President’s Message

As your 2011 MIPRIMA President, I’d like to welcome all members, affiliate members and sponsors to what promises to be an exciting year full of many educational opportunities. We’re looking forward to providing you with information that is timely, useful and comprehensive, and we hope all of you take advantage of our educational conferences as a way to hone your risk management skills.

We’d especially like to see more public entity members at our conferences. While there has been a slight increase in the number of public entity members attending some of our recent conferences, we’d still like to see more public entity attendees. This is YOUR organization, so we’d like to have as much support as possible. In addition to all the information you will learn, it is truly a great way to share challenges and successes with other fellow professionals. In recognition of your support, we are not charging public entity members for our upcoming conference in March. That’s right, the registration for public entity members is FREE!

By now, many of you have had the opportunity to access our new Web site. The site went “live” in November and we’ve received a lot of positive feedback since then. In addition to renewing memberships, the site will allow members to register for upcoming conferences, and all our future event dates and locations will be posted there. Future newsletters will continue to be posted there and board contact information is posted there as well.

The Web site committee, led by Chris Underwood, did an outstanding job in getting the site up and running. Other members of the committee included Steve Cooperrider, Jerry Ragsdale and Rick Hensley. Many, many kudos go to Chris, as she spent countless hours working on the project and was the driving force for making it happen. As a result of Chris’s hard work and commitment, I’ve submitted the development of the MIPRIMA Web site as an entry to PRIMA’s annual Chapter Recognition Award contest. Entries can be submitted by any PRIMA chapter nationwide. The winner will be announced by late March. We have also chosen Chris for the Chapter Service Award. This recognition is given to a member who represents leadership, dedication and service to the Chapter. Chris no doubt possesses those attributes and is well deserving of the award. Chapter Service Award winners are recognized at the annual PRIMA meeting in June.

I look forward to seeing all of you at our upcoming spring conference in East Lansing on March 24th. We have a great conference planned for you. Also, I encourage all our public entity members to tell us about one of your risk management success stories by applying for the 2011 Membership Achievement Award. See the home page for more details.

See you all soon!
Thomas Wolff
MIPRIMA President
MIPRIMA’s new web site is now online and ready for your use. It’s a great tool for our membership, providing:

- a current membership directory;
- email advisories to remind you of important events and deadlines;
- information on upcoming MIPRIMA and national PRIMA events and the latest chapter news, including the annual achievement award, scholarship programs and the annual Donald P. Althoff golf outing;
- and links to a variety of resources to help you in your day-to-day risk management activities.

It also gives you the online ability to:

- renew your membership;
- register for meetings;
- view chapter newsletters;
- and download your MIPRIMA membership certificate.

Be sure to take advantage of the ability to click on our corporate sponsors’ logos to visit their respective web sites for even more information on what’s happening in the industry. We hope you find our new web site informative, easy-to-use and helpful.

To complete your registration for the Spring Conference please visit our website, www.miprima.org.
Michigan Public Risk Management Association  
2011 Spring Educational Program  
Thursday, March 24, 2011  
East Lansing Marriott at University Place • 300 M.A.C. Avenue • East Lansing, Michigan  48823 • (517) 337-4440

8:00 – 9:00  
REGISTRATION & CONTINENTAL BREAKFAST

9:00 – 9:15  
President’s Remarks  
Tom Wolff  
MI PRIMA President

9:15 – 9:45  
What is New at the Office of Financial and Insurance Regulation?  
Ken Ross, Commissioner, Office of Financial and Insurance Regulation

9:45 – 10:30  
Aging Workforce  
Employers face new challenges related to safety & health and workers’ compensation costs in regards to your aging workforce.  
Dan Sulzner  
Midwest Employers Casualty Company

10:30 – 10:45  
Break

10:45 – 11:30  
Accident Investigation  
How to conduct an effective accident investigation and understand the three types of injury causes.  
Dan Sulzner  
Midwest Employers Casualty Company

11:30 – 12:30  
LUNCH

12:30 – 1:45  
Auto Liability and Tort Liability Update  
Bill Reising  
Plunkett Cooney

1:45 – 2:00  
Break

2:00 – 3:00  
Getting Help from MIOSHA  
Michael Patrick, Senior Occupational Safety Consultant,  
Michigan Department of Energy, Labor and Economic Growth Michigan  
Occupational Safety & Health Administration (MIOSHA), Consultation, Education & Training (CET) Division

3:00 – 4:00  
NETWORKING RECEPTION
Our fall conference began with opening comments from our Chapter President, Stephen Cooperrider; Following his opening remarks, he introduced the new Michigan Prima Board, Thomas Wolff, President; Christine Underwood, Vice President; Phil Van Duke, Treasurer; Rick Hensley, Secretary; Fred Hill, Paul Van Damme, Lisa Anderson, Board of Trustees.

