



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

**October 13, 2020**

A business meeting of the Maine Workers' Compensation Board of Directors was conducted remotely on Tuesday, October 13, 2020 via Zoom.

**PRESENT:** John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, Richelle Wallace, Tom Davis, Gary Koocher, and Emery Deabay (*Directors*), and Richard Hewes (*General Counsel*)

**I. CALL TO ORDER**

Executive Director Rohde called the meeting to order at 10:01 a.m. with over 30 people participating remotely. Executive Director Rohde reviewed the Zoom meeting platform and procedures. Board members and staff introduced themselves for the recording. Voting to be conducted by roll call vote instead of a show of hands.

**II. APPROVAL OF MINUTES**

**1. Draft Minutes of 8/11/2020 Board of Director's Business Meeting**

Director Burroughs MOVED TO ACCEPT THE MINUTES OF 8/11/2020 AS WRITTEN; Director Wallace seconded. **MOTION PASSED 7-0.**

**III. SUBCOMMITTEE REPORTS**

The IME, Personnel, and Budget subcommittees met on October 6, 2020 via Zoom.

**1. IME Subcommittee**

The Independent Medical Examination Subcommittee met to discuss the application of Geoffrey McCullen, M. D., which he submitted to be appointed to the Board's section 312 examiners' list. Dr. McCullen is an orthopaedic surgeon. The subcommittee recommends that Dr. McCullen be appointed as a section 312 examiner in the field of orthopaedics.

Director Burroughs MOVED TO APPOINT GEOFFREY MCCULLEN, M. D., TO THE LIST OF EXAMINING PHYSICIANS APPROVED BY THE BOARD TO CONDUCT INDEPENDENT MEDICAL EXAMINATIONS PURSUANT TO 39-A MRSA § 312 IN

THE SPECIALTY OF ORTHOPAEDICS; Director Koocher seconded. **MOTION PASSED 7-0.**

**2. Personnel Subcommittee**

The Workers' Compensation Board's Personnel Subcommittee met to discuss the reappointment of Hearing Officer Richard Dunn. Hearing Officer Dunn's term is set to expire January 1, 2021 and he is willing to continue to serve as a hearing officer. Hearing Officer Dunn presides over cases brought by the Abuse Investigation Unit, appeals from independent contractor predeterminations, and vocational rehabilitation cases and processes those cases expeditiously.

Director Deabay MOVED TO REAPPOINT HEARING OFFICER RICHARD DUNN TO A SEVEN YEAR TERM BEGINNING JANUARY 1, 2021 AND ENDING ON JANUARY 1, 2028; Director Koocher seconded. **MOTION PASSED 7-0.**

**3. Budget Subcommittee**

The biennial budget submission is normally due on September 1<sup>st</sup>. Due to the pandemic, the deadline has been extended to October 19<sup>th</sup>. The Budget subcommittee met to discuss the Board's proposed budget submission. Discussion was held regarding the assessment cap, the uncertainty of the economy, and the overall budget process. Directors Davis, Wallace, and Koocher expressed concerns about submitting a budget with projected expenditures that are in excess of the Board's assessment cap.

Executive Director Rohde noted the proposed budget, using reserve funds to cover the amount over the assessment cap, will allow the Board to submit a balanced budget and be fully funded for the next biennium. However, the assessment cap will have to be addressed before the Board submits its next biennial budget in 2022. Executive Director Rohde also noted the impact of the pandemic was taken into account when the Board issued its assessment for the current fiscal year that ends June 30, 2021. The Board, in light of the current uncertainty, reduced this year's assessment by 4.65% as compared to last year.

Deputy Director Jan Adams explained that the Bureau of the Budget has indicated that reserve accounts can be used to cover money over the assessment cap, but we can't be sure of that until the approval goes through. While the proposed budget is likely to be approved, there is still a chance that changes will need to be made.

Director Green MOVED TO APPROVE A BUDGET IN THE PROJECTED AMOUNTS OF \$13,200,000 FOR FISCAL YEAR 2022 AND \$13,400,000 FOR FISCAL YEAR 2023. EXPENSES THAT EXCEED THE ASSESSMENT CAP WILL BE TAKEN FROM THE RESERVE ACCOUNT. **MOTION PASSED 4-3.** (*Directors Davis, Wallace, and Koocher opposed.*)

## **IV. EXECUTIVE DIRECTOR REPORT**

**1. Medical Fee Schedule**

The inpatient fee schedule is being updated. A comprehensive 3-year review of the Medical Fee Schedule is due this year. We are most of the way through this process. A memo will be drafted with recommendations for changes.

