



STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
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AUGUSTA, MAINE 04333-0027

JANET T. MILLS  
GOVERNOR

JOHN C. ROHDE  
EXECUTIVE DIRECTOR

December 22, 2021

Senator Craig Hickman, Chair  
Representative Michael Sylvester, Chair  
Joint Standing Committee on Labor and Housing  
100 State House Station  
Augusta, ME 04333-0100

**Re: 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**

## I. INTRODUCTION

### A. Mental injuries caused by mental stress.

Mental injuries caused by mental stress have long been compensable in Maine. In *McLaren v. Webber Hospital Association*, Me. 386 A.2d 734 (Me. 1978), “a compensation award was upheld where the claimant suffered an acute [mental injury] as a result of a job-related sensitivity seminar he attended.” *Townsend v. Maine Bureau of Public Safety*, 404 A.2d 1014, 1016 (Me. 1979). In *Townsend*, the Law Court held “that gradual mental injuries are not per se excluded from the reach of the Act.” *Townsend*, 404 A.2d, 1016-1017.

The Law Court did, however, establish limitations with respect to proving a gradual mental is compensable:

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 128<sup>th</sup> Maine Legislature repealed § 201(3) and enacted 39-A M.R.S.A. § 201(3-A)<sup>1</sup>. 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.

Finally, a sunset provision in § 201(3-A)(B) mandates that the PTSD presumption be repealed on October 1, 2022.

### E. Report To Legislature

Section 201(3-A) (B) requires the Workers’ Compensation Board (“Board”) to submit a report to the Joint Standing Committee on Labor and Housing by January 1, 2022 analyzing the impact of the PTSD presumption. This report is being submitted pursuant to that mandate.

## II. PTSD STUDY GROUP

The Workers’ Compensation Board created a subcommittee to assist in the preparation of this report. Participants included: Ann Willette and Michelle Pelletier from the Maine Municipal Association (“MMA”); Beatrice Turner from the State of Maine, Department of Administrative

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<sup>1</sup> The full text of 39-A M.R.S.A. § 201(3-A) is included in Appendix A.

and Financial Services (Anna Ryerson attended the first meeting in 2019); Ronnie Green a Labor member of the Board, Richard Hewes General Counsel for the Board, Lindsay Lizzotte Deputy Director of Information Management for the Board and John Rohde Executive Director of the Board.

The group met once in 2019 to ensure relevant information was being gathered. The group met three times in 2021 to discuss the PTSD presumption.

During its discussions in 2021, the group agreed that

- PTSD among first responders is a serious problem;
- Early intervention by way of employee assistance programs, peer-to-peer communications and, when necessary, medical treatment are important tools to ameliorate the impact of PTSD amongst first responders;
- Enactment of the presumption has not resulted in more claims being compensable than would have been the case if the presumption was not in the law;
- Since the presumption was enacted in 2017, employee assistance and peer-to-peer options have increased for first responders who suffer PTSD;
- Enactment of the presumption has played a role in increasing awareness of, and reducing the stigma associated with, PTSD injuries among first responders;
- The number of PTSD claims that have been filed with the Board has increased since the PTSD first responder presumption was enacted in 2017; and,
- A smaller percentage of PTSD claims are being pursued after a Notice of Controversy is filed post-presumption than was the case pre-presumption.

### III. ANALYSIS

#### A. The Data

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
<b>Grand Total</b>	<b>1</b>	<b>9</b>	<b>14</b>	<b>13</b>	<b>19</b>	<b>56</b>

Workers Compensation Board Post-Presumption Data						
Job Category	2017	2018	2019	2020	2021	Grand Total
EMT		2	3	1		6
Firefighter		14	23	17	13	67
Law Enforcement	1	9	20	16	9	55
<b>Grand Total</b>	<b>1</b>	<b>25</b>	<b>46</b>	<b>34</b>	<b>22</b>	<b>128</b>

Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*						
Job Category	2017	2018	2019	2020	2021	Grand Total
EMT		2	3	1		6
Firefighter		15	27	19	16	77
Law Enforcement	1	11	20	16	9	57
<b>Grand Total</b>	<b>1</b>	<b>28</b>	<b>50</b>	<b>36</b>	<b>25</b>	<b>140</b>
* MMA data includes 3 lost time claims and 9 (6 with payments) medical only claims.						

Based on this data, it is possible to conclude that enactment of the presumption has played a role in increased filings of PTSD claims.

## 2. First Responder PTSD Claims by Description

The next question is whether the nature of the onset of the various PTSD claims was different in the post-presumption period. The following charts breakdown PTSD cases by nature of onset and year of alleged injury for the pre- and post-presumption periods. The “Cumulative” and “Event” categories include FROIs that describe unique incidents – e.g., a specific accident scene or event – that could lead to the identification of some or all of the first responders involved in the response. For this reason, generalized categories were used to preserve confidentiality.

