

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES
AND WORKER HEALTH

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COMBINED SUBCOMMITTEE ON MEDICAL ADVICE RE:
WEIGHING MEDICAL EVIDENCE AND
SUBCOMMITTEE ON IH & CMC AND THEIR REPORTS

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MONDAY
OCTOBER 23, 2017

+ + + + +

The Advisory Board met telephonically
at 1:00 p.m., Victoria Cassano and Rosemary Sokas,
Co-Chairs, presiding.

MEMBERSSCIENTIFIC COMMUNITY:LESLIE I. BODEN
KENNETH Z. SILVERMEDICAL COMMUNITY:VICTORIA A. CASSANO, Co-Chair
ROSEMARY K. SOKAS, Co-Chair
STEVEN MARKOWITZCLAIMANT COMMUNITY:

FAYE VLIENER

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DESIGNATED FEDERAL OFFICER:

CARRIE RHOADS

ALSO PRESENT:

MELISSA SCHROEDER, SIDEM

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

2 1:07 p.m.

3 MS. RHOADS: Good afternoon or
4 morning, everyone, depending on where you are. My
5 name is Carrie Rhoads and I would like to welcome
6 to today's teleconference meeting of the
7 Department of Labor's Advisory Board on Toxic
8 Substances and Worker Health, the Combined Meeting
9 of the Subcommittee on Medical Advice for Claims
10 Examiners Regarding Weighing Medical Evidence and
11 the Subcommittee on IH and CMC and Their Reports.

12 I am the Board's designated federal
13 officer or DFO for today's meeting.

14 First, we'd like to thank the Board
15 Members for their work and for all of the time that
16 they put in for us. I will introduce the Board
17 Members on the subcommittees and do a quick roll
18 call.

19 Dr. Victoria Cassano is the chair of the
20 Weighing Medical Evidence Subcommittee. Are you
21 here, Dr. Cassano?

22 (No audible response.)

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1 MS. RHOADS: She was. We'll get back
2 to her.

3 Okay, yes. And the Members are Dr.
4 Leslie Boden --

5 DR. CASSANO: I'm here!

6 MS. RHOADS: Okay. That was Dr.
7 Cassano.

8 DR. BODEN: That was not Dr. Leslie
9 Boden.

10 MS. RHOADS: Okay, great. Ms. Faye
11 Vlieger.

12 MS. VLIEGER: Yes, I'm here.

13 MS. RHOADS: Ms. Duronda Pope, who I
14 think is not on the line yet.

15 Dr. Ken Silver.

16 (No audible response.)

17 MS. RHOADS: Okay.

18 MS. VLIEGER: Maybe he's mute.

19 MS. RHOADS: Maybe. And Dr. Rosemary
20 Sokas is the chair of the IH and CMC Subcommittee.

21 DR. SOKAS: Here.

22 MS. RHOADS: And the members are, Ms.

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1 Vlieger again; Mr. Kirk Domina, who I think is not
2 on the call yet; Mr. Garry Whitley, who will not
3 be able to join us today; Mr. Mark Griffon; Dr.
4 George Friedman-Jimenez; and Dr. Steven Markowitz,
5 who is also the chair of the Board.

6 DR. MARKOWITZ: I'm here.

7 MS. RHOADS: Great.

8 We are scheduled to meet from 1:00 to
9 2:30 p.m., Eastern Time.

10 In the room with me is Melissa Schroeder
11 from SIDEM, our contractor.

12 Copies of all meeting materials and any
13 written public comments are or will be available
14 on the Board's website under the heading Meetings
15 and the listing there for the subcommittee meeting.

16 The documents will also be up on the
17 WebEx screen so everyone can follow along with the
18 discussion.

19 The Board's website can be found at
20 www.dol.gov/owcp/energy/regs/compliance/advisor
21 yboard.htm. After clicking on today's meeting
22 date, you'll see a page dedicated entirely to

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1 today's meeting. We will publish any materials
2 that are provided to the subcommittee there. You
3 should also find instructions for participating
4 remotely there.

5 If you are participating remotely and
6 you're having a problem, please email us at
7 EnergyAdvisoryBoard@dol.gov. If you're joining
8 by WebEx, please note this will be for viewing only.
9 It will not be interactive.

10 Phones will also be muted for
11 non-Advisory Board Members.

12 Please note that we do not have a
13 scheduled public comment session today. The
14 call-in information has been posted on the Board's
15 website so the public can listen in but not
16 participate in the subcommittee's discussions.

17 The Board voted at its April 2015
18 meeting that subcommittee meetings should be open
19 to the public. Full transcripts and minutes will
20 be prepared from today's meeting.

