UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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NOVEMBER 8-9, 2021

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The Advisory Board met via videoconference, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

AARON BOWMAN
MARK CATLIN
KENNETH SILVER
MIKE VAN DYKE

MEDICAL COMMUNITY

GEORGE FRIEDMAN-JIMENEZ
ROSE GOLDMAN
STEVEN MARKOWITZ, Chair
MAREK MIKULSKI

CLAIMANT COMMUNITY

JIM KEY
DURONDA POPE
CALIN TEBAY
DIANE WHITTEN

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

MONDAY, NOVEMBER 8, 2021

Welcome/Introductions:

Michael Chance called the meeting to order at 1:03 p.m. The meeting was conducted via videoconference as a precaution against the COVID-19 pandemic. Mr. Chance reminded Board members that some of the materials they received in their capacity as special government employees should not be shared or discussed publicly. He also noted that the two-year terms of all Board members will expire July 2022. Current Board members will be eligible for re-nomination when the Office of Workers' Compensation Programs (OWCP) conducts the nomination process in the spring. Chair Steven Markowitz welcomed Advisory Board members, Department of Labor (DOL) staff, and members of the public. He called for introductions and briefly reviewed the meeting's agenda.

DEEOIC Updates: Program Highlights, Information Items since April 2021:

Rachel Pond, Director, Division of Energy Employees Occupational Illness Compensation (DEEOIC), discussed changes to DEEOIC's quality review process. The Performance Management Branch now reviews work on an ongoing basis for each stage of the process and then prepares a quarterly report on their findings and recommendations. DEEOIC has also implemented a more robust sampling process with enhanced feedback mechanisms. Because of the switch to ongoing reviews, they have eliminated accountability reviews with the exception of those for payment processing. DEEOIC has converted to entirely digital files, which has allowed for greater telework capability and downsizing of physical space. They have begun providing electronic case files to claimants and are beginning the process of allowing authorized representatives to have the same access. DEEOIC has not been able to conduct in-person outreach due to the pandemic, but has utilized their mailing list for digital outreach efforts. They have also hosted about one public session a month on their website, which usually have 150-200 attendees. Ms. Pond also described some of the various employee trainings DEEOIC has offered.

John Vance, Chief, Branch of Policy, Regulations and Procedures, DEEOIC, discussed policy changes, procedure manual updates, and how DOL has acted upon the Board's recommendations. Bulletins issued in 2021 included guidance on how to handle and adjudicate cases for COVID-19 as a consequential illness, allowances for

providers to utilize telemedicine for routine and home and residential health care, and a review of cases that may be impacted by a new Special Exposure Cohort Class. He highlighted some of the changes in Version 5.1 of the Staff Procedure Manual, including an update to credentialing for impairment raters, adding the allowance of the six-minute walk test, substantial changes to how claims examiners go about evaluating impairment ratings from physicians and contract medical consultants (CMCs), as well as several administrative updates and technical modifications. The biggest changes in the manual were to chapters concerning medical bill processing instructions and ancillary medical benefits. DOL has accepted the recommendations from the Board to add a group of health effects based information from the International Agency for Research on Cancer (IARC) and recommendations with regarding the addition of health effect data to the Site Exposure Matrices (SEM). Two other recommendations from the Board concerning cancer categories were returned for clarification and will be addressed later in this meeting. Following another Board recommendation, DOL has added explicit language on the SEM webpage stating that they accept input from IARC and the National Toxicology Program (NTP). DOL agreed with the Board's recommendation on continuing collaboration between the Board and the Department with regard to utilizing the IARC and NTP. DOL evaluated the Board's comments regarding how the Department evaluates job titles and different kinds of exposure information and found there were no changes they could make, but did provide feedback for the Board to consider. The addition of IARC Group 2A will likely be incorporated into the next release of the public SEM in November.

Chair Markowitz was pleased to see the digitization of case files and was interested in getting feedback from claimants to see how useful it is. Duronda Pope asked if the digital case files were read only or if they were interactive. Ms. Pond said that they are read only, but anyone associated with the claim will be able to upload documents to the file. It is still in the early stages and they have not yet determined what capabilities they may seek to add to it.

