

# MAINE STATE LEGISLATURE

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# MEMORANDUM

## MAINE WORKERS' COMPENSATION BOARD

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**TO:** Workers' Compensation Board of Directors  
**FROM:** Paul H. Sighinolfi, Esq., Board Chair/Executive Director  
**DATE:** August 26, 2014  
**SUBJECT:** Relationship between the Executive Director and the Workers' Compensation Board

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In light of discussions we have had at the last two Board meetings, I have taken steps to address the issue of the relationship between the Workers' Compensation Board Executive Director and the Board of Directors.<sup>1</sup> The Workers' Compensation Board structure in Maine is somewhat atypical, that is, unlike many other jurisdictions, the Executive Director wears two hats: one as Executive Director and a second as the Chair of the Board. With this in mind, I thought it would make some sense to try to put substance to this unique position.

The starting place is our Workers' Compensation Act. The Act, at 39-A M.R.S.A. §151-A, defines our mission. The Act provides:

The Board's mission is to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

In the definition section of the Act, 39-A M.R.S.A. §102, we learn the "Board" is the Workers' Compensation Board created by §151 and includes a designee of the Board. "Board member" means any member of the Board, including the Executive Director. I have attached to this memorandum §§151, 152 and 153 of the Act, all of which address Board activities. These provisions do not distinguish between the Board of Directors and the agency. In Title 39-A M.R.S.A. §151(1-A), the Act tells us something about the Executive Director position. It provides in pertinent part:

The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director serves at the pleasure of the Governor. Except as otherwise provided, the executive director shall, at the direction of the board, hire personnel as necessary to administer this Act, subject to the Civil Service Law.

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<sup>1</sup> In this memo I will refer to the Board of Directors as the "Board." The institution will be called the "agency."

The Act, therefore, is explicit about the Executive Director duties to hire personnel and administer the Act. All other duties are implicit. What those duties are and how they are exercised is what the balance of this memo will address. Once I started down this path, I thought addressing other aspects of this position would be helpful.

Our Rules are silent on the roles of the Executive Director and the Board. I thought looking at other legal structures might be beneficial.

Generally speaking, an Executive Director's role in a corporate setting is defined by the corporate by-laws. We do not have that luxury. I have, however, researched Executive Directors' functions in multiple corporate settings, and share with you the following. My hope is we can use this as a basis for our discussions.

### Job Purpose

The Executive Director is responsible for the successful leadership and management of the Workers' Compensation Board. The Executive Director should be ever mindful of the Workers' Compensation Act, Board Rules, Law Court decisions, and decisions issued by the Appellate Division of the Workers' Compensation Board.

The Executive Director fills the job purpose by performing some or all of the following:

#### 1. Leadership.

- The Executive Director leads the Board in developing a vision and strategic plan to guide the agency.
- The Executive Director identifies, addresses, and informs the Board of internal and external issues that affect the good functioning of the agency.
- The Executive Director works to maintain a working knowledge of significant developments and trends in workers' compensation.
- The Executive Director reaches out to and communicates with other state Executive Directors (whatever title applies in other jurisdictions).
- The Executive Director acts as a professional advisor to the Board in all aspects and activities of the agency.
- The Executive Director works with senior agency staff to plan staff development and within limitations management succession.
- The Executive Director acts as a spokesman for the agency.
- The Executive Director fosters effective teamwork between the Board and the Executive Director and between the Executive Director and agency staff.
- The Executive Director conducts official correspondence on behalf of the Board as appropriate and jointly with the Board when appropriate.
- The Executive Director represents the agency in its relationships with other governmental officials, including the Governor, the Legislature, other state of Maine agencies, and other state's workers' compensation executives.
- The Executive Director is charged with enhancing the agency's community profile.

## 2. Program Planning and Management.

- The Executive Director ensures the services being offered by the agency contribute to its mission and reflect its priorities.
- The Executive Director oversees the planning, implementation and evaluation of the agency's programs and obligations.
- The Executive Director has the obligation to monitor the day-to-day delivery of services, maintaining and, when necessary, working to improve quality.
- The Executive Director oversees the planning, implementation, execution and evaluation of senior staff and agency divisions.