21 During the discussion, people on a
22 teleconference line, please speak clearly enough

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1 for the transcriber to understand you. When you
2 begin speaking especially at the start, please
3 state your name so we can get an accurate record.

4 Can you please mute your phones because
5 there is a call in the background we can hear?
6 Thank you.

7 Also, I'd like to ask our transcriber
8 to please let us know if you have trouble hearing
9 --

10 Can everybody mute their phones,
11 please?

12 As DFO, I see the minutes were prepared
13 and inserted as certified by the chair.

14 The minutes of today's meeting will be
15 available on the Board's website no later than 90
16 days from today, per FACA regulations. If it's
17 available, the minutes will be published before the
18 90th day.

19 Although formal minutes will be
20 prepared, we will also be publishing verbatim
21 transcripts, which are more detailed in nature.
22 They will be available on the Board's website

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1 within 30 days.

2 I'd like to remind the Advisory Board
3 Members -- materials that have been provided to you
4 in your capacity as members of the Board, which are
5 not for public disclosure and can't be shared
6 publicly.

7 With that, I convene the meeting of the
8 Advisory Board on Toxic Substances and Worker
9 Health, Combined Subcommittee on Medical Advice
10 Re: Weighing Medical Evidence and Subcommittee on
11 IH and CMC and Their Reports.

12 I am going to turn it over to Dr. Sokas
13 and Dr. Cassano.

14 I will also ask the moderators to mute
15 the line that is loud to everyone.

16 Go ahead, Dr. Sokas.

17 DR. SOKAS: Okay. So welcome,
18 everybody. And I'm going to ask any of the
19 committee members to jump in at any point on our
20 discussions today.

21 We have two agenda items. The first is
22 a brief report on the meeting that took place among

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1 some of the subcommittee members with the
2 Department of Labor on July 11th. And the second
3 item is really a preparation for the meeting in a
4 month's time, the full Board meeting.

5 We did have a request to include some
6 discussion of the DOL's response to the full
7 Board's questions and we may be able to get into
8 some of that.

9 But the other agenda item that was in
10 preparation for the next full Board meeting was to
11 determine whether we want to make a recommendation
12 that our two subcommittees get merged, since the
13 topics seem to overlap more and more at this point.

14 Any other comments or anything else to
15 discuss about the agenda?

16 (No audible response.)

17 DR. SOKAS: And my fondest hope is that
18 we finish within an hour but I'll see how it goes.

19 All right, I'm appreciative of the fact
20 that the noises have all stopped. So I am grateful
21 that people are all on mute. Please unmute when
22 you want to make a comment.

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1 I'm going to do a very brief description
2 of what happened and a little bit of follow-up from
3 our subcommittee meeting on July 11th. Dr.
4 Cassano and Dr. Silver each phoned into that
5 meeting. I was local so I was able to actually go
6 to the meeting in person. It was essentially a
7 meet and greet for some of the members of our two
8 subcommittees with Dr. Armstrong and Mr. Levitt.

9 Dr. Armstrong is the relatively new
10 medical director for the program, who was recruited
11 a little over the past year.

12 Mr. Levitt is the lead industrial
13 hygienist for the group.

14 Also in attendance, Rachel Leiton, and
15 Doug Pennington, and Carrie Rhoads, and John Vance.
16 So there was a hefty representation of the program
17 in the room.

18 We had a generally useful discussion
19 about the approach that Dr. Armstrong and Mr.
20 Levitt take to the review of the CMCs and the
21 industrial hygiene approach. I'll leave it to Dr.
22 Cassano to discuss whether or not we really

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1 approached the issue of weight of medical evidence.

2 One new piece of information that I
3 would say was very important that came out of the
4 meeting was a clarification that in fact Dr.
5 Armstrong has been conducting some reviews of the
6 CMC reports, which we were unaware of. We had
7 previously asked several times to see about any
8 such qualitative report -- I'm sorry, not
9 qualitative but reports on the content, on the
10 quality of the CMCs. We had previously been given
11 access on several different occasions to a February
12 2015 memorandum that was basically a review of the
13 process, the pieces that were sent and the pieces
14 that were returned to the claims examiners for the
15 CMC and the IH reports. But we had never been given
16 access to the actual evaluation of the content.

17 Now, and I think there may have been
18 some misunderstanding when the full Board made the
19 request, actually, at its previous meeting to have
20 50 records reviewed for the quality and the content
21 of the CMC reports.

22 So since that time, we've been notified

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1 that that information, there are publicly
2 available reports now on the website from Dr.
3 Armstrong and from Mr. Vance.

