

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

+ + + + +

MEETING

+ + + + +

TUESDAY
JANUARY 30, 2018

+ + + + +

The Subcommittee met telephonically at
1:00 p.m. Eastern Time, Steven Markowitz, Chair,
presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

- JOHN M. DEMENT
- MARK GRIFFON
- KENNETH Z. SILVER
- GEORGE FRIEDMAN-JIMENEZ
- LESLIE I. BODEN

MEDICAL COMMUNITY:

- STEVEN MARKOWITZ, Chair
- LAURA S. WELCH
- ROSEMARY K. SOKAS
- CARRIE A. REDLICH
- VICTORIA A. CASSANO

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CLAIMANT COMMUNITY:

DURONDA M. POPE
KIRK D. DOMINA
GARRY M. WHITLEY
JAMES H. TURNER
FAYE VLIENER

DESIGNATED FEDERAL OFFICIAL:

DOUG FITZGERALD

ALSO PRESENT:

KEVIN BIRD, SIDEM
CARRIE RHOADS, Alternate DFO

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1 P-R-O-C-E-E-D-I-N-G-S

2 1:06 p.m.

3 OPERATOR: Welcome. Thank you for
4 standing by. Throughout today's conference, all
5 participants will remain in listen-only mode.
6 Today's conference is being recorded. If you have
7 any objections, you may disconnect at this time.

8 And I'll turn your conference over to Doug
9 Fitzgerald from the Department of Labor. Thank
10 you, you may begin.

11 MR. FITZGERALD: Good afternoon,
12 everyone. I'm Douglas Fitzgerald and I would like
13 to welcome you today to this meeting at the
14 Department of Labor's Advisory Board on Toxic
15 Substances and Worker Health. I'm the Board's
16 Designated Federal Officer, or DFO.

17 First, on behalf of the Department of
18 Labor, I would like to express my appreciation for
19 the hard work of our board members over the past
20 months in preparing for these public meetings and
21 for their forthcoming deliberations.

22 I also wish to thank my colleagues here

1 at the Department of Labor for all their efforts
2 in preparing for today's meeting, and in particular
3 Carrie Rhoads, our committee staff and alternate
4 DFO, and Kevin Bird of our SIDEM staff who always
5 does a terrific job of preparing for these meetings
6 and running them virtually as well.

7 As DFO, I serve as the liaison between
8 the Board and the Department. I'm also responsible
9 for ensuring all provisions of the Federal Advisory
10 Committee Act, or the FACA, are met regarding the
11 operations of the Board.

12 I work closely with the Board's Chair,
13 Dr. Markowitz, and I'm responsible for approving
14 the meeting agenda and for opening and adjourning
15 these meetings. I also work with the appropriate
16 agency officials to ensure that all relevant ethics
17 regulations are satisfied.

18 Copies of all meeting materials and
19 public comments are or will be available on the
20 Board's website under the heading Meetings. I
21 should note, however, that since some of the
22 documents that we'll be discussing today arrived

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1 too late for posting on the web, they will appear
2 on the website tomorrow. But they will be viewable
3 in WebEx as we have those discussions.

4 The Board's website can be found at
5 dol.gov/owcp/energy/regs/compliance/advisoryboard.htm, or you can simply Google Advisory Board on
6 Toxic Substances and Worker Health and it's likely
7 to be the first one that comes up.

8 On that page you also see instructions
9 for participating remotely today. And it should
10 be noted that there's no public comment period
11 scheduled for this full board meeting.

12 If you are joining by WebEx, please note
13 that this session is for viewing only and will not
14 be interactive. During the meeting, I would
15 request that members be mindful of background noise
16 in their locations, and to place your phones on
17 mute when possible if you are not presenting or
18 engaged in direct discussion with other members
19 since we're recording the meeting to produce
20 transcripts and to ensure the public can hear.

21 The FACA requires that minutes of this
22

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1 meeting be prepared to include a description of
2 the matters discussed and the conclusions reached
3 by the Board. As DFO, I ensure that the minutes
4 are prepared and certified by the Board's Chair.

5 The minutes of today's meeting will be available
6 on the Board's website no later than 90 calendar
7 days from today per FACA regulations, but if
8 available sooner, it will be published before the
9 90th day.

10 Also, although formal minutes will be
11 prepared because required by the FACA regulations,
12 we will also be publishing verbatim transcripts
13 which are obviously more detailed in nature. We'll
14 work to see those transcripts will be available
15 on the Board's website within the next several
16 weeks.

17 Now with that, let me just go through
18 a quick roll call and make sure we have all the
19 Board present before I turn it over to Dr.
20 Markowitz. So, Dr. Dement?

21 MEMBER DEMENT: Present.

22 MR. FITZGERALD: Dr. Silver?

1 (No audible response.)

2 MR. FITZGERALD: Dr. Silver?

3 (No audible response.)

4 MR. FITZGERALD: We'll come back to Dr.
5 Silver. Mark Griffon, Mr. Griffon?

6 MEMBER GRIFFON: Yes, I'm here.

7 MR. FITZGERALD: Dr.
8 Friedman-Jimenez?

9 MEMBER FRIEDMAN-JIMENEZ: Present.

10 MR. FITZGERALD: Dr. Boden?

11 MEMBER BODEN: Here.

12 MR. FITZGERALD: Dr. Redlich?

13 MEMBER REDLICH: Yes.

14 MR. FITZGERALD: Dr. Cassano?

15 MEMBER CASSANO: Here.

16 MR. FITZGERALD: Dr. Welch?

17 MEMBER WELCH: Here.

18 MR. FITZGERALD: Dr. Sokas?

19 MEMBER SOKAS: Here.

20 MR. FITZGERALD: Ms. Pope?

21 MEMBER POPE: Here.

22 MR. FITZGERALD: Ms. Vlieger?

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1 MEMBER VLIEGER: Present.

2 MR. FITZGERALD: Mr. Turner?

3 MEMBER TURNER: Here.

4 MR. FITZGERALD: Mr. Whitley?

5 MEMBER WHITLEY: Here.

6 MR. FITZGERALD: Mr. Domina?

7 MEMBER DOMINA: Here.

8 MR. FITZGERALD: And Dr. Silver?

9 MEMBER SILVER: Here.

10 MR. FITZGERALD: Okay. And lastly,
11 Chairman Markowitz?

12 CHAIR MARKOWITZ: Here.

13 MR. FITZGERALD: With that, Mr.
14 Chairman, I turn it over to you.

15 CHAIR MARKOWITZ: Thank you, Doug.
16 Also thank you Carrie and Kevin for supporting this
17 meeting and all of our activities. I would like
18 to welcome everybody back to this Board meeting
19 by telephone which isn't optimal, but it's
20 efficient and we will get our work done.

21 I want to also welcome the public, I
22 don't know how many members of the public are on

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1 the phone, but we are happy to have you listen.
2 Unfortunately we're not able to have a public
3 comment period.

4 Some of what we'll do today is on, we'll
5 discuss is on our website, ABTSWH. All you have
6 to do is google that and look at today's meeting,
7 and you'll see about five or six documents that
8 we will discuss.

9 Several of the documents we'll discuss
10 did not make it to the website as Doug mentioned
11 due to the tardiness of myself and a few select
12 other members of the Board in terms of getting the
13 materials to Carrie.

14 But in any case, we're going to run
15 through all these things today on the WebEx and
16 by discussion. So hopefully the members of the
17 public will be able to keep up.

18 I want to take note of sad event, that
19 the passing of Jim Melius who was an occupational
20 medicine physician, he passed away January 1st.
21 He's a friend of many of us and a colleague.

22 He was for 17 or 18 years chair of the

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1 Radiation Advisory Board of the DOE, and also within
2 New York State instrumental in establishing the
3 permanent health program and the compensation
4 program for World Trade Center workers.

5 He did many other things at a federal
6 level with NIOSH, at a state level within the New
7 York State Department of Health over the last 20
8 years, New York State laborers. Many things in
9 his career, and we will miss Jim sorely.

10 The agenda for today is basically to
11 review our draft replies to Department of Labor's
12 comments on our recommendations. We discussed
13 these issues at the last Board meeting, and what
14 we're going to review is text that hopefully
15 summarizes our opinions and responses, in some
16 instances revisions of recommendations.

17 We will vote on each of these today.

18 This Board continues, all but one member continue
19 until February 16th. Faye Vlieger's term
20 continues over several weeks after that meaning,
21 I guess, Faye, you'll get to vote on whatever you
22 need to vote on during those weeks.

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1 But in any event, the schedule from
2 today until February 16th is that we will vote on
3 ten items today, the comments. And we will permit
4 limited word changes in what we vote on today over
5 the next week or so and then submit the final
6 documents to Department of Labor within the next
7 ten days or so, if that makes sense.

8 Most of today's agenda revolves around
9 ten comments or recommendations. If we detect that
10 there's time, we may hear news or any reports from
11 any subcommittees if there is any.

12 And finally, we, if there's time we
13 might discuss topics we think that the next Board
14 should address. We won't vote on those. Those
15 are just ideas that which we will write up and float
16 for the next Board. We did that preliminarily at
17 the end of the last meeting. I just want to
18 continue that process if there's time.

19 Any comments or questions? We will
20 take a break at, you know, roughly 2:30, quarter
21 of 3:00. And otherwise, let's start. We can start
22 with the draft on the IOM databases. This is

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1 Recommendation number 2 from October, 2016.

2 First of several recommendations from
3 October 2016. We're not going to read these draft
4 responses because they're long, and there's no need
5 to read them. But I would ask the drafter to
6 summarize it and then open it up for questions,
7 comments. So I think, Laurie, I think this is
8 yours.

9 MEMBER WELCH: Yes. I'm ready.

10 CHAIR MARKOWITZ: Okay.

11 MEMBER WELCH: Okay, the Board saw
12 a previous draft of this at our last meeting. And
13 the Board recommended that, and I had proposed with
14 that draft that the Department incorporate data
15 from IARC and from EPA's IRIS database to expand
16 the causal links between exposure and disease in
17 SEM.

18 And at the Board Meeting, several
19 people recommended, and there was a consensus, we
20 should also recommend that at the same time instead
21 of just the two databases we add the National
22 Toxicology Program.

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1 So I did that. I added that. And what
2 you can see now is IARC and IRIS. And if you scroll
3 down a little bit more you'll see that we have,
4 I added National Toxicology Program as well, just
5 you know, a paragraph stating what the NTP is and
6 then added under the process that NTP should be
7 added in the same way we're recommending adding
8 the other databases.

9 And that's pretty much what we're
10 covering. What's here is that the recommending
11 that the Department review IARC Group 1 and Group
12 2A carcinogens, and the IRIS database and the NTP
13 will incorporate those causal links into the SEM.

14 And that's it. Open for comments.

15 CHAIR MARKOWITZ: This is Steve
16 Markowitz. So I keep a couple of suggestions.
17 One is in the additional description of these
18 various sources that you, and the term
19 peer-reviewed because these are authoritative
20 sources. And as though asking the lead for DOL
21 to reinvent anything. So I would just add that
22 term. And my other --

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1 MEMBER WELCH: Okay. Yes. I will.

2 CHAIR MARKOWITZ: -- suggestion under
3 the recommended process actually, Kevin, if you
4 could -- oh, yes. No we're looking at, under one,
5 it says here DEEOICP should identify team that was,
6 that these recommendations includes individuals
7 with competence in toxicology. I would add
8 epidemiology and occupational medicine just to make
9 it clear.

10 MEMBER WELCH: Okay. I think that's
11 a good idea. Let me ask you about process. Should
12 we at this point see if there are anybody on the
13 Board objects to those changes, because they sound
14 good to me.

15 MEMBER FRIEDMAN-JIMENEZ: This is
16 George. I strongly support it because, for
17 example, NTP bases it's known human carcinogen on
18 the epidemiology. It has to have human evidence
19 and the toxicology is secondary. So I'm strongly
20 in support of adding epidemiology and occupational
21 medicine, which is really about the causal
22 inference.

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1 MEMBER WELCH: Do you want to, can we
2 edit it now on the screen or should I make those
3 changes and send another draft? It's easy enough
4 to add it. Under Number 1 we would add competence
5 in toxicology, occupational medicine, and
6 epidemiology.

7 CHAIR MARKOWITZ: You know -- this is
8 Steve Markowitz. It's unclear to me where
9 epidemiology really exists in OWCP. I don't know
10 where, my sense is that the Paragon contractor is
11 that it's mostly focused on exposure assessments,
12 I could be wrong.

13 And then we've heard about occupational
14 medicine, toxicology within OWCP, or specifically
15 within DEEOICP. And we really haven't heard at
16 all of epidemiology.

17 So it's one of the questions I think
18 that Ms. Leiton was going to get back to us about
19 exactly what the range of skills that the Paragon
20 had or brought to the project. But we'll find that
21 out I think in the future.

22 MEMBER WELCH: If I remember -- this

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1 is Laura Welch again. If I remember on the previous
2 recommendation where we recommended incorporating
3 all the resources in the table. I did have more
4 of a rational that talked about these sources being
5 peer-reviewed. It's possible to incorporate that
6 into this and making it a more complete
7 recommendation. It does refer back to the old one,
8 which I will.

9 CHAIR MARKOWITZ: Yes, yes. No, this
10 is Steven. That's a good point, actually. Your
11 response should be viewed supplemental to a prior
12 recommendation because you really haven't changed
13 anything. You've really just filled out what the
14 recommendation is.

15 MEMBER WELCH: Right.

16 CHAIR MARKOWITZ: Whereas there's
17 another recommendation actually which revised
18 things. Any other comments on this, or should we
19 move on?

20 (No audible response.)

21 CHAIR MARKOWITZ: No other comments.

22 MEMBER FRIEDMAN-JIMENEZ: This is

1 George. A question. Do you think we should also
2 add industrial hygiene?

3 MEMBER WELCH: You know, what we're
4 really looking at is we're having people go through
5 peer-review databases. And you're asking them to
6 accept what has already been peer-reviewed and
7 determined by these agencies to be a valid causal
8 link. You don't want to do too much second guessing
9 of those. But I don't think --

10 MEMBER DEMENT: This is John, I thought
11 of that too, but I had the same sort of thought
12 as Laurie. You know these are already exposure
13 response patterns that have already been reviewed
14 and accepted. So I'm not sure exposure assessment
15 needs to be thrown into there. It's mostly the
16 causal link and accepting those causal links and
17 how to get them into that form.

18 CHAIR MARKOWITZ: Other comments?

19 MEMBER CASSANO: Dr. Cassano. I tend
20 to agree with the last two speakers. I think the
21 more we add to this, the more complicated it looks
22 and the more complicated it looks and the more

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1 onerous it appears to the agency. So I would
2 recommend that we just keep it the toxicology,
3 occupational medicine, and epidemiology.

4 MEMBER FRIEDMAN-JIMENEZ: Sounds good
5 to me.

6 CHAIR MARKOWITZ: Ken, I know you're
7 not, I think you're not looking at the screen.
8 Do you have any questions in particular about the
9 content here?

10 MEMBER SILVER: I agree with the last
11 several speakers. Keep it simple, and the causal
12 links are already established.

13 CHAIR MARKOWITZ: So are there other
14 comments? Otherwise, we'll vote on this.

15 (No audible response.)

16 CHAIR MARKOWITZ: Okay, so the motion,
17 is there a motion?

18 MEMBER WELCH: Well I noted, but I move
19 that we approve it.

20 MEMBER SOKAS: I second.

21 MR. FITZGERALD: Dr. Markowitz, this
22 is Doug. I think you should probably at least by

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1 voice vote agree to the changes before you adopt
2 the recommendation. And then we can do the roll
3 call.

4 CHAIR MARKOWITZ: You're suggesting
5 that we vote on the modifications first and then
6 --

7 MR. FITZGERALD: Yes.

8 CHAIR MARKOWITZ: As opposed to just
9 voting on the modified statement or recommendation.

10 MR. FITZGERALD: I think you can take
11 by voice vote or just ask if there are any objections
12 to the modified language, and then we will note
13 that if there aren't any that it was unanimous and
14 then move the whole recommendation.

15 CHAIR MARKOWITZ: Okay, thanks. Are
16 there any objections to the minimal changes that
17 we've mentioned so far?

18 MEMBER FRIEDMAN-JIMENEZ: I don't
19 object, but I have a question on Number 4. So you
20 specified Group 2A, hierarchy 2A, that's the
21 probable human carcinogens. 2B is possible human
22 carcinogens. And it's a different and much larger

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1 group.

2 MEMBER WELCH: Thank you. I think we
3 should say 2A, and that was my understanding.
4 You're right, it doesn't say that. So if people
5 are okay with that, unless there's any objection,
6 we'll make it 2A.

7 (No audible response.)

8 CHAIR MARKOWITZ: Sounds good. Are
9 there any other comments?

10 (No audible response.)

11 CHAIR MARKOWITZ: Okay. So Doug, you
12 want to take a roll call for this?

13 MR. FITZGERALD: Sure. If hearing no
14 objections to the modifications in the language
15 and have someone move for the adoption of this
16 recommendation with modifications.

17 MEMBER WELCH: Yes, I did.

18 MR. FITZGERALD: Okay. And that is
19 who?

20 MEMBER WELCH: Dr. Welch.

21 MR. FITZGERALD: Dr. Welch. Okay.

22 MEMBER CASSANO: Dr. Cassano seconds.

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1 MR. FITZGERALD: Okay, thank you.

