



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

May 31, 2016

A business meeting of the Maine Workers' Compensation Board of Directors was held on Tuesday, May 31, 2016, at the Workers' Compensation Board Portland Regional Office.

PRESENT: Paul H. Sighinolfi (*Chair*), Ron Green, Glenn Burroughs, Emery Deabay, Gary Koocher, Richelle Wallace, and Andy Charles.

I. CALL TO ORDER

Chair Sighinolfi called the meeting to order at 10:03 a.m.

II. APPROVAL OF MINUTES

1. Draft Minutes of 4/12/2016.

Director Koocher MOVED TO ACCEPT THE MINUTES OF 4/12/16; Director Wallace seconded. **MOTION PASSES 6-0-1** (*Chair abstained*).

III. SUBCOMMITTEE REPORTS

1. Budget Subcommittee

The Budget Subcommittee met before the Board meeting to discuss the FY 2017 assessment.

Director Charles MOVED TO ACCEPT THE BUDGET SUBCOMMITTEE'S RECOMMENDATION TO REDUCE THE FY 2017 ASSESSMENT FROM THE STATUTORY CAP OF \$11,200,000 TO AN ACTUAL ASSESSMENT OF \$9,500,000 AND REQUIRE STAFF TO USE AN ASSESSMENT RATE FOR INSURED OF 2.46% BASED ON AN FY 2017 ESTIMATED INSURED MARKET OF \$227,900,000 AND TO RAISE \$3,886,712 FROM SELF-INSURED; Director Green seconded. **MOTION PASSES 6-0-1** (*Chair abstained*).

2. IME Subcommittee

The IME Subcommittee met prior to the Board meeting to discuss the §312 application by John Guernelli, MD. Director Koocher requested to postpone voting on the application until the next meeting so management members can talk with their constituents. Director

Burroughs noted the labor members are already prepared to vote, but were willing to postpone the vote to the next meeting.

IV. EXECUTIVE DIRECTOR REPORT

1. IAIABC

Director Sighinolfi attended the Board of Directors Meeting of the IAIABC where three white papers were approved. The papers were on return to work, formularies, and opt-out. Following the meeting, the IAIABC held its annual forum. On the second day, Director Sighinolfi participated in a work session on the future of workers' compensation with, among others, Bill Minick from PartnerSource.

2. Meeting with Dr. Saito

Director Sighinolfi met with an occupational physician, Ken Saito, MD, JD, of Aroostook Medical Center. Dr. Saito is interested in working with the Board on occupational disease in Maine.

3. NCCI Regulators Meeting and Annual Issues Symposium

NCCI held a Regulators Meeting where opioids, opt-out, possible federalization of workers' compensation, large deductibles in some states, misclassification of employees, and constitutional challenges to workers' compensation provisions were discussed.

Highlights from the Annual Issues Symposium were:

- Workers' Compensation net written premium is up 2.9% nationally. This means more people are working.
- State funds account for \$5.8 billion.
- The combined ratio has improved to 94, the second best number since 1990.
- Workers' Compensation cost drivers: payroll is up 23% nationally since 2010. Construction employment is up 17% nationally (Maine's construction has not come back quite as much).
- Claim frequency is down 3% nationally.
- Medical costs are 58% of total benefits nationally. Maine is nearly 50/50 with medical and indemnity costs.
- There are concerns about fixed investments and adequacy of reserves for the carriers.
- Medical severity is down.
- There has been a 6% increase in pharmaceutical costs nationally.
- Data collection continues to improve.
- Technology will have a profound impact on the provision of medical care going forward.

4. National Workers' Compensation Summit

A meeting of 41 thought-leaders in workers' compensation was held. Discussed were ProPublica articles, NPR expose on workers' compensation, and the 2015 OSHA report on workers' compensation, and members of Congress suggesting the nationalization of workers' compensation.

5. Maine Human Resources Convention

Director Sighinolfi presented on medical marijuana with Dr. Dustin Sulak and Peter Lowe at the Maine Human Resources Convention. A history of the law was discussed, as were the five Maine workers' compensation decisions on the topic.

6. Meeting with Dr. Guernelli

A meeting was held with Dr. Guernelli to discuss his §312 examiner application.

