WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #5

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2004 JAN 29 P 3:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§ 6-9A-3; 23-1-1a(j); 29A-3-3

RULE TYPE: PROCEDURAL X INTERPRETIVE ____

EXEMPT LEGISLATIVE RULE ____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW
W. Va. Code § 23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES ____ NO X*

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: *Repeal and replacement of 85CSR14 entitled, "Procedural Rules for the Compensation Programs Performance Council."

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Procedural Rules for the Workers' Compensation Board of Managers

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS March 1, 2004

Authorized Signature

WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Procedural CITE AUTHORITY: Code §§ 6-9A-3; 23-1-1a(j)(3); 29A-3-3

AMENDMENT TO AN EXISTING RULE: YES ___ NO X*

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: *Repeal and replacement of 85CSR14 entitled, "Procedural Rules for the Compensation Programs Performance Council."

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Procedural Rules for the Workers' Compensation Board of Managers

DATE OF PUBLIC HEARING: December 17, 2003 TIME: 11:00 a.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia
**This public hearing is an extension and continuance of the previous comment period for this proposed rule.

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
~~4700 MacCorkle Avenue, S.E.~~
Charleston, WV 25304
Fax # (304) 926-5372

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Randall B. Huter

Authorized Signature

WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

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Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Procedural CITE AUTHORITY: Code 6-9A-3, 23-1-1a(j)(3), 29A-3-3

AMENDMENT TO AN EXISTING RULE: YES ____ NO X*

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: *Repeal and replacement of 85CSR14 entitled, "Procedural Rules for the Compensation Programs Performance Council"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Procedural Rules for the Workers' Compensation Board of Managers

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 18, 2003* AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

*Note this is an extension of a comment period for this rule.
T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Fax # 304 926-5372

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Randall B Sutter

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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2003 OCT -6 P 4: 16

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Procedural CITE AUTHORITY: Code 6-9A-3, 23-1-1a(j)(3), 29A-3-3

AMENDMENT TO AN EXISTING RULE: YES ____ NO X *

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: *Repeal and replacement of 85CSR14 entitled, "Procedural Rules for the Compensation Programs Performance Council"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Procedural Rules for the Workers' Compensation Board of Managers

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 6, 2003 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304
Fax # 304-926-5372

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone: (304) 926-1710

October 6, 2003

The Honorable Joe Manchin III
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 14
"Procedural Rules for the Workers' Compensation Board of Managers"

Dear Secretary Manchin:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission have approved the enclosed 85 C.S.R. 14, entitled, "Procedural Rules for the Workers' Compensation Board of Managers," for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

G. Burton

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

Type of Rule: ____Legislative Exempt ___Interpretive _X_Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no significant change in the estimated costs associated with conducting the Workers' Compensation Board of Managers meetings than what were previously incurred in conducting the meetings of its predecessor, the Performance Council of the Bureau of Employment Programs. The transferring of all of the fiduciary responsibilities of the Performance Council to the Board of Managers, effective October 1, 2003, will result in an increase in the number of voting members from eight to eleven. Each appointed voting member of the Board shall receive not more than $350 per day for each day during which the voting member is required to and does attend a meeting of the Board. Any other changes in costs associated with conducting the meetings of the Board, such as travel to and from the meetings, the cost of the facilities used to conduct the meetings and the number of meetings held, cannot be reasonably determined.

3. Objectives of this rule:

The purpose of this rule is to establish the rules and procedures for conducting the meetings of the Workers' Compensation Board of Managers.

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the there will be no economic impact on State Government. This rule results in the Workers' Compensation Board of Managers assuming the duties and responsibilities of its defunct predecessor, the Performance Council of the Bureau of Employment Programs, for the new standalone State agency, the Workers' Compensation Commission, created October 1, 2003.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

It is expected that there will be no impact from this rule.

C. Economic Impact on Citizens/Public at Large.

This rule will not have a direct economic impact on the citizens of West Virginia.

Date: October 6, 2003

Signature of Agency Head or Authorized Representative

G. A. B

Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 14
Procedural Rules for the Workers' Compensation Board of Managers

This rule repeals and replaces the provisions of 85 C.S.R. 14, entitled "Procedural Rules for the Compensation Programs Performance Council."

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission was created, effective October 1, 2003, as a stand-alone agency of State government. Under that Bill, the Commission is required to revise each of its rules prior to July 1, 2006. W. Va. Code § 23-1-1d.

Pursuant to Senate Bill 2013 and also effective October 1, 2003, the Compensation Programs Performance Council was abolished and replaced by the Workers' Compensation Commission's Board of Managers.

The proposed rule substantially revises the procedures of the Board of Managers. The rule relates to:

(1) How meetings shall be set;
(2) The selection of officers;
(3) How meetings are conducted;
(4) The establishment of agendas;
(5) How meetings are noticed to the public;
(6) How executive sessions are conducted;
(7) The establishment of sub-committees;
(8) Public comment at the meetings; and
(9) Minutes for the meetings.

~~[TO BE FILED WITH THE SECRETARY OF STATE]~~

TITLE 85
PROCEDURAL RULE
WORKERS' COMPENSATION COMMISSION

SERIES 14
PROCEDURAL RULES FOR THE WORKERS' COMPENSATION BOARD OF MANAGERS

§ 85-14-1. General.

1.1. Scope. -- The West Virginia Open Governmental Proceedings Law, W. Va. Code §6-9A-1, of 1931, as amended, requires in section three that governing bodies of state public bodies shall promulgate rules by which the time, the place, and the purpose of all regularly scheduled meetings and the time, place, and purpose of all emergency meetings are made available, in advance, to the public and the news media to the extent possible. Similarly, W. Va. Code §29A-3-3, requires that agencies adopt procedural rules. The purpose of this rule is to comply with these requirements.

1.2. Authority. -- W. Va. Code §§6-9A-3, 23-1-1a(j)(3) and 29A-3-3.

1.3. Filing date. --

1.4. Effective date. –

1.5. Repeal and replacement. -- This rule repeals and replaces 85 C.S.R. 14, entitled, "Procedural Rules for the Compensation Programs Performance Council." Under the provisions of Senate Bill 2013, as passed in the Second Extraordinary Session of the two thousand-three Legislature, the Compensation Programs Performance Council of the Bureau of Employment Programs was replaced, effective October 1, 2003, by the Workers' Compensation Board of Managers ~~of the Workers' Compensation Commission~~.

§ 85-14-2. Application and enforcement.

2.1. Application. This procedural rule applies to the Workers' Compensation Board of Managers created pursuant to W. Va. Code §23-1-1a et seq. The enforcement of this rule is vested with the chairperson of the Board.

2.2. Except as specifically required by this rule, the Board shall not use any formal points of parliamentary order, personal privilege, parliamentary inquiry or other technical forms.

2.3. Any matter, procedure or order not covered by these rules shall be referred to the presiding officer who shall decide the matter in conformity with the purpose of these rules in a fair and expeditious manner. The decision of the presiding officer may be reversed by an affirmative vote of six (6) Members of the Board.

§ 85-14-3. Definitions.

3.1. "Chairperson" means the member elected as provided for by W. Va. Code §23-1-1a(f).

3.2. "The Board" means the Workers' Compensation Board of Managers created under W. Va. Code §23-1-1a.

3.3. "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the Board is required at any meeting at which a quorum is present.

3.4. " Meeting" means the convening of the Board for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. For the purposes of West Virginia Code Section 23-1-1a(h)(1), subcommittee meetings shall meet the definition of "Meeting" for those Members required to attend the subcommittee meeting.

3.5. "Quorum" means the presence of six (6) voting members of the Board. W.Va. Code §23-1-1a(f).

3.6. "Member" means a voting member as more fully set forth in W.Va. Code §23-1-1a(b)(1), et seq.

3.7. "Advisory Member" means a non-voting member as more fully set forth in W.Va. Code §23-1-1a(b)(2), et seq.

§ 85-14-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Board may be called by the chairperson, and the chairperson shall call a meeting upon the request of at least three (3) of the Members of the Board: Provided that, the Board must meet no less frequently than once every three (3) months. All meetings shall be held at locations and in facilities large enough to comfortably accommodate Members and Advisory Members and a reasonable number of public observers and participants.

4.2. The chairperson shall notify Members and Advisory Members in writing at least seven (7) days in advance of a meeting. The notice shall set forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the place, and the matters for consideration have been fixed in a meeting where all the members and advisory members are present.

4.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear in the state register at least five days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.4. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Board. In the event of an emergency requiring immediate official action, the Board may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the time, place, and purpose of the meeting and the facts and circumstances of the emergency. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.5. Meetings may be continued to a set time and place by an affirmative vote of six (6) Members without further notice to the Members and Advisory Members and without further publication unless such continued meeting is scheduled for more than fourteen (14) days from the date of the voting.

4.6. All Members and Advisory Members present at a meeting shall have the same right to participate in discussion of matters before the Board.

4.7. The Board shall consider any matter brought before it by the chairperson or any Member or Advisory Member and may consider, at its discretion, any matter referred to it by a person not a Member or Advisory Member of the Board.

4.8. Meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

4.9. The Members of the Board shall select from one of their number a member to serve as <u>chairperson</u>

and vice-chairperson. The vice-chairperson ~~who~~ shall preside in the absence of the chairperson. The terms of the chairperson and vice-chairperson shall be for one ~~calendar~~ year; from October 1 to September 30; but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new chairperson or vice- chairperson for the remainder of a term. A Member may be reelected as chairperson or vice-chairperson. The Members of the Board also shall select from one of their number a Member to serve as secretary. The term of the secretary shall be for one ~~calendar~~ year; from October 1 to September 30; but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new secretary for the remainder of a term. A Member may be reelected as secretary.

4.10. To allow more Members and Advisory Members of the Board to participate in public meetings and hearings the Board will allow Members and Advisory Members to participate using the telephone provided at least four Members of the Board are physically present in the room where the public meeting is being held, and the sound system in the room and the electronic equipment is such that the Members and Advisory Members participating electronically can hear what is being said by all Members and Advisory Members participating in the meeting and any person from the public making a presentation or answering questions of the Board, and all of the Members and Advisory Members and the public physically present in the meeting or hearing room can reasonably hear what is being said by the Member(s) and Advisory Member(s) who is participating electronically.

4.11. A Member participating telephonically in a meeting may vote for or against any motion offered by a Member that is seconded by another Member. The moving Member and the seconding Member may be physically present or be participating telephonically or be any combination thereof.

4.12 In an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§ 85-14-5. Agenda.

5.1. Prior to each regular meeting, the secretary of the committee shall publish ~~as~~ an agenda that contains all items the Board anticipates acting upon at the meeting. The committee may adopt the agenda as presented, or may amend the agenda.

a. The secretary may utilize, for purposes of accomplishing his or her duties under this rule, clerical staff of the Commission as designated by the Executive Director or such clerical staff as the Board of Managers may employ. This utilization may include, but is not limited to, the designation of staff to receive proposed Agenda items, preparation of the Agenda, and all necessary public filing duties.

5.2. Agenda deadline. Any Member or Advisory Member may have an item included on the agenda by requesting the secretary to include the item by 5:00 p.m. on the Tuesday preceding the Wednesday by which the agenda must be filed in the State Register in order to comply with the open meetings laws of this State.

5.3. Notice of meeting.

a. If a meeting is to be held on a Sunday, Monday, Tuesday or Wednesday, notice of the meeting must be published in the State Register by noon on the second Wednesday immediately preceding the day of meeting.

b. If a meeting is to be held on a Thursday, Friday or Saturday of the calendar week immediately following publication of the State Register, notice of the meeting must be filed by noon on the Wednesday preceding the Friday publication of the State Register.

5.4. Items requested or filed after 5:00 p.m. on the Tuesday preceding the deadline for filing the Agenda in the State Register shall not be included on the Agenda unless a Member or Advisory Member deems the item of sufficient urgency to warrant immediate Board action. These items shall be designated as "Extra" items and will be considered at the end of the regular Agenda. The secretary shall record on the Extra item the name of the sponsoring Member or Advisory Member.

