

11439221

MAR
Workmen's
Comp.

GOVERNOR'S STUDY COMMISSION

ON WORKMEN'S COMPENSATION COVERAGE

MD

Y 3. W062:2/a/979

INTERIM REPORT

November 1, 1979



This Study Commission has met nineteen times since November, 1978 to discuss, formulate and vote upon recommended changes in the Workmen's Compensation Law, dealing with occupational diseases. The meetings have been open to the public and interested persons have been invited by news releases, advertisements in the Daily Record and notices in the Maryland Register to present their views and suggestions.

The topic of workmen's compensation coverage for occupational diseases is one of nationwide concern. Each section of the law concerning occupational diseases has had to be studied and evaluated, not only by itself, but also in relation to the total body of law concerning this subject. This Interim Report reflects the recommendations of this Study Commission to date as to changes in the existing sections of Article 101 of the Maryland Annotated Code, as amended, which deal with occupational disease. There still remain topics to be discussed and voted upon by members of the Study Commission before the final report and recommendations can be submitted. It is the intent of the Commission to submit its final report and recommendations by December 1, 1979, however, this Interim Report is being submitted to reflect the recommendations made by this Commission to date.

The recommendations in this Interim Report have been reviewed by H. George Meredith, Jr., Assistant Attorney General. Mr. Meredith reports that he finds no questions as to the constitutionality of these recommendations concerning changes in the law dealing with occupational disease coverage. An evaluation of the final bill forms as to the constitutionality of the recommendations will be presented upon their completion.

INTERIM REPORT OF THE GOVERNOR'S STUDY COMMISSION
ON WORKMEN'S COMPENSATION COVERAGE

CONTENTS

Introduction

- Creation of the Study Commission
- Membership of the Study Commission
- Meetings of the Study Commission

The Medical Board for Occupational Diseases of the Workmen's
Compensation Commission

Hearing Procedures Before the Medical Board

Review of Findings of the Medical Board by the Workmen's
Compensation Commission

Presumptions

Rehabilitation and Re-employment of Workers Afflicted with
Occupational Diseases

- The Subsequent Injury Fund
- Waivers by Workers Affected by Silicosis or Asbestosis

Summary of Recommendations as of October 31, 1979

INTRODUCTION

CREATION OF GOVERNOR'S STUDY COMMISSION ON WORKMEN'S COMPENSATION COVERAGE

Maryland has been relatively progressive in the area of compensation for disability due to occupational diseases, yet the topic remains one of controversy. In 1936, a Study Commission was appointed to study the problem of industrial diseases. In 1939, the Legislature adopted the occupational disease sections of the Act which provided coverage for specifically named diseases. In 1951, the Act was amended to delete the specifically named diseases and to extend coverage to all occupational diseases resulting from workers' employment. Recognizing that new technological developments have presented increased health hazards in the workplace, the General Assembly requested that a study commission be appointed in 1978 to consider the topic.

Acting Governor, Blair Lee, III, created the Study Commission on Workmen's Compensation Coverage in November, 1978 at the request of the General Assembly (Resolution No. 5, Acts of 1978). The purpose of the Commission as set out in the Senate Joint Resolution is, "to consider the problem of industrial health and the adequacy of Workmen's Compensation Coverage and to report to the Governor with recommendations as to areas where legislation may be necessary." (Appendix A)

MEMBERSHIP OF THE STUDY COMMISSION

The Commission consists of thirteen appointed voting members: three from industry, three representatives of labor, two physicians, one representative of a mutual insurance company, one representative of self-insured employers, one representative of the stock insurance companies and two members of the

Governor's Study Commission on Workmen's Compensation. In addition, the Commissioner of Labor and Industry, the Chairman of the Workmen's Compensation Commission and the Assistant Secretary of the Department of Health and Mental Hygiene are ex officio members. Appended to this report are the names and addresses of the members of this Study Commission. (Appendix B)

MEETINGS OF THE STUDY COMMISSION

An organizational meeting was held on November 29, 1978 with Thomas E. Cinnamond, Chairman, presiding. It was agreed that Maurice J. Pressman, Esquire, should serve as Vice Chairman of the Commission. All present agreed that the scope of this study should be limited to the adequacy of the occupational disease sections of Article 101 of the Maryland Annotated Code, as amended. There was unanimous agreement that the occupational disease provisions in Maryland's Workmen's Compensation Law need review and revision. It was decided that the goal of this study should be to propose improvements in the compensation system for occupational diseases in order that those workers who are disabled by diseases arising out of and in the course of their employment should be fairly and efficiently compensated.