Our first conference session was a panel discussion regarding The Health Care Reform Act and what you need to know now. Avoiding False Dichotomies, Strategic Total Rewards Approach, Looking to 2014 & 2018 and Hitting the Sweet Spot(s) was presented by Keith Friede of Gallagher Public Entity & Scholastic Group.

Benefit Plan Design Strategies was presented by Mark A. Manquen, CPA, MST from the Cornerstone Group. He shared Collective Bargaining tools such as Retirement Health Care, Dependent Eligibility Audits, High Deductible Medical/RX plans, Health Savings Accounts & Health Reimbursement Arrangements.

Elaine Coffman and Gregory J. Surmont from McGraw Wentworth, discussed “A week that changed the Health Care Forever”; they presented the “Why” of the reform, giving us statistics that “drove this legislation”. They shared their opinion of the potential threats and opportunities for employers under the new environment.

After lunch we discussed The Michigan Medical Marijuana Act: Developing the Common Law in our Courts, this was presented by Michael G. Woodworth and Eric W. Misterovich from The Hubbard Law Firm, P.C.

Highlights from the presentation included the overview of the Proposal 08-1; which is a legislative initiative to permit the use and cultivation of marijuana for specified medical conditions.

- Permit physicians approval use of marijuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS hepatitis C, MS and other conditions as may be approved by the Department of Community Health.
- Permit registered individuals to grow limited amounts of marijuana for qualifying patients in an enclosed, locked facility.
- Require the Department of Community Health to establish an identification card system for patients qualified to use marijuana and individuals qualified to grow marijuana.
- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marijuana as defense to any prosecution involving marijuana.

Our final session; Risk Management Ethics – Principles, Guidelines and the Current “Buzz”; presented by Mike Thoits, VP, Risk Management Affinia Group Inc.

- Ethics can be good for Risk Managers, What is the right thing to do? He discussed Risk Management as the “professional” and the importance of the “Code of Conduct”, Ethics and Enforcement Mechanism.

If you missed his presentation you will be able to catch it at the RIMS Conference on May 25, 2011.
RECENT MAGISTRATE APPOINTMENTS

Eight workers’ compensation Magistrates had their terms expire in late January 2011. On February 2, 2011, newly elected Michigan Governor Rick Snyder partly filled this void by announcing five appointments to the Workers’ Compensation Board of Magistrates. He re-appointed Lisa Klaeren and Beatrice Logan, and made new appointments of Carol Guyton, Louis Ognisanti, and Chris Slater. Therefore, former magistrates Jennifer Barnes, Rosa Bava, Lee Decker, David Grunewald, David Merwin, and Rosemary Wolock were not re-appointed and no longer serve as Magistrates. In addition, Governor Snyder appointed current Magistrate Jay Quist as chairman of the Workers’ Compensation Board of Magistrates.

Lisa Klaeren: Magistrate Klaeren has served as a Magistrate since 2008. Prior to becoming a Magistrate, she worked as a senior staff attorney for Hartford Insurance.

Beatrice Logan: Magistrate Logan, of Southfield, Michigan, has served as a Magistrate since 2006.

David P. Grunewald: Magistrate Grunewald was reappointed as a magistrate as Carol Guyton declined the appointment.

Louis Ognisanti: Magistrate Ognisanti joins the Board of Magistrates after working as a defense attorney with the Saginaw firm of Braun Kendrick, PLC. While there, he focused on all aspects of employment law defense, including workers’ compensation defense.

Chris Slater: Magistrate Slater has been a practicing attorney since 1990, with an emphasis on representing plaintiffs in workers’ compensation, social security disability, and personal injury cases. Prior to his appointment, Magistrate Slater worked out of Spring Lake, Michigan.

