

# *Workers' Compensation Board*

## *Meeting Minutes*

January 24-25, 2019

**Thursday, January 24, 2019**

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

Workers' Compensation Director Grey Mitchell called the Board to order at 9:07 am on Thursday, January 24, 2019 in Anchorage, Alaska.

### **II. Roll call**

Director Mitchell introduced himself and conducted roll call. The following Board members were present:

Brad Austin	Pamela Cline	Chuck Collins
Jacob Howdeshell	Sarah Lefebvre	Linda Murphy
Donna Philips	Nancy Shaw	Amy Steele
Rick Traini	Robert Weel	

Director Mitchell noted that Members Frye, Kester, Stubbs, Mack and Williams were excused. Members Evans and Letuligasenoa were absent. Members Philips and Traini arrived after roll call. Quorum was established.

### **III. Agenda Approval**

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

### **IV. Approval of Meeting Minutes**

A motion to adopt the minutes from the October 4-5, 2018 regular Board Meeting was made by member Weel and seconded by member Austin. Member Cline noted that she was present and requested that her name be added to the list of present members. A motion to adopt the amended minutes from the October 4-5, 2018 regular Board Meeting was made by member Weel and seconded by member Austin. The amended minutes were adopted without objection.

### **V. Director's Report**

Director Mitchell introduced senior staff present, and noted that some board member terms were expiring on March 1, 2019.

Administrative Officer Alexis Newman provided an overview of Division staffing, the various budget components within the Division, and the FY19 budget performance year-to-date.

Administrative Officer Alexis Newman reviewed the list of board designees. Member Collins moved that the Board approve the amended list of Board designees, which was seconded by member Murphy. The motion passed unanimously.

Director Mitchell discussed upcoming legislation.

*Break 9:49am-10:15am*

## **VI. Public Comment Period 10:15am- 11:15am**

Brian Zematis – representing self

- Disagreed with the repeal of 8 AAC 45.890.
- Stated this repeal would create more gray areas.
- Stated the new definition of Independent Contractor is onerous.

Barbara Williams – representing self

- Stated she has had issues when submitting records electronically, and complained that the Division does not accept audio recordings electronically.
- Expressed dissatisfaction with the rehabilitation process in regards to disabilities.
- Disagreed with the movement towards “book based” Medical Fee Schedule.
- Disagreed with Fee Schedule rule that physical therapists are not reimbursed at 100% of the Physician MAR.
- Would like to see more community people and injured worker stakeholders involved with the regulatory process and serving on the Medical Services Review Committee.
- Stated that the proposed regulations look great on paper, but implications are not being considered.
- Expressed dissatisfaction with the Division’s template letters.
- Requested an audit of the WC System.
- Provided an ADA flier to each of the board members.

Michael Budzinski – representing Workers’ Comp Attorney

- Disagreed with the proposed amendments to 8 AAC 45.092, as the amendment removes the right of the parties to submit SIME questions.
- Stated there is a pending dispute before the Appeals Commission regarding the correctness of the Board’s standard questions.
- Feels the Board questions are misleading.
- Acting Chief of Adjudications Ron Ringel clarified the issue.
- Member Murphy stated that the Board’s intent with this change is that the hearing officer would develop questions.

*Break 11:05am – 11:10am.*

Heather Johnson – representing self

- Disagreed with amendments to 8 AAC 45.092.
- Feels SIME process is unfair to the employee and the proposed amendment obstructs due process.
- Requested change to Controversion form.

Sandy Travis – representing self

- Feels the proposed regulations are not in the public interest.
- Feels that the regulations are too technical and are difficult to understand.
- Feels that SIME doctors are not impartial.

Tana Noe – representing self

- Feels the website is too technical and not user friendly.
- Expressed that the Division needs to better accommodate injured workers with disabilities.
- Stated SIME doctors go over the same questions at each evaluation and the injured worker feels unheard.

Eric McDonald – representing self

- Expressed dissatisfaction with the Controversion form.

Ward Wells – representing self

- Feels his rights as a human being were violated by Workers' Compensation.
- Feels regulations are poorly organized to the rights of human beings.
- Feels the regulations are too technical and there is a lack of ability for Workers' Compensation as a whole to work with injured workers.

Butch McGavran – representing self

- Feels the workers' compensation process is difficult.
- Expressed that the WC website and offices do not meet ADA Guidelines.
- Stated he has requested ADA accommodations and they have been met.

Heidi Palmer – representing self

- Disagreed with Fee Schedule rule that physical therapists are not reimbursed at 100% of the Physician MAR.
- Requests carve out for work hardening programs.
- Provided a written document to the Board to illustrate concerns with the Fee Schedule adopted by the Board through the Medical Services Review Commission.

Bruce Williams – representing self

- Advocated for physical therapists to receive reimbursement at 100% of the physician MAR.