2 Okay, I will take the roll then. Dr. Dement.

3 MEMBER DEMENT: Yes.

4 MR. FITZGERALD: Dr. Silver.

5 MEMBER SILVER: Yes.

6 MR. FITZGERALD: Mr. Griffin.

7 MEMBER GRIFFON: Yes.

8 MR. FITZGERALD: Dr.

9 Friedman-Jimenez.

10 MEMBER FRIEDMAN-JIMENEZ: Yes.

11 MR. FITZGERALD: Dr. Boden.

12 MEMBER BODEN: Yes.

13 MR. FITZGERALD: Dr. Redlich.

14 MEMBER REDLICH: Yes.

15 MR. FITZGERALD: Dr. Cassano.

16 MEMBER CASSANO: Yes.

17 MR. FITZGERALD: Dr. Welch.

18 MEMBER WELCH: Yes.

19 MR. FITZGERALD: Dr. Sokas.

20 MEMBER SOKAS: Yes.

21 MR. FITZGERALD: Ms. Pope.

22 MEMBER POPE: Yes.

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1 MR. FITZGERALD: Ms. Vlieger.

2 MEMBER VLIEGER: Yes.

3 MR. FITZGERALD: Mr. Turner.

4 MEMBER TURNER: Yes.

5 MR. FITZGERALD: Mr. Whitley.

6 MEMBER WHITLEY: Yes.

7 MR. FITZGERALD: Mr. Domina.

8 MEMBER DOMINA: Yes.

9 MR. FITZGERALD: And Chairman
10 Markowitz.

11 CHAIR MARKOWITZ: Yes.

12 MEMBER WELCH: Before you close the
13 document, we did decide that under Number 4 we
14 should have it say IARC Group 2A. Just get a little
15 A in there. And I'll note we did agree to that.

16 Thank you.

17 MR. FITZGERALD: Yes, so noted.

18 CHAIR MARKOWITZ: Okay. The next one
19 is recommendation Number 3 from October, 2016 about
20 hiring former DOE workers to administer the
21 occupational health questionnaire. Okay. So
22 it's being brought on the screen.

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1 Let me just summarize, this is my
2 write-up. So let me summarize the sequence. You
3 know, we recommended that they hire former DOE
4 workers at the resource centers to do the
5 occupational health questionnaire. And DOL's
6 response to that was basically they agree it's
7 beneficial.

8 In fact, out of the 60 employees at the
9 resource centers, 17 are former DOE workers. And
10 that they encourage the contractor to recruit
11 former DOE workers. And whoever does the
12 occupational health questionnaire, the DOL makes
13 sure they are adequately trained and skilled to
14 do it.

15 So, that was DOL's response to us, our
16 recommendation. And so what I formulated here is
17 a recognition that we agree about the importance
18 of using former DOE workers. And we recognize the
19 DOL makes a commitment to hire, or at least
20 encourage at the hiring of DOE workers.

21 But then in what you're looking at, I
22 pose a number of questions that really get to the

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1 detail about how the former DOE workers are used
2 at the resource centers to perform this function.
3 And let me just review them.

4 I know Ken isn't looking at it, but so
5 how many of these at least 17 DOE workers who are
6 currently employed spend at least a third of their
7 time administering the occupational health
8 questionnaire in the past year?

9 The one third of their time is
10 arbitrary, but I wanted to put a number on it rather
11 than say, you know, something like substantial.
12 The second question is what percentage of the
13 occupational questionnaires were administered by
14 former DOE workers during the past year.

15 These two questions are trying to drill
16 down into yes, you have former DOE workers there.

17 We don't know exactly what they're doing to tell
18 us whether they are actually doing the occupational
19 health questionnaire. And if those data are hard
20 to come by, develop those data and consider using
21 them as metrics.

22 The third question is what job titles

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1 the former DOE workers had when they worked at DOE?

2 Did they occupy job titles that are highly relevant
3 to the kind of exposures that people had at the
4 sites. And thereby, you know, they would be better
5 able to ask the questions about out the occupational
6 health questionnaire.

7 And then the fourth question is, are
8 there resource centers which aren't doing so well
9 in this score of former of DOE workers that below
10 average in employing former DOE workers, or
11 administering the occupational questionnaire by
12 DOE workers?

13 And then finally, does the resource
14 center do job vacancy notices. And the
15 recruitments here specifically address the
16 desirability about having former DOE workers work
17 at the resource centers to do the occupational
18 health questionnaires.

19 So, this is about getting greater
20 detail to see whether the former DOE workers
21 actually are doing what we think they should be
22 doing at a minimum in terms of obtaining better

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1 quality information on the occupational health
2 questionnaire.

3 So let me just point out one last thing,
4 which is this is not a revised recommendation
5 telling, to the extent that we're advising the DOL,
6 to be more proactive in ensuring the DOL workers,
7 DOE workers are hired at the resource centers.
8 This is much more getting additional information
9 which then could be followed by a stronger
10 recommendation.

11 But let me leave it at that and open
12 the floor for comments, questions?

13 MEMBER CASSANO: Steve, this is Dr.
14 Cassano. I think I had written a comment to you
15 prior without sending it to the entire group,
16 unfortunately. As I remember, the resource
17 centers are run by contractors.

18 And I thought it might be appropriate
19 as part of our ask to ask that we either look at
20 the RFP or the actual contract language to see how
21 that encouragement is worded. And though we're
22 not revising a recommendation to basically see if

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1 they actually make it a required priority to hire
2 DOE, former DOE workers, or if it's just a loosely
3 unenforceable phrase of that encouragement.

4 CHAIR MARKOWITZ: So, this is Steve
5 Markowitz. So, to address that, we can do, add
6 a bullet at the end and ask specifically, does the
7 contract list the contractor require or have
8 language that specifically encourages hiring DOE
9 workers, meaning that we're asking for the
10 information about what's in, exactly what's in the
11 contract. Does that address your point?

12 MEMBER CASSANO: I think I would rather
13 say, you know, we would like to know if the RFP
14 or the contract has language that -- yes. That's
15 fine. I would like to see how strong that
16 encouragement is, because quite frankly they could
17 make it a priority. But, so yes, I think that's
18 a fine bullet.

19 CHAIR MARKOWITZ: So if we just ask
20 does the contract with the resource center
21 contractor require the hiring of former DOE
22 workers, does that --

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1 MEMBER CASSANO: No, I would say make
2 it a priority to hire former DOE workers. Or does
3 the RFP or contract language give former DOE workers
4 priority over other applicants? I think that's
5 the way to put it.

6 CHAIR MARKOWITZ: Okay. So Kevin, in
7 that what you just typed up, would you go back to
8 require and add require or prioritize, and then
9 a question mark at the end. So Tori, are you
10 looking at that, does that capture your point?

11 MEMBER CASSANO: Yes, I think we should
12 take require out and just say prioritize the hiring
13 of former DOE workers over other applicants. So
14 after contractor, a contract not contractor. Oh,
15 I see. Contract with the DOE, take out require
16 or. And I would say prioritize the hiring of former
17 DOE workers over other workers.

18 CHAIR MARKOWITZ: Over other
19 candidates.

20 MEMBER CASSANO: Other applicants,
21 yes.

22 CHAIR MARKOWITZ: Or applicants.

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1 MEMBER CASSANO: Or candidates.

2 CHAIR MARKOWITZ: Applicants, yes.

3 Okay. So does that do it now?

4 MEMBER CASSANO: Yes.

5 CHAIR MARKOWITZ: Okay. Other
6 comments, questions?

7 (No audible response.)

8 CHAIR MARKOWITZ: Okay. So in that
9 case, are there any objections to the modification
10 that Tori just added, made?

11 (No audible response.)

12 CHAIR MARKOWITZ: Okay, there are no
13 objections. So is there a motion to approve this
14 reply to DOL?

15 MEMBER BODEN: So moved.

16 CHAIR MARKOWITZ: Okay. That was --

17 MEMBER BODEN: Les Boden.

18 CHAIR MARKOWITZ: -- Dr. Boden, yes.

19 MEMBER FRIEDMAN-JIMENEZ: George
20 Friedman-Jimenez seconds.

21 CHAIR MARKOWITZ: Okay. So any final
22 comments before we -- so Doug, if you want to do

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1 a roll call here.

2 MR. FITZGERALD: Will do. Dr. Dement?

3 MEMBER DEMENT: Yes.

4 MR. FITZGERALD: Dr. Silver?

5 MEMBER SILVER: Yes.

6 MR. FITZGERALD: Mr. Griffon?

7 MEMBER GRIFFON: Yes.

8 MR. FITZGERALD: Dr.

9 Friedman-Jimenez?

10 MEMBER FRIEDMAN-JIMENEZ: Yes.

11 MR. FITZGERALD: Dr. Boden?

12 MEMBER BODEN: Yes.

13 MR. FITZGERALD: Dr. Redlich?

14 MEMBER REDLICH: Yes.

15 MR. FITZGERALD: Dr. Cassano?

16 MEMBER CASSANO: Yes.

17 MR. FITZGERALD: Dr. Welch?

18 MEMBER WELCH: Yes.

19 MR. FITZGERALD: Dr. Sokas?

20 MEMBER SOKAS: Yes.

21 MR. FITZGERALD: Ms. Pope?

22 MEMBER POPE: Yes.

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1 MR. FITZGERALD: Ms. Vlieger?

2 MEMBER VLIEGER: Yes.

3 MR. FITZGERALD: Mr. Turner?

4 MEMBER TURNER: Yes.

5 MR. FITZGERALD: Mr. Whitley?

6 MEMBER WHITLEY: Yes.

7 MR. FITZGERALD: Mr. Domina?

8 MEMBER DOMINA: Yes.

9 MR. FITZGERALD: Chairman Markowitz?

10 CHAIR MARKOWITZ: Yes.

11 MR. FITZGERALD: So passed.

12 CHAIR MARKOWITZ: Okay, we're going to

13 go to the next one. This is Recommendation number

14 7 from October 2016. And Dr. Sokas is going to

15 take over. But let me remind you that this is the

16 recommendation in which we suggested that

17 occupational medicine function be reorganized

18 within the Department of Labor so that occupational

19 medicine physicians within who worked on DEEOICP

20 blended with physicians who worked on other

21 compensation programs within OWCP, and even

22 physicians who worked in other parts of DOL such

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1 as OSHA. So Rosie, if you want to jump in.

2 (No audible response.)

3 CHAIR MARKOWITZ: Rosie, if you're
4 speaking, you're on mute.

5 MEMBER SOKAS: Sorry about that. Yes,
6 I'm on mute. I apologize. So yes, this is
7 basically a recommendation that we don't want them
8 to necessarily have to reorganize the entire
9 Department of Labor, but there are benefits to
10 having collegial relationships that can improve
11 the quality of the work product.

12 And in particular, we have concerns
13 about physicians practicing in isolation. Now,
14 the gist of it is really that in fact there are
15 resources throughout the Department of Labor that
16 might be exemplars, but that we await further
17 information from the program.

18 We understand that within OWCP there's
19 at least one additional physician. But we don't
20 have any real information on that yet. So we're
21 just asking for that information.

22 CHAIR MARKOWITZ: So this is really

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1 just an information request?

2 MEMBER SOKAS: That's right.

3 CHAIR MARKOWITZ: To provoke continued
4 discussion on this issue?

5 MEMBER SOKAS: Provoke is the
6 operative word, yes.

7 CHAIR MARKOWITZ: Any comments or
8 questions?

9 (No audible response.)

10 CHAIR MARKOWITZ: I'm just holding on
11 for a moment, giving people a chance to -- those
12 who can see it on the screen. Okay. So then I
13 think we need a motion to approve this.

14 MEMBER SOKAS: So I can, this is Rosie.
15 I'll move to approve.

16 MEMBER CASSANO: Second.

17 CHAIR MARKOWITZ: That was Dr. Cassano
18 who seconded. Okay. Any comments?

19 (No audible response.)

20 CHAIR MARKOWITZ: So, Doug, you want
21 to do a roll call?

22 MR. FITZGERALD: Sure. Dr. Dement?

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1 MEMBER DEMENT: Yes.

2 MR. FITZGERALD: Dr. Silver?

3 MEMBER SILVER: Yes.

4 MR. FITZGERALD: Mr. Griffin?

5 MEMBER GRIFFON: Yes.

6 MR. FITZGERALD: Dr.

7 Friedman-Jimenez?

8 MEMBER FRIEDMAN-JIMENEZ: Yes.

9 MR. FITZGERALD: Dr. Boden?

10 MEMBER BODEN: Yes.

11 MR. FITZGERALD: Dr. Redlich?

12 MEMBER REDLICH: Yes.

13 MR. FITZGERALD: Dr. Cassano?

14 MEMBER CASSANO: Yes.

15 MR. FITZGERALD: Dr. Welch?

16 MEMBER WELCH: Yes.

17 MR. FITZGERALD: Dr. Sokas?

18 MEMBER SOKAS: Yes.

19 MR. FITZGERALD: Ms. Pope?

20 MEMBER POPE: Yes.

21 MR. FITZGERALD: Ms. Vlieger?

22 MEMBER VLIEGER: Yes.

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1 MR. FITZGERALD: Mr. Turner?

2 MEMBER TURNER: Yes.

3 MR. FITZGERALD: Mr. Whitley?

4 MEMBER WHITLEY: Yes.

5 MR. FITZGERALD: Mr. Domina?

6 MEMBER DOMINA: Yes.

7 MR. FITZGERALD: And Chairman
8 Markowitz?

9 CHAIR MARKOWITZ: Yes.

10 MR. FITZGERALD: Okay, so moved.

11 CHAIR MARKOWITZ: Okay, we're going to
12 move on to Recommendation number 8. Kevin, this
13 is from October of 2016. And so this, Tori can
14 handle this.

15 But while this is being brought up, let
16 me just remind you this is the recommendation in
17 which we suggested that the entire case file go
18 through the contract position or the industrial
19 hygienist so they can look at all the material in
20 the case file as opposed to just what the claims
21 examiner decides is relevant and sends to them.
22 So Tori, you want to continue?

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1 MEMBER CASSANO: Yes. As Dr.
2 Markowitz said, the original recommendation was
3 about the entire claims file. And the Agency's
4 response was a list of reasons for why this
5 recommendation was either inappropriate or
6 impractical.

7 And at our last face-to-face meeting,
8 there was very strong support for sending the entire
9 case file from all of the board members including
10 the -- and especially including those board members
11 that do this kind of medical record review as part
12 of their practice.

13 And so the Department of Labor, without
14 reiterating all of this, Department of Labor
15 basically stated their reasons that they could not
16 agree with the recommendation. And if you could
17 scroll down a little bit.

18 Essentially, what this revised
19 recommendation says is it's our response to each
20 one of those issues essentially saying that the
21 fact that it's too cumbersome for the professionals
22 to look through the whole record is resolved by

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1 having a case map.

2 Number two, the issue that they didn't
3 want the industrial hygienist and medical examiners
4 to make up their own facts, basically believes the
5 Agency wishes that expert form their opinions based
6 on complete and accurate information and nothing
7 more and nothing less.

8 And most of us felt that it is
9 inappropriate to ask a professional to render an
10 opinion when they are not permitted to review
11 documents that may be pertinent but were not
12 provided to them. And it creates a tunnel vision
13 and possibly a false response from the
14 professional.

15 And then finally, the statement that
16 these same contractors do provide expert medical
17 opinions to other federal agencies, and in those
18 contracts they are required to have the entire
19 record.

20 And so essentially, we're reiterating
21 our initial recommendation with reasons that, and
22 statements that try to allay the Agency's fears

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1 or help modify the Agency's reactions to the
2 recommendation.

3 CHAIR MARKOWITZ: Thank you. So I
4 know that Dr. Boden is listening. And then maybe
5 we can start with those comments and then move on?

6 MEMBER CASSANO: Yes. I had no
7 problem with Les' comments, so if somebody has them,
8 so I don't know if Carrie has them. But he added
9 some wording that I was trying to work with and
10 just gave up. So we can add those, I have no
11 objection to that.

12 CHAIR MARKOWITZ: But I think, Les, I
13 think you should just go over those with the group.

14 So Les, I think you might be on mute because we're
15 not hearing you.

16 MEMBER BODEN: Correct. So I was just
17 asking, can you put them up, or are they not there
18 available?

19 MR. FITZGERALD: Yes, we're working to
20 pull them up right now for you.

21 MEMBER BODEN: Okay. I seem to have
22 -- okay, maybe that's -- okay. So on Issue 2, there

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1 was an objection to our suggestion stating that
2 the CEs are the finders of fact, and that sending
3 the whole file to outside experts would undermine
4 their role as finders of fact.

5 And the sentence that I added said in
6 addition, finders of fact in our legal system are
7 typically not experts, and we do not believe that
8 using experts undermines the role of the finders
9 of facts. Finders of facts like judges and juries
10 often rely on expert evidence.

11 The finders of fact then weigh the
12 evidence to determine the facts that they will use
13 in rendering an opinion, which I think, disclaimer,
14 I am not a lawyer. But I think that is a reasonable
15 description of the role of a finder of fact and
16 the role of experts in situations where there is
17 a finder of fact. Should I go on to the next?