- FROIs were categorized as “Cumulative” if the description of injury indicated the injury resulted from more than one incident.
- FROIs were categorized as “Event” if a specific incident was identified as the cause of the injury.
- 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%
<b>Grand Total</b>	<b>1</b>	<b>9</b>	<b>14</b>	<b>13</b>	<b>19</b>	<b>56</b>	

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%
<b>Grand Total</b>	<b>1</b>	<b>25</b>	<b>46</b>	<b>34</b>	<b>22</b>	<b>128</b>	

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%
Event	1	7	23	16	14	61	46.46%
Symptom		10	14	6	7	37	28.35%
Workplace Interactions		1	1	3	2	7	5.51%
Other			2		1	3	2.36%
<b>Grand Total</b>	<b>1</b>	<b>28</b>	<b>50</b>	<b>36</b>	<b>25</b>	<b>140</b>	

\* MMA data includes 3 lost time claims and 9 (6 with payments) medical only claims.

These charts show that the nature of the onset of PTSD injuries in the post-presumption period has not changed materially.

### 3. Number of Claims Involving an Award or Settlement

Section 203(3-A) (B) requires the Board to report on the portion of claims that resulted in a settlement or an award of benefits. Claims involving settlements are categorized as “Lump Sum Settlement” in the charts below. Under 39-A M.R.S.A. § 352, a lump sum settlement is an agreement between the parties to “discharge any liability for compensation, in whole or in part, by the employer’s payment” of a sum of money.

Claims involving awards are categorized as “Decrees” in the following charts. This category includes two types of decrees. One type involves a claim that is litigated in a contested process which requires an administrative law judge to issue an order; the other involves a claim where the parties agree to voluntarily resolve a case in lieu of litigation by submitting, and having an administrative law judge sign, a consent decree.

The following charts show that a larger percentage of pre-presumption claims resulted in lump sum settlements or awards than in the post-presumption period. Also, in the post-presumption period, most decrees were consent decrees.

Workers Compensation Board Pre-Presumption Data						
Decrees and Lump Sum Settlements						
	2013	2014	2015	2016	2017	Grand Total
<b>Total Claims</b>	<b>1</b>	<b>9</b>	<b>14</b>	<b>11</b>	<b>19</b>	<b>54</b>
Decrees	0	0	6	3	2	11
Lump Sum Settlements	1	3	1	3	4	12
<b>Grand Total</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>23</b>
% Decrees	0%	0%	43%	27%	11%	20%
% Lump Sum Settlements	100%	33%	7%	27%	21%	22%
% All	100%	33%	50%	55%	32%	43%

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

<b>Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*</b>						
<b>Decrees and Lump Sum Settlements</b>						
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Grand Total</b>
<b>Total Claims</b>	<b>1</b>	<b>28</b>	<b>47</b>	<b>36</b>	<b>25</b>	<b>137</b>
Decrees		4	2	1		7
Lump Sum Settlements		2	7	1		10
<b>Grand Total</b>	<b>0</b>	<b>6</b>	<b>9</b>	<b>2</b>	<b>0</b>	<b>17</b>
% 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.

#### 4. Denied Claims with Subsequent Payments

When a lost time FROI is filed in a case where a claim for lost time benefits has been made, the insurer/self-insurer responsible for handling the claim will either:

- file a Notice of Controversy (NOC) indicating it will not voluntarily pay lost time benefits; or
- file a Memorandum of Payment (MOP) indicating the injured worker is being paid by the insurer or is receiving salary continuation payments from the employer for whom the injured employee worked.

Claims that are initially denied (i.e. a NOC is filed) may eventually be paid. Alternatively, the employee can decide they do not want/need to pursue a claim. The following charts show the percentage of claims, for the pre- and post-presumption periods, in which a NOC was followed by a payment. A smaller percentage of post-presumption claims that were initially denied were eventually paid.

Workers Compensation Board Pre-Presumption Data							
Initial Filing a Notice Of Controversy Followed by a Payment							
	2013	2014	2015	2016	2017	Grand Total	Percent of NOCs
First filing NOC	1	6	14	15	18	54	
Consent Decree			1			1	1.92%
Lump Sum Settlement	1	2	4	5	4	16	30.77%
Memorandum of Payment			4	2	4	10	19.23%
<b>Grand Total</b>	<b>1</b>	<b>2</b>	<b>9</b>	<b>6</b>	<b>8</b>	<b>26</b>	<b>50.00%</b>

Workers Compensation Board Post-Presumption 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	20	39	28	17	105	
Consent		1	1	1		3	2.94%
LSS		2	3			5	4.90%
MOP		2	11	5	2	20	19.61%
<b>Grand Total</b>	<b>0</b>	<b>5</b>	<b>15</b>	<b>6</b>	<b>2</b>	<b>28</b>	<b>27.45%</b>

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%
<b>Grand Total</b>	<b>0</b>	<b>6</b>	<b>15</b>	<b>6</b>	<b>2</b>	<b>29</b>	<b>27.62%</b>

\* 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.

a. Claim costs

The following charts breakdown claim costs for pre- and post-presumption periods. Board data shows overall claim costs were approximately the same for the pre-presumption and the post-presumption periods. Board data also shows that average costs per claim have been lower in the post-presumption period.

