

# *Workers' Compensation Board*

## *Meeting Minutes*

October 2-3, 2014

**Thursday, October 2, 2014**

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

Director Monagle, acting as Chair of the Alaska Workers' Compensation Board, called the Board to order at 9:00 am on Thursday, October 2, 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	Brad Austin	Pamela Cline
Chuck Collins	Linda Hutchings	David Kester
Ron Nalikak	Donna Phillips	Amy Steele
Mark Talbert	Rick Traini	Pat Vollendorf
Robert Weel	Lake Williams	

Members Julie Duquette, Michael O'Connor, and Zeb Woodman were absent. Member Sarah Lefebvre was excused.

Director Monagle welcomed Lake Williams, labor representative from Fairbanks, who was appointed to the Board on May 14, 2014.

Director Monagle introduced senior staff present and Administrative Officer Ezzell provided general housekeeping instruction.

### **IV. Agenda Approval**

A motion to adopt the agenda was made by member Hutchings, and seconded by member Nalikak. The agenda was adopted without objection.

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

A motion to adopt the minutes from the May 15-16, 2014 regular Board Meeting was made by member Hutchings and seconded by member Weel. The minutes were adopted without objection.

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

The following member's terms expire as of March 1, 2015: Allen, Cline, Collins, Hutchings, Traini, Vollendorf, and Weel. If these members would like to continue serving on the Board, Boards and Commissions would like letters of interest as soon as possible.

In the current calendar year there have been 30 hearings with only one panelist. Of those, 23 were hearings where there was no industry member and 7 hearings where there was no labor member. Director Monagle stressed the importance of having a full panel present at hearing, and urged members – especially industry members – to meet this obligation when asked to serve.

## **VII. Administrative Report**

Administrative Officer Alan Ezzell introduced Alexis Hildebrand, the new Administrative Assistant in Juneau. Alexis handles all travel arrangements and payroll/stipend processing for the Division.

Mr. Ezzell reviewed the Division's organizational chart and staffing.

- Collections Officer Melinda Place resigned and has been replaced by Martha Narino-Torres.
- Roberta McCauley is a temporary hire in the Fishermen's Fund while regular full time employee Terry Ryals is completing basic training in the National Guard.
- Tamara Wagster has been promoted from an Office Assistant II to an Investigator I/II within the Special Investigations Unit. The Director is planning on moving this PCN to Juneau to assist Project Assistant Monica Butler with the Division's new case management and electronic data interchange (EDI) system.
- The Law Office Assistant I position in the Appeals Commission remains vacant, with no immediate plans to fill that position.

Regarding the FY15 budget, the Division started the year with a \$250K personal services deficit. This is normal because there is a planned 5% vacancy rate, which factors in anticipated vacancies for the year. The Division monitors this throughout the year, and fills vacancies accordingly. This is why you may see the Division hold some positions vacant for a while before recruitment.

The FY15 budget reflects an increase of \$62K in the administrative services line. This is to accommodate implementation of HB316, which requires regular meetings of the Medical Services Review Committee (MSRC) and the hiring of a consultant to assist the Division and the Committee with the development of new medical fee schedules.

For FY16, the Division submitted operating budget requests for two non-permanent positions to convert paper Board files to electronic files; a medical officer position; and a workers' compensation ombudsman's position to assist pro se litigants. The Division submitted a \$650K capital budget request for continued work on the Division's new case management system, to include integration of the Division's stand-alone proof-of-coverage (POC) system. The operating budget requests were not accepted, but the capital budget was moved forward.

The State is developing a new integrated resource information system (IRIS). IRIS is a series of integrated software systems to handle accounting, finance, procurement, payroll, debt management, and human resource management. The various pieces of this system will be coming online over the next several years. The Department of

Labor's charge back for this system will be an additional \$1.7 million/year, which will be allocated between all divisions in the department. It is anticipated that this new system will increase the Division's operating expenses by approximately \$100K/year beginning in FY17.

Director Monagle provided a recap of the new workers' compensation case management system, Incident and Claims Expense Reporting System (ICERS). ICERS has been into production since July 2013, but there are several components that are not functional yet; the annual reporting piece and written business practices and procedures. Administration of EDI and ICERS has become more than one person can handle, which is why the Division is considering re-classing a vacant position to this area.

The second independent medical examination (SIME) selection process has been completed. Workers' Compensation Officer Sue Reishus-O'Brien is completing the documentation process for the selected physicians, and the Division will be publishing a bulletin with the specialists later this Fall.