18 CHAIR MARKOWITZ: Yes, I think you
19 should. I think you should. And I do think you're
20 doing the right thing by reading it both because
21 Ken's not looking at it and I think some members
22 of the public may not be able to see it. So that's

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1 a good thing.

2 MEMBER BODEN: Okay, good. So that
3 was, then Issue number 4, let me just sort of look
4 at it for a second myself. So Issue number 4 is,
5 thank you, if you move up. If you move up to read
6 Issue number 4 at the beginning sort of to help
7 people with it.

8 So Issue number 4 was when a claims
9 examiner refers a case to an IH or a CMC, they are
10 seeking guidance on a particular set of
11 circumstances from which the specific questions
12 are derived. And then if you can move down to the
13 suggestion.

14 So my suggestion was to add to that,
15 in addition, the Board's recommendation does not
16 affect the CE's ability to ask specific questions
17 of the IH or the CMC. It provides the consultants
18 with the opportunity to use their expertise to
19 identify information relevant to the CE's questions
20 that was not necessarily recognized as such by the
21 CE.

22 In reading this, I added a couple of

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1 words which might make it sound a little better.
2 So it's to use their expertise, I said to identify
3 information relative to the CE's questions that
4 would not necessarily be recognized as such by the
5 CE. Thank you.

6 MEMBER CASSANO: This is Dr. Cassano.
7 I just have one tweak to the first addition. It's
8 the IH and the CMC that are rendering an opinion.
9 The CE is actually making the determination. And
10 so I would like to use to determine the facts that
11 they will be using to make a decision.

12 So since they already used the term
13 determine the facts in making a determination to
14 be sort of redundant.

15 MEMBER BODEN: Okay. That's fine with
16 me. I think rendering an opinion and making a
17 decision, I don't care which words we use.

18 CHAIR MARKOWITZ: Are there further
19 comments on Les' recommended language? Okay. So
20 are there other comments on the entire piece?

21 MEMBER POPE: This is Duronda Pope.
22 I think this is essential. I agree with Dr. Boden.

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1 Essential, this recommendation and the additions
2 of the -- his recommendations because this is the
3 meat of the claimant's case, and is making sure
4 that all that information is getting to the right
5 people.

6 CHAIR MARKOWITZ: Thank you. Other
7 comments?

8 (No audible response.)

9 CHAIR MARKOWITZ: Okay. Hearing
10 none, is there any objection? Oh, I want to
11 announce to the group that Ken Silver is now on
12 WebEx and can see things. But we still need to
13 consider that members of the public may not be able
14 to see the screens. So we'll try to adapt what
15 we say.

16 MEMBER SOKAS: And this is Rosie. I
17 can't see the screen either.

18 CHAIR MARKOWITZ: Okay. So are there
19 any objections to the modifications that Dr. Boden
20 has recommended, has made?

21 (No audible response.)

22 CHAIR MARKOWITZ: So there are no

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1 objections. Do I hear a motion to accept then this
2 new recommendation?

3 MEMBER CASSANO: So moved.

4 MEMBER DEMENT: John, second.

5 CHAIR MARKOWITZ: Second, okay. Any
6 final comments on this?

7 (No audible response.)

8 CHAIR MARKOWITZ: Okay. So Doug, if
9 you could do a roll call?

10 MR. FITZGERALD: Certainly. Dr.
11 Dement?

12 MEMBER DEMENT: Yes.

13 MR. FITZGERALD: Dr. Silver?

14 MEMBER SILVER: Yes.

15 MR. FITZGERALD: Mr. Griffon?

16 MEMBER GRIFFON: Yes.

17 MR. FITZGERALD: Dr.
18 Friedman-Jimenez?

19 MEMBER FRIEDMAN-JIMENEZ: Yes.

20 MR. FITZGERALD: Dr. Boden?

21 MEMBER BODEN: Yes.

22 MR. FITZGERALD: Dr. Redlich?

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1 MEMBER REDLICH: Yes.

2 MR. FITZGERALD: Dr. Cassano?

3 MEMBER CASSANO: Yes.

4 MR. FITZGERALD: Dr. Welch?

5 MEMBER WELCH: Yes.

6 MR. FITZGERALD: Dr. Sokas?

7 MEMBER SOKAS: Yes.

8 MR. FITZGERALD: Ms. Pope?

9 MEMBER POPE: Yes.

10 MR. FITZGERALD: Ms. Vlieger?

11 MEMBER VLIEGER: Yes.

12 MR. FITZGERALD: Mr. Turner?

13 MEMBER TURNER: Yes.

14 MR. FITZGERALD: Mr. Whitley?

15 MEMBER WHITLEY: Yes.

16 MR. FITZGERALD: Mr. Domina?

17 MEMBER DOMINA: Yes.

18 MR. FITZGERALD: Chairman Markowitz?

19 CHAIR MARKOWITZ: Yes.

20 MR. FITZGERALD: Okay.

21 CHAIR MARKOWITZ: Okay. We're going

22 to move on now to the April 2017 Board Meeting.

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1 And we're going to, we have six recommendations
2 to go through. The first is on asbestos. If you
3 can just bring that up.

4 There was a lot of agreement, I would
5 say, between DOL and us on the issue of asbestos.
6 DOL agreed that they haven't recognized, at least
7 in writing, the issue of asbestos and lung cancer.

8 And we agreed that certain time
9 parameters, you know, number of days exposed,
10 latency, the gap of time between onset of exposure
11 and when the person develops disease, were
12 important.

13 There was a little bit of disagreement
14 about what that latency should be for each of the
15 illnesses. DOL preferred using ten years latency
16 for asbestosis. And we had recommended, really
17 for the purposes of keeping it simple, 15 years
18 across the board. But it's fine to use ten years
19 for asbestosis.

20 The way that this write-up is, and it's
21 a few pages so we're not going to by any means read
22 it. But the way this is structured is that the

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1 recommendation is now revised to include the
2 specifics that we would like to see in this for
3 asbestos related disease.

4 And we agree that if a person worked
5 250 days or more, that that would be sufficient,
6 with the exception of mesothelioma which is known
7 to have a smaller dose required. And we agreed
8 with DOL, 30 days is the minimum that can be used
9 for the purposes of presuming a mesothelioma is
10 related to DOE related asbestos exposure.

11 So if you could scroll down. You can
12 stop there, yes. So DOL raised a couple of areas
13 of disagreement or requests for additional
14 information. One is they made this distinction
15 between exposure and causation presumptions which
16 is different from the way we look at it.

17 But actually, when you scratch the
18 surface, there's not a whole lot of difference.
19 It's mostly, I think, linguistic and a little bit
20 of procedure.

21 When we talk about these exposure
22 criteria, 250 days or 30 days or a certain number,

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1 we're talking about whether it should be considered
2 sufficient to be causal if the person has the
3 disease in question. And whereas DOL is really
4 focusing on is this a significant exposure or not,
5 and making distinctions based on 1986 and 1995 and
6 the like.

7 So in any event, our approach is
8 simpler. But I think for the purposes really of
9 a causation presumption, the differences in
10 approaches in terms of calling them an exposure
11 versus a causation presumption is not a big
12 difference. So I don't think it's really an issue.

13 They, DOL wanted us to provide more
14 documentation about the listed job titles, and
15 which we will do. I don't include it here because
16 I still have to assemble, I have some but I have
17 to assemble more.

18 Now our recommendation, if you
19 remember, was for all maintenance and construction
20 job titles. And the List A, which is what's used
21 currently, is not as broad as what we're
22 recommending. So the documentation we will give,

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1 provide, is for all maintenance and construction
2 job titles.

3 And one side note is when I began to
4 think about this, I thought well why doesn't DOL
5 use what is the federal standard which is the
6 standard, it's called the SOC system that the
7 Department of Labor uses for statistics, which is
8 the classification system of jobs, the standard
9 occupational classification system which was
10 updated actually in 2018.

11 And so I provided at the end of this
12 what the SOC looks like. And if you could scroll
13 down for a moment, Kevin, so people can see what
14 this looks like. And this is just a standard way
15 of looking at various jobs, first in construction.

16 Yes, just go up a little bit more.

17 So construction, so you see familiar
18 job titles. It's all inclusive, and it may also
19 to some extent coincide with how some of the
20 research studies supporting asbestos related
21 disease among these workers has been done.

22 If you go a little further, Kevin, down,

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1 you'll get to the maintenance workers. And the
2 difference, for those who are looking, there's some
3 job titles in red that I made in red because I
4 thought they probably didn't routinely have
5 asbestos exposure at DOE, or they were jobs that
6 weren't really relevant to DOE.

7 But a question I have for the group when
8 I stop talking will be whether this introduction
9 of SOC is really a useful part of this
10 recommendation at all because DOL has been using,
11 you know from the SEM, it has its own lists of jobs.

12 They have job categories and they have job aliases.

13 So they've taken the very large number
14 of job titles that I've seen across the complex
15 over time and they have found ways of grouping them
16 into a much more limited number of job titles, not
17 all that dissimilar from what we're looking at on
18 the screen, particularly in the construction
19 trades.

20 So they have a system, and I'm not sure
21 that system of job categorization is at all broke.

22 So I'm raising the question of whether we should

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1 include an SOC recommendation as part of this, or
2 whether it's just a distraction.

3 So if you can go back up, Kevin. More
4 importantly is, okay, yes, is that the DOL requested
5 that we provide documentation that 2005 was an
6 important date in terms of exposure.

7 So our recommendation was if workers
8 worked in maintenance or construction for 250 days
9 or more prior to 2005, that they should be presumed
10 that they had significant or sufficient asbestos
11 exposure so that it would aggravate, contribute,
12 or cause an asbestos related disease.

13 And DOL said, what's the basis of the
14 2005. And they've heard our discussion about this,
15 particularly from the members of the Board who work
16 at the sites why we picked that date. But the
17 request from DOL was for some documentation that
18 could support that date.

19 By documentation they meant a change
20 in DOE policy or procedure, inspection data,
21 evidence of overexposure from industrial hygiene
22 data, or the like. And we haven't been able to

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1 come up with it, to tell you the truth.

2 I have interacted some with DOE, Greg
3 Lewis and Pat Worthington, asking about the 1995
4 order, when the 1995 order took effect. This is
5 Order 440.1, a major health and safety order.

6 And interestingly, orders do not have
7 the authority of regulations for the contractor.

8 So DOE issues an order like it did in 1995, the
9 contractor at DOE does not have to, it's not
10 mandatory that they alter their procedures to
11 comply with that order.

12 It does become mandatory when the
13 contract period ends and a new contract period
14 begins with the same contractor or with a new
15 contractor. It's built into the contract. But
16 when the order comes down during the period of a
17 contract, it's somewhat encouraged, somewhat
18 optional. It's not mandatory.

19 So I thought okay, we could use the
20 average length of a contract in existence in 1995
21 to come up with a more realistic date of when the
22 order became effective. But haven't really been

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1 able to get that information out of DOE, mostly
2 because of logistics of talking to them about this.

3 And we've been unable to come up with
4 any industrial hygiene data, any inspection reports
5 across the complex that would support 2005 versus
6 1995. So what I'm recommending is that we use the
7 1995 date as the date for presumption because the
8 order did take place.

9 We know things didn't change overnight,
10 but it is a marker of time. And I appreciate that
11 we rejected that marker in terms of the DOL
12 circular. That was slightly different. It was
13 the presumption that all exposure after 1995 was
14 essentially insignificant.

15 But that it's important to establish,
16 for asbestos, a presumption. And it's key, it's
17 essential to have a date. And if the order 440.1
18 allows us to get the date of 1995, it will cover
19 an awful lot of people.

20 And then sometime in the future, we can
21 identify information that would document that
22 exposure to asbestos could be presumed after 1995,

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1 then that information could be supplied to DOE and
2 DOL, they could possibly change the date.

3 But that 1995 appears to be an
4 acceptable date to DOL. And if we use that and
5 get this accepted as a presumption, it would be
6 a major step forward.

7 So I'm going to stop now and open it
8 up.

9 MEMBER WELCH: Stephen and everybody,
10 this is Laurie Welch. I think that's a great plan,
11 and I think having the presumption year at '95 will
12 cover the great majority of people who need to use
13 it. So I think that will make it easier for them
14 to get accepted. So I support that idea.

15 I think it's a good idea to list those
16 SOC jobs because every time we talk about a list
17 of jobs, I feel like we get back from OWCP you have
18 to tell us which jobs or that's too broad a statement
19 or something like that.

20 Construction, they have an accepted
21 list. But when we say maintenance, it seems as
22 if they want us to define it. So I think defining

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1 it, maybe it's not defining it the way they use
2 it. But they could match these job titles up with
3 their job titles, or say that they don't need to
4 use these job titles because they have their own
5 list of maintenance jobs.

6 But it would move us past this response
7 that I keep hearing that they want a list from us
8 of the job titles. Now if I'm wrong on that, then
9 they don't need them. If someone else could weigh
10 in on that?

11 MEMBER DOMINA: This is Kirk. I don't
12 have a problem with using these job titles to
13 further move this along. But everybody needs to
14 realize it's not inclusive. And the fact is the
15 way that Paragon groups job titles together is not
16 necessarily correct in the fact when you're dealing
17 with jurisdictions and stuff.

18 And I know I've talked about this a lot
19 in the past. But then this is also where it comes,
20 it's very important for whoever's doing the OHQ
21 to know about specificity at certain job sites and
22 how things were done.

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1 So you know, we can use this list to
2 start with. But then because it's the prime
3 example that's not on here is our health physics
4 techs, our radiation monitors, however you want
5 to word them in your text, they're completely left
6 off this. And they're always, because rad is
7 always a concern before chemicals.

8 And so they were first in and last out,
9 and I want to make sure everybody doesn't lose sight
10 of that as one glaring hole that's in this list
11 of job titles.

12 CHAIR MARKOWITZ: This is Steve
13 Markowitz. Yes, I hear you about that. This is
14 just a complete list of construction and
15 maintenance job titles. This is not a complete
16 listing of all job titles who were exposed to
17 asbestos at the facilities.

18 Think janitors for the moment, or you
19 know, or an obvious group that would have had
20 exposure. It would be at this point too difficult
21 I think to identify outside of construction and
22 maintenance all of the individual job titles on

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1 whom we could develop a presumption of asbestos
2 exposure.

3 And so I don't disagree with you that
4 there are other job titles that aren't on here.
5 They're not on here because they're not maintenance
6 and construction. And perhaps if this presumption
7 is accepted, then the next step would be to add
8 other job titles, you know, then have a framework.

9 And then if there are other job titles
10 that people could agree on a presumption basis could
11 be added, then they could be added.

12 MEMBER DOMINA: This is Kirk again.
13 Yes, I don't disagree with that. I just want to
14 make sure that it's not used against somebody
15 because they're not on the list, and they have to
16 fight harder with letters having to go back and
17 forth between, you know, DOL and the claimant.

18 MEMBER CASSANO: It's Dr. Cassano.
19 Could we go back up to where we reference the SSOC
20 in the document and how we request that it be used?

21 CHAIR MARKOWITZ: Yes, it's right
22 there. It's Item number 4.

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1 MEMBER CASSANO: Okay.

2 MEMBER DEMENT: Hi, this is John.
3 From a practical perspective, the only way this
4 SOC list will be useful is if they can map their
5 job titles, and there may be many, into one or more
6 of these SOC titles.

7 So in reality, it's going to require
8 them to do some work, to map their job titles into
9 these. I have mixed feelings of whether or not
10 we're introducing more confusion as opposed to less
11 by the SOC classification.

12 MEMBER CASSANO: I agree with Dr.
13 Dement. I think to consider using this, I think
14 there has to be some way for them to use these job
15 titles to include additional job titles, especially
16 for maintenance workers, but be specific about
17 saying that this is not an exclusive list because
18 as we've seen, especially with presumption, if it's
19 not covered under the presumptions, the great
20 possibility is that the person is denied.

21 And that goes to the 1995 thing too.

22 I think we need a strong statement that if a worker

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1 is not covered under the presumption, that the claim
2 needs to be evaluated by an industrial hygienist
3 and a CMC.

4 So I think I'm okay with leaving the
5 SSOCs out of it, as long as we determine that they
6 should include their maintenance workers in the
7 presumption.

8 MEMBER BODEN: So this is Les Boden.
9 So the question is does listing the standard
10 occupational categories help the DOL determine
11 whether somebody is a construction or maintenance
12 worker.

13 And I guess, I mean, my sense of it is
14 that independent of that list, it shouldn't be that
15 hard to figure out from somebody's job title if
16 they're construction or maintenance. And if it
17 is hard to figure it out, then it would be hard
18 to map it into job titles in the SOC list.

19 So that would kind of make me wonder
20 if it helps to have that list. You know, it might
21 be good to get some feedback from the people who
22 are making those decisions or from somebody from

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1 DOL who might be able to tell us whether they think
2 it would help or not.

3 CHAIR MARKOWITZ: Other comments?
4 This is Steve Markowitz. We could soften the
5 language on the use of the SOC. You know, we could
6 say, to consider relying on the SOC.

7 I kind of share Laurie's frustration
8 a little bit about the somewhat arbitrary nature
9 of the previous lists we've seen. But I don't want
10 this to serve as a distraction from adopting a
11 presumption about asbestos which is, you know, a
12 very important goal.

