

Workers' Compensation Board

Meeting Minutes

January 9-10, 2014

Thursday, January 9, 2014

I. Call to order

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:03 am on Thursday, January 9, 2014, in Anchorage, Alaska.

II. Invocation and Pledge of Allegiance

III. Roll call

Director Monagle conducted a roll call. The following Board members were present:

Stacy Allen	Sara Lefebvre	Rick Traini
Brad Austin	Krista Lord	Patricia Vollendorf (telephonic)
Pamela Cline	Ron Nalikak	Zeb Woodman
Chuck Collins	Michael O'Connor	
Linda Hutchings	Amy Steele	
David Kester	Mark Talbert	

Director Monagle noted that member Robert Weel was excused. There is a vacant labor seat in Anchorage (3rd judicial district) and in Fairbanks (4th judicial district).

IV. Agenda Approval

A motion to approve the agenda was made by member Kester, and seconded by member Lefebvre. The agenda was approved by unanimous vote.

V. Approval of Meeting Minutes

A motion to adopt the minutes from the September 26-27, 2013 regular Board Meeting was made by member Kester and seconded by member Lefebvre. Corrections were noted and the minutes as corrected were adopted and accepted by unanimous vote.

VI. Director's Report

Director Monagle covered some housekeeping items regarding board member travel, reimbursements, and per diem.

Budget - Administrative Officer Alan Ezzell provided an overview of the FY14 budget and the preliminary draft of the FY15 budget. The Division is on budget for FY14, but personal services will be tight for the remainder of the year. The Division recently sought and obtained a \$400K increase in the grant line for the Benefit Guaranty Fund, as benefits are expected to exceed the original appropriation. The Appeals Commission has a vacant Law Office Assistant position, which will likely remain vacant for the remainder of the fiscal year. The Special Investigations Unit has a vacant investigator III position in Juneau, which it expects to fill in February.

The Office of Management and budget has mandated a hold-the-line budget for FY15. Although the final budget is not yet out, the Division expects that budgets will continue to tighten in the coming years.

Director Monagle provided an overview of the Division's new case management system, ICERS, which went into production at the end of July. The Division continues to work through some development issues, bugs, and enhancements, and expects most of those issues to be resolved by the end of the current fiscal year.

Break 10:00am-10:16am

VII. Public Comment Period 10:15 am -11:00 am

Mike Jensen, Plaintiff Attorney – Mr. Jensen commented on the proposed change to regulations concerning the selection of second independent medical examiners. While not opposed to the idea of changing the selection process, he stated that a tremendous amount of time is spent conducting background research by the attorneys appointed to the selection panel, and he questions whether the Board or the Division has adequate resources to take this on.

VIII. Review of Reports and Communications

Director Monagle discussed several recently published reports on medical costs, including the September 2013 NCCI medical data report, the May 2013 NCCI report on the impact of workers' compensation fee schedules on physician pricing, and the Division's comparative analysis of Alaska's workers' compensation fee schedule to regional states. This was followed by a general discussion of medical cost containment efforts.

IX. Case summaries from the Appeals Commission and the Supreme Court

Hearing officers discussed recent decisions by the Alaska Workers' Compensation Appeals Commission and the Alaska Supreme Court.

Lunch Break 12:05 pm-2:01 p.m.

X. Training Session: Terry Thurbon, Chief Administrative Law Judge

Making credibility determinations.

Break 3:03pm-3:20pm

XI. Overview of Existing Second Independent Medical Examiner (SIME) Process

Director Monagle gave a short overview of the purpose for the proposed regulation changes to 8 AAC 45.090 and 8 AAC 45.092. A brief discussion followed.

Meeting Adjourned 4:25 pm

Friday, January 10, 2014

I. Call to Order

Director Monagle resumed the Alaska Workers' Compensation Board meeting at 9:02 am on Friday, January 10, 2014, in Anchorage, Alaska. The following Board members were present:

Stacy Allen	Sarah Lefebvre	Rick Traini
Brad Austin	Krista Lord	Zeb Woodman
Pamela Cline	Ron Nalikak	
Chuck Collins	Michael O'Connor	
Linda Hutchings	Amy Steele	
David Kester	Mark Talbert	

Members Robert Weel and Patricia Vollendorf were excused. Member Michael O'Connor arrived late, and was excused for the afternoon.