4 Dr. Armstrong, basically, has a review
5 that was conducted for the third quarter of 2016
6 and for the fourth quarter of 2016, which are very
7 condensed public versions that are on the website.

8 Mr. Vance has reviewed Dr. Armstrong's
9 evaluations and has submitted a somewhat more
10 detailed report in May of 2017 that covered the
11 results of the third quarter review and in August
12 of 2017 that covered the fourth quarter of the
13 review.

14 The reviews, themselves, are not
15 completely available. Obviously, there is a
16 certain amount of redaction. But there were a
17 couple of areas where I think it would be useful
18 to have the Board have access to the reviews as
19 conducted and to the records as conducted.
20 Basically, there were a couple of reviews where the
21 language that was being criticized was -- I have
22 it written down here someplace but I don't have it

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1 in front of me -- not as likely as not, as opposed
2 to not a relationship. And there were some
3 determinations that were made that I think it might
4 still be useful, if feasible, to have the Board
5 members who had volunteered to do some of the review
6 to actually take a look at the information and the
7 reviews themselves. So I think that might be
8 something we could propose at the next full Board
9 meeting or for the next full Board meeting.

10 I'd like to open it up now, especially
11 to Dr. Silver and Dr. Cassano for any other comments
12 they might have, or Ms. Rhoads, on that particular
13 meeting, since all of you participated.

14 DR. CASSANO: Yes, I think so much of
15 it revolves around the issue of what the CMCs and
16 what the IHs were doing that there wasn't much from
17 my half of this world, other than a discussion of
18 what information the IHs and the CMCs get in order
19 to develop their opinions on exposure, et cetera.

20 And I think this has been sort of an
21 ongoing theme between the program and the Board in
22 that I think most of us, at least on our

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1 subcommittee, are unclear about how the claims
2 examiner with limited medical and/or industrial
3 hygiene knowledge can actually extract all of the
4 pertinent data, whether it's in the medical record
5 or whether it's in the exposure history, especially
6 when the occupational history questionnaire cannot
7 be -- is not routinely sent, unless they have
8 corroborated that information with either the SEM
9 or some other information held by the agency that
10 confirms what the claimant is saying in the
11 occupational history questionnaire.

12 And I think this is going to be brought
13 up again at the full Board meeting because it is
14 one of our recommendations, which was not
15 acceptable to the agency. And I think we're going
16 to try to figure out some compromise where there
17 is a possibility of either the IH or the CMC getting
18 more information in order to make sure that they're
19 not missing anything because the quality of their
20 report is only as good as the information that they
21 get.

22 And that's mostly what I have to say

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1 about that meeting. Ken, you were also on my
2 subcommittee or actually, you're on both, I think.
3 If you have anything more to add to that, please
4 go ahead.

5 DR. SILVER: Yes, I've been having
6 connectivity issues so I didn't hear everything you
7 just recapped, sorry.

8 I would say that Mr. Levitt's long field
9 experience in industrial hygiene was impressive to
10 me.

11 I'm still a little disturbed that
12 claims examiners are not incentivized to dig, and
13 dig, and dig but think for themselves before the
14 files get passed along to CMCs and others in the
15 program Staff.

16 But I find it interesting that these
17 audit documents first started showing up around the
18 time that the Board was created. So it looks like
19 we've had an impact just by coming into existence.
20 Do they go further back in time than 2016, anyone?

21 DR. SOKAS: So, I don't know. That's
22 a great question. As far as I know, this was

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1 something that was put in place by Dr. Armstrong
2 and he doesn't go back farther than that, I don't
3 think. These are just the last two quarters of
4 2016 that have been posted.

5 Ms. Rhoads, is that -- could we ask if
6 there have been previous similar quality
7 evaluations by previous medical directors, I guess
8 would be the question?

9 MS. RHOADS: Yes, I will ask if they
10 have anything previous to Dr. Armstrong.

11 DR. SOKAS: Thank you.

12 Any questions from any of the committee
13 members about the meeting on July 11th?

14 (No audible response.)

15 DR. SOKAS: Okay, hearing none, I would
16 like to get us right into the next part, which is
17 really planning for the full board meeting.

18 So we should really come as -- I would
19 like to have us, and really all of the people on
20 the line, discuss the question of whether it makes
21 sense to merge the two subcommittees.

22 And I don't know. Dr. Markowitz may

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1 want to comment on that, since he's on both.

2 DR. MARKOWITZ: Sure, it's Steve
3 Markowitz.

4 You know the terms of virtually
5 everybody on the Board expire in February I think
6 except for Fay Vlieger who I think gets until March.
7 I guess during that month maybe she can conduct
8 Board business.