Eighteen subsequent meetings have been held to date and members of the public have been invited to address the question of recommended changes in the law. Among those speaking before the Study Commission have been:

Dr. James Frenkil, Chairman
Medical Board for Occupational Diseases
Workmen's Compensation Commission

Commissioner Clement R. Mercaldo
Workmen's Compensation Commission
Chairman of the on-going Governor's Study
Commission on Workmen's Compensation Coverage

Sheldon Press, Chief Solicitor
Administrative Trial Section, Baltimore City

Walter Morrissey, President
Self-Insurer's Association

Barry Castleman, Environmental Consultant

The following interest groups have presented written recommendations for the Study Commission's consideration: labor unions (AFL-CIO, UAW, USA); The Alliance of American Insurers; The American Insurance Association; The Maryland Self-Insurers and Employers Compensation Association, Maurice J. Pressman, Esquire; and, Dr. Grace Ziem. Reports by the Interdepartmental Worker's Compensation Task Force of the Sub-committee on Labor of the Committee on Labor and Public Welfare of the U. S. Senate and the Committee on Education and Labor of the U. S. House of Representatives, The National Commission on State Workmen's Compensation Laws, the Department of Budget and Fiscal Planning for the State of Maryland, Mayor Schaefer's Committee on Environmental Matters Pertaining to Cancer, Department of Finance of Baltimore City, Central Maryland Health Systems Agency, Inc., and the United States Department of Labor have been considered during the course of this study. The recommendations as to changes in the law which follow are based upon the discussion, consideration and voting of the members of the Study Commission during the course of meetings on these topics to date.

THE MEDICAL BOARD FOR OCCUPATIONAL DISEASES OF THE WORKMEN'S
COMPENSATION COMMISSION

The Medical Board for Occupational Diseases was established in this state by Chapter 465, Acts of 1939. The function of this Board is to hear and make findings of fact on all controverted medical issues in claims for compensation and disability or death arising from occupational diseases. The decisions of the Board, as provided in the present law, are subject to review by the Workmen's Compensation Commission.

This Study Commission recommends that the Medical Board be retained. Some members were opposed to the retention of the Board and they argued that occupational disease cases could be effectively decided on the basis of medical evidence and testimony without being heard by a board of physicians. The final decision of the majority of this Study Commission is that occupational disease is an area of specialty which involves complex medical questions and is constantly changing. For this reason, a board of experts in the field should hear and decide these cases. The new technologies and substances which are being introduced into industry make it virtually impossible for a lay person to keep abreast of the rapidly changing developments in the area of occupational disease.

There has been an increase in the number of occupational disease cases requiring hearings before the Medical Board, and it appears likely that it will continue to increase. The Study Commission recommends that the Medical Board be increased from its present three members to five members to properly protect the rights of afflicted workers and to facilitate the resolution of their claims for compensation. The Medical Board should consist of licensed physicians in good professional standing, all of whom shall have had at least five years' practice and experience in their specialties. The composition of the Medical Board should be as follows: two specialists in the diagnosis, treatment and care of industrial diseases; one specialist in roentgenology; one general internist; and, one internist with a sub-specialty, training and experience in pulmonary diseases.

The Study Commission suggests that recommendations to the Governor for members of the Medical Board should be submitted as presently provided in Section 27(a). Each submitting agency, however, should submit at least five names for the Governor's consideration. It is also suggested that the appointment

of the Chairman of the Medical Board remain as presently provided in Article 27(a).

The term of appointment of the members of the Medical Board should be for five years and should be staggered so that one term expires each year. Based upon the terms of the present members, terms of the two proposed additional members should expire in 1982 and 1984 respectively. It is the conclusion of the Study Commission that the fixing of salaries should remain in the budget procedure as presently provided in Section 27(b) rather than in the legislative process.