Chair Markowitz asked if DOL had any results from the changes in the quality review process that the Board could review. Ms. Pond said they are looking at ways to organize it in a way that would be beneficial and should have something for the Board to review this quarter. Chair Markowitz asked if they can make available the methodology they are using to assess the quality review processes. Ms. Ponds said that should be possible and she will

follow up with the Board on the subject. Chair Markowitz asked if any of the modifications address the issue of the quality of industrial hygienists' work and physician input into the claims process. Ms. Pond said the quality review will look at the reports themselves and ensure they are in compliance with the process, but they are working on a new methodology for reviewing the work of CMCs. Every report done by a contract industrial hygienist (IH) is reviewed by at least one federal employee. The Department has not yet decided if more needs to be done, but they will share the methodology with the Board as soon as it is finished.

Chair Markowitz asked if there were any significant changes in the new procedures manual related to impairment. Mr. Vance said the manual now makes it very clear that DOL is going to evaluate impairment ratings based explicitly on the language in the AMA guides. It also makes clear that this is something DOL will not be engaging with their internal physician on; if there are concerns with the sufficiency of an impairment rating, the rating physician would have an opportunity to clarify their position. If this does not sufficiently address the concerns, the matter will be referred to a CMC and the Department will weigh the competing opinions in their final determination of an impairment rating.

Chair Markowitz asked if DEEOIC has had any COVID claims. Ms. Pond said there have been fewer than five and they have typically been entered as consequential to other conditions. Mr. Vance added that he was familiar with cases in which COVID-19 was a direct factor in the deaths of claimants, and the circular on COVID-19 has played a large role in getting benefits out in those cases.

Review of ABTSWH Charter and MBP Renewed June 2021

Chair Markowitz asked if there were any changes to the Advisory Board's charter. Carrie Rhoads said the only changes were to the standard language that is required of all charters. Chair Markowitz reviewed some of the more important aspects of the ABTSWH charter.

DOL Response to April 2021 Board Recommendations; Aldrin/Dieldrin:

Chair Markowitz reviewed the Board's recommendations to DOL, including that agents that qualify as 2A carcinogens under IARC and for which there was some limited human epidemiologic

evidence be included in the SEM; that the SEM specify that IARC and NTP evaluations have been used in updating the SEM links between exposure and disease; and that any new 2A carcinogens or NTP equivalent listings should be evaluated and added to the SEM. DOL agreed to each of these recommendations and to continue regular collaboration with the Board on evaluating updated health effect data from various scientific organizations. Chair Markowitz asked if this was an invitation for the Board to periodically survey these or if DOL plans to do that in-house. Mr. Vance said DOL's in-house toxicologist and epidemiologist will continue to look at these, but additional input from the Board is welcome. Chair Markowitz said IARC and NTP classifications are not frequently updated, but the inclusion of other scientific organizations may require a fair amount of work.

Rose Goldman commented that keeping DOL up-to-date on the latest medical findings and advances would be a huge undertaking for the Board. She asked if this refers only to 2A carcinogens or all outcomes. Ms. Pond said DOL looks at health effects on a regular basis, but they do not have a research arm. Hopefully the Board's contractor will be able to help with some of the work. The request was broad, but the Board could narrow it down to particular conditions or types they would want to look at. Dr. Goldman asked if anyone in the program is surveying new findings on non-carcinogenic effects. George Friedman-Jimenez said IARC and NTP are expert review panels made up of multidisciplinary reviewers weighing in to reach a final conclusion. He was not aware of another organization besides NTP that has an expert panel for non-cancer outcomes, so there might not be that much for the Board to review. Ms. Pond said part of DOL's current dilemma is that there is not a lot of been peer reviewed data, which is why they often have to rely on individual case files. She would be happy to work with the Board to help hone in on specific areas they may want to focus on.

Chair Markowitz asked if Haz-Map is updated and, if so, are those updates integrated into the SEM. Ms. Pond said that when there are updates they are integrated into the SEM. There is not much work going into that now, so DEEOIC incorporates other reviews. Mr. Vance added that it takes a lot to get to consensus viewpoints on established new human health effects, but they will update the SEM when that kind of information becomes available.

