



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

**March 14, 2023**

A business meeting of the Maine Workers' Compensation Board of Directors was conducted remotely on Tuesday, March 14, 2023 via Zoom.

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

**I. CALL TO ORDER**

Executive Director Rohde called the meeting to order at 10:05 a.m. with over 25 people participating remotely. Due to weather conditions, State offices are closed for the day. Executive Director Rohde reviewed the meeting format and remote participation procedures. Board members and staff introduced themselves for the recording.

**II. APPROVAL OF MINUTES**

**1. Draft Minutes of 2/14/2022 Board of Director's Business Meeting**

Director Burroughs MOVED TO ACCEPT THE MINUTES OF THE 2/14/2023 BOARD MEETING AS WRITTEN; Director Green SECONDED.  
**MOTION PASSED 7-0.**

**III. SUBCOMMITTEE REPORTS**

**1. Budget Subcommittee**

Director Wallace reported that the Portland office move has been narrowed down to two locations.

The Board recently received unexpected charges from the landlord for the Augusta facility. These expenses accumulated over the past 3 years. Deputy Director Jan Adams is working with the Bureau of General Services (BGS) to determine if the charges are valid under the lease. The Augusta lease has been renegotiated and the new terms should eliminate retroactive charges in future years.

Deputy Director Adams has begun work on the annual assessment process. Director Green reported that the biennial budget is slowly working its way through the legislative process.

Executive Director Rohde reported that an initiative regarding technical support was reviewed by the Labor and Housing Committee (LBHS) last week. The LBHS Committee voted in favor 9-3. The request to add money to the agency budget for costs of Board meetings received a unanimous 12-0 vote. The language change regarding the assessment cap received a favorable vote of 7-5. The Board portion of the biennial budget will now go back to the Appropriations Committee.

## 2. Personnel Subcommittee

Director DeWolfe reported that the Personnel Subcommittee met last month for a second round of interviews for Caribou Administrative Law Judge position. Two candidates were interviewed in this round.

Director DeWolfe MOVED TO APPOINT CHRISTINE SMITH TO THE POSITION OF ADMINISTRATIVE LAW JUDGE FOR AN INITIAL TERM THAT WILL END APRIL 30, 2026. Director Picard SECONDED. **MOTION PASSED 7-0.**

The anticipated start date for Christine Smith is April 10<sup>th</sup>.

Director DeWolfe also reported that the Personnel Subcommittee conducted interviews for the Deputy Director of Benefits Administration position. Director DeWolfe MOVED TO APPOINT KATHLEEN TROST TO BE DEPUTY DIRECTOR OF BENEFITS ADMINISTRATION FOR THE WORKERS' COMPENSATION BOARD. Director Picard SECONDED. **MOTION PASSED 7-0.**

## 3. IME Subcommittee

Director Gaudette reported that the IME Subcommittee received an application from Sacha Matthews, M. D., for appointment to the Board's list of approved section 312 examiners.

The subcommittee interviewed Dr. Matthews on February 24, 2023. Dr. Matthews is an orthopaedic surgeon and practices at the Veterans' Administration Hospital in Togus. Of note, his practice is focused on the treatment, including surgery, of hands and arms. He also treats other orthopaedic problems. The subcommittee recommends that Dr. Matthews be appointed as a section 312 examiner in the specialty of orthopaedics.

Director Gaudette MOVED TO APPOINT SACHA MATTHEWS, 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 Burroughs SECONDED. **MOTION PASSED 7-0.**

Director Gaudette noted that the subcommittee used the new interview and application process for this appointment and feels very confident about the process. Executive Director Rohde agreed that having the Board members as part of the process is a positive step.

Director Burroughs reported that the Board received an application from Martin Fitzpatrick for appointment as a Board-approved vocational rehabilitation provider under WCB Rule Ch. 6 § 1. Mr. Fitzpatrick works for Fitzpatrick Disability Solutions, Inc., in Windham, Maine and has worked as a Board-approved vocational rehabilitation provider for a number of years. The IME subcommittee recommends that Mr. Fitzpatrick be appointed as a Board-approved vocational rehabilitation provider for a two-term beginning March 14, 2023.

Director Burroughs MOVED TO APPOINT MARTIN FITZPATRICK TO THE LIST OF BOARD-APPROVED VOCATIONAL REHABILITATION PROVIDERS FOR A TWO-YEAR TERM BEGINNING MARCH 14, 2023. Director Gaudette SECONDED. **MOTION PASSED 7-0.**

Director Burroughs also noted that the subcommittee has discussed potential changes to Chapter 4 of the Board's rules and recommends that a sentence be added as Ch. 4 §1 (4) (F), which confirms that Board approved independent medical examiners should be impartial.

Director Burroughs MOVED TO START THE PUBLIC HEARING PROCESS ON PROPOSED CHANGES TO CHAPTER 4 OF THE BOARD'S RULES. Director Gaudette SECONDED.

Director Gaudette pointed out that Management stakeholders preferred to have stronger language on this point, but the new process of having board members participate in the hiring and review process covers that issue.

**MOTION PASSED 7-0.**

## **IV. EXECUTIVE DIRECTOR REPORT**

### **1. Comp Summit**

Strategic HR has decided not to put on Comp Summit going forward. The Board is not in a position to take over the event. The Board will need to work on providing continuing legal education opportunities for advocates either through in-house trainings or coordination with the Bar Association.

### **3. Labor and Housing Committee**

Directors Picard and Burroughs were reappointed by the LBHS Committee. Paperwork that finalizes these appointments will be issued soon by the Governor's Office. Executive Director Rohde is looking forward to having them continue their service on the Board for another term.