It is strongly urged that the Medical Board hold more frequent hearings in order to expedite the handling of occupational disease cases. With its present composition of three members, the Board ordinarily hears cases only one afternoon per week. Two additional members of the Board should enable claims to be heard and decided within a reasonable time span.

The Study Commission recommends that the provision in Section 27(a) which enables one doctor to hear a case, but requires that two doctors decide each case, remain as written. In the opinion of a majority of the Commission, it is suggested that two doctors decide each case, in order to provide a balancing effect.

There should be a provision in the law to clearly enable the Medical Board to refer cases to an outside specialist when deemed necessary by the Board. There is such a provision for the referral to outside specialists by the Workmen's Compensation Commission, (Section 42 and Rule 12 of the Rules of Procedure before the Workmen's Compensation Commission), but this does not specifically include the Medical Board. The Commission is also considering whether or not Rules 12 and 13 of the Rules of Procedure of the Workmen's Compensation Commission should be amended to allow the right of controversion by either side of the medical report of an outside specialist as is presently allowed accidental injury cases.

HEARING PROCEDURES BEFORE THE MEDICAL BOARD

It has been acknowledged that there are often delays in scheduling and hearing cases by the Medical Board. The increased number of members on the Board should help to facilitate more efficient processing of cases. Frequent continuances are often the cause of delayed hearings and decisions by the Medical Board. This Study Commission recommends that there be a provision in the law to dispose of stale cases, perhaps by placing a time limitation on those cases which are awaiting to be reset at the request of counsel. A request for information letter, similar to the one used in Subsequent Injury Fund cases, should be sent to all parties and their attorneys before a hearing is scheduled. This would help to ensure that all medical evidence and witnesses are prepared before a hearing is set and would also indicate the approximate length of time to be scheduled for each case. (Appendix C)

Another suggestion to reduce the backlog of cases and the waiting period for cases to be heard would be modification of Rule 15A.¹ Although the Study Commission is concerned with preserving the rights of claimants, a restriction of the time limitation for those claimants who fail to appear at a scheduled hearing would provide a quicker resolution of cases for those claimants who do appear for a hearing.

¹ Rule No. 15A - When a claim has been scheduled for a hearing and notices have been served upon the claimant by mailing in due course a copy to his last known post office address two successive times, and the claimant has failed to appear, the claim shall be held in abeyance by the Commission for one year from the date of the last scheduled hearing.

The above recommendations dealing with scheduling and hearing procedures have been referred to the on-going Governor's Study Commission on Workmen's Compensation for their consideration.

REVIEW OF FINDINGS OF THE MEDICAL BOARD BY THE WORKMEN'S COMPENSATION COMMISSION

After a case has been heard by the Medical Board, the Board files the record of the proceedings and its report and findings upon all medical questions with the Workmen's Compensation Commission. If either party feels aggrieved by the decision of the Medical Board, it can request that the Workmen's Compensation Commission review the case. The present law permits such a request for review to be filed within 30 days of the filing of the Medical Board's findings and report. The Study Commission recommends that the time period in which to file a petition for review under Section 29 by the Workmen's Compensation Commission of the findings of the Medical Board be reduced to ten days. The parties involved might argue that this is not sufficient time in which to have the findings of the Board reviewed by their medical experts. It was agreed, however, that a party should know within ten days if it wants to contest the findings of the Medical Board. This Commission is of the opinion that ten days is an adequate period in which to file a petition for review.

Another recommendation to facilitate review of decisions and findings of the Medical Board is to provide that the court reporter assigned to transcribe the record of proceedings before the Medical Board be paid by the State for transcribing the record. This would provide for a more prompt transmittal of the record to the Workmen's Compensation Commission for review.

PRESUMPTIONS

Section 24(a) dealing with negative presumptions as to the cause of asbestosis and silicosis, should be eliminated from the law. Established medical authority has concluded that the on-set and resulting disability from these diseases is insidious. The Study Commission is of the opinion that the present provisions in Section 24(a) are inconsistent with medical knowledge about these diseases and are inequitable to persons who are disabled by silicosis and asbestosis due to their occupations. It was also agreed that these negative presumptions are unnecessary because cases involving these diseases can be effectively determined by the Medical Board based upon the medical evidence and testimony presented at its hearings.

