Testimony of the

Workers' Compensation Board

LD 82

An Act to Amend the Workers' Compensation Laws by Extending Indefinitely the Presumption Applying to Law Enforcement Officers, Corrections Officers, E-9-1-1 Dispatchers, Firefighters and Emergency Medical Services Persons Diagnosed with Post-traumatic Stress Disorder

February 11, 2025

Senator Tipping, Representative Roeder and members of the Joint Standing Committee on Labor and Housing, I am John Rohde, the Executive Director of the Workers' Compensation Board. On behalf of the Maine Workers' Compensation Board, I am here to testify in support of LD 82. The vote to testify in favor of this bill was 7-0.

The Board supports enactment of LD 82 because it preserves a rebuttable presumption that is helping to reduce the stigma associated with post-traumatic distress order injuries suffered by law enforcement officers, corrections officers, E-9-1-1 dispatchers, firefighters and emergency medical services personnel and is encouraging early diagnosis and treatment of this condition.

The presumption was enacted in 2017 (P.L. 2017, c. 294). It initially applied to law enforcement officers, firefighters and emergency medical services persons. The law included a sunset date of October 1, 2022, and required that the Board submit a report analyzing claims brought under the presumption by January 1, 2022.

Corrections officers and E-9-1-1 dispatchers were added to the list of eligible employees in 2021. In 2022, the sunset date was extended to October 1, 2025, and additional reports were required. Specifically, the Board must: Submit an initial report analyzing claims brought under the presumption for corrections officers and E-9-1-1 dispatchers by April 1, 2025; a second report

82 will not increase costs because the presumption is already law and is currently being factored into premiums and contributions.

For all of these reasons, the Board respectfully requests that you vote Ought-To-Pass on LD 82.

Thank you. I am happy to answer any questions you might have.

APPENDIX B

Report to The Labor and Housing Committee Pursuant to 39-A M.R.S.A. § 201 (3-A) (B)

Relative to First Responder Post Traumatic Stress Disorder Presumption

December 22, 2021

> In sum, where there is a sudden mental injury precipitated by a work-related event, our typical workers' compensation rules will govern. *See McLaren v. Webber Hospital Association, supra.* Where, however, the mental disability is the gradual result of work-related stresses, the claimant will have to demonstrate either that he was subjected to greater pressures and tensions than those experienced by the average employee or, alternatively, by clear and convincing evidence show that the ordinary and usual work-related pressures predominated in producing the injury.

Townsend, 404 A.2d 1020.

B. Codification of Mental Injury Rule

In response to the Court's decision in *Townsend*, the Legislature enacted 39 M.R.S.A. § 51(3); effective September 29, 1987. The standard adopted by the Legislature in 1987 was incorporated into 39-A M.R.S.A. § 201(3) when the current Workers' Compensation Act was enacted in 1992.

C. The Current Statute

In 2017, the 128th Maine Legislature repealed § 201(3) and enacted 39-A M.R.S.A. § 201(3-A)[2].

Section 201 (3-A) (A) carried forward the mental injury rule in the former § 201 (3). Section 201 (3-A) (B) created a presumption that law enforcement officers, firefighters and emergency medical services persons (collectively "first responders" in this report) who meet specific criteria have suffered work related post-traumatic stress disorder ("PTSD").

In 2021, corrections officers and E 9-1-1 dispatchers were added to the list of employees to whom the presumption applies. (P.L. 2021, c. 419.) It is, therefore, too soon to know what, if any, impact this amendment will have with respect to this population of workers.

D. The Presumption

In order for the presumption to apply, a first responder must obtain a PTSD diagnosis from "an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56 . . ." In addition, the diagnosis must be based on a finding "that the work stress was extraordinary and unusual compared with that experienced by the average employee and the work stress and not some other source of stress was the predominant cause of the post-traumatic stress disorder . . ."

The presumption that a first responder's PTSD claim is compensable can be rebutted by clear and convincing evidence to the contrary.

[2] The full text of 39-A M.R.S.A. § 201(3-A) is included in Appendix A.

In conducting its analysis for this report, the Board examined claim information in its database for two periods: November 1, 2013 through October 31, 2017 (the "pre-presumption data") and November 1, 2017 through October 28, 2021 (the "post-presumption data"). Information in the Board's database is derived from filings submitted by self-insured employers and insurance companies. MMA provided data for claims identified as involving PTSD for the period November 1, 2017 through November 4, 2021.

Claims involving first responders were identified using occupations reported to the Board when a First Report of Injury ("FROI") was filed. Occupations were used to categorize first responders as either law enforcement, EMT or firefighter. If an occupation included both firefighter and EMT it was included in the firefighter category.

First responder claims potentially involving PTSD were identified based on the nature of injury reported to the Board on the FROI. Since a FROI is usually filed soon after an injury is reported, the exact diagnosis is sometimes not clear because treatment is at its inception. To be as inclusive as possible, claims were classified as PTSD injuries if they seemed likely to involve a PTSD diagnosis. For example, if the nature of the injury described in the first report suggests it was caused by mental stress, anxiety, etc., then it was included within the data assumptions in this PTSD report. Therefore, it is not known exactly how many of the PTSD claims included in this report involve cases where employees received PTSD diagnoses "by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56" as required by the PTSD presumption law.

