

# *Workers' Compensation Board*

## *Meeting Minutes*

May 17-18, 2012

**Thursday, May 17, 2012**

### **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, May 17, 2012, in Anchorage, Alaska.

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

### **III. Roll call**

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

Brad Austin	David Kester	Patricia Vollendorf
Jeff Bizzarro	Krista Lord	Janet Waldron
Chuck Collins	Arylis Scates	Zeb Woodman
Don Gray	Amy Steele	
Linda Hutchings	Rick Traini	

Director Monagle stated Sarah Lefebvre and Robert Weel are excused from attending the meeting this quarter.

### **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 January 12-13, 2012 was made by member Hutchings and seconded by member Vollendorf. Minutes were approved by unanimous vote.

### **VI. Director's Report**

1. Legislature - No workers' compensation bills made it through the session.  
Department - Commissioner Bishop resigned. David Stone is Acting Commissioner. There are three labor vacancies board appointments open in Anchorage. The Governors' office has two applications for consideration and one left to be vetted. Director Monagle asked all board members to seek labor representatives interested to serve on the board.
2. WC Rewrite - Director Monagle stated the computer system rewrite and moving toward electronic reporting is going well. Contractor Insurance Services Organization (ISO) working with national insurance companies, self-insured vendors, and regional companies are in the testing phase. Form revisions are underway and will be presented for the next scheduled board meeting. The case

management system is running behind schedule and anticipates toward end of summer to implement.

3. Budget FY12 & FY13 - Administrative Officer Alan Ezzell provided an overview of the Governor's FY13 budget. The budget was signed into law and there are no changes to our budget. Two unknown cost variables for consideration in this budget are 6<sup>th</sup> & K office relocating to the Eagle Street location and lease increase due to renovations. Secondly is our Juneau office building and possible relocation due to a "sick building" situation. Budget FY12 we are about 80% expenditure for the fiscal year. The Appeals Commission has appointed a board member from Ketchikan, thus incurring travel costs for their budget. Benefit Guarantee Fund has a number of significant liabilities with several large payouts in the future. In FY13 additional funding will needed due to increased legal fees.
4. Addition of Collection Agent - Legislature approved funding for a Collection Officer position to assist the Benefit Guarantee Fund, Second Injury Fund and SIU unit. In collecting around five million in judgment fees and it anticipated this position will pay for itself.
5. Staffing - Tamara Wagster, Office Assistant II for Special Investigative Unit (SIU) starts 5/23/12. One hearing officer position in Adjudications is currently being advertised. Dee Ford, Hearing Officer II is retiring in July.
6. Lease Space/Move from 6<sup>th</sup> & K to Eagle St - Director Monagle stated this is an additional cost for FY13 the department will absorb. The department will have a dedicated hearing room with updated media equipment.

*Break 10:05am-10:22am*

#### **VII. Board Committee Reports**

Medical Fee committee - Member Hutchings stated they haven't formally met. The committee is gathering information from a number of medical entities, the State of Alaska, and surgery centers. Member Hutchings hopes to provide a presentation for the September board meeting.

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

Repeal and readopt 8 AAC 45.138(b) and amend 8 AAC 45.138(c), Cost of Living Adjustment (COLA) - The amended regulation proposed shifting the cost of producing the COLA survey onto the employer was forwarded to Administration January, 2012 for consideration. The Governors' administration will not accept any proposals that raise costs for employers. Member Hutchings moved to table the amendment approved last January and bring it back tomorrow with the new draft and work up a proposal for the board to consider. Member Lord seconded the motion.

Due to public comment period Member Hutchings moved to table this amendment to work on draft proposal after lunch. Member Traini seconded the motion.

**Public Comment Period 11:02 a.m. -12:00 Noon**

Fred Brown, Executive Director Health Care Costs Management Corporation of Alaska. Their mission is to secure for their members value and quality based health care coverage. Mr. Brown disseminated two pages of information outlining the increasing cost of health care coverage. This information was taken from a larger report presented to the Alaska Health Care Commission last fall. In 2001-2010 health care cost rose from one billion up to two billion dollars. In 2010-2020, if current trends continue, health care coverage will exceed the entire State of Alaska budget. Mr. Brown relayed his organization is working with the Chamber of Commerce, unions and other entities to help keep health care costs down and stated he would like to collaborate with the board in this mission too. A pilot project SB16 was introduced as a possible solution that allowed collective bargained organizations as authorized in statutes to meet and agree on a preferred provider in the event if there was a workers' compensation injury. The opportunity would allow the preferred provider to negotiate rates because commercial rates are lower than worker compensation rates. The medical lobby did not like SB16 and it did not make it out of committee.