13 And I don't think, frankly I don't think
14 it's necessary to adopt an SOC framework to get
15 it right for the most part.

16 MEMBER WHITLEY: This is Garry. I
17 think that if you just leave it maintenance or
18 construction categories, then if you were filed
19 on a claim, you're the claimant and you were a
20 maintenance or construction worker, either, it
21 would be pretty easy to get verification from that
22 from your work records and/or from job titles.

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1 And we're reminded over and over that
2 they do not use the SEM to deny cases. So if you
3 just filed a claim and you said you were a
4 maintenance construction worker and told what you
5 were, you know, electrician for me talking, then
6 I don't know why that wouldn't be good enough to
7 do that. I don't know why you need to make it
8 stronger.

9 MEMBER VLIEGER: This is Faye. The
10 fact that they say they don't deny with the SEM
11 is inaccurate. They say they can't find any links
12 in the SEM, and then require the worker to provide
13 toxic substances which they're not able to do
14 because no one has that information. And there
15 is no monitoring data.

16 So I do think we need to be specific,
17 and I agree with Kirk in that there are many job
18 titles who are required to be in the field right
19 next to these people that are not on the list that
20 we should address at a later date.

21 MEMBER TURNER: This is James. What
22 about bystanders? I think we talked about

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1 bystanders.

2 CHAIR MARKOWITZ: Yes. This is Steve
3 Markowitz. That's a difficult and important issue
4 because you had a lot of production workers who
5 were bystanders when the maintenance guys were
6 doing their work, right.

7 The problem is defining the boundaries
8 of that, who's in, who's out. And the presumption
9 we're trying to, you know, start with the basics,
10 get the basics right, things we absolutely know.

11 And then use that as a basis for expanding it in
12 the future.

13 If we were to think through bystanders,
14 we would I think have a very difficult time figuring
15 out where many job titles fit. I'm not denying
16 that it's a problem, it is. But for the purposes
17 of presumption, I just don't see how we can fold
18 that in at this point.

19 MEMBER CASSANO: This is Dr. Cassano
20 again. I think I agree with Steve and I agree that
21 I think an incremental response to this is probably
22 the best way to do this. Maybe we should leave

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1 this as pure and simple as we can make it and get
2 it accepted, and then revisit it later on or a future
3 board revisit it so that, you know, all of these
4 other additions.

5 But if we get some basic presumptions
6 established, then I think it would be easier to
7 add some of these more complicated cases to that
8 presumption at a later date.

9 CHAIR MARKOWITZ: So, any other
10 comments? I mean, I think I know what the issues
11 -- any other comments on the 1995 date?

12 MEMBER SILVER: When we submit this,
13 Ken Silver here, could we ask DOL to provide the
14 Board with data on people who don't meet the
15 presumption because their exposures occurred after
16 1995, essentially track how the 1995 bright line
17 is working going forward?

18 CHAIR MARKOWITZ: Yes, this is Steve
19 Markowitz. That's interesting because it goes to
20 the point of our concern about people who don't
21 meet this presumption not getting a fair shake.
22 And that would be something that could be monitored

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1 and could be tracked.

2 MEMBER SILVER: Yes. We've had a hard
3 time getting data from DOE contracts. We had a
4 really hard time when 1995 came up in another
5 context. So we may as well put in place a tracking
6 system now.

7 CHAIR MARKOWITZ: Other comments?

8 MEMBER BODEN: Ken, this is Les Boden.
9 Could you restate what you would like DOE to
10 provide?

11 MEMBER SILVER: I don't know --

12 MEMBER BODEN: DOL to provide, sorry.

13 MEMBER SILVER: I don't know if it has
14 to go in the language of the presumption. But in
15 the past, we've passed our recommendations along
16 with a little bit of a background statement. And
17 in that background statement we would ask DOL to
18 report back to the Board periodically claims that
19 did not get included in this presumption because
20 the exposures occurred only after 1995.

21 MEMBER BODEN: All right, so you would
22 want both accepted and not accepted claims?

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1 MEMBER SILVER: Correct, and the Board
2 could then --

3 MEMBER BODEN: Okay. That's what I
4 wanted to clarify for myself. Thank you.

5 MEMBER SILVER: Sure.

6 MEMBER BODEN: I did have one other
7 thought after Garry's simplifying idea to say
8 construction and maintenance. That would then
9 give the worker many ways, many pathways to come
10 in under this presumption.

11 If their job title didn't leap off the
12 page saying maintenance or construction, they might
13 be able to demonstrate that they worked for a
14 contractor who had one or both of those words
15 attached to them. That would be, you know, a
16 reasonable way of them getting included.

17 CHAIR MARKOWITZ: Other comments? So
18 this is Steve Markowitz. I think to keep it simple,
19 I suggest that we remove reference to the SOC system
20 and just go with maintenance and construction,
21 because my concern is that it will be a distraction
22 and it will end up being an effort that will take

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1 considerable amount of time and delay use of the
2 asbestos presumption, assuming it's accepted.

3 MEMBER DOMINA: This is Kirk. I guess
4 I can look at this maintenance for Hanford in a
5 couple different ways because the production
6 workers are under the M&O contract which is
7 maintenance and operations.

8 So you know, if you're just on this SOC
9 list, is it purely just construction. But yes,
10 and I think simplifying is good. But I think for
11 terminology for me, I can look at the maintenance
12 side as being the M&O side, maintenance and
13 operations which is a production side.

14 CHAIR MARKOWITZ: This is Steve
15 Markowitz. I don't quite get your point, Kirk.

16 MEMBER DOMINA: Well, if this is just
17 a construction list, when you simplify it, if you
18 don't know all that background information what
19 we're talking about, to me it includes the
20 production workers also which still leaves out some
21 of our folks.

22 You know, I'm just saying on how you

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1 can look at it maybe at a 30,000 foot level or
2 whatever.

3 CHAIR MARKOWITZ: But the maintenance
4 workforce does not include production. I understand
5 the M&O contractor includes both. But if this is
6 limited to maintenance workers, that by definition
7 would not include production.

8 MEMBER DOMINA: Yes. But looking at
9 it by just simplifying it like that, I see it the
10 other way. I'm just saying, you know, because
11 that's the way the contract is.

12 And so when you put just maintenance
13 in there, that is the production side because we
14 did a lot of asbestos work on our side. You know,
15 because if it's not Davis-Bacon, it belongs to
16 maintenance, onsite forces, production.

17 MEMBER POPE: This is Duronda Pope.
18 I agree with Kirk because in a lot of the situations
19 in operations, you had operators and maintenance
20 in the same area, in the same hazardous area. And
21 excluding them I think would be doing them a
22 disservice.

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1 CHAIR MARKOWITZ: Other comments?

2 (No audible response.)

3 CHAIR MARKOWITZ: So my proposed
4 modification is to entirely remove reference to
5 the SOC classification system from this revised
6 recommendation. So are there any other comments
7 on that issue?

8 (No audible response.)

9 CHAIR MARKOWITZ: I think we should --
10 are there any objections to removing reference to
11 the SOC?

12 (No audible response.)

13 CHAIR MARKOWITZ: Okay. So hearing no
14 objections then, we will remove reference to that.

15 And Kevin, I may need to -- maybe something as
16 simple as removing Item number 4, but I think there
17 are some other pieces. So as long as we remember
18 that it's going to be removed, and I can take care
19 of it.

20 Are there other modifications for the
21 revised recommendation that are -- at this time?

22 (No audible response.)

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1 CHAIR MARKOWITZ: Okay. So I think we
2 can take a vote. Is there a motion to accept this?

3 MEMBER WHITLEY: This is Garry. I'll
4 make a motion to accept it.

5 CHAIR MARKOWITZ: Is there a second?

6 MEMBER DEMENT: Second.

7 CHAIR MARKOWITZ: Any comments?

8 (No audible response.)

9 CHAIR MARKOWITZ: Okay. So Doug, if
10 you could take a vote?

11 MR. FITZGERALD: Sure. Dr. Dement?

12 MEMBER DEMENT: Yes.

13 MR. FITZGERALD: Dr. Silver?

14 MEMBER SILVER: Yes.

15 MR. FITZGERALD: Mr. Griffon?

16 MEMBER GRIFFON: Yes.

17 MR. FITZGERALD: Dr.

18 Friedman-JIMENEZ?

19 MEMBER FRIEDMAN-JIMENEZ: Yes.

20 MR. FITZGERALD: Dr. Boden?

21 MEMBER BODEN: Yes.

22 MR. FITZGERALD: Dr. Redlich?

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1 MEMBER REDLICH: Yes.

2 MR. FITZGERALD: Dr. Cassano?

3 MEMBER CASSANO: Yes.

4 MR. FITZGERALD: Dr. Welch?

5 MEMBER WELCH: Yes.

6 MR. FITZGERALD: Dr. Sokas?

7 MEMBER SOKAS: Yes.

8 MR. FITZGERALD: Ms. Pope?

9 MEMBER POPE: Yes.

10 MR. FITZGERALD: Ms. Vlieger?

11 MEMBER VLIEGER: Yes.

12 MR. FITZGERALD: Mr. Turner?

13 MEMBER TURNER: Yes.

14 MR. FITZGERALD: Mr. Whitley?

15 MEMBER WHITLEY: Yes.

16 MR. FITZGERALD: Mr. Domina?

17 MEMBER DOMINA: Yes.

18 MR. FITZGERALD: Chairman Markowitz?

19 CHAIR MARKOWITZ: Yes.

20 MR. FITZGERALD: Motion carries.

21 CHAIR MARKOWITZ: Okay. We're going

22 to move on to occupational asthma. This is

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1 Recommendation number 2 from April 2017. And
2 Carrie Redlich is going to lead the discussion here.

3 It is a long document, so I think we'll
4 go with a summary. So if you want to -- okay, it's
5 up. Fine. Okay, Carrie?

6 MEMBER REDLICH: Yes. So this
7 recommendation has parts related to the criteria
8 to diagnose work-related asthma. The reason the
9 comments are so long, I think unlike a number of
10 the other recommendations, the recommendations
11 were already incorporated into the last manual.

12 And I think this does raise an issue
13 potentially for other recommendations. But I
14 think I also looked at not only whether the DOL
15 agreed or didn't with our recommendation, but how
16 it was actually implemented in the manual because
17 I think implementation in general can be
18 challenging, even if there's agreement on the
19 content of the recommendation.

20 So this recommendation has four parts.
21 The first one just related to the definition of
22 work-related asthma, that it should include both

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1 new onset asthma and work-exacerbated asthma. And
2 the DOL agreed with the recommendation, and it was
3 also appropriately incorporated into the revised
4 procedure manual.

5 So that was the first part. The second
6 part of the recommendation addressed the criteria
7 for the diagnosis of asthma, and the main issue
8 being whether one had to demonstrate
9 physiologically reversible airflow obstruction,
10 or whether some other criterion such as a treating
11 physician's diagnosis or response to asthma
12 medication would also be sufficient.

13 And for non-physicians, in practice
14 asthma is usually diagnosed based on a clinical
15 assessment and response to treatment rather than
16 a lot of spirometry and other testing.

17 So, and also the DOL agreed with our
18 second recommendation that other criteria other
19 than demonstrating reversible airflow obstruction
20 was sufficient, which was good.

21 One issue was in reviewing how this was
22 then incorporated into the new procedure manual,

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1 the wording didn't actually convey as clearly as
2 it could the recommendation. So that's why this
3 goes on a little bit longer.

4 I don't think we need to go into the
5 detail, but I simply pointed out the area that I
6 thought was confusing, and suggested alternate
7 wording.

8 So, because basically they agreed that
9 a physician can rely on other clinical information
10 to substantiate his or her diagnosis of asthma,
11 meaning other than demonstrating this
12 reversibility.

13 But then the example then was
14 spirometry was the best way to do it, and the
15 response to a bronchodilator. So I suggested
16 alternate examples such as, you know, wheezing on
17 exam or documentation of response to treatment,
18 et cetera.

19 So does anyone have questions or
20 comments? That's the first part of the
21 recommendation.

22 CHAIR MARKOWITZ: Steve Markowitz. I

1 think it's beautifully written, and you've done
2 their homework for them, so they should especially
3 thank you.

4 MEMBER REDLICH: Okay. So moving on
5 to the last two, which are really related. And
6 again, for the non-physicians, generally the
7 general recommendation as far as how you diagnose
8 work-related asthma is first you sort of confirm
9 the diagnosis that you have asthma. And then you
10 address the work-related component.

11 And so the second in the -- the three
12 and the four, the last two relate to this how you
13 determine the association. And generally it's
14 done by really a careful history and temporal
15 relationship in terms of onset being worse at work,
16 better away from work.

17 And so that was recommendation #2-3,
18 and the DOL agreed with this recommendation.

19 And then the fourth one was again
20 addressing the criteria for the work-related
21 component and making the point that there could
22 be a single specific triggering event, but that

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1 that was not typical.

2 And most commonly, work related asthma
3 occurred following repeated exposures to mixed
4 types of exposures such as dust and fumes. And
5 so the Department of Labor also agreed with this
6 recommendation.

7 They pointed out that we had given heat
8 and cold as other examples of work exposures that
9 could trigger asthma. And we agreed that those
10 were not good examples given how common those types
11 of exposures were.

12 And they also, it was -- I'll try to
13 simplify this. The issue sort of also came to
14 whether you had to have a single exposure versus
15 what occurs in the great majority of cases where
16 there is an exposure that is actually a mixture
17 of substances such as the exhaust fumes or the way
18 cigarette smoke is a mixture of multiple different
19 combustion products in the cigarette smoke.

20 And I think that the confusion arises
21 over the interpretation and the wording of Part
22 E of the Act which states that exposure to a toxic

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1 substance at a covered DOE facility was at least
2 as likely as not a significant factor in
3 aggravating, contributing, or causing the illness.

4 That's the key wording in the Part E.

5 And so the DOL agreed with us that multiple
6 exposures could cause work-related asthma. But
7 in their wording then, again looking at the manual
8 of how this has been incorporated, the wording was
9 sort of I think sub-optimal.

10 And the wording suggests that there had
11 to be a single exposure and that the -- to find
12 out where this was, that the qualified physician
13 had to provide specific information on the
14 mechanism for causing the condition and that the
15 strongest justification was when you could identify
16 a specific exposure and substance.

17 And so we tried to clarify this and
18 first of all show that -- the meaning of what a
19 toxic substance is. And that it's defined
20 frequently as a -- although it could be a single
21 substance, it is commonly a mixture of substances
22 such as gasoline or a number of other examples.

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1 So understanding that there's the
2 importance of following the Act, we felt that there
3 was a misunderstanding of what was meant by a toxic
4 substance and that whether it's cigarette smoke
5 or mixed solvents or diesel exhaust fumes, that
6 there are a number of examples where the toxic
7 substance is actually a mixture of toxic chemicals.

8 And so I think basically the DOL agreed with our
9 recommendation. Again, the way it was implemented
10 in the wording of the new manual was, I think,
11 confusing.

12 So I have suggested alternate wording
13 to clarify in the manual. And I explained that
14 as coherently as I could. But I'll stop there if
15 anyone has any comments or suggestions.

16 CHAIR MARKOWITZ: This is Steve
17 Markowitz. So just while we're on this suggested
18 language, for those of us who -- actually, Kevin
19 can bring this up on the screen, too. The suggested
20 language is on which page?

21 MEMBER REDLICH: That language is
22 actually on page 5.

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1 CHAIR MARKOWITZ: Five, okay. It's
2 the italicized on page 5?

3 MEMBER REDLICH: Yes. So what I
4 suggested is that -- and I think the -- earlier
5 in the definition, basically it says that the CE
6 does not apply a toxic substance exposure because
7 any dust, vapor, gas, or fume has the potential
8 to affect asthma.

9 So that current wording is correct and
10 is included. If you go down further under the two
11 -- the Roman, you know, this II, the next paragraph.

12 The bolded section, I thought if that were removed
13 -- so in this case, one needed more to remove certain
14 wording rather than to add additional wording.

15 But the sections being removed would
16 be the bolded section, the qualified physician must
17 provide a well-rationalized explanation. And
18 there are a number of reasons.

19 We don't need to go through each
20 sentence, but you know, after many years of studying
21 and being an expert in this area, if I were asked
22 to describe the mechanisms that are causing asthma,

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1 I would be unable to do that.

2 So I don't think we should request a
3 qualified physician provide that. And then the
4 strongest justification when you could identify
5 the specific incident. I think if that section
6 were removed, that would actually provide greater
7 clarity than having it included.

8 CHAIR MARKOWITZ: Steve Markowitz.
9 So as it stands now, DOL accepts, I think they have
10 language in their procedure manual that, as you
11 said on page 4, quote, any dust, vapor, gas, or
12 fume has the potential to affect asthma, end quote.

13 And so that's their standard, they
14 don't require naming of a toxic substance, right?

15 MEMBER REDLICH: No. So the standard
16 states, just going back to it.

17 CHAIR MARKOWITZ: It's the third full
18 paragraph.

19 MEMBER REDLICH: The standard states
20 that an illness can be accepted as -- so this is
21 the bottom of page 3. An illness can be accepted
22 as a compensable covered illness if exposure to

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1 a toxic substance at a covered facility was at least
2 as likely as not.