5.5. Withdrawal of items. Only the Member or Advisory Member requesting the placement of an item on the Agenda may withdraw the item prior to the filing of the Agenda in the State Register.

5.6. A Member or Advisory Member wishing the committee to continue, defer, or not act on an Agenda item has a right to make and have a his or her motion to continue, defer, or not act on any Agenda item considered before any other act that the Board may consider on the Agenda item.

§ 85-14-6. Opening the meeting.

6.1. Call to order. The chair or vice chair of the Board shall call the meeting to order at the appointed hour. In the absence of the chair or vice chair, the secretary shall call the meeting to order and a temporary presiding officer shall then be selected under subsection 6.2.

6.2. Presiding officer. The chair, or in the chair's absence or incapacity, the vice chair, shall be the presiding officer at the meeting of the Board. If both the chair and the vice chair are absent, the secretary shall call the meeting to order and the Members present shall select a presiding officer by an affirmative vote of six (6) Members. In the absence of such an affirmative vote, the secretary shall remain and continue to be the presiding officer of the meeting.

6.3. Roll call. Before proceeding with the business of the Board, the secretary shall call the roll call of Members and Advisory Members present, and enter the name in the minutes of the meeting. The secretary shall determine the presence of a quorum as required by these rules.

6.4. Order of consideration of agenda items. Except as otherwise provided in these rules, each Agenda item shall be considered in the numerical order assigned by the secretary. Each Agenda item shall be separately announced by the presiding officer, or the secretary, for purposes of discussion and consideration. To announce an item it shall be sufficient to identify the item by the number assigned and summary provided by the secretary.

§ 85-14-7. Discussion.

7.1. The presiding officer shall control the discussion of the Board on each Agenda item to assure full participation in accordance with these rules.

a. A Member or Advisory Member shall speak only after being recognized by the presiding officer. A Member or Advisory Member recognized for a specific purpose shall limit his or her remarks to that purpose. A Member or Advisory Member, after being recognized, shall not be interrupted except by the presiding officer to enforce these rules.

b. Each Member and Advisory Member shall limit his or her remarks to a reasonable length.

c. The presiding officer as a Member of the Board may enter into any discussion. The presiding officer has the right to close debate and speak last on any item.

7.2. Closing debate. Discussion may be closed on any item by the presiding officer. Such closure may be reversed by a vote of six (6) Members of the Board.

§ 85-14-8. Motions; voting.

8.1. Motion to act on matters. At any appropriate place on the Agenda, any Member of the Board may make a motion for the Board to act upon any matter if the motion is germane to the matter then under consideration.

8.2. Motion required. All action requiring a vote shall be moved by a Member seconded by a different Member of the Board.

8.3. Recording names of moving members. The secretary shall record the name of the Board Member moving and seconding each motion.

8.4. Call for vote. At the conclusion of debate, the presiding officer shall call for a vote: Provided, That an affirmative vote of six (6) Members may require a vote at any time.

8.5. Prevailing vote required; Vote by Proxy Prohibited. The vote of six (6) Members of the Board shall be necessary to take any action.

8.6. Motion to reconsider. A motion to reconsider must be made by a Member who was on the prevailing side in the original action.

§ 85-14-9. Proceeding to be Open; Exceptions; Executive Session Permitted.

9.1. All meetings of the Board shall be open to the public; Except that, an executive session closed to the public may be held during a regular or emergency meeting, after the presiding office has identified the authorization under W. Va. Code §6-9A-4 for the holding of such executive session and has presented it to the Board and to the general public, but no decision shall be made in such executive session.

9.2. An executive session may be held only upon an affirmative vote of six (6) Members for the following (as stated in W. Va. Code §6-9A-4) reasons:

a. Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

b. The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

c. The issuance, effecting, denial, suspension or revocation of a license, certificate or resignation under the laws of this State or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

d. The physical or mental health of any person, unless such person requests an open meeting; or

e. Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or

f. The development of security personnel or devices; or

g. Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.

9.3. The Board may limit the number of members of the public present for a meeting if there is not room enough for all members of the public who wish to attend. This limitation may take the form of a limit on the number of members of the public present or the amount of time individual members of the public may remain, or both.

9.4. The chairperson is authorized to order the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

9.5. Upon an affirmative vote of six (6) Members, members of the public may be permitted to address the Board for a reasonable length of time or for such time as is fixed by the Board. Members of the public desiring to address the Board shall indicate their desire to do so by marking the register of attendance accordingly; Provided that, such person shall not be required to register to address the Board more than fifteen minutes prior to the time the scheduled meeting is to commence.

9.6. All members of the public present for a meeting of the Board shall indicate their presence by signing their name to a register of attendance which may also require the giving of each such person's address and who such person is representing. The register of attendance shall also provide a place for members of the public who wish to address the Board to so indicate.

§ 85-14-10. Citizen's right to address Board.

10.1. Persons other than Members and Advisory Members shall be permitted to address the Board only upon specific Agenda items, which may include an Agenda item called "General Public Comment Period."

10.2. Persons desiring to address the Board shall register to speak prior to the start of the Board meeting. The form for registration shall require the following information: (1) name of the person, (2) mailing address, (3) telephone number where the person may be reached during the day, (4) the person's group affiliation, if any, and (5) the Agenda item to which the person desires to speak. If the person does not desire to speak to a particular Agenda item, the person shall identify the subject matter about which he or she wishes to speak.

10.3. A person desiring to address the Board shall, after being recognized, step to the podium, state his or her name, address, and group affiliation (if any), and speak clearly into the microphone.

10.4. Time limits. Citizens shall be limited to five minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen in-put on any subject under Board consideration can be limited to a fixed period by the presiding officer. An affirmative vote of six (6) Members may extend the time limitations of this rule.

10.5. This rule shall not apply to persons whom the Board has asked to come and address the Board. They shall have such time as the presiding officer or the Board allows for the presentation, including any question and answer period.

10.6. Remarks of citizens to be germane.

a. Citizen comments must be directed to a specific item on the Agenda, unless the comments are offered during a general public comment period when the public may comment on any aspect of the work of the Board.

b. The presiding officer shall rule on the germaneness of citizen remarks. The ruling may be initiated by the presiding officer or pursuant to a point of order raised by a Member or Advisory Member of the Board.

c. Citizens making personal, impertinent, or slanderous remarks shall be barred by the presiding officer from further comment before the Board during that meeting.

10.7. Matters not on Agenda. An affirmative vote of six (6) Members may allow citizens who wish to raise a matter not on the Agenda to speak.

10.8 With regard to exempt legislative rules, a member of the public may request the Board hold a public hearing on the Rule no later than fifteen (15) days from the date the Rule is filed for public comment with the Secretary of State's office. Requests may be made submitted to the Commission contact person identified on the "Notice of a Comment Period on a Proposed Rule." Whether a public hearing is held is within the sole discretion of the Chairperson.

§ 85-14-11. Subcommittees.

11.1. There shall be the following subcommittees: 1) Audit; 2) Claims; 3) Finance and Administration ~~and~~ 4) Risk Management; and 5) Executive. Each subcommittee shall consist of three (3) Members. The chairperson shall designate each subcommittee's membership and chairperson. In addition, the Board chairperson may designate the subject matter to be considered by each such subcommittee and may create additional subcommittees. Only those Members assigned to the Subcommittee shall be required to attend a meeting of the subcommittee.

11.2. The Chairperson, in his or her discretion, may appoint Advisory Members as non-voting members of subcommittees.

11.3 As set forth in paragraph 4.12, in an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§ 85-14-12. Minutes.

12.1. The Board shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

a. The date, time and place of the meeting;

b. The name of each Member and Advisory Member present or absent;

c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

d. The results of all votes and, upon request of a Member, the vote of each Member, by name.

12.2. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of W. Va. Code §6-9A-4 listed above.

§ 85-14-13. Records of the Board - Public.

Records of the Board are public records that may be inspected in accordance with W. Va. Code §29B-1-3 and copied at a charge reasonably calculated by the Commission to recover its reasonable costs associated with the production of documents.

<u>PUBLIC COMMENT: RULE 14</u>

From: "William T. Brotherton, III" <wbrotherton@spilmanlaw.com>
To: "T. J. Obrokta (E-mail)" <tobrokta@wvbep.org>
Date: 10/31/03 11:23AM
Subject: Rule 14 Comments

T. J.,

I offer the following observations following my review of proposed Rule 14:

Sec. 2.3. There is a typographical error in the first line. "shalbe" should be "shall be."

Sec. 4.2. There is a typographical error in the first line. "Membersand" should be "Members and."

Sec. 4.9. The use of "calendar year" in connection with the period Oct. 1 to September 30 seems awkward. A calendar year typically means January 1 to December 31, as opposed to a fiscal year which can be any 12 month period, but frequently is July 1 to June 30. I would recommend the language from 23-2-1(a)(f) which references a "one-year term" for the chairman. In other words, "a one-year term from October 1 to September 30." I also note that this section fails include reference to the election of the chairman. The only offices mentioned are vice-chairman and secretary.

Sec. 4.11 I am opposed to telephonic participation in meetings by voting members. I am told by former members of the Performance Council that it is very difficult to follow a meeting via telephone because the reception is so variable (i.e. bad). I think that votes by members on the telephone must be suspect if they cannot even hear all of the discussion. I would have no problem with non-voting members participating by telephone, or with voting members listening but not voting. I don't think anyone should be paid for listening to a meeting via telephone.

Sec. 5.1 There is a typographical error in the first line. "publish as agenda" should be "publish an agenda."

Sec. 11.1 I see no need for an Audit Committee. The Finance Committee can oversee the function of the internal auditor that is required by statute. This section should provide for an Executive Committee comprised of the Board's officers (chairman, vice-chairman and secretary).

I would be happy to discuss or explain any of these comments in greater detail if it would be helpful.

Will Brotherton
Spilman Thomas & Battle
P.O. Box 273
Charleston, W. Va. 25321
(304) 340-3826

Bowles Rice
McDavid Graff & Love PLLC

RECEIVED NOV 07 2003

Sarah E. Smith
Telephone — (304) 347-1115
Facsimile — (304) 347-1196
E-Mail: ssmith@bowlesrice.com

600 Quarrier Street, Charleston, West Virginia ❖ Post Office Box 1386, Charleston, West Virginia 25325-1386 ❖ (304) 347-1100 ❖ www.bowlesrice.com

November 6, 2003

Thomas J. Obrokta, Esquire
Workers' Compensation Division
Post Office Box 3151
Charleston, West Virginia 25332

Re: § 85 CSR 14
Procedural Rules for the Board of Managers

Dear Mr. Obrokta:

Thank you for the opportunity to comment on the proposed Procedural Rules for the Workers' Compensation Board of Managers.

The rules appear thorough and well written and we look forward to the oversight and guidance which the Board could provide to the workers' compensation system.

We recommend that the reference to the Board in § 85 CSR 14-1.5 be changed from "Board of Managers of the Workers' Compensation Commission" to the "Workers' Compensation Board of Managers" to reflect the broader responsibility which the Board has for the entire workers' compensation system. We believe this change is more consistent with the language and spirit of Senate Bill 2013.

Thank you for considering our suggestions.

Very truly yours,

Sarah E. Smith

Sarah E. Smith

SES/pfl

BEFORE THE WEST VIRGINIA WORKERS' COMPENSATION COMMISSION
BOARD OF MANAGERS

IN RE: RULE 85 CSR 14

ORIGINAL

TRANSCRIPT OF PROCEEDINGS had at the public hearing in the above referenced matter, held on December 17, 2003, at 11:00 a.m., before the West Virginia Workers' Compensation Commission Board of Managers, at the Charleston Civic Center, Charleston, West Virginia, pursuant to notice duly given to all interested parties.

REBECCA L. BAKER
CERTIFIED COURT REPORTER
P. O. BOX 7822
CROSS LANES, WV 25356 - (304) 759-2471

ATTENDING REPORTER: JENNIFER L. JIMISON, CCR

A P P E A R A N C E S:

MEMBERS OF THE BOARD OF MANAGERS:

STEVE WHITE, Chairman
CRAIG SLAUGHTER
RICHARD HUMPHREYS
GENE F. BAILEY
JOHN JOHNSON
EVERETTE SULLIVAN
BOB PHALEN
DOUG MERRITT (via telephone)

(Call to order, 11:05 a.m.)