Dr. Friedman-Jimenez said determining the causal relationship for an individual requires understanding their exposure, which

will be different for every case. It is a complicated process and most cases will have to be decided on their own or in groups based on presumptions. Using precedents, as in the legal profession, would not be applicable to this situation.

DOL requested clarification from the Board on whether both aldrin and dieldrin should be listed when discussing breast cancer health effects, since dieldrin as a metabolite of aldrin. They further asked if an occupational exposure to dieldrin is the same as having the body produce it from aldrin intake. There is limited evidence for linking dieldrin to cancer of the breast, but the evidence for aldrin is inadequate. Dr. Goldman said the evidence was marked inadequate because there are limited human data, but there are some animal data for linking aldrin. From a compensation point of view, one could assume that a claimant with exposure to aldrin also had exposure to dieldrin, which is why the group recommended both toxins be included. Aaron Bowman agreed and theorized that part of the reason for the limited evidence is because aldrin is converted to dieldrin so rapidly in the body. Chair Markowitz also concurred, adding that what matters is not what is ingested or absorbed through the skin, but what makes it to the target tissue or organ. Mr. Vance said the Department's concern is from an occupational exposure standpoint and asked if the Board is saying that both of these have the same breast cancer health effect. Chair Markowitz said yes, both toxins should be separately linked to breast cancer. Ms. Pond said they will take the transcript of this discussion to the contractor for review.

Chair Markowitz discussed the other issue sent back to the Board for clarification. Lymphohematopoietic malignancies were proposed to be added to the SEM under styrene. DOL asked if the diseases are limited to acute myelogenous leukemia and T-cell lymphoma or if the linkage is broader. DOL's response had not been circulated prior to the meeting, but the Board will try to get an answer to DOL in the near future.

Review of SEM Generic Profiles:

Chair Markowitz led a discussion on DOL's response to the Board's recommendations on asbestos. The Department agreed to coordinate a re-evaluation of the noted job titles with its contractor Paragon Technical Services (PTS) and make agreed-to alterations to the list of labor categories with a presumption of significant exposure to asbestos. This re-evaluation has not yet been completed and the Board reviewed their progress to-date. The generic profile acknowledges that certain job titles

(e.g., janitors, laundry workers, and power line communication maintenance) have potential asbestos exposure; however, PTS found these were not subject to presumptions due to the nature, frequency, and duration of exposure. The Board previously noted that NIOSH occupational mortality data (NOMS database) showed several job titles had significant risk of mesothelioma, which is synonymous with asbestos exposure, and proposed using this data to modify the presumption list in the DOL procedure manual. PTS argued that some of these job titles had relatively small numbers of deaths, minimal increased risk, and that it is reasonable that they do not appear in the DOE complex. This was persuasive to the Board, but it noted that there is both a significant number of mesothelioma deaths and an increase in risk of mesothelioma death in the NIOSH NOMS database for chemical engineers, industrial health and safety engineers, and mechanical engineers. This indicates that the risk of asbestos is probably broadly shared across industries for these selected job titles. The Board noted that the PTS' recommendation that death certificates be reviewed for the three occupations of layout workers, molding and casting machine operators, and materials engineers would take significant effort and was unlikely to be very fruitful. On a related matter PTS stated that the SEM recognizes bystander exposure when IH sampling provides evidence. Chair Markowitz commented that it seems unlikely that bystander exposure would be documented by air sampling in the field. PTS' response appears to address asbestos abatement workers, while the Board is focused more broadly on workers who had less controlled exposure to asbestos and who may have had continued incidental or unknowing exposure both before and after the issuance of DOL directives.

Dr. Goldman noted that anyone that comes forward with a mesothelioma diagnosis would be assumed to have had some level of asbestos exposure. That is, as long as other employment can be excluded as a source, it should be presumed that the exposure is related to a claimant's employment at a covered facility. Mr. Vance said that a claimant with a mesothelioma diagnosis that worked at a covered site would very likely have their case approved. Dr. Goldman added that the issue has less to do with dose than latency.