The elimination of the negative presumptions in the present law leads to the question of whether or not it is necessary to add any positive presumptions. A minority of the Study Commission has expressed the view that the addition of a positive presumption is necessary in order that the causal relationship between certain diseases and occupations be established. The majority of the Study Commission, however, is of the opinion that decisions on all occupational disease cases should be based upon the medical and other evidence presented to the Medical Board.

Based upon this philosophy as stressed by the majority of the Study Commission, it is recommended that Section 64A be eliminated from the law. This section provides a positive presumption that heart and lung diseases and hypertension among policemen and firefighters are causally related to occupations. A minority contends that this provision should be retained due to the nature of the work and the hazard to which policemen and firefighters are

exposed. The majority stresses that the Medical Board must necessarily consider the causal relationship of these occupations to heart and lung diseases and hypertension, and therefore, a positive presumption in the law is superfluous.

Recognizing that the recommendations as to changes in the law are subject to action by the Legislature, this Study Commission recommends that an alternate provision be added in the event that Section 64A is not eliminated. If 64A remains in the law, the off-set provisions of Section 33 should apply to those persons covered under Section 64A. It is recognized that a minority of the Commission is in opposition to this recommendation. The recommendation, however, is based upon the premise that policemen and firemen should be treated no differently than other workers to whom Section 33 off-set provisions apply.

REHABILITATION AND RE-EMPLOYMENT OF WORKERS AFFLICTED WITH OCCUPATIONAL DISEASES

There is a pressing need for effective rehabilitation for workers who are afflicted with occupational diseases as is presently provided for in Section 36(9) for employees who are disabled by accidental injuries. The Study Commission recognizes that employers are sometimes hesitant to hire an employee who has suffered either an accidental injury or an occupational disease. This situation results in partially disabled persons who wish to return to the work force being denied the opportunity to become self-supporting and places a burden on the workmen's compensation system. One suggestion to help meet this problem is to give the Medical Board the express authority to recommend in its findings of fact to the Workmen's Compensation Commission that an individual be referred for vocational rehabilitation.

Section 66, concerning the Subsequent Injury Fund, should be revised to specifically include occupational disease cases. This would also encourage

re-employment of those afflicted with occupational diseases.

Section 25, dealing with waivers of compensation by employees affected by silicosis or asbestosis, should be eliminated from the law. Permitting such an affected employee to waive his right to compensation for an aggravation of his condition with \$2,000 maximum in the event of total disablement or death as a result of the diseases, was probably intended to encourage employers to hire or retain employees afflicted with these occupational diseases. There is strong feeling among the members of the Study Commission that these waivers may have an unconscionable effect today. A waiver may encourage an employee to continue working in a harmful situation which could result in further damage to his health and ultimately lead to total disability or death. With the definite inclusion of occupational diseases in Section 66, as recommended above, employers will still be encouraged to provide employment for partially disabled workers.

The waiver provisions in Section 25 do not encourage employers to remove hazardous substances from the workplace. Legislation must encourage safer workplaces and also encourage partially disabled employees to be gainfully employed. More extensive and improved use of training and rehabilitation can achieve these goals better than the existing waiver provisions.

APPENDIX A

8lr2186

SENATE JOINT RESOLUTION No. 32

By: Senator Lapidés	24
Introduced and read first time: February 3, 1978	26
Assigned to: Economic Affairs	27
	28
Committee report: Favorable with amendments	29
Senate action: Adopted	30
Read second time: March 20, 1978	31
	32

RESOLUTION NO. 5 35

SENATE JOINT RESOLUTION 38

A Senate Joint Resolution concerning 42

Industrial Health 45

FOR the purpose of requesting the Governor to appoint a study commission to consider the problem of industrial health and the adequacy of Workmen's Compensation coverage, and to report to the Governor's Study Commission on Workmen's Compensation Governor with recommendations as to areas where legislation may be necessary. 49
50
51
52

The quality of industrial health is a prime issue at all levels of government. There is great concern as to the adequacy of proper protection for workers from adverse health exposures. 54
55
56

A further concomitant of this problem is the adequacy of present legislation in our Workmen's Compensation Laws to properly take care of those workers whose health and earning power are affected by everchanging and new technologies whose impact on workers has not been fully explored; now, therefore, be it 58
59
60
61