## 3. Human Resource Management and Planning.

- The Executive Director determines staffing requirements for organization management and program delivery.
- The Executive Director maintains a work climate that attracts, keeps and motivates a diverse staff of quality employees.
- The Executive Director oversees the implementation of the human resource policies, procedures and practices including the development of staff job descriptions.
- The Executive Director is responsible for the recruitment, interviewing and selection of staff that have the essential background, training, experience and personal abilities and qualities to help further the agency's mission.
- The Executive Director is responsible to ensure that all staff receive an organizational orientation and training for their respective positions.
- The Executive Director establishes a positive, healthy and safe work environment in accordance with all appropriate and relevant state and federal legislation and regulations.
- The Executive Director is responsible to oversee coaching and mentoring of staff as appropriate to maintain and improve performance.
- The Executive Director is responsible to implement a performance management process for all staff, which includes monitoring the performance of staff on an ongoing basis and ensuring annual performance reviews are prepared.
- The Executive Director is responsible for staff discipline and, when necessary, the release of staff, while ensuring compliance with appropriate federal and state laws and regulations, and civil service and union contracts.

## 4. Operational Planning and Management.

- The Executive Director oversees the efficient day-to-day operations of the agency.
- The Executive Director ensures the operation of the agency meets the expectations of the Governor, Legislature, other state agencies, and agency stakeholders.
- The Executive Director ensures staff activities are performed in a safe, appropriate and risk controlled fashion.
- The Executive Director prepares policies for the approval of the Board and prepares procedures to implement the organizational policies; this includes a

review of existing policies on a regular basis and recommending changes to the agency as appropriate.

- The Executive Director provides support to the Board by facilitating the preparation of meeting agendas and supporting materials when necessary.
- The Executive Director ensures that personnel and agency files are securely stored and privacy/confidentiality is maintained.

#### 5. Financial Planning and Management.

- The Executive Director works with agency staff and the Board (Finance Committee) to prepare a Board budget.
- The Executive Director is ultimately responsible for the administration of the budget.
- The Executive Director approves expenditures within the authority delegated by state policies and Board determinations.
- The Executive Director is responsible to ensure that sound bookkeeping and accounting practices are followed.
- The Executive Director is responsible to provide the Board with reports on expenditures of the organization when requested.

#### 6. Public Relations.

- The Executive Director is responsible for all official agency communication.
- The Executive Director communicates with the Governor, the Legislature, other state agencies, and agency stakeholders keeping them informed of the work of the Board and agency and identifying legislative, Rule and policy changes.
- The Executive Director establishes good working relations and collaborative arrangements with all state agencies, stakeholders, national regulatory bodies, and other state workers' compensation boards.

#### Qualifications

- A law degree with a minimum of ten years' workers' compensation experience including a working knowledge of employment and human resource law.
- Five or more years of management experience in government or the private sector.

#### Knowledge, Skills and Abilities

- Working knowledge of the Maine Workers' Compensation Act and associated Rules. There should be a familiarity with employment and human resource law.
- Knowledge of leadership and management principles as they relate to similar organizations.
- Human resource management knowledge.
- Financial management knowledge.

#### Personal Characteristics and Areas of Competence

- Ability to adapt. An administrative willingness to be flexible, versatile and/or tolerant in a changing work environment while maintaining effectiveness and efficiency.

- Understand ethical behavior and business practices, and ensure own behavior and the behavior of others in the agency is consistent with the standards and aligns with the values of the Board and agency.
- Establish and maintain positive working relationship with others both internally and externally to advance the purpose and achieve the goals of the agency.
- Must be an effective communicator. Must be able and willing to speak, listen, and write in a clear, thorough and timely manner using effective and appropriate communication skills, communication techniques and tools.
- Must be creative, prepared to develop ways to improve operations of the organization and able to develop new ways to meet the agency's mission in the context of its obligations under the Workers' Compensation Act.
- Must foster teamwork, work cooperatively and effectively with others to set goals, resolve problems and make decisions that enhance the agency's effectiveness.
- Must be a positive leader who influences others to achieve results that are in the best interests of the agency.
- Must be capable of making decisions, assess situations and determine the importance, urgency and risks associated with those decisions and make decisions that are timely and in the best interests of the agency.
- Must have organizational skills. These include setting priorities, developing work schedules and monitoring progress towards goals and track details.
- Must be a planner. This includes determining strategies to move Board and agency goals forward by creating and implementing action plans, and evaluating the process and results of those plans.
- Must be a problem solver. Must have the ability to assess problem situations to identify causes, gather and process relevant information, generate possible solutions and make recommendations and/or resolve problems.
- Must think strategically. Assess options and actions based on trends and conditions. Develop a vision and foster Board and agency values.