9 But in any case, we don't know how much
10 turnover there's going to be. We don't know
11 whether people are going to reapply. We don't know
12 whether -- I should add, by the way, that Department
13 of Labor highly encourages current members to
14 reapply to serve on the Board. And I --

15 DR. SOKAS: And it's due -- it's due in
16 two days, right?

17 DR. MARKOWITZ: Right, due Wednesday.
18 There is an electronic submission, right, Carrie?

19 MS. RHOADS: Yes, to the regular Board
20 email that we usually use.

21 DR. MARKOWITZ: Right and it's a very
22 similar package, virtually identical to the

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1 package that you submitted two years' ago. No
2 external nomination is needed. You can nominate
3 yourself.

4 And so they, and I'm using the exact
5 language, highly encourage, is the key word, us to
6 reapply. And also I would encourage everybody to
7 reapply. We you know learned a lot and we're still
8 learning. You know, frankly, if you have a
9 majority new Board, it will be a whole other travel
10 up a steep learning curve. So that's potentially
11 problematic.

12 But in any case, so the question in hand
13 about merging the committees, I don't really know.
14 We can do that, I guess. If the Board turns over
15 significantly, then they sort of start over. And
16 in that case, you know they'll be looking at their
17 four tasks. The committees were structured
18 according to the four tasks.

19 My only concern, I guess, if we merge
20 things is that one or the other tasks may not get
21 full attention that it's gotten in the past.

22 So I don't know. And it largely is

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1 affected by the potential for change in the Board.

2 DR. SOKAS: Got it. So, again this is
3 Rosie. You know I feel as if the IH and the CMC
4 pieces have -- I'm not worried that they'll be
5 submerged but I'll turn it over to Dr. Cassano to
6 see if there are -- or to any of the people who serve
7 particularly on both the subcommittees to see
8 whether that would be problematic from anybody's
9 perspective.

10 DR. CASSANO: I don't think so. This
11 is Tori Cassano.

12 I don't think so because in order to
13 really evaluate how well the claims examiner is
14 doing, one has to be able to tie what the claims
15 examiner is doing to the end product. And with
16 just having the piece that I suppose we could share
17 information between the two subcommittees but that
18 gets sort of logistically onerous and I think
19 knowing both ends of it so we can definitely see
20 that okay, the industrial hygienist or the CMC had
21 all the appropriate information and, in our minds,
22 still came up with an inappropriate answer or we

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1 can be able to say that yes, given the information
2 the CMC had, this was the appropriate answer. And
3 you can't separate out those two.

4 You know it's sort of like if your cake
5 doesn't bake you've got to figure out what was wrong
6 with the ingredients and then re-bake the cake.

7 DR. MARKOWITZ: Did everybody get that
8 for the minutes?

9 DR. CASSANO: What?

10 DR. MARKOWITZ: Never mind.

11 DR. CASSANO: You want that for the
12 minutes? Well you know, okay. You don't have to.

13 DR. SOKAS: I agree. I think it makes
14 sense. It's very hard to look at these two pieces
15 in isolation, in my experience, in my opinion.
16 This is Rosie again.

17 Ken did you have anything you wanted to
18 add or say?

19 MS. VLIEGER: This is Faye. I think it
20 will be wise to merge them. I still think our
21 considerations from the meeting where we discussed
22 having someone with medical experience look at the

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1 evidence before it's discounted is a wise thing.
2 And I think by combining the committees, we'll be
3 able to see the relevance of that.

4 DR. SOKAS: Good, okay.

5 DR. CASSANO: And I think while the
6 committees may be combined, we can still track a
7 path, i.e., if what we want to recommend is under
8 the umbrella of weighing medical evidence but with
9 the guidance for the claims examiner, we can still
10 put that in the track, in that particular track or
11 if it's guidance for the CMC but OIH would put it
12 in that track.

13 So I think one subcommittee can do both,
14 at which point we have more expertise among the two
15 committees -- between the two committees than we
16 do just with one, with separate committees.

17 DR. SOKAS: So I would think we don't
18 need to really vote on this. I mean I think what
19 we could do is raise it as an agenda item to be
20 discussed at the full Board meeting because,
21 essentially what we've kind of done is we voted with
22 our feet a little bit by having our two

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1 subcommittees meet together the last two times --
2 I mean this time and the previous time.

3 Again, I would like to kind of clarify
4 this in that full Board meeting but either way, we
5 still collaborate, whether it is formally joined
6 or whether we continue to have joint meetings.

