



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

July 9, 2024

A business meeting of the Maine Workers' Compensation Board of Directors was conducted remotely via Zoom and in person at the Board's Augusta Central Office at 442 Civic Center Drive, Suite 100, Augusta, on Tuesday, July 9, 2024.

BOARD MEMBERS PRESENT: John Rohde (*Executive Director/Chair*), Penny Picard, Glenn Burroughs, Ron Green, Serina DeWolfe, Paul Gendreau, and Lynne Gaudette (*Directors*), and Richard Hewes (*General Counsel*) attended in person.

CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:01 a.m. with over 30 people participating in person and via Zoom. Executive Director Rohde reviewed the hybrid meeting format, remote participation procedures, and welcomed everyone attending in person. Board members and staff introduced themselves for the recording.

I. APPROVAL OF MINUTES

1. Draft Minutes of 6/11/2024 Board of Director's Business Meeting

Director Green MOVED TO ACCEPT THE MINUTES OF THE JUNE 11, 2024 BOARD MEETING AS WRITTEN; Director Burroughs SECONDED. **MOTION PASSED 7-0.**

II. SUBCOMMITTEE REPORTS

1. IME Subcommittee

Director Gaudette reported that the Subcommittee has been reviewing feedback from independent medical examiners. The subcommittee is considering potential rule changes to address key points including the difficulty in attracting doctors, a suggestion to allow licensing from other States, and clarifying what "active treating practice" means and if changes can be made to that definition to allow more doctors to be independent examiners. Director Burroughs concurred and noted that four randomly chosen examiners will be interviewed after the annual questionnaires are submitted by section 312 doctors.

The hourly pay rate for section 312 examiners has not been increased since 2009. The Board's rule for Section 312 evaluations allows examiners to charge \$200 an hour for up to three (3) hours of preparation time plus a maximum of \$300.00 an hour up to five hours for examinations, preparation of a report, and review of information and records

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needed to write the report. Additional charges may be allowed with the consent of both parties, or if good cause is shown. Many examinations involve complex histories and necessitate a review of voluminous medical records. The Section 312 Subcommittee suggests that the Board consider increasing the hourly rates and increasing the three-hour preparation limit to seven hours. Examining physicians who need more than seven hours would still be required to get clearance to charge more money.

Director Picard asked about the number of examiners the Board is allowed to have in any given year. There is a maximum of 50 allowed though there are currently only 15 on the list. The specialties most needed at this time are neurology, cardiology, and audiology. Discussion continued regarding the typical longevity and how to reach out to doctors to recruit more examiners.

2. Framework Subcommittee

Director Gaudette noted that the subcommittee will meet later this week. They will plan future activities and discuss possible topics for guest speakers.

3. Personnel Subcommittee

In preparation for the biennial budget the Personnel subcommittee met twice this month to meet with different senior staff managers to discuss their areas of responsibility, recruitment and retention issues. The subcommittee will continue to meet with managers to get a more complete understanding of the departments and their staffing needs.

Jimmy Jandreau, who is the mediator/troubleshooter in the Caribou Regional Office, will be leaving the Board at the end of August. Caribou is typically a difficult area geographically to fill vacancies. ALJs Knopf and Elwin plan to retire at the end of the year. Both judges have stopped taking new cases but will wrap up their current caseloads. New cases are being reassigned to other judges.

III. EXECUTIVE DIRECTOR REPORT

1. Caribou Office

The lease for the Caribou Regional Office will come due next year. Deputy Directors Jan Adams and Lindsay Lizzotte are looking for new office space as the current location is not set up in a way that provides adequate security for staff.

2. Annual File Audit

The Board will have an admin week this fall to allow for the annual file audit to be conducted.

IV. GENERAL COUNSEL REPORT

1. Annual Regulatory Agenda

The approved Annual Regulatory Agenda was filed with the Secretary of State's office.

2. Personnel

A Portland Advocate, James Burbridge, is leaving. There is still another advocate vacancy in that office. The positions are posted. Directors asked if a reason for leaving was given. General Counsel Hewes noted that advocates are assigned very large caseloads that come with considerable backlog. This can be very challenging to manage, especially for lawyers not familiar with workers' compensation law and process.

V. OLD BUSINESS

1. August Meeting

The August meeting will be moved to August 28th to allow more time to work on the budget package. It will be held in the Bangor Regional Office.

VI. NEW BUSINESS

1. Vacancy Provision

The vacancy provision for Board members under §151(3) can be clarified to allow for the appointment of a Director to finish out an unexpired term. Executive Director Rohde will draft suggested revisions to §151(3) and send it to the Directors for review.

2. 2023 Annual Draft Compliance Report

Carrie Pomeroy presented a draft of the 2023 Annual Compliance Report. The report shows that compliance over the years has dropped steadily. The highest benchmark is for Notice of Controversy forms. The forms for initial indemnity payments are equally important. Monitoring, Audit and Enforcement (MAE) staff are trying to figure out how to get insurers to improve performance. Director Picard asked if other States have similar programs/issues. Carrie has previously looked into this, and many other States do not have comparable programs.

Benchmarks were discussed. It was noted that benchmarks were initially set before electronic filing was available and the benchmarks prior to 2013 were being met. It was suggested that benchmarks be updated and that the 3 days allowed for mailing be removed as 100% of the Memoranda of Payment forms are transmitted electronically or by fax.

Wage statements were also discussed as many contain empty data fields and/or inaccurate wage information. MAE staff sent out a questionnaire to try and identify why so many wage statements are not filled out properly or not filed at all. Insurers with a minimum number of claims were sent the questionnaire. MAE is compiling the results.

Carrie would like to expand the compliance by size chart to show wage statement compliance by the size of insurers. The trends are similar to previous years. There is room for improvement from the largest insurers. Directors asked if insurers are saying why they are not complying. Insurer representatives have mentioned to Carrie that turnover and staff vacations are the primary cause. MAE staff members work with insurers to help get statements submitted. As one would expect, the largest insurers account for the majority of filings.

Director Picard MOVED TO ACCEPT THE 2023 ANNUAL COMPLIANCE REPORT AS WRITTEN; Director Gendreau SECONDED. **MOTION PASSED 7-0.**

3. 1st Quarter 2024 Draft Compliance Report

Carrie Pomeroy also presented the draft 1st Quarter 2024 Compliance Report. The MAE program uses a reconciliation process helps to verify the accuracy of the data before the final report is assembled. Insurers have 4 weeks to respond or rebut the data during the reconciliation process. Members of the MAE staff spend a considerable amount time verifying changes that are made during this process. They also look for good quality data, rather than inaccurate information or blank forms that are filed hastily to meet a deadline. MAE staff has begun a more thorough review of inaccurate or missing information.

More penalties under §205(3) are being issued across all insurer size categories. Directors also asked how many insurers are being audited each quarter and what the results of those audits show. This varies; Carrie noted that audits can take a long time to complete, and the Audit Department continues to be shorthanded.

Director Gaudette MOVED TO ACCEPT THE 1ST QUARTER 2024 COMPLIANCE REPORT AS WRITTEN; Director Picard SECONDED. **MOTION PASSED 7-0.**

VII. ADJOURNMENT

Director Gendreau MOVED TO ADJOURN; Director Picard SECONDED. **MOTION PASSED 5-2.** (*Directors Green and Burroughs opposed.*)

The meeting formally adjourned at 11:10 a.m.