Samantha Atlas – representing self

- Expressed agreement with Butch and Heather.
- Feels that injured workers need help getting through the workers compensation process and getting the right treatment.

McKenna Wentworth – representing Wilton Adjustment Services

- Disagreed with repeal of 8 AAC 45.890.
- Feels some of the proposed regulations are premature and that the Board should wait to see what is proposed by the Legislative Workers' Compensation Working Group.
- Feel the Affidavit of Readiness for Hearing rushes the process and hurts the injured worker.
- Advocated for training of the SIME doctors.
- Recommended the addition of daily wage per diem for SIME travel.
- Feels the Division's template letters are misleading and requested changes.

Noel McCullough – representing self

- Expressed concern with medical evaluations.
- Believes SIMEs are unregulated and should be neutral.

*Lunch Break 12:00pm-1:32pm*

## **VII. Old Business**

Director Mitchell requested to amend the agenda to move the case law review to the end of agenda. Member Weel moved, Murphy seconded. The motion passed unanimously.

Director Mitchell introduced the next item on the agenda for the Board to review proposed regulations and make decisions regarding approval.

Amend 8 AAC 45.020(d), relating to electronic filing. Member Murphy moved to adopt the amendment of 8 AAC 45.020(d). Member Weel seconded the motion. Member Murphy raised concern with the language of 45.020(d)(5), and suggested to remove the word "standard" from "Alaska Standard Time". Member Weel moved to amend the proposed amendment of AAC 45.020(d) and member Austin seconded. The motion passed unanimously. The members discussed 45.020(d)(6) and whether or not the board should be responsible for verifying that documents filed electronically are received correctly. Director Mitchell called the question and the motion did not pass on an 8 to 1 vote, with member Shaw voting against, and members Austin, Cline, Collins, Murphy, Howdeshell, Steele, Traini, and Weel voting in favor and member Philips abstaining.

Member Philips motioned for reconsideration to amend 8 AAC 45.020(d), and member Weel seconded. The motion passed without objection. The board continued discussion of the Division's responsibility for verifying that records sent by facsimile or electronic

mail are received correctly. A brief recess was held to distribute copies of Commissioner's Order No. 001. Member Shaw expressed concerns with 45.020(d)(6). Member Murphy emphasized that if the adoption does not pass, the language will still be in effect under the Commissioner's Order. Director Mitchell called the question. The motion did not pass on an 8 to 1 vote, with member Shaw voting against, members Austin, Cline, Collins, Howdeshell, Murphy, Steele, Traini, Weel, and Philips voting in favor. Member Philips moved to postpone action on this amendment until the following day. Member Weel seconded and the motion to postpone passed without objection.

Amend 8 AAC 45.025(c), relating to board forms. Member Austin moved to adopt the amendment of 8 AAC 45.025(c). Member Howdeshell seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.060(b), relating to electronic filing. Member Austin moved to adopt the amendment of 8 AAC 45.060(b). Member Weel seconded the motion. After a brief discussion, the motion passed unanimously.

*Break 3:06pm-3:19pm*

Amend 8 AAC 45.070(b), relating to review of a reemployment benefits administrator's decision. Member Murphy moved to adopt the amendment of 8 AAC 45.070(b)(1)(A). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(b)(1)(A), relating to review of a reemployment benefits administrator's decision. Member Austin moved to adopt the amendment of 8 AAC 45.070(b)(1)(A). Member Collins seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(f)(1), relating to claims. Member Weel moved to adopt the amendment of 8 AAC 45.070(f)(1). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.070(f)(2), relating to claims. Member Austin moved to adopt the amendment of 8 AAC 45.070(f)(2). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.083(m), relating to fees for medical treatment and services. The intent of amendment is to clarify the existing fee schedule and incorporate the most recent recommendations. Member Collins moved to adopt the amendment of 8 AAC 45.083(m) including material incorporated by reference. Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.085, relating to electronic filing. Member Murphy moved to adopt the amendment of 8 AAC 45.085. Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(g), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(g). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(h), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(h). Member Weel seconded the motion. The board discussed implications of this repeal. The motion passed unanimously.

Repeal 8 AAC 45.092(h)(5), relating to second independent medical evaluations. Member Murphy moved to repeal 8 AAC 45.092(h)(5). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092(j)(1), relating to second independent medical evaluations. Member Austin moved to approve the amendment of 8 AAC 45.092(j). Member Collins seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.110(a), relating to case file records and board proceedings. Member Weel moved to approve the amendment of 8 AAC 45.110(a). Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.110(b), relating to case file records and board proceedings. Member Austin moved to approve the amendment of 8 AAC 45.110(b). Member Weel seconded the motion. The motion passed unanimously.