B. Number of FROIs filed in First Responder PTSD Claims

1. First Responder PTSD Claims

The following charts show that more PTSD cases have been filed with the Board in the post-presumption period than in the pre-presumption period. At MMA's request, the Board reviewed its data and determined that 8 of the 45 pre-presumption claims were filed after November 1, 2017 (the effective date of 39-A M.R.S.A. § 201(3-A). Of these cases, 5 claimed dates of injury in 2017; 2 in 2016 and 1 in 2014 (though this injury may have been an aggravation of a pre-existing physical injury). Payments were reported for one of the 8 cases.

Workers Compensation Board Pre-Presumption Data						
Job Category	2013	2014	2015	2016	2017	Grand Total
EMT		1	1		1	3
Firefighter	1	3	5	8	9	26
Law Enforcement		5	8	5	9	27

- FROIs were categorized as "Symptom" if the description of injury included a word or phrase such as PTSD, anxiety, stress, etc.
- FROIs were categorized as "Workplace Interaction" if the description of injury was based on interactions between the employee and a supervisor or co-worker.
- FROIs were categorized as "Other" do not fit in any of the above categories.

Workers Compensation Board Pre-Presumption Data							
Description	**2013**	**2014**	**2015**	**2016**	**2017**	**Grand Total**	**Percent of Total**
cumulative		1	2	4	9	16	29.63%
Event		2	7	3	2	14	25.93%
Symptom		3	3	3	4	13	24.07%
Workplace Interaction	1	0	1	2	1	5	9.26%
other	0	3	1	1	3	8	14.81%
Grand Total	**1**	**9**	**14**	**13**	**19**	**56**	

Workers Compensation Board Post-Presumption Data							
Description	**2017**	**2018**	**2019**	**2020**	**2021**	**Grand Total**	**Percent of Total**
Cumulative		10	9	10	1	30	24.00%
Event	1	6	22	16	11	56	44.80%
Symptom		8	12	5	7	32	25.60%
Workplace Interactions		1	1	3	2	7	5.60%
Other			2		1	3	2.40%
Grand Total	**1**	**25**	**46**	**34**	**22**	**128**	

Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*							
Description	**2017**	**2018**	**2019**	**2020**	**2021**	**Grand Total**	**Percent of Total**
Cumulative		10	10	11	1	32	17.32%

Grand Total	**1**	**3**	**7**	**6**	**6**	**23**
% Decrees	0%	0%	43%	27%	11%	20%
% Lump Sum Settlements	100%	33%	7%	27%	21%	22%
% All	100%	33%	50%	55%	32%	43%

Workers Compensation Board Post-Presumption Data						
Decrees and Lump Sum Settlements						
	2017	**2018**	**2019**	**2020**	**2021**	**Grand Total**
Total Claims	**1**	**25**	**43**	**34**	**22**	**125**
Decrees		4	2	1		7
Lump Sum Settlements		2	7	1		10
Grand Total	**0**	**6**	**9**	**2**	**0**	**17**
% Decrees	0%	16%	5%	3%	0%	6%
% Lump Sum Settlements	0%	8%	16%	3%	0%	8%
% All	0%	24%	21%	6%	0%	14%

Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*						
Decrees and Lump Sum Settlements						
	2017	**2018**	**2019**	**2020**	**2021**	**Grand Total**
Total Claims	**1**	**28**	**47**	**36**	**25**	**137**
Decrees		4	2	1		7
Lump Sum Settlements		2	7	1		10
Grand Total	**0**	**6**	**9**	**2**	**0**	**17**
% Decrees	0%	14%	4%	3%	0%	5%
% Lump Sum Settlements	0%	7%	15%	3%	0%	7%
% All	0%	21%	19%	6%	0%	12%
* MMA data includes 3 lost time claims and 9 (6 with payments) medical only claims.						

Consent		1	1	1		3	2.94%
LSS		2	3			5	4.90%
MOP		2	11	5	2	20	19.61%
Grand Total	**0**	**5**	**15**	**6**	**2**	**28**	**27.45%**

Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*							
Initial Filing a Notice Of Controversy Followed by a Payment							
	2017	**2018**	**2019**	**2020**	**2021**	**Grand Total**	**Percent of NOCs**
First filing NOC	1	23	39	28	17	108	
Consent		1	1	1		3	2.86%
LSS		2	3			5	4.76%
MOP		3	11	5	2	21	20.00%
Grand Total	**0**	**6**	**15**	**6**	**2**	**29**	**27.62%**
* MMA data includes 3 lost time claims and 9 (6 with payments) medical only claims.							

Even though more PTSD claims have been filed in the post-presumption period, fewer have been pursued to the point of a payment being made. The next question to examine is whether that has a bearing on the costs of PTSD claims.

5. Costs

Costs in this section are discussed in two contexts:

Claim costs. Claim costs include payments made by claim administrators with respect to a claim. These include payments for lost time, medical treatment, lump sum settlements, employer legal costs and expenses categorized as "other."

