



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

**September 13, 2022**

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, September 13, 2022 via Zoom with some directors attending in person at the Board's Central Office on 442 Civic Center Drive, Augusta.

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

**I. CALL TO ORDER**

Executive Director Rohde called the meeting to order at 10:03 a.m. with 21 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**

Executive Director Rohde noted that the meeting minutes from August will be voted on at the October meeting.

**III. SUBCOMMITTEE REPORTS**

**1. Personnel Subcommittee**

Director DeWolfe recapped the subcommittee meeting held on September 7<sup>th</sup>. The repairs and mold remediation work at the Portland office continue to be problematic. Most recently, the landlord provided short notice on a repair and the technician he sent was not licensed to do the work. The ongoing roof leak issues have not been resolved which prevents the mold remediation work from being done. The office is not closed, but areas are sectioned off. Additionally, staff may be limited to the amount of time they can spend in certain areas. Board staff have met with the Bureau of General Services (BGS) as they oversee the lease. A search for potential new office space is underway.

Hearing Officer Richard Dunn will be retiring at the end of this year after more than 30 years of service with the Board.

The vacant troubleshooter position in Lewiston will be reclassified to a Management Analyst I position.

ALJ Chabot's term expires on December 31, 2022. The subcommittee discussed his appointment and recommends that the board reappoint him.

Director DeWolfe MOVED TO REAPPOINT BRYAN CHABOT AS AN ADMINISTRATIVE LAW JUDGE FOR A SEVEN YEAR TERM ENDING DECEMBER 31, 2029. Director Picard second. **MOTION PASSED 7-0.**

**2. IME & Legislation Subcommittee**

Directors Lynne Gaudette and Glenn Burroughs have been serving on both the IME subcommittee and an ad hoc committee to review possible amendments to the Workers' Compensation Act. Ten ideas have been discussed and there appears to be consensus on most of them. A draft bill will be submitted to the Board for consideration at the October meeting. Legislative proposals are due at the Revisor's office on December 1, 2022.

**IV. EXECUTIVE DIRECTOR REPORT**

**1. Portland Regional Office**

The problems at the Portland office were already covered by the Personnel Subcommittee report and do not require further discussion at this time. Senior staff will review the Board's needs for office space and determine if a smaller footprint is feasible.

**2. Personnel**

The shift from pandemic work schedules to telework agreements went into effect on September 12<sup>th</sup>. Board employees did a great job adjusting to the changes and challenges created by the pandemic and have adapted effectively to their new schedules.

**3. Comp Summit**

Executive Director Rohde has invited Bud Bernstein to join the Board at the October meeting so the Board may wish him well on his retirement. Bud has been the driving force behind the decades' long Maine Workers' Compensation Summit, which has provided valuable training to all who have been involved in Maine's workers' compensation community.

**V. GENERAL COUNSEL REPORT**

**1. Personnel**

General Counsel Richard Hewes reported that three vacancies in the Abuse Unit have been filled. Larry Brann and Nigel Stevens were internal candidates who moved over from the advocate division and the third, Katie Trost, previously worked at the Board. Senior Staff Attorney Shawn Walsh has begun interviewing to fill the vacancies left by Nigel and Larry.

**2. Section 213 Petition**

General Counsel Richard Hewes held a second conference of counsel regarding the petition for the extension of benefits due to extreme financial hardship. A schedule has

been set for filings with the first filing date being October 3<sup>rd</sup> for exhibit lists. A hearing date has not been set.

## **VI. OLD BUSINESS**

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

Executive Director Rohde stated that the stakeholder group has met several times to discuss potential changes to chapter 5, and the forms that authorize the release of mental health records. The most recent issue discussed with the group was a process to allow providers to use their own release form should they feel that the Board form is not sufficient for HIPAA compliance or patient privacy. A draft is being prepared and will be presented to the Board at the October meeting for further consideration.

## **VII. NEW BUSINESS**

### **1. 2021 Annual Compliance Report**

Carrie Pomeroy presented a draft of the 2021 Annual Compliance report. She advised that one page was misnumbered in the draft and has since been corrected. As the quarterly reports have largely been below benchmark, it was expected that the annual report would fall short as well.

The new Memorandum of Payment (MOP) penalty process seems to be helping improve MOP numbers. Staff is getting used to the new process and will be taking up wage and fringe benefit compliance next. In the third quarter of 2019, the benchmark for wages and fringe benefits was set at 75% and it's only gone down since then.

Carrie reported that First Report of Injury (FROI) filings are up about 2,700 from the previous year which is likely due to COVID cases. On a positive note, 50% of injured employees go back to work within the waiting period, which is good compared to the national average.

Executive Director Rohde thanked Deputy Director Lindsay Lizzotte and Management Analyst II Candace Mullen for producing such great reports and noted that COVID has been about 20-25% of cases overall. The Board will look at how that might be changing as people go back to work. He noted that wage statements are also important benchmark. Without accurate wage statements, average weekly wage (AWW) cannot be determined. As the Abuse Investigation Unit is fully staffed for the first time in more than a year, the AIU will get a similar penalty process started for wage statements as they are currently doing with MOPs. While a late-filed report is self-explanatory, inaccurate or incomplete wage statements affect all parts of the process.

Director Burroughs asked what reasons are being given for wage and fringe benefit deficiencies. Carrie said most insurers say that the employer isn't providing the information, or that "that's what we have" even if the information is incomplete or inaccurate. These are not a reasonable excuses though and the insurers should be pushing back on the employers for accurate and complete information.

Director Wallace asked about the table on page 4 that shows the first line at over 100% but 2021 at 17%. Carrie noted that is the percent changed since the Board began monitoring.

Assistant General Counsel Seanna Crasnick reported that there is a lot of resistance to completing the wage statements. Director Burroughs inquired about the recourse for non-compliance. Executive Director Rohde cited Section 360 of the Act for penalties.

Monitoring, Audit, and Enforcement (MAE) continue to meet monthly which has been very helpful as the new penalty process continues and will be expanded going forward.

Director Green MOVED TO ACCEPT THE 2021 ANNUAL COMPLIANCE REPORT AS WRITTEN; Director Burroughs SECONDED. **MOTION PASSED 7-0.**

## **VIII. ADJOURNMENT**

Director Green MOVED TO ADJOURN;

Director Wallace SECONDED. **MOTION PASSED 6-1.** (*Director Burroughs opposed.*)

The meeting formally adjourned at 10:37 a.m.