents before the Industrial Commission or the Bureau of Workers' Compensation. Pursuant to R04-1-01, Respondents are permitted to attend hearings for the purposes of recording and reporting any action at those hearings, and can apprise the hearing officer of documents either within or missing from the file. R04-1-01(A)(3). Respondents are also permitted to complete and submit/file documents, including medical reports, request continuances, and discuss knowledge within the independent knowledge of the representative. R04-1-01(A)(4). In addition, Respondents may submit records and reports dealing with job classifications pertinent to premium rates and workers' compensation premium programs, as well reports related to payroll rate adjustment protests, settlements, and handicap reimbursement requests. R04-1-01(A)(5), (6).

There was insufficient evidence presented at the original hearing to determine whether the conduct of any individual respondents constituted the unauthorized practice of law.

(B) **“Negotiation and involvement with settling claims.”**

Respondent CMI has engaged in the unauthorized practice of law with respect to conduct prohibited by R04-1-01(B)(3), (4), (5), and (6). Respondent CMI files settlement application forms on behalf of their clients with the Bureau of Workers' Compensation. *See* Board Report, pg 12; *see* Original Hearing Tr. at 146-148; and 378. Further, Respondent CMI's settlement department negotiates claims on behalf of employers. *Id.* Settlement negotiations require legal review and analysis of claims, evaluation of evidence, credibility of witnesses, and advice as to outcomes. The negotiation of settlements by Respondent CMI extends beyond the authority granted by R04-1-01(A)(1)-(A)(8) and is the unauthorized practice of law. *See, Cincinnati Bar Assn. v. Cromwell* (1998), 82 Ohio St. 3d 255.

There was insufficient evidence presented at the original hearing to determine whether the

conduct of any individual respondents constituted the unauthorized practice of law.

(C) **“Direct and indirect examination, including cross-examination, of witnesses during hearings.”**

The evidence presented clearly demonstrates that Respondent CMI engaged in direct and indirect examination of witnesses at hearing. *See* Board Report, pg. 13, citing Original Hearing Tr. at 308-315, 336-337, and 635. Such action is in direct contravention to the prohibitions of R04-1-01(B)(1), (3), and is therefore the unauthorized practice of law.

There was insufficient evidence presented at the original hearing to determine whether the conduct of any individual respondents constituted the unauthorized practice of law.

(D) **“Presentation of employer concerns, arguments, summations of evidence, conclusions regarding the import of factual information and/or closing statements on behalf of employers during hearings.”**

The evidence presented before the Panel indicates that during hearings before the Industrial Commission, that Respondent Bobbijo Christensen and Respondent CMI’s representatives advocate employers concerns through presenting factual issues, evidence, and arguments. *See* Board Report, pg. 13, citing Original Hearing Tr. at 601-606. Respondent Christensen testified that she “prepares arguments” to be made at the Industrial Commission hearings, and determines what issues to present based in part on legal doctrines such as causation and statute of limitations. *Id.*, pgs. 13-14, *see also* Original Hearing Tr. at 625-627.

Respondents CMI and Bobbijo Christensen’s separate and joint actions in counseling clients, presenting employer concerns, making argument and giving summations of evidence, conclusions regarding the import of factual information and/or closing statements, are all in violation of the prohibitions set forth in R04-1-01(B)(1)-(7), and therefore constitute the unauthorized practice of law.

(E) **“Recommendation and advice to employers as to taking appeals and other legal action.”**

Respondent Christensen, and other employees/representatives of Respondent CMI, evaluate Industrial Commission decisions and make recommendations based upon those evaluations to employers as to whether they should appeal. *Id.*, *see also* Original Hearing Tr. at 121-132, 193-196, 583, 593, and 598-600. Such evaluation is not based solely upon financial and/or economic concerns for the employer client. *Id.*, pg. 15, *see also* Original Hearing Tr. at 406, and 418-422.

Respondent CMI and Bobbijo Christensen’s actions in counseling clients as to whether an appeal or other legal action should be taken are in direct violation of the prohibitions of R04-1-01(B)(2)-(7), and therefore constitute the unauthorized practice of law.

(F) **“Evaluation, advice or recommendation concerning whether an employer should retain an attorney to handle a claim before the Industrial Commission.”**

Respondent CMI’s and Respondent Bobbijo Christensen’s recommendation to clients that they should retain counsel is not a violation of R04-1-01(A)(9), and is therefore not the unauthorized practice of law. This Panel would nonetheless give strong warning, and implore this Honorable Court, that the actions engaged in by Respondents that led up to their specific recommendation to clients to retain legal counsel may be in violation of the prohibitions set out in R04-1-01(B)(2)-(6).

The record from the original hearing in this matter is full of clear examples of Respondents evaluating the legal position of their clients prior to recommending either the retention of legal counsel, or the necessity not to retain counsel. *See* Board Report, pgs. 15-17; *see also*, Original Hearing Tr. at 136, 271, 272-274, 306, 390-391, 413, 581, 581-582, 617-618, and 628-629. Such action places the employer/client in a precarious position that does not allow for either safeguards or rehabilitation upon Respondents furnishing bad *advice*.

IV. PANEL RECOMMENDATIONS

The Panel recommends that the Supreme Court of Ohio issue an order that finds that Respondent CompManagement, Inc. has engaged in the unauthorized practice of law, and has done so in violation of Industrial Commission Resolution No. R04-1-01 in those instances set forth above in Section III, 4(A)(B),(C),(D), and (E).

The Panel recommends that the Supreme Court of Ohio issue an order than finds that Respondent Bobbijo Christensen has engaged in the unauthorized practice of law, and has done so in violation of Industrial Commission Resolution No. R04-1-01 in those instances set forth above in Section III, 4(D) and (E).