3 And I think if we appreciate that the
4 way the NIH and you know, other organizations, and
5 I think scientific community understands a toxic
6 substance, is that that frequently is a mixture
7 of toxic substances.

8 CHAIR MARKOWITZ: Yes, Steve
9 Markowitz. That's from Part E. That's from the
10 statute.

11 MEMBER REDLICH: That's correct.

12 CHAIR MARKOWITZ: I get that. But DOL
13 has already in applying this asthma, and this is
14 on page 4 in the third full paragraph where you
15 quoted from the procedure manual, they -- well,
16 the CE does not apply a toxic substance exposure
17 assessment.

18 And then skipping on, because any dust,
19 vapor, gas, or fume has the potential to affect
20 asthma. So in the claims evaluation process, then
21 -- just, this is a question. The claims examiner
22 doesn't have to identify a potentially toxic

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1 substance, right?

2 MEMBER REDLICH: That's correct.

3 CHAIR MARKOWITZ: Okay. Okay.

4 MEMBER REDLICH: So I think there's
5 sort of some internal consistency in the wording.

6 It's just the way the wording of the rest of the
7 current manual could confuse a physician or a claims
8 examiner because it sort of wants the specific
9 mechanism and it says that the strongest
10 justification is when the physician can identify
11 the incident that occurred, and the most likely
12 toxic trigger.

13 So I think that that wording is actually
14 inconsistent with the earlier wording. And the best
15 thing to do would be to remove it.

16 CHAIR MARKOWITZ: Right. So, Steve
17 Markowitz. So part of your response is that they
18 should do away with the triggering idea?

19 MEMBER REDLICH: That's correct.

20 CHAIR MARKOWITZ: Okay. You know, the
21 work related asthma is defined as temporally
22 related symptoms, to work. And they already

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1 concede there's no toxic substance standard they
2 need to apply because any vapor, gas, dust, and
3 fume can do it.

4 And then they were hung up on this whole
5 idea of identifying a trigger moment or a trigger
6 mechanism. And our recommendation at least
7 sitting here is that the whole triggering concept
8 being removed?

9 MEMBER REDLICH: Yes.

10 CHAIR MARKOWITZ: Okay. Thanks.

11 MEMBER REDLICH: And that is also very
12 consistent with the entire medical literature about
13 work-related asthma.

14 CHAIR MARKOWITZ: Comments,
15 questions?

16 (No audible response.)

17 MEMBER REDLICH: I think I also just
18 commented I was -- the nice thing about the new
19 manual is it's all PDF'd and you can easily search
20 it. The recommendation also has a table with the
21 criteria for diagnosing work-related asthma which
22 just needs major revision and is not accurate.

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1 I didn't include it in the handout.

2 MEMBER VLIEGER: This is Faye.
3 Perhaps I'm not looking at the most up to date edited
4 version. But on page 4, paragraph 3, second line
5 from the bottom, that on a more likely than not
6 basis for a significant factor, I'm not sure if
7 that's something that Carrie typed up or if that's
8 a quote from the manual. But the statute is as
9 likely as not, like she quoted earlier.

10 CHAIR MARKOWITZ: Yes. You see that,
11 Carrie?

12 MEMBER REDLICH: I'm just looking for
13 the spot.

14 CHAIR MARKOWITZ: Page 4, the second
15 full paragraph. Yes, the paragraph begins there
16 are numerous other examples. We're looking at it
17 on the screen, and if you look at the last sentence.

18 MEMBER REDLICH: Okay.

19 CHAIR MARKOWITZ: So, remove more and
20 say as least as, right?

21 MEMBER REDLICH: I'll correct that.
22 Thank you.

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1 CHAIR MARKOWITZ: Other comments,
2 questions?

3 (No audible response.)

4 CHAIR MARKOWITZ: Okay. So hearing
5 none, then --

6 (Simultaneous speaking.)

7 MEMBER REDLICH: So, I would just add
8 that having spent my professional career trying
9 to teach practitioners how to diagnose work-related
10 asthma, I think it is challenging.

11 So I think what is important for this
12 to be implemented is that the training materials
13 and the like, I just think that those need attention
14 because I think it will take some training of those
15 involved to sort of consistently and accurately
16 make the diagnosis.

17 This is just because it's most
18 physicians don't have, even pulmonary physicians,
19 do not have much experience in diagnosing
20 work-related asthma.

21 CHAIR MARKOWITZ: This is Steve
22 Markowitz. So, DOL is not going to train the

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1 providers. But if it sets out very clear criteria
2 for this --

3 MEMBER REDLICH: Yes, that's what I
4 meant.

5 CHAIR MARKOWITZ: Okay.

6 MEMBER REDLICH: I meant that I just
7 think it's important that there be clear criteria
8 to provide guidance.

9 CHAIR MARKOWITZ: Okay, other --

10 MEMBER REDLICH: Currently that's, you
11 know, such as the -- it's not included here but
12 the current table that is I think meant to do that
13 contains a number of inaccuracies.

14 CHAIR MARKOWITZ: Any other comments
15 or questions on this topic?

16 (No audible response.)

17 CHAIR MARKOWITZ: Okay. I take it
18 there -- are there any objections to Faye's revision
19 of at least as likely as not?

20 (No audible response.)

21 CHAIR MARKOWITZ: No objections. So,
22 fine. Is there a motion to accept this revised

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1 recommendation?

2 MEMBER WELCH: Yes, I move -- Dr.
3 Welch.

4 CHAIR MARKOWITZ: Second. I second
5 it, Steve Markowitz. Let's vote. Doug, if you
6 could do the roll call.

7 MR. FITZGERALD: Sure. Dr. Dement?

8 MEMBER DEMENT: Yes.

9 MR. FITZGERALD: Dr. Silver?

10 MEMBER SILVER: Yes.

11 MR. FITZGERALD: Mr. Griffon?

12 MEMBER GRIFFON: Yes.

13 MR. FITZGERALD: Dr.
14 Friedman-Jimenez?

15 MEMBER FRIEDMAN-JIMENEZ: Yes.

16 MR. FITZGERALD: Dr. Boden?

17 MEMBER BODEN: Yes.

18 MR. FITZGERALD: Dr. Redlich?

19 MEMBER REDLICH: Yes.

20 MR. FITZGERALD: Dr. Cassano?

21 MEMBER CASSANO: Yes.

22 MR. FITZGERALD: Dr. Welch?

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1 MEMBER WELCH: Yes.

2 MR. FITZGERALD: Dr. Sokas?

3 MEMBER SOKAS: Yes.

4 MR. FITZGERALD: Ms. Pope?

5 MEMBER POPE: Yes.

6 MR. FITZGERALD: Ms. Vlieger?

7 MEMBER VLIEGER: Yes.

8 MR. FITZGERALD: Mr. Turner?

9 MEMBER TURNER: Yes.

10 MR. FITZGERALD: Mr. Whitley?

11 MEMBER WHITLEY: Yes.

12 MR. FITZGERALD: Mr. Domina?

13 MEMBER DOMINA: Yes.

14 MR. FITZGERALD: Chairman Markowitz?

15 CHAIR MARKOWITZ: Yes.

16 MR. FITZGERALD: The recommendation
17 carries.

18 CHAIR MARKOWITZ: Okay. It's 2:50.

19 Let's take a ten minute break, and then we'll resume
20 with COPD back at 3:00 p.m.

21 MR. FITZGERALD: One thing before you
22 sign off, don't sign off. If you could just put

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1 your phones on mute because logging back on could
2 take some time. So if you just want to put your
3 phones on mute and we'll see you in 15 minutes,
4 is that right, Chairman?

5 CHAIR MARKOWITZ: I put my phone on
6 mute already. Yes, five after 3:00.

7 MR. FITZGERALD: Five after 3:00.
8 Thank you.

9 (Whereupon, the above-entitled matter
10 went off the record at 2:51 p.m. and resumed at
11 3:07 p.m.)

12 CHAIR MARKOWITZ: Well, we have a
13 quorum, so I think we can get started.

14 MR. FITZGERALD: Okay.

15 CHAIR MARKOWITZ: I think we're on
16 COPD. Let's see, Kevin, if you could bring up Item
17 G, yes. Okay, thank you. Okay, Laurie?

18 MEMBER WELCH: Yes. So this -- we have
19 a response and a re-written proposal based on the
20 -- to try to address the comments that we got from
21 OWCP. So this was the -- the certain five bullet
22 points you're looking at were our understanding

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1 of the primary reasons that OWCP did not accept
2 our first recommendation.

3 The first one was that they wanted --
4 they were saying the presumption and any
5 compensation would have to be due to a specific
6 toxic substance. And the program has defined toxic
7 substance as Number 2. And looking at it that way,
8 the VGDF is way too broad.

9 The Number 4 was that the current
10 presumption for COPD was, like, 20 years of exposure
11 to the substance, and they thought that our -- the
12 OWCP thought that our recommendation of five years
13 of exposure was sufficiently inconsistent with
14 their research. And then they requested
15 clarification of the labor categories.

16 So the response we've put together
17 basically said that there are many ways in which
18 the Department currently accepts exposure to
19 mixtures and lists some of the ones that are in
20 their work processes and complex mixtures, such
21 as diesel exhaust or welding fumes.

22 And they clearly accept solvents as a

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1 category, even though that can be a mixture of many,
2 many different kinds. But trying to be somewhat
3 responsive to them, we created something that names
4 a lot of specific agents in addition to VGDF.

5 Let's see. If you can scroll down some
6 more, Kevin, we're just going to get that next one
7 up that we've got in.

8 So in terms of their statement that our
9 recommendations are inconsistent with their own
10 review, that it requires 20 years of asbestos
11 exposure, we pretty much said, well, we need to
12 review your documentation.

13 So now we're moving to what the new
14 presumption is. So if you look under, primarily
15 on Number 2, there are many different ways that
16 a presumption of significant exposure to toxic
17 substances can be accepted as causing COPD.

18 One would be five years of work with
19 a list of specific agents. And defining where,
20 they would figure out that those people were
21 exposed, either from the OHQ or the EE-3. The next
22 one is five years of work in any one of the job

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1 titles encompassed by major categories.

2 This one, I used it this way because
3 Stephen was proposing putting those into the
4 asbestos presumption. So I think we have to revisit
5 these.

6 The last one is five years of exposure
7 with agents that fall into one of those five major
8 toxic substances groups. Within the SEM, agents
9 are grouped into these categories. So if there
10 was an exposure to any particular agent, the claims
11 examiner could look up that agent and see if it
12 fell into one of these five categories.

13 So that's the main body of these --

14 (Audio interference)

15 CHAIR MARKOWITZ: There's some
16 extraneous noise coming through. People should
17 just be sure to put their phone on mute.

18 MEMBER WELCH: That helped, thanks. So
19 we're still maintaining the emphasis on VGDF but
20 providing alternative ways for the Department to
21 accept claims where that's a factor, either by
22 identifying one of these primary agents, working

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1 in particular job titles, or being exposed to an
2 agent within one of those five groups which are
3 all well recognized causes of COPD.

4 So, comments or questions?

5 (No audible response)

6 MEMBER WELCH: And I would also add
7 that the SEM Subcommittee took a look at this
8 before. We were giving it a wordsmithing before
9 we sent it to the rest of the group.

10 CHAIR MARKOWITZ: Steve Markowitz.
11 So this is really very nicely written up and, I
12 think, pinpoints and addresses the issues on both
13 Page 1 and 2 that DOL raised. I want to make a
14 comment which -- because we just did occupational
15 asthma, and there we saw language in which DOL
16 accepts that VGDF causes, aggravates, or
17 contributes to work-related asthma and relieves
18 the claims examiner from having to identify, look
19 for a toxic substance.

20 And yet, when it comes to a different
21 kind of obstructive lung disease, COPD, there's
22 insistence that the VGDF be linked to specific toxic

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1 substances.

2 I understand that asthma and COPD are
3 a little bit different. And there's a standard
4 for asthma that the doctor has to identify that
5 it's temporally related to work, and that doesn't
6 apply here to COPD. But nonetheless, DOL is
7 displaying some clear flexibility about VGDF with
8 relation to asthma and would appear to be
9 demonstrating a lot less flexibility.

10 But I do think this scheme solves that
11 problem and overcomes, I think, the principal
12 reluctance that DOL has about the VGDF. Because
13 here, it's clearly tied to either specific toxic
14 substances or groups of toxic substances. So that
15 can no longer be an objection.

16 I did want to ask the group though on
17 Item 2, presumption of significant chronic exposure
18 to toxic substances. And there it says, quote,
19 claimants will be presumed to have had significant
20 chronic occupational exposure, and it goes on.
21 My question is whether introducing the word
22 significant is potentially confusing in the claims

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1 process.

2 MEMBER WELCH: Yes, you may be right.

3 CHAIR MARKOWITZ: I mean, an alternative
4 is simply take it out and say chronic and
5 occupational exposure.

6 MEMBER WELCH: I actually think that's
7 a good idea. Because significant has terminology
8 in causation statements all the time. And I think
9 it's not required when we're saying -- because here
10 we're saying exposure is sufficient to aggravate,
11 contribute, or cause.

12 And you don't have to -- we don't have
13 to say it was a significant contributing factor
14 of one of those. So I, unless anyone objects I
15 would accept that amendment. So great, let's do
16 it. We can take it out right were you have it
17 highlighted, and then in the next sentence.

18 CHAIR MARKOWITZ: And then if you go
19 up in Item 1, it appears again in the first line.
20 And then, Kevin, if you could just do a find/search
21 and see if it's anywhere else that it shouldn't
22 be. So other comments?

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1 MEMBER WELCH: Yes, that's okay to leave
2 it there. That's good.

3 MEMBER BODEN: Can we go back to the
4 one that you just said leave it there on for a
5 moment?

6 MEMBER WELCH: Oh, yes. That was in
7 a -- this was a background rationale.

8 MEMBER BODEN: Right. But -- oh,
9 okay. So I was thinking maybe substantially, but
10 it doesn't matter for the background.

11 MEMBER WELCH: No. So I guess the
12 question is, for where I mentioned SOC as working
13 the new jobs, should we go back and say any one
14 of the job titles in the categories of construction,
15 installation, maintenance, and repair, or
16 construction maintenance, making it parallel to
17 what we did with asbestos?

18 CHAIR MARKOWITZ: I think so.

19 MEMBER WELCH: I think we need to do
20 that.

21 CHAIR MARKOWITZ: Right.

22 MEMBER WELCH: Stephen, do you know the

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1 right -- can you make that language work so it
2 matches what --

3 CHAIR MARKOWITZ: Yes, sure.

4 MEMBER WELCH: -- we had in asbestos?

5 CHAIR MARKOWITZ: Sure, sure. And,
6 you know, that's Item B. You know, there are
7 several criteria, right. So the production
8 workers are clearly covered by Item C.

9 MEMBER WELCH: Yes.

10 CHAIR MARKOWITZ: So we don't have this
11 problem we had previously.

12 MEMBER WELCH: But we should still say,
13 work in any one job title in --

14 CHAIR MARKOWITZ: Maintenance and
15 construction.

16 MEMBER WELCH: Maintenance and
17 construction. Just work in any one of the
18 maintenance and construction job titles, whatever
19 you would say. That's kind of how we should put
20 it.

21 So, Kevin, you could have it say five
22 years of work in any one of the maintenance and

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1 construction job titles. Yes, it can be or. Or
2 is fine, construction.

3 CHAIR MARKOWITZ: And if anybody wants
4 to test Number 5, all you have to do is put -- in
5 the SEM, if you go to any --

6 MEMBER WELCH: Yes, that's good.

7 CHAIR MARKOWITZ: -- any job title that
8 sounds like it is likely to be exposed to vapors,
9 gas, dust or fumes. It typically has many
10 different toxic substances associated with that
11 job title.

12 MEMBER WELCH: That's a good edit,
13 thanks. And A, B, and C may seem to be redundant,
14 but the idea was to be redundant, so that there's
15 not categories that slip between the cracks in some
16 way.

17 CHAIR MARKOWITZ: Right. So other
18 comments or questions?

19 MEMBER DEMENT: This is John. Just to
20 reinforce the idea that, you know, in Item C there's
21 categories. They're broad, but they're not always
22 inclusive of everything. For example, we have

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1 metal. But machining aerosols include the metals
2 as well as some of the cutting oils that are
3 associated with it.

4 MEMBER WELCH: Yes. It's hard to know
5 whether, you know, you'd have to look it up where
6 machining aerosols --

7 MEMBER DEMENT: We have that covered
8 in Item A.

9 MEMBER WELCH: Okay, yes. Right,
10 good. Okay.

11 CHAIR MARKOWITZ: Okay, so Laurie had
12 no objection to taking out significant. So I take
13 it there's no other objections unless someone
14 speaks up now.

15 (No audible response)

16 CHAIR MARKOWITZ: So is there a motion
17 to approve this?

18 MEMBER REDLICH: This is Carrie
19 Redlich. Just before we vote, I would just also
20 note that in the latest version of the procedure
21 manual, I mean, the other piece of this is what
22 the criteria are to diagnose COPD in addition to

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1 the exposure component.

2 And it just currently has mentioned,
3 you know, bronchoscopy which is not used to diagnose
4 COPD. And there's also a note that, and the
5 employee has a history of being a never smoker.
6 So I just draw attention that I think the written
7 manual needs review and revision.