CHAIRMAN WHITE: Pursuant to the provisions of West Virginia Code 23-1-1A(j)30, the Board of Managers is responsible for approving the rules of the Workers' Compensation Commission.

The Board has determined that a public hearing be held with regard to Rule 14 to solicit public comment.

Sign-up sheets have been provided to me. We have one individual who signed to speak to this rule. Again, Mr. Ed. Pancake. Ed?

MR. PANCAKE: Thank you, again, Mr. Chairman.

Mr. Chairman, we had previously submitted a written response, written comment asking that a rule be added which would allow members of the public to request a public hearing on a proposed rule.

I don't believe that that was added in the final draft of the rule. We believe that this is very important in light of the number and complexities of the rules that this Board is going to be charged with developing.

And we think that the stakeholders and the public at large would best be served by being able to require or at least request and have reasonable expectation of being provided a public hearing.

Thank you, sir.

CHAIRMAN WHITE: Thank you. Are there any other individuals wishing to speak to this rule?

(No response.)

CHAIRMAN WHITE: Hearing and seeing none, I declare that the comment period with respect to Rule 14 is hereby closed.

(Whereupon, the public hearing was adjourned.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, Jennifer L. Jimison, a Subcontractor for Rebecca L. Baker, Official Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption thereof.

Jennifer L. Jimison
Certified Court Reporter

OFFICIAL SEAL
Notary Public, State of West Virginia
JENNIFER L. JIMISON
PO Box 721

RULE 14: PROCEDURAL RULES FOR THE WORKERS' COMPENSATION BOARD OF MANAGERS

I. William T. Brotherton, III

1. Insert a space between "shall" and "be" in Section 2.3, and between "Members" and "and" in Section 4.2.

   Recommendations: Accept. This is technical clean-up.

2. Change the reference to "calendar year" to "one-year term" in section 4.9 and make any other technical changes. Also, include a reference to the election of a Chairman.

   Recommendation: Accept, although the reference to "Chairman" may be redundant as it is addressed in the Code.

3. Do not allow Members to vote if they are attending by telephone. Section 4.11.

   Recommendations: None. This is a pure procedural matter best left to the members of the Board.

4. Change the word "as" to "an" on the 1st line of Section 5.1.

   Recommendation: Accept. This is technical clean-up.

5. Eliminate the Audit Subcommittee created in Section 11.1 and add an Executive Committee.

   Recommendation: The Commission generally believes that there is a need for an Audit Committee, so it disagrees with the suggested elimination of the Committee. However, the Commission agrees that the suggested Executive Committee is advisable.

II. Sarah E. Smith

1. Change the reference to the "Board of Managers of the Workers' Compensation Commission" to the "Workers' Compensation Board of Managers" in Section 1.5

   Recommendation: Accept.

III. Commission

1. Insert "Rule 5.1.a The secretary may utilize, for purposes of accomplishing his or her duties under this rule, clerical staff of the Commission as designated by the Executive Director or such clerical staff as the Board of Managers may employ. This utilization may include, but is not limited to, the designation of staff to receive proposed Agenda items, preparation of the Agenda, and all necessary public filing duties."

2. Insert "Rule 10.8. Public Hearings. A public hearing on any issue may be scheduled in the sole discretion of the Chairperson, or upon the request of six (6) Members.

   With regard to exempt legislative rules which are presented to the Board by the Commission, any Member desiring to have a public hearing on the proposed rule shall so request at the Board meeting wherein the rule is presented for filing with the Secretary of State's office. No person, including the Chairperson, or any collection of Members, may call for or schedule a public hearing on an exempt legislative rule after the rule has been approved by the Board for filing with the Secretary of State's office.

Members of the public desiring to request a public hearing on a proposed exempt legislative rule shall submit their request at the Board meeting wherein the rule is presented to the Board of Managers for filing with the Secretary of State's office. No person, including the Chairperson, or any collection of Members, may call for or schedule a public hearing on an exempt legislative rule after the rule has been approved for filing with the Secretary of State's office.

FINANCE AND ADMINISTRATION COMMITTEE

WEST VIRGINIA WORKER'S COMPENSATION BOARD OF MANAGERS

NOVEMBER 19, 2003

Minutes of the meeting of the Finance and Administration Committee held on Wednesday, November 19, 2003, at 1:00 p.m., at the Charleston Civic Center, Room 105, Charleston, West Virginia.

Claims Committee Members Present:
Steve White, Chairman
Chris E. Jarrett

Other Board of Managers Members Present:
Bob Phalen

Staff Members Present:
Cindy Grinstead
Chris Howat
Janet Howard
Melinda Ashworth Kiss
Phil Lynch
T. J. Obrokta, Jr.
Randall B. Suter
Lisa Teel
David Townsend

1. Call To Order

Chairman Steve White called the meeting to order at 1:10 a.m.

Chairman White: The first order of business. . . let me call on the staff of the Division to present the reports. . .Ms. Kiss.

Melinda Ashworth Kiss: Good afternoon Mr. Chairman, members of the Committee and members of the public. We would like to present today to the Finance and Administration Committee the monthly financial report for the month ended October 31, 2003. Some of the pages of this report. . .this is in the comprehensive standard monthly report that the Division is seeking to prepare and supply the Board with. Beginning with the table of contents it will kind of walk you through it and after I finish, of course, will answer any questions that you may have.

doing this and we are looking at ways we can improve and perhaps make a better impression upon the employer community how serious the Commission is to pursue these defaulted accounts. Any other questions?

Mr. Jarrett: Yeah, do you collect money at the door?

Mr. Townsend: We are not allowed to collect money there, but we'll take them and give them an envelope and ask them to mail it in to us.

Mr. Jarrett: Self addressed stamped envelope? You carry the mail, can't you?

Ms. Kiss: One other thing I think that the Board of Managers would like to hear about. This came to light actually in our town hall meetings with regard to regional defaults and it is something that Director Burton just asked us to do and while Dave and his unit were working on the county by county default thing we are seriously considering doing advertisements in local newspapers letting them know who in their area is in default with the workers' compensation system. This is particularly with those that are active default employers – people who are still in business. They're still operating and they are in default with the worker's compensation system. One lady at the Beckley town hall meeting advised us that on no uncertain terms that if she knew an employer – she was an employer – she says she pays her premium on time every single month and if she knew an employer who was in default, she would not patronize that company. So, that is something Director Burton had asked us to look into so when . .

Chairman White: Thank you.

Mr. Jarrett: I think it's great – do it.

Mr. Townsend: Any other questions?

Chairman White: Thank you very much. Any other reports from the staff? The next item that we will discuss will be the two rules that are pending. I'd like for T. J. to address the rules and to walk the Committee through the differences in positions on that for our benefit.

Mr. Obrokta, Jr.: Yes sir, Mr. White. T. J. Obrokta, General Counsel, Workers' Compensation. We are now at a point in the rule preparation process where it is about time to vote on the final approval of some of these rules. Two of the rules are before you here today and just to briefly go over how they have gotten to you, way back in August we identified over now thirty-some stakeholders, told them we wanted to start working on a few rules, sent them a draft I believe in late August. We've worked with them. We ultimately presented three rules to you at your very first meeting in October 2nd or 3rd. Those three rules were Rule 10, which addresses contractor sub-contractor liability issues; Rule 14, which was a procedural rule governing your meetings; and, Rule 32, which for the first time enables us to revoke business licenses from individuals who are in default. You gave us permission in early October to file those three rules with the West Virginia Secretary of State's office. That initiated a thirty-day public comment period. That public comment period ended on November 6. At your most recent Board of Managers meeting you indicated that you wanted two of the rules referred to the subcommittee for a discussion of any comments we had received from the public during the thirty-day public comment period. That is the purpose I think that we are here to address today. Let me just say briefly that, given all the work we did on the front end involving the thirty-plus stakeholders, sending drafts to them long before we brought the rules to you, that has in my opinion, greatly minimized the topics we need to discuss here today. In fact, I will provide you, and I've already sent you a document – I'll give you another copy today – of the summary of all the public comments that we have received and our responses to them. There are roughly twenty comments on the two rules that we are going to discuss here today. I will be shocked if any more than five of those twenty are in any way controversial. So I think that is a reflection of the process that we've gone through to date and obviously as with any process we will continue to refine it with input from the stakeholders, but I do think we've gone a long way to being able to bring new rules that are. . .that have the least amount of controversy as possible. So with that, I'm going to give you – in case you don't have your copies – what I've given you is a document entitled, "Workers' Compensation Commission's Response to Public Comments Received on Rules 10, 14 and 32."

The first three pages address Rule 10, which is not before this subcommittee, so if you would just skip to rule . . to Page Four. Beginning on Page Four, I addressed the public comments we received on Rule 14. We received comments from two individuals in the public on this rule and the Commission has some additional comments as well.

The first five comments are from the Will Brotherton the Law Firm of Spilman and Thomas. His first comment is simply technical clean up. I have a problem with my printer sometimes that puts two words together when it is trying to format the pages. He identified that we needed to put a space between "shall" and "be" and a space between "members" and "and." We agree with that and we recommend that the Committee accept that suggestion.

Second change Mr. Brotherton recommends and we agree with addresses in Section 4.9 of the rule – this is when it's discussing the terms of your officers – Chair, Vice-Chair and Secretary. It talks about an October 1 through September 30 term but uses the phrase "calendar year." He suggests that is really not a calendar year, that's a one-year term. A calendar year is January through December. We agree with that and again that's more stylistic than anything else. We would agree with that change and accept that.

Third comment we received from Mr. Brotherton is a substantive comment that we would need direction from you as the Board. He suggests that if a member is attending by telephone, attending a Board of Managers meeting by telephone that that member not be allowed to vote. As the rule is currently written, a member may participate by telephone and may vote. This is purely a procedural issue for you as a Board and we take no position on it although it does seem to me that it may be reasonable to allow people to attend by phone and vote, but again that is up to you.

The fourth suggestion from Mr. Brotherton is changing the word "as" to the word "an" on line one of Section 5.1. That again is a technical clean up and we agree with it.

The final comment from Mr. Brotherton is really a two-fold comment. He sees no need for an Audit Subcommittee. We disagree with that. And he also does see the need for the creation of an Executive Committee, which was not in the original rule. I think we agree with the creation of an Executive Committee and I think the Chair has already made those appointments. We would suggest that the Board not adopt his comment regarding elimination of the Audit Committee. We would recommend to the Board – do accept his suggestion that an Executive Committee be created. Those are our comments. Again, three out of those five are clearly technical clean up. The other two – one is whether or not you folks want to vote by telephone. The final one is on your subcommittees.

Mr. Jarrett: T. J. if we do nothing, we still get to vote by phone, do we not?

Mr. Obrokta, Jr.: That's correct. You can vote by telephone.

Mr. Jarrett: Right. We don't have to have an agenda item and vote "yes" or "no." That is the rule today?

Mr. Obrokta, Jr.: I just need direction from you. . .

Chairman White: That is in the rule that has been posted with the Secretary of State's Office?

Mr. Obrokta, Jr.: Yes sir. His comment was that, I guess, he disagrees with the idea of voting by telephone.

Mr. Jarrett: The size of these committees nowadays. . .that's going to be very difficult. I mean. . .if we had something to vote on today with this subcommittee – I know it would never happen, but we could have a "yea" and a "nay" here or something and the guy on the phone would be setting there and couldn't vote. That's just my comments.

Chairman White: I intend to agree. I think the members certainly will make every attempt to be at meetings but sometimes that's not possible. They should be able to participate by telephone.

Mr. Obrokta, Jr.: My suggestion is you keep your Audit Committee. I don't think it should be abolished.

Chairman White: Procedurally, we posted this rule with the Secretary of State's Office. There are several changes that the Division has accepted and now it's before this. . .before the Board of Managers – so we will have to at some point in time at the next meeting adopt –

depending upon our discussions – adopt a revised rule in response to the public comments, correct?