Misty Steed, Corvel Corporation managed care vendor, works with employers, audit medical bills and the Alaska fee schedule. Ms. Steed relayed the new fee schedule is not clear in establishing rates in regard to different medical specialties. Additionally, they are not receiving correct and consistent information from the division to help clarify the rate schedule. Ms. Steed requests the Board to consider hiring an independent consulting firm to assist insurers and medical providers when they have questions in regards to billing and rates pertaining to the Alaska fee schedule.

Sheila Hanson, Billing Manager, Corvel Corporation stated there are national standards and most states has worker compensation fee schedule that have good methodology. Ms. Hanson relayed to would like to work with the board to assist with an effective fee schedule. Additionally, Ms. Hanson relayed she has two comments pertaining to the fee schedule. First, there is a gap in determining an appropriate allowance in outpatient facilities codes and guidelines. There is confusion about which code to use such as out-patient, in-patient, office visit, hospital setting. Second, there are no restrictions on a timeline a medical provider can bill or appeal for a bill. This can pose a number of challenges of reopening a claim and need guidelines to pay in a reasonable timeline.

Terri McFarlin, Risk Manager and Beth Shuttleworth, Claims Adjuster with Fairbanks North Star Borough School District. Ms. McFarlin had two requests. First, the public be provided a telephone connection to attend telephonically the public comment portion of the board meetings. Secondly, Ms. McFarlin agreed with Ms. Steed's concerns about the Medical Fee Schedule. They have two Worker Compensation Claims filed by local providers based on Medical fee schedule interpretations. Ms.

McFarlin expressed appreciation for this updated medical fee schedule and encouraged the Board to provide staff the technical expertise to resolve future disputes with employers and providers.

Sandy Travis, an injured worker stated prevention in the workplace is crucial to prevent work place injuries and to limit medical costs for everyone.

*Lunch Break 12:04 pm-1:33 p.m.*

**VIII. Old Business from Previous Meeting (Cont).**

Repeal and readopt 8 AAC 45.138(b) and amend 8 AAC 45.138(c), Cost of Living Adjustment (COLA) Member Hutchings moved to bring back 8 AAC 45.138 on the premise we go back to the original and make adjustments to subsection (b) and (c). Member Traini seconded the motion. After discussion, the motion was approved by unanimous vote. Member Hutchings moved to repeal and readopt of 8 AAC 45.138(b) and amendment of 8 AAC 45.138(c) as amended for public comment. Member Lord seconded the motion. The motion was approved by unanimous vote.

*Meeting Adjourned 2:47 pm*

Friday, May 18, 2012

## **I. Call to Order**

Director Monagle resumed the Board meeting at 9:04 am on Friday, May 18, 2012, in Anchorage, Alaska. The following Board members were present:

Brad Austin	David Kester	Patricia Vollendorf
Jeff Bizzarro	Krista Lord	Janet Waldron
Chuck Collins	Arylis Scates	Zeb Woodman
Don Gray	Amy Steele	
Linda Hutchings	Rick Traini	

Director Monagle stated Sarah Lebvere and Robert Weel are excused from attending the meeting this quarter.

Director Monagle relayed Diane Blumer is the new Commissioner for Department of Labor. She has worked for Governor as a Special Assistant in Anchorage and has 20 years of state experience.

## **II. New Business**

1. Amend 8 AAC 45.065 (h), allowing a board designee to reconsider a discovery order. The intent of amendment is to give board designees authority to reconsider or modify their decision. Member Gray moved to approve the amendment of 8 AAC 45.065(h). Member Bizzarro seconded the motion. The motion passed unanimously.
2. Amend 8 AAC 45.025, allowing electronic filing of certain reports and documents. Director Monagle stated the department is considering the Notice of Injury or Death form and other related forms completed by an employee, employer and stakeholders to be file electronically; instead of a paper form and mailed in a stamped envelope as outlined under Sec. 23.30.070(d). Member Traini moved to approve the amendment of 8 AAC 45.025(d). Member Kester seconded the motion. The motion passed unanimously.

*Break 10:06-10:24 a.m.*

3. Amend 8 AAC 45.176. Failure to provide security assessment of civil penalties. Director Monagle stated there are inconsistencies on how uninsured civil penalties in failure to insure cases are being treated. Member Hutchings moved to approve the suspension of civil penalties and seconded by Member Waldron. This motion was withdrawn by Member Hutchings for further discussion and seconded by Member Waldron.