HB141 and HB316 were both signed into law by the Governor on September 19, 2014, and became effective September 20, 2014. There was some initial confusion over conflicting language contained in the bills. Working with Law, the Division issued interpretive bulletin 14-03, which is available on the Division's website.

Last month the National Council on Compensation Insurance (NCCI) released its 2014 Medical Data Report for Alaska. NCCI collects medical data from all workers' compensation carriers in Alaska, and analyzes medical cost drivers in this state. With medical costs comprising \$.76 of every dollar spent on workers' compensation benefits in Alaska, it is a valuable source of information for policy makers. The report is available from the Director on request.

The MSRC has held 3 meetings since the legislature passed HB316, and is in the process of gathering the necessary data on which to base its recommendations for new fee schedules. The committee is using NCCI's workers' compensation medical data and is collecting additional healthcare data from FairHealth (FH). FH is a national data collection organization which collects data from over 50 million billing transactions each year. The Division is contracting with Optum to assist the MSRC. Optum has assisted a number of states in the development of workers' compensation fee schedules - including those used in Alaska. Optum will be presenting an overview to the MSRC on inpatient hospital and outpatient facility pricing. The committee has also had presentations on the resource based relative value system (RBRVS) by Dr. Hamm, who serves on the resource value update committee (RUC), which is a multidiscipline national committee which works with the American Medical Association and the Centers for Medicaid and Medicare in establishing CMS relative values each year. MSRC meetings are scheduled for October 10<sup>th</sup>, October 24<sup>th</sup>, November 7<sup>th</sup>, and November 21<sup>st</sup>.

The MSRC will make recommendations to the Commissioner of Labor and Workforce Development which, if approved, will be forwarded on to the Workers' Compensation Board for adoption by regulation. The goal is have the Board propose regulations in early 2015, go through the public regulatory process, and adopt final regulations by April so that stakeholders will have time to program their systems by the effective date of July 1, 2015.

There was some discussion on developing an air ambulance fee schedule. Director Monagle acknowledged that the Board is tasked with coming up with an air ambulance fee schedule in HB316. There may be challenges with implementation as there is some concern that regulation of air ambulance rates is restricted under the federal Airline Deregulation Act of 1978.

Director Monagle acknowledged the arrival of Deputy Commission Grey Mitchell.

*Break 10:01am-10:16am*

#### **VIII. Case Summaries from the Supreme Court and the Appeals Commission**

Chief of Adjudications, Janel Wright, and staff Hearing Officers reviewed recent decisions from the Alaska Supreme Court and the Alaska Workers' Compensation Appeals Commission.

#### **IX. Public Comment Period 11:00 am -12:00 pm**

Denise Vander Pol – Reemployment Specialist, Southeast Rehabilitation Services

- Rehabilitation specialists need to be included in all discussions concerning statutory or regulatory reemployment benefit changes.
- The 90-day mandatory evaluation under AS 23.30.041(c) needs to be changed to 120 days.
- If an injured worker returns to work, the reemployment process should stop. Specialists are seeing injured workers referred up to two months after they have returned to work.
- Extend the evaluation time under 23.30.041(d) from 30 days to 60 days.
- Discontinue use of the US DOL Dictionary of Occupational Titles.
- Predictions of physical capacities should be done by physical therapists.
- Determinations on “previously rehabilitated” should be limited to the most recent 10 year period.
- Nobody who is not a credentialed reemployment specialist should ever provide reemployment services, which is something that is completely under the current authority of the RBA.
- Reemployment specialists are professionals and should be able to make eligibility determinations without their work being reviewed for approval by non-credentialed employees of the Division.
- The RBA needs to do a better job of accurately collecting data on reemployment benefit costs.

- The maximum reemployment plan benefit must be increased from the current statutory cap of \$13,300. Denise suggested increasing the cap to \$23,000.
- The definition of “remunerative employability” needs to be increased from 60% of the injured worker’s gross hourly wage.
- Job placement needs to be placed back into the reemployment plan process.
- The data provided by the RBA in his annual report is unintelligible. Information should not be collected from insurance companies – it can be collected directly from each specialist.
- The reemployment benefits section simply doesn’t not work – from the top down.

Cynthia Bradley – Injured Worker, Medically Retired Anchorage Police Officer

- Ms. Bradley agrees with the comments made by Ms. Vander Pol.
- A plan could not be developed that met remunerative wage, so she accepted a settlement and used that money to complete her own retraining plan as a CAD drafter.
- The \$13,300 plan limit was a barrier to retraining possibilities and occupational considerations.
- Job placement needs to be part of the reemployment process.