Mr. Obrokta, Jr.: Yes sir.

Chairman White: Okay.

Mr. Obrokta, Jr.: I would envision making our suggestions as a package deal. Hopefully there's agreement. . .vote yes or no. . .

Chairman White: I would envision that we would take this up at the next meeting of this subcommittee and make a recommendation to the full Board.

Mr. Jarrett: That's December?

Chairman White: Yes.

Mr. Obrokta, Jr.: Moving on. . .the second individual comment on Rule 14 was Sally Smith from Bowles, Rice. . .She had one comment. It simply has to do with what we refer to you as. The rule refers to you, as drafted, as the Board of Managers of the Workers' Compensation Commission. She suggests, and I agree, that the more proper term is "Workers' Compensation Board of Managers." The idea there is that we are a Board of Managers over top of the Commission, but you are also over the Office of Judges, the Appeal Board, etc. So it is misleading to use the word "Commission" in your title. So again, I would recommend that you be called the "Workers' Compensation Board of Managers" and leave the word "Commission" out. I think that's a well-taken suggestion.

The final category of comments really came from the Commission. After we make these suggestions, we extended the public comment period so people could comment on the Commission's suggestions. The two suggestions from the Commission deal with how you will allow the public hearings to be called for the public to comment on the rules that are pending before you. The first suggestion we make is – it would require a member of the Board – if a member of the Board wants to have a public hearing on a proposed rule, that's fine. But the member should make that request whenever we present the rule to you to file at the Secretary of State's Office. At that point the member should request a public hearing be held. That will eliminate the problems when the thirty days go by at the Secretary of State's Office – we bring you a rule for a final vote and all of a sudden someone wants a public hearing. We would suggest the language of 5.1.a that would require Board of Managers members to request a public hearing with the same meeting where the rule is proposed for filing with the Secretary of State's Office. That facilitates the process.

Chairman White: Would the thirty-day public comment period then be extended to encompass the date of the public hearing?

Mr. Obrokta, Jr.: The thirty-day would run concurrently.

Chairman White: Well, I'm saying if the public hearing is outside the thirty days, I think we would want the public comment period to extend out to. . .

Mr. Obrokta, Jr.: Exactly. Technically, the public. . .when we file at the Secretary of State's Office, we have to give a thirty-day – at least thirty, no more than 60-day window for public comments, we always actually set by thirty-two or thirty-three days to make sure we don't miscount. So we would just always make sure that that day would be. . .that the public hearing would happen within the public comment. . .

Chairman White: So if we need comments. . .the public hearing. . .take into consideration?

Mr. Obrokta, Jr.: Yes. The second suggestion is very similar. It governs. . .members of the public can come before you and request a public hearing. Same rules would apply. The members of the public who want to have a public hearing on a rule would have to request that when we present the rule to you for filing with the Secretary of State's Office. Again, we think that's a fair way to do it so things are not unreasonably delayed. Those are the changes with regard to Rule 14 and those are our positions on those changes.

Beginning on Page Six Rule 32 as you may recall, for the first time gives the Commission the power to revoke business licenses for those companies that go into default. We, again, back in late August began this drafting process on this rule. You approved it for filing with the Secretary of State's Office early October. That public comment period expired November 6 and now have a few comments from the public. Again, three people commented out of a whole host of people who have seen this. So, again, I think that's a positive reflection of the process. Mr. Maroney has the first comment on this rule. If I just could just take a step back and explain how this works. Whenever we determine an amount that's due, if we do an audit and we determine that an amount is due, the employer can come to us. This is not. . .delinquency or default – this is when we go back and audit someone and say, "Hey, you owed us some money back then." There is an informal rate consideration process that has to be conducted within 60 days. The employer can come to us and say, "No, no. Your audit is incorrect and this is why. Would you please reconsider?" We have to do that within 60 days. If we say, "No, we stand by our audit," then the matter must be appealed into what's called the "Article II process," which is an administrative process to litigate the matter. Certain bonds and sureties must be posted once you get to the litigation stage to match up with the amount they owe us, if they want to litigate it. . .various financial instruments to secure the debt. Mr. Maroney suggests that we apply those same requirements to the reconsideration stage. Make them post a bond or post surety, etc., get a letter of credit and what have you at this initial reconsideration stage. We disagree with that. The purpose of the reconsideration stage is to get quick efficient process to correct clerical errors and things of this nature. We think that would inject an erroneous and time consuming step in what is suppose to be an efficient, expedited reconsideration process before we start litigating the matter. So that was Mr. Maroney's comment and we would disagree with that suggestion.

I sent this document to everyone who has commented to me that I'm going over today – Mr. Maroney, Mr. Huffman, etc. No one has called me and said they disagree with my comments, but again he is here today and if he disagrees, maybe we can sit down and work something out.

The second comment we received was from Timothy Huffman of the law firm of Jackson and Kelly. He recommends a change. I've not had a chance to discuss it with Mr. Huffman, but I think he just misread the rule. He wants to change the phrase "delinquency notice" to "default notice" in Section 7.3.b. We disagree with that. The intent of this language – to make it clear – that if an employer fails to respond to a delinquency notice, then a revocation will not be stayed. There is no reason to stay the enforcement of a revocation if the employer has not responded to the properly issued delinquency notice. We think we've got. . .we disagree with his suggestion and he has not contacted me to register his disagreement with our position. I will pledge to this committee and I will contact him before your December 10 meeting and hopefully I'll be able to represent to you that he's okay with our explanation. Thank you.

Mr. Huffman's second comment is technical clean up. The original rule had a bad cite in it. It cited Section 23-1-17 of the Code. The proper cite is 23-2-17 of the Code.

Mr. Huffman's third comment, in my opinion, is really a technical clean up or it's an omission from the first rule that is drafted. It again has to do with the type of surety that can be posted and when it can be posted during the process. He pointed out that we allowed it early on in the process and we should allow it later and we agree. Again, I'll discuss that one with him. I'll discuss it with Mr. Maroney and see if either parties have any real disagreement with that. If they do, I will try to bring you compromise language.

The final individual comment on Rule 32 is Mr. Steve White of the ACT Foundation. His first comment – he wants to expand the definition of "agency" in Section 2.1. I met with Mr. White and explained to him that we think that would be a violation of the Code. I'll let him speak to you as to whether or not he agrees. The Code already. . .and his suggestion would expand that definition.

The second comment involves a definition of "employing unit." We think his concerns will be addressed in a future undertaking of the Commission, which is when we created the Employer Violator System. Mr. White met with me earlier today before this began and I'll let him comment on that, but I think he and I can come up with some language to put in. . .that will address his concerns. I hope I will be able to represent to you on the tenth. . .he and I will iron that out.

His third suggestion is to insert the word "renewal" between the word "any" and "transfer" on Line One. We agree and think this clarifies and strengthens the rule. One of his comments just kind of makes me question as to whether a section is redundant. We don't think it's redundant and given our explanation, hopefully that's sufficient for him. It's this suggestion he wants to rearrange one of the sections – reorganize it. We think it's a good suggestion and makes it clearer. . .so we would agree with accepting that.

Finally, his suggestion to insert the word "bank" between the words "a and "letter" on the first line. This makes it clearer that when they're posting surety it has to be a "bank letter of credit" as opposed to other types of letters of credit. We agree with that and we think it probably makes it a tighter letter of credit and better protects the Commission's interest, so we agree with that change.

Chairman White: Are there any other requirements in the letter of credit other than a banking institution? Are there any ways to monitor the letter of credit to determine the type of bank and if there is sufficient ability to issue a letter of credit?

Mr. Obrokta, Jr.: I am not aware of it. I do know that we have forms that we require. . .that we draft forms and they meet with our legal section's approval and they've been used over the years.

Chairman White: The form that the letter of credit. . .is something that is prescribed by the Division?

Mr. Obrokta, Jr.: Yes sir. . .(inaudible). . .Our folks have a very strong sense of ownership over them, but I'm not aware of any other specific requirements.

Chairman White: Is it an irrevocable letter of credit? Is it provided on the letter of credit to revocable?

Mr. Obrokta, Jr.: One the ones I've seen, yes. I'd be happy to. . .

Chairman White: I deal with those all the time.

Mr. Obrokta, Jr.: Okay. Those are the suggestions on. . .or the comments that we've made on the public comments we've received on Rules 14 and 32.

Chairman White: Thank you very much.

Mr. Phalen: I have a question, if you don't mind. T. J., may I inquire in regards to Rule 14 on the Commission's recommendation? And I believe this question was asked and responded to at the Board of Managers meeting I believe, but I just want to make sure. With the Commission's recommendation on the changes on. . .under paragraph. . .well actually under Paragraph One and Two. These recommendations came after it was submitted. . .after the rule was submitted originally to the Secretary of State's Office, correct?

Mr. Obrokta, Jr.: That's correct.

Mr. Phalen: Okay. Was that thirty-day public comment period extended from the time that these were submitted?

Mr. Obrokta, Jr.: Yes sir. It expired yesterday.

Mr. Phalen: It did expire yesterday?

Mr. Obrokta, Jr.: Yes.

Mr. Phalen: Okay. Now a couple other follow-up questions. In regards to your proposed changes under two, the first question is – on the public hearing request it would have to be as a result of the majority of the Board of Managers' request for a public hearing? Right? At six. . .I believe that is the majority?

Mr. Obrokta, Jr.: Yes.

Mr. Phalen: Okay. Is the Chairperson included in that six or is that. . .?

Mr. Obrokta, Jr.: It can be called in the sole discretion of the Chairperson. . ..

Mr. Phalen: Right.

Mr. Obrokta, Jr.: Or upon a vote of six individuals.

Mr. Phalen: Okay. The Chair only votes in the event of a tie. The Chair would be considered part of those six members.

Mr. Obrokta, Jr.: He could call it on his own.

Mr. Phalen: I know he could.

Mr. Obrokta, Jr.: Okay.

Mr. Phalen: But if he doesn't call it on his own?

Chairman White: Well to clarify that, I believe the Chair votes on everything, correct?

Mr. Obrokta, Jr.: He would have a vote. Not just be a tiebreaker.

Mr. Phalen: I mean he could be one of those six members?

Mr. Obrokta, Jr.: Absolutely.

Mr. Phalen: Okay. Secondly, in regards to the. . .if a member or the six members does not request that at the time that it is submitted to the Board of Managers, then it goes on to the Secretary of State's Office and then we can't at a later date request a public hearing?

Mr. Obrokta, Jr.: That's correct. It's our suggestion.

Mr. Phalen: Okay. Are these rule changes going to be submitted or placed in the hands of the Board of Managers prior to them coming to the Board of Managers at a regular meeting?

Mr. Obrokta, Jr.: Yes. I will give you copies of them before we bring them to you and ask for permission to file them with the Secretary of State's Office.

Mr. Phalen: Right.

Mr. Obrokta, Jr.: Absolutely.

Mr. Phalen: Okay, my next question is – how much of an advance notice are we going to have in regards to reviewing or receiving these proposed rules?

Mr. Obrokta, Jr.: Our goal is to give them to you a week in advance. . .back up from that. . .we are going to get them into the stakeholders' hands hopefully three weeks before and then we will try to get some of their comments in, incorporate what we can and give them to you a week before. And just so. . .if it's not being clear, you can at the end of the public comment period, if you're not pleased that there's been enough time, the Board can vote to extend for another thirty-day public comment period. I don't think we will ever be in a position where you're pushing time.

Mr. Phalen: Okay. In regards to the second part of that where the members of the public. . .request a public hearing, and you said the stakeholders will be notified prior to those meetings as well. Does this encompass the public being notified that a proposed rule change is about to be submitted to the Board of Managers?

Mr. Obrokta, Jr.: I don't think so for the following reasons. First of all, we are including the stakeholders that represent I would think the bulk of employers and employees in this state well beforehand. Also, when we file a notice of a public hearing, the agenda is attached to that notice and then we'll list whatever rules are going to be discussed that day. I think through those two steps the public is being informed.

Mr. Phalen: The public is being informed that there will be a proposed rule change or a. . .?

