

**Workers' Compensation Board**  
**Meeting Minutes**

September 27-28, 2012

**Thursday, September 27, 2012**

**I. Call to order**

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:01 am on Thursday, September 27, 2012, in Anchorage, Alaska.

**II. Invocation and Pledge of Allegiance**

**III. Roll call**

Director Monagle introduced two new board members, Mark Talbert and Pamela Cline. The roll call was taken. The following Board members were present:

Stacy Allen	David Kester	Rick Traini
Brad Austin	Sarah Lefebvre	Patricia Vollendorf
Jeff Bizzarro	Krista Lord	Robert Weel
Chuck Collins	Amy Steele	Zeb Woodman
Linda Hutchings	Mark Talbert	

Director Monagle stated Don Gray, Janet Waldron, and Pam Cline are excused.

**IV. Introduction of Senior Staff**

Director Monagle introduced senior staff in attendance: Mark Kemberling, Reemployment Benefits Administrator; Rhonda Gerharz, Acting Chief of Special Investigations; Marie Marx, Hearing Officer/Regulations Attorney; Alan Ezzell, Administrative Officer; Janel Wright, Chief of Adjudications, Robert Vollmer, Hearing Officer.

**V. Agenda Approval**

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

**VI. Approval of Meeting Minutes**

A motion to approve the minutes from the Regular Board Meeting May 17-18, 2012 was made by member Hutchings and seconded by member Bizzarro. Minutes, with typographical corrections to pages 14, 15, & 17, were approved by unanimous vote.

**VII. Director's Report**

1. Administrative Officer Alan Ezzell reviewed Division staffing and vacant positions, including the move of the SIU Chief position to Anchorage, the addition of a Workers' Compensation Officer II to the Reemployment Benefits Section, and the hiring of a Collections Agent for the Benefits Guaranty Fund.

2. Budget FY12 & FY13 - Administrative Officer Alan Ezzell provided an overview of the FY12 budget, and the FY13 budget. Of note were the scheduled renovations at the Eagle Street building in Anchorage and the 8<sup>th</sup> Street building in Juneau; creation of a new hearing room on the 2<sup>nd</sup> floor at Eagle Street; increasing lease costs; cuts to Division travel and business services (procurement); and the status of special funds operated by the Division (Fishermen's Fund, Second Injury Fund, and the Benefits Guaranty Fund).
3. Director Monagle reviewed the condition of the Workers' Safety and Compensation Administration Account (WSCAA), which is the primary funding source for the Division and the Appeals Commission. It is projected that WSCAA funding will no longer be sufficient to fund Division operations within a couple of years, requiring supplemental general funds.
4. Director Monagle reviewed the Division's computer upgrade & electronic data interchange (EDI) project. The project was scheduled to be completed by February 2012, but has had several delays. The contracted vendor pulled out of the project at the end of August, and the Division is currently soliciting a new vendor to complete the project. Funding is stable and expected to be sufficient to complete the project.
5. Director Monagle reviewed building renovations in Anchorage and Juneau, and consolidation of Division offices from 6<sup>th</sup> & K to Eagle Street in Anchorage. The Department is requesting a FY13 supplemental request of approximately \$1.0 million to assist with these renovation costs.
6. Director Monagle reviewed the Division's proposed FY14 budget. The Division proposed 3 new positions: an Investigator III for Juneau, a Workers' Compensation Officer II for the Reemployment Benefits Section, and a Medical Officer. All three requests were denied. This prompted the Division to reallocate existing resources to move an Investigator III to Juneau, and add a Workers' Compensation Officer II to the Reemployment Benefits Section.

*Break 10:25am-10:47am*

### **VIII. Board Committee Reports**

Medical Fee committee – Member Hutchings stated the committee has been getting many reports from the Chief of Adjudications, Janel Wright, and Director Monagle, and has had discussions with the National Council on Compensation Insurance, the Governor's Office, and Department of Administration Commissioner Becky Hultburg. The Committee will be working to have recommendations to present to the Board in 2-3 weeks for their consideration.