The Panel recommends that the Supreme Court of Ohio issue an order that enjoins and restrains Respondents CompManagement, Inc. and Bobbijo Christensen from engaging in the unauthorized practice of law, and doing so in violation of Industrial Resolution No. R04-1-101 in those instances set forth above in Section III, 4(A)-(E).

In applying the factors set forth in Gov.Bar R. VII,§8(B) the Panel recommends that the Supreme Court of Ohio issue an order that does not assess a monetary civil penalty against Respondents CompManagement, Inc. and/or Bobbijo Christensen. This recommendation is supported by the mutual requests of Relator and Respondents.

The Panel recommends that the Supreme Court of Ohio issue an order providing for the reimbursement of costs and expenses incurred by both the Board and Relator.

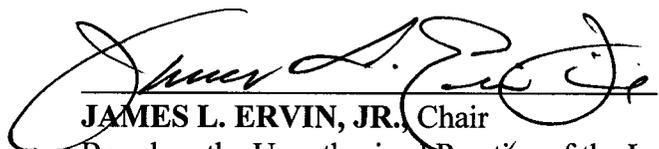
V. BOARD RECOMMENDATIONS

Pursuant to Gov. Bar R. VII, §7(F) the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on December 8, 2005. The Board adopted the findings, conclusions of law, and recommendations of the Panel. Specifically, and as provided

herein, the Board adopts the Panel's recommendations that the Court issue an Order that the Respondents CompManagement, Inc. and Bobbijo Christensen have engaged in the unauthorized practice of law; and that the Court issue an Order enjoining the Respondents, CompManagement, Inc., and Bobbijo Christensen, from engaging in the unauthorized practice of law. The Board further recommends that the costs of these proceedings incurred by the Board and the Relator be taxed to the Respondents in any Order entered, so that execution may issue.

VII. STATEMENT OF COSTS

Attached as Exhibit A is a statement of costs and expenses incurred to date by the Board and Relator in this matter.


JAMES L. ERVIN, JR., Chair
Board on the Unauthorized Practice of the Law

**BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
THE SUPREME COURT OF OHIO**

Exhibit "A"

AMENDED STATEMENT OF COSTS

Cleveland Bar Association v. CompManagement, Inc., et. al.,
Case No. UPL 02-04

Costs Originally Filed May 18, 2004

Reimbursement to Cleveland Bar Association	8,861.22
Armstrong & Okey, Inc.	300.00
5/21/03 Hearing	
Armstrong & Okey, Inc.	462.50
5/22/03 Hearing	
Armstrong & Okey, Inc.	796.50
5/21/03 Transcript	
Armstrong & Okey, Inc.	1036.75
5/22/03 Transcript	
Armstrong & Okey, Inc.	428.25
8/22/03 Hearing and Transcript	
Eric Kearney, Commissioner	151.20
Expenses -5/21-22/03 Hearing	
John Polito, Commissioner	256.33
Expenses- 5/21-22/03 Hearing	
Eric Kearney, Commissioner	75.60
Expenses -8/22/03 Hearing	
Subtotal	\$12,368.35

Post Remand Costs

Reimbursement to Cleveland Bar Association	636.64
Frank DeSantis, Commissioner	
Expenses -7/29/05 Hearing	127.02
John Polito, Commissioner	
Expenses – 7/29/05 Hearing	113.40
Fraley Cooper	222.45
7/29/05 Hearing and Transcript	
Subtotal	\$1,099.51

Total All Costs **\$13,467.86**

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Report was served by certified mail upon the following this 14th day of December, 2005.

Cleveland Bar Association, 1301 East Ninth Street, 2nd Level, Cleveland, OH 44114-1253; Aubrey B. Willacy, Esq., 700 Western Reserve Building, 1468 West Ninth Street, Cleveland, OH 44113; Michael P. Harvey, Esq., 311 Northcliff Drive, Rocky River, OH 44116-1344; Robert M. Kincaid, Esq., Elizabeth A. McNellie, Esq., Rodger L. Eckelberry, Esq., Baker & Hostetler, LLP, 65 East State Street, Suite 2100, Columbus, OH 43215; Douglas Godshall, Esq., Hanna Campbell & Powell LLP, 3737 Embassy Parkway, Ste 100, Akron OH 44334; CompManagement, Inc., c/o Alec Wightman 65 East State Street, #2100, Columbus, OH 43215; Bobbijo Christiansen, CompManagement, Inc., 9100 South Hills Bend, Suite 300, Broadview Heights, OH 44147; Jonathan R. Wagner, CompManagement, Inc., 6377 Emerald Parkway, Dublin, OH 43016; Robert J. Bossart, CompManagement, Inc., 6377 Emerald Parkway, Dublin, OH 43016; Ohio State Bar Association; 1700 Lake Shore Dr., Columbus, OH 43204; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215.


D. Allan Asbury, Secretary of the Board

Industrial Commission of Ohio

May 23, 2005

Interpretation and Guidance Concerning Commission Resolutions R04-1-01 and R04-1-03

I. Notice of Appeal

1. Does filing of the claim include signing a notice of appeal by a TPA on behalf of an employer as a permitted activity by a TPA? Does it make a difference if the signature on the notice of appeal is the signature of the TPA employee? What if the TPA signs the name of the employer?

Completing notices of appeal (IC-12 forms) for submission at the IC and the BWC, as well as the mechanical aspect of filing notices of appeal with the IC and the BWC, are permitted activities by a non-attorney representative of a party, including the signature of a non-attorney representative on the notice of appeal.