II. Old Business from Previous Meeting

At the September 2013 meeting, the Board decided to make the work group a permanent subcommittee of the Workers' Compensation Board. Industry members appointed to the subcommittee were Linda Hutchings and Sarah Lefebvre, with Ron Nalikak as the alternate. Labor members appointed to the subcommittee were Rick Traini and Zeb Woodman, with Stacy Allen as the alternate. The selection was approved unanimously by the Board.

Meeting dates and times for the work group will be determined later this Spring. At the Board's request, Director Monagle agreed to send out a notice of all work group meetings to all Board members.

III. New Business

Director Monagle presented the Division's proposed regulatory changes to 8 AAC 45.090 and 8 AAC 45.092.

Member Hutchings moved to approve the proposed changes repealing and readopting 8 AAC 45.090. The motion was seconded by member Lefebvre. The Board discussed the proposed changes.

Break 10:00-10:17 a.m.

Member Woodman made a subsidiary motion that 8 AAC 45.090(a)(1) as proposed, be amended to read "a physician has not impartially estimated the degree of permanent impairment..." The motion was seconded by member Allen. After discussion, the subsidiary motion passed on a vote of 9 yes and 5 no. Director Monagle noted that although AS 23.30.005(l) requires a majority vote of the full board to approve a regulation proposed by the department, a simple majority of the quorum is all that is required for subsidiary motions.

Member Traini made a subsidiary motion that 8 AAC 45.090(a)(2) as proposed, be amended to read, “contradictory medical evidence exists”. The motion was seconded by member Talbert. After discussion, the subsidiary motion passed on a vote of 11 yes and 3 no.

Returning to the main motion, the Board approved the proposed changes to 8 AAC 45.090 as repealed, readopted, and amended on a vote of 11 yes and 3 no.

Member Hutchings moved to approve the proposed changes, repealing and readopting 8 AAC 45.092, seconded by member Kester. Prior to the Board discussing the proposed changes, Workers’ Compensation Officer Sue Reishus-O’Brien and Chief of Adjudications Janel Wright gave an overview of the current SIME selection process.

Member Woodman made a subsidiary motion that 8 AAC 45.092(b)(3) as proposed, be amended to remove “director or director’s designee” from the Board’s selection panel. The motion was seconded by member Allen. After discussion, the subsidiary motion failed on a vote of 5 yes and 9 no.

Lunch Break 11:58 pm-1:32 p.m.

Member Cline made a subsidiary motion that 8 AAC 45.092(b)(3) as proposed, be amended to retain the existing regulatory selection panel of attorneys with the addition of a labor member and an industry member. The motion was seconded by member Allen. After discussion, the subsidiary motion failed on a vote of 1 yes and 12 no.

Member Hutchings made a subsidiary motion that 8 AAC 45.092(b)(3) as proposed, be amended to provide that the SIME selection panel be appointed by May 31st of each year. The motion was seconded by member Kester. After discussion, the subsidiary motion passed on a vote of 12 yes and 1 no.

Member Kester made a subsidiary motion that 8 AAC 45.092(d) as proposed, be amended to add a new subsection (8), providing for the removal of a physician from the SIME list for the physician’s failure to provide a fair and impartial opinion. The motion was seconded by member Talbert. After discussion, the subsidiary motion passed by unanimous vote.

Member Talbert made a subsidiary motion that 8 AAC 45.092(h) as proposed, be amended, providing that the Board “may” order an employee’s medical records be prepared for the SIME examiner instead of “shall”. The motion was seconded by member Hutchings. After discussion, the subsidiary motion was withdrawn by member Talbert.

Break 3:13 pm – 3:30 pm

For the record, member Woodman was excused for the remainder of the meeting.

Returning to the main motion, the Board rejected the proposed changes to 8 AAC 45.092 as repealed, readopted, and amended on a vote of 9 yes and 3 no. Since the vote did not receive the approval of the full board, the motion failed.

Director Monagle stated he would be sending out a legislative update to the Board members. He will be in touch with the workgroup members to firm up dates for listening sessions later this year.

The next Board meeting is May 15th & 16th, 2014.

Meeting Adjourned 4:09 pm