7. New York Workers' Compensation System

Occasionally, Maine employers have difficulty with the New York workers' compensation system. Director Sighinolfi discussed the issues with the New York Executive Director, Mary Beth Woods.

8. Troubleshooting/Mediation Training

Training was held for Board troubleshooters and mediators. Director Sighinolfi discussed new legislation and mediations.

9. State Agency Workers' Compensation Presentation

Director Sighinolfi presented to state employees responsible for processing workers' compensation claims for state agencies. They were urged to promptly and correctly process claims.

10. Office Relocations

The Portland office has been settled. The Central Office will be moving to Civic Center Drive in July. Deputy Director Jan Adams has done a fantastic job coordinating the move.

11. Meeting with Governor

Director Sighinolfi and Deputy Director Jan Adams met with the Governor and his senior staff to discuss the Board's budget and staff and the possibility of running the agency in a leaner manner. The Governor discussed his concern about employee misclassification.

V. GENERAL COUNSEL REPORT

1. Maine Human Resources Convention

General Counsel John Rohde presented at a seminar on the "On-demand Economy" at the Maine Human Resources Convention. Of concern is whether our current employment and independent contractor laws work in the new digital environment (i.e. Uber).

2. Predeterminations

A study on the independent contractor process will be conducted as a result of LD 1553. One idea is to have auditors go to the employers and see how the predeterminations are being used.

3. Legislation

Proposals for the upcoming legislative session will need to be prepared by the Board by December 1st.

VI. OLD BUSINESS

1. Legislation

LD 1553, *An Act to Improve the Workers' Compensation System*: This bill was enacted and does the following:

- 1) A study group will form to evaluate the predetermination process and a report will be presented to the LCRED Committee
- 2) Appellate Process: The operative decision for purposes of appeal to the Law Court is the decision of the Appellate Decision.
- 3) Holyoke: Business must provide workers' compensation coverage for each employee, and the Board's Abuse Investigation Unit has the authority to assess penalties against employers that misclassify workers as independent contractors.
- 4) Assessment: The assessment cap will be \$13 million beginning FY 2017-2018.

LD 1646, *An Act To Prevent Opiate Abuse by Strengthening the Controlled Substances Prescription Monitoring Program*: This bill was also enacted and does the following:

- 1) Limits opioid prescriptions for acute pain to 7 days, and chronic pain to 30 days. The prescriptions can be extended beyond these deadlines if the physicians determine it to be medically necessary.
- 2) The prescription monitoring program will be improved and mandatory.
- 3) Effective date is January 1, 2017.
- 4) Limits dosage.
- 5) Prescriptions can be partially filled.

2. Office Space Update

Portland: A tour of the new space was given to Board members. There were a number of telephone issues, which have been resolved.

Augusta: Central Office has a new location which it will be moving to in mid-July. The regional office will move to the same building at a later date.

VII. NEW BUSINESS

1. Mediation Policy

Director Sighinolfi proposed a new mediation policy giving mediators discretion to grant or deny requests for telephone mediations. Board members and members of the audience discussed holding mediations in person versus on the telephone. Some felt mediations are requested by telephone when the parties already know a resolution will not be reached. Director Sighinolfi suggested a resolution would be more likely to occur if parties appear in person with their clients. The main idea is to make mediations work so there are more cases resolved at that level. One suggestion was to begin using video technology.

This topic will be discussed further at the next meeting.

2. Redrawing Territories for Caseloads

The Administrative Law Judges have been carefully analyzing the caseloads in order to redraw the territories to balance the number of cases assigned to each office. ALJ Jerome described the changes as very modest. The territories will be reviewed annually going forward.

3. Establishment of a Rulemaking Taskforce

General Counsel John Rohde will be creating a rulemaking taskforce to address the latest legislative changes and to make other changes necessary. Director Deabay suggested a labor and management member be part of the group.

4. Administrative Law Judges' Caseloads

Director Burroughs asked for a status report on ALJ caseloads. Director Sighinolfi will provide Board members with information on the ALJ's oldest and newest pending cases.

VIII. ADJOURNMENT

Director Koocher MOVED TO ADJOURN; Director Deabay seconded. **MOTION PASSES 6-0-1** (*Chair abstained*).

The meeting formally adjourned at 11:40 a.m.