A non-attorney representative should not execute the signature of a party.

Prohibited activities include attaching briefs, copies of agency rules, statutes, or case law to a notice of appeal, or supporting a notice of appeal with reference to such authorities.

The Commission will revise the IC-12 Notice of Appeal form as well as revise the notice of appeal form on ICON in order to provide the ability of a non-attorney representative that completes the notice of appeal to indicate whether the non-attorney representative has been provided authority by the party in the claim to complete and file the notice of appeal.

[*Reference: (A)(2) and (B)(1) to (B)(6).]

2. Is the determination to file a notice of appeal part of the determination of “without making any legal determination respecting such claims or appeals” that is prohibited in (A)(2)?

The determination whether to file an appeal is made by the party. The decision to file an appeal is not to be made by a non-attorney representative. A party may direct that a non-attorney representative complete and file a notice of appeal. However, a party cannot delegate the authority to make the determination of whether to appeal a Commission or Bureau order to a non-attorney representative.

[*Reference: (A)(2) and (B)(3).]

3. Does filing a notice of appeal on ICON result in the different outcome? In other words, can a TPA file a notice of appeal under a representative ID number through ICON?

The reply to the first inquiry is “No”. The reply to the second inquiry is “Yes”. Completing the information on ICON for filing an appeal and the actual filing of a notice of appeal is a permitted activity for non-attorney authorized representatives as described in Inquiry #1.

The Commission will revise the notice of appeal form on ICON in order to provide the ability of a non-attorney representative that completes the notice of appeal on ICON to indicate whether the non-attorney representative has been provided authority by the party in the claim to complete and file the notice of appeal. Once the online notice of appeal form is revised on ICON, there will be an indication on the notice of appeal as to whether the party provided specific authorization to file such a notice of appeal.

[*Reference: (A)(2) and (B)(1) to (B)(6).]

4. Can a non-attorney representative for an employer make the determination to file a notice of appeal without obtaining specific authority from the employer to file such notice of appeal? Instead, can such authority be provided to the TPA by the employer in “blanket fashion” such as "you have the authority to file an appeal with the IC that you deem proper?"

No. There must be specific authority from the party provided to the non-attorney representative to file a notice of appeal. But such authority need not be in written format. The determination as to whether to file a notice of appeal cannot be delegated by a party to a non-attorney representative. For example, blanket authority cannot be provided to, or sought by, a non-attorney representative from an employer such as, “You (non-attorney representative) are authorized to file a notice of appeal with the Commission whenever you as a non-attorney representative deem the same to be in the interest of the employer.”

The Commission will revise the IC-12 notice of appeal form as well as revise the notice of appeal form on ICON in order to provide the ability of a non-attorney representative that completes the notice of appeal to indicate whether the non-attorney representative has been provided authority by the party in the claim to complete and file the notice of appeal.

[*Reference: (A)(2), (B)(5) and (B)(3).]

5. Can an employee of an employer that is not an attorney sign such an appeal?

Yes. An employee of an employer that is not an attorney can complete, file and sign a notice of appeal on behalf of an employer if the employer's employee is acting pursuant to authority provided by the employer. See reply to Question #1 in Category I.

6. Can a non-lawyer employee of an employer determine whether to file an appeal on behalf of the employer without being in violation of (A)(2)?

Yes, as long as the employee of the employer is acting under the authority of the employer. See reply to Question #1 under Category I.

7. Can a non-attorney representative file a request for reconsideration of a final IC order?

No. A request for reconsideration as described in IC Resolution 98-1-03 cannot be filed by a non-attorney representative since such action is prohibited as described in Resolution (B)(3).

[*Reference: (B)(3).]

8. Can non-attorney representative of an employer or injured worker file a motion for the Commission to exercise continuing jurisdiction under the provisions of 4123.52?

No. For example a non-attorney representative cannot complete and file a request for reconsideration of a final Commission order requesting that the Commission exercise continuing jurisdiction.

But if a request is made for failure to receive a notice of hearing, a non-attorney representative can complete, file and sign form IC-52 upon direction of the party. However, the prohibitions and limitations in the Resolution apply. For example, if the request results in the need for a hearing, a non-attorney representative is prohibited from commenting upon or giving opinions with respect to the evidence, credibility of witnesses, the nature and weight of evidence, and the legal significance of the contents of the claim file, and from citing, filing or interpreting statutory or administrative provisions, or case law as well as prohibited from engaging in the other activities set forth in Part (B) of Resolution R-04-01.

[*Reference: (B)(3), (A)(4) and (A)(6).]

*The same questions listed above in #1 to #8 are also raised as far as their application to union representatives is concerned.

Same responses to Questions #1 to #8.

II. Filing Motions and Applications

1. Is filing a motion for relief under 4123.522 a permitted activity by a TPA, employee of an employer or union representative?

Yes. A non-attorney representative can complete, sign and file an IC-52 form and submit the same to a hearing administrator. But the prohibitions and limitations in the Resolution apply. For example, where the relief requested in the IC-52 results in the need for a hearing due to the fact that the matter is contested, a non-attorney representative is prohibited from commenting upon or giving opinions with respect to the evidence, the credibility of witnesses, the nature and weight of evidence, and the legal significance of the contents of the claim file, and from citing, filing or interpreting statutory and administrative provisions, or case law as well as prohibited from engaging in the other activities prohibited in Resolution R-04-1-01.

[*Reference: (A)(4) and (A)(6). (B)(1) to (B)(6).]

2. Is filing a motion to suspend a claim for refusal to appear at a medical examination scheduled by an employer a permitted activity?