A general discussion ensued on medical costs in Alaska's Workers' Compensation system. Director Monagle informed the Board he would be sending out a summary of

reports he has received so that members could request specific reports of interest to review.

**Public Comment Period 11:00 a.m. -12:00 Noon**

Blake Flowerree, Coventry Health. Mr. Flowerree asked if the Board intended to produce an updated fee schedule. Director Monagle stated it was not an agenda item, but acknowledged the Board could consider the subject under new business.

Patti Shake, Assistant Attorney General, State of Alaska. Ms. Shake testified that two issues are causing a major financial burden to her client, the State of Alaska: medical costs and statutory noncompliance by the Reemployment Benefits Section. Ms. Shake testified that workers' compensation medical costs have tripled for the State, rising from \$4.0 million in 1998 to over \$16.0 million in 2011. She stated allowable charges have increased 46.6% under the new medical fee schedule. Citing recent news and studies, she stated that costs for medical services in Alaska are 3-4 times higher than neighboring states. Ms. Shake testified that the failure or inability of the Reemployment Benefits Section to meet statutory deadlines under AS 23.30.041 are costing the state thousands of dollars in stipend benefit payments. She cited numerous examples of late decisions, some exceeding 100 days.

Fred Brown, Executive Director of the Health Care Cost Containment Corporation of Alaska. Mr. Brown provided the Board with an overview of his organization and its work on medical cost containment. Mr. Brown echoed the comments made by others of the need to address rising medical costs.

Neal Lacy, injured worker. Mr. Lacy testified that he is one of the injured workers referenced by Ms. Shake. He has been caught up in a "bureaucratic bungle". The reemployment benefits process is broken and needs to be fixed.

Misty Steed, Corvel Corporation. Ms. Steed testified that the goal of a medical fee schedule is to contain costs, which the Alaska Workers' Compensation Medical Fee Schedule fails to do. Under the new fee schedule, hospital in-patient costs have doubled. The Medical Services Review Committee met for a year and made several recommendations in its final report. Ms. Steed urged the Board to support the Committee's findings.

Chris Logan, National Association of Nurse Anesthetists; Terri Covington, Denali Anesthesia, and Jeff Worrell, Alaska CRNA Associates. These individuals gave an overview of CRNA's, how they are regulated, and the services they provide in Alaska. These individuals testified that the current fee schedule only provides for payment of supervised certified registered nurse anesthetists (CRNA), and does not provide for payment to unsupervised CRNA's. As a result of this omission, unsupervised CRNA's are being paid at 1/3 of the allowable fee schedule rate. This group seeks an adjustment to the fee schedule to properly reimburse services provided by unsupervised CRNA's.

Susan Daniels, Northern Adjusters. Ms. Daniels testified in support of the remarks made by Ms. Shake regarding medical costs and reemployment benefits. Ms. Daniels also testified that there is misunderstanding between providers and bill payers on unsupervised CRNA services. She agrees that specific language in the fee schedule addressing unsupervised CRNA services would be helpful.

*Lunch Break 11:56 am-1:30 p.m.*

#### **IX. Old Business from Previous Meeting**

Director Monagle discussed Law's findings on the 6 regulations proposed by the Board at its meeting on May 17-18, 2012. Upon review, Law determined that 3 of the proposed regulations did not meet statutory authority and should be returned. The three regulations are

- The proposed amendment to 8 AAC 45.050, giving the Reemployment Benefits Administrator authority to approve stipulations. Law's opinion is that under existing statutory language, this authority rests exclusively with the Board.
- The proposed amendment to 8 AAC 45.025, adding a new section providing for electronic filing. Law's opinion is that there may not be statutory authority. Director Monagle stated the Governor's Office has indicated that this is an item they plan on addressing through the legislative process.
- The proposed amendment to 8 AAC 45.176, adding a new section dealing with suspensions of civil penalties. Law advises that the current regulatory construct does not meet the legal requirements set out by the Appeals Commission in *State v Ivan Moore* and *State v R&C Communications*.