Mr. Obrokta, Jr.: Yes. Through first of all, including all the stakeholders – the AFL-CIO, etc. – including all of them in the process well before we bring it to you and tell them when we're going to bring it to you. I think it informs a great deal of the public. And when we file the notice with the Secretary of State's Office setting the meeting, it will have an agenda attached setting forth what rules will be discussed as well.

Mr. Phalen: But that request from the public has to occur at the. . .when the rule is presented to the Board of Managers?

Mr. Obrokta, Jr.: Yes sir, if I could just give a little follow-up. On your one questions with regard to our suggestions on this, you asked if the public comment period had been expanded and I said, "yes." We also noticed that rule along with the two other rules for a public hearing on December 17, 2003. So I think it's more than sufficient time for everyone to comment on that.

Mr. Phalen: Right.

Chairman White: Thank you very much. Do you want to discuss these differences or would you rather wait until the next meeting?

Mr. Phalen: Well, it would have to be a discussion between you and Chris. I mean. . .

Chairman White: Did anybody sign up for public comments?

Thomas P. Maroney: Steve and I did.

Chairman White: Mr. Maroney, would you like to address these rules?

Mr. Maroney: In addition to these rules I would like to make another comment, Mr. Chairman. Number one, I was here for the earlier meeting. . .one of the committees. And just generally speaking this has to do with perhaps Rule 14 also. Because of the burden which has been placed upon the Board of Managers to be financially responsible for $6 to $700 million dollars worth of business a year, that in meetings which address rules and regulations, which is what is going to govern this body and all of the affected parties to it, that in your proposed Rule 14 – and this is a comment or a thought that came up after seeing the first meeting today; since this is the first meeting of the subcommittees of the Board of Managers, that you have no defined perimeters for each of the subcommittees as to what is to be referred to each subcommittee, that that should be defined so that the affected parties know what will take place at each of the subcommittee meetings.

Number two, that when there are proposed rules that they go before the appropriate subcommittee and that subcommittee, at a bare minimum, hold a public hearing on the proposed rule. Knowing that at that time they may still be in a "draft" form, but at least that's the first opportunity to members of the public to address those rules. In addition to that, there should be an agenda formed for each of the subcommittee rules, which is distributed to the public and to the affected parties so that they know what will take place at each of the subcommittee meetings and to address the rules specifically. The comment period for Series

14 was extended until yesterday and I did fax – and maybe you haven't seen this – yesterday evening our suggestion at. . .that the public hearing rule should be changed to allow members of the public to request a public hearing at any time before final approval of the rule. And I've heard the comments of the general counsel and I can appreciate his position on this. But I think that the real purpose of the publication of the rule with the Secretary of State is to give those members of the public who have not seen the rule, may not even be familiar with it, an opportunity to appear before this body to express their concerns about the rule. And to deny the public that opportunity is in direct conflict with the approving of the statute having to do with the promulgation of rules and regulations and particularly this body, which is going to be responsible for some $6 to $7 to $800 million dollars annually and that that should not be taken lightly that these folks be denied that opportunity.

As to Rule or Series 32, I had made the suggestion that the employing unit – even in the reconsideration process – post the appropriate bond as is also required in the litigation process. And the reason for that is, and again, it's the overlap of all of these committees I think needs to be addressed because some of the subcommittees address one portion and some address another. But in this particular situation. . .in this particular situation, and I think you have to look at Rule 10 a little bit on this – proposed Rule 10, which has to do with the delinquency and default provisions as to when a primary contractor, when a subcontractor or when just a general employer who becomes delinquent – first they could become delinquent, then they have a long period of time before they go in default. It could be as high as seven to eight months, depending upon when the proper notice is given to the employer by the Division – that at first they are delinquent and then giving them the opportunity to correct the delinquent status because that is not given until after the quarter. They then have 60 days and during that 60-day period the Commission – I'm having a hard time with the language since we've changed the name of it so frequently here in the last several years – that the Commission gives notice to the employer. If they're late in giving notice to the employer, the delinquent status could be as high 90 days as opposed to 60 days. Then they have a period of time in which to correct the delinquency status before they go into default status. In proposed Rule 32, we're talking about people who are already in default status. Not delinquent statues, but default status. They have already been notified that they are delinquent and yet they are now coming back in and saying, "This may have been a clerical error. This may have been something else and we need a little more time. We want this to refute and we don't want to post a bond." Those are the very people that we need to make sure are paying their premiums or money that puts forth in some type of letter of credit, financial deposits to make sure that that is paid. If this was just a delinquent account, that would be one thing. But the way Rule 32 is written it talks about defaulted employers, which is way down the line from delinquency and that's why I suggest that the financial responsibility be added to those reviews at the very beginning of the review process that is asked for by the employer. Thank you very much.

Chairman White: Thank you Mr. Maroney. Steve White from ACT.

Steve White (ACT Foundation): I am here to speak specifically to the Series 32 and I think Mr. Obrokta did a fair job of going over the comments and I don't have a problem with anything he said. What I want to focus on specifically is 2.9 and that is the definition of "employing unit." What I handed to you was a copy of the recent article in the *Charleston Gazette* about a particular company. I think this is a good example. Maybe not a perfect example, but an example of the problem that the Division or Commission has. I don't fault the Commission. I think chasing after these companies. . .the issue I guess before you is the repeat violators, the people who are racking up the big amounts of debt and start another company. It's a problem we all know about. I think it is responsible for a large portion of our debt and the problems we have today.

I think you have a great opportunity here with this Series 32. You folks have a big job before you. You need to clamp down everywhere you can. Series 32 is going to be very important for you in order to accomplish that. But I'm afraid in the definition of 2.9 "employing unit" that we haven't quite narrowed it down or been as tight as we need to be to focus specifically on the repeat violator and that is the individuals behind the companies. I'll use a couple of examples. . .they started out as a company called North American. . .racked up a big debt. Two of three principles started another called IPI Division. . .went after them and that was good. . .but that was I think 2001. Here is 2003 and we're still going after them. . .that company, and they just filed bankruptcy and that creates a whole bunch of other problems and issues. But we all can see and appreciate how hard it is going after that. I think what we have in the bill that was passed is some clarification language which talks about this employer violator system and being able to track the individuals behind the company who were ten percent or more owners. And here we're picking up on what's being done in the federal government. The Department of Interior does this. To help. . .I'm hoping to expedite this process of going after the successor. . .stopping that person from. . .starting another company. . .clearly help is needed. IPI is a good example of that. I think in this definition of "employing unit" – what I'm afraid is we could say, "That North American we'll never let down to do another thing again. We'll revoke your license. . ." But who cares? They're not in business anymore. IPI is. Another example I'd like to use. . .should be of interest to you, Mr. Jarrett, because they were caught polluting the water. . .wanting to hire that company for your business. Another one that I know Mr. Phalen is well aware of. . .Island Fork. Again, a company that. . .we could say, "Island Fork. . .we will shut them down and they can't do another thing." Who cares? You are never going to see Island Fork again because they are going to move from active to inactive to non-collectible. We can predict that. . .individuals behind Island Fork have already had a host of other companies they could shift their business to. They've learned this method of doing business and can start all over again. I know the controls are a lot tighter now. It still happens. As Mr. Obrokta mentioned, we talked briefly before. . .in the comments that the Commission made you're not opposed to my wanting to do something about this employing unit. . .this is a great opportunity. We don't want it to get past us. We know those people out there. . .this is a chance to do something. I think we need to include something to make sure that the individual is prevented from. . .who is associated with that company. . .ten percent or more ownership. . .as they go forward, can't do it again. They may have something that's currently just waiting out there. They'll just start a company. . .So that's my comments in regard to 32. The only other comment I would to add is the process of the rules. I appreciate the stakeholder process. I would suggest – and I mentioned this also earlier to Mr. Obrokta – that proposed rules come with an abstract because we know that it might entitle administrative or something else. . .well, I'm not interested in that. . .abstract would help us all. . .existing rules being modified, strikethroughs, underscored for changes in language. . .just a suggestion. That's my comments. Thank you very much.

Chairman White: Thank you everybody for attending the subcommittee meeting. With that I entertain a motion to adjourn.

Mr. Jarrett made a motion to adjourn. The motion was seconded by Chairman White and passed unanimously.

There being no further business, the meeting was adjourned at 3:00 p.m.

BOARD OF MANAGERS

December 18, 2003 - 10:00 a.m.
Charleston Civic Center Rms. 207-209

AGENDA

1. Call to Order..Steve White
2. Approval of Minutes..Steve White
3. Commission Report...Greg Burton
4. Office of Judges Report ....Timothy Leach
5. Claims Committee Report.......................................Everette Sullivan
6. Audit Committee Report..Bob Phalen
7. Finance & Administration Report.................................Chris Jarrett
8. Risk Management Report..Doug Merritt
9. General Counsel's Report...T.J. Obrokta
    a. Primary Contractor Liability 85CSR10
    b. Board of Managers Procedural Rule 85CSR14
    c. License Non-Renewal and Revocation Rule 85CSR32
    d. Treatment Refusal and Mileage Rule 85CSR1
    e. Health Care Vendor Hearings Rule 85CSR28
    f. Request to File Rules
10. Old Business...Steve White
11. New Business...Steve White
12. Comments from the Public..Steve White
13. Next Meeting...Steve White
14. Executive Session...Steve White
15. Adjourn...Steve White

WORKERS' COMPENSATION COMMISSION BOARD OF MANAGERS
DECEMBER 18, 2003

Minutes of the meeting of the Board of Managers held on Thursday, December 18, 2003, at 10:00 a.m. in the Charleston Civic Center, Rooms 207-209, Charleston, West Virginia.

Board members present:

- Steve White, Chairman
- Gene F. Bailey
- Richard W. Humphreys
- Chris E. Jarrett
- John L. Johnson
- Matt Jones (representing Craig Slaughter)
- Brooks McCabe
- Douglas W. Merritt
- Bob Phalen
- David Satterfield (by phone)
- Everette E. Sullivan

Commission staff present:

- Gregory A. Burton
- Melinda Ashworth Kiss
- Timothy G. Leach
- T. J. Obrokta
- Randall B. Suter
- Lisa Teel

1. Call To Order

Chairman White called the meeting to order at 10:10 a.m.

2. Approval Of Minutes

Mr. Sullivan moved to approve the minutes of the meeting held on October 28, 2003. The motion was seconded by Mr. Merritt and passed unanimously.

3. Commission Report – Gregory A. Burton

Gregory A. Burton: Thank you, Mr. Chairman. You have in your hand-out the November statement. This was gone over at the last F&A Committee meeting, but we wanted to take a minute to go over it with the full Board. This is a new format. I want to make sure everyone is comfortable with it and you're getting the information that you want to receive.

9. General Counsel's Report – T. J. Obrokta

T. J. Obrokta: Mr. Chairman, members of the Committee, T. J. Obrokta, General Counsel, Workers' Compensation Commission. You have on the agenda before you here today eight rules that we will be discussing that are at various stages in the rule development process. Before I discuss the specific rules, let me just say you've been handed a packet that has the eight rules that we're going to discuss today in the order in which we will discuss them. I'll go through them one-by-one.

If I could make a preliminary comment or two, we're pretty excited about today. This Commission – more importantly, this Board of Managers has been in existence for only two-and-a-half months, and yet today you stand poised to vote on up to five rules that will go a long way to implementing Senate Bill 2013. We think that pace has been expeditious but a deliberate pace, and certainly congratulate the Board of Managers on the process. I will finally say that given the very limited comments we had yesterday at the public hearing, it's very clear that the process we've established, as authorized by Mr. Burton, has given everyone a seat at the table in the development of these rules. I believe everyone who came up and commented yesterday indicated that they had made comments during the process and that we had accepted a lot of them. So, people are given a seat at the table, we take their comments seriously, and have tried to adopt as many as we possibly could. With that, I'll go right to the rules.