Mark Catlin said the Board was concerned with broader issues that may be related to asbestos exposure. The Board used mesothelioma-job title associations as a means of identifying job titles that were likely to have had significant asbestos exposure. They were hoping DOL would identify asbestos exposure in job categories that are not currently on the program PM list

of presumptively exposed job titles. Chair Markowitz agreed that if these job categories with sufficient asbestos exposure made it to the presumption list, then it would cover mesothelioma as well as lung cancer, asbestosis, and pleural plaques, and the decision-making for these job titles would be much easier.

Chair Markowitz asked the Board about the likelihood of bystander exposure documentation. Kenneth Silver said that the asbestos abatement industry which might conduct area monitoring on the perimeter of a job site, but their findings may not be reported to the facility. Mike Van Dyke said there have been many asbestos exposures that were likely not caught for the people doing the jobs, much less the bystanders, so the odds of there being any IH measurements of bystanders are very low. Chair Markowitz said bystander exposure would be a very challenging issue for the SEM to address, given the lack of data around it, but it an important topic.

Chair Markowitz said that the Board will await a response on PTS' position on adding the three job titles to the presumption list.

DOL Responses to Board Information Requests: IH/CMC and Public Comment:

Chair Markowitz led a discussion of DOL's responses to two ABTSWH working group questions and requests for clarification.

Public Comment Working Group questions

DOL's response to a question about the timeliness of claims involving impairment evaluation over the past several years was not sufficiently clear. The Board specified that they were interested in finding out if the time metric used for advancing claims involving impairment evaluations is different from other claims or if there is an inordinate delay in those involving impairment evaluations. Mr. Vance said adjudication time for cases involving impairment depends on many variables. DOL needs a better understanding of what it is the working group is asking for and whether DOL can provide the data in a way that will be useful. Ms. Pond said this question came from a public comment that did not offer much context, which makes it difficult to respond to. The process for a claim involving impairment can include delays for a variety of reasons and the question is too open-ended for DOL to provide an objective response. Chair Markowitz suggested the working group reconvene and draft a more specific request for information from DOL.

DOL said that the working group's question on overall timeliness of claims evaluation over the last two years was vague and required clarification. Ms. Pond said the program has operation plan goals around timeframes for each of the steps of the claim process, which they will provide to the Board, but DOL needs more specifics to know what data the working group is looking to assess.

The working group expressed its concern about the perception of a declining number of medical providers accepting the EEOICP benefit medical cards. They requested a count of the number participating over time in order to look at trends and what possible reasons providers may have for dropping out of the program. DOL said it does not collect this information directly and when providers drop out, DOL has no way of knowing their reasons. Ms. Pond said some providers have indicated a frustration with the process but she has not noticed an acute drop in the participation rate.

The working group asked how many claimant occupational health interviews the contractor and federal IHs have conducted over the past two years. DOL's response was two. Ms. Pond indicated they were not happening more frequently because claimants are not requesting interviews and industrial hygienists are not initiating interviews. Mr. Vance added that they have communicated to staff the importance of having this option available, but it is up to the claims examiner to decide whether there is an issue they think will be rectified by conducting an interview. Chair Markowitz understood why claims examiners might not initiate interviews, but would expect industrial hygienists to do so in order to get a more complete picture of a claimant's exposure. Mr. Vance said that the contextual framework is driven by the claims examiner's need for additional information, so it falls on them to identify the need and not the industrial hygienists. IHs are not prevented from requesting interviews, but it has not been a common practice. Diane Whitten said it is not surprising there have only been two. She has seen many claims in which the CMC reports that an employee was not exposed to toxic substances above a known amount without having called the claimant to ask them. Mr. Catlin said claims examiners are not the best people to say that the interviews ought to be done. It would be useful to have a process in which claims examiners decide they do not need an interview and a certain number get done anyway to see how much additional information can be pulled out and if it would be helpful. Dr. Silver suggested that the explanation for the small number of interviews may be that

Occupational Health Questionnaires are soliciting more and better information than they did previously.