### Other Observations

Commentators on the topic of Board and Executive Director relationships observe that to have a high functioning effective relationship, it is critical for the Board of Directors and the Executive Director to both understand and appreciate their distinct roles.

The roles are usually divided between the Board governing and the Executive Director managing the agency operation. This is understood in the business and government worlds to mean the Board provides counsel and direction to management and should not be involved in the day-to-day operations of the agency.

In addition, the Board's authority comes to it as a Board. Members have virtually no authority individually. Their authority is the "Board's" and their decision making lies in its group structure.

An Executive Director by contrast has the duty and obligation to personally act.

Board and Executive Director need to understand and maintain their respective roles. Commentators warn a Board that becomes overly active and attempts to manage the organization can, and frequently does, inhibit the organization's effectiveness.

Finally, I am attaching a modified copy of the inter-relational chart prepared by Coopers & Lybrand. The attached was modified by the Board in 2004, and I made more changes.

As noted earlier, I hope this memo and the attached chart can serve as a starting point for our discussion on this important topic.

PHS/ldl

Enclosure

## Title 39-A M.R.S.A.

### §151. WORKERS' COMPENSATION BOARD

**1. Board established.** Pursuant to Title 5, section 12004-G, subsection 35, the Workers' Compensation Board is established as an independent board composed of 7 members. The members of the board, including the executive director, must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 157, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee.

The board consists of 3 representatives of management, 3 representatives of labor and the executive director appointed pursuant to subsection 1-A. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system. In addition to the conflict of interest provisions in section 152, subsection 8, a member of the board may not take part in reaching a decision or recommendation in any matter that directly affects an insurer, self-insurer, group self-insurer or labor organization that the member represents.

Members of the board representing management and labor hold office for staggered terms of 4 years, commencing and expiring on February 1st, except for initial appointees and members appointed to fill unexpired terms.

[ 2009, c. 640, §1 (AMD) . ]

**1-A. Executive director.** The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director serves at the pleasure of the Governor. Except as otherwise provided, the executive director shall, at the direction of the board, hire personnel as necessary to administer this Act, subject to the Civil Service Law.

[ 2003, c. 608, §6 (NEW) . ]

**2. Removal.** Board members representing management and labor hold office for the terms provided, unless removed, and until their successors are appointed and qualified. They must be sworn and may be removed by the Governor for inefficiency, willful neglect of duty or malfeasance in office, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over labor matters upon hearing in executive session or by impeachment. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

[ 2003, c. 608, §7 (AMD) . ]

**3. Vacancies.** If a vacancy occurs during a term of a management or labor member, the Governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

[ 2003, c. 608, §7 (AMD) . ]



#### 4. Chair.

[ 2003, c. 608, §8 (RP) .]

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

[ 2003, c. 608, §9 (AMD) .]

**6. Salary; expenses.** A board member is entitled to a per diem of \$100 per day. Members of the board receive their actual, necessary, cash expenses while on official business of the board.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**7. Leave of absence.** An employer may not terminate the employment of an employee who is appointed as a member of the board because of the exercise by the employee of duties required as a board member. The member is entitled to a leave of absence from employment for the period of time required to perform the duties of a board member. During the leave of absence, the member may not be subjected to loss of time, vacation time, or benefits of employment, excluding salary.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**8. Headquarters; regional offices.** The board must have its central office in the Augusta area and such district offices as it may choose to establish. The board may hold sessions at any place within the State.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**9. Seal.** The board must have a seal bearing the words "Workers' Compensation Board of Maine."

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

#### SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 2003, c. 382, §1 (AMD). 2003, c. 608, §§5-9 (AMD). 2009, c. 640, §1 (AMD).

