



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

**November 15, 2022**

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, November 15, 2022 via Zoom and in person at the Board's Central Office on 442 Civic Center Drive, Augusta.

**PRESENT:** John Rohde (*Executive Director/Chair*), Serina DeWolfe, Ron Green, Glenn Burroughs, and Penny Picard (*Directors*), Richard Hewes (*General Counsel*)  
**REMOTE VIA ZOOM:** Richelle Wallace and Lynne Gaudette (*Directors*)

**I. CALL TO ORDER**

Executive Director Rohde called the meeting to order at 10:03 a.m. with over 25 people participating remotely and in person. Executive Director Rohde reviewed the hybrid meeting format and remote participation procedures. Board members and staff introduced themselves for the recording.

**II. APPROVAL OF MINUTES**

**1. Draft Minutes of 8/23/2022 Board of Director's Business Meeting**

Director Green reported the Budget Subcommittee discussed the August meeting minutes and did not come to a resolution. Director Green MOVED TO HAVE A TRANSCRIPT PREPARED OF THE ENTIRE CONVERSATION AROUND THE BUDGET THAT TOOK PLACE ON AUGUST 23<sup>rd</sup>; Director Burroughs seconded.

Discussion continued. Director Wallace noted that the Budget subcommittee had time to review the audio links, but it wasn't clear what the next steps would be.

**MOTION PASSED 7-0.**

**2. Draft Minutes of 10/11/2022 Board of Director's Business Meeting**

Director Green MOVED TO ACCEPT THE MINUTES OF THE 10/11/2022 BOARD MEETING AS WRITTEN; Director Burroughs seconded.

**MOTION PASSED 7-0.**

### III. SUBCOMMITTEE REPORTS

#### 1. Personnel Subcommittee

Administrative Law Judge (ALJ) Pelletier will be retiring in February 2023. Director DeWolfe reported that his position will be posted in December. Caribou can be a difficult area to fill vacancies. The new deputy director position (formerly the Hearing Officer position) will hopefully start in January. We have an anticipated vacancy for the Director of Audit as well. The Board is still looking for new office space for the Portland Regional Office.

#### 2. IME Subcommittee

The IME subcommittee met last week to discuss the annual review of doctors on the Independent Medical Examiner (IME) list. This year a reminder will also be sent to doctors about what their role is in the process. Additionally, the Board has been contacted by a doctor who may want to apply for the list. If he does apply, the usual process will be followed.

Director Gaudette noted that the independent role of IME's should be emphasized because an issue has been brought to the Board's attention. There was no evidence that information sent to a doctor was improper, but this action has triggered the need to clear up any questions.

Liz Brogan asked what the Board intends to do about this situation as there doesn't seem to be a clear path noted to deal with the situation. She feels this is very damaging to the system.

Executive Director Rohde said the Board has not discussed this with the other doctors. He and General Counsel Hewes will draft language for a letter to be sent to the IMEs. Directors Burroughs and Gaudette will review the language in subcommittee before it is sent out with the annual review.

Liz Brogan suggested amending Chapter 4 of the Board Rules to show there should be no *ex parte* communication. Marti Conti added the language should show that any documentation received that is not as a result of the 312 examination should be brought to the Board and shared with the opposing party.

Nathan Jury noted that term "IME" is being used. In this situation, the doctors are 312 examiners. The same insurers, who feel this communication was improper, can request the same doctors to perform 207 examinations and be medical experts for insurance companies. The letter at the center of this discussion was sent as an educational letter as there is not currently any specific training for 312 doctors.

Executive Director Rohde reminded everyone that the Board looks at whether IME reports are being accepted, accepted in part, or rejected. If we start to see reports being rejected, we will discuss what action needs to be taken. In the meantime, we have to rely on the ALJ's to make determinations when hearing cases.

The Board will need to work through any suggested changes to the language of Chapter 4 to avoid creating problems. The IME Subcommittee will reconvene and continue its discussion.

## **IV. EXECUTIVE DIRECTOR REPORT**

### **1. Personnel**

As Director DeWolfe noted, Hearing Officer Richard Dunn is retiring. His last day in the office is next Wednesday. HO Dunn is the longest tenured employee at the Board. He hired Executive Director Rohde back in 1993 along with many more current staff members. He will be greatly missed.

ALJ Pelletier from the Caribou office is also retiring. The other ALJ's are pitching in to keep the Caribou cases moving forward while the Personnel Subcommittee works to hire a new ALJ.

### **2. NCCI Medical Data Report**

NCCI has released their annual report. The time to first surgery and the use of telemedicine have increased since the previous report largely due to the impacts of COVID.

Noting a discussion from March about NCCI, Liz Brogan asked about the status of changes to EDI filing where the use of UIANs (Unemployment Insurance Account Numbers) was going to be dropped. She inquired about the status of this change. Executive Director Rohde replied that many meetings and a lot of work has been happening relative to the move away from using UIANs but that work is not completed. Deputy Director Lindsay Lizzotte added that the entire system is currently based on using UIANs, so there is a large amount of programming work involved as well.

## **V. GENERAL COUNSEL REPORT**

### **1. Personnel**

General Counsel Richard Hewes reported there is a vacant advocate position in Augusta. No applications were received from the first job posting, so it is being reposted.

## **VI. OLD BUSINESS**

### **1. Chapter 5 Rulemaking**

Executive Director Rohde said the draft rules for releases has been changed. Providers may use their own releases and a provider signature line has been added to the draft revision of the M-1 form. Board releases do not fit on one page and will be 2-sided documents. The issue we want to come back to today is Section 1.06(2) situations where bills are received that are missing one or more of the required elements. If elements are missing from a bill, a provider should be given the opportunity to correct it by being told what is missing. Currently, insurers might not identify deficiencies for providers. The change in the rule clarifies that insurers must flag missing elements which render a bill incomplete.

Executive Director Rohde suggested that this might be an opportunity for the Board to vote on whether to send Chapter 5 out for public comment. Sending it out for public comment does not lock the Board into passing the current version, which is essentially a draft that can be revised to account for later comments. Director Burroughs MOVED TO SEND CHANGES TO CHAPTER 5 OUT FOR PUBLIC COMMENT; Director Gaudette SECONDED.

Discussion continued. Directors Picard and Gaudette would prefer to hold off on voting for the current draft of Chapter 5. They want to read the final language relative to adjusters' obligations to flag billing deficiencies for medical providers. After the draft language finalized, they would like to vote. Director Green MOVED TO TABLE THE MOTION UNTIL THE DECEMBER MEETING; Director Picard SECONDED.

**MOTION PASSED 7-0.**

## **VII. NEW BUSINESS**

### **1. 2023 Board Meeting Schedule**

Director Green MOVED TO ACCEPT THE PROPOSED 2023 BOARD MEETING SCHEDULE; Director Burroughs SECONDED.

**MOTION PASSED 7-0.**

## **VIII. ADJOURNMENT**

Director Green MOVED TO ADJOURN; Director Picard SECONDED.

**MOTION PASSED 5-2.** (*Director Burroughs and Gaudette opposed.*)

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