7 Now, I'd like to turn this question --
8 so unless there is any other conversation about
9 this -- Ken, I don't know if you had any thoughts
10 that you wanted to put on the record.

11 DR. SILVER: Yes, one more thing. If
12 our idea for file review of 50 cases is adopted and
13 the Department of Labor provides resources for a
14 contractor to do it with some AOEC type, it would
15 be much easier for them to report to one committee,
16 rather than getting bounced back and forth between
17 medical evidence and IH.

18 So that's another reason for just one.

19 DR. SOKAS: Yes, that's an excellent
20 point. And it also raises the question about that
21 recommendation because we based it on some faulty
22 input but I think that deserves to be discussed a

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1 little bit more in the next section.

2 Les, you're also on the line. Did you
3 have a comment or a thought?

4 DR. BODEN: No, except that I agree
5 with what other people have said.

6 DR. SOKAS: Okay.

7 DR. BODEN: So consider my silence
8 agreement.

9 DR. SOKAS: Okay, great. That's
10 lovely.

11 And I think we've heard from everybody
12 else who is on the phone right now. If anybody has
13 joined who wasn't, who hasn't had a chance to weigh
14 in, please let me know.

15 (No audible response.)

16 DR. SOKAS: Okay. So the next piece of
17 preparation for the main meeting, I think Ken
18 already got us started thinking about but do we have
19 any particular responses to the recommendations?

20 And I know Steve has already been
21 thinking about this. And I didn't know, Steve, if
22 you want us to go through it or if you have some

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1 particular thoughts you'd like to lead us off with.

2 DR. MARKOWITZ: No, I don't have any
3 particular thoughts except that you know that my
4 reading of some of the responses is there's clearly
5 an indication to interact. I think there is, at
6 least for some of them, there is at least an implied
7 expectation of that we will react to their
8 responses and so there will be some dialogue,
9 rather than just instead of the final decisions
10 handed down.

11 Other than that, I haven't.

12 DR. SOKAS: Okay, great. So with
13 that, by way of background and Ken having raised
14 the question about that one recommendation, I want
15 to kind of go through and focus on recommendations
16 that are quite specific to our two subcommittees
17 because some of the other items won't be as -- you
18 know might be more related to different
19 subcommittees.

20 So unless I hear differently -- so shout
21 it out if you disagree -- but I would suggest we
22 not discuss Recommendation 1, which has already

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1 been addressed. It is the 1995 guidance was being
2 rescinded.

3 Recommendation 2, which is related to
4 the SEM. Recommendation 3, about hiring former
5 workers to administer the occupational health
6 questionnaire, again, referring to what Steve just
7 said, we are anticipating being in dialogue about
8 that but I didn't know if anybody wanted to raise
9 any particular comments about that now.

10 Now Recommendation 4, I think, Ken,
11 this would be primarily for you to weigh in on. If
12 you want to discuss it now or all of these, again,
13 will be discussed at the full Board meeting, but
14 this is the recommendation about allowing for more
15 discussion between the IH and the claimant. And
16 the response to that seems to be really focusing
17 it back on the claims examiners. I didn't know.
18 Is this something to discuss now or defer to the
19 full meeting?

20 DR. SILVER: It's kind of the classic
21 argument and you know if someone like John Dement
22 is present, the argument gets a real boost in

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1 credibility. The industrial hygienists learned a
2 great deal from the affected individual.

3 I guess we'll just have to keep saying
4 the same thing over and again in public forums and
5 maybe there will be members of the public who have
6 worked on claims who have a similar view.

7 But I have nothing brilliant to add at
8 this stage.

9 DR. SOKAS: At this stage. Okay,
10 thank you.

11 DR. MARKOWITZ: Rosie, this is Steve.

12 DR. SOKAS: Steve?

13 DR. MARKOWITZ: Yes. So my read on
14 this is that there seems to be a desire by the
15 Department to include the claims examiner as the
16 central person in any collection of any additional
17 information or at least to participate. And I
18 think the key word here is coordinate any activity
19 between the industrial hygienist and the claimant.

20 And I think that is probably a good
21 thing because ultimately that information comes
22 back to the claims examiner. So the more that the

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1 claims examiner is involved, the less opportunity
2 there is for miscommunication.

3 I don't read that it responds as a no.
4 I don't read it as a complete yes but I read it as
5 sort of a conditional yes. I mean, obviously, we
6 want some clarification but that's -- looking at
7 the response, I don't see any real alternative
8 explanation.