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Governor is requested to appoint a study commission to consider the problem of industrial health and the adequacy of present Workmen's Compensation coverage; and be it further 63
64
65

RESOLVED, That the study commission consist of ~~11~~ 15 members, three from industry, three from labor, and ~~three from the public at large~~ two who are physicians experienced in the field of industrial health, one from the mutual insurance companies, one from the stock insurance companies, one from the self insured employers and two from the Governor's Study Commission on Workmen's Compensation, all 67
68
69
70
71

EXPLANATION:

Underlining indicates amendments to the resolution.
~~Strike out~~ indicates matter stricken by amendment.

appointed by the Governor, with the Chairman of the Workmen's Compensation Commission and the Commissioner of Labor and Industry as nonvoting ex officio members; and be it further

RESOLVED, That the study commission be directed to report to the ~~Governor's Study Commission on Workmen's Compensation~~ Governor by December 1, 1978 with recommendations as to areas where legislation may be necessary; and be it further

RESOLVED, That copies of this Resolution be sent to Acting Governor Blair Lee III, the Chairman of the Workmen's Compensation Commission, the Commissioner of Labor and Industry, and the Chairman of the Governor's Study Commission on Workmen's Compensation.

Approved:

Acting Governor.

President of the Senate.

Speaker of the House of Delegates.

STUDY COMMISSION ON WORKMEN'S COMPENSATION COVERAGE

Thomas E. Cirnamond, Esquire 10 Light Street Baltimore, Maryland 21202	Governor's Study Commission on Workmen's Compensation
Maurice J. Pressman, Esquire 605 Court Square Building Baltimore, Maryland 21202	Governor's Study Commission on Workmen's Compensation
Errol Hay, Environmental Health Engineer Bethlehem Steel Corporation Personnel Services Building North Point Road and 7th Street Baltimore, Maryland 21219	Industry
Douglas MacNab Manager, Industrial Relations Koppers Company Inc. 3700 Koppers Street Baltimore, Maryland 21203	Industry
Patricia A. Harness Manager, Plant Safety and Workmens' Compensation Kelly Springfield Tire Company P. O. Box 300 Cumberland, Maryland 21502	Industry
Dominic N. Fornaro President, Maryland, D. C. AFL-CIO 305 W. Monument Street Baltimore, Maryland 21201	Labor
Alvin Lloyd United Automobile Workers Region 8 7124 Ambassador Road Baltimore, Maryland 21207	Labor
David Wilson, President Local 2609, USA 550 Dundalk Avenue Baltimore, Maryland 21224	Labor
William A. Pillsbury, M. D. Medical and Chirurgical Faculty 1211 Cathedral Street Baltimore, Maryland 21201	Physician
Grace Ziem, M. D. School of Health Services The Johns Hopkins University 624 N. Broadway Baltimore, Maryland 21205	Physician

Thomas O'Day Alliance of American Insurers 1776 F Street, N. W. Washington, D. C. 20006	Mutual Insurance Company
W. Bradley Wallace Assistant Vice President USF&G Company Casualty Department P.O. Box 1138 Baltimore, Maryland 21203	Stock Insurance Company
James R. Zavodny Route #1, Box 165B Wye Acre Drive Queenstown, Maryland 21658	Self-Insured Employers
Charles J. Krysiak, Chairman Workmen's Compensation Commission 108 E. Lexington Street Baltimore, Maryland 21202	Ex Officio
Dr. Benjamin D. White Assistant Secretary Department of Health and Mental Hygiene 201 W. Preston Street Baltimore, Maryland 21201	Ex Officio
Harvey A. Epstein, Commissioner Division of Labor and Industry Fourth Floor One South Calvert Street Baltimore, Maryland 21202	Ex Officio
Georgia Duffee Executive Secretary Study Commission of Workmen's Compensation Coverage Fourth Floor One South Calver Street Baltimore, Maryland 21202	

APPENDIX C
STATE OF MARYLAND

G. HOWLETT COBOURN
CHAIRMAN

MAURICE CARDIN
HAROLD LEE FRANKEL
WILLIAM R. HUGHES
CLEMENT R. MERCALDO
EDWARD A. PALANARA
JOSEPH I. PAPER
THOMAS P. ROSS
COMMISSIONERS



