

# *Workers' Compensation Board*

## *Meeting Minutes*

October 1-2, 2020

**Thursday, October 1, 2020**

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

Workers' Compensation Director Charles Collins called the Board to order at 9:07 am on Thursday, October 1, 2020. Due to concerns related to the COVID-19 public health disaster, the meeting was held by telephone and video conference.

### **II. Roll call**

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

Bradley Austin	Randy Beltz	Bob Doyle	Julie Duquette
Sara Faulkner	Bronson Frye	Jacob Howdeshell	Sarah Lefebvre
Nancy Shaw	Robert Weel	Lake Williams	

Director Collins noted that members Justin Mack and Pamela Cline were excused. Members Bob Doyle and Julie Duquette 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 Beltz. The agenda was approved by unanimous vote.

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

A motion to adopt the minutes from the May 7, 2020 regular Board Meeting was made by member Weel and seconded by member Austin. The minutes were adopted without objection.

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

Director Collins introduced senior staff present, and provided an update on the Department's discontinued efforts to merge the Division of Workers' Compensation with the Division of Labor Standards and Safety.

Director Collins presented the revised format of the Board Hearing Calendar.

Director Collins reviewed the list of board designees. He noted that Judy DeMarsh had joined the Division as a Workers' Compensation Hearing Officer II. A motion to approve the board designees was made by member Beltz and seconded by member Weel. The board designees were approved without objection.

Director Collins provided an overview of division staffing chart, and noted that the vacant Workers' Compensation Officer I in Anchorage is currently in recruitment.

## **VI. Annual Report**

Alexis Hildebrand, Administrative Officer, provided an overview of the various budget components within the Division, the FY20 budget performance, and the FY21 budget performance year-to-date.

Velma Thomas, Program Coordinator, reviewed statistics from the Division's 2019 annual report, a compilation of statistics and benefit data obtained from insurers and self-insured employers pursuant to AS 23.30.155(m).

*Break 10:01am-10:15am*

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

Alison Leigh – representing self

- Asked questions regarding compensation reports and the Annual Report.
- Commented on a specific case.
- Feels that non-attorney representatives should be allowed to be compensated.

Charles McKee – representing self

- Commented on a specific case.

Brian Zematis – representing Parker, Smith & Feek

- Regarding proposed amendment to 8 AAC 45.185, Mr. Zematis sought clarification on when an LLC has multiple members and the LLC owns a portion of a company, effectively bringing the individual ownership under 10%.

Barbara Williams – private consultant

- Would like to see the Board solicit feedback from injured workers regarding their SIME experience.
- Commented on her experience in a specific case.
- Would like the Director and the Board to reach out to individuals with disabilities to enhance accommodation process.
- Would like to see more community members on the Board to represent injured workers.

Sandy Travis – representing self

- Stated she was having difficulty hearing.
- Stated she requested accommodations and was turned down.
- Alleged the meeting did not meet the standard for a public meeting.  
Made comments on supposed agreements regarding access to state and injured worker medical records.

Heather Johnson – representing self

- Made comments on a specific case.
- Would like to see more stakeholder involvement

- Feels there should be a statute that requires all relevant records be sent to the EME doctor. Parties should not be allowed to “cherry pick” records.
- Feels that IMEs and SIMEs should be added to the fee schedule.

Eric McDonald – representing self

- Stated he had difficulty finding an attorney to represent him in his case.

### **VIII. Annual Report, continued.**

Velma Thomas continued presentation of the Division’s 2019 annual report. Ms. Thomas also reviewed the funds and programs administered by the Division: the Benefits Guaranty Fund, the Fishermen’s Fund, the Second Injury Fund, the Self-Insurance Program, and the Proof of Coverage Program.

