

IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND

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Gerald Grupe, Chairman • Paul Boecker, President • Tom English, Secretary • Arnold Andrews, Treasurer • Richard McGill, Vice President

ILLINOIS PUBLIC RISK FUND Firefighter Safety Steering Committee Formed



Illinois Public Risk Firefighter Safety Steering Committee
Standing (starting at left) Pleasantview Fire Chief, Dan Hermes; Alsip Deputy Fire Chief, Phil Schafer; Kankakee City Fire Chief, Rich Kamerad
Sitting (starting at left) Glenside Deputy Fire Chief, Don Markowski; Kankakee County ESDA, Training/Haz-Mat Officer, Bill Chigaros



In its ongoing effort to improve on-the-job safety for firefighters, the Illinois Public Risk Fund sponsored the creation of a Fire Safety Steering Committee. Volunteering their time to attend a one day meeting were Kankakee City Fire Chief Rick Kamerad, Glenside Deputy Fire Chief Don Markowski, Alsip Deputy Fire Chief Phil Schafer, Pleasantview Fire Chief Dan Hermes, and Bill Chigaros, Kankakee County ESDA Training/Haz-Mat Officer. The objectives of the committee were to analyze and address injury causes that are unique to firefighters and to reduce workers' compensation losses amongst IPRF member Fire Districts and Fire Departments.

The steering committee meeting was facilitated by IPRF Loss Control Department staff members Mick DeMarco and Tom Spencer, with assistance from Scott Babcock. After a brief

discussion of the meeting agenda, the group went to work. An analysis of firefighter injuries that occurred in the last two years and resulted in over \$10,000 in incurred costs was presented by Loss Control. The incidents were analyzed and some surprising issues were identified. Of the 189 injuries:

- 35 involved firefighting activities for over \$2.4 million in losses. Handling fire hose was a significant factor in several of these losses.
- 23 involved injuries that occurred during patient handling for over \$2.1 million in losses.
- 44 occurred during training, including fire suppression drills and physical fitness for over \$2.3 million in losses.
- 23 involved either exiting or entering fire trucks or vehicles for over \$2 million in losses.

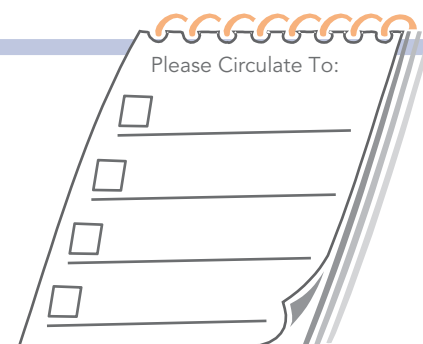
Using the knowledge and experience of these Fire Chiefs, the committee tackled each one of

these issues. Recommendations were then developed aimed at eliminating or reducing the injury causing activity. Solutions included best practices, equipment improvements, changes in training methods, and safety program enhancements. Detailed results of the committee meeting will be communicated in the near future. The committee was pleased with the progress made and plans to continue this process. They are to meet quarterly to focus on reducing firefighter injuries and worker's compensation losses.

The Illinois Public Risk Fund is planning steering committees for other disciplines including law enforcement, parks and recreation, public works, and school districts. If you have an interest in joining one of these committees, please contact Tom Spencer @ Thomas.Spencer.IPRF@iprf-losscontrol.com, or telephone (847) 719-5374.

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Workers' Compensation Liability

for Work Performed by Prisoners, Inmates, & Other Offenders

Questions have been raised concerning potential workers' compensation liability on the part of counties, municipalities, and other local public entities for injuries sustained by individuals engaged in performing work as part of a criminal sentence or pursuant to their incarceration. At the outset, all Illinois Public Risk Fund (IPRF) members can rest assured that the IPRF will be there for them to offer defense and indemnity before the Illinois Industrial Commission even if the case is totally without merit. That will be the case in the event that an individual files a claim for injuries sustained while performing work pursuant to their incarceration or as a condition of a court-imposed sentence of probation, conditional discharge, or supervision.