Dana Swank – Injured Worker

- Mr. Swank has an open workers’ compensation claim.
- He agrees with previous comments that the \$13,300 plan cap is insufficient. This amount wouldn’t even come close to covering costs for 2 years at UAA.
- Simply throwing money at an injured worker and leaving it up to them to get retraining is inadequate. Ensuring that an injured worker receives retraining and job placement should be a priority in workers’ compensation.
- The Division should check out statute books to injured workers’.
- Mr. Swank wanted to know the intent behind the wage replacement provisions of the workers’ compensation act. He believes the current wage replacement methodology in statute is inadequate, that the calculation methodology implemented by the legislature in 2005 no longer accurately calculates the wage benefit.

Cameron Van Dyck – Sales Representative for Genex Services

- Mr. Cameron was present for major statutory changes in Oregon in 1990, which dramatically improved the reemployment benefits process in that state. If Alaska is looking to model its law on another state, it should be looking at Oregon.

Janice Shipman – Reemployment Specialist, Employment Solutions

- A barrier to reemployment is that regulation 8 AAC 45.525 doesn’t require employers to make ADA accommodations.
- Specialists should determine the physical demands of the employee’s job based on interviews with the employer and the injured worker rather than relying on the descriptions contained in the US DOL Dictionary of Occupational Titles.
- Work hardening should be included in the return-to-work process without giving up the right to future reemployment benefits.

- Increasing the remunerative wage will require also increasing the plan benefit cap.
- Reemployment data should come from the specialists and not the insurance companies.

Jean Ann Daniels – Reemployment Specialist, Aurora Consultants

- There are significant delays getting physicians to review job descriptions and predict whether the employee’s physical capacities will be less than the job demands.
- The RBA provides a necessary service – she would not want to see reemployment decisions left to insurance companies and claims adjusters.
- The clientele she sees are mostly over age 50, have been doing the same job for 30 years, are hurt and can’t continue doing the same work, and are scared & in need of help.

Alizon White – Rehabilitation Specialist, Genex Services

- Two years is not enough time for plan completion.
- While emphasizing stay-at-work, return-to-work is admirable, in 9 out of 10 cases employers are not willing to offer alternative employment.
- Job placement is difficult because the employee’s willingness and ability to do a job may have nothing to do with their work injury.

Kaya Kade – Rehabilitation Specialist, Kade and Associates

- We shouldn’t be too quick to throw out the US DOL Dictionary of Occupational Titles. While it has problems, there needs to be a replacement standard.
- Parties should be allowed to stipulate to alternative employment if it is something the employee is willing to do, but the injured worker should have up to a year to decide whether they want to pursue retraining.
- Plan limits should be based on UAA tuition rates.
- The RBA needs to redefine the definition of a successful plan. Many employees settle, but do continue on with the plan developed by the reemployment specialist and return to work. However, these cases are not considered a successful plan completion by the RBA.
- Opposed to a fee schedule.
- Supports work hardening.

Betty Lees – Rehabilitation Specialist, Vocational Choices, LLC

- Agrees with increasing the mandatory evaluation period from 90 days to 120 days.
- Reemployment specialists should be invited to any meeting where changes to statutes or regulations are being considered.
- She supports an increase in the remunerative wage and plan benefits, but the two year limitation could be a barrier for some injured workers. She recommends an additional indemnity benefit for workers who can’t be retrained to a remunerative wage within the two year period.
- She is hesitant about doing away with the US DOL Dictionary of Occupational Titles. An on-site job analysis is probably more accurate, but it would likely raise the cost of doing an evaluation.

Karen Davis – Reemployment Specialist

- She would like to see a specialist added to the Board’s workgroup when discussing reemployment changes.
- She supports increasing the mandatory evaluation from 90 to 120 days, increasing the plan limit, and recommends increasing the evaluation time from 30 to 60 days.
- She is hesitant about doing away with the US DOL Dictionary of Occupational Titles as well, perhaps only using it if the employer does not have well defined job descriptions.

*Lunch Break 12:19 pm-2:00 p.m.*

**X. Executive Branch Ethics Act Training Session by AAG Jonathan Woodman**

Assistant Attorney General Jonathan Woodman delivered a PowerPoint presentation and overview of the Executive Branch Ethics Act, which applies to all state employees, and board and commission members.

*The Department of Law provides Executive Branch Ethics Act training materials and information on its website at <http://www.law.alaska.gov/doclibrary/ethics.html>.*

*Break 2:56pm-3:15pm*

**XI. Board Ethics Training Exercise**

The Adjudication Section held a mock hearing in the matter of Florence Fartinino v Seahorse Seafoods. Board members were invited to note ethics and etiquette issues they observed during the hearing. General discussion followed.