*Lunch Break 11:51pm-1:33pm*

### **IX. Old Business**

Amend 8 AAC 45.083, 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 Weel moved to adopt the amendment of 8 AAC 45.083. Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45, by adding a new subsection (8 AAC 45.185) relating to corporate officers and members of limited liability companies. The intent of this amendment is to clarify the definition of ownership when an entity is owned by another entity, such as a revocable trust. Member Faulkner moved to adopt the amendment of 8 AAC 45, and Member Weel seconded the motion. The motion passed unanimously.

### **X. Annual Report, Continued.**

Stacy Niwa, Reemployment Benefits Administrator, reviewed the performance of the Reemployment Benefits Program.

Rhonda Gerharz, Chief of the Special Investigations Unit (SIU), gave an overview of the SIU’s performance.

Ron Ringel, Acting Chief of Adjudications, reviewed the performance of the Adjudications Section.

*Break 2:50pm-3:15pm*

Dani Byers, Workers’ Compensation Officer II, reviewed SIME statistics.

Member Austin motioned to adjourn for the day, and member Weel seconded. With no objections, the meeting adjourned.

*Meeting Adjourned 3:43 pm*

**Friday, October 2, 2020**

**I. Call to Order**

Director Collins resumed the Alaska Workers' Compensation Board meeting at 9:05am on Friday, October 2, 2020.

Bradley Austin	Randy Beltz	Pamela Cline	Bob Doyle
Julie Duquette	Sara Faulkner	Bronson Frye	Jacob Howdeshell
Sarah Lefebvre	Nancy Shaw	Robert Weel	Lake Williams

Director Collins noted that member Justin Mack was excused. Quorum was established.

**II. New Business**

Member Weel motioned to discuss regulatory amendments as new business. Member Austin seconded. The motion passed without objection.

Amend 8 AAC 45.030, relating to fees for file copies. The intent of this amendment is to replace outdated terminology to reflect modern operation procedures. Member Austin moved to approve the amendment of 8 AAC 45. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.032, relating to case file set up for investigations into failure to insure. The intent of this amendment is to reflect current operational procedures. Member Beltz moved to approve the amendment of 8 AAC 45.032. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.092, relating to second independent medical evaluations. The intent of this amendment is to correct the name of the referenced organizations. Member Austin moved to approve the amendment of 8 AAC 45.092. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.093, relating to qualifying medical examinations for certain firefighters. The intent of this amendment is to delineate the proper form for use in filing medical record. Member Frye moved to approve the amendment of 8 AAC 45.093. Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.122, relating to rating of permanent impairment. The intent of this amendment is to update the language to reflect modern operation procedures. Member Austin moved to approve the amendment of 8 AAC 45.122. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.136(a) & (b), relating to notice of payment or modification of compensation. The intent of this amendment is to reflect current electronic data interchange operation. Member Austin moved to approve the amendment of 8 AAC 45.136(a) & (b). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.136(c), relating to notice of payment or modification of compensation. The intent of this amendment is to reflect current electronic data interchange operation.

Member Austin moved to approve the amendment of 8 AAC 45.136(c). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.136(d), relating to notice of payment or modification of compensation. The intent of this amendment is to reflect current electronic data interchange operation. Member Weel moved to approve the amendment of 8 AAC 45.136(d). Member Beltz seconded the motion. The motion passed unanimously, with Lake Williams abstaining.

Amend 8 AAC 45.136(e), relating to notice of payment or modification of compensation. The intent of this amendment is to reflect current electronic data interchange operation. Member Austin moved to approve the amendment of 8 AAC 45.136(e). Member Weel seconded the motion. The motion passed unanimously.