G. Jay Quist of Kent County was appointed as chairperson of the Board of Magistrates, and Gregory A. Przybylo of Ingham County was appointed as chairperson of the Workers’ Compensation Appellate Commission. Both terms expire at the pleasure of the Governor.

Governor Rick Snyder has appointed Kevin A. Elsenheimer as director of the Workers’ Compensation Agency effective January 24, 2011. Mr. Elsenheimer, of Grand Traverse County, served in the Michigan House of Representatives from November 2004 through 2010. He served as Minority Leader in the Michigan House of Representatives during the 2009-2010 legislature.

TODOR V. NORTHLAND FARMS, LLC – INSURANCE COMPANIES ARE NOT OBLIGATED TO PAY FOR A PLAINTIFF’S MEDICAL USE OF MARIJUANA

When Michigan passed the Michigan Medical Marihuana Act in December 2008, the issue of medical marijuana as it relates to workers’ compensation benefits jumped to the forefront. The now-legal medical use of marijuana created the possibility that its use could be deemed reasonable and necessary medical treatment under the Workers’ Disability Compensation Act, and thus obligate insurance companies and employers to pay for it.

Tom Cypher, of Bleakly, Cypher, Parent, Warren, & Quinn, P.C., recently tried this issue in the case of Todor v. Northland Farms, LLC, and won a favorable decision for employers and insurance companies, believed to be the first of its kind.

In the case, the plaintiff asked Magistrate Jennifer Barnes to order the insurance company to reimburse him for his use of medical marijuana to treat his shoulder injury. In her Opinion/Order, Magistrate Barnes denied the plaintiff’s request, holding that “pursuant to the MMMA, no insurance company can be held responsible for the costs associated with the use of medical marijuana.” She relied on Section 7(c)(1) of the MMMA, which states that “nothing in this act shall be construed to require a governmental medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marijuana.”

Magistrate Barnes did find that in this particular case, the medical use of marijuana was reasonable and necessary. Nonetheless, her decision went beyond the facts of that case, as she broadly found that insurance companies do not have to pay for medical marijuana as a medical benefit under the Workers’ Disability Compensation Act. This decision provides favorable and important guidance as other Magistrates and the Appellate Commission decide this issue in the future. We will be sure to update you regarding further developments and decisions on this issue, including any appeal that is heard on this case.
OFIR Wants Your Email Address

The Office of Financial and Insurance Regulation (OFIR) is going paperless and intends to send all future contact to individuals licensed by OFIR by email starting January 1, 2012. If you have a state license as an individual either counselor, adjuster, agent or solicitor, you need to make certain that OFIR has your email address. OFIR provided notice of this some time back in a memorandum dated September 21, 2009 that can be found online, click HERE.

It appears that your email address is not shown in the information available when using the Insurance Agent Locator at the OFIR website, so it is hard to check to see if you have previously provided this information.

While OFIR has mailed paper license renewal notices this year, MiPRIMA members may have problems with next year’s renewal if they do not have an email address on file.

If you have questions, you can call the OFIR toll free number 877-999-6442 or email licensing questions to Insurance Licensing staff at OFIR–licensing@Michigan.gov.

Major Problem with Minor Releases

Since the Woodman vs Kera decision last summer, we have been watching for remedial legislation which would authorize some form of parental pre-injury waiver.

House Bill 4970 had been introduced in August 2009 in anticipation of the problems created by the Supreme Court decision in Woodman. House Bill 4970 provided protection for the sponsor or organizer of the recreational activity or the owner or lessee of the property on which the recreational activity occurs. While House Bill 4970 did not specifically reference governmental entities, it was seen as a vehicle for some measure of protection. Unfortunately, House Bill 4970 died with the end of the 2009-2010 sessions.

On February 10, 2011, House Bill 4231 was introduced, which reopens discussion on this topic. House Bill 4231 states: (1) Before a minor participates in recreational activity, a parent or guardian of the minor may release a person from liability for economic or noneconomic damages for personal injury sustained by the minor during the specific recreational activity for which the release is provided.

However, House Bill 4231 goes onto limit this protection to “non-governmental, non-profit organization[s].” While this bill does not currently offer any protection to MiPRIMA members, it does present a vehicle for future discussion.

