



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

April 13, 2021

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, April 13, 2021 via Zoom.

PRESENT: John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, Richelle Wallace, Tom Davis, Gary Koocher (*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 is to be conducted by roll call vote instead of a show of hands.

II. APPROVAL OF MINUTES

1. Draft Minutes of 3/9/2021 Board of Director's Business Meeting

Director Green MOVED TO ACCEPT THE MINUTES OF THE 3/9/2021 BOARD MEETING AS WRITTEN; Director Burroughs seconded. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

Some directors will step down from the board and new subcommittee assignments will be made in the coming weeks. The Personnel subcommittee met on 4/7/21. The Budget subcommittee met on 4/8/21. Both meetings were held via Zoom. The IME subcommittee conducted interviews via Zoom with §312 independent medical examination applicants on March 16th and 18th.

1. Budget Subcommittee

Executive Director Rohde reported the Legislature has passed a baseline spending budget. The supplemental budget, which will include a rent increase for the Bangor regional office, will be addressed in the special session of the 130th Legislature. No issues are anticipated at this time. Work on the assessment is underway and there will be more information on the assessment provided at the May Board meeting.

Director Green and Executive Director Rohde thanked Director Davis for his work on the Budget subcommittee. He will be leaving the board when his replacement director is confirmed by the senate and sworn in.

2. Personnel Subcommittee

Executive Director Rohde reported that the board can begin filling staff vacancies now that the Budget has been approved. The vacant administrative law judge position will be a priority. ALJ Sue Jerome's position has not been filled yet. ALJ Timothy Collier plans to retire later this year. The new ALJ will fill ALJ Jerome's position and will be hired for the Lewiston office. ALJ Chabot will move from the board's Lewiston office to Portland.

Director Burroughs and Executive Director Rohde thanked Director Deabay for his work on the Personnel subcommittee. Director Deabay will be leaving the board when his replacement is confirmed by the senate and sworn in.

3. IME Subcommittee

Director Burroughs reported the IME Subcommittee had the opportunity to conduct a follow up interviews with orthopaedic doctors Gregory Taggart and Kevin Olehnik for appointment to the Board's section 312 examiners' list.

Director Burroughs MOVED TO APPOINT GREGORY TAGGART, 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.**

Director Koocher MOVED TO APPOINT W. KEVIN OLEHNIK, 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 Davis seconded. **MOTION PASSED 7-0.**

IV. EXECUTIVE DIRECTOR REPORT

1. IAIABC

IAIABC will hold their annual Forum virtually this year. Deputy Directors Lindsay Lizzotte and Kimberlee McCarson will attend on behalf of the Board.

2. Board Appointments

Directors Burroughs, Wallace, and Green are up for reappointment. Lynne Gaudette, Penny Picard, and Serina DeWolfe have been nominated to fill the remaining seats on the Board. All the candidates received a favorable recommendation from the Labor and Housing Committee on 4/5/21. The Senate confirmation hearing is scheduled for 4/22/21. Once the Senate has confirmed the nominations, each of the new directors will need to be sworn in by a dedimus justice within 30 days.

3. Comp Summit

As mentioned in previous meetings, plans are still a work in progress for the 2021 Workers' Compensation Summit currently scheduled for September. Executive Director Rohde had a follow up meeting with Bud Bernstein about the Comp Summit schedule. Currently, the schedule is for a virtual day and a half long "nuts and bolts" session. The following week would tentatively offer a day and a half long session in person which would be held outside in a tent at the Samoset. There will not be a Board meeting at Comp Summit this year.

4. Board Offices

At this time, the current remote and in office schedules will be in effect until 7/5/21. DAFS will reassess this as needed based on COVID trends.

5. Bedivere Insurance

Bedivere Insurance has been declared insolvent. The Board has been sent information about open claims and will reconcile our information against data sent.

6. COVID

There have been 3,336 COVID-19 lost time first reports of injury (FROI) to date. FROI's have dropped from the December through February time frame. Currently, about 15 FROIs per week are filed.

V. GENERAL COUNSEL REPORT

1. Board Nominations

General Counsel Hewes reported the Labor and Housing Committee reviewed the nominees to the Board on 4/5/21. The Senate confirmation hearing is scheduled for 4/22/21. New members will need to be sworn in (in person) within 30 days by a dedimus justice and return their oaths to the Secretary of State to complete their appointments. General Counsel Hewes can assist if the new members do not have a local dedimus justice.

2. Law Court

The Law Court issued a decision in *Charest v. Hydraulic Hose & Assemblies*. The Law Court concluded that the Appellate Division (AD) erred in determining that the statute of limitations had expired because social security retirement payments were functionally workers' compensation benefits, which extended the statute of limitations. The AD decision was vacated, and the case remanded for further proceedings.