Following the exercise, board members were asked what additional training topics they would like to see covered at future board meetings. Recommendations included

- Presentation on pain management and opioid use
- Presentation on reviewing settlement agreements and determining how “the best interest of the employee” is determined
- Presentation from a reemployment specialist on the whole process of completing an evaluation and plan, and monitoring to plan completion.

*Meeting Adjourned 5:01 pm*

**Friday, October 3, 2014**

**I. Call to Order**

Director Monagle resumed the Alaska Workers' Compensation Board meeting at 9:05 am on Friday, October 3, 2014, in Anchorage, Alaska. The following Board members were present:

Stacy Allen	Brad Austin	Pamela Cline
Chuck Collins	Linda Hutchings	Sarah Lefebvre
David Kester	Ron Nalikak	Amy Steele
Mark Talbert	Rick Traini	Pat Vollendorf
Lake Williams		

Members Julie Duquette, Michael O'Connor, and Zeb Woodman were absent. Members Donna Phillips and Robert Weel were excused.

**II. Presentation on Evidence Based Medical Treatment Guidelines**

Phil LeFevre, Director of Business Development, the Work Loss Data Institute, gave a PowerPoint presentation on evidence based medical treatment guidelines, and demonstrated their product, Official Disability Guidelines (ODG). A copy of Mr. LeFevre's presentation will be provided to the Division. Additional information on ODG can be found [online](#).

*Break 10:20am-10:39am*

The board discussed evidence based medicine and treatment guidelines. Implementation of treatment guidelines in Alaska would require a statutory change.

**III. Old Business**

The Board formed a workgroup subcommittee in 2013 for the purpose of holding listening sessions and receiving feedback from stakeholders. Listening sessions were held in Fairbanks, Anchorage, Kenai, and Juneau. The results of the work done by that subcommittee were realized in a resolution adopted by the full Board in September 2013.

On September 9<sup>th</sup> through the 12<sup>th</sup> of this year, the workgroup held listening sessions again in these same locations. The workgroup consisted of members Hutchings, Lefebvre, Nalikak (alternate) as industry representatives, and members Traini, Woodman, and Allen (alternate) as labor members. Summaries of the public comments received at those sessions and copies of written comments were sent to board members prior to this meeting.

The board stepped through the summaries and written comments received.

Recommendations received include

- Adoption of evidence based medical treatment guidelines
- Making changes to the reemployment benefits program, many of which the board heard yesterday during the public comment period
- Regulation of the prescription of opiates
- Improved access to insurance information for employers, including classification, payroll rules, experience modification calculations, audits, the assign risk market, and dispute resolution
- Changes to reduce employer liability for non-work related incidents, such as horse-play, preexisting conditions, and comorbidity factors
- Promoting speedier resolution of disputes and reduced legal costs
- Reducing the number of unnecessary independent medical exams and repeal of the SIME process
- Allowing employer directed care so that employers can take advantage of market forces by steering employees to negotiated networks
- Improved access to medical data through the establishment of an all claims payers database
- Closing loopholes for misclassifying employees as independent contractors, and putting limits on who can be exempted as corporate officers and LLC members
- Increasing the PPI statutory benefit
- Tightening up injury and compensation reporting by employees and employers

*Lunch Break 12:06p.m-1:35 p.m.*

#### **IV. New Business**

The Board reviewed Resolution No. 13-01, adopted in September 2013.

- Twelve of the 13 items listed in the first set of resolutions were addressed by HB141 and HB316, which were adopted by the legislature and signed into law by the Governor. The only item that has not yet been addressed is authority to address the prescription of opiates.
- All of the items in the second set of resolutions were addressed by HB316.
- None of the items in the third set of resolutions - all dealing with the reemployment benefits program - were addressed by the legislature.

The board discussed whether the resolution should make specific language recommendations, or whether it ought to broadly discuss the board's concerns and leave it up to the legislature to craft a solution. The consensus was to make specific recommendations.

The board took up discussion on the reemployment recommendations from September 2013.

*1. Transition from emphasis on retraining to emphasis on stay-at-work/return-to-work and on a voluntary basis, provide an initial consultation with the employer, the employee, and the employee's treating physician to determine the physical demands of the employer and the physical capacities of the employee to determine whether a stay-at-work/return-to-work plan can be implemented.*

It was noted that testimony from reemployment specialists was generally not in favor of this recommendation. Member Lefebvre stated that industry in Fairbanks was very supportive of engaging employers in return-to-work programs. There was general consensus supporting emphasis on stay-at-work, return-to-work over retraining to a new occupation.