9 DR. SOKAS: Okay.

10 DR. CASSANO: Well, this is Tori. I
11 agree with Steve's interpretation of that. It is
12 a little bit fuzzy as to what they exactly mean but
13 if the meaning of the response is, gee, if the
14 industrial hygienist is going to call the claimant,
15 then it should be a three-way call with the claims
16 examiner. If that was the intent of the response,
17 I agree that's a good point.

18 DR. SOKAS: Okay, good. So the
19 question moving forward then is a clarification of
20 what that means.

21 DR. MARKOWITZ: Right.

22 DR. SOKAS: Okay. Any other comments

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1 on that one?

2 (No audible response.)

3 DR. SOKAS: So moving on to
4 Recommendation 5, this was around teleconference
5 notes. And again, I probably am reading it more
6 narrowly but it looks like this probably did not
7 address some of the information that we thought was
8 available from the pieces that we had reviewed. So
9 that might be worth more of a conversation at the
10 full Board meeting.

11 Any other comments on Recommendation 5?
12 This was the teleconference note whether or not
13 there was generalizable information that is useful
14 for others to know about and to make available in
15 a redacted form.

16 DR. MARKOWITZ: This is Steve. I just
17 have one comment. I realize that members of the
18 public may be on the phone and they may not be
19 accessing what we're talking about but it is
20 available on the Board's website. You just have
21 to go the Board meeting from October 17 to 19, 2016.
22 And if you can find that, the meeting from a year

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1 ago, there is available under available meeting
2 items. And anyway, you eventually make your way
3 to the available -- under recommendations, under
4 the available meeting items is the link to the
5 responses and you can find what we're talking
6 about.

7 DR. SOKAS: That's right. It's a
8 September 19, 2017 communication to Dr. Markowitz.

9 Thank you. Thanks, Steve.

10 Okay, I'm going to -- yes?

11 DR. BODEN: Okay, this is Les. I think
12 I understand where they are coming from on this one.
13 And this is the sort of a kind of a less intense
14 version of executive privilege, where they want to
15 feel free to discuss policy issues in an open way
16 that might not -- it might not feel comfortable
17 making public. And I do think that we have to think
18 about that side of things in this. That is, they
19 do need a place where they can sort of you know
20 brainstorm ideas and not be ridiculed because these
21 things become public or something like that.

22 DR. SOKAS: Okay, that's helpful.

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1 Thank you.

2 Now in the next response,
3 Recommendation 6 and 8 are pooled together and this
4 was about making files accessible.

5 And so the file is being made accessible
6 to the claimant, as soon as the technology allows.
7 And that was a positive response.

8 There was a second recommendation that
9 the industrial hygienist and contract medical
10 consultants would also have access to the full
11 files and not simply to the specific information
12 being forwarded with the questions by the claimant,
13 claims examiner. And that, again, in my
14 interpretation seems to be not approved. And so
15 that seems to be a negative response.

16 I think Tori's comments in the
17 beginning addressed somewhat that it is
18 challenging to think of how the claims examiner
19 will know exactly which piece of medical
20 information is the appropriate piece to forward and
21 that sort of thing.

22 So I think we do have some questions

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1 about that that we would plan to raise at the full
2 Board meeting.

3 DR. CASSANO: Yes, Tori again.

4 I owe Steve a response to their response
5 that I said I would get to him. And since I can
6 now type, I will be getting that out within the next
7 couple of days to Dr. Markowitz so we have that.

8 I don't know whether we're going to
9 discuss those responses to the full Board -- I don't
10 know whether those responses are going to go in
11 before the full Board meeting or whether we're
12 going to discuss them at the full Board meeting.
13 I don't know how that's going to work. And maybe
14 Steve, Dr. Markowitz, you could let us know how
15 that's going to happen.

16 DR. MARKOWITZ: Yes, we're going to
17 discuss them at the full Board meeting. I mean we
18 haven't had an opportunity as a full Board to
19 discuss them. So, that's what we'll do.

20 DR. CASSANO: Okay. Okay, so before
21 any responses go in, we're going to discuss them
22 as a full Board. Okay.

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1 DR. SOKAS: And I don't know if anyone
2 else on the call has a comment about that.

3 DR. MARKOWITZ: This is Steven. This
4 actually really goes to the heart of our task about
5 weighing medical evidence because I think you know
6 in our recommendations I think we expressed some
7 maybe skepticism or maybe just some questioning
8 about whether the claims examiner was capable of
9 and was in fact sorting through the information
10 correctly and passing along the correct
11 information to the IH and the CMCs.

12 And so you said why not just send them
13 all along and let the CMC and the IH sort it out.
14 And clearly, that realigns the functions in the
15 program in the claims examining process and in a
16 very important way. I think that's what I read the
17 response to be.

