

# *Workers' Compensation Board*

## *Meeting Minutes*

May 16-17, 2013

**Thursday, May 16, 2013**

### **I. Call to order**

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:04 am on Thursday, May 16, 2013, in Anchorage, Alaska.

### **II. Invocation and Pledge of Allegiance**

### **III. Roll call**

Director Monagle introduced two new board members Ronald Nilikak and Michael O'Connor. The following Board members were present:

Stacy Allen	David Kester	Mark Talbert
Brad Austin	Sarah Lefebvre	Rick Traini
Jeff Bizzarro	Krista Lord	Patricia Vollendorf
Pamela Cline	Ronald Nilikak	Robert Weel
Chuck Collins	Michael O'Connor	Zeb Woodman
Linda Hutchings	Amy Steele	

Director Monagle asked all board members to seek labor representatives interested to serve on the board.

### **IV. 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.

### **V. Approval of Meeting Minutes**

A motion to approve the minutes from the Regular Board Meeting September 27-28, 2012 and Special Meeting December 13, 2013 was made by member Hutchings and seconded by member Weel. Minutes, with typographical corrections to page 16 were approved by unanimous vote.

### **VI. Introduction of Senior Staff**

Director Monagle introduced senior staff in attendance: Janel Wright, Chief of Adjudications, William Soule, Hearing Officer, Marie Marx, Hearing Officer/Regulations Attorney, Susan Reishus-O'Brien, Workers Compensation Officer II, Velma Thomas, Program Coordinator, Rhonda Gerharz, Chief of Special Investigations; Margaret Scott, Hearing Officer, Laura deMander, Hearing Officer, Robert Vollmer, Hearing Officer, and Mark Kemberling, Rehabilitation Administrator.

## VII. Director's Report

1. Legislative –Director Monagle relayed the Administration's concern regarding premium rates and workers' compensation system costs in Alaska. However the legislative priority for the session was oil and gas issues. The Administration intends on addressing this issue during the next legislative session.

Director Monagle stated he has been asked to develop a working group with the Workers Compensation Board to conduct listening sessions around the State this summer. Director Monagle stated he would like to have two board member presenting industry and labor to work with the division to obtain feedback from the public. The findings collected will be presented to the board for consideration.

2. Staffing – Deborah Chung, Office Assistant I for Adjudications started 5/13/13. Cynthia Stewart has been promoted to Workers Compensation Officer I 5/14/13. The Workers Compensation Technician and a Hearing Officer position are currently being advertised. In Reemployment, Penny Helgeson has been promoted to Workers Compensation Officer II. There will be a temporary Reemployment Office Assistant I for the summer.
3. Renovations – Building renovations in Anchorage and Juneau are almost complete. In the Anchorage building there were roof leaks and is currently being re-roofed. In Juneau, the top floor is finished, finishing the second floor and will be moving down to the first floor. We haven't started paying the higher lease costs until the renovations are complete.
4. Director Monagle provided an overview of the FY13 budget and the FY14 budget recently approved by the legislature.

For FY13, expenditures are at 87% of appropriation. One budget item pending is due to the Appeals Commission remanding back to the Board a ruling on a failure to ensure case. The employer appealed the civil penalty and was granted \$52,000.00 in attorney fees to be paid from the Workers Compensation Division. Director Monagle stated there will be further internal discussions to limit the liability for these decisions due to budgetary constraints. The Benefit Guarantee Fund is currently at 62% of the grant line appropriation, with projected additional liability expenditures of \$350K. Two separate cases in regards to this fund. First, a partially paralyzed claimant settlement estimated to be \$250K and second a \$100K fatality lump sum benefit currently being appealed by the employer with the Appeals Commission.

For FY14, the Workers' Compensation Division's budget, Personal Services - adjusted for collective bargaining receive merit and step increases, and cost of living adjustments and health benefits - did not change. There will be a 10% reduction in travel and operational costs.

5. WC Rewrite - Director Monagle stated the computer system rewrite is going well, and the anticipated "go-live" date is July 22nd. The legislature has passed Senate Bill 76, which grants the Commissioner authority to order electronic filing as a legal substitute to paper filing.