NCCI will give a presentation of its annual medical data and opioid reports tomorrow. These reports will be forwarded to the Board's directors when the reports are made available for distribution.

## **2. Formal Hearings**

As previously reported, Zoom licenses have been secured for the ALJs. Formal hearings can be held remotely using both Zoom and MS Teams. Board staff are working on how to provide in-person hearings when they become necessary. Deputy Director Lindsay Lizzotte has been working with the State of Maine Office of Information Technology to secure kiosk computers for the regional offices. These computers will be designated for use only when employees or witnesses do not have access to technology needed to participate in remote hearings. Procedures for use and cleaning in accordance with COVID guidelines have been developed.

## **3. Information Management**

Board staff have been working with the programmers on the employer database. Last week the new database went into use. It enhances the board's ability to access accurate information and is a substitute for a database that the Bureau of Labor used to share with the Board. Board staff continues to work on the Electronic Data Interchange (EDI) and Proof of Coverage pieces. Deputy Director Lizzotte has been in contact with the Workers' Compensation Board in Michigan regarding their EDI project. Michigan uses IAIABC for their EDI piece and may be able to provide helpful information about the implementation of their project.

## **4. COVID Related Cases**

As of October 2, 2020, the Board had received 1,254 first reports of injuries related to COVID-19. Of those, 1,088 were lost time claims. More First Reports of Injuries were filed for Healthcare workers than for other occupations.

# **V. GENERAL COUNSEL REPORT**

## **1. Waiver Request**

General Counsel Richard Hewes reported that MEMIC filed an EDI waiver request due to technical issues encountered during the transition to a new vendor for EDI filings.

Director Deabay MOVED TO GRANT A BOARD WAIVER PERMITTING MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY TO BE EXEMPTED UNDER ME. W.C.B. RULE, CH. 3 §4 (1) (C) (1) FROM THE REQUIREMENT THAT IT FILE FORMS ELECTRONICALLY FROM OCTOBER 1, 2020 THROUGH NOVEMBER 2, 2020, DURING WHICH TIME IT ANTICIPATES IT WILL IDENTIFY AND CORRECT THE PROBLEM THAT PREVENTS IT FROM FILING TIMELY, ACCURATE AND COMPLETE FORMS WITH THE WORKERS' COMPENSATION BOARD. Director Koocher seconded. **MOTION PASSED 7-0.**

## **2. Law Court**

General Counsel Hewes reported that the Law Court held oral arguments on September 16<sup>th</sup> in the case of *Somers v. SD Warren*. SD Warren challenged the validity of a Board Rule that extended the allowance of benefits beyond 520 weeks.

The Law Court also heard *Darla Potter v. Cooke Aquaculture* on September 18th. This case involved application of the Jones Act which allows benefits under federal law. If the employee is a seaman for the purposes of the Jones Act, then the employee is not allowed to be considered an employee under the Workers' Compensation Act.

The Law Court will issue decisions soon.

## **VI. OLD BUSINESS**

There was no old business.

## **VII. NEW BUSINESS**

### **1. 2019 Compliance Report**

The 2019 Annual Compliance Report was presented for review by Carrie Ellis and discussion was held regarding the steady drop in compliance.

Director Burroughs MOVED TO ACCEPT THE REPORT AS DRAFTED. Director Koocher seconded. **MOTION PASSED 7-0.**

### **2. First Quarter 2020 Compliance Report**

The 1<sup>st</sup> Quarter 2020 Compliance Report was presented for review by Carrie Ellis. There are no major issues for this quarter.

Director Deabay MOVED TO ACCEPT THE REPORT AS DRAFTED. Director Wallace seconded. **MOTION PASSED 7-0.**

### **3. Second Quarter 2020 Compliance Report**

The 2<sup>nd</sup> Quarter 2020 Compliance Report was presented for review by Carrie Ellis. This is the first full quarterly report that reflects "full COVID mode" and compliance was better than expected with employees largely working from home.

Director Davis MOVED TO ACCEPT THE REPORT AS DRAFTED. Director Burroughs seconded. **MOTION PASSED 7-0.**

## **VIII. ADJOURNMENT**

Director Wallace MOVED TO ADJOURN; Director Burroughs seconded. **MOTION PASSED 6-1** (*Director Green opposed.*)

The meeting formally adjourned at 10:48 a.m.