The majority view in the United States by judicial decision, statute and sometimes a combination of the two is that workers' compensation benefits are denied individuals who sustain injuries in connection with work performed as part of a criminal sentence, whether or not the work assignment was mandatory or voluntary. The pivotal reason for denying liability is that there is no "contract of hire" and no employer-employee relationship under such facts and circumstances. Controlling case law in Illinois is conspicuous by its absence given the strong statutory authority to the effect that inmates and other persons performing work in conjunction with a court-imposed sentence of probation, conditional discharge, or supervision are not considered to be "employees" under the workers' compensation laws; and, thus, are not covered by the act. This legal conclusion is based in large part on the Illinois Criminal, Penal, and Correction Codes in general, and the Illinois Probation Community Service Act (70 ILCS 115/0.01), in particular. The latter statute specifically provides as follows:

"Neither the State, any local government, probation department, public or community service program or site nor any official, volunteer, or employee thereof acting in the course of their official duties shall be liable for any injury or loss a person might receive while performing public or community service as ordered either (1) by the court or (2) by any duly authorized station or probation adjustment, teen court, community

mediation, or other administrative diversion program authorized by the Juvenile Court Act of 1987 for a violation of penal statute of this State or a local government ordinance (whether penal, civil, or quasi-criminal) or for a traffic offense, nor shall they be liable for any tortious acts of any person performing public or community service, except for willful, wanton misconduct or gross negligence on the part of such governmental unit, probation department, or public or community service program or site or on the part of the official, volunteer, or employee."

Section 1 of the Act concludes with the following:

"No person assigned to a public or community service program shall be considered an employee for any purpose, nor shall the county board be obligated to provide any kind of compensation to such person."

In light of the existing overcrowding of state and local penal institutions, court-imposed public or community service is becoming more and more prevalent in the disposition of criminal cases. With more offenders involved, it is anticipated that county boards and probation departments will step-up their efforts to enlist the help of municipalities and other units of local government to provide public service work. We are aware that most county probation departments obtain written waivers or releases from persons assigned to community or public service programs. Any IPRF member participating in such a program under the auspices of a Probation and Court Service Department, the Circuit Court, the Sheriff's Office, (Sheriff's Work Alternative Programs SWAP), or other authority should secure copies of the applicable written waivers and releases for its files.

Should additional questions arise concerning these and related issues, please feel free to contact the Illinois Public Risk Fund's counsel, William N. Krucks, at the Chicago law firm of Freeborn & Peters LLP, at the following address and telephone numbers:

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Freeborn & Peters LLP
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Indices of Workers' Compensation Fraud:

The workers' compensation systems of all fifty states are designed to provide employees and their families with quick and efficient remedies for lost income and the medical costs associated with on-the-job accidents and occupational diseases, regardless of fault. But, for some, the inherent benevolence towards claimants leaves the systems vulnerable to fraud. The resultant fraudulent claims include faked injuries, injuries suffered elsewhere and not on the job, exaggerated injuries, and employees working while collecting benefits under workers' compensation systems that give them every benefit of the doubt. The forms of fraud share common "red flags."

Consider the following:

- The employee is familiar with the workers' compensation system, and may even have any attorney on the day of the injury.
- The employee is disgruntled, on probation, facing layoff, or ready to retire.
- The employee is engaged in seasonal or project work that is about to come to an end.
- The employee has a poor attendance record.
- The employee is a new hire.
- The employee changes doctors when a return to work is eminent or medically authorized.
- The employee produces an invalid social security number, address, or telephone number.
- The employee lists his or her home address as a P.O. Box.
- The employee cannot be reached at his or her home phone number.
- The employee delays reporting the injury for several weeks or more.
- The employee's medical records or reports provide a description of the injury that is different or contradictory to what actually occurred.
- The employee protests returning to work and doesn't seem to improve.
- The employee has financial difficulties.
- The employee has been seen working elsewhere while collecting workers' compensation benefits.
- The accident reported by the employee was not witnessed by anyone, not even coworkers.
- The accident was rumored to have been staged, to never have occurred, or to have occurred elsewhere.
- The accident reportedly occurred near the end of the shift, or shortly after the employee arrived at work.
- The injury occurred in an area or location where the employee would not normally be in the performance of his or her duties.
- The injury occurred at an odd time.
- The accident or injury is reported only after a reduction in force or termination.
- The employee can only describe the details of the accident vaguely or inconsistently.