Director Monagle stated a webinar was hosted a week ago to familiarize our trading partners about the new rewrite. It was well attended with over 40 trading partners learning about the new system. The Report of Injury, Compensation and Controversion forms are currently being circulated to our partners for their input. The major change in reporting is that the employee and employer reporting will be on two distinct forms instead of a single form. In electronic reporting there are a number of data elements the injured employee does not have that employers are required to report

*Break 10:00am-10:05am*

### **VIII. Public Comment Period**

Misty Steed, Account Executive, CorVel Corporation. Ms. Steed commented on the recommended changes to 8 AAC 45.082. CorVel fully supports Workers' Compensation Division efforts to lower medical costs. Ms. Steed stated Alaska has the highest worker compensation costs, with \$.76 of every dollar spent going to health care providers. Ms. Steed recommends the Board consider a regulation requiring timely billing by providers. Ms. Steed stated insurance companies don't have a mandated timeframe for providers to bill and find themselves paying bills two or three years after the service has been rendered and the claimant file is closed out. Most private insurance companies and Medicaid/Medicare require that a medical provider bill within 12 months of date of service, which is generally accepted as the industry standard. Ms. Steed's second recommendation concerns payment for out-of-state medical treatment. Currently employers pay out-of-state medical providers based on reimbursement rates set out in the Alaska fee schedule. CorVel would like to see billing for out-of-state treatment subject to the fee schedules in the state where treatment was provided.

Lisa Anne Forsythe, Coventry Workers' Compensation Service. Ms. Forsythe backed Ms. Steed in her comments regards reimbursement rates for out-of-state medical treatment. Coventry views reimbursement at rates many times over their own state's provider allowance as unjust enrichment.

Shelby Davidson, defense attorney, President of Workers Compensation Committee of Alaska (WCCA). Ms. Davidson referred a letter WCCA wrote to Workers Compensation outlining problems with reemployment benefits. Currently, every case is referred automatically after 90 consecutive time-loss days for an eligibility evaluation. WCCA recommends a regulation if at any time an employee is released back to work from an attending physician, the reemployment process should cease. Additionally, WCCA believes many employees do not want to go through the evaluation process. Ms. Davidson asked if the reemployment administrator would

allow the parties to stipulate to ending reemployment evaluation. WCCA's second issue is reemployment specialist fees. Ms. Davidson stated a fee schedule needs to be in place to ensure proper billing, without incurring the cost of a hearing.

Ms. Davidson also stated the SIME process could use some refining. She relayed there have been some large bills issued from SIME physicians in Hawaii.

#### **IX. Board Sub-Committee Reports**

Medical Fee Sub-committee: Linda Hutchings, Board Chair stated nothing was passed during this legislative session. Member Hutchings reported that she spoke with Kurt Olson and was assured this issue will be addressed during the next session.

Working group on Civil Penalties: Member Kester stated there has not been a formal meeting yet to address this issue and a chairperson has yet to be established. Director Monagle stated he will provide the sub-committee more information about this matter. Member Weel asked for clarification about meeting as members in regards to the Public Meeting Act. Director Monagle stated members can communicate individually with each other however if more than two members meet a notice must be published for the public to attend. The Board would be responsible for notices and setting up the location.

#### **X. Division Section Reports**

Annual Report FY 12 Overview of Statistic Data: Director Monagle provided an overview of the FY12 annual report by stating this data is collected under AS 23.30.155(m). Under this statute self-insured employers and insurance companies must provide an annual report containing all benefits paid during the preceding calendar year. The report is sent to the board annually by March 1<sup>st</sup> deadline. Total workers compensation benefits increased 6% over 2011.

*Lunch Break 11:33 a.m.-1:35 p.m.*

The following section reports were provided:

- Adjudications
- Special Investigation Unit
- Benefits Guaranty Fund

*Break 3:00pm-3:19pm*

Section Reports (continued):

- Fishermen's Fund
- Second Injury Fund
- Self-Insured Program
- Reemployment Benefits
- Second Independent Medical Examination

*Meeting Adjourned 5:07 pm*

Friday, May 17, 2012

**I. Call to Order**

Director Monagle resumed the Board meeting at 9:03 am on Friday, May 17, 2013, in Anchorage, Alaska. The following Board members were present:

Stacy Allen	David Kester	Mark Talbert
Brad Austin	Sarah Lefebvre	Rick Traini
Jeff Bizzarro	Krista Lord	Patricia Vollendorf
Pamela Cline	Ronald Nilikak	Robert Weel
Chuck Collins	Michael O'Connor	Zeb Woodman
Linda Hutchings	Amy Steele	

**II. Continued Business from Previous Meetings**

Director Monagle gave an overview of the proposed regulatory changes approved by the Board at the September 27-28, 2012 Board meeting:

- 8 AAC 45.082(d), requiring use of CMS billing forms;
- 8 AAC 45.082(j), cleaning up language from 2010 regulatory changes;
- 8 AAC 45.082(m), providing reimbursement rates for unsupervised CRNA; and
- 8 AAC 45.082(n), notification requirement upon fee schedule adoption by the Board.