A non-attorney representative of an employer is permitted to complete, sign and file a motion with the Hearing Administrator asserting that the claim be suspended due to the injured worker's refusal to appear at an examination set by an employer, or refusal to provide a medical release. The general view is that a non-attorney representative can note the overall action requested without being in violation of the standards in the Resolution.

A non-attorney representative can also complete, sign and file an objection to a compliance letter issued by a hearing administrator. The objection filed should indicate whether the non-attorney representative has been provided authority by the party to complete and file the objection.

However, the non-attorney representatives cannot provide an opinion on the credibility, weight, nature or significance of evidence that is relevant to the disputed issue that is the subject of a hearing or cite, file or interpret statutory or administrative rules, case law or agency rulings, or engage in the other activities prohibited by Resolution R-04-1-01. For example, it would be inappropriate for a non-attorney representative to make an assertion,

comment on, or provide a conclusion concerning whether the standard of “without good cause” has or has not been demonstrated.

[*Reference: (A)(4) and (A)(6). (B)(1) to (B)(6).]

3. Is filing and signing a motion to terminate TT a permitted activity?

Yes. See reply to Questions #1 & #2 under Category II.

4. Is filing and signing a motion to terminate TT by reason of MMI a permitted activity?

Yes. A non-attorney representative may complete, sign, and file such a motion. However, the content of the motion may not violate the prohibitions of (B)(1) through (B)(6) of the Resolution. Also see reply to Questions #1 and #2 under Category II.

5. Is it proper for a hearing officer to dismiss a motion signed by an actuary requesting a finding of maximum medical improvement?

No.

6. If the answer to the above question is yes, is it proper for a Staff Hearing Officer to vacate such an order and, instead of getting to the merits of the issue, refer the matter back for another District Hearing Officer decision?

N/A

7. Is filing and signing a motion to terminate TT due to an employee “working” a permitted activity?

Yes. But non-attorney representatives must adhere to the prohibitions set forth in Resolution (B)(1) through (B)(6). Also see reply to Questions #1 and #2 under Category II.

8. Is filing a motion to terminate TT for the reason that the injured worker engaged in employment a permitted activity?

Yes. Also see reply to Questions #1 and #2 under Category II.

9. Is filing and signing a motion for wage loss or to terminate wage loss a permitted activity?

Yes. Also see reply to Questions #1 and #2 under Category II.

10. Can TPAs attend hearings and “agree” to permanent partial percentage awards?

Yes. From the perspective of an employer, there will likely be a direct actuarial impact on the employer as a result of an award under 4123.57(A), and based on the view that the non-attorney representative of an employer is acting as the agent of the employer with the understanding that the non-attorney representative has been given specific authority by the employer to enter into an agreement.

[*Reference: (A)(2), (A)(6) and (A)(8).]

11. Under (A)(4) what does "completion of forms promulgated by the IC and BWC" mean as far as a form for notice of appeal (IC-12) and C-86 motion as far as the questions raised in issue #1 and #2 are concerned?

See reply to question #1 and #2 under Category I and #1 and #2 under Category II.

12. May a non-attorney representative of an employer negotiate on behalf of the employer during the settlement process?

While the negotiation process concerns the actuarial and financial impact of a settlement on an employer, the settlement process also requires the employer to approve any settlement agreement. Therefore, a non-attorney representative of an employer must obtain the signature of the employer or an attorney for the employer on the settlement agreement.

III. Attendance at Hearing

1. Is a TPA limited to only apprising the hearing officer of certain documents in the claim or portions of documents in the claim without making any other comments about such documents?

A non-attorney representative can apprise a hearing officer of factual matters that are part of the specific contents of the file. Also see reply to Question #4 in Category III.

[*Reference: (A)(3).]

2. Is a non-attorney representative permitted to notify the hearing officer that the injured worker suffered another injury assuming that such information is part of the record?

Yes. See reply to Question #4 in Category III.

3. Is a non-attorney representative permitted to state that the injured worker was terminated from employment for failure to follow a work rule of an employer assuming that such evidence is part of the record?

Yes. See reply to Question #4 in Category III.

4. Are TPA personnel permitted to read from physicians' reports, notes, etc. or must they simply "point out" the portions of the report (e.g., page 3, paragraph 2, line 4 of Dr. Smith's report, dated...)?

Yes. Non-attorney representatives can read from a portion of the documents that the non-attorney representative desires to apprise the hearing officer, unless the hearing officer finds that reading the document or portion of a document by the non-attorney representative interferes with the conduct of the hearing or unreasonably delays the hearing and unless reading of the document(s) is otherwise prohibited by the standards set in the resolution such as reading a court decision, reading a statute, a rule, or an agency resolution.

However, if the non-attorney representative is permitted to read from a claim file document such as a medical report, the exact words in the report are to be read. The non-attorney representative is prohibited from paraphrasing the content of the report, or providing an opinion of the content of the report, or commenting on the nature, weight, credibility or significance of such a report.

For example, a non-attorney representative can apprise the hearing officer of the existence of an ER report that is on file. The non-attorney representative can state that the report sets forth various facts, but the representative is prohibited from expressing a view or providing an opinion of what is not in the ER report. In other words, a non-attorney representative cannot state that the report does not contain a statement that the incident described in the ER report was a work-related incident when there is, in fact, no such express statement in the ER report.

Another example is the situation where a medical report is submitted where a physician notes that the injured worker has reached MMI. A non-attorney representative is permitted to apprise the hearing officer of that portion of the medical report that contains the physician’s statement. However, a non-attorney representative is not permitted to state that a physician has rendered an opinion that the injured worker has reached MMI, or the physician “meant” that the injured worker has reached MMI when the physician has not actually stated the specific language of “MMI” in the medical report under review.