William N. Krucks, Partner
Freeborn & Peters LLP

Average & Maximum Weekly

DISABILITY BENEFITS

The maximum TTD benefit can be no more than 133-1/3% of the statewide average weekly wage on the date of the injury or last exposure.



	STATE AVERAGE WEEKLY WAGE	MAXIMUM TTD BENEFIT
July 15, 2002 to January 14, 2003	\$748.59	\$998.12
January 15, 2003 to July 14, 2003	\$753.31	\$1,004.41
July 15, 2003 to January 14, 2004	\$759.01	\$1,012.01
January 15, 2004 to July 14, 2004	\$764.80	\$1,019.73

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Second Firefighter Injury Involving an Oxygen Cylinder



The IPRF Loss Control Department provided accident investigation assistance to a member Fire Protection District regarding an injury involving a Firefighter/Paramedic that occurred in early January, 2004. Another firefighter was injured in a similar incident in 1997. The injury occurred as the member was performing a weekly pressure check of the three oxygen cylinders that are connected in series to a manifold with one pressure gauge in an oxygen cylinder cascade system. The Firefighter suffered 2nd and 3rd degree burns to his left pinky and ring fingers when a flash fire occurred as he was breaking a connection. The Firefighter lost approximately 3 weeks of duty due to the injury and has returned to full duty.

The pressure is checked once per week to ensure an adequate supply of oxygen for the Fire Protection District's use. Oxygen cylinders are filled in house at the station. A vendor supplies oxygen cylinder replacement service, and drops off full cylinders/picks up empty cylinders on the dock. The vendor employees do not change out the bottles; Fire Protection District employees handle the cylinders.

The Firefighter indicated that he has conducted this pressure check once per week for over fifteen years, the same way every time. He estimated that "D" oxygen cylinders are filled about five times per week.

The regular procedure at the Station to check the pressure of each cylinder is to connect a Hudson brand oxygen connector to a "D" cylinder, to "deadhead" the pressure. The valve to the cylinder being checked is opened, and the pressure is read off of the pressure gauge on the manifold.

The cylinder valve for the cylinder being tested is shut off, and the next oxygen cylinder valve is opened, the pressure read, the valve closed. This process is continued until all cylinders are tested. After pressure-testing is completed, the Hudson oxygen connector "T" valve is cracked to slowly bleed off the oxygen in the lines. When the Firefighter cracked the "T" valve to bleed off the pressure, the flash fire occurred.

Flash fires have occurred in other accidents from the rapid opening of oxygen cylinders and leaving flow regulators in the on position. High pressure cylinder valves need to be opened slowly and flow valves should be off or at the zero flow position to prevent a flash fire from the heat of compression.

There have been many incidents reported in the literature involving flash fires with oxygen cylinders, and most involved aluminum cylinders and oxygen regulators. This incident did not involve aluminum or regulators. The filling of oxygen cylinders in fire stations without adequate safety measures and controls is a risky activity. Hydrocarbon contamination of the equipment in the presence of oxygen can cause flash fires.

Possible sources of hydrocarbon contamination include foreign matter dropping onto the oxygen equipment from employee's shoes or through open mesh stairs, handling the oxygen equipment with greasy and/or dirty hands, diesel exhaust residual from Fire Trucks and/or

Ambulances, or lubricants and/or cleaning agents applied directly to oxygen equipment for maintenance.

Possible causes of the accident include; hydrocarbon contamination of the Hudson connector, gaskets, braided hosing, "D" cylinder valve, etc., static charge and ignition of small quantities of combustibles in an oxygen rich atmosphere, hydrocarbon contaminated oxygen gas in the oxygen cylinders, Internal combustion of metal flakes or contaminants located inside high-pressure oxygen cylinders or regulators that become trapped on filters.

After review of all of the available information, the most likely scenario is hydrocarbon contamination (and ignition in the presence of oxygen) of the Hudson regulator, oxygen cylinder hosing, and/or "D" oxygen cylinder.

The Fire Protection District reviewed all recommendations and has determined to eliminate the risk of filling oxygen cylinders. The Fire Protection District is making arrangements to purchase filled cylinders from an oxygen cylinder supplier.

The following recommendations were made as a result of the accident investigation. All Fire Protection Districts and Fire Departments should conduct a thorough review of their oxygen cylinder use and strongly consider implementing the following recommendations.