2. EDI Waiver

On April 6, 2021, Shonna Poulin-Gutierrez, Executive Director of the Office of Workers' Compensation at the Bureau of Human Resources for the State of Maine, notified the Workers' Compensation Board that the Office of Workers' Compensation's claims data storage system will be shut down beginning April 9, 2021. A new claims management system will be installed and is expected to be operating by April 12th.

Ms. Poulin-Gutierrez anticipates that during the week following April 9, 2021 the Office of Workers' Compensation may encounter some difficulty filing electronic documents with the Board as the new system is adjusted to meet the claims handling needs of the

Office of Workers' Compensation. To accommodate problems that may arise, Ms. Poulin-Gutierrez asked the Board to grant a waiver of the electronic form filing requirements as allowed by Workers' Compensation Board Rule Ch. 3 §4 (1) (C) (1). Under that rule, the Board may waive electronic form filing requirements for the Office of Workers' Compensation if it establishes that compliance with the Board's filing requirements would cause undue hardship. Undue hardship means significant difficulty or expense.

Director Koocher MOVED TO GRANT A BOARD WAIVER PERMITTING THE STATE OF MAINE OFFICE OF WORKERS' COMPENSATION TO BE EXEMPTED UNDER WORKERS' COMPENSATION BOARD RULE CHAPTER 3 SECTION 4 (1) (C) (1) FROM THE REQUIREMENT THAT IT FILE FORMS ELECTRONICALLY FROM APRIL 9, 2021 THROUGH APRIL 16, 2021. Director Burroughs seconded.

Discussion was held regarding the dates of the waiver. It was suggested that an additional week be added to the waiver in case more time is needed. Beatrice Turner, in her new capacity with the Office of Workers' Compensation, reported that the program went live on Monday. They are currently working out any bugs in the system and asked that the waiver period be extended just in case additional time is needed.

Director Koocher MOVED TO AMEND HIS MOTION TO CHANGE THE EDI WAIVER DATES FROM APRIL 9, 2021 THROUGH APRIL 23, 2021. Director Green seconded. **AMENDMENT PASSED 7-0.**

VI. OLD BUSINESS

1. Legislation Update

Executive Director Rohde reported Labor and Housing Committee had voted on LD 467 An Act To Support E-9-1-1 Dispatchers and Corrections Officers Diagnosed with Post-traumatic Stress Disorder, and LD 575 An Act To Establish a Conditional Presumption of Compensability for Certain Employees in Cases of Impairment from Hypertension or Heart Disease and 575. A divided report is anticipated.

Three public hearings are scheduled for 4/12/21: LD 992 An Act To Prevent the Denial or Revocation of a Professional or Business License for a Violation Not Related to That Profession or Business, LD 024 Resolve Directing the Workers' Compensation Board To Study the Impact of Workers' Compensation Laws on Certain Public Sector Employees, and LD 1239.

LD 1430 has been printed but is not yet scheduled for a public hearing. Though LD 1128 is a Public Safety bill, it has a workers' compensation component as it would add transport officers to the Section 328(A) presumption.

VII. NEW BUSINESS

1. 4Q2020 Draft Compliance Report

The 4th Quarter 2020 Compliance report draft was presented by Carrie Pomeroy from Monitoring. FROIs increased by almost 800 due to COVID-19, bringing the other

categories up with it. Overall, the percentages are down though. MOPs, for example, are down to 74%.

Executive Director Rohde noted that Carrie has worked very hard to make sure the report is accurate. There was a significant amount of work done with the claims administrators to ensure there was good information available for the report. MEMIC's numbers are down and Carrie will continue to work with them.

Carrie reported that while insurers are trying to meet the benchmarks, there continues to be room for improvement in compliance. When MEMIC's numbers are removed from the percentages MOPs, for example, go up to 84% from 74%.

Matt Harmon from MEMIC was present for the meeting and noted that MEMIC had an EDI waiver during that period which may have impacted their numbers. MEMIC's expectation is that they will surpass the benchmarks going forward. Carrie noted she has a meeting scheduled on 4/14/21 with Nicole from MEMIC to review these issues.

Director Wallace MOVED TO ACCEPT THE 3RD QUARTER COMPLIANCE REPORT AS WRITTEN; Director Deabay seconded. **MOTION PASSED 7-0.**

VIII. ADJOURNMENT

Executive Director Rohde again thanked Directors Deabay, Koocher, and Davis for their hard work. It has been a pleasure working with them. He also welcomed Lynne Gaudette, Penny Picard, and Serina DeWolfe to the Board.

Director Koocher MOVED TO ADJOURN; Director Deabay SECONDED. **MOTION PASSED 7-0.**

The meeting formally adjourned at 10:43 a.m.