*Break 10:05am-10:20am*

Amend 8 AAC 45.210, relating to weekly compensation rate. The intent of this amendment is to replace an outdated rate of pay equation with an updated calculation that properly reflects the statute, and to update language to reflect current electronic data interchange procedures. Member Austin moved to approve the amendment of 8 AAC 45.210. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.220, relating to gross weekly earnings. The intent of this amendment is to align the regulation with the statute. Member Austin moved to approve the amendment of 8 AAC 45.220. Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900(a)(2), relating to definitions. The intent of this amendment is to enhance the definition of "board". Member Weel moved to approve the amendment of 8 AAC 45.900(a)(2). Member Shaw seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900(4), relating to definitions. The intent of this amendment is to remove unnecessary pronouns. Member Frye moved to approve the amendment of 8 AAC 45.900(4). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900(15), relating to definitions. The intent of this amendment is to remove unnecessary punctuation. Member Frye moved to approve the amendment of 8 AAC 45.900(15). Member Beltz seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900 relating to definitions by adding a new subsection (16). The intent of this amendment is to define "failure to insure". Member Frye moved to approve the amendment of 8 AAC 45.900. Member Beltz seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900(c), relating to definitions. The intent of this amendment is to further clarify “part-time help” by adding a definition for part-time baby-sitter. Some board members expressed concern that gray area still existed in the proposed language. The board did not make a motion to move this amendment forward.

Amend 8 AAC 45.900(c), relating to definitions. The intent of this amendment is to further clarify “part-time help” by adding a definition for “contracted entertainer” and “harvest help”. Member Shaw moved to approve the amendment of 8 AAC 45.900(c). Member Austin seconded the motion. The Board members discussed changes to the proposed language. Member Shaw amended her motion with the revised proposed language and Member Austin seconded. The motion did not pass on a vote of 8 to 2, with members Doyle and Duquette voting against and members Austin, Faulkner, Frye, Howdeshell, Lefebvre, Shaw, Weel, and Williams voting in favor.

Amend 8 AAC 45.900(d), relating to definitions. The intent of this amendment is to correct an outdated statutory reference. Member Austin moved to approve the amendment of 8 AAC 45.900(d). Member Weel seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.900(h), relating to definitions. The intent of this amendment is to correct an outdated statutory reference. Member Austin moved to approve the amendment of 8 AAC 45.900(h). Member Weel seconded the motion. The motion passed unanimously.

*Lunch Break 12:17pm-1:38pm*

Amend 8 AAC 45.900(j), relating to definitions. The intent of this amendment is to further clarify the definition of “previously rehabilitated”. Member Austin moved to approve the amendment of 8 AAC 45.900(j). Member Frye seconded the motion. The motion did not pass on a vote of 9 to 1, with members Austin, Doyle, Faulkner, Frye, Howdeshell, Lefebvre, Shaw, Weel, and Williams voting in favor and member Duquette voting against.

Amend 8 AAC 45.900, relating to definitions by adding a new subsection (k). The intent of this amendment is to define “misclassification” and “deceptive leasing practices”. Member Frye moved to approve the amendment of 8 AAC 45.900. Member Weel seconded the motion. Member Shaw proposed to strike the words “without his or her knowledge or consent, or”, the board agreed with the amendment. Member Frye amended his motion and member Weel seconded. Director Collins called the question and the motion passed unanimously.

Amend 8 AAC 45.174, relating to uninsured employers. The intent of this amendment is to further clarify the person authorized to serve process in investigation proceedings. Member Frye moved to approve the amendment of 8 AAC 45.174. Member Austin seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.174(c), relating to uninsured employers. The intent of this amendment is to further clarify the person authorized to serve process in investigation proceedings. Member Austin moved to approve the amendment of 8 AAC 45.174(c). Member Frye seconded the motion. The motion passed unanimously.

Amend 8 AAC 45.174(e-f), relating to uninsured employers. The intent of this amendment is to clarify that employers do have the right to file a petition for hearing in failure-to-insure cases. Member Shaw moved to approve the amendment of 8 AAC 45.174(e). Member Austin seconded the motion. The motion passed unanimously.

*Break 2:49pm-3:15pm*

Director Collins requested volunteers to fill the vacant industry seat on the SIU Fraud Laws work group.

Director Collins reminded the Board members the next regular board meeting is January 14-15, 2021.

Motion to adjourn was made by Member Austin at 3:22pm. Member Weel seconded the motion. The motion passed unanimously.

*Meeting Adjourned 3:23pm*