Repeal 8 AAC 45.110(c), relating to case file records and board proceedings. Member Austin moved to repeal 8 AAC 45.110(c). Member Weel seconded the motion. The motion passed unanimously.

Repeal 8 AAC 45.134(c), relating to modification and offset of compensation. Member Collins moved to repeal 8 AAC 45.134(c). Member Murphy seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.136, relating to insurer or adjuster reporting. Member Collins moved to approve the amendment of 8 AAC 45.136. Member Cline seconded the motion. The board invited McKenna Wentworth, representing Wilton Adjustment Services, to provide testimony. Member Weel moved to table this issue and member Murphy seconded. The motion to postpone action passed unanimously.

Amend 8 AAC 45.182(a), relating to insurer or adjuster reporting. Member Weel moved to approve the amendment of 8 AAC 45.182(a). Member Austin seconded the motion. Administrative Officer Alexis Newman explained that the intent of this change was to clarify that EDI denial transaction serves to terminate benefits, but does not satisfy the requirement to notify the parties that benefits have been denied. Form 07-6105

Controversion Notice must still be filed. Director Mitchell called the question and the motion passed unanimously.

Repeal 8 AAC 45.890, relating to determining employee status. Member Weel moved to adopt the repeal of 8 AAC 45.890. Member Collins seconded the motion. The motion passed unanimously.

Motion to adjourn was made by Member Weel at 5:00pm. Member Austin seconded the motion. The motion passed unanimously.

*Meeting Adjourned 5:00pm*

## **Friday, January 25, 2019**

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

Director Mitchell resumed the Alaska Workers' Compensation Board meeting at 9:05am on Friday, January 25, 2019, in Anchorage, Alaska. The following Board members were present:

Brad Austin	Pamela Cline	Chuck Collins
Jacob Howdeshell	Sarah Lefebvre	Linda Murphy
Donna Phillips	Nancy Shaw	Amy Steele
Robert Weel	Lake Williams	

Director Mitchell noted that Members Frye, Kester, Stubbs and Mack were excused. Members Evans, Letuligasenoa and Traini were absent. Quorum was established.

### **II. Old Business Continued**

Amend 8 AAC 45.020(d), relating to electronic filing. A motion to approve remained on the floor from the previous day. Member Shaw clarified that her objection to this amendment was purely due to what she considered to be sloppy drafting. The Board discussed improvements to the amendment. Member Austin motioned to make non-substantive changes to the proposed amendment. He proposed to separate the second and third sentence of section 9 into their own paragraph to be numbered 10, and to renumber section 10 to 11 and 11 to 12. Member Shaw seconded the motion. The motion passed unanimously. Director Mitchell called the question and the motion to adopt the revised amendment of 8 AAC 45.020(d) passed unanimously.

Amend 8 AAC 45.136, relating to insurer or adjuster reporting. The Board again invited McKenna Wentworth to provide testimony. Ms. Wentworth raised concerns that the proposed language would cause an increase in late compensation report penalties. She stated that reports are currently considered on-time if the attempt to submit an EDI transaction has been made, and under this amendment those reports would be considered late if the transaction contains errors and is not accepted. Director Mitchell called the question. The motion did not pass on a 9 to 2 vote, with

members Cline and Austin voting against, and members Collins, Howdeshell, Lefebvre, Murphy, Shaw, Steele, Weel and Williams voting in favor.

*Break 10:15am-10:30am*

### **III. New Business**

Hearing Officer Bill Soule reviewed 2018 Case Law from the Alaska Supreme Court and the Alaska Workers' Compensation Appeals Commission.

*Lunch Break 12:00pm-1:32pm*

Hearing Officer Soule continued his 2018 case law review.

Director Mitchell, through Workers' Compensation Officer Sue Reishus-O'Brien, introduced a proposal for the amendment of 8 AAC 45.090(b) to incorporate ancillary costs that may be necessary to conduct the SIME, namely additional imaging the physicians may require (which some do) and the costs of an interpreter, if required. This proposal would close a loophole that has caused some insurers to initially deny payment of an interpreter for non-English speakers, as the regulation does not specifically state they must provide that benefit. Ms. Reishus-O'Brien explained that some Board-ordered SIMEs had to be cancelled and rescheduled at considerable expense to the employer/insurer due to problems with interpreter payment and suggested additional language to read, "The cost of an examination, medical report, and ancillary costs to do the examination shall be paid by the employer." The board discussed this proposal, but did not take action.

Member Shaw brought an issue regarding an employer's failure to pay, and what could be done when an employer fails to cooperate.

Director Mitchell reminded the Board members the next regular board meeting is May 2-3, 2019. Meeting will be by teleconference.

Motion to adjourn was made by Member Austin at 3:38pm. Member Philips seconded the motion. The motion passed without objection.

*Meeting Adjourned 3:38pm*