The Board next took up the amendment to 8 AAC 45.138, dealing with cost of living adjustments, proposed at the May Board meeting. Member Hutchings moved that the proposed amended to 8 AAC 45.138 be adopted. The motion was seconded by member Bizzarro. There was no public comment received. After discussion, the motion was unanimously approved.

The Board next took up the amendment to 8 AAC 45.174, dealing with a stop work order issued by the division director, proposed at the May Board meeting. Member Hutchings moved that the proposed amended to 8 AAC 45.174 be adopted. The motion was seconded by member Collins. There was no public comment received. After discussion, the motion was unanimously approved.

The Board next took up the amendment to 8 AAC 45.065, dealing with a Board designee's authority to reconsider a decision on a discovery order, proposed at the May Board meeting. Member Hutchings moved that the proposed amended to 8 AAC 45.065 be adopted. The motion was seconded by member Austin. There was no public comment received. After discussion, the motion was unanimously approved.

The Board next took up the amendment to 8 AAC 45.176, dealing with Board suspension of civil penalties, proposed at the May Board meeting. As noted earlier, Law recommended the Board rework the language of the proposed regulation to comply with legal precedents established by the Alaska Workers' Compensation Appeals Commission.

Chief of Adjudications, Janel Wright, reviewed the Commission's decisions in *State v Ivan Moore* and *State v R&C Communications*. The Commission held that the purpose of a civil penalty is restorative, "to bring the employer back into compliance, deter future lapses, provide for the continued, safe employment of the employees of the business, and satisfy the community's interest in punishing the offender, but without vengeance." The Commission held that when assessing a civil penalty, the Board must consider

- The duration, scope, & severity of the risk associated with the employer's conduct;
- The culpability of the employer's conduct;
- The impact on the community and employees; and
- The employer's ability to pay.

Law believes that the proposed changes to 8 AAC 45.176 address the first three factors, but not the fourth factor – the employer's ability to pay.

After lengthy discussion, the Board decided to establish a working group to work on revising 8 AAC 45.176 for consideration by the Board at a later date. The working committee is comprised of members Kester, LeFebvre, Austin, and Traini.

*Break 3:05pm-3:23pm*

## **X. New Business**

A motion was made by member Hitchings, seconded by member Vollendorf to approve the list of Board Designees contained in the Board's packet. Director Monagle acknowledged the hiring of two new Hearing Officers, Bridgette Ellis and Paul Pozonsky. The motion was approved unanimously.

A motion was made by member Bizzarro, seconded by member Weel, to approve the proposed 2013 hearing calendar contained in the Board's packet. After discussion, the Board amended the calendar to include a special meeting of the Board on December 7, 2012 for the purpose of taking up the findings of the Board's medical subcommittee. The motion was approved unanimously.

The Adjudications Section, through staff Hearing Officers, presented summaries of Appeals Commission and Supreme Court decisions. The decisions were discussed by staff and the Board members.

Director Monagle discussed a new Division policy whereby the Division will be contracting with the Alaska Language Interpreter Center to provide interpretive

services in cases involving pro se litigants who do not speak English, or have a weak command of the English language.

Director Monagle spoke in response to the public comment receive earlier in the day regarding delays in getting eligibility and plan determinations out of the Reemployment Benefits Section. Director Monagle acknowledged the situation is a problem area, to which the Division has been slow to react. As previously noted, the Division is working to add a third decision maker to the section.