### **4. Legislative Process**

Executive Director Rohde reviewed the legislative process. When a bill is printed, it is scheduled for a public hearing before a Legislative committee. At the public hearing, interested parties may appear and testify "for," "against" or "neither for nor against" the bill.

After the public hearing, the bill is scheduled for a work session before the same legislative committee. At work sessions, people with specific knowledge about the bill may be asked to present information to the committee. Open public comment is limited to public hearings. After receiving information at a work session, the committee votes on the bill as either “ought to pass” or “ought not to pass.” The committee can also amend a bill based on feedback. In that case, it can be voted on as amended.

If the vote is unanimous, the bill usually proceeds easily through the rest of the legislative process. If the vote is divided, there will be a majority report and a minority report. The Board, however, only gets one chance to offer its position, which is at the public hearing.

## **V. GENERAL COUNSEL REPORT**

### **1. Personnel**

The advocate position in Caribou is still vacant. The posting has been extended again. General Counsel Hewes asked meeting participants to spread the word to attorneys who may be interested.

Amanda DiPietro has accepted the Director of Audit position.

## **VI. OLD BUSINESS**

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

As previously reported, a required legal pre-review was done by Attorney General’s office which was very thorough. The Legislation subcommittee met to discuss the review and resulting questions. Questions were raised about medical releases. Currently, the Board’s releases state that medical information gathered with the release may be redisclosed, which is necessary for Maine workers’ compensation cases. The AG’s office pointed to a federal regulation that prevents the redisclosure of medical information unless additional authorization gives permission for that redisclosure. Executive Director Rohde is working with the AG’s office on revisions that fits within the Workers’ Compensation Act and the Code of Federal Regulations (CFR). The fundamentals of what was already approved by the Board basically do not change. Director Burroughs agreed with the summary and there were no questions from participants.

### **2. Legislation**

Four bills have been printed since the last Board meeting:

- LD 1057 would require contractors to show proof of WC insurance before beginning a residential project. This has not been scheduled for public hearing at this time.
- LD 727 says concurrent wages should be included for first responders. The Act already calls for concurrent wages to be included in an average weekly wage. Executive Director Rohde has spoken to the bill’s sponsor. The sponsor will likely ask the LBHS to vote ought not to pass as the bill is not needed. This bill

arose from a constituent concern and the Board is not aware of the original situation that caused this bill to be drafted.

- LD 1112 seeks to ensure that temporary workers are covered by workers' compensation insurance as other employees are. Executive Director Rohde spoke to the bill's sponsor and explained temporary workers are already considered employees under the Act and are covered. The bill's sponsor will either file for leave to withdraw or ask LBHS to vote ought not to pass. This bill came from a constituent concern. The Board is not clear regarding the underlying facts that prompted this bill.
- LD 1123 would create a presumption for cardiovascular injury or disease or pulmonary disease for certain law enforcement officers. We already have a presumption for firefighters, and this would follow the same process as when the firefighter presumption was put into place. Executive Director Rohde would like to see if there is data that shows whether there is a need for this presumption. Directors Burroughs and Green stated that we shouldn't take a position until we have more data. The Board agreed to testify neither for nor against.

LD 53 An Act to Ensure Accountability for Workplace Harassment and Assault by Removing Intentional Acts and Omissions from Workers' Compensation Exemptions was discussed at length last month. In testimony to LBHS, the concern that the bill's language was too broad was raised. In the meantime, the sponsor of the bill has noted that origin of the bill dealt with sexual harassment in the workplace. The sponsor has circulated potential amendments which have been shared with the Board members.

Executive Director Rohde noted there isn't going to be a cost impact to the WC system with this bill. Cases would be paid somewhere besides the workers' compensation system. Additionally, staff has looked into the data we have on these types of cases. There were 15 sexual assault/harassment lost time FROIs (first report of injury) filed in the last 4 years. A case search of ALJ decisions and found even fewer cases.

Other issues regarding LD 53 include how sections 104 and 408 of the Act will remain compatible, if tort suits are allowed to be processed simultaneously with workers' compensation actions, how will LD 53 be worded and will offsets be permitted for monetary recoveries arising out of tort claims.

Discussion continued. Director Picard asked if other states have similar legislation. If so, were more cases filed because of such laws? Executive Director Rohde said that Hawaii has a law but did not know if there was increased litigation.

Director Picard noted that while this wouldn't increase costs to workers' compensation, but it will financially impact employers. Director Gaudette agreed and is concerned with how offsets might be allowed or not allowed. This could be a big impact to employers as they could be paying twice. She also noted concerns about supervisors or coworkers who may need to hire attorneys to defend themselves in these cases.

Director Burroughs stated that rules should be obeyed in places of employment. Director Gaudette agreed that there should be no sympathy for wrongdoers, but she is concerned for coworkers who defend against improper accusations.

Director Wallace also stated that LD 53 does impact the workers' compensation system because it would amend the language in the Workers' Compensation Act. This impacts the workers' compensation system because it would change the immunity and exclusivity protections provided by the Act.

Executive Director Rohde summed up that there is a concern about creating an exception in general and the Board is mindful that there may be impacts other than to workers' compensation costs.

## **VII. NEW BUSINESS**

There was no new business.

## **VIII. ADJOURNMENT**

Director Wallace MOVED TO ADJOURN; Director Picard SECONDED.

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

The meeting formally adjourned at 11:07 a.m.