[*Reference: (A)(3) and (B)(1) to (B)(6).]

5. Can a non-attorney representative quote and or read from a previous IC order?

No. Resolution (B)(2) provides that non-attorney representatives cannot cite or interpret administrative rulings. An IC order is an administrative ruling. However, a non-attorney representative can apprise a hearing officer of the existence of a specific order that is in the claim file folder.

[*Reference: (B)(2).]

6. What exactly is “apprising ... documents or parts thereof that are in the file...”? Does this mean they can read parts of a report?

Yes. See reply to Questions #1 and #4 as noted above.

[*Reference: (A)(3).]

7. Is a non-attorney representative permitted to make comments regarding the interpretation to be provided to medical reports or to make recommendations regarding the credibility of evidence?

No.

[*Reference: (B)(4) and (B)(3).]

8. Can a non-attorney representative be permitted to read sentences or paragraphs from a submitted medical report for the purpose of emphasizing the express opinion or findings set forth in a medical report?

Yes. See reply to question #4.

[*Reference: (A)(3).]

9. Can non-attorneys representing a party to a claim interpret a doctor's opinion in a medical report? Per IC resolution, is this activity proper?

No.

[*Reference: (B)(4) and (B)(3).]

10. Can a non-attorney representative use language which refers to legal principles based upon case law, such as the injured worker "voluntarily abandoned his employment" or the injured worker had an intervening injury?

No. For example while a motion may be filed by a non-attorney representative to terminate TT, and while the non-attorney representative may "apprise" the hearing officer of a document that is on file, the non-attorney representative is prohibited from engaging in the activities that are set forth in part (B) of Resolution R04-1-01. Therefore, the non-attorney representative is prohibited from citing, filing or interpreting statutory, or administrative rulings or case law, as well as prohibited from making or giving legal interpretations with respect to the testimony, affidavits, medical evidence, or filing a brief, or commenting on, or giving opinions with respect to evidence, credibility of witness, the nature and weight of the evidence or the legal significance of the contents of the claim file.

[*Reference: (B)(2) to (B)(6).]

11. Can a non-attorney representative submit a copy of a court decision if no comment is made, or refer to a case name, or a legal principle of a known court decision?

No.

[*Reference: (B)(2), (B)(3) and (B)(6).]

12. Are non attorneys who represent parties, solely limited to referring to a report by name and date?

No. See reply to question #1 & #4.

13. Can a non-attorney representative submit a witness statement?

Yes. A non-attorney representative can prepare and submit a witness statement. However, a witness "statement" submitted by a non-attorney representative does not meet the standards of the Resolution when such a statement consists of a series of questions posed by a non-attorney

representative to the witness and a list of responses. Such a witness “statement” is in violation of the prohibition on direct examination and indirect examination of witness found in Part (B)(1) of the Resolution. A non-attorney representative cannot submit a document that is the written equivalent of oral direct examination or cross-examination of a witness that is prohibited under the Part (B)(1) of the Resolution.

[*Reference: (A)(1) and (B)(1).]

14. Can a non-attorney representative discuss matters within the independent knowledge of the representative?

Yes. But such knowledge must have been obtained independently by the non-attorney representative through personal observation or a similar process.

[*Reference: (A)(3), (B)(1) to (B)(6).]

15. Is it improper for the hearing officer to permit the non-attorney representative to vary from the standards set forth in the IC resolution? Does it make a difference if there is no objection from the opposing party?

Yes. Hearing officers do not have the discretion to choose whether to make exceptions to the standards set forth in the Resolution or to adopt greater or lesser standards.

It makes no difference if there is no objection raised by an opposing party to the conduct of the non-attorney representative that is inconsistent with the standards within the Resolution.

16. Does a Hearing Officer have responsibility to ensure compliance with (A)(3) and (B)(1) to (B)(4) so as not to permit violation of the IC Resolution?

Hearing officers should ensure that non-attorney participants in the hearing process that represent parties follow the standards in the Resolution in the hearing room. Hearing Officers are to orally notify those non-attorney representatives whose hearing room conduct fails to meet such standards and specifically inform the non-attorney representative of the specific standard that has not been met. Hearing Officers should provide notification to the non-attorney representative in an appropriate and professional manner. By taking an active role in such a situation the hearing officer will tend to avoid the perception that silence on the part of a hearing officer means that the conduct of a non-attorney representative in the hearing room is deemed to meet the standards in the Resolution or is meant to signal tacit acceptance

and authorization of the actions of the non-attorney representative by the Commission.

17. Does a Bureau employee that serves as an adjudicator at administrative hearings conducted by the Bureau have responsibility to ensure compliance with (A)(3) and (B)(1) to (B)(4) so as not to permit violation of the IC Resolution?

Yes. See reply to Question #16.

18. What action must a hearing officer take if a non-attorney representative continues to violate the standards in the Resolution in (A)(3) and (B)(4) or any other prohibition set forth in the Resolution?

If a hearing officer finds a continuing pattern of conduct of a non-attorney representative that violates the standards in the Resolution, even after the non-attorney representative has been previously notified by the hearing officer, the hearing officer should bring the matter to the attention of the hearing officer's supervisor. The Commission will then take further necessary action.

It is recognized that while hearing officers as attorneys are governed by the Code of Professional Responsibility, attorneys representing the parties in a workers' compensation claim are also governed by the Code and thus also maintain responsibility.

19. What action must a Bureau employee that serves as an adjudicator at administrative hearings at the Bureau take if a non-attorney representative continues to violate the standards in the Resolution in (A)(3) and (B)(4) or any other prohibition set forth in the Resolution?

