



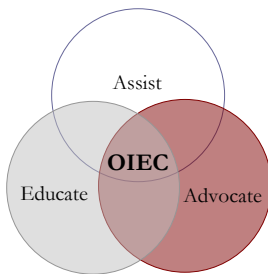
# OIEC Quarterly Review

Issue No. 4

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## In This Issue

- 1 Letter from the Public Counsel
- 2 Fourth Quarter Accomplishments
- 3 Rule Development Update
- 3 Ombudsman Assistant Training
- 4 Ombudsman Training
- 4 A New Look
- 4 Contact Us



OFFICE OF INJURED EMPLOYEE COUNSEL

## Letter from the Public Counsel

The beginning of the year is always a time of reflection and resolutions that will be forgotten by the first of February. Losing weight and getting in better shape are my top two resolutions that are never accomplished. However, in considering the year's accomplishments, I am thankful for the opportunity to serve the injured employees of Texas and represent their interest in the workers' compensation system. While each of us involved in workers' compensation may have a tendency to become somewhat clinical about our work, it is important to take a moment to reflect on the lives we touch as they cope with their work-related injuries.

I recently attended the Governor's Executive Development Program (GEDP), and it was the most outstanding learning experience that I have had since law school, which was many years ago. It was a three-week course that touched on virtually every aspect of good management and the development of leadership skills. Due to the fact that I had never worked in state government until a year ago (and for that matter, given that the Army was the only large organization I have ever worked for), this training was extremely valuable.

The management and leadership skills taught at GEDP do not just apply to those at the top of the organizational chart; they are tools for everyone. Everyone in an organization has a leadership role. While many do not have direct management authority over others, they influence the performance of everyone around them.

All of the GEDP speakers emphasized that every agency of state government must be value-based in order to be effective. The organizational structure that is only outcome-based will always struggle. We must define our values as a starting point for success. Ethical decision-making requires management consideration of fairness, integrity, and respect for others. A quotation particularly meaningful to me was, "Character may be manifested in the great moments, but it is made in the small ones."

We must start at the most basic level of our daily activity to bring character and integrity into our decision-making process. A good start is to say "thank you" frequently and to give praise and recognition where it is deserved. In a survey by Motivational Systems, 38% of employees surveyed rarely or never received any praise from their boss, and 27% reported that they would quit and move to another company known for giving praise and recognition.

Some of the important program objectives are:

- Understand the ethical culture of your agency.
- Appreciate the importance of building trust.
- Recognize and deal with ethical dilemmas.
- Feel comfortable with hard decisions which go beyond policy and political considerations.
- Recognize the link between ethics, integrity, and success.
- Apply a systematic model for ethical reasoning.
- Apply this thinking to actual cases.

*(continued on page 2)*



The Office of Injured Employee Counsel (OIEC) is a new agency seeking to create an identity built on a foundation of success and professionalism. This foundation will establish the basis for our institutional identity for years to come. At OIEC's conference last July, I told the Ombudsmen that we were going to teach them how to play like professionals. This is lesson one. The rest will take care of itself.

## Fourth Quarter Accomplishments

As the 2006 calendar year comes to an end, OIEC looks forward to its first legislative session and the opportunity to serve as an advocate for and to provide assistance to more injured employees in the years ahead. OIEC is proud of its accomplishments since the agency was established on March 1, 2006. An overview of OIEC's 2006 accomplishments by program area may be found at: [www.oiec.state.tx.us](http://www.oiec.state.tx.us).



The following are highlights of OIEC's fourth quarter accomplishments:

- Staff researched, developed, and published OIEC's first legislative report, complete with regulatory and legislative recommendations. Following is an overview of OIEC's recommendations:
  - Modifying the Small Employer Return-to-Work Pilot Program by providing pre-certification of workplace modifications to allow an employer to obtain up to \$2,500 in reimbursement for modification costs before incurring that expense;
  - Requiring that all peer reviews be performed by health care providers licensed to practice medicine in Texas;
  - Providing that interlocutory orders may be requested and issued at a Benefit Review Conference;
  - Requiring the insurance carrier to pay the cost of an examination by the treating doctor or referral doctor where the injured employee disagrees with the opinion of the designated doctor on the issues of maximum medical improvement (MMI) and impairment rating (IR) and the treating doctor or a referral doctor has not conducted an examination to assess MMI and IR prior to the issuance of the designated doctor's report on those issues;
  - Providing OIEC's Ombudsmen access to the medical records of injured employees they are assisting free of charge; and
  - Proposing that district courts be required to appoint an attorney ad litem to find an attorney to represent the injured employees where the injured employee has not been successful in obtaining representation at the district court level. This recommendation only applies to cases where an injured employee prevailed at the administrative level and the insurance carrier appeals to district court.
- Regional Staff Attorneys developed training on direct and cross examination for the Ombudsmen. Mock hearings were held to permit the Ombudsmen to practice conducting direct and cross-examination with feedback from the staff attorneys.
- Rule 276.5 was adopted requiring employers to post notice of the Ombudsman Program effective December 20, 2006.