The working group requested more detail on the role of the EEOIC Medical Director/Medical Officer. DOL pointed to Chapter 29 of the procedure manual where it states that the Medical Officer reviews organ transplant and experimental treatment requests. Chair Markowitz said there is very little in the Procedure Manual about the role of the Medical Officer and asked if that indicates that they have a small role in claims evaluations. Ms. Pond said this is correct and that the Medical Officer usually looks at the broader picture of medical issues across the program. Medical Officer input is becoming less common because DOL is increasingly using CMCs or going back to the treating physician. Mr. Vance added that they have been working on clarifying that the role of Medical Officer is the interpretation of the evidence by a medical physician, which is then compared to other opinions in a case.

The working group asked if DOL has attempted to aggregate data from prior claims decisions to ensure consistency in decision-making. The Department does not do that kind of data aggregation. With the appropriate resources, this is something the Board could look at in the future.

In response to a question about hiring another physician, Ms. Pond said that DOL is not currently hiring any additional Energy Employee-specific medical expert, but will continue to rely more on the treating doctors and CMCs when there is a question or concern in a particular case.

The working group asked what percentage of claims CMCs and IHs recommend denial. DOL responded that CMCs and IHs only provide professional advice to the claims examiner and do not recommend acceptance or denial. Chair Markowitz believed this question was based on a misperception on the Board’s part and they may have a more refined question following their claim reviews.

The working group asked what percentage of claims CMCs and IHs find minimal exposure. DOL does not collect these data.

IH/CMC Working Group questions

The working group asked similar questions about the role of the Medical Officer as previously discussed. They also asked how the Medical Officer communicates their input into the claims evaluation process. Chair Markowitz outlined the process and Mr.

Vance confirmed: when the program requests a case-specific review from the Medical Officer, the Medical Officer will communicate a response in writing, which DOL uploads into the permanent case record. When reviewing claims in the future, the Board may occasionally see these communications. Going forward, very little will trigger an impairment claim review by the Medical Officer.

Mr. Chance said he and Ms. Rhoads would set up a meeting to discuss the topic of the Board getting clarification on public comments.

Dr. Silver said the discussion around these questions makes plain the need for an ombudsman that can refine the questions and get the data needed to answer them promptly and directly. Chair Markowitz asked about the status of replacing the ombudsman position. Ms. Pond said there is currently an acting ombudsman, but could provide little other information since the position is located in a different office.

Chair Markowitz read from Chapter 29 of the procedure manual on the role of the Medical Officer. He noted that the description applies to organ transplant and experimental treatment requests and appears to only apply to those occasions. Mr. Vance said the Medical Officer has other functions in OWCP, but for DEEOIC's purposes, this is what they ask the Medical Officer to participate in. He said that "experimental treatments" refers to treatments that are not recognized as normal and routine treatment modalities for a particular condition. Dr. Friedman-Jimenez said that the term "experimental" could potentially be problematic, as it could change depending on the opinion of the Medical Officer. Experimental also has a precise medical meaning which is not necessarily the definition used in this context.

Public Comment:

Terrie Barrie, Alliance of Nuclear Worker Advocacy Groups, commented on a letter she sent the Board earlier in the year concerning rescinded cancers. Her request is more appropriate for the ABTSWH than NIOSH's Advisory Board on Radiation and Worker Health because it is within this Board's purview to provide advice to DEEOIC on the claims adjudication process generally. She asked the Board to review the original and rescinded final circulars and consider recommending to DEEOIC that the five cancers identified, as well as the SLL/CLL issue raised by D'Lanie Blaze in her written comments, do qualify as specified cancers. She was pleased to hear that DEEOIC has

issued a request for proposal to provide a support contractor to the Board, but could not understand why it has taken three years to do so. Ms. Barrie suggested that the Board ask for the number of cases that were filed for mesothelioma to get a better idea of how frequently they were approved or denied. She was also curious about the amount of time it takes from the physician submitting their findings to DEEOIC until a final decision is issued. This would help to determine if there is a problem with claims examiners issuing these decisions.