The first rule in your packet is Rule 10. This is a rule up for final vote today. Just a very general – very brief background because you've seen most of these rules several times before. Historically, primary contractors have been liable for the unpaid premiums of their sub-contractors. Senate Bill 2013 expanded that concept to include what it called the Natural Resources Extraction Business. That is to say, we're going to take this concept and we're going to apply it in the coal, timber and natural gas businesses. Primary contractors will be liable for the unpaid premiums of their subs.

We took the then existing Rule 10 and modified it to accommodate this legislative change. That is what's before you here today. This rule has been through several drafts with the stakeholders – everyone from the Coal Association to the United Mine Workers, the Chamber, and the AFL-CIO. I think we're very comfortable with the way it is now.

The changes I would like to highlight and make the Board aware of today are the changes that were suggested yesterday at the public hearing. The comments, I believe, came from Mr. Maroney's office. They're four small comments – small in terms of the least number of words – that I will briefly discuss with you.

On page 2 of Rule 10, paragraph 2.3, you will see some underlined language on the fourth line. It says within ninety days. This issue addresses when an out-of-state company comes into West Virginia and when they are required to get coverage from our Workers' Comp Commission and when their coverage from the other State will apply. This ninety days is provided for in Rule 9 of our rules. Rule 9 covers all types of coverage issues, classification issues – it covers really all of the "employer" issues. I believe the suggestion from the comment was to take that ninety days to thirty. The reason I would disagree with that suggestion is because that ninety days is provided for in Rule 9. Rule 9 takes a global approach to this whole issue, and I think we should reserve the right to address this issue when Rule 9 is before the Board, which I would expect to be in the next few months. So, I'm not suggesting that I disagree with the comment. I'm simply suggesting that this is an issue that if we changed it now, it would be inconsistent with Rule 9, and I just think it's an issue better addressed once the Board is looking at Rule 9 in total. So, I would suggest not adopting that recommendation.

Paragraph 3.2 on the bottom of this page – the fourth line. Mr. Maroney wanted to insert the word "transportation" to make it clear that this rule covered those who also transported natural resources. I think the rule covered them anyway, but to accommodate his request, I inserted the word "transportation" there on the fourth line.

Page 3 – you'll see the first full paragraph, 3.2.b. You'll see a reference there to thirty days. The concept of primary contractors only being liable for the unpaid sub's premiums – that only applies per *Code* if the contractor/sub-contractor contract is longer than thirty days. That's in *Code*. That's why we have thirty days here. If you adopted the public comment suggestion that that thirty days go, I believe, to ten days, that would be in violation of the *Code*. So, I'm not suggesting that I disagree with the concept – I may even agree with the concept – but I don't think you can do it here in this rule. I think that would require a legislative change.

Finally, on page 6 of the document, you will see paragraph 5.6. The essence of this paragraph is as follows. Under the *Code*, a primary contractor can protect itself from being liable for the unpaid premiums of its subs if that primary contractor comes to us before the contract and gets a certificate from us saying the sub's in good standing with us. There's a whole process set forth in the *Code* that enables the primary contractor to insulate itself from this liability. Paragraph 5.6 is in here to adopt those provisions of the *Code*. It was suggested that this come out in the public comment period. I would disagree with that suggestion because, again, I think this is just implementing what's in the *Code* and to be changed, it would have to be changed in the *Code*.

Those are the four comments we received yesterday, according to my notes, on Rule 10. I think it's fair to say that, given the scope of the rule and its complexity, we were pleased to be down to these very few issues.

I would respectfully request from this Board that it entertain a motion to adopt the recommendations we propose be adopted from the public comments and have those amended into the rule. Then I would request a second motion to approve the rule – the final filing with the Secretary of State's office.

Chairman White: Thank you, Mr. Obrokta. Do we have a motion to amend the rule as suggested?

Mr. Merritt: I would like to make that motion – as Mr. Obrokta indicated, actually two motions – one to make the amendments/changes and then to ....

Chairman White: The first motion would be to make the amendments that have been suggested by the Division reflecting public comments. We have a motion. Do we have a second?

Mr. Sullivan: Second. I have a question. Mr. Obrokta, on the ninety days to thirty days request, you said that would be in Rule 9?

Mr. Obrokta: Yes, sir.

Mr. Sullivan: What would be the position of the Commission on bringing it back to thirty days if we did change it in Rule 9?

Mr. Obrokta: Without consulting with Mr. Burton or the rest of the Commission, I would say it is my personal belief that conceptually, it makes sense to reduce the ninety days. My personal belief is it would make sense to sit down and try to lower that figure.

Mr. Sullivan: Back to thirty days or ten days or...?

Mr. Obrokta: I would want to give it further thought before I would commit to a number but, again, conceptually, I agree with the idea.

Mr. Phalen: I just want to follow up on that. I appreciate your response, T.J., however, once we got to Rule 9, we have Rule 10 and Rule 10 has ninety days. Then if we were to change Rule 9 to thirty days, would there not be a conflict there?

Mr. Obrokta: At that point, we could certainly just do an amendment to this section. We could amend that one word. We could come back and do that very easily.

Mr. Phalen: Okay. Thank you.

Chairman White: Good question. Any further discussion? Hearing none, all those in favor, please signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: It is clear that the amendment has passed. The rule before you is the revised Primary Contractor Liability Rule 10. Do I hear a motion?

Mr. Merritt: So moved.

Mr. Sullivan: Second. Mr. Obrokta, you said that even though we pass this rule that we can come back and amend it if we amend Rule 9?

Mr. Obrokta: Yes, sir. We can put language in Rule 9 that says this supercedes the ninety days in this rule. We can easily address that.

Mr. Sullivan: Thank you.

Chairman White: Further discussion? Hearing none, all those in favor of passing the revised rule, signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: It is clear that revised Rule 10, the Primary Contractor Liability Rule, has passed. The next rule on the agenda is Rule 14. Mr. Obrokta.

Mr. Obrokta: Rule 14 is the procedural rule that sets forth how this Board of Managers will operate. This rule was subject to public hearing yesterday. There was one comment received on the rule that I have tried to accommodate. I believe the comment was either from Mr. White or Mr. Maroney's office.

If you will look on page 7 of the document, you will see the second full paragraph, number 10.8. There was an interest expressed yesterday during the public hearing discussion that members of the public be able to come to this Board and request a public hearing on a rule.

After discussions with some of the Board members afterwards, I have tried to come up with language that accommodates that request. Essentially, what it reads is, any member of the public may request a public hearing – may request one – at any point until after the rule has been filed with the Secretary of State's office and then fifteen days have expired. After the expiration of those fifteen days – it's been out there in the public for fifteen days – then that right to request a public hearing would expire.

But, again, during the entire drafting process, during the entire deliberation process when you're considering filing with the Secretary of State's office, and after we file with the Secretary of State's office for the next fifteen days, all that time is open for members of the public to come to you or come to us as a Commission if you're not having a meeting, and request a public hearing. I think that's a reasonable balance. We don't want to unnecessarily delay the process but, again, we want to accommodate the request. That was the only comment made at yesterday's public hearing.

The Commission would request two similar motions that were made for Rule 10.

Mr. Sullivan: Mr. Chairman, I move the amendments be approved.

Mr. Phalen: Second

Chairman White: Discussion? All those in favor, signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: It is clear the amendment has passed. The rule has been amended to reflect the comments made in the public comment period. Do we have a motion to adopt the amended rule?

Mr. Jarrett: So moved.

Mr. Bailey: Second.

Chairman White: We have a motion and a second. Discussion? All those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: We have declared that revised Rule 14 as before this Committee has passed. The next item on the agenda is Rule 32.

Mr. Obrokta: Mr. Chairman, members of the Board, Rule 32 is a critical rule that we see as a great new tool given to us by the Legislature to enforce premium collections. Specifically, it has been the law on the books for quite a while that if an employer goes into default, the next time that employer goes to get a new business license or any other license that's necessary to do business – the next time they go to renew that, that request will be rejected because they're in default with Workers' Comp.

The Legislature greatly strengthened that provision. What the Legislature said in Senate Bill 2013 is, you no longer have to wait until it's renewal time. You can go out now and when they go into default, you can go out and you can revoke a business license or any other type of license that's necessary to do business in the State of West Virginia – a very proactive step. We took Rule 32 and modified it to reflect this legislative change.

Again, this rule's been all through the drafting stages with the stakeholders. It's been through the Sub-Committees. It was the subject of yesterday's public hearing. I believe we received two comments yesterday and I'm trying to adopt them both.

If you will turn to page 2 of the document, you will see paragraph 2.9. If I could just take a step back and explain what this is trying to get at, it may be helpful. Rule 32 says you can go out and revoke business licenses or what-have-you if they go into default. There's a separate concept in the legislation – another new concept – called an Employer Violator System. What that says is, if you're a ten percent or more shareholder in a company that goes into default, you're going to be put on a violator list and, you, as an individual, if you go try to form another company – go around the hill and start another operation – you will be denied. You will be blocked. That Employer Violator System deals with the individual owners of the companies.

The trick is to make sure Rule 32, which, again, involves the revoking of business licenses, must work in tandem with the Employer Violator System so that when you revoke the license, then you get the ownership information on the folks who own that company who are in default, and you put those individuals on the Employer Violator System. So, the next time they go out and try to start a new company, they won't be allowed to do so. So, these two concepts have to work in tandem. We fully agree with that concept.

Steve White with the ACT Foundation wanted to make it clearer in Rule 32 that it has to work with the Employer Violator System. I agree with that. The language I've come up with is in 2.9, the last sentence has been added. It reads as follows: The Commission shall gather individual and other ownership information concerning the employing units in default for examination under the Commission's Employer Violator System.

That's the language I've tried to come up with to make the point that these two endeavors must work in tandem together. I spoke with Mr. White before the meeting – I don't want to put words in his mouth, but I think he thinks we're almost there. I'm not sure he's completely signed on, but that's the best I think we can do to try to accommodate the request.

The other request yesterday at the public hearing made, I believe, by Mr. Maroney's office – if you turn to page 4 of the document, what this paragraph is addressing – paragraph 7.2. Let me take a step back and kind of give you the factual scenario of how this would evolve. An employer goes delinquent – they don't pay their premiums. Then they go into default because they still haven't paid their premiums. Several months have gone by now. So, then they go into default. At that point, we're going to revoke the business license. The rule provides for an administrative review before we pull the license because governments do make mistakes and we don't want to pull someone's business license until we're sure. Mr. Maroney suggested that you need to make them put up a bond at that point before you reconsider to at least secure the debt. We agreed with that and put that in. But I said the Commission "may" require the bond, etc., and he thought "may" should be "shall." So I made it "shall." 7.2. Okay.

That covers the comments that I have from my notes on the hearing yesterday. So, with that, I would ask that the Board adopt the various modifications to Rule 32 that have evolved through the public hearing process. Then, I would ask for a second motion approving Rule 32 for final filing.

Mr. Sullivan: So moved, Mr. Chairman.

Mr. Satterfield: Second.

Chairman White: We have before us a motion to adopt the amendments that have been explained by Mr. Obrokta to Rule 32. Discussion?

John L. Johnson: Yes, I have a question, T. J. In regard to 7.2, changing the "may" to "shall" gives the Division absolutely no leeway going forward. If an employer happens to be in default, it's quite possible that they're defaulting for good reasons – economic reasons – and, consequently, cannot afford at that time to put up assets for reconsideration which means that then you have no choice but to go out of business which may not work in the best interest of Workers' Comp and may not work in the best interest of the State as a whole. So, for that reason, I object to changing that from "may" to "shall."

As a matter of fact, I'm pretty sure if we change that – in the past, we would have been in hot water with a lot of different companies and entities that we are even currently dealing with. So, I would oppose changing that to "shall."

Mr. Obrokta: Mr. Johnson, I share some of your apprehension on this change, but the way I reconciled it in my own mind is that we are so far down the process at this point – they've been in delinquency, they've been in default and they still haven't paid. So, I'm very sensitive to your issue and I think you raise a very good point, but they're so far down the line at this point, I could see the point that we want to be firm with them, and I would ultimately suggest that this Board do that.