Workers Compensation Board Pre-Presumption Data								
Total Paid Amounts								
	Lost Time	Medical	ER Legal Costs	Other	LSS	Total Paid	Total Claims	Average per Claim
2013	\$0.00	\$0.00	\$3,034.10	\$0.00	\$1.00	\$3,035.10	1	\$3,035.10
2014	\$3,656.52	\$450.00	\$30,582.10	\$3,042.96	\$200,000.00	\$120,694.05	9	\$13,410.45
2015	\$272,367.38	\$64,014.85	\$86,687.10	\$19,516.36	\$740,122.00	\$1,182,707.69	14	\$84,479.12
2016	\$10,102.38	\$20,570.38	\$48,427.63	\$30,496.01	\$685,000.00	\$794,596.40	13	\$61,122.80
2017	\$156,975.99	\$58,853.29	\$41,382.13	\$9,065.36	\$597,500.00	\$803,854.75	19	\$42,308.14
<b>Total</b>	<b>\$443,102.27</b>	<b>\$138,833.72</b>	<b>\$205,973.86</b>	<b>\$61,724.21</b>	<b>\$2,162,623.00</b>	<b>\$3,012,257.06</b>	<b>56</b>	<b>\$53,790.30</b>

Workers Compensation Board Post-Presumption Data Supplemented with MMA Data*								
Total Paid Amounts								
	Lost Time	Medical	ER Legal Costs	Other	LSS	Total Paid	Total Claims	Average per Claim
2017	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	1	\$0.00
2018	\$249,661.29	\$218,715.07	\$31,277.66	\$28,072.82	\$507,000.00	\$945,806.60	28	\$33,778.81
2019	\$287,195.56	\$178,773.21	\$12,405.75	\$8,860.52	\$732,871.79	\$1,099,835.23	50	\$21,996.70
2020	\$174,181.36	\$38,908.58	\$4,618.40	\$8,852.70	\$0.00	\$224,778.62	36	\$6,243.85
2021	\$7,117.93	\$61,883.00	\$0.00	\$0.00	\$0.00	\$69,000.93	25	\$2,760.04
<b>Total</b>	<b>\$718,156.14</b>	<b>\$498,279.86</b>	<b>\$48,301.81</b>	<b>\$45,786.04</b>	<b>\$1,239,871.79</b>	<b>\$2,339,421.38</b>	<b>140</b>	<b>\$16,710.15</b>

\* MMA data includes 3 lost time claims and 9 (6 with payments) medical only claims.

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<sup>2</sup> 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.

Hopefully, the data detailed above is an indication that the goals of early intervention and reduced severity are being realized.

I am available to answer any questions you may have regarding this report.  
Sincerely,

John C. Rohde  
Executive Director  
Workers' Compensation Board

Cc: Senator Stacey Guerin  
Senator David Miramant  
Representative Richard Bradstreet  
Representative Scott Cuddy  
Representative Gary Drinkwater  
Representative Traci Gere  
Representative Joshua Morris

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<sup>2</sup> The full text of Director Sighinolfi's testimony is included as Appendix B.

Representative Sarah Pebworth  
Representative Dwayne Prescott  
Representative Amy Roeder  
Representative Sophia Warren  
Steven Langlin - OPLA Analyst  
Rachel Tremblay - OFPR Analyst  
Justin Purvis - Committee Clerk

## 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 counties, municipalities and other political or administrative subdivisions, in the development of the report.

This paragraph is repealed October 1, 2022.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

## APPENDIX B



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
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PAUL H. SIGHINOLFI, ESQ.  
EXECUTIVE DIRECTOR/CHAIR

**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 bill for firefighters, police officers, and emergency personnel. I did not think there was sufficient historical medical support for corrections officers, and, therefore, would be unwilling to agree to that part of the bill.

Why not corrections officers? You have attached to this testimony an excerpt from Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a text used by psychiatrists and psychologists for purposes of making psychiatric or psychological diagnosis. This attachment addresses the specific diagnostic criteria for Post-traumatic Stress Disorder, Diagnostic Criteria 309.81 (F43.10). It is written in plain English, and I direct your attention to page 276 under the heading Prevalence where the following is provided: “Rates of PTSD are higher among veterans and others whose vocation increases the risk of traumatic exposure (e. g., police, firefighters, emergency medical personnel)?” The editors of the DSM-5 include examples in the diagnostic feature section of their text in an effort to identify at-risk populations. You will see they list three of the professions in the bill, but not the fourth.

This bill makes sense because in looking at the diagnostic criteria beginning on page 271, sections C, D and E of the attachment, you will note how individuals function with PTSD. 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 life activities.

I testify before you in support of this bill and recommend the bill be voted out of committee “ought to pass.” I thank you for your attention, and I am available if there are questions.

PHS/ldl