VIRGINIA R. BARNES
SECRETARY DIRECTOR OF ADMINISTRATION

LEONARD REICHLYN
DIRECTOR OF CLAIMS

ROBERT L. DODSON
CHIEF HEARING DEPARTMENT

WORKMEN'S COMPENSATION COMMISSION

109 E. LEXINGTON STREET

BALTIMORE 21202

IN REPLY REFER TO:

RE: Claim No:
Claimant:
Employer:
Insurer :

In order to facilitate the assignment of the above Subsequent Injury Fund case for hearing, the following information is necessary:

1. Are you ready to try this case on all issues (including availability of medical witnesses?)
Yes _____ No _____
2. Please estimate the required time to present your case

Please indicate this information on the enclosed copy. Sign it and return at once in the enclosed self-addressed envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert L. Dodson".

Robert L. Dodson
Chief, Hearing Department

Date _____

Attorney _____

RECOMMENDATIONS OF
THE GOVERNOR'S STUDY COMMISSION ON
WORKMEN'S COMPENSATION COVERAGE

THE MEDICAL BOARD

1. The Medical Board should be retained to hear cases involving occupational diseases.
2. The Medical Board should be increased to five members.
3. The composition of the Medical Board should be:
 - Two specialists in the diagnosis, treatment and care of industrial diseases
 - One specialist in roentgenology
 - One general internist
 - One internist with a sub-specialty, training and experience in pulmonary diseases
4. The Board and the Chairman should be appointed by the Governor from a list of nominees submitted by the Deans of the Medical Departments of the University of Maryland, Johns Hopkins University and the council of the Medical and Chirurgical Faculty of Maryland.
5. Each submitting agency should submit at least five names for the Governor's consideration.
6. The terms of appointment for members of the Medical Board should be five years and staggered so that one term expires each year.
7. The term of one of the proposed additional members should expire in 1982 and the term of the other should expire in 1984.
8. Fixing of salaries for the Medical Board should remain in the budget procedure.
9. The Board should hold more frequent hearings.
10. One doctor should hear a case, but two are necessary to decide each case.
11. There should be a provision in the law to clearly enable the Medical Board to refer cases to an outside medical specialist for an opinion.

HEARING PROCEDURES

1. There should be some provision in the law to dispose of stale cases.
2. There should be a time limitation on those cases which are waiting to be reset at the request of counsel.

3. A request for information letter should be sent to all parties and their attorneys before their hearings are scheduled.
4. There should be a modification of Rule 15A to reduce the time for claims held in abeyance because the claimant failed to appear.

REVIEW OF FINDINGS OF THE MEDICAL BOARD BY THE WORKMEN'S COMPENSATION COMMISSION

1. The present provision allowing 30 days after the report of the Medical Board has been filed with the Commission in which to request a review by the Commission should be shortened to ten days.
2. The court reporter assigned to transcribe the record of proceedings before the Medical Board should be paid by the State.
3. Additional staff, facilities and equipment should be funded to permit the Workmen's Compensation Commission and the Medical Board to handle cases more efficiently and more quickly.

REHABILITATION AND RE-EMPLOYMENT OF WORKERS DISABLED BY OCCUPATIONAL DISEASES

1. The Medical Board should have the express authority to recommend in their findings of fact to the Workmen's Compensation Commission that an individual be referred for vocational rehabilitation, as provided in Section 36(9) for accidental injury cases.
2. Section 66, concerning the Subsequent Injury Fund, should be revised to specifically include occupational disease cases.
3. Section 25, dealing with waivers of compensation by employees affected by silicosis or asbestosis should be eliminated entirely.

PRESUMPTIONS

1. Section 24(a) dealing with negative presumptions as to the cause of asbestosis and silicosis should be eliminated from the law.
2. There should be no positive presumptions added to the existing law.
3. Section 64A, which provides a positive presumption that heart and lung diseases and hypertension among policemen and firefighters are occupation related, should be eliminated.
4. In the event that Section 64A remains in effect, then the off-set provisions of Section 33 should apply to workers covered by Section 64A.