The other point I would suggest is, all they have to do – of course, well, they can pay up – they can also just enter into a repayment agreement. That's sufficient, or they can get a cash or surety bond or a bank letter of credit. So, they have several methods available to them that will hopefully safeguard against the issue you're raising.

Chairman White: Any further discussion?

Mr. Phalen: T. J., in regard to the employing unit under 2.9 – and I appreciate you adding the additional language – one question that I have. It says, the Commission shall gather individual or other ownership information – does this go towards if, say we have three owners with an employer or a board of directors. Let's just put it that way. Does this prohibit (a) the CEO or the president of the company or the employer from obtaining another license or whatever? Would his license be revoked or (b) a secretary/treasurer of an employer or that he or she may be able, to use your words, go around the hill and open up another operation? Does that go to that extent?

Mr. Obrokta: It does not go to that extent. But, when we do the Employer Violator System and they work together, we will accomplish the concepts you're describing. But, again, Rule 32 is not designed to do that. It's just a rule limited to the revoking of business licenses. But, again, to put this language in there, I'm trying to make the point that it's got to talk with the Employer Violator System and, working together, they should accomplish what you've outlined.

Mr. Phalen: Okay. Just to make sure I understand it, in conjunction with the Employer Violator System, this change that you've made should take care of that particular problem.

Mr. Obrokta: That's correct.

Chairman White: Any further discussion? The question before us is the adoption of the amendment to Rule 32 which reflects the comments made in the public comment period. We have a motion and a second. All those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: The "Ayes" have it. The motion is passed.

We have an amended Rule 32 before us. Do I have a motion for the adoption of amended Rule 32?

Mr. Phalen: So moved, Mr. Chairman.

Mr. Satterfield: Second.

Chairman White: We have a motion and a second to adopt revised Rule 32. Discussion? Hearing no discussion, we have before us the revised Rule 32. All those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: The "Ayes" have it. I declare the motion is passed. The revised rule has been adopted.

Mr. Obrokta: The next rule is Rule 28. Senate Bill 2013 did several things in an effort to get a hold of and to get under control the various medical expenses being incurred by the Commission. A couple things Senate Bill 2013 did – first of all, it gave the Executive Director power to suspend for up to three years or terminate any medical provider who's abusing the system. The old law used to require, however, that the Executive Director go through a very onerous administrative process before he could get to that point.

The second thing Senate Bill 2013 did was say, he doesn't have to go through that onerous administrative process any more. He can immediately suspend or terminate a medical provider after he's consulted with a medical expert of his own. He can immediately suspend or terminate, and then there will be an administrative process to see whether he was right or not, essentially.

Those rules have been modified and put into Rule 28. The only public comment – there were no comments yesterday on this rule. This rule, again, has gone through the stakeholder process. The only comment I received – and it's well taken. If you'll turn to page 8 of the document – the statute states that the Executive Director can suspend or terminate if the provider is basically engaging in medically-unsupportable treatment. Paragraph 9.6 is a series of definitions of what that means. What we wrote was, "treatment which is controversial, obsolete, investigational or experimental will be subject to strict scrutiny by the Commission." It was suggested that we add the words, "and must be pre-authorized by the Commission." I think it's a good point, although I do think it's taken care of in other rules. But, again, I would propose amending Rule 28 by adding that phrase – "and must be pre-authorized by the Commission." That's the only public comment and change that I'm aware of.

So, I would request a vote to adopt that minor change, and I would request a vote to file the rule with the Secretary of State's office.

Mr. Bailey: I move that we adopt the change.

Mr. Humphreys: Second.

Chairman White: I have a motion that we adopt the amendment and a second. Discussion?

Mr. Humphreys: T. J., at 9.6, it may not be of any consequence, but I guess I'm a little uneasy about the idea that the Commission might pre-authorize controversial or obsolete treatment.

Mr. Obrokta: I would be concerned if we pre-authorized obsolete treatment as well and, if we do that, I hope someone brings it to your attention. I agree that language might not quite – I'm sensitive to your point. I would simply – I guess I would suggest that our Medical Director, Jim Becker, and his staff will be the ones responsible for ensuring that we don't run afoul of the concern you're expressing. I have full faith that they will do that.

As soon as we take out obsolete, which we can do if you'd like, there's going to be a treating physician who's going to say this is not obsolete, so there's going to be a debate as to what's obsolete. That's why we're saying it's subject to strict scrutiny and that we pre-authorize before we ever do it.

Chairman White: Any further discussion? The question before us is passage of the Rule 28, as amended, pursuant to the recommendations of the Division. All of those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: I declare the motion has passed. The rule has been adopted. It has been pointed out to me that the amendment has not been passed. We'll do it again. All those in favor, please signify by saying "Aye." Opposed?

The motion on the amendment to the rule passed unanimously.

Chairman White: We have before us the revised rule. Do I have a motion for its passage?

Mr. Humphreys: I so move.

Mr. Bailey: Second.

Chairman White: We have a motion and a second. Discussion? Hearing none, all those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: I declare the motion has passed. The revised rule has passed – for the second time.

Mr. Obrokta: The next rule on the agenda is the final rule we'll discuss today that you've already seen. This is Rule 1. It's twenty-nine pages long, but we only made a few isolated changes to it.

They are as follows. First and foremost, Senate Bill 2013 states that a claimant can have his benefits suspended if he refuses to seek necessary medical treatment. We put the language into the rule which adopts that. I have not received – I don't recall receiving a single comment from anybody as to the language we put in here. I'm not aware of anyone who objects to how we've set it out. No comments were made on this Rule yesterday at the public hearing.

The second substantive change in Rule 1 is on page 15 of your document. Just to go back over an issue, this is an idea that we presented to the Board awhile back and let me just briefly remind you. Claimants are entitled to mileage reimbursement at 36¢ a mile every time they go to a doctor, chiropractor, etc. We made a proposal, as outlined in the document before you, to eliminate that mileage reimbursement. We would still maintain reimbursing claimants if they were mandated by the Commission to go to a doctor or mandated by an employer to go to the doctor. So, we would still have reimbursement under those circumstances. But the routine daily trips to secure treatment, we were proposing eliminating the mileage reimbursement. We viewed as somewhere north of a $6 million savings and there are three FTEs (full-time employees) that do this work. That was the reason behind the suggestion at the time.

I believe there have been some discussions on maybe a better way to address this issue. Those are my comments and I would leave it to the Board to instruct me on -- if there are any questions or if anyone has a suggested better way to do this.

Mr. Phalen: As I spoke before, I was adamantly opposed to the reduction of the 36¢ per mile when an injured worker had to seek medical attention, understanding full well if the employer or the Commission gives that injured worker direction, then that 36¢ per mile would still be paid. That's my understanding, right, T. J.?

Mr. Obrokta: That's correct. As proposed.

Mr. Phalen: And the elimination of the mileage is if the injured worker has a doctor's appointment to be treated for the injury that he has sustained and he goes on his own where the doctor sets up that appointment. That's correct, right?

Mr. Obrokta: Yes, sir.

Mr. Phalen: And, again, I stand today still in opposition of the elimination of that 36¢ per mile, understanding full well that has been the practice of the Division for a number of years and understanding full well as to what the Division has said in regard to the estimated savings that may be derived from the elimination of that 36¢ per mile. Again, that is estimated savings. I have not seen anything concrete as to what that savings would constitute, other than what you folks have told us in the past, and that's somewhere around $5 million, I believe.

Again, I'm still adamantly opposed to the reduction or the elimination of the 36¢ per mile. These people did not ask to be injured. They do not ask the doctor to set up their appointment, in most situations.

Don't anybody misunderstand. I recognize that there's abuse in anything, and some people can take full advantage of anything. But, I can point out several situations where the people do have to go to the doctors on a regular basis and they're not sent by the employer or they're not sent by the Division.

You know, again, these folks did not injure themselves intentionally or whatever the case may be. When they are injured, naturally their monies are eliminated as to their wages and things as to what they're actually used to making. It's reduced. Thank God we do have workers' compensation to provide for on-the-job injuries. However, that's part of the injury, and I can't for the life of me understand, you know, if someone's injured and they have to go to the attending physician for medical treatment as to why they're going to be penalized further out of their pocket to pay for their mileage expense, their gas expense, and things when they've already sustained loss in regard to the injury itself.

So, again, I would still stand opposed to the reduction of the 36¢ per mile on the injured worker. However, I do have an open mind in regard as to how this is done on another level. Through Medicare, I believe it is, that rate is around 13¢ or 15¢ per mile, and I would have an open mind in regard to trying to reach some type of settlement in regard to this particular situation. And even at 15¢ per mile, that's still a 21¢ per mile reduction on an injured worker. However, it's still 15¢ better than zero. So, again, I'm opposed to the elimination of mileage on injured workers.

Mr. Jarrett: There has been, as I understand it, some in-depth discussion between the Commission as well as all the stakeholders regarding this issue. It's been a very divisive issue. In an effort for conciliation and a compromise, I'd like to propose the following as an amendment for this section, 15.1. We would strike it in its entirety and insert the following:

> Claimants are entitled to reasonable travel, meals and lodging expenses actually incurred in connection with medical examinations or treatment. In making a determination of the reasonableness of such expenses, the Commission shall utilize the travel regulations for State employees as a guide, unless specific provisions to the contrary are otherwise contained herein. Claimants may be reimbursed for mileage in connection with medical examination or treatment at a rate of 15¢ per mile.

> This rate shall not apply to mileage reimbursement requests involving treatment provided when the Commission requires the claimant to undergo the medical examination and has selected the physician, or when an employer is required to reimburse reasonable travel and other expenses, as provided for in the *West Virginia Code* §23-4-a. The rate provided for in the travel regulations for State employees shall apply to these latter reimbursement requests.

I offer this as an amendment up for consideration before this Board.

Mr. Sullivan: I would second that amendment, Mr. Chairman.

Chairman White: We have an amendment that's been proposed to Rule 1 and we have a second. Do we have discussion?

Mr. Phalen: Yes, Mr. Chairman. For clarification, Chris, it only applies – the 15¢ only applies to the claimant going to a doctor other than him being directed by the Commission or by the employer, is that correct?

Mr. Jarrett: That's correct.

Mr. Phalen: And the regular amount that's provided by the State *Code*, if the Commission or the employer directs a claimant to a doctor, would still apply in that situation?

Mr. Jarrett: That kick in. That's correct.

Chairman White: Thank you, Mr. Jarrett and Mr. Phalen. Further discussion?

Mr. Bailey: I have a concern or a thought that that 15¢ should be across-the-board. It should be in all the categories whether the employer requests the exam or whether it's an IME. I know that's not what the motion says here at this point in time. I'm even concerned that paying at all – well, I'm not concerned with us paying 15¢ or whatever. I have supported that to some degree. But, I understand that Mr. Obrokta has said here that it takes three full-time employees just to process those invoices. I don't know what we can do about that. I don't know how many invoices that entails – many thousands, I assume, if it takes three full-time employees two hundred and twenty days a year or however many days they work to process those. I, at this point in time, have a problem with the motion if it does not cover all of those categories or all areas.

Chairman White: Mr. Obrokta, in the public hearing process, were there any comments directed to including these other categories into the reduction in the mileage reimbursement?

Mr. Obrokta: Mr. Chairman, normally, we receive very little, if any, written comment on this issue. I got one letter from one attorney suggesting it was unfair. But, I do believe that through the give-and-take of the public discourse, there has been discussion that the concept offered by Mr. Bailey was one alternative people were discussing, as was, of course, the amendment described by Mr. Jarrett. Both have been ideas I have heard floated by one side or the other.

Mr. Jarrett: It's subject to check, but I think, as an employer, if I send my employee to use his personal transportation to go to a doctor at my request, I think I'm required by Federal law to subject him to the Federal levels of transportation. Someone can check that for me. I mean, if I have an employee and I tell him to use his car to go over and pick up a box of paper clips, I've got to pay him mileage, by Federal law. So, I don't know that we can even do that, Gene. That's subject to check.

Mr. Bailey: I mean all I'm asking is that you pay everybody 15¢ a mile. But, you're saying that according to Federal ...