Donna Hand said the specified diseases designated in EEOICPA refer to physiological conditions that are recognized by the National Cancer Institute (NCI) under their current names or any previously accepted or commonly used names/nomenclature. NCI should be asked to review the specified cancers and include those that have been rescinded from the list. Chronic lymphocytic leukemia may require a technical or legal change to be covered. She said that many day-to-day activities are not being considered in impairment decisions. This needs to be addressed and made consistent across the board. Lastly, she noted that Haz-Map is no longer part of the National Institutes of Health and asked why it cannot be used to address Environmental Health Perspective and their database, Collaborative on Health. She will submit further details on this database.

Stephanie Carroll commented that EEOICPA is clear in discussing medical benefits for this program and it is important to pay attention to the language of the Act when determining if workers are going to be furnished the medical benefits their physician orders or recommends. The steep criteria for getting authorization for treatments that would provide relief or reduce the degree/duration of an illness should not be acceptable. The criteria must be consistent no matter the cost of the treatment. Regarding nomenclature with NCI, the Act has been very clear, and something has changed in the program. Ms. Carroll said she has had difficulty getting people with secondary bone cancer related to the prostate covered for their treatments, which has not been the case in the past. Ms. Carroll commented on doctors weighing in on decisions for statutory diseases. A doctor is not a claims examiner, and if they are going to be used as such they should be listed as a part of the program. She said that Econometrica has addressed many of the issues the ABTSWH has now taken up and they should review the 2005 report concerning presumptions or exposures that are expected to be at the site. She noted that official production at Rocky Flats stopped in 1989, but they continued processing waste and other activities

that were the same as during production. She expressed concern about using the earlier date to make changes to the SEM. The SEM has a library of documents that have been used to verify that exposures occurred onsite for covered facilities. She suggested the Board request the SEM library index from DOL.

TUESDAY, NOVEMBER 9, 2021

Call to Order:

Chair Markowitz called the second day of the meeting to order at 1:02 p.m.

Board Request for Resources:

Chair Markowitz provided an update on the DOL's response to the Board's request for resources. DOL has been working to secure a contractor to assist in the performance of certain tasks and have issued a request for information which received a number of responses from potential contractors. Board members reviewed these responses and a performance work statement with DOL staff and provided feedback. Board members said that experience in occupational health would be very helpful and estimated that there could be 3-5 scientific and/or technical reviews per year that should be based on existing consensus or expert reviews of a particular area. The Board will provide specific direction in the claims review process undertaken by the contractor and recommended job titles they would like to see in the responses to their request for proposals.

Mr. Chance emphasized that DOL is moving on this as quickly as possible, though government contracting requires extensive due diligence.

Plan for Review of Limited Number of Claims by Spring 2022:

Chair Markowitz led a discussion on the Board's work plan over the coming year. While the contractor procurement process is underway, the Board can engage in developing a plan for looking at claims addressing specific questions. It would be a good idea for the Board to request a limited number of claims to review and get a better understanding of what kind of information they would want to see from future claims. Because of the time it takes for DOL to de-identify claims before Board members can review them, they will need to formulate a request soon in order to obtain the claims prior to the Board's spring meeting. Chair Markowitz asked the Board how many claims to request and what

specifics they would be interested in (i.e., what years, what conditions, geographical representation, ratio of accepted-to-denied claims, issues involving causation or impairment, and/or consequential conditions).

Dr. Bowman said unique cases may not be as helpful as representative cases and they will want to review both accepted and denied claims.

Rose Goldman asked if there were outstanding questions or issues from the last time the Board conducted claims reviews. In the past, it was difficult to go through claims papers because they were not organized by different categories. Chair Markowitz agreed that the lack of indexing for the claims was a problem and said that he will find out if the performance work statement included that as part of the contractor's deliverable. Mr. Vance said there's no indexing DOL can do based on the extraction of the material from their case files. Doing so would require an extremely time-consuming manual process. Previously, DOL has provided a PDF of the entirety of the file in whatever order it is presented in their imaging system. Dr. Friedman-Jimenez said the claims they have received in the past were very large, unsearchable PDFs. If the Board cannot get an index, his preference would be a PDF file that has been run through a character recognition program to make it searchable.