1. Fire Departments should consider eliminating internal filling of oxygen cylinders and obtain filled cylinders from a qualified oxygen supplier.
2. If oxygen cylinder filling is determined to be necessary due to operational needs or economics, Station oxygen cylinder filling operations should be reviewed for safe design and should be located in a controlled environment.
3. Oxygen filling stations should be grounded to ensure safe dissipation of static charges.
4. Oxygen equipment should be periodically cleaned, maintained, and stored in a safe manner to ensure that contamination does not occur.
5. Procedures should be developed on purchase, storage, inspection, maintenance (including cleaning and gasket replacement), and cylinder handling, including filling cylinders, changing cylinders, and pressure testing oxygen cylinders.
6. Oxygen cylinders should be stored in an upright or vertical position, to prevent contaminants from entering connectors or regulators, and secured from being knocked over.
7. All sources of combustion or ignition should be identified and eliminated within the three-foot oxygen enriched zone of oxygen cylinder discharge.
8. All Fire Department employees should receive periodic training in the safe use and handling of oxygen cylinders.
9. Procedures should be developed and Fire Department members should be trained to ensure that high pressure cylinder valves are opened slowly and flow valves are shut off or at the zero flow position to prevent a flash fire from rapid release of oxygen (the heat of compression).
10. Fire Departments should review the entire March 1999 report from the United States Fire Administration/Federal Emergency Management Agency (FEMA), Special Report, "Fires Involving Medical Oxygen Equipment," authored by Thomas H. Miller, P.E. This report is available in .pdf format at the following Web address; <http://www.usfa.fema.gov/downloads/pdf/publications/tr-107.pdf>

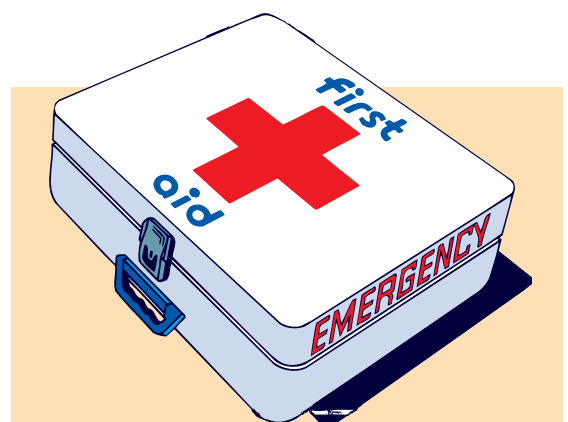
If there are any questions, please contact J. Michael DeMarco, IPRF Loss Control Department at (708) 645-7689, or e-mail J.Michael.DeMarco.IPRF@iprf-losscontrol.com.

IPRF COVERAGE Extended To Volunteers

Public employers throughout the nation and in the State of Illinois have become more and more reliant upon "volunteers." By relying upon volunteers to "maintain and improve" essential public services, questions have arisen concerning whether such volunteers are covered under the public entity's public liability and workers' compensation insurance programs.

A case involving an ESDA volunteer who was working for an Illinois municipality has fueled the need to examine one's insurance coverage. While directing traffic for a community event, the volunteer sustained injuries requiring the amputation of both legs after a drunken teenager had run over him. The municipality and the ESDA coordinator felt confident that the public entity's workers' compensation would cover all costs. The insurance provider (a competitor of IPRF) denied coverage in all aspects.

Had the municipality chosen IPRF as its workers' compensation provider, the anticipated results would have occurred. IPRF coverage extends to all authorized volunteers and student workers. IPRF provides members with the full workers' compensation occupational disease coverage required by Illinois law. "Volunteers Endorsement" appended to the excess reinsurance policy and issued for the benefit of all IPRF members by Safety National Casualty Company of St. Louis, Missouri specifically includes volunteers.



Keep A Well-Stocked First-Aid Kit

Be prepared for household injuries and emergencies.

Consider having the following items in a home first-aid kit. Be sure to check your kit regularly, and replace any outdated or expired items.