Should a BWC employee that serves as an adjudicator at administrative hearings conducted by the Bureau of Workers' Compensation find that a continuing pattern of conduct of a non-attorney representative of an employer that violates the standards in the Resolution continues, even after the non-attorney representative has been notified by the adjudicator, the adjudicator should bring the matter to the attention of the Industrial Commission.

20. What will the Commission do to prevent future "outbursts" regarding the UPL issue i.e., non-attorney representatives who do not follow the Commission guidelines. What will the IC do about them? Will there be a central (in-house) place to lodge a complaint regarding violations of the standards? What should a

HO do? Should he or she file with the UPL committee? Should the IC attempt to take care of problems at the agency level regarding the habitual offender versus the one-time “oops” sort of situation?

See reply to Question #16 and Question #18.

21. Are hearing officers under a responsibility (either ethically or professionally) to report such conduct to an entity of a bar association as provided by the Rules of the Code of Professional Responsibility or any other rules adopted by the Ohio Supreme Court?

See reply to Question #18 and also Question #16.

22. What are the limitations for non-attorney representatives who appear on behalf of parties at the Bureau administrative hearings?

The same standards that apply to hearings at the Commission that are set forth in the Commission Resolution also apply to administrative hearings held by the Bureau.

23. Do the standards in the Commission Resolution apply to non-attorney employees of the Bureau of Workers' Compensation that appear at an administrative hearing at the Bureau to provide background information as to the Bureau's actions on an issue that is in dispute? For example, a Bureau employee from the Risk Department may attend a hearing of the Adjudicating Committee to provide factual information.

The employee of the Bureau that appears at such a hearing appears as a witness. A Bureau employee can apprise the Bureau adjudicator of the facts of the risk matter that is part of the record and provide background information to the adjudicator on the action taken by the Bureau unit that made the initial determination that is the subject of the dispute. In other words, the Bureau employee can testify as to procedure and practice followed by the Bureau employee's unit and the action taken by the Bureau unit on the issue that is in dispute. However, a Bureau non-attorney employee cannot provide an interpretation of an administrative rule.

IV. Orders received by TPA

1. Does a TPA violate the IC resolution by recommending to the employer that an appeal be filed? Can a TPA provide advice to the employer that an order might impact the employer without being in violation of the IC Resolution?

Yes. Non-attorney representatives are not to recommend to a party whether an appeal should or should not be filed. However, a non-attorney representative of an employer can advise an employer as to the actuarial and financial impact on an employer of an order that is issued by the Commission or BWC. A non-attorney representative of an injured worker can provide advice to an injured worker as far as the financial impact of an order on an injured worker.

[*Reference: (A)(2), (A)(8), (B)(5) and (B)(6).]

2. Can a TPA provide the employer with the "import of the information" in the notice of hearing or notice of findings" for any purpose, whether under 4123.522 or other portions of Chapters 4123 and 4121?

A non-attorney representative of an employer is not authorized to advise an employer of the legal ramifications of Commission orders. The "import" of the order is beyond the scope of a non-attorney representative of an employer and notice received by a non-attorney representative cannot be imputed to the employer for purposes of Section 4123.522 O.R.C. However, a non-attorney representative of an employer may advise the employer of the actuarial and financial impact of a Commission or Bureau order on the employer.

A non-attorney representative of an employer may report any action taken at a hearing to the employer.

3. Should hearing officers "sign-off" on final settlement agreements that are signed by a non-attorney representative of an employer?

No. See reply to Question #12 under Category II.

[*Reference: (A)(6), (A)(4) and (A)(8).]

V. Actions outside of IC facilities

1. Do the prohibitions set forth in (B) of the IC Resolution apply to the actions of non-attorney representatives outside of the IC and BWC facilities?

Both the permitted activities as well as the prohibited activities set forth in the Resolution, apply to actions within, as well as outside of agency hearing rooms with regard to workers' compensation matters.

[*Reference: (B)(1) to (B)(6).]

VI. Stand Alone Representation - Part (B)(7) of IC Resolution

1. What does stand-alone representation mean?

As set forth in (B)(7) of the Resolution, stand-alone representation was meant to refer to paralegals and other similar situated individuals who are not TPAs, are not attorneys, and are not authorized union representatives who hold themselves out, on their own, to represent injured workers or employers before the IC or the BWC for a fee.

[*Reference: (B)(7).]

2. If a TPA asks an individual that is not an employee of the TPA and not an attorney to take a hearing on behalf of the TPA is that action permitted or prohibited? Can a TPA designate a non-employee agent that is not an attorney to stand in for an employee of the TPA at an IC hearing?

A TPA cannot designate an individual that is not an attorney and not an employee of the TPA to appear at an IC hearing on behalf of the TPA (that is the authorized representative of the employer) for a fee specially associated with attending the hearing.

[*Reference: (B)(7).]

3. The IC should be aware that some representatives that come into the hearing room think that authorization cards or an authorization letter is not required. (We need to know if the person is representing the TPA or the law firm.)

The hearing officer should make inquiry at the hearing if the hearing officer has any question as far as whether the individual that appears in the hearing is appearing on behalf of the employer or on behalf of the TPA. The consensus was that the Commission should require written notification from the attorney that appears at a hearing, unless it is clear from the claim file records as far as which entity the attorney is representing.

It is believed that in the case of an attorney that appears at an IC or BWC hearing when such attorney is asked to appear at the last minute, and when the hearing officer makes inquiry of the attorney, the hearing officer should

take the “word” of the attorney as far as the identity of the entity that the attorney is representing at the hearing in those cases where it is not clear from the record. In such a situation, the attorney is expected to provide written notification specially providing clear identification of the entity that the attorney is representing to the claim file after the hearing takes place and no later than the close of business on the day of the hearing.