Dr. Silver said more recent cases that receive IH referrals would be of interest because, even after the guidance was withdrawn, claims examiners were still applying the assumption that if exposure occurred after 1995 they would be at or below OSHA's standards. He would also like to see recent claims to see how the new OHQ is performing.

Chair Markowitz said they want completed claims so they can review the entire process, including the decision. He asked if there would be many claims from 2020 or later that have been decided. Ms. Pond said there were probably several very recent claims that have final decisions. DOL will have to run a report to find out how many and if they can sort them by the data points the Board is looking for. Mr. Vance said the key thing with data requests is specificity. Chair Markowitz asked if claims handled during the pandemic might be unrepresentative of the broader process. Ms. Pond replied that the claims have been processed the same during this period.

Chair Markowitz asked if claims with an IH report will automatically have a CMC report and vice versa. Ms. Pond said

this is not always the case. In more recent claims, DOL has increasingly gone back to the treating physician first and if they provide enough information DOL will not go to a CMC. She assumed the Board would want to see an IH report regardless of whether it went to a CMC or not.

Dr. Bowman said it would be good to get an approved claim and a denied claim for emergency responders. Ms. Pond said they are unable to search by job category. Dr. Bowman suggested reviewing denied-to-accepted claims at a ratio of 2-to-1 or 3-to-1. Regarding health conditions, Chair Markowitz suggested reviewing some claims involving impairment but mostly not. He did not think it would be necessary to review consequential claims since they piggyback on accepted claims.

Dr. Goldman said she would be interested in claims with a Parkinson's disease condition and cancer. This would help them see how the Board's work connects with what is happening on the ground. Chair Markowitz asked if cancer claims accepted under Part B are automatically accepted under Part E. Ms. Pond said they would be as long as it is a Part E covered site. Chair Markowitz said it would be helpful to look at cancers that are Part E only. Dr. Silver pointed out that claims that are solely Part E are not likely to involve much radiation exposure.

Jim Key raised the issue of a case he recently became aware of concerning a Part B cancer claim from the Gaseous Diffusion Plant SEC in which the claimant was told a dose reconstruction was required. Ms. Pond said staff will seek out more information and discuss the matter offline.

Mr. Catlin said it would be interesting to look at cases that met the initial criteria but in which the examiner decided an IH review was not necessary and still denied the claim. Mr. Vance said a lack of viable health effect data would be a probable reason for denial in these situations and expressed uncertainty if the data could be manipulated to identify such cases.

Chair Markowitz said it would be worth familiarizing Board members with claims involving beryllium disease and pulmonary disease. He asked how many claims the Board members could review without being overburdened. Dr. Silver said it depended on how much time they had between receipt of the case files and the working group report-out date. Dr. Goldman said it would be helpful if Board members had access to previous work done by the Board connecting certain exposures and diagnoses and then reviewed more recent claims to see if those findings have been

incorporated into decisions. Chair Markowitz noted that the point of this is not to identify problems in the process, but it would be worthwhile to learn what they can about these issues.

Chair Markowitz asked if DOL, after the Board has submitted their request, would give them feedback on what additional details they need in order to locate the cases. It would be best is claims are reviewed by multiple Board members. Dr. Goldman suggested 3 to 5 claims for each member to review, depending on how complex they are. Chair Markowitz will draft the request and circulate it to Board members for further input.

EEOICP Program Metrics: Additional indicators of EEOICP claim status outcome:

Chair Markowitz reviewed the data available in the DEEOIC Public Reading Room in order to familiarize Board members with the kinds of data that are publicly available and what additional data might be useful to the Board. He reviewed the records in each of the headings listed on the webpage. Mr. Vance reviewed reasons for denial for chronic silicosis Part B claims. The majority of denials were due to an employee not being covered, but some had negative causation. The issue of causation appears to be key in the claims evaluation process for a sizable portion of denied claims. There was considerable variation in acceptance rates for different cancers.