8 CHAIR MARKOWITZ: So, this is Steve
9 Markowitz, you know --

10 MEMBER REDLICH: It's just so that
11 people are aware.

12 CHAIR MARKOWITZ: I think for the --
13 when we get around to briefly discussing issues
14 that next Board can take up, I think we should
15 include that, the medical criteria for COPD
16 diagnosis. Because that hasn't been addressed in
17 this recommendation, but it should be addressed.
18 And we should put it on the list.

19 MEMBER REDLICH: Yes. So I just
20 wanted it noted.

21 CHAIR MARKOWITZ: Right, right.

22 MEMBER WELCH: Okay.

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1 CHAIR MARKOWITZ: Other comments?

2 MEMBER GRIFFON: Yes, Steve, this is
3 Mark Griffon. On Number 4, I lost my connection,
4 so I'm looking at maybe an old version. But on
5 Number 4, I just wanted to make sure we had deleted,
6 I think, the five years can be accumulated by a
7 combination of DOE employment and employment
8 outside of the DOE. Laurie, is that correct?

9 MEMBER WELCH: Yes.

10 MEMBER GRIFFON: Was that removed, or
11 was that changed just to be DOE?

12 MEMBER WELCH: Oh, you know, yes. It
13 needs to come out. And it's funny, I thought I'd
14 taken it out many times. But I guess I went back
15 and worked with an old draft. So yes, we should
16 take that out.

17 MEMBER GRIFFON: An old version,
18 that's why I asked, yes. Okay.

19 MEMBER WELCH: Yes.

20 MEMBER GRIFFON: So that should be
21 removed, right?

22 MEMBER WELCH: Yes.

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1 MEMBER CASSANO: And that whole
2 sentence or just five years cumulative at DOE and
3 just take out the last three words, or outside DOE,
4 or just remove the whole sentence?

5 MEMBER WELCH: I think we can just take
6 it out because it's presumed, a duration of five
7 years of employment exposure. It's presumed to
8 be at DOE, because that's the way the legislation
9 is structured. So I think we can take out the whole
10 sentence.

11 CHAIR MARKOWITZ: Yes.

12 MEMBER CASSANO: Okay. Does that say
13 anything about -- I'm just wondering about whether
14 they're going to look at that as the duration of
15 five years cumulative versus five years of
16 consistent. Because I think there was someplace
17 else where they looked only at exposure. You know,
18 five years had to be --

19 CHAIR MARKOWITZ: Consecutive.

20 MEMBER CASSANO: -- consecutive,
21 excuse me, not consistent.

22 CHAIR MARKOWITZ: Yes.

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1 MEMBER CASSANO: Versus cumulative. So
2 I think we need the word cumulative in there
3 somewhere.

4 CHAIR MARKOWITZ: Yes, Steve
5 Markowitz. In four, if you go to four at the end
6 of that line where it says a duration, you say a
7 cumulative duration of five years, so after
8 duration of. And if that's a little awkward, then
9 Laurie can fix it later.

10 MEMBER WELCH: That's okay. But,
11 like, there's other places where we said, you know,
12 the other, the A, B, and C have five years of work,
13 five years of exposure. I don't think we need to
14 add cumulative there.

15 CHAIR MARKOWITZ: Right.

16 MEMBER WELCH: Because, well, also
17 we're defining it down below. I think that's okay.

18 CHAIR MARKOWITZ: All right, other
19 comments, questions?

20 (No audible response)

21 CHAIR MARKOWITZ: Okay, so if not, I
22 think we have a motion, right, to accept? Do we

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1 have a motion to accept?

2 MR. FITZGERALD: No, I don't think we
3 do.

4 CHAIR MARKOWITZ: Okay.

5 MEMBER SOKAS: So it's Rosie, I move
6 to accept.

7 CHAIR MARKOWITZ: Okay, second?

8 MEMBER FRIEDMAN-JIMENEZ: This is
9 George. I second.

10 CHAIR MARKOWITZ: Thank you, comments?

11 (No audible response)

12 CHAIR MARKOWITZ: Okay. Doug, the
13 vote.

14 MR. FITZGERALD: Dr. Dement?

15 MEMBER DEMENT: Yes.

16 MR. FITZGERALD: Dr. Silver?

17 MEMBER SILVER: Yes.

18 MR. FITZGERALD: Mr. Griffon?

19 MEMBER GRIFFON: Yes.

20 MR. FITZGERALD: Dr.
21 Friedman-Jimenez?

22 MEMBER FRIEDMAN-JIMENEZ: Yes.

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1 MR. FITZGERALD: Dr. Boden?
2 MEMBER BODEN: Yes.
3 MR. FITZGERALD: Dr. Redlich?
4 MEMBER REDLICH: Yes.
5 MR. FITZGERALD: Dr. Cassano?
6 MEMBER CASSANO: Yes.
7 MR. FITZGERALD: Dr. Welch?
8 MEMBER WELCH: Yes.
9 MR. FITZGERALD: Dr. Sokas?
10 MEMBER SOKAS: Yes.
11 MR. FITZGERALD: Ms. Pope?
12 MEMBER POPE: Yes.
13 MR. FITZGERALD: Ms. Vlieger?
14 MEMBER VLIEGER: Yes.
15 MR. FITZGERALD: Mr. Turner? Mr.
16 Turner, are you on mute?
17 MEMBER TURNER: Yes.
18 MR. FITZGERALD: Okay, I got you. Mr.
19 Whitley?
20 MEMBER WHITLEY: Yes.
21 MR. FITZGERALD: Mr. Domina?
22 MEMBER DOMINA: Yes.

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1 MR. FITZGERALD: And Chairman
2 Markowitz?

3 CHAIR MARKOWITZ: Yes. Faye, I -- you
4 just seem to be getting worse on every vote. I
5 feel sorry. We only have three more. So hang in
6 there with us.

7 MEMBER VLIENER: Thank you.

8 CHAIR MARKOWITZ: The next one is the
9 occupational health questionnaire. John, are you
10 leading this, or Laurie?

11 MEMBER DEMENT: I can take it if you'd
12 like.

13 CHAIR MARKOWITZ: Okay, great.

14 MEMBER WELCH: Yes, that'll be great.

15 MEMBER DEMENT: So, the recommendation
16 that's up. We had a long discussion of this at our
17 last Board meeting. And basically, everything
18 that was captured in this response is our
19 discussion.

20 And if you look at the OWCP response,
21 they believe that they had already updated the OHQ.

22 And we, in fact, saw the revised edition. They

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1 also commented on the VGDF questions. Remember,
2 we specifically wanted those questions in the OHQ.

3 So we've already addressed Item 2. And I think
4 we've taken care of the VGDF issue.

5 I think the Advisory Board was pretty
6 consistent in its discussion of the OHQ, but the
7 OHQ in relationship to what is the overall intent
8 of the OHQ, and that's to gather occupational
9 history information, is in a complete a manner as
10 possible.

11 And so we felt still that we should
12 retain the questions of task-based exposures where
13 we could, and you have a reasonable set of tasks
14 for construction. We acknowledge that
15 non-construction was more of a problem. But we
16 asked about exposures in particular, and we asked
17 about the tasks that created those exposures. Some
18 of them were hygienists' perspective. Those are
19 important pieces of information to note.

20 Can you scroll down to the next page?
21 So basically, you know, I think we've pretty much
22 stayed with our recommendation. I don't see that

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1 we've changed very much.

2 We simply responded back to DOL with
3 regard to our view, if you will, of the incentive,
4 the occupation history, to gather more information
5 that's useful by hygienists, have that information
6 available in a broader perspective to reviewers
7 of the information, the positions in hygiene as
8 decisions are made.

9 And I guess to -- at least in my view
10 to reinforce the Board's view that they revise
11 occupation history, it's not likely much of an
12 advance forward with respect to trying to gather
13 this information.

14 And I'm open, I guess, for discussion
15 and comment. We discussed this at our SEM
16 conference call a few weeks back. And I think this
17 is a reflection of that deliberation as well.

18 CHAIR MARKOWITZ: The floor is open for
19 comments or questions.

20 (No audible response)

21 CHAIR MARKOWITZ: So let me, just to
22 provoke conversation a little bit, and so for, say,

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1 production or non-construction by a maintenance
2 worker, how would what we're recommending differ
3 from what DOL is doing?

4 MEMBER DEMENT: Well, I think it
5 differs with respect to how we are asking about
6 the task that's generating the exposure. And it's
7 tied in, we recommended it to be tied in with each
8 one of the exposures that are flagged in the OHQ.

9 So I think if a worker flags an
10 exposure, then the follow-up question is that there
11 is power for your exposure. It allows him, in a
12 precise manner, to describe how that exposure
13 occurred.

14 A lot of the tasks that
15 non-construction workers would do are, in fact,
16 quite similar to construction workers' tasks. And
17 we expect that they would perhaps flag some of those
18 anyway.

19 CHAIR MARKOWITZ: All right, thank
20 you.

21 MEMBER POPE: This is Duronda Pope
22 here. I think part of our discussion as well was

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1 we have production office workers that work in tank
2 farms which had accumulation of different chemicals
3 and toxic substances. And we wanted to make sure
4 that they were included.

5 MEMBER DEMENT: Yes. I mean, they're
6 clearly included with regard to, first, the toxic
7 substances and then, of course, the description
8 event would be the tank farm work.

9 MEMBER POPE: Right, thank you.

10 MEMBER DEMENT: I mean, I think we all
11 acknowledge, and certainly the BTMed Program
12 acknowledges that, you know, how this task is not
13 complete. It represents some of the core tasks
14 that we've identified that BTMed workers do.

15 There are lots of tasks that are done
16 that are similar to these tasks and so in addition
17 to. But nevertheless, we found that those tasks
18 within themselves, combined with the history of
19 frequency of doing tasks and the duration of doing
20 that task, is not a bad predictor of getting
21 outcomes, and particularly lung diseases that we
22 looked at, and to scan the hearing loss information.

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1 CHAIR MARKOWITZ: Okay, other comments
2 or questions?

3 MEMBER SILVER: Yes. This is Ken. I
4 want to compliment you on having several places
5 for free-text descriptions. If you think about
6 some of the flaws of the program up to now, there's
7 been a tendency to, you know, draw a matrix, check
8 a box, and break everything down into tiny bites
9 of information.

10 And I'm sure some of the industrial
11 hygienists in the CMC have been thirsting for more
12 of the kinds of information that, you know, we use
13 all the time in our profession, workers describing
14 how they did what they did.

15 MEMBER DEMENT: Absolutely. And I
16 think one of the issues that we've already covered
17 is that those reviewers of fact have that
18 information as it was reported and given to the
19 program to review.

20 MEMBER SILVER: Great.

21 MEMBER DEMENT: You know, these
22 checking, checks in boxes and lists, I mean, they're

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1 useful, but we've found, over many years of working
2 with it, that the task itself is a predictor of
3 the exposure. And if nothing else, it will be a
4 flag for a hygienist, if he or she reviews that
5 information in the OHQ, to go back and ask the worker
6 more details about that. If it doesn't provide
7 a fact verification of exposure, it will provide
8 a flag to ask more questions.

9 CHAIR MARKOWITZ: Other comments?

10 (No audible response)

11 CHAIR MARKOWITZ: Okay. So there are
12 no modifications proposed here. Then I think we
13 can hear a motion to accept.

14 MEMBER SILVER: Ken Silver, I make a
15 motion to accept.

16 CHAIR MARKOWITZ: Is there a second?

17 MEMBER BODEN: Second.

18 CHAIR MARKOWITZ: I think it was Mark
19 Griffon.

20 MEMBER BODEN: Les Boden.

21 CHAIR MARKOWITZ: Oh, Les. Okay.

22 Any further comments?

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1 (No audible response)

2 CHAIR MARKOWITZ: Okay, so I think we
3 can take a vote.

4 MR. FITZGERALD: Okay. Dr. Dement?

5 MEMBER DEMENT: Yes.

6 MR. FITZGERALD: Dr. Silver?

7 MEMBER SILVER: Yes.

8 MR. FITZGERALD: Mr. Griffon?

9 MEMBER GRIFFON: Yes.

10 MR. FITZGERALD: Dr.
11 Friedman-Jimenez?

12 MEMBER FRIEDMAN-JIMENEZ: Yes.

13 MR. FITZGERALD: Dr. Boden?

14 MEMBER BODEN: Yes.

15 MR. FITZGERALD: Dr. Redlich?

16 MEMBER REDLICH: Yes.

17 MR. FITZGERALD: Dr. Cassano?

18 MEMBER CASSANO: Yes.

19 MR. FITZGERALD: Dr. Welch?

20 MEMBER WELCH: Yes.

21 MR. FITZGERALD: Dr. Sokas?

22 MEMBER SOKAS: Yes.

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1 MR. FITZGERALD: Ms. Pope?

2 MEMBER POPE: Yes.

3 MR. FITZGERALD: Ms. Vlieger?

4 MEMBER VLIEGER: Yes.

5 MR. FITZGERALD: Mr. Turner?

6 MEMBER TURNER: Yes.

7 MR. FITZGERALD: Mr. Whitley?

8 MEMBER WHITLEY: Yes.

9 MR. FITZGERALD: Mr. Domina?

10 MEMBER DOMINA: Yes.

11 MR. FITZGERALD: Chairman Markowitz?

12 CHAIR MARKOWITZ: Yes.

13 Okay. We're going to move on to
14 Recommendation Number 5 from April 2017 having to
15 do with enhancing the scientific and technical
16 capacity within the program. We had recommended
17 that.

18 DOL said they agreed it would be useful
19 to have additional capability. They pointed out
20 that they have some already. The paragon is a
21 contractor. They have a medical director, the
22 nurses, they have a toxicologist. And they look

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1 forward to getting additional assistance from us.

2 So this response here basically says
3 that -- reiterates what we said before which is
4 that there remain gaps, despite -- we realize they
5 have resources, they have experts. But from our
6 review of claims, the program, procedure manual,
7 there are gaps.

8 And trying to briefly say what some of
9 those gaps or functions were, for instance,
10 following up on the IOM report, the kind of thing
11 that Laurie Welch talked to us about with the
12 examining IARC, and NTP, and IRIS, we know that
13 DOL no longer has a contract with Haz-Map which
14 is the function that linked exposures with
15 diseases. Someone needs to maintain that, to keep
16 that up, to advance it, and some other things that
17 I mentioned here, evaluating claims for novel --
18 or conditions where the knowledge base is evolving.

19 I recall at the beginning of the Board's
20 process two years ago that DOL specifically asked
21 us for some help with some cancers and whether they
22 were caused by certain exposures. And Dr.

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1 Friedman-Jimenez did a very nice review on how to
2 look at a particular question there. These are
3 gaps. And they need to be filled.

4 And then I cite just a couple of
5 examples of our own experience where, when we took
6 on the issue of presumptions on occupational
7 asthma, on hearing loss, which we haven't heard
8 back from yet, on COPD, and asbestos, that there
9 were, you know, faults basically in the medical
10 and scientific thinking about them.

11 So we can assist on an ad hoc basis,
12 or the Board can on an advisory basis. But there
13 needs to be some sustained function within the
14 organization that really has expertise in disease
15 causations, and epidemiology, and occupational
16 medicine, above and beyond what they have now.
17 So that's what this says.

18 Actually, it probably would have been
19 shorter to read it than to explain it, but in any
20 event, any comments, questions?

21 (No audible response)

22 CHAIR MARKOWITZ: You know, I suspect

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1 there are other issues in play, budgetary issues,
2 or administrative issues that are behind the
3 scenes. We are arguing this on face value which
4 is, you know, our role. So I suspect there are
5 some other factors going on, not our business at
6 the moment. Any additions, anything missing here?

7 (No audible response)

8 CHAIR MARKOWITZ: Okay. Then is there
9 a motion to accept?

10 MEMBER FRIEDMAN-JIMENEZ: This is
11 George. I move to accept.

12 CHAIR MARKOWITZ: Okay.

13 MEMBER WELCH: And this is Laurie, I
14 second that.

15 CHAIR MARKOWITZ: Okay. So any
16 comments?

17 (No audible response)

18 CHAIR MARKOWITZ: Okay, Doug, if you
19 want to do a roll call. Doug?

20 MR. FITZGERALD: Oh, I'm sorry. I was
21 on mute that time.

22 Dr. Dement?

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1 MEMBER DEMENT: Yes.

2 MR. FITZGERALD: Dr. Silver?

3 MEMBER SILVER: Yes.

4 MR. FITZGERALD: Mr. Griffon?

5 MEMBER GRIFFON: Yes.

6 MR. FITZGERALD: Dr.

7 Friedman-Jimenez?

8 MEMBER FRIEDMAN-JIMENEZ: Yes.

9 MR. FITZGERALD: Dr. Boden?

10 MEMBER BODEN: Yes.

11 MR. FITZGERALD: Dr. Redlich?

12 MEMBER REDLICH: Yes.

13 MR. FITZGERALD: Dr. Cassano?

14 MEMBER CASSANO: Yes.

15 MR. FITZGERALD: Dr. Welch?

16 MEMBER WELCH: Yes.

17 MR. FITZGERALD: Dr. Sokas?

18 MEMBER SOKAS: Yes.

19 MR. FITZGERALD: Ms. Pope?

20 MEMBER POPE: Yes.

21 MR. FITZGERALD: Ms. Vlieger?

22 MEMBER VLIEGER: Yes.

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1 MR. FITZGERALD: Mr. Turner?

