**90-351 WORKERS’ COMPENSATION BOARD**

**Chapter 16: CONFIDENTIALITY OF FILES**

Pursuant to 39-A M.R.S.A. §152(2), these rules establish procedures to safeguard the confidentiality of the records of the former Workers' Compensation Commission and the Workers' Compensation Board pertaining to individual injured employees.

**§ 1. Records**

 Records of the former Workers’ Compensation Commission and Workers’ Compensation Board providing a basis for identification of injured employees through name, address, Social Security number or like means of identification are confidential and available on a need-to-know basis.

**§ 2. Need-to-Know**

 For purposes of this rule, "need-to-know basis" shall include, but is not limited to, the following:

 1. An injured person gives written authorization for disclosure;

 2. An injured person asserts a claim and an employer or insurer potentially subject to liability for the claim requests disclosure directly or through an attorney or other agent;

 3. A person asserts a workers’ compensation claim, or asserts a claim through civil or other litigation and any other person or insurer potentially subject to liability for the claim requests disclosure directly or through an attorney or other agent;

 4. A person, insurer, employer, or other involved party is the subject of a public agency investigation or prosecution for fraud or other impropriety, whether civil or criminal;

 5. An Administrative Law Judge, mediator, arbitrator, an appointed or agreed upon §312 independent medical examiner with proper notification, or other employee of the Board requests records for the purpose of administering and decision-making under the Act;

 6. An Administrative Law Judge, mediator, or arbitrator, or the General Counsel upon request, rules that disclosure is appropriate for any other reason, including the potential relevance of such records to a claim or proceeding, or the likelihood that such records may reasonably be expected to lead to relevant evidence. Any such ruling may limit further disclosure by a recipient as appropriate; or

 7. Access is required by Maine or Federal statute, regulations, or court order.

**§ 3. Methods for Requesting Information**

 The Workers’ Compensation Board will release no individual identification information contained in individual injured workers files to individuals that do not meet the need-to-know standard in Section 2. Individual identifying information includes name, Social Security number, claim, or employee number. If the request is made in person or over the telephone, and the individual is unknown to staff or the need-to-know is not established, a written request will be required. The written request shall state the relationship of the requesting party to the case, the specific information requested, and any other information the party believes helpful in establishing "need-to-know" as defined by these regulations. The written request shall become part of the individual file.

**§ 4. Legitimate Research Purposes**

 1. Records of the former Workers’ Compensation Commission and the Workers’ Compensation Board which do not require the identification of individual injured employees are available for legitimate research purposes. For purposes of these rules, legitimate research purposes are defined as a study undertaken for academic purposes or by a bona fide organization or representative of an organization to discover facts, establish principles, review processes or evaluate outcomes regarding the administration and operations of activities relating to the workers’ compensation system.

 2. **Public Access for Legitimate Research Purposes**

 A. Request to access the Workers’ Compensation Board database for legitimate research purposes will be made in writing to the General Counsel who will review the request with appropriate staff to determine if:

 (1) The request complies with applicable statutes and Workers’ Compensation Board regulations;

 (2) The request is technically feasible;

 (3) The Workers’ Compensation Board resources needed to comply with such a request are available without jeopardizing ongoing operations.

 B. If the request seeks access to individual injured employee files, the need-to-know standard must also be met.

 C. For requests needing technical assistance and support from Board staff, the General Counsel may prioritize or deny staff support and assistance for legitimate research proposals based on limited agency resources, higher Workers’ Compensation Board data priorities, duplicative efforts, or other reasonable and stated reasons. This standard does not apply to requests based on a need-to-know basis, which will be complied with in all instances where the need-to-know standard is met.

 D. Individuals who are denied access may appeal the General Counsel’s decision to the Workers’ Compensation Board who must respond within 30 days.

 E. The Executive Director may enter into agreements with the Bureau of Insurance, Maine Department of Labor, and other appropriate state governmental agencies which allow access to the Workers’ Compensation Board database for research purposes as long as the Board’s requirements for confidentiality of individual files are maintained. Failure to maintain the standard may result in the revocation of access.

**§ 5. Sensitive Records**

 Absent a ruling pursuant to Section 2, subsection 6 or a written authorization by an employee, "need-to-know" does not include the following:

 1. Information designated confidential by any other State or Federal statute or regulation;

 2. Medical records including but not limited to medical records admitted into evidence; and

 3. Information sealed during the dispute resolution process by an Administrative Law Judge on his or her own motion or at the request of a party. Such information may include records relating to: abortion, AIDS or HIV test results and treatment, mental deficiency, or disease, substance abuse test results and treatment or sexually transmitted diseases.

**§ 6.** All Workers’ Compensation Board and former Workers’ Compensation Commission records not declared confidential or sensitive pursuant to §5 of this chapter are public records. Public records include, but are not limited to, Board decisions, transcripts of testimony, and exhibits admitted into evidence.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

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