18 So actually, if our empirical question
19 is are the claims examiners doing as well in terms
20 of identifying the appropriate information or the
21 doctors for the industrial hygienist. And you
22 know our recommendation to look at 50 claims, I

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1 think it was CMCs, actually, we could conceivably
2 expand that and look at not just the performance
3 of the CMC but look at what information was passed
4 along to the CMC or the IH by the CE. In other
5 words, develop some data as to whether this is a
6 real problem or not. Because I don't see, in the
7 absence of data here that we're going to be
8 persuasive or even that we quite know the facts,
9 actually.

10 DR. CASSANO: And Steve, Tori Cassano,
11 again. Again, one of my subcommittees or my
12 partial subcommittees will be discussing the trip
13 to Seattle, which did elucidate a little bit how
14 well the claims examiners are doing their job,
15 albeit it is a small number of records that were
16 picked by the different district offices.

17 So as I said, it's really hard to know,
18 number one if the process is working as well as it
19 could and, number two, if it is not working as well
20 as it could, where's the weak link? And you just
21 don't know that unless you see the whole claims
22 folder, see what the claims examiner sends to the

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1 IH and to the CMC, and then to the end product and
2 be able to dissect gee was anything really missing
3 or did the industrial hygienist or CMC not use the
4 information they got properly. You just don't
5 know until you see the whole thing.

6 DR. SOKAS: All right. Any other
7 comments on those recommendations for now?

8 And I did realize that what Ken was
9 discussing and what we had previously recommended
10 from our subcommittee about the need to do a content
11 review of the CMC reports was not one of the
12 recommendations that had gone out in October. It
13 didn't go out until I believe it was the April
14 meeting.

15 So we don't have a response on that one
16 but we will need to review that recommendation and
17 discuss it at the next meeting because given the
18 fact that we do have some information available
19 from the medical director reports, we may want to
20 look at and maybe tweak a little bit the language
21 in that.

22 I think we're still going to be

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1 requesting a review, along the lines of what Tori
2 and Steve have both been describing, having all of
3 the information together.

4 We have had full medical records at some
5 point and letters that have gone out to the
6 claimants but not necessarily in the same package
7 as letters that go to the CMC or the IHs. So that
8 would be helpful.

9 DR. MARKOWITZ: This is Steven. While
10 we're discussing this, the idea of our
11 recommendation for us to look at, maybe through a
12 contractor, a sizeable number of CMC reports and
13 the latest files, you know looking at Dr.
14 Armstrong's review for those two quarterly
15 reviews, for those two quarters, I think we should
16 give some thought about recommending looking at
17 larger than a number of 50 claims. Some of the
18 errors that Armstrong identified were less
19 frequent. And I think that we need a larger number
20 to really understand how important they are.

21 So we don't need to settle that now, but
22 I just wanted to throw that in.

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1 DR. SOKAS: Right. Okay, that's a
2 good point.

3 Any other comments on what we -- either
4 the response to these eight recommendations or
5 anything else we, as the subcommittees need to be
6 preparing for the Board meeting at large next time?

7 DR. CASSANO: Oh, did we just -- we
8 didn't discuss 7. I don't know if it was germane
9 to either of our committees but --

10 DR. SOKAS: Yes, I think it probably --
11 yes, I'm sorry. So 7 was a recommendation for
12 reorganization of the Department, which would be
13 nice but you know I don't know that we'll have a
14 chance to really make much difference on that. But
15 if anybody else has different thoughts --

16 DR. CASSANO: I do have one -- I don't
17 know whether it would be a request or a
18 recommendation. Probably a request.

19 I think a lot of us feel a little bit
20 frustrated when we have recommendations that go in
21 to the next full Board meeting and taking ourselves
22 away from a regular job and we don't have a response

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1 back from the Agency about the recommendations that
2 we submitted from the prior full Board meeting.

3 And it makes it very inefficient for us
4 to move forward and it makes it very difficult to
5 make further recommendations if you don't know what
6 has been accepted or rejected from the prior
7 recommendations from six months previously.

8 So I would like to make a request to the
9 program that responses to recommendations be
10 available to be made to the Board at least 30 days
11 before the next full Board meeting, if not sooner.

12 DR. BODEN: And I think we could add to
13 something like that a little you know sort of
14 generous note that says that we understand that
15 during the presidential transition sometimes it's
16 hard to make decisions but now that everybody's
17 onboard, ha-ha, we think that should be something
18 that could --

19 DR. SOKAS: Yes.

20 DR. MARKOWITZ: Well, you know -- it's
21 Steven. It really relates to whether we can be
22 effective.

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1 By way of example, we issued some
2 recommendations regarding presumptions and it was
3 mostly low-hanging fruit. So you know it would be
4 nice to know before we plow ahead with some
5 additional more challenging issues in relation to
6 presumptions whether that approach is helpful or
7 not.