Mr. Jarrett: I would ask for clarification on that if anybody knows that particular piece of the law but, to my knowledge, we pay whatever the guidelines are. An employer is told, here's what you've got to pay if an employee uses his personal car on company business. And, if I direct an employee to go for a second opinion or to a doctor, I typically reimburse him at that 36¢ – unless someone tells me different. That's my understanding.

So, you couldn't change that piece of it. The only piece you could be talking about, in my judgment, would be the part – maybe – and I don't know the law on that one either – when the Commission directs someone to go.

Mr. Humphreys: T. J., awhile back, you gave us an example of a claimant employed by a chiropractor who was charging mileage to go to work. Would this amendment mean that this claimant would be able to charge 15¢ instead of 36¢?

Mr. Obrokta: Yes. Obviously, we're not going to let that person charge anything because they're abusing the system and we'll take the appropriate steps. But, conceptionally, yes.

Mr. Merritt: I personally oppose paying claimants going for the routine doctor visits. I think if you look around at the other surrounding States, they do not pay claimants going for routine office visits. I could live with a change of maybe for these routine visits if there's a mileage of, say, anything over twenty-five miles, then we could consider reimbursing the claimant. That's my suggestion.

Mr. Sullivan: I think we're losing sight of the fact that these are injured workers that we're talking about. These are employees of the employer and it wasn't – as Mr. Phalen has stated, it wasn't their doing that they got injured and they have to go to the doctor, and I don't see why that we'd want to penalize them further. I would support the amendment as it was suggested by Mr. Jarrett.

Mr. McCabe: I would just suggest that perhaps the Board does support the amendment as presented, given the different perspectives that are really fairly broad as I am listening to this. I would suggest that we take this amendment and the Board accept it and pass it and ask that Mr. Obrokta perhaps, at some point in the future, take another look at this. But at least we are taking a step today that we can implement something and create some savings. My fear is that if we don't do that, we may create some unnecessary divisiveness. I sense that there perhaps is not a clear, broad-based consensus on this as we sit here. Maybe what we do is do the best we can today, pass the amendment as presented by Mr. Jarrett and, as we work through some of these other rules, ask Mr. Obrokta to maybe convene a working group to take another look at it further down the path a bit.

Chairman White: Thank you, Mr. McCabe. Are there further discussions? Hearing none, all those in favor of passing the amendment as proposed, signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: It is clear that the motion has passed. The rule before the Committee, as revised by Mr. Jarrett's motion.... Now, as a point of clarification, T. J., were there other amendments that had to be addressed or that you have suggested?

Mr. Obrokta: No, sir.

Chairman White: Is there a motion to adopt the Rule that has been amended, pursuant to the amendment just passed? Do we have a motion?

Mr. Jarrett: So moved.

Mr. Sullivan: Second.

Chairman White: We have a motion and a second to adopt the revised Rule 1. Discussion? Hearing none, all those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: I declare the motion has passed. Rule 1, as revised, has been adopted by this Committee.

The next item on the agenda is Old Business.

Mr. Obrokta: There should be another item on the agenda regarding rules.

Chairman White: Oh, pardon me. Request to file rules. It's your floor.

Mr. Obrokta: We are now bringing before you three new rules. I am going to request that at least two of those be filed with the Secretary of State's office for the initial public comment period. The same work has gone into these rules that went into the other rules. These rules have gone through the stakeholder process. We've tried to adopt as many suggestions as possible. I am not here to tell you that these rules are perfect yet, but I do think they are far enough along that we can file them. I do think each of these three rules will be very important, and my suggestion would be that each have their own public hearing because they are very substantive rules. I agree that the continued dialogue with all the stakeholders is still necessary on these rules, but I think we're far enough along that they can be filed with the Secretary of State's office.

The first rule in your packet should be Rule 15. This is the Vocational and Rehabilitation Provider Rule. Senate Bill 2013 did a few things on rehab. First of all, it increased from $10,000 to $20,000 – double – the amount we'll pay for rehab plans.

This rule adopts that doubling. Senate Bill 2013 allowed employers to contract with preferred providers for those rehab services. This rule accomplishes that. Finally, Senate Bill 2013 put a two-year limit on rehab indemnity benefits. This rule adopts that as well.

The evolution of this rule is as follows. I did a first draft, as usual, sent it out to everybody and got a whole host of comments. It was important to me and I tried to accommodate as many comments as possible and, then, unlike the other rules, I sent it back out for a second round of comments. I then met with the head of the Rehab Association. I will represent to the Board that I think -- not all -- but the overwhelming majority of issues have now been worked out with them. I would pledge also to continue to work with them if there are any outstanding issues.

A couple of other changes in the rule or a couple of things the rule accomplishes -- there was a $10,000, now a $20,000 cap on rehab plans. The rule never said, well, what goes against that $20,000? It was very hard to police. So I went to the State of Washington, I believe, and they have a rule on rehab. I got a lot of ideas from them. So, the rule sets forth actually what should be charged against the $20,000 so that limit can have some meaning. That's in the rule.

This is a major rewrite -- there's no doubt about it -- on Rule 15. But, again, we have involved the stakeholders and two drafts have gone out to them and a sit-down meeting. I'm not here to tell you that they agree with everything, but I am here to say that we have narrowed the gap so that I think the filing with the Secretary of State's office, and then a public hearing on this rule, is an appropriate step at this time.

So, with that, I would request permission to file this with the Secretary of State's Office.

Mr. Jarrett: So moved.

Mr. Phalen: Second.

Chairman White: We have a motion and a second. Discussion? All those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: The motion has passed. It will be filed with the Secretary of State's office.

Mr. Obrokta: We will also work with the Chair and the other members of the Board to set up a public hearing on this rule.

Chairman White: A public hearing is hereby requested on this rule.

Mr. Phalen: For clarification. T. J., I thought you stated in the beginning that you would suggest a public hearing on all three?

Mr. Obrokta: That's correct.

The second rule before you, I e-mailed this to everyone on the Board or mailed it to them a couple of weeks ago. Excuse me. Permit me one second.

Chairman White: Just for clarification, Mr. Obrokta, it's my understanding that we will be – when we set the rules for public hearing, that will – if, in fact, a public hearing is beyond the thirty-day time period, the public comment period will be expanded to include the public hearing.

Mr. Obrokta: As a matter of fact, we'll set a forty-five day public comment period just to accommodate that issue. If you need to, we can extend it.

Senate Bill 2013 required us to come up what I generically will call a Medical Management of Claims Rule. This is a very comprehensive rule. If I could just read to you out of Senate Bill 2013 – just very briefly. We have to bring to you what the statute calls a Medical Management of Claims Rule and Awards of Disabilities Rule. This requires three things. Three things must be in this rule. First, we have to establish standardized guidelines and parameters for the appropriate medical treatment of claimants. Second, we have to establish expected periods of time to reach maximum medical improvement. Third, under the statute, we have to come up with ranges of permanent partial disability awards for common injuries and diseases. The statute gives us the flexibility to come up with our own to meet any of these three, or we can reference in our rule a nationally-standardized set of guidelines or what-have-you. So, that's the statutory background for why I'm bringing this rule to you today.

What we've done is, you have a 102 page rule in front of you. The first three pages, which are not included in the 102, are basically a table of contents which breaks down what this rule is trying to do. You'll see roman numeral I, then there's an introduction – those are introductory provisions. Roman numeral II addresses providers – who can be providers of workers' comp. Roman numeral III gets into provision of services – the role of the treating physician – how do they bill us, things of this nature. Roman numeral IV are those specific guidelines I just mentioned to you regarding treatment – treatment guidelines. Roman numeral V – we have some special rules for drugs and medications. Roman numeral VI gets into the expected period of time off. When you are injured, what do we expect? How long do we expect you to be off? The Board members may know awhile back, the Commission adopted the Pressley-Reed guidelines on this issue and this provision of this rule references Pressley-Reed. That's how we handled that. Roman numeral VII gives the ranges for permanent partial disability awards for common injuries and diseases.

The evolution of this rule is as follows. There was – some of this had been in rules, but very little of it. The Commission had treatment guidelines on the Internet. We had other documents that governed medical care scattered through different rules. It was not well organized. What we did – we took this chance that the Legislature gave us to bring everything in that we could think of that has to do with how we manage medical claims – we spend $220-some million a year on medical claims – and brought everything into one rule – let's sit down and work it out and see how this should all operate.

Jim Becker, our Director of the Office of Medical Services – who's from Marshall, I will mention – he's worked with the WVU lawyers so we have diversity there – worked closely with them. They've had a lot of input. This rule, obviously, the State Medical, the State Hospital – all of those folks who are on our stakeholders list, they got the first draft that you received a couple weeks ago. We've gotten very limited comments on the rule. I think people are still trying to digest it. I do think, however, we are at a point, and we are required by Senate Bill 2013, to get this filed with the Secretary of State's office.

I recognize this is a very voluminous document – that no one can sit down and go through all this at one sitting. This is really the reason I preface my remarks on these rules. I think we need at least a forty-five day public comment period on this. We need a hearing. We need continued involvement with the stakeholders.

I'm not here to tell you this is all agreed to. There will be parts in here that are controversial, I'm sure. But, nevertheless, we are trying to satisfy our legislative mandate to bring this rule to you, and it does need to be filed with the Secretary of State's office before December 31st. So, I present it to you, as a second step in a process I recognize will be a longer process.

I'll be happy to answer any specific questions. Dr. Becker is here to talk about it as well.

But I would respectfully request that we be given permission to file this with the Secretary of State's office and initiate the public comment period and, again, get the stakeholders involved in a public hearing and also as many sit-arounds as we need to, and hammer out any differences. So, with that, I'll request that we file this with the Secretary of State's office.

Chairman White: Thank you, Mr. Obrokta. We have a request to file the rule with the Secretary of State's office. Do I have a motion to that effect?

Mr. Bailey: So moved.

Mr. Jarrett: Second.

Chairman White: All those in favor, please signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: The rule will be filed with the Secretary of State's office.

Mr. Obrokta: The last rule here before you today – under Senate Bill 2013, we are required to come up with .... Let me back up. This rule deals with permanent total disability awards. Under Senate Bill 2013, we have to come up – by the end of this year – we being the Commission – have to present to you, the Board, by the end of this year the contents of a new permanent total disability application. We also have to come up with a plan – under the *Code*, we're required to go back and anyone who was awarded a permanent total disability since 1993, we are required to take another look at those recipients and see if they do still meet the definition of permanently and totally disabled.

The last document in your folder is our attempt to do this. It is our plan to again address a new application and a plan to evaluate all claimants who have received PTDs since 1993. As we put this together, we realized there may be some ancillary issues – we realized this over the last few days – there may be some ancillary issues that could be impacted by the requirements of Senate Bill 2013 – issues such as chargeability and things of this nature.

I would request that you accept this rule as our plan, but I would also request that we hold off until the January meeting before filing with the Secretary of State's office so we can have just one more month to think through these ancillary issues that may be impacted by this that may or may not have been contemplated by the legislation. Again, the plan certainly meets everything that's required by the legislation, but I think we need to do it right and make sure we address these by-products or these other ancillary issues. So, I would request that you accept this as our plan, but allow us to possibly present an amended plan at the January meeting.

Chairman White: Then you are not asking us to file the rule at this time?

Mr. Obrokta: Not at this point. I would wait to request that in January.

Chairman White: Then, there is no action requested of the Committee?

Mr. Obrokta: I am simply asking you – we are mandated by *Code* to give you this – just to give it to you – by the end of the year. We're doing that. We're clearly satisfying that duty. But, I'm not going to ask you to file it with the Secretary of State's office until the January meeting because there are some other issues that have come up in our deliberative process.

Chairman White: So, you're not asking us to take any action at this time?

Mr. Obrokta: No, sir. Just read it and comment, if you would.

Mr. Phalen: A point of clarification. Are you asking us to accept this plan or just accept that you have given it to us prior to the end of the year?

Mr. Obrokta: Exactly that – the latter. With that, Mr. Chairman, that's all I have.

Chairman White: Thank you very much.

10. Old Business

Chairman White: Do we have old business?

11. New Business

Chairman White: New business?