Dr. Bowman said he would be interested in seeing an approved and a denied Alzheimer’s claim to get a sense of what factors into those decisions. Dr. Goldman asked if the Alzheimer’s category meant Alzheimer’s alone or if it included any dementia. She noted that peripheral nerve disorders are not caused by many chemicals and yet there were 44 claims listed with 17 accepted. Mr. Vance clarified that DOL can accept cases based on the weight of medical evidence assigned by a treating physician regarding how an exposure is reasonably contributing to the onset of a disease. Ms. Pond added that more physicians are addressing aggravation and contribution rather than causation.

Dr. Silver suggested adding a link for users to get back to state and facilities data in order to provide a more integrated experience for the Public Reading Room. He also asked if the Board has considered going directly to claims examiners and asking them about recent claims that may meet the Board’s criteria for requesting claims for review. Mr. Vance said this would be possible. Ms. Pond said she would talk to the District Directors about how useful it would be. They will also discuss

internally the possibility of adding a link to the facilities data.

New Business:

Chair Markowitz raised the issue of whether the Board was recommending linking aldrin and dieldrin to both male and female breast cancer. Dr. Friedman-Jimenez said male breast cancer cases are extremely rare and there is very little known about the environmental causes. There is not sufficient information available to say that they behave any differently and he did not see a basis for differentiating them. Considering them both to have the same determinants is a reasonable position for the Board. Dr. Bowman said IARC does not specify male or female.

Chair Markowitz presented Dr. Bowman's summary language on the styrene issue. Dr. Friedman-Jimenez' extensive commentary and review in support of the final statement was much appreciated. Chair Markowitz noted that the World Health Organization renewed its classification of lymphomas in 2017 and there are now 70 subtypes. Dr. Goldman said that that if a worker had styrene exposure and had any kind of leukemia or lymphoma, it should be compensable. Mr. Vance said he believed the response was sufficient, but will discuss the matter further internally. Ensuring they had the proper classification coding for that type of malignancy would be his only concern. Dr. Goldman said this will be a problem when they go to the ICD-10 coding because there are so many diagnostic codes and subgroups that would fit under lymphoma and leukemia. Mr. Vance said DOL can take the recommendation back to PTS to see what they think can be done based on the current structure of the SEM. They will reach out to the Board if further information is needed. After reviewing the Veterans and Agent Orange Update, Dr. Friedman-Jimenez said that ICD-9 maps into ICD-10 very neatly so it should not be an issue.

Chair Markowitz briefly raised a couple of issues related to written comments the Board had received. Terrie Barrie cited certain cancers for which DOL had asked NCI for clarification on whether or not they were synonymous with the 22 cancers listed in the statute. Chair Markowitz asked if justification for what the list includes or excludes is within the ABTSWH's purview. Ms. Pond said she would discuss this with Mr. Chance after the meeting, but did not believe it would be within the Board's purview. The reasons DOL has changed its stance on certain cancers have been legal in nature. Mr. Vance said this topic has been discussed by the Board in the past and DOL provided a

written response, which Ms. Rhoads will share with the Board.

Another issue raised was that chronic lymphocytic leukemia (CLL) was not one included in the 22 specified cancers, but lymphoma was. Now that CLL has been reclassified as a lymphoma in the 2017 WHO classification system, it should be considered as one of the 22 cancers. This may be a nomenclature issue that NCI could clarify. Ms. Pond believed the statute refers to CLL as nonradiogenic, but it does not have a specific designation in the statute. Mr. Vance added that Congress explicitly excluded CLL from consideration in its legislation. DOL needs to have a clear interpretation of the evidence as to whether a physician has diagnosed CLL or small lymphocytic lymphoma; however, many physicians are now combining the two.

Board Work Plan:

Chair Markowitz summarized the upcoming tasks for the working groups. The IH/CMC and public comments working groups will reconvene to review DOL's responses. They will track the progress on the issue of contractors for the Board and will provide any additional information. Chair Markowitz will send out a formulation of the claims request in the coming week to be refined and finalized. In the past, it generally took around three months to get batches of claims, which should provide ample time for review them before the next Board meeting.

Close of Meeting:

Mr. Chance adjourned the meeting at 3:26 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are on accurate summary of the meeting.
Submitted by:

Steven Markowitz, MD, DrPH
Chair, Advisory Board on Toxic Substances and Worker Health
Date: 2/9/2022