Bandages & Dressings:

Adhesive bandages – assorted sizes
Butterfly bandages / Sterile gauze pads
Elastic bandage for wrapping wrist, ankle, knee or elbow injuries

Equipment:

Scissors with rounded or blunt-tipped edges
Tweezers, to remove ticks and small splinters
Sterile cotton balls
Liquid soap
Ice bags for icing injuries
Thermometer

Medication:

Ipecac syrup to induce vomiting (use only as directed by the Poison Control Center)
Acetaminophen or ibuprofen
Buffered aspirin for headaches, fever and pain (avoid giving aspirin to young children – use acetaminophen instead)

Topical Skin Preparations:

Antiseptic solution, such as hydrogen peroxide or wipes, to clean a superficial wound
Antibiotic ointment for cuts and scrapes
Calamine lotion for stings or exposure to poison ivy
Hydrocortisone cream, ointment or lotion
Insect repellent
Sunscreen lotion or cream
Aloe Vera gel

Other:

First-aid manual
Safety pins
Waterproof flashlight and spare batteries

**HHS
RULE
OUTLINES**

**Federal
Smallpox
Vaccine Injury
Compensation Program**

The Department of Health and Human Services (HHS) on December 16, 2003, published an interim final rule implementing a federal program to provide medical and financial benefits to healthcare and emergency response workers who were vaccinated under the Bush Administration's December, 2002 initiative and suffered complications from the vaccine. The program also includes persons who sustain injuries as the direct result of exposure to the smallpox virus through contact with vaccinated emergency response workers.

The federal government is a secondary payer for most of the benefits available under the program. Benefits include medical, lost employment income, and survivor death benefits. The program provides for a \$262,100 lump-sum payment to families of workers killed by the vaccine. For those who are disabled by the vaccine, the program will pay up to \$50,000 annually in lost wages. In general, smallpox vaccine recipients have one year from the date of vaccination to initiate a claim. The second classification of eligible individuals, is persons who have suffered injuries (contracted vaccine) as the direct result of exposure to the virus through contact with persons who received the vaccine, have two years to submit their claim from the date of the onset of the covered injury as documented in their medical records. Those seeking further information should consult the program's website at <http://www.hrsa.gov/smallpoxinjury/>.

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), 42 U.S.C. 239, establishes the federal government as a secondary payer for most benefits available under the program. This means that the program's benefits are generally second in line to any obligation of any third party payer including group health and disability plans, workers' compensation programs, the Federal Employee's Compensation Act (FECA), and the Public Safety Officers' Benefit (PSOB). The full text of the rule can be found at 42 CFR 102.

Workers' compensation coverage for vaccination injuries in Illinois is problematical because of the voluntary nature of the programs. The law varies considerably from state to state. In a case of first impression, the District of Columbia Court of Appeals recently ruled that workers' compensation liability exists for injuries resulting from a required vaccination. The District of Columbia case involved a hospital worker who was required to receive a measles, mumps and rubella (MMR) vaccination as a condition of his employment. As a consequence, the employee sustained a severe reaction with ongoing seizures. Sufficient medical evidence was produced to allow the conclusion that the MMR inoculation caused the seizures. The court concluded that workers' compensation liability existed because the employee was under the obligation to receive the vaccination as a condition of his employment. (*Washington Hospital Center v. Department of Employment Services, District of Columbia Court of Appeals, 2003.*)

Meet Your Claims Analyst

Glenn Macey has been working with IPRF Claims Administration for two years and services area code 815 A-La members.



Glenn's 18 years of professional insurance experience includes commercial liability, automobile, products liability and multi state workers compensation. His previous employers include Liberty Mutual Insurance as field adjuster multi-line claims, Hertz Corporation as Litigation Examiner, Crawford & Company as an Account Administrator, and St. Paul Fire & Marine Insurance as commercial auto liability and inland marine examiner.

Glenn enjoys working as IPRF workers compensation examiner because there is a close team effort relationship with each of the Members whose claims he has the opportunity to handle. "We work together to find cost-savings and resources to help the injured employee return to a pre-accident status; that benefits us all."

When Glen is not busy with IPRF he values his time spent with his sons Adam (2) and Stephan (10). Glenn looks forward to Stephan's soccer games, family camping this summer and if he has any time left for himself, he would like to squeeze some time in for golf.

Need More Newsletters?

If you would like IPRF Issues newsletter mailed to additional department heads, please contact:

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	217 (J-Z members)	
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