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*OIEC staff researched, developed, and published OIEC's first legislative report, complete with regulatory and legislative recommendations.*

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## Rule Development Update

OIEC adopted §276.1, §276.2, and §276.5, which is effective December 20, 2006. Section 276.1 provides a place for Chapter 276 Definitions, and §276.2 provides clarity to OIEC's mission in the workers' compensation system. Finally, §276.5 requires employers to post notice of the Ombudsman Program for their employees. The employer notice of the Ombudsman Program may be downloaded at the OIEC's website ([www.oiec.state.tx.us](http://www.oiec.state.tx.us)). In addition, all OIEC rules adopted to date may also be found at the agency's website.

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*§276.5 requires employers to post notice of the Ombudsman Program for their employees.*

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Also on the rules-front, on December 11, 2006, the Texas Department of Insurance, Division of Workers' Compensation (DWC) adopted Medical Dispute Resolution (MDR) rules, which are effective December 31, 2006. The new MDR rules provide for a MDR process modeled after group health insurance whereby an independent review organization provides medical judgment as to appropriate and necessary medical care. DWC reports that the MDR rules are designed to streamline the process for an efficient resolution of non-network medical care disputes.

DWC incorporated OIEC's rule comment in the final MDR adoption to include an injured employee in the definition of the term "party" or "requestor" in the MDR process, unlike the concurrent review process rule (§134.600) adopted earlier in 2006 where injured employees are not considered as parties or requestors. In OIEC's legislative report, OIEC recommended that DWC address the issue of injured employees being considered a party throughout the MDR process. In the alternative, OIEC recommended that legislative action be taken to protect certain procedural due process concerns regarding the right of the injured employee to be considered a party in the process. DWC's new MDR rules satisfy this recommendation without the need for legislative action and provide an avenue whereby injured employees can participate in both the medical necessity and fee disputes regarding their own health care.

## Training for Ombudsman Assistants



OIEC recognizes that its Ombudsman Assistants are a critical part of providing effective assistance to injured employees. In addition to handling administrative functions for the Ombudsmen, the Ombudsman Assistants have taken on more customer assistance functions and as a result, must be more knowledgeable about the Texas Workers' Compensation System.

In August, OIEC launched an ongoing training program specifically for the Ombudsman Assistants. The training program began with a six-week period where the Ombudsman Assistants completed over 25 online training courses. The online courses covered basic, intermediate, and advanced workers' compensation concepts. Next, monthly training (via teleconferences) began. The first training topics, "Confidentiality" and "Telephone/E-Mail Etiquette," were chosen to help provide the Ombudsman Assistants with the skills to handle their increased communication with injured employees.

The response to the training has been overwhelmingly positive, and the Ombudsman Assistants are anxious for monthly training to resume in 2007 when the topics will pertain more directly to workers' compensation claims.



## Ombudsman Training Performed by Regional Staff Attorneys

As part of OIEC's continuing commitment to developing training programs to ensure adequate assistance to injured employees, the Director of Legal Services invited Ombudsmen to identify areas where they would like guidance from the Regional Staff Attorneys. In addition, Regional Staff Attorneys met individually with Ombudsmen to assess Ombudsmen needs. In response, Legal Services developed the Ombudsman Practical Skills Training Series, which consists of small-group practical skills training sessions.

*The objective of the first training session focused on using witness testimony to adequately develop the record in Contested Case Hearings.*

In October, Regional Staff Attorneys began conducting the first practical skills training sessions in field offices throughout the State. The objective of the first training session focused on developing direct and cross examination skills to elicit witness testimony to develop the record in Contested Case Hearings, the most frequently requested skill. The Regional Staff Attorneys developed a model practice problem based on an actual dispute to simulate a Contested Case Hearing. The staff attorneys published a written guide to assist Ombudsmen in effectively developing the administrative record using witness testimony.

Each training session consisted of a discussion led by the Regional Staff Attorneys along with performance exercises followed by observations and suggestions for improvement. Ombudsmen and staff attorneys worked together in small groups to create solutions to frequent challenges Ombudsmen and injured employees experience during Contested Case Hearings.

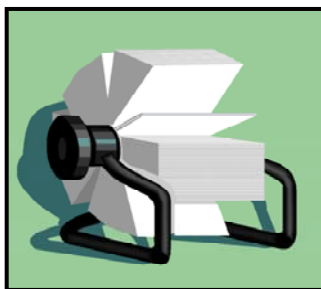


Ombudsmen throughout the state responded enthusiastically to the first round of training sessions. Responses to evaluations completed at the end of the training sessions indicate that a large majority of the Ombudsmen believe that the training helped them perform their jobs and improved their skills and knowledge. Ombudsmen are reporting that they are already using the techniques presented during the first training session to improve the presentation of injured employees' cases in Contested Case Hearings. Ombudsmen received three hours of continuing education units from the Texas Department of Insurance for participating in the session.

## A New Look for the New Year!

You may have noticed a slightly different look to this issue's *OIEC Quarterly Review*. The *Quarterly Review* now uses a one-column layout, an "In this Issue" feature, and has the issue number and timeframe of the issue on each page of the newsletter.

## Contact Us



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