

# MAE News

## Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Summer 2015

Volume 11, Number 2



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### *Medical Fee Schedule Training for Adjusters*

The Board has scheduled a medical fee schedule training session for Friday, July 31, at the SafetyWorks Training Institute at the Department of Labor, 45 Commerce Drive in Augusta (the same place the Board now holds open training). The training is scheduled from approximately 10:00 am to 3:00 pm. There is no charge and materials will be provided.

If you would like to attend this session or the Board's next open training (scheduled for October 29-30), please email Anne Poulin to reserve a spot as seating is limited.

### *New Bangor Hearing Officer*

The Board recently welcomed David Hirtle, Esq. as the Board's new Hearing Officer (Garry Greene's successor). David "Dave" came to Portland, Maine from Western Massachusetts, to attend college at the University of Southern Maine (USM). At USM, he majored in philosophy. Dave went on to attend law school at the University of Maine School of Law, where he was on the moot court team and came to enjoy appellate argument.

In January of 2008, Hearing Officer Hirtle began practicing at MacAdam Jury Law Offices in Portland. He has represented clients in all aspects of workers' compensation litigation, including mediation, formal hearing, and appeals. He has had four Law Court arguments and several cases that were decided on briefs. He has appeared before the Appellate Division on a number of occasions.

His practice consisted of approximately 80% workers compensation, 15% Social Security, with the remaining 5% being a catch-all of civil suits, Maine Public Employee's Retirement System appeals, and Maine Human Rights Commission complaints. His experience will serve him well at the Board and has allowed him to hit the ground running!

### *The Appellate Division*

Appellate week was held May 18th through May 22nd. Oral arguments were presented on May 20th and 22nd. The next session is scheduled for July 20 through 24, 2015.

On May 27, 2015, a decision was issued in the case of Parker v. Frito Lay, WCB No. 15-16. Pepsico, Inc. (Frito-Lay) appealed the decision of hearing officer Jerome awarding Mr. Parker total incapacity benefits from February 3, 2012, through December 11, 2013, based on Frito-Lay's violation of the "fourteen-day rule," Me. W.C.B. Rule, Ch. 1, § 1.

The sole issue on appeal was whether Frito-Lay had a duty to file a notice of controversy (NOC) within fourteen days of Mr. Parker's filing of his Petition for Restoration, when it had previously filed an uncontested, 21-day notice of discontinuance on the same date of injury. See 39-A M.R.S.A. § 205(9) (Supp. 2014). The hearing officer's decision was affirmed.

Appellate Division decisions are available in their entirety on the Board's website. <http://www.maine.gov/wcb/Departments/appellate/appellatedecisions.html>

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### *The Legislature & Workers' Comp*

LD 1119, An Act To Amend the Laws Governing the Filing of Wage Statements and Other Laws under the Maine Workers' Compensation Act of 1992 was passed through the House and Senate. On June 29, 2015, the Bill was vetoed by Governor LePage. On June 30, 2015 the veto was over-ridden by the Legislature and will become law.

In summary:

- (1) The title "hearing officer" is changed to administrative law judge;
- (2) Within 180 days of the insolvency of an insurer, the Board shall meet with the Maine Insurance Guarantee Association to review its adjusting responsibilities regarding the insolvency;
- (3) Wage statements may be filled out consistent with an employer's pay cycle (e.g. – weekly, bi-weekly, monthly, etc.)
- (4) An employer does not have to report lost time for medical appointments if an employee has passed the 14 day waiting period, attends a medical appointment, and is paid regular wages for the time spent traveling to and from and attending the exam,
- (5) The Board must prepare a report on the Section 312 IME Program. The report will focus on all matters that can be quantified within that program.

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### *From the Office of Medical/Rehabilitation Services Attention Providers: Medicare Set-Asides*

If a health care provider is treating an employee for a work injury and that employee has a **Workers' Compensation Medicare Set-Aside (WCMSA)** based on the Maine Workers' Compensation Medical Fee Schedule, the provider must **bill the employee directly** using the billing procedures outlined in Board Rules Chapter 5. This means that bills must specify the date and type of service, **the appropriate procedure codes**, the condition treated, and the charges for each service.

A WCMSA allocates a portion of a workers' compensation settlement for all future work-injury-related medical expenses that are covered and otherwise reimbursable by Medicare. Employees with a WCMSA based on the Maine Workers' Compensation Fee Schedule are required to pay for treatment related to the work injury pursuant to the Maine Workers' Compensation Medical Fee Schedule.

Health care providers may wish to establish a separate financial class for employees with a WCMSA to facilitate the billing process. If a health care provider mistakenly bills Medicare or other insurer for treatment related to the work injury, the provider is responsible for refunding any payments received for that treatment.

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### *Improved WCB Website*

The Board launched a new website on July 13, 2015. The site has a new look and provides navigation options that make information more accessible to users.

While the main website address remains the same ([www.maine.gov/wcb/](http://www.maine.gov/wcb/)), all other WCB webpages have new web addresses. Note: any links that users may have saved previous to the launch will no longer work.