### §151-A. MISSION STATEMENT

The board's mission is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation. [1997, c. 486, §1 (NEW).]

#### SECTION HISTORY

1997, c. 486, §1 (NEW).

## §152. AUTHORITY OF BOARD; ADMINISTRATION

**1. General responsibility.** The board has general supervision over the administration of this Act and responsibility for the efficient and effective management of the board and its employees.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**2. Rules.** Subject to any applicable requirements of the Maine Administrative Procedure Act, the board shall adopt rules to accomplish the purposes of this Act. Those rules may define terms, prescribe forms and make suitable orders of procedure to ensure the speedy, efficient, just and inexpensive disposition of all proceedings under this Act.

The board shall adopt rules establishing a policy and procedures to safeguard the confidentiality of the records of the former Workers' Compensation Commission and the Workers' Compensation Board pertaining to individual injured employees. The policy must make records available on a need-to-know basis only and must include legitimate research purposes while protecting individual confidentiality.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**2-A. Electronic filing rulemaking.** The board shall adopt rules requiring the electronic filing of information required by this Act and by board rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The rules must be developed through the consensus-based rule development process set forth in Title 5, section 8051-B and must include as participants representatives of employers, insurers and 3rd-party administrators. [2003, c. 425, §1 (NEW).]

B. The rules must include written standards and procedures for implementation of the standards, which may include definition of the applicable programming interface for in-state and out-of-state entities required to submit reports. The rules must relate specific forms required to be filed with data points in the standards. [2003, c. 425, §1 (NEW).]

Before adopting the rules, the board shall test the applicable application programming interfaces and standards to ensure that the program operates successfully.

[ 2003, c. 425, §1 (NEW) .]

### **3. Employment of executive director.**

[ 2003, c. 608, §10 (RP) .]

**4. Employment of general counsel.** The board shall employ a general counsel, who is the legal adviser to the board and who shall perform such other duties as may be assigned by the board, and assistants as necessary. The general counsel and assistants to the general counsel are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

The board shall appoint a staff attorney to advise the advocates pursuant to section 153-A. The staff attorney is subject to the Civil Service Law and works under the direction of the general counsel.

[ 1997, c. 486, §2 (AMD) .]

**5. Employment of and contracts with hearing officers and mediators.** The board shall obtain the services of persons qualified by background and training to serve as hearing officers, who are authorized to take action and enter orders consistent with this Act in all cases assigned to them by the board, and mediators. In the exercise of its discretion, the board may obtain the services of hearing officers and mediators by either of the 2 following methods:

A. The board may contract for the services of hearing officers and mediators, in which case they must be paid reasonable per diem fees for their services plus reimbursement of their actual, necessary and reasonable

expenses incurred in the performance of their duties, consistent with policies established by the board; or  
[1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board may employ hearing officers and mediators to serve at the pleasure of the board and who are not subject to the Civil Service Law. They are entitled to receive reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**6. Hiring of personnel.** The board shall appoint the directors of the bureaus and divisions of the board and their deputies and assistants, who are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**7. Powers and duties of board.** The board has all powers as are necessary to carry out its functions under the law. The board may delegate any powers and duties as necessary.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**8. Conflict of interest.** Each member of the board and each employee, contractor, agent or other representative of the board are "executive employees" for purposes of Title 5, section 18 and are subject to the limitations of that section. In addition, Title 17, section 3104 is applicable, in accordance with its provisions, to all such representatives of the board.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**9. Accepting gifts, grants or donations.** The board may accept gifts, grants or donations for the use of the board as provided by rules adopted by the board.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**10. Case administration.** The board shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall continually monitor individual cases to ensure that benefits are provided in accordance with this Act.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**11. Recommending legislative change.** The board shall consider and recommend to the Legislature changes in this Act. Recommended changes must be forwarded to the Legislature annually on or before December 1st.

[ 1995, c. 103, §1 (AMD) .]