Director Monagle noted that the regulations proposed to adopt several national publications as amended from time-to-time. However, the Department of Law advised the Division that it may not adopt publications “as amended from time-to-time”, but would instead have to revise regulations each time a publication was updated. In response to Law’s advice, this portion of the proposed regulation was withdrawn.

Several Board members expressed concern with dropping this language from the proposed regulations, as it was the Board’s intent, based on the December 2012 resolution, to administer a medical fee schedule by regulation. Director Monagle acknowledged the Board’s concerns, stating the options were to pull the entire regulations project back or removing this piece & moving forward with the remaining proposals. He stated the Division was investigating language that satisfies Law’s concerns, without necessitating frequent regulatory revisions, and noted that the Division would consult with the Board in the future before making a decision whether to withdraw a portion or portions of proposed regulations.

The Board began review of the public comment received on the proposed regulations.

*Break 10:10am-10:34am*

The Board continued its review of the public comment received on the proposed regulations.

Member Collins moved that the Board adopt the proposed changes to 8 AAC 45.082(d), 8 AAC 45.082(j), 8 AAC 45.082(m), and 8 AAC 45.082(n) approved by the Board at the September 2012 meeting. The motion was seconded by Member Hutchings.

Member Kester moved that the proposed regulations be amended to include an October 1, 2013 effective date, a definition of "general public", and inclusion of a universal claim form for prescription billing. The motion was seconded by member Lefebvre.

*Lunch Break 12:03 am-1:35 pm*

The Board resumed its discussion of the subsidiary motion. Members Kester and Lefebvre withdrew the motion to .082(d), requiring a specific form for prescription drug billing.

The definition of "general public" under 8 AAC 45.082(j) was proposed to read

In this section, "general public" means those individuals who are covered by a group health insurance plan within this state. To be included in this definition, the insurer or third party administrator must occupy at least 1% of the group health market share, as determined by the director of the Alaska Division of Insurance.

After discussion, the Board unanimously approved the subsidiary motion, adding an effective date and defining "general public".

Returning to the main motion, the Board further discussed the motion to adopt 8 AAC 45.082(d), 8 AAC 45.082(j), 8 AAC 45.082(m), and 8 AAC 45.082(n) as amended. The motion to adopt failed on a 9-7 vote. Members Allen, Austin, Bizzarro, Cline, Collins, Hutchings, and Woodman voted against. Kester, Lefebvre, Lord, Nalikak, Steele, Talbert, Traini, Vollendorf, and Weel voted in favor for the proposed changes.

### **III. New Business**

Director Monagle stated he is creating a working group within the Board for the purpose of generating discussions on workers' compensation reform. Member Kester motioned to nominate Members Hutchings, Kester and Lefebvre as an alternate representing Industry. The motion was seconded by Member Weel. The motion was unanimously approved. Member Bizzarro motioned to nominate members Woodman, Bizzarro and Traini as an alternate representing Labor. The motion was seconded by member Woodman and unanimously approved. The working group will travel to Fairbanks, Anchorage, Kenai, and Juneau to obtain recommendations from trading partners and the general public, and make recommendations to the full Board at the September meeting.

Member Hutchings moved to approve Margaret Scott, Hearing Officer I, Cynthia Stewart, Workers Compensation Officer I and Teresa Nelson, Workers Compensation Officer I as Board designees. Member Weel seconded the motion. Motion approved unanimously.

Member Hutchings moved to approve the adoption of the 2014 hearing calendar, with Board meetings on May 15-16, 2014 and October 2-3, 2014. The motion was seconded by member Traini. After discussion, it was decided to add a third Board meeting, January 9-10, 2014. The motion carried unanimously.

*Break 2: 39pm-2:50pm*

Case Law Review – A summary of decisions and orders by the Alaska Workers' Compensation Appeals Commission and the Alaska Supreme Court.

Member Traini stated he would like to have the proposed regulations considered by the Board at this meeting brought back for discussion at the September meeting. He would like to see if Law has a workable solution for the "as amended from time to time" provision in the regulations considered by the Board in September 2012.

The Board asked that copies of pending legislation be included in the Board's packet – not just a summary.

Director Monagle reminded Board members that the next Board meeting is scheduled for September 26-27, 2013.

*Meeting Adjourned 4:54pm*