*Meeting Adjourned 4:48 pm*

## **Friday, September 28, 2012**

### **I. Call to Order**

Director Monagle resumed the Board meeting at 9:01 am on Friday, September 28, 2012, in Anchorage, Alaska. The following Board members were present:

Stacy Allen	David Kester	Rick Traini
Brad Austin	Sarah Lefebvre	Patricia Vollendorf
Jeff Bizzarro	Krista Lord	Robert Weel
Chuck Collins	Amy Steele	Zeb Woodman
Linda Hutchings	Mark Talbert	

Director Monagle stated Don Gray, Janet Waldron, Pam Cline, and Bob Weel are excused.

### **II. New Business (continued)**

Director Monagle brought forward the petition received from Denali Anesthesia PC, pursuant to AS 44.62.220, seeking a solution to the medical fee schedule issue relating to reimbursement rates for unsupervised certified registered nurse anesthetists (CRNA).

Director Monagle reviewed the current medical fee schedule with the Board, and discussed various fee schedule methodologies. He presented the Board with a draft proposal, amending 8 AAC 45, adding a new section .083. The Board discussed and reworked the Division's draft.

Director Monagle paused new business to introduce Commissioner Blummer. The Board members introduced themselves to the Commissioner, identifying their district and affiliation.

*Break 10:06-10:36 a.m.*

The Board finished working through the Division's draft of 8 AAC 45.083.

- Section (a) of the draft established notice provisions when a fee schedule is produced or modified.
- Section (b) adopted several national publications by reference.
- Section (c) provided medical bills must be on a CMS approved claim form.
- Section (d) established a state specific modifier for services provided by a physician assistant, nurse practitioner, or certified registered nurse anesthetist.
- Section (e) established a state specific modifier for a supervised nurse anesthetist.
- Section (f) adopted geographic adjustment factors.
- Section (g) established a reimbursement rate for prescription drugs.
- Section (h) established a reimbursement rate for durable medical equipment not contained in the fee schedule.
- Section (i) excluded air ambulance services from section (h).
- Section (j) & (k) provided reimbursement rates for services not included in the fee schedule.

A motion was made by member Kester, seconded by member Collins to approve the proposed changes to 8 AAC 45, adding a new section .083. With no further discussion, the Board approved the motion unanimously.

*Lunch Break 12:00 pm-1:33 p.m.*

### **III. New Business (continued)**

The next item of new business was a petition received from the Homer Medical Center, pursuant to AS 44.62.220, seeking changes to the firefighter presumption medical examination forms approved by the Board in February 2011. Director Monagle reviewed the petition with the Board, explaining the petitioners appeared to be using the firefighter presumption exam forms for physical fitness testing, a purpose for which the forms were not designed.

After review and discussion, the Board reworked the forms

- The form "Firefighter's Medical History & Evaluation Form", no. 07-6176, was renamed "AS 23.30.121 Firefighter's Presumption Medical History & Evaluation Form".
- The form "Firefighters Lung & Heart Physical Examination and Cancer Screening Form", no. 07-6177, was renamed "AS 23.30.121 Firefighters Presumption Lung & Heart Physical Examination and Cancer Screening Form".
- The following disclaimer was added to both forms: "Notice to Fire Departments: This form is not intended to replace medical history and medical evaluation forms used by fire departments to determine a firefighter's physical capacities and fitness to perform firefighter duties."
- On form "AS 23.30.121 Firefighter's Presumption Medical History & Evaluation, no. 07-6176, "Respiratory Disease" was added to question #5, and question #6 was restated.

Member Hutchings moved that the changes be approved by the Board, seconded by member Weel. The motion was approved unanimously.

Before adjourning, the Board discussed concerns relating to the performance of the reemployment benefits section, brought up during the public comment period. Board members were generally frustrated at the lack of improvement that was anticipated when the statute was changed in 2005 and the new regulations were adopted in 2010. Director Monagle acknowledge the problems, and assured the Board the Division was working on addressing performance by adding additional resources to the reemployment benefits section.

The next Board meeting is scheduled for May 16<sup>th</sup> & 17<sup>th</sup> in Anchorage.

*Meeting Adjourned 2:45 pm*