8 DR. BODEN: Right, especially since
9 the Board only has full Board meetings a few times
10 a year.

11 DR. SOKAS: So that's a request to the
12 program, Carrie?

13 DR. BODEN: Well, you know we should
14 raise it at the full Board meeting -- you know three
15 weeks or whatever.

16 MS. VLIENER: This is Faye. I know we
17 discussed the Circular 1505 on asbestos and that
18 we didn't believe that that one should go forward
19 either. It was another post-1995 circular about
20 presumption of exposure.

21 I just want to point out that the
22 Department of Labor incorporated that into the new

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1 procedure manual. And so even though we were in
2 discussions about it and told them we didn't like
3 it, they went ahead and did that anyway.

4 I think we should discuss that at the
5 next meeting.

6 DR. CASSANO: So they rescinded the
7 circular but put it in the procedure manual?

8 MS. VLIEGER: They rescinded the
9 circular on chemical exposure not asbestos
10 exposure.

11 DR. SOKAS: And that recommendation
12 didn't go in until the subsequent Board meeting,
13 right?

14 MS. VLIEGER: I'd have to look at the
15 time line on it but they did not rescind the
16 circular on asbestos exposure 1505. They
17 rescinded the one on post-1995 hearing loss, 1506.

18 DR. MARKOWITZ: So you know, Carrie,
19 maybe since we're going to discuss this at the Board
20 meeting in New Mexico, maybe whoever attends from
21 DOL can be prepared to discuss what the chronology
22 and the thinking is on this issue.

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1 MS. RHOADS: Yes, I'll pass that on to
2 them.

3 DR. MARKOWITZ: And Faye, if you could
4 just send me a two-line email requesting that be
5 on the agenda. Otherwise, I'll forget.

6 MS. VLIEGER: No problem. It's
7 weaning its way to you.

8 DR. MARKOWITZ: Okay.

9 DR. SOKAS: All right, any other
10 comments, discussion, topics?

11 DR. MARKOWITZ: Yes, this is Steven.
12 So I've got a question.

13 We have these two audits by Dr.
14 Armstrong and then we have Mr. Vance's it looks like
15 decisions or recommendations to Rachel about the
16 Armstrong's observations.

17 And by the way, Carrie, those are
18 available to the public, right?

19 MS. RHOADS: Yes, those are posted in
20 the reading room. I sent a link out to the members
21 of the subcommittee but I could resend it around.

22 DR. MARKOWITZ: Okay. So are they on

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1 the Board's website or where would the public, or
2 for that matter, members of the Board exactly find
3 these?

4 MS. RHOADS: Yes, they are on the
5 program's website in the reading room, their public
6 reading room.

7 DR. MARKOWITZ: Okay, so the EEOICP
8 website, right, public reading room.

9 MS. RHOADS: Right. You know what, I
10 can direct them so that the links on the Board site
11 go to that site as well.

12 DR. MARKOWITZ: Okay, so here is a
13 question. Are we going to discuss the substance
14 of both Dr. Armstrong and Mr. Vance's memoranda at
15 the full Board meeting?

16 DR. SOKAS: Yes, so --

17 DR. MARKOWITZ: I think we should, but
18 go ahead.

19 DR. SOKAS: Okay. I mean that's fine.
20 I mean it's really follow-up to the July 11th
21 meeting. We could put that in to a discussion.

22 I mean what it does is I think when we

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1 need to discuss it, the way I was looking at having
2 that conversation was re-examining our Board
3 recommendation about the subcontracting to review
4 the quality of the information going forward and
5 the quality of the information coming back.

6 And to have some portion of what was
7 done through these -- through Mr. Vance and through
8 Dr. Armstrong to be available to the Board in
9 unredacted you know kind of the case files be
10 available and to have kind of a second opinion on
11 sort of a quality assessment of the quality
12 assessment, rather than come out with --

13 I mean is that what you had in mind,
14 Steve, or did you have something else in mind?

15 DR. MARKOWITZ: No, I actually meant
16 just sort of Step 1, which is Dr. Armstrong went
17 through -- I'm looking at this 42 randomly selected
18 CMC reports that were a subset of the third quarter
19 2016. He clips it to his memo February 8, 2017.
20 And of those 42, you know he talks about what number
21 and percentage were problematic and then discusses
22 why they were