**12. Advisory committees.** The board may appoint advisory committees as it determines necessary to assist the board in matters that arise under this Act. Advisory committee members are not entitled to compensation but may be reimbursed for travel and reasonable expenses as determined by the board.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**13. Budget.** The board shall administer its budget, with the assistance of the executive director.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**14. Reimbursement.** The board shall impose reasonable charges for reimbursement for the provision of services, facilities and materials, including, but not limited to, reproduction and distribution of forms, reports and publications, photocopying and the use of facilities.

[ 1993, c. 145, §3 (NEW) .]

## SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1993, c. 145, §3 (AMD). 1995, c. 103, §1 (AMD). 1997, c. 486, §2 (AMD). 2003, c. 425, §1 (AMD). 2003, c. 608, §10 (AMD).

## §153. BOARD ACTIONS

In addition to other actions required of or permitted the board under this Act, the board shall perform the actions required by this section to ensure just and efficient administration of claims. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

**1. Monitor payments.** The board shall monitor cases to ensure that:

A. Payments are initiated within the time limits established in section 205; and [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Payments to the employee provide the full amount of compensation to which the employee is entitled and are properly indicated on the memorandum of payment. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**2. Troubleshooter program.** The board shall establish a troubleshooter program to provide information and assistance to participants in the workers' compensation system. The troubleshooter may meet or otherwise communicate with employees, employers, insurance carriers and health care providers in order to prevent or informally resolve disputes.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**3. Construction.** In interpreting this Act, the board shall construe it so as to ensure the efficient delivery of compensation to injured employees at a reasonable cost to employers. All workers' compensation cases must be decided on their merits and the rule of liberal construction does not apply. Accordingly, this Act is not to be given a construction in favor of the employee, nor are the rights and interests of the employer to be favored over those of the employee.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**4. Information.** The board shall require the employee, employer or insurer to provide it with any information it reasonably determines necessary to monitor cases, including, but not limited to, preinjury and postinjury wage statements.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**5. Abuse investigation unit.** The board shall provide adequate funding for an abuse investigation unit.

A. The board shall, subject to the Civil Service Law, appoint at least 2 abuse investigators who must be qualified by experience and training to perform their duties. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The unit shall, at the direction of the board, investigate all complaints or allegations of fraud, illegal or improper conduct or violation of this Act or rules of the board relating to workers' compensation insurance, benefits or programs, including those acts by employers, employees or insurers. All records, correspondence and reports of investigation in connection with actual or alleged fraud, illegal or improper conduct or violation of this Act or rules of the board and all records, correspondence and reports of criminal prosecution or civil action are confidential. The confidential nature of any such record, correspondence or report does not limit or affect the use of those materials in any prosecution or action or prevent the board, upon request, from providing information to another state agency for use by the agency in enforcing laws and rules. [2009, c. 520, §1 (AMD).]

C. Each employer or employee and each state, county, municipal or quasi-governmental agency shall cooperate fully with the unit and provide any information requested by it. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. The unit shall report all its findings to the board. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Whenever the board determines that a fraud, attempted fraud or violation of this Act or rules of the board may have occurred, the board shall report in writing all information concerning it to the Attorney General or the Attorney General's delegate for appropriate action, including a civil action for recovery of funds and criminal prosecution by the Attorney General. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[ 2009, c. 520, §1 (AMD) .]

**6. Mediation.** The board shall establish a mediation program to provide mediation services to parties to workers' compensation cases.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**7. Investigation.** The board may, when the interests of any of the parties or when the administration of this Act demands, appoint a person to make a full investigation of the circumstances surrounding any industrial injury or any matter connected to an industrial injury, or conduct an audit pursuant to section 359 and report the same without delay to the board.

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**8. Impairment guidelines.** The following provisions apply regarding impairment guidelines.

A. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the board shall establish by rule a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule must be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for that purpose, such as the American Medical Association's "Guides to the Evaluation of Permanent Impairment." Pending the adoption of a permanent schedule, "Guides to the Evaluation of Permanent Impairment," 3rd edition, copyright 1990, by the American Medical Association, is the temporary schedule and must be used for the purposes of this subsection. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall collect and analyze data from Maine cases, studies from other states and generally accepted medical guidelines for occupational impairment to examine the feasibility and desirability of establishing an objectively ascertainable functional capacity standard to be used for determining eligibility for benefits under this Act consistent with section 213, subsection 2. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

[ 1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

**9. Audit and enforcement.** The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators; determining whether insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. When auditing the Maine Insurance Guaranty Association, the program shall consider when the Maine Insurance Guaranty Association obtained the records of an insolvent insurer. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. Audit working papers are confidential and may not be disclosed to any person outside of the board except the audited entity. For purposes of this subsection "audit working papers" means all documentary and other information acquired, prepared or maintained by the board during the conduct of an audit or investigation, including

all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report. The final audit report, including the underlying reconciled information, is not confidential. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

[ 2005, c. 603, §3 (AMD) .]

**10. Annual report to Legislature.** The board shall collect and analyze data from Maine cases on permanent impairment ratings and costs to employers associated with the compensation for partial incapacity pursuant to section 213. The board shall provide annually by January 31st a report to the joint standing committee of the Legislature having jurisdiction over labor matters regarding the data collected.

[ 2011, c. 647, §1 (NEW) .]

SECTION HISTORY

1991, c. 885, §A8 (NEW). 1991, c. 885, §§A9-11 (AFF). 1997, c. 486, §3 (AMD). 1999, c. 354, §2 (AMD). 2005, c. 603, §3 (AMD). 2009, c. 520, §1 (AMD). 2011, c. 647, §1 (AMD).

## OBJECTIVE

Clarify the roles and responsibilities of the Workers' Compensation Board and Executive Director.

### RESOURCE ASSIGNMENT MATRIX

<b>R</b>	Responsible	Has the Authority/is accountable for
<b>A</b>	Approve	Can veto
<b>I</b>	Informed	Is told of details
<b>S</b>	Support	

TASK	WC Board	Executive Director	COMMENTS
dispute resolution	I	R	
dispute resolution, Board review cases	R	R	
record keeping	I	R	
case processing	I	R	
advocates	I	R	
business administration: office		R	
plant operation	I	R	
payroll		R	
leases	A	R	
technology: EDI policy	A	R	
format/major expenditures	A	R	
public impact implementation	A	R	
day-to-day e.g. web	I	R	
medical & vocational rehabilitation	I	R	
relationship with legislators		R	
advertising: posters; videos	A	R	
compliance	I	R	
supervise staff: admin. secs.	I	R	
legal counsel	R	R	
legal staff			
WCB staff		R	
annual report to Legislature	A	R	
public outreach: forums	R	R	
public meetings	R	R	
subcommittee meetings	R	R	

annual regional meetings	R	R	
rulemaking	R	R	
policy-making	R	R	
enforcement >\$5,000 penalty	A		
<\$5,000 penalty	I		
hire/fire: IME	A	R	
General Counsel	A/R	R	
Executive Director	I	R	
Hearing Officers	A/R	R	
Assistant Directors	A/R	R	
Deputies	I	R	
Mediators	I	R	
Contract Employees	I	R	
Advocates	I	R	
Senior Staff Attorney	A	I	
Agency Technology Officer	A	R	
plaintiff case	A	A	
litigation	A	A	
relations prof. organizations: IAIABC	I	R	
business plan	A	R	
benchmarking	A	R	
auditing	A	R	
budget: day-to-day	I	R	
annual	A	R	
assessment	A	R	
implement forms (includes changes	A	R	
relationship with legislature	I	R	
legislature, appropriations	R	R	
legislative proposals	R	R	
day-to-day	I	R	
legislation monitoring process			
1. review		S	
2. outline		S	
3. sends Board objective briefs		S	
4. present to committee	I	R	



## GENERAL ROLE DESCRIPTIONS

### WORKERS' COMPENSATION BOARD

Workers' Compensation Board authority is at the group level, not the individual level

- policy (written, vote on, and approved by the Workers' Compensation Board)
- organizational structure
- business plan
- long range plans
- rules

### EXECUTIVE DIRECTOR

While these guidelines are general, the Governor expects the Executive Director to seek his/her approval when in doubt. The Workers' Compensation Board and the Governor desire the Executive Director to be proactive.

- move resources (on a temporary or permanent basis if there is NO impact to budget, policy, or business plan)
- change structure (same constraints as above)
- align processes
- day-to-day changes