Costs to the State and its subdivisions. For purposes of this report, this category refers to costs that are the equivalent of insurance premiums.

As this chart shows, while the number of PTSD claims being filed has increased, the total benefit costs have stayed relatively constant in comparison to the costs in the pre-presumption period.

b. Costs to the State and its Subdivisions

The Board does not collect data regarding premiums (referred to as contributions by some self-insured entities). MMA reports that member contributions to its self-insurance trust fund increased by $1,809,924 for the most recent 3-year period. These increases were borne mostly by entities that have been paying PTSD-related claims.

Increases in costs to the State have not been significant since the PTSD presumption was enacted.

IV. CONCLUSION

Although the number of PTSD claims filed by first responders has increased since the presumption was enacted, the percentage of claims resulting in payment has decreased. Overall benefit costs have remained about the same.

It is possible that increased awareness of, and reduced stigma attached to, PTSD is contributing to an increase in the number of first responders filing PTSD claims. It is also possible that efforts by employers, employer groups and employee organizations to promote early intervention by way of employee assistance programs, peer-to-peer communications and, when necessary, medical treatment is reducing the severity of PTSD injuries.

In 2017, on behalf of the Board, then Executive Director Paul Sighinolfi testified[3] in favor of enacting the presumption because:

> As a member of the public at large, I believe we are best served if police officers, firefighters, and first responders are fully functioning and in the proper frame of mind to perform their jobs well. I am not a healthcare professional who deals with these conditions, but having managed and defended a number of PTSD cases during the course of my career, I learned from consulting with experts and taking their testimony that the sooner a diagnosis is made and the condition treated, the greater likelihood for recovery, return to gainful employment and return to meaningful activities.

[3] The full text of Director Sighinolfi's testimony is included as Appendix B.

APPENDIX A

39-A MRSA §201 (3-A)

§ 201. Entitlement to compensation and services generally

. . . . . .

3-A. Mental injury caused by mental stress. Mental injury resulting from work-related stress does not arise out of and in the course of employment unless:

A. It is demonstrated by clear and convincing evidence that:

(1) The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

(2) The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee; or

B. The employee is a law enforcement officer, corrections officer, E-9-1-1 dispatcher, firefighter or emergency medical services person and is diagnosed by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56 as having post-traumatic stress disorder that resulted from work stress, that the work stress was extraordinary and unusual compared with that experienced by the average employee and the work stress and not some other source of stress was the predominant cause of the post-traumatic stress disorder, in which case the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment. This presumption may be rebutted by clear and convincing evidence to the contrary. For purposes of this paragraph, "law enforcement officer," "corrections officer," "firefighter" and "emergency medical services person" have the same meaning as in section 328-A, subsection 1. For the purposes of this paragraph, "E-9-1-1 dispatcher" means a person who receives calls made to the E-9-1-1 system and dispatches emergency services. "E-9-1-1 dispatcher" includes an emergency medical dispatcher as defined in Title 32, section 85-A, subsection 1, paragraph D.

By January 1, 2022, the board shall submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters that includes an analysis of the number of claims brought under this paragraph, the portion of those claims that resulted in a settlement or award of benefits and the effect of the provisions of this paragraph on costs to the State and its subdivisions. The Department of Administrative and Financial Services, Bureau of Human Resources and the Department of Public Safety shall assist the board in developing the report, and the board shall seek the input of an association, the membership of which consists exclusively of

APPENDIX B

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LD 848: An Act to Support Law Enforcement Officers and First Responders Diagnosed with Post-traumatic Stress Disorder

March 23, 2017

Senate Chair Volk, House Chair Fecteau, and distinguished members of the Joint Committee on Labor, Commerce, Research and Economic Development, I am Paul Sighinolfi and I serve as the Executive Director and Chair of the Maine Workers' Compensation Board. I appear before you today to testify in favor of LD 848: *An Act to Support Law Enforcement Officers and First Responders Diagnosed with Post-traumatic Stress Disorder.*

You have heard me testify in the past that I strongly disfavor presumptions. I do so, in large part, because they tip the scales of justice in favor of one party or another. Generally, doing this is unwise, is not keeping with fundamental principles of American jurisprudence and should therefore be avoided.

Some time ago, I was approached by individuals from NAMI who were working on this bill. They showed me an early draft. After reading the proposed legislation, I explained I generally do not favor presumptions. However, having managed a number of psychological injury cases over the course of my legal career, I understood the need, perhaps, to support this legislation. I made several specific recommendations. These have been incorporated into the bill. The first is I believe we live in a society where some professional and paraprofessional healthcare workers cavalierly use psychological and psychiatric terms in patient assessments. I explained, if the diagnosis was made by a medical doctor trained as a psychiatrist, that would go a long way toward securing my support. I explained in the alternative, if the diagnosis was made by a psychologist licensed to practice as such in the State of Maine, that would be equally compelling. You will see this legislation provides the claimant must be diagnosed by an allopathic physician or an osteopathic physician licensed under Title 32, with a specialization in psychiatry or a psychologist license under Title 32 Chapter 56. I explained I would be in support of the