Zarko’s Legacy

Chetly Zarko, who lived just north of Lansing in DeWitt, was trying to research whether members of the teacher’s union were engaged in taxpayer-funded lobbying on work time. To that end, Zarko made a request under FOIA for electronic records from the Howell Public Schools. As they say, the rest is history.

The resulting lawsuit established the legal principle that just because an e-mail is sent using public equipment, does not make the e-mail a public record. The Court of Appeals decision in this case established this principal.

During the appeal of this lawsuit, 39 year old Zarko died, apparently from natural causes at home while sitting in a chair reading. Zarko’s death did not stop the litigation but merely added an additional element of drama to this lawsuit. Supporters of Zarko’s position pushed the matter to the Michigan Supreme Court with several Amicus Briefs filed. Ultimately, the Supreme Court decided not to hear this case, which will leave the Court of Appeals decision in place. However, the decision to not hear this case was made before the first of the year when control of the Court shifted back to the Republicans.
With the recent changes in membership on the Court, who knows what would happen now. This is not lost on the Zarko followers who have filed a Motion for Reconsideration, hoping the change in membership on the Court will benefit their position.

Zarko’s friends and supporters have also introduced House Bill 4052 which states: “A public employee or collective bargaining organization shall not use publicly owned property, facilities, or services, including an electronic mail system, for political activities, political fund-raising, campaigning for office of a collective bargaining organization, collective bargaining organizing activities, or solicitation of employees for membership in a collective bargaining organization.”

Sidewalks & the 2 Inch Rule

After the Michigan Supreme Court’s somewhat surprising ruling in the Robinson vs City of Lansing case that the 2 inch rule only applied to counties, we watched for remedial legislation to fix this perceived problem. What occurred was House Bill 1475. House Bill 1475 would have applied the 2 inch rule to sidewalks adjacent to municipal and state highways, in addition, to sidewalks adjacent to county highways. House Bill 1475 would have also replaced the “rebuttable inference” standard with a “rebuttable presumption”. Unfortunately, House Bill 1475 died at the end of the session 2009-2010 and will need to be re-introduced.

We can only hope that with more conservative bend of the current legislature that we can get, at least, a similar, if not better bill through this session.

EFMs and Michigan Municipalities in Financial Trouble

The State of Michigan and our new Governor are gearing up for local municipalities with financial problems. The state held a boot camp for future “Emergency Financial Managers” (EFMs) with over 40 attendees.

Legislation followed aimed at giving future EFMs greater powers and imposing severe sanctions on municipalities that require an EMF. The Governor has stated that he wants House Bill 4214 passed as soon as possible.

Among the new provisions of House Bill 4214 are penalties for the elected officials in charge of a municipality that requires an EFM. The appointment of an EFM would trigger the suspension of the elected officials without pay and barred them from seeking office for ten years. Clearly, not everyone will get “on board” with this new legislation, but it is a bill to watch and an issue that all MiPRIMA members need to be concerned about.
IME’s and FCE’S – Effective Tools That Deliver Results!
By Rhett R. Kukulski, ExamWorks Group Inc.

The following is the opinion of Examworks and not that of MiPRIMA or members.

As the need for cost effective claim solutions continues, it is never a bad time to review some of the best tools available to employers, insurance carriers and attorneys!

An independent medical examination (IME) occurs when a doctor who has not previously been involved in a person’s care examines an individual. There is not a doctor-patient relationship established during this exam.

An IME may be conducted to determine the cause, extent, and potential need for additional medical treatment of a work or auto injury where liability is at issue. They can help answer whether an individual has reached maximum benefit from treatment and whether any permanent impairment remains after treatment. Should the doctor performing the IME conclude that a patient's medical condition is not related to a compensable event, the employer and/or carrier may deny the claim and refuse payment.

A Functional Capacity Evaluation (FCE) is a series of tests measuring physical strength, range of motion, stamina, and tolerance to functional activities, including lifting and carrying. These tests can be used to evaluate work tolerance, and the necessity for work restrictions.

During a Functional Capacity Evaluation, a trained evaluator will use a battery of standardized tests, designed around key factors that include diagnosis, impairment, pain and functional limitation, referral questions, and, in some instances, the case resolution goal. FCE’s value to the injured individual is the focus on functional ability instead of the pain limitation associated with an impairment.

