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## DEVELOPMENTS IN THE SUBSTANTIVE LAW

### ADMINISTRATIVE LAW

#### WORKERS' COMP WHIRLWIND

by DYLAN O. DRUMMOND

Many notable developments have taken place in administrative law during 2005, but perhaps none more dramatic than H.B. 7's abolition of the Texas Workers' Compensation Commission (TWCC) and the transfer of its powers and duties to the Texas Department of Insurance (TDI).

## '05 YEAR IN REVIEW

This sea change in the administration of the workers' compensation system in Texas was precipitated by the sunset review of the agency and the resulting finding that the regulatory framework established by the TWCC had proven neither effective for injured workers nor efficient for employers and insurance carriers.

H.B. 7 created a new Division of Workers' Compensation to administer and operate the workers' compensation system under a new commissioner of workers' compensation, who will exercise all executive authority for the division, including rule-making authority. The Texas governor appoints commissioners, who will serve two-year terms.

H.B. 7 also legislated formation of a new Office of Injured Employee Counsel (OIEC), which — although administratively attached to the TDI — is independent of direction by the workers' compensation commissioner, the insurance commissioner and the TDI. The OIEC's primary purpose is to represent the interests of claimants. More specifically, the OIEC advocates on behalf of injured employees with regard to rule-making

decisions, assists claimants in presenting complaints, makes recommendations to the Division of Workers' Compensation, recommends proposed legislation, and reports to the governor's office regarding its activities, identification of problems and analysis of the workers' compensation system as a whole.

Of particular interest to the administrative law bar are drastic changes to the workers' compensation hearings process. First, the division may now conduct a benefit review conference (BRC) telephonically by agreement from the claimant, and a benefit review officer may reschedule a BRC only once. In addition, the Texas Labor Code provides for division staff, other than the officer who oversaw the BRC, to review interlocutory orders regarding accrued or future benefits.

The passage of H.B. 7 also affects appeals from contested case hearings. The appeals panel must maintain a precedent manual composed of precedent-establishing decisions. The panel no longer has to issue written decisions on affirmed cases but now may choose to do so only on cases that reverse the decision of the hearings officer. The panel also has 45 days in which to issue its decision, instead of the previous 30-day timeframe.

Finally, perhaps the most important revision to the workers' compensation medical-dispute resolution process involves the elimination of de novo contested case hearings at the State Office of Administrative Hearings (SOAH) challenging decisions of the Division of Workers' Compensation and independent review organizations (IROs).

Effective Sept. 1, any such medical-dispute resolution case not already referred to SOAH may be appealed directly only to the Travis County district courts. However, the division will continue to refer other types of cases to SOAH for contested case hearings, including enforcement, approved doctor list and non-IRO prospective review cases.

As of Nov. 15, approximately 4,000 workers' compensation cases were pending at SOAH.

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