Should the Board be authorized to suspend civil penalties? Member Traini moved to call for the question, seconded by Member Kester to make the motion. The motion failed on a 8-5 vote, Members Austin, Bizzarro, Kester, Lord, Scates, Steele,

Traini, Vollendorf voted against, members Collins, Gray, Hutchings, Waldron, Woodman voting in favor. The Board establishes by majority vote that the Board should not be suspending civil penalties. This motion did not involve a regulatory matter, only a simple majority of the quorum was required.

Member Kester moved should the Board adopt a regulation to prohibit the suspensions of civil penalty in failure to insure cases? Motion seconded by Member Lord. After discussion, Member Gray moved to call the question, seconded by Member Collins. The motion failed on an 8-5 vote. Members Austin, Collins, Gray, Hutchings, Scates, Vollendorf, Waldron, Woodman voted against, members Bizzarro, Kester, Lord, Steele, Traini voted in favor. The Board establishes by majority vote that the Board should not prohibit suspension of civil penalties. This motion did not involve a regulatory matter, only a simple majority of the quorum was required.

Member Gray moved should the Board draft regulations narrowing the conditions under which a suspension of civil penalties is permitted in failure to insure cases? Motion seconded by Member Collins. After discussion Member Traini moved to call the question seconded by Member Kester. The motion was approved unanimously. Board establishes by majority vote that the Board should narrow the conditions by regulation under which civil penalties should be suspended in failure to insure cases. Because this motion did not involve a regulatory matter, only a simple majority of the quorum was required.

*Lunch Break 11:52 pm-1:30 p.m.*

Member Hutchings moved to amend 8 AAC 45.176 adding conditions under which civil penalties may be suspended in failure to insure cases. Motion seconded by Member Scates.

The Board voted separate on each section of this regulation.

Subsidiary motion to approve language to 8 AAC 45.176(f) Members Austin, Collins, Hutchings, Kester, Lord, Scates, Steele, Traini, Vollendorf, Waldron, Woodman voted in favor, Bizzarro voted against. The Board establishes by majority vote a suspension may occur for limited circumstances and for a good cause.

Subsidiary motion to approve language to 8 AAC 45.176 (f)(1). Motion was approved unanimously.

Subsidiary motion to approve language to 8 AAC 45.176(f)(1)(A) Members Austin, Bizzarro, Collins, Gray, Hutchings, Lord, Scates, Vollendorf, Waldron voted in favor. Members Kester, Steele and Traini voted against and Member Woodman abstaining.

Vote to adopt the language 8 AAC 45.176(f)(1)(A) was not approved due to failure to obtain a majority vote of the full board.

Subsidiary motion to approved language to 8 AAC 45.176(f)(1)(B). Motion was approved unanimously.

Member Collins moved to reconsider the motion to approve language to 8 AAC 45.176(f)(1)(A). Seconded by Member Gray. The subsidiary motion was approved unanimously. The motion to reconsider is approved. The motion to approve the language in 8 AAC 45.176(f)(1)(A) was on the floor. The motion was approved on a 10-3 vote, with members Austin, Bizzarro, Collins, Gray, Hutchings, Lord, Scates, Vollendorf, Waldron and Woodman voting in favor, and members Kester, Steele, and Traini voting against.

The subsidiary motion to approve language to 8 AAC 45.176(f)(2)(A)-(B) was approved unanimously.

*Break 3:00 pm – 3:23 pm*

The subsidiary motion to approve language to 8 AAC 45.176(f)(3)-(5) was approved unanimously.

Vote on the main motion to amend 8 AAC 45.176. The motion was approved with members Austin, Bizzarro, Collins, Gray, Hutchings, Kester, Lord, Scates, Steele, Vollendorf, Waldron and Woodman voting in favor, member Traini was absent.

4. Amend 8 AAC 45.50(f) Reemployment Benefit Administration (RBA) stipulations. Member Hutchings moved to amend 8 AAC 45.050(f) seconded by Member Gray. After discussion Member Gray called for the question seconded by Member Hutchings. The motion was approved unanimously.
5. Amend 8 AAC 45.174 Uninsured employers. Member Hutchings moved to repeal and readopt 8 AAC 45.174 authorizing the division director to issue a stop work order, seconded by Member Scates. The motion was approved unanimously.
6. Next Board Meeting. Director Monagle relayed there will be a Board meeting scheduled September 27-28, 2012.

*Meeting Adjourned 4:30 pm*