Functional Capacity Evaluation is not only a useful clinical tool, but a baseline for industry-standard results that can clearly define an individual’s transition from injury to employment.

An IME or FCE may be conducted at the request of an employer or an insurance carrier to obtain an independent opinion of the clinical status of an individual. Workers’ compensation insurance carriers, auto insurance carriers, and self-insured employers have a legal right to this request.

ExamWorks Group, Inc. is a leading provider of independent medical examinations (IMEs), peer reviews, bill reviews and related services including litigation support, administrative support and medical record retrieval for the insurance and legal industries. Their evidence-based services span all the major medical specialties and incorporate comprehensive jurisdictional knowledge on medical-legal issues. The company has a large panel of ABMS® Board Certified physicians and expert medical professionals.

ExamWorks Group provides a broad portfolio of IME services, more quickly and consistently through their large medical panel at locations across the United States, Canada and the United Kingdom, and is supported by an industry leading technology platform.

Mark Your Calendars!

**2011 Summer Conference**
General Meeting

**July 21 - 22, 2011**
Crystal Mountain Lodge
12500 Crystal Mountain Drive
Thompsonville, Michigan 49683

Details to follow.

**2011 Fall Educational Program**
General Meeting

**Thursday, November 3, 2011**
St. John’s Golf & Conference Center
44045 Five Mile Road
Plymouth, Michigan 48170

Details to follow.
2011 MIPRIMA Scholarships
Rick L. Hensley, ARM, SPHR, Risk Manager
City of Battle Creek

The Michigan Public Risk Management Association (MIPRIMA) annually, awards Scholarships to students who register for the Fall Term and are at least a Junior, to assist with tuition costs.

In 2011, MIPRIMA will distribute the following Scholarships:

- MIPRIMA September 11th Memorial Risk Management Scholarship(s); and
- Donald Althoff Memorial Scholarship(s)

All procedures must be completed and application materials submitted to the Chair of the Scholarship Committee by March 30, 2011.

For more information go to www.MiPrima.org or contact Rick Hensley at rhensley@battlecreekmi.gov.

2011 Corporate Sponsors

Insurance Companies or Agencies

- **IBEX Insurance Agency** is an all lines independent insurance agency. Keith Potter (248) 538-0470.
- **Marsh USA**, is the world’s leading risk and insurance service firm. Cheryl Smith (517) 393-6513.

Attorney Firms

- **Cummings, McClorey, Davis & Acho, P.C.** mission is simple - we must help our clients be successful and improve their bottom line to assist our clients to achieve their business objectives with the least amount of legal risk. Joseph T. Seward, (734) 261-2400.
- **Johnson, Rosati, Labarge, Aseltyne & Field, P.C.** is a full service law firm. Chris Johnson (248) 489-4100.
- **Lacey & Jones, LLP.** The firm’s practice is divided into three practice groups: 1) Workers’ Compensation Litigation, Appeals and Legal Research; 2) Civil Litigation; and 3) Employment Law, Commercial, Litigation and Labor Law. Dawn Drobnich (248) 283-0740.
- **LeVasseur & Levasseur.** Our mission is to lead our clients through the shark-infested waters of worker’s compensation litigation by defending their asset to the very letter of the law, Denice LeVasseur (248) 356-8600.
- **Pedersen, Keenan, King, Washberg & Andrzejak, P.C.** is a full service law firm. Diverse defense of personal injury, property, and contract cases. Paul Pedersen (248) 363-6400.
- **Plunkett & Cooney, P.C.** is Michigan’s leading litigation defense and trial practice law firm. William Reising (810) 342-7001.

Claims, Investigative and Financial Service Companies

- **CorVel**, providing network solutions, case management and bill review. Lisa Deehan (517) 381-1531.
- **FDI-CompOne Administrators**, We believe in the Power of One, the one source that can pull together the diverse set of services needed to provide quality, cost effective claims management with a clear focus on quality, communication and focus. Tammy Richison (517) 913-1712
- **Global Options**, experts from law enforcement, government, military and business provide high-end risk mitigation services. Joe Bielecki (248) 569-6980.
- **Milliman**, offers a wide range of insurance and financial consulting services. Their contact is Gary Josephson at 262-796-3305.
- **The ASU Group** service line includes adjusting, case management, third party administration and medical bill review. Chad Johnson (517) 381-7923.