2 MEMBER TURNER: Yes.

3 MR. FITZGERALD: Mr. Whitley?

4 MEMBER WHITLEY: Yes.

5 MR. FITZGERALD: Mr. Domina?

6 MEMBER DOMINA: Yes.

7 MR. FITZGERALD: Chairman Markowitz?

8 CHAIR MARKOWITZ: Yes.

9 MR. FITZGERALD: Okay.

10 CHAIR MARKOWITZ: Okay, so our final
11 recommendation is Number 7. It has to do with the
12 review of claims, excuse me, of CMC and IH reports
13 by the Board. And this response, which Kevin, is
14 a bit late-breaking. So there's a draft, and then
15 Rosie Sokas added some language. I don't know,
16 Carrie Rhoads, do we have access to Dr. Sokas'
17 version? I don't want to put it up necessarily,
18 I just want to know if we have access to it.

19 MS. RHOADS: It's in my email from this
20 morning.

21 CHAIR MARKOWITZ: Yes, 12:48 p.m.

22 MS. RHOADS: Right, yes.

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1 CHAIR MARKOWITZ: Okay, so let me begin
2 the conversation. Then, Rosie, you can take it
3 over. Does that work?

4 MEMBER SOKAS: Okay.

5 CHAIR MARKOWITZ: Okay. So I for one
6 feel very strongly about this, that Task Number
7 4 of the Board specifically states that we will
8 look at the work of the IH's staff physicians and
9 consulting physicians to ensure the quality
10 objectivity, and consistency. And I don't believe
11 that we can do that unless we oversee examination
12 of relevant reports and come to our own conclusions.

13 DOL's response was, in part, that they
14 have a medical director who's conducting an audit,
15 and they gave us examples of two audits, two
16 quarterly audits from 2016 which were interesting
17 and good. But that doesn't, in my view, supplant
18 what we need to do, which is an independent look
19 at quality, objectivity, and consistency.

20 Secondly, the medical director,
21 actually in those two audits, he found problems
22 in 13 out of 82 reviewed reports. So that's one

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1 out of every six reports there was a problem that
2 required correction. That's fairly frequent.
3 That's not -- that may or may not be acceptable
4 or unacceptable, but that's fairly frequent in
5 terms of finding issues.

6 MEMBER WELCH: And Stephen, can I add
7 a comment there?

8 CHAIR MARKOWITZ: Sure, sure.

9 MEMBER WELCH: They were not all --
10 they weren't causation cases either. They were
11 impairment ratings and a whole range of different
12 opinions. So the impairment ratings, I think, are
13 closed a bit easier.

14 CHAIR MARKOWITZ: Right, yes. Yes,
15 there was a diverse -- he looked at causation, he
16 looked at impairment, he looked at second opinions,
17 and there was a fourth category he looked at.

18 And finally, the medical director's
19 audit didn't entirely look at -- capture quality,
20 objectivity, and consistency. It didn't address
21 the forms he uses. And his report didn't address,
22 for instance, consistency across different

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1 reports.

2 So for all those reasons, I think we
3 -- and just the basic fulfillment of our obligation
4 under Task Number 4, the Board needs to look at
5 these claims.

6 Now, in our previous recommendation,
7 we, I think, requested examining 50 claims. I
8 think that's an inadequate number. And I think
9 that the medical director's audit kind of
10 demonstrates -- he's reviewing 160 or more per year
11 -- demonstrates that we would need to look at more,
12 because there are a lot of factors at play.

13 There're IH reports, there're CMC
14 reports, there're the impairment ratings, there's
15 the causation, there's second opinion, there're
16 different types of claims, there's, you know, COPD,
17 versus dementia, versus whatever. And so I think
18 that it's going to require looking at, frankly,
19 several hundred claims or reports, not 50, to do
20 the job properly.

21 So let me turn it over to Rosie who has
22 --

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1 MEMBER SOKAS: Yes. And I just -- I
2 wanted to modify the document that was sent around
3 earlier. Because we have had this conversation
4 back and forth with the Department.

5 We originally were talking past each
6 other and didn't realize that the medical director
7 was performing any sort of a quality audit. But
8 then when we did see those audits, I think there
9 were very specific and troubling problems with the
10 audit itself, not just the CMC reports that were
11 being audited.

12 The audit instrument itself was
13 inadequate. And the medical examiner focused on
14 some very narrowly defined issues concerning the
15 AMA guidelines and seemed to miss some other issues
16 that might have been equally important.

17 So I think we could -- I would like to
18 propose, and I wrote up a couple of items that we
19 actually discussed at the last full Board meeting,
20 that we include in this response to reflect the
21 fact that, yes, we've seen what the medical director
22 has conducted as an audit, and we are not satisfied

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1 with it.

2 And the first reason is that there's
3 no mention in that audit of whether the information
4 the CE forwarded to the CMC was sufficient or
5 adequate. And that there needs to be a review,
6 a clear understanding that the medical director
7 is looking at the entire record, which I understand
8 he is, and that the first evaluation piece is
9 whether or not the CE has sent forward the
10 information that should have been sent forward.

11 Now, if the Board's other
12 recommendation that the entire record goes forward
13 as adopted, then this isn't necessary. But, you
14 know, this is kind of a second bite at that apple.

15 The second requirement that should be
16 clearly expressed back to the Department of Labor
17 is that the forms themselves need to include a
18 medical director assessment about whether or not
19 the CMC made an appropriate determination based
20 on existing DOL guidelines or on the best available
21 scientific information. And that's a judgment
22 call that needs to be included that's nowhere

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1 currently in the evaluation form.

2 And then the third recommendation is
3 actually a procedural recommendation which is that
4 there should be more than one person conducting
5 these so that you can have kind of a review of the
6 reviewer, basically.

7 So I would insert those three as
8 examples of changes that could be taking place as
9 we're proceeding, because I don't think we really
10 -- I don't disagree that it's important to do a
11 large-scale audit. And I think that should stay
12 in there. But I don't think we need to wait for
13 that in order to make some fairly straightforward
14 recommendations on quality assessment.

15 CHAIR MARKOWITZ: So Carrie and Kevin,
16 and is it possible to bring up Rosie's version of
17 this, because she did have the language. And it
18 would help to be able to look at it from that --
19 this morning or early this afternoon, 12:48.

20 MR. BIRD: Yes. We're finding it now.

21 CHAIR MARKOWITZ: Okay, okay.

22 MEMBER SOKAS: And I apologize. In

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1 that one I didn't, you know, kind of complete the
2 subsequent sentence. So I would leave everything
3 that was originally in it, there. I would just
4 insert these others.

5 In the meantime, this needs to change.
6 And then the Board also takes the position that
7 it cannot properly advise the Secretary unless,
8 you know, and that continues on to the
9 recommendation for the broader audit.

10 CHAIR MARKOWITZ: So, this is Steve
11 Markowitz. And here's my question, Rosie.
12 Looking at this, on Line 3 where the, I think, purple
13 text begins, it says, the Board raises the concern
14 that the audit process itself is flawed and fails
15 to address the major questions concerning quality.

16 And then you list three things. Are
17 those three things that you list, are those all
18 of the concerns that you have about quality and
19 about the process being flawed, or are those just
20 examples? It's just --

21 MEMBER SOKAS: Those are immediately
22 fixable and low-hanging fruit.

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1 CHAIR MARKOWITZ: Okay. So I would
2 recommend some -- we don't have to do it now, but
3 some language to indicate that either short-term
4 changes that can be easily instituted just so --

5 MEMBER SOKAS: Okay. I agree with
6 that.

7 CHAIR MARKOWITZ: Yes.

8 MEMBER CASSANO: Can we move, oh, can
9 we move this up a little bit so we can see the whole
10 thing? Thanks.

11 Yes, I think putting a statement in here
12 that says, while the Board still has additional
13 concerns, addressing these three issues
14 immediately would greatly improve the process.

15 CHAIR MARKOWITZ: And the other
16 question mark was on the third issue you raised
17 where, quote, a review process in which reviews
18 are conducted by two medical experts, end of quote,
19 is that the same CMC report that's being reviewed
20 by two separate doctors?

21 MEMBER SOKAS: Right. What it is, so
22 you change the requirements of the audit itself

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1 so that you have to answer two additional questions,
2 one, did the CE send forward appropriate
3 information and, two, did the CMC make an
4 appropriate judgment based on that information and
5 on appropriate medical, scientific evidence.

6 And then that change is implemented by
7 two people. So the medical -- currently the
8 medical director conducts all these audits. And
9 there is a secondary review that takes place by
10 his supervisor who is not a physician but, I
11 believe, may be a nurse by background.

12 But that's mostly, again, currently on
13 the basis of, you know, there's a kind of a
14 combination of common sense and the rules of the
15 program that get applied at that level.

16 But there are in -- oh, there is at least
17 one other position in OWCP who could at least do,
18 you know, some auditing just to sort of double check
19 to see if people were saying the same thing.

20 I mean, there has to be a process in
21 place where it's not a single individual doing it.

22 But the goal would be to have two medical opinions

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1 just to see how things are working out. Because
2 I think there were some concerns raised.

3 CHAIR MARKOWITZ: Comments,
4 questions?

5 (No response.)

6 CHAIR MARKOWITZ: Okay. So I think
7 that the modifications that Rosie is recommending,
8 we need to -- does anyone have any objections to
9 that modification? Any, Rosie, you and I should
10 wordsmith a little bit just to retain the meaning
11 but make it a little bit clearer?

12 MEMBER SOKAS: Sure.

13 CHAIR MARKOWITZ: But that's implied
14 regardless. So, okay, hearing no objections then,
15 is there a motion to accept this revised
16 recommendation?

17 MEMBER FRIEDMAN-JIMENEZ: One small
18 point, this is George. The sentence that said,
19 however the Board takes the position that it cannot
20 properly advise, that now has a big piece put in
21 there, but it's no longer a sentence. So that needs
22 to be fixed grammatically.

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1 CHAIR MARKOWITZ: Right, yes.

2 MEMBER SOKAS: Right.

3 CHAIR MARKOWITZ: We will take care of
4 that.

5 MEMBER FRIEDMAN-JIMENEZ: Okay.

6 CHAIR MARKOWITZ: Yes, thanks. Okay,
7 so is there a motion to approve or to --

8 MEMBER CASSANO: Moved.

9 CHAIR MARKOWITZ: Okay. And is there
10 a second?

11 MEMBER CASSANO: Tori, this is Tori,
12 so moved.

13 CHAIR MARKOWITZ: And a second?

14 MEMBER SOKAS: I'll second, it's
15 Rosie.

16 CHAIR MARKOWITZ: Okay. So any
17 comments, final comments?

18 (No response.)

19 CHAIR MARKOWITZ: Okay. So time for
20 roll call, Doug.

21 MR. FITZGERALD: Okay. Dr. Dement?

22 MEMBER DEMENT: Yes.

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1 MR. FITZGERALD: Dr. Silver?
2 MEMBER SILVER: Yes.
3 MR. FITZGERALD: Mr. Griffon?
4 MEMBER GRIFFON: Yes.
5 MR. FITZGERALD: Dr.
6 Friedman-Jimenez?
7 MEMBER FRIEDMAN-JIMENEZ: Yes.
8 MR. FITZGERALD: Dr. Boden?
9 MEMBER BODEN: Yes.
10 MR. FITZGERALD: Dr. Redlich?
11 MEMBER REDLICH: Yes.
12 MR. FITZGERALD: Dr. Cassano?
13 MEMBER CASSANO: Yes.
14 MR. FITZGERALD: Dr. Welch?
15 MEMBER WELCH: Yes.
16 MR. FITZGERALD: Dr. Sokas?
17 MEMBER SOKAS: Yes.
18 MR. FITZGERALD: Ms. Pope?
19 MEMBER POPE: Yes.
20 MR. FITZGERALD: Ms. Vlieger?
21 MEMBER VLIEGER: Yes.
22 MR. FITZGERALD: Mr. Turner?

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1 MEMBER TURNER: Yes.

2 MR. FITZGERALD: Mr. Whitley?

3 MEMBER WHITLEY: Yes.

4 MR. FITZGERALD: Mr. Domina?

5 MEMBER DOMINA: Yes.

6 MR. FITZGERALD: Chairman Markowitz?

7 CHAIR MARKOWITZ: Yes.

8 Okay, we've completed the review of the
9 recommendations. On our original agenda,
10 actually, if you could bring that up, the next was
11 if there are any reports from any subcommittees.

12 I think only the SEM Subcommittee has met. But
13 is there anything to add from that committee or
14 any other committee?

15 (No response.)

16 CHAIR MARKOWITZ: Okay. Sounds like
17 you don't have anything. That's fine.

18 So I think lastly, Kevin, if you could
19 bring up the file that I sent to Carrie a while
20 ago called Prioritizing Issues.

21 But what I did was I took the minutes
22 from the last meeting. At the end of the meeting,

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1 you may recall, in Santa Fe, we had a brief
2 discussion about issues that the next Board might
3 take up. And I just listed these here. They're
4 in no particular order.

5 I want to just review them briefly, but
6 mostly I want to have a discussion about adding
7 to them. This is our last meeting. And if there
8 are items that we can recommend that the next Board
9 address, this is the mechanism by which we would
10 do that.

11 First though, I would take out the word
12 prioritizing. I'd just keep it at issues for the
13 next Board. Because there's no -- this listing
14 of nine, and if we add to it, there's no -- we're
15 not setting priorities.

16 So briefly then, the first thing is to
17 make progress, additional progress on the issue
18 of what does it mean to apply a standard of
19 aggravated, contributed to, or caused by an
20 exposure. Since we discussed that, we've talked
21 about it, but it needs more direct discussion.

22 Secondly -- and these, by the way, these

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1 were added from different authors. These are from
2 different people who made these suggestions. And
3 I didn't make any attempt to attribute them to
4 anybody.

5 To revisit the SEM, we look at the
6 exposure assessment in the claims process. We have
7 made recommendations on the OHQ on these informal
8 workers, or having industrial hygienists talk
9 directly to claimants. This is all
10 exposure-related. And so then we think that SEM
11 should be revisited to see what else needs to be
12 addressed.

13 And the third thing is to look, and I
14 think this relates to the last recommendation
15 actually, is to look more deeply at available claims
16 data.

17 There was an exercise that Carrie
18 Redlich referred to, and John Dement did a nice
19 analysis of some claims data, mostly beryllium and
20 lung disease, which was extremely useful. And it's
21 the only time we've done that. And the Board ought
22 to look at additional claims data to identify what's

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1 going on in the program.

2 There was the suggestion that the Board
3 look at the topics of durable medical equipment
4 authorization. I'm not sure exactly if that fits
5 into any of our tasks. If someone has an idea about
6 that, then we ought to put that in there because
7 on the face of it, there might be some objection
8 to us addressing it.

9 A fifth is to look at the program's
10 performance on impairment ratings. And I think
11 this would fall under weighing medical evidence
12 in the form of the functions.

13 Six is to look at additional conditions
14 that are most common for the most commonly denied
15 types of claims, to get additional data on that.

16 Seventh is to take a closer look at
17 neurologic illnesses. We spent a lot of time on
18 risk certainties, some limited time on cancer, and
19 hardly any time on neurologic illnesses.

20 There was a suggestion that the Board
21 ought to interact more with the physicians from
22 DOL to get a better understanding of their role

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1 and functioning.

2 And then finally, it was suggested that
3 the Board have initial presentations from DOL so
4 that they can understand the program from the
5 get-go.

6 So are there additional ideas, or any
7 modification of these things, or additional things
8 we think the Board should take a look at?

9 MEMBER DEMENT: This is John. From
10 the OHQ perspective, we had strongly recommended
11 a redraft of OHQ and perhaps in combination with
12 use of former workers, a pilot process to evaluate
13 the OHQ, how well it's collecting information.
14 I think the new Board needs to be more involved
15 with that review of the pilot data.

16 CHAIR MARKOWITZ: So the pilot data
17 specifically with reference to the OHQ.

18 MEMBER DEMENT: Yes, yes. We
19 requested, at least our recommendation was to, you
20 know, pilot test the new questionnaire and data
21 gathering process. Because that will be
22 something, I think, the Board ought to be involved

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1 in taking a look at.

2 CHAIR MARKOWITZ: So, Kevin, I think
3 if you wouldn't mind getting these down on the
4 screen, it would be very helpful.

5 MR. BIRD: Okay. If you just want to
6 let me know again, sorry.

7 CHAIR MARKOWITZ: Number 10.

8 MEMBER DEMENT: I'll just say it again,
9 the new Board needs to be involved in evaluating
10 the pilot data from the OHQ redrafted
11 questionnaire.

12 MR. BIRD: So you say from the
13 redrafting of the OHQ?

14 MEMBER DEMENT: Yes, the pilot from the
15 redrafted OHQ questionnaire.

16 MR. BIRD: How's that?

17 MEMBER DEMENT: Yes.

18 MR. BIRD: Okay, perfect.

19 CHAIR MARKOWITZ: Kind of an obvious
20 thing is to follow-up on Number 11, to follow-up
21 on Board recommendations today's date, including
22 hearing loss.