In cases where an attorney is asked to appear on behalf of a TPA, the attorney is limited to the standards set forth for non-attorney representatives set forth in the Resolution.

Attorneys asked to appear at IC hearings by TPA instead of the employer

4. If such a practice exists, isn't it true that the attorney who is asked to appear at an IC hearing is limited to the same standards as the TPA assuming that there is no attorney-client relationship in existence between the employer and the attorney asked to appear at an IC hearing by a TPA?

See response to inquiry immediately preceding this inquiry.

5. In the situation described in question #3 in Category VI, what proof should be sufficient for a hearing officer to demonstrate that there is an attorney-client relationship between an employer and an attorney that appears at a hearing stating that he or she is representing the employer and desires to address all legal issues in the claim?

An oral statement to the hearing officer by an attorney stating that the attorney is representing the employer is sufficient. The attorney should be notified by the hearing officer that the appropriate written notification is to be made part of the claim file folder no later than the close of the business on the date of the hearing, if such written notification has not already been submitted.

Also see reply to Question # 3.

VII. Forms

1. Can a C-88 be filed, signed and completed by a non-attorney?

Yes.

2. Can a C-9 be completed?

N/A.

3. Can a C-84 be filed by a union representative?

Yes. A C-84 can be filed by a union representative. However, a C-84 application cannot be signed by a union representative.

4. Can motions be filed by a union representative? Can such motions be signed by a union representative? Can such motions be completed by a union representative?

The outcome is the same as with non-attorney representatives for employers.

*References to provisions in Resolution R04-1-01.

MEMORANDUM

TO: Debra Lynch, Akron Regional Manager
Jerome Klett, Cincinnati Regional Manager
Greg Gibbons, Cleveland Regional Manager
Ellen Dickhaut, Columbus Regional Manager
Scott Hines, Toledo Regional Manager
Jayne Beachler, Manager, Commission Level Hearings
Denise Clark, Manager, Claims Management
David Binkovitz, Manager, Litigation
Mary Stevenson, Supervisor, Legal Research
District and Staff Hearing Officers
Hearing Administrators
Paul Walker, Legal Counsel
Rick Tilton, Hearing Officer Trainer

FROM: Patrick Gannon, Chairman
William Thompson, Chairperson
Kevin Abrams, Chairperson

SUBJECT: Interpretation of Resolution 04-1-01
Regarding the Unauthorized Practice of Law

DATE: May 03, 2007

*****Additional issues have been raised regarding the issue of proper
conduct of non-lawyers in Industrial Commission hearings. The purpose of this
memorandum is to address some of those issues.

1. Can evidence which violates the Industrial Commission’s UPL Policy be excluded from consideration?

Answer: No. There is no provision to exclude evidence simply on the bases of a possible violation of the UPL guidelines. If a concern is raised whether certain activity is inappropriate, that issue should be forwarded to Administration to determine whether further action is necessary.

2. Can a non-lawyer waive proper notice of hearing or waive the right to appeal on behalf of a party?

Answer: No. While a non-lawyer may act as the messenger of the decision to waive the rights of the party, a non-lawyer cannot independently make that determination or advise a party on the ramifications of that waiver.

3. May a non-lawyer contact a witness or other individual to obtain evidence which may be submitted at hearing?

Answer: It depends on the circumstances. If the contact or interview is for the purpose of conducting a post-injury investigation to determine whether a claim should be certified/pursued or whether any other safety ramifications are implicated, then that discussion is proper. However, if the discussion or questions are related to obtaining evidence in anticipation of a hearing in a contested claims matter, then that activity is not permitted.

Industrial Commission of Ohio
June 27, 2005

Further Interpretation and Guidance Concerning Commission
Resolutions R04-1-01 and R04-1-03

1. May TPAs certify claims on behalf of their client employers?

Certification and rejection of claims are permitted activities by a non-attorney representative of a party, including the signature of a non-attorney representative on the FROI, so long as the non-attorney has been authorized and directed to certify the claim by the employer. A non-attorney representative may not independently decide whether to certify or reject a claim.

A non-attorney representative should not execute the signature of a party. Also, supporting the rejection of a claim by referencing legal authority or stating a legal conclusion would be prohibited.

BWC may revise the FROI and the online form in order to provide the ability of a non-attorney representative that completes the certification portion to indicate whether the non-attorney representative has been provided authority by the party to complete the certification portion of the form.

Non-attorney employees of the employer may certify claims so long as it is within that non-attorney employee's authority. See reply to questions 5 & 6 in category I of the May 23, 2005 memo.

2. Is a "blanket authorization" provided in a group rating plan sufficient documentation to establish an attorney-client relationship between an attorney and an employer who may be a member of the group?

No, the group rating authorization, by itself, would be insufficient to document an attorney-client relationship for purposes of participating at the hearing. However, that authorization would be sufficient to allow an attorney who maintains that they are present on behalf of the employer to participate in the hearing so long as specific written authorization is submitted to the file by the end of the business day. See the response to questions 3, 4 & 5 of Section 6 of the May 23, 2005 memo.

3. May an investigation report be submitted to a file and be considered by the hearing officer?

An investigation report prepared following an accident may be submitted and considered as evidence. However, the investigation should have been conducted in a normal course of business and not to circumvent limitations contained in Industrial Commission Resolution 04-1-01. See response to question 13 in Section 3 of the May 23, 2005 memo.

4. Because a TPA cannot file a reconsideration appeal to the Commissioners, does this mean that a TPA or BWC non-attorney cannot file a .52 or fraud motion?