*2. A repeal of the 90 day mandatory reemployment evaluation under AS 23.30.041, and return to evaluations on the request of either the employer or the employee.*

The board discussed whether the mandatory evaluation at 90 days, under 23.30.041(c), should be dropped or extended to 120 days, as recommended by the majority of the reemployment specialists through their public comments. It was noted that one of the biggest delays is getting the treating physician to predict whether or not the employee will have a permanent impairment, and whether the employee will have the physical capacities to meet the demands of their job at the time of injury or another job in the labor market. It was also noted there needs to be a mechanism to more timely ascertain when an employee has been continuously off work for 90 days, and to stop the reemployment process if the employee has returned to work before an eligibility referral has been made.

*3a. Strengthen criteria by eliminating reemployment services by non-credentialed individuals and eliminating reemployment services being administered by firms not principally owned by credentialed individuals.*

Public comment received is that the RBA has broad statutory and regulatory authority to remove specialists; he just needs to be more assertive in exercising that authority. Industry is opposed to the requirement that firms be owned by a credentialed individual. The Board does not object to non-credentialed individuals assisting with administrative procedures.

*3b. Authorize the Board to establish fees for reemployment specialist services.*

From the public comment received, specialists are generally opposed to a fee schedule. The board is generally supportive of a fee schedule.

*3c. Increase the benefit under .041(l) from \$13,300 to \$18,600, and adjust to cpi annually.*

The recommended increase was based on the 2013 school year at the University of Alaska, Anchorage, which included tuition, fees, books, room and board, transportation, and personal expenses. It was noted that vocational and online courses may cost less, and that injured workers' who may have little educational experience beyond high school may require additional remedial instruction to achieve at the collegiate level. The \$13,300 cap was last changed in 2000 and if you adjusted the \$13,300 for inflation, that number would be \$18,300 today.

Break 3:01 pm – 3:21 pm

After discussion, and revisiting the UAA cost estimator for the 2014/2015 school year, the board changed the recommendation to \$20,176, tied to inflation.

3d. *If found eligible, provide two choices: 1) accept retraining with limit of 2 years and maximum benefit under .041(l), or 2) accept a one-time cash payment of the maximum benefit under .041(l) plus 50%.*

There was discussion on whether the 2 year time limit should be extended. The consensus was to keep it at 2 years, but allow the parties to stipulate to a plan exceeding two years. It was noted that the correct citation for the one-time cash benefit is 23.30.041(g). It was also noted that the board's intent was to make the selection "either/or", i.e. after being found eligible, you either accept retraining with no settlement, or you take the .041(g) cash settlement.

4. *Increase evaluation time from 30 days to 60 days.*

The board's consensus is to extend the time limit under 23.30.041(d) from 30 to 60 days, and do away with the 30 day extension. There was also discussion on why the statute requires administrative approval of an eligibility determination in all cases, but only requires administrative approval of a plan with there is disagreement between the parties. Public comment was that non-credentialed state employees are "second guessing" the work being done by credentialed specialists. An evaluation process that is supposed to be completed in 70-90 days is taking 12 months or longer.

5. *Provide statutory provision for RBA reconsideration with 30 days of decision.*

The board was in consensus on this recommendation.

6. *Amend the statute to allow employers to controvert based on noncooperation & follow regular claim process.*

The board was in consensus on this recommendation.

Member Kester said he would like the resolution to include evidence based medical treatment guidelines. There was support for this recommendation, but the board did not reach consensus. It was also recommended that the board address exemptions from workers' compensation coverage in the resolution, to include independent contractors, executive officers, and LLC and LLP members. There was consensus on this recommendation.

The board agreed that a workgroup should meet before the next meeting to work out draft language on a resolution for consideration by the full board. The workgroup will be labor members Allen and Austin, and industry members Steele and Kester. The work will be done by email and telephonic conference.

The Board's next meeting is scheduled for January 15<sup>th</sup> and 16<sup>th</sup>. The board discussed adding the 14<sup>th</sup> as a work session on medical fee schedules. Moved by member Austin, and seconded by member Collins. The motion was approved without objection. Member Collins recommended the division see if another venue is

available for January 14<sup>th</sup>. It was also recommended that the agenda for the January board meeting be limited to approving fee schedule regulations and the revised resolution.

*Meeting Adjourned 4:49 pm*