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1 And I don't know that there was another
2 recommendation that we haven't heard about for the
3 moment. So we need to follow-up on Board
4 recommendations.

5 And, I think, another Item 12 would be
6 to monitor the outcomes of changes made by DOL in
7 response to Board recommendations. So for
8 instance, they don't have to list this necessarily,
9 but the concern that people who don't meet
10 presumptions will not necessarily get a fair shake
11 in evaluation, that can be looked at.

12 MEMBER BODEN: Yes. I think it's a
13 great idea to take another look at the changes that
14 have been made and how they continue to affect the
15 claims process.

16 CHAIR MARKOWITZ: So just on
17 recommendations, if you could replace that period
18 with a comma. No, no, I'm sorry, at the end, Number
19 12, that's the Board recommendations, including
20 the claims process and outcomes. And I'll clean
21 up the language a little bit.

22 MEMBER CASSANO: This is Tori. I'd

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1 like to add a couple of things to Number 7 besides
2 neurological illnesses. I think we should add
3 cancers other than respiratory cancers such as
4 urological cancers and hematologic cancers.

5 (Simultaneous speaking.)

6 MEMBER WELCH: With that and the
7 neurologic conditions, maybe going back to the
8 issue of how they're determining causation. So
9 if we can get the recommendations to update the
10 SEM with additional causal data, it'll affect the
11 way you approach looking at those conditions.
12 Because I assume you're talking about focusing on
13 causation analysis related to those conditions.
14 And currently, there's been a limited move from
15 SEM, I think.

16 MEMBER CASSANO: Yes.

17 MEMBER WELCH: And actually, while I
18 have the mic, Stephen, you had mentioned earlier,
19 related to SEM, to have some process by which
20 Department of Labor continues their contract with
21 the National Library of Medicine, their Haz-Map.

22 And Haz-Map is being updated. I was

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1 on that site recently, and seeing they have it
2 updated, I thought that we would understand --
3 understood from Rachel that the Commissioner who
4 may have retired and no one is updating it. But
5 I think that it looks like it is being updated.
6 It has a new format, it looks different than it
7 did six months ago.

8 CHAIR MARKOWITZ: Good.

9 MEMBER WELCH: But, you know, there
10 should be -- we should be assured that there's an
11 ongoing connection with Haz-Map and some of the
12 side projects, but improvement in Haz-Map and
13 understanding -- having the Board understand how
14 the National Library of Medicine is managing
15 Haz-Map. It could cause some real problems if they
16 don't -- if they're having it peer reviewed and
17 pulling in other data sources.

18 CHAIR MARKOWITZ: So, Laurie, not to
19 get concrete, but is there an item to be listed
20 here from your suggestion there?

21 MEMBER WELCH: Well, I was just saying
22 we have number -- revisit the SEM at a broad level.

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1 CHAIR MARKOWITZ: Right.

2 MEMBER WELCH: We can add to there,
3 focus on, I think, revisit the SEM at a broad level,
4 somewhere in there, and ensure that DEEOICP still
5 has a relationship with National Library of
6 Medicine for Haz-Map. I think that would probably
7 be enough, as long as we're just mentioning Haz-Map.

8 CHAIR MARKOWITZ: Now, getting back to
9 Tori's comment about neurologic and hematologic
10 cancers, because, Tori, you wanted to add that to
11 seven.

12 MEMBER CASSANO: Yes. Yes, just
13 because, I mean, I think neurologic illnesses are
14 important when you look at things like metal
15 intoxicant encephalopathy, but Parkinson's Disease
16 which is related to organic solvent exposure.

17 But, you know, I think we focus so much
18 on respiratory cancers that to just pinpoint the
19 neurological illnesses without talking about some
20 of these other cancers makes it sound like the only
21 thing that hasn't been addressed properly is the
22 neurological illnesses. And I don't think that's

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1 necessarily the case.

2 So I thought, you know, adding
3 additional cancers other than respiratory cancers,
4 or just put it like that, because we really didn't
5 look at anything else other than the ovarian cancer
6 as it relates to asbestos exposure.

7 So there's a whole lot of other stuff
8 out there that we haven't really looked at to see
9 how they are actually adjudicating those claims.

10 CHAIR MARKOWITZ: So if we took out --
11 so if we added neurologic illnesses, cancer, took
12 out the toxic encephalopathy, which greatly
13 restricts it, you know, clearly it's broader than
14 that, are there other categories of illness that
15 we should name, basically neurologic illness and
16 cancer is where we're at.

17 MEMBER CASSANO: Well, we could -- I
18 mean, if we wanted to, endocrine conditions might
19 be something we might want to look at within that.
20 Thanks. Does anybody have anything else to add?

21 CHAIR MARKOWITZ: So any other items
22 for the list?

1 MEMBER SILVER: This is Ken. We had
2 two recommendations discussed earlier. One would
3 increase the job satisfaction and collegial
4 environment of the occupational physicians.
5 Another one would hopefully bring about the hiring
6 of people with more expertise in occupational
7 medicine, epidemiology, related subjects.

8 What about growing the internal talent
9 pool of OWCP's claims examiners? Seems like a lot
10 of them are trained when a new major revision comes
11 down, but the training is really just checking the
12 boxes and complying with the rule.

13 I think back, this program would have
14 been a dream job for me right out of college. But
15 at the level I function at now, it would be a
16 nightmare. That's kind of sad. It would be nice
17 if people who start off in this program could add
18 to their credentials, and advance along some kind
19 of career path, and become more critical,
20 independent thinkers, and learn a lot of what
21 members on this Board have learned in their careers.

22 So the next Board maybe could have a

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1 dialogue with the director of OWCP about starting
2 to build something like that. There are so many
3 free webinars that a person with a couple of hours
4 at their desk in a bureaucracy could avail
5 themselves of and add depth to their knowledge of
6 occupational disease and chemical exposures
7 instead of waiting for the program staff to
8 parachute in from Washington.

9 It would take a fair amount of tweaking
10 the relationship with the union that represents
11 people, but I really think that's the long-term
12 solution for a lot of the problems we've identified.

13 CHAIR MARKOWITZ: So, Ken, this is
14 Steve Markowitz. So if we added an Item 13, it
15 would be something like examine and encourage
16 additional continuing education for claims
17 examiners. Does that capture it?

18 MEMBER SILVER: Continuing education
19 and credentialing.

20 CHAIR MARKOWITZ: Okay, okay.
21 Encourage additional continuing education and
22 credentialing for claims examiners.

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1 MEMBER DEMENT: Thank you.

2 MEMBER BODEN: This is Les. Related
3 to Ken's point, is there any kind of promotion
4 ladder within so that CEs not only could get
5 additional education but could move up? I just
6 don't know anything about that. And it would fit
7 with Ken's suggestion.

8 MEMBER CASSANO: I think we had asked
9 about this early on with the Board about what the
10 career progression was and what kind of education
11 the CEs had besides procedural and policy education
12 and if there were those opportunities. So I think
13 that's something that I think got was, sort of,
14 you know, put in the parking lot because of all
15 the other issues we needed to address.

16 And I think that was something we wanted
17 to do when we could talk to the claims examiners
18 directly. But we're not -- we were not able to
19 do that. So I think that was information we were
20 going to try to get from them.

21 So I think that's something that we do
22 need to add to this to look at -- and just a statement

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1 that says look at the educational opportunities
2 and career progression for claims examiners and
3 other staff involved in the claims review process.

4 CHAIR MARKOWITZ: So, Ken, I think we
5 want to slip in Dr. Cassano's phrase: career
6 progression, continuing education, comma,
7 credentialing, and career progression for claims
8 examiners. And was that other staff, Tori?

9 MEMBER CASSANO: Yes. Career
10 progression for claims examiners and other staff
11 involved in the claims review process.

12 CHAIR MARKOWITZ: So Item 14, if we're
13 done with that, I would say that we'd encourage
14 the Board to ensure that public comments are
15 appropriately tracked and subsequently integrated
16 into Board discussions. Other comments, issues?

17 (No response.)

18 CHAIR MARKOWITZ: I will write a little
19 bit of introductory sentence or two saying that
20 these don't necessarily represent priorities, but
21 that there are some items that should be addressed
22 by the next Board.

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1 MEMBER CASSANO: Could you just scroll
2 up so we could see the whole list from the beginning?

3 CHAIR MARKOWITZ: Other comments or
4 additions?

5 MEMBER REDLICH: This is probably just
6 included in one of these many other suggestions,
7 so if -- there were just a number of examples of
8 inconsistencies between, like, the manual and the
9 training materials, so just more of the
10 implementation of the recommendations. So I think
11 that's incorporated.

12 CHAIR MARKOWITZ: But in your work --
13 it's Steve Markowitz -- in your work on asthma,
14 you actually saw in the procedure manual that there
15 were inconsistencies, contradictions. Is that
16 right?

17 MEMBER REDLICH: Yes. And that was
18 sort of common with all the beryllium, sarcoid,
19 and other, you know, in that area.

20 CHAIR MARKOWITZ: Well, so I think that
21 deserves a separate line actually, a separate item.

22 MEMBER SOKAS: I agree. It's Rosie.

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1 MEMBER CASSANO: I do too.

2 CHAIR MARKOWITZ: So it's Number 15.

3 MR. BIRD: Sorry, Dr. Markowitz, can
4 you repeat that for me?

5 CHAIR MARKOWITZ: I could if I'd said
6 something.

7 MEMBER REDLICH: Something like review
8 of the latest procedure manual and training
9 materials for accuracy and consistency.

10 MEMBER CASSANO: Perfect.

11 MR. BIRD: You guys want training
12 materials instead of manual? Sorry.

13 MEMBER REDLICH: Yes, that's -- thank
14 you.

15 MEMBER FRIEDMAN-JIMENEZ: Okay, this
16 is George. I have one other comment. And I don't
17 see it down. Number 3, I think, that mentioned
18 the Haz-Map, would you like to include also IARC
19 and NTP? Those are the two main sources for
20 causation reviews for cancers.

21 And I think it would be useful to
22 mention Number 2. And I think it would be useful

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1 to mention them, to focus the new Committee on those
2 two. I think they're very useful. And they should
3 be an integral part of this process.

4 Do you want to add it after Haz-Map or
5 put a separate line?

6 MEMBER WELCH: I don't think we need
7 to do that. You know, we're already making a
8 recommendation about it. And I guess even it could
9 have implied that the new Board would follow-up
10 on all the recommendations.

11 Because we don't want them really to
12 limit it to those. We want them to include all
13 the ones that have been recommended, but this on,
14 I think, since we have a recommendation about it.

15 So we don't need to add it specifically.

16 Stephen, do you think we should have
17 here, you know, follow-up on all the
18 recommendations or is that just --

19 CHAIR MARKOWITZ: Yes. I think
20 they're, yes, Number 11. I think it's covered
21 under Number 11.

22 MEMBER WELCH: Okay.

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1 MEMBER REDLICH: Could we just add a
2 minor edit to Number 15? Review of the latest
3 manuals, circulars, and bulletins, and, comma,
4 circular, comma, bulletins and training materials.

5 Because sometimes the intent seemed to sometimes
6 change when things went from one to the other.

7 CHAIR MARKOWITZ: Okay, anything else
8 on the list? So we're not, obviously, going to
9 vote on these. These are just items that make sense
10 to us.

11 That is pretty much the end of our
12 agenda unless anybody has any other matter they
13 want to raise. I am going to discuss the schedule
14 for the next two weeks. But are there any other
15 issues anybody wants to bring up?

16 (No response.)

17 CHAIR MARKOWITZ: So --

18 MEMBER BODEN: This is Les, actually.

19 CHAIR MARKOWITZ: Yes.

20 MEMBER BODEN: So I don't know what's
21 going to happen in terms of the appointment of the
22 new Board. But I just wanted to express my thanks,

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1 Stephen, for the really wonderful work that you've
2 done as Chair of the current Board.

3 MEMBER CASSANO: Hear, hear.

4 MEMBER FRIEDMAN-JIMENEZ: I second
5 that.

6 CHAIR MARKOWITZ: Do you take a roll
7 call?

8 MEMBER SOKAS: And also the pleasure
9 was working with everyone who's on the current
10 Board. So thank you.

11 CHAIR MARKOWITZ: Yes, my view is that
12 we've really worked well together, you know, the
13 entire group. And we've been productive. We
14 haven't covered everything, but we've covered some
15 very important issues. I don't think we have a
16 complete understanding of this program, but we've
17 gone pretty far in understanding things. And I
18 think it's been a really excellent effort. And
19 personally, very pleasurable to me to work with
20 everybody on this Board.

21 I want to thank the Department of Labor
22 folks, particularly Carrie Rhoads, Doug

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1 Fitzgerald, and the contractor, Kevin Bird, for
2 the support, the patience, for turning things
3 around quickly, for reminding us of certain things
4 we needed to get done by certain time periods.

5 And I also wanted to thank the public
6 that's participated in each of our meetings, both
7 the one-timers who showed up at the various sites
8 we went to, but also the people who have
9 consistently come to our meetings, provided public
10 comments, enriched our knowledge. I hope that
11 we've effectively addressed at least some of the
12 issues on people's minds. I know we haven't
13 addressed them all, but with time hopefully they
14 will become addressed. But I appreciated that
15 interaction very much.

16 I also want to congratulate Laurie
17 Welch who is, I think, retiring tomorrow from --

18 MEMBER WELCH: That's correct. That
19 is correct.

20 CHAIR MARKOWITZ: -- a career that
21 began in 1982 or so. So I'm being approximate,
22 because I don't know exactly the date.

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1 I have three phone calls with Laurie
2 tomorrow. So I don't have to say goodbye to her.

3 But I do want to congratulate you on a wonderful
4 career.

5 MEMBER WELCH: Well, thank you. And,
6 you know, I plan to -- you guys that are staying
7 on the Board, you know, you've got to keep up the
8 work that we started, so I can bask in the glory
9 and not have to have to do any more work. That's
10 my view.

11 (Laughter.)

12 CHAIR MARKOWITZ: But I'm happy to say
13 she hasn't -- she's not changing her cell phone
14 number, so that's good too.

15 MEMBER WELCH: Or my email, yes, my
16 email too. I know, I'm here.

17 CHAIR MARKOWITZ: Okay, good. Any
18 other comments before, I think, Doug needs to close,
19 or adjourn this meeting, or say something before
20 we close?

21 MEMBER REDLICH: So maybe I missed this,
22 it's Carrie. What is the plan going forward?

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1 CHAIR MARKOWITZ: Okay. So the plan
2 going forward is that by next Tuesday, February
3 6th, well, first, Carrie and Kevin are going to
4 send around these recommendations, these things
5 that we've been looking at and working on.

6 And then the person or persons who have
7 taken the primary responsibility for writing these
8 up are going make whatever small change is needed
9 and send it to me and to Carrie by February 6th.

10 That's next Tuesday. Then we will turn that all
11 around and submit them to DOL, hopefully by February
12 9th. That's a week before most members of the Board
13 terms expire. Does that time table work?

14 MEMBER REDLICH: Works for me.

15 CHAIR MARKOWITZ: That's good, that's
16 good. Hearing no objection, that's good.

17 So, Doug, do you need to -- is there
18 any official announcement you need to make to --

19 MR. FITZGERALD: No. I just want to
20 say that, and I think I can speak for Carrie, that
21 we both really appreciate all the work the Board
22 has done on behalf of the program, taking time out

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1 from your personal lives to contribute to this,
2 try to make it a better program. And I want to
3 applaud you and thank you, Stephen, for your
4 leadership as Chairman in this as well. And I hope
5 we all talk very soon. But we will see.

6 CHAIR MARKOWITZ: Well, I hope Faye
7 begins to talk again very soon.

8 (Laughter.)

9 MEMBER VLIEGER: Faye has one
10 question. Do we know the date that they're going
11 to announce the Board members that are seated on
12 the next Board?

13 MR. FITZGERALD: I've been given no
14 information on that.

15 MEMBER REDLICH: This is Carrie. One
16 last thing, we had mentioned giving a list of
17 specific cases or claims that we had questions with
18 the final adjudication. I have put together a list
19 from the Part D conditions. I don't know if others
20 from cases they interviewed had any.

21 And the question is what do we do with
22 that list also. Because it has some identifiers

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1 or has to have some identifiers of the person, how
2 the best way to communicate that in terms of HIPAA
3 compliance.

4 CHAIR MARKOWITZ: Yes. It's a good
5 point. We did not discuss this.

6 MS. RHOADS: It might be that faxing
7 that would be the best thing to do. But let me
8 check. And then I'll send an email about that.

9 MEMBER REDLICH: When we adopt them,
10 they just have -- they have the identifier, I know,
11 the last four numbers of --

12 MS. RHOADS: If the identifier is
13 related to the Social Security number, we can't
14 email it. So let me check and see what the
15 identifier is, okay.

16 CHAIR MARKOWITZ: Okay. Any other
17 comments before we adjourn?

18 (No audible response)

19 CHAIR MARKOWITZ: Okay. So I'd like
20 to adjourn this meeting of the Board and --

21 MR. FITZGERALD: Yes, I concur.

22 CHAIR MARKOWITZ: -- wish everyone well.

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1 (Whereupon, the above-entitled matter
2 went off the record at 4:31 p.m.)
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