See the response to question 8 in Section 1 of the May 23, 2005 memo. Please note that an attorney from the BWC Law Section would not be prohibited from filing this type of request.

5. If an authorization for a TPA is not on file, should a hearing officer take a TPA's word on being authorized to represent a party and give the TPA until the close of business to submit their signed authorization?

Yes, however, the TPAs must be limited to engaging in activity that a TPA would be permitted to do at hearing.

6. Since non-attorneys have been permitted to file various documents including appeals and motions, are non-attorneys other than TPAs and union representatives also contemplated by this permission i.e., medical providers?

The only non-attorney representation contemplated by the Resolution is union representation and TPAs. Medical providers are not parties to the claim and are not authorized representatives within the system. Therefore, motions and appeals filed by medical providers still would be handled under the guidance of Hearing Officer Manual Policy S.6 and thus, should be dismissed.

7. The Resolution and its clarification seem to allow employees of employers to act as representatives at hearing. What activities are those employees limited to if any?

The Commission Resolution and its clarification treat employees of employers similarly to TPAs and thus, would permit non-attorney employees of an employer to represent that employer as if being a TPA.

MEMORANDUM

TO: Debra Lynch, Akron Regional Manager
Landi Jackson-Forbes, Cincinnati Regional Manager
Greg Gibbons, Cleveland Regional Manager
Felicity Hillmer, Supervisor, District Hearing Officers, Columbus Region
David Binkovitz, Supervisor, Staff Hearing Officers, Columbus Region
Scott Hines, Toledo Regional Manager
Ellen Dickhaut, Manager, Legal Services
Rachel Black, Supervisor, Legal Research
Denise Clark, Manager, Claims Management
District and Staff Hearing Officers
Hearing Administrators

FROM: Gary DiCeglio, Chairperson
Jodie M. Taylor, Member
Kevin R. Abrams, Member

SUBJECT: Further Guidance on the *Unauthorized Practice of Law*

DATE: October 28, 2010

Questions have arisen as to the limitations of non-attorneys when conducting post-injury accident investigations. In addition, questions have arisen as to the admissibility of any transcript or written documentation obtained during accident investigation. The purpose of this memorandum is to provide further guidance in these areas.

I. Prior Guidance on the issue:

The first guidance in this area was provided in Section III (Attendance at Hearing), question thirteen (13), of the inter-office memorandum issued on May 23, 2005, which provides:

Question #13: Can a non-attorney representative submit a witness statement?

Yes. A non-attorney representative can prepare and submit a witness statement. However, a witness "statement" submitted by a non-attorney representative does not meet the standards of the Resolution when such a statement consists of a series of questions posed by a non-attorney representative to the witness and a list of responses. Such a witness "statement" is in violation of the prohibition on direct examination and indirect examination of witness found in Part (B)(1) of the Resolution.

A non-attorney representative cannot submit a document that is the written equivalent of oral direct examination or cross-examination of a witness that is prohibited under the Part (B)(1) of the Resolution.

In addition, Section V (Actions outside of the IC facilities), question one (1) of that same memorandum provided the following:

Question #1: Do the prohibitions set forth in (B) of the IC Resolution apply to the actions of non-attorney representatives outside of the IC and BWC facilities?

Both the permitted activities as well as the prohibited activities set forth in the Resolution, apply to actions within, as well as outside of the agency hearing rooms with regard to workers' compensation matters.

Additional guidance was provided in question three (3) in an inter-office memorandum dated June 27, 2005, which provided the following:

Question #3: May an investigation report be submitted to a file and considered by the hearing officer?

An investigation report prepared following an accident may be submitted and considered as evidence. However, the investigation should have been conducted in a normal course of business and not to circumvent limitations contained in Industrial Commission Resolution 04-1-01. (See response to question 13 in Section 3 of the May 23, 2005 memo.)

Finally, in a one page inter-office memorandum dated May 03, 2007, in question three (3), the following guidance was given:

Question #3: May a non-lawyer contact a witness or other individual to obtain evidence which may be submitted at hearing?

It depends on the circumstances. If the contact or interview is for the purpose of conducting a post-injury investigation to determine whether a claim should be certified/pursued or whether any other safety ramifications are implicated, then that discussion is proper. However, if the discussion or questions are related to obtaining evidence in anticipation of a hearing in a contested claims matter, then that activity is not permitted.

II. Additional Guidance:

It is clear that post-accident injury investigations can be conducted by non-attorneys in an attempt to determine what happened at the time of the injury. However, the tenor of the investigation should be limited to fact-finding, and any statement obtained should not be the written equivalent of oral direct or cross-examination. In addition, the veracity of any witnesses, including the injured worker, should not be

challenged by the non-attorney in conducting the investigation. To that end, no warnings to the witnesses regarding untrue or fraudulent answers should be given by a non-attorney during the investigation.

Because the tenor of the investigation should be one of fact-finding, it is also improper for a non-attorney to comment on the evidence or give any interpretation or recommendation to any witness (including but not limited to advice on compensability of the claim). In no circumstance should the non-attorney comment on the compensability of a claim or on the veracity of any witness or evidence which has been submitted to substantiate the claim.

Should a hearing officer come across a written statement, transcript, or other evidence on file that documents an investigation, conducted by a non-attorney, which does not comport with the guidance provided herein, the evidence can be given whatever weight the hearing officer feels is appropriate. However, in those circumstances, the hearing officer shall forward the matter to the Director of Hearing Services so that it may be investigated.

It is hoped this provides helpful guidance in this area. Should you have further questions or concerns feel free to contact the Director of Hearing Services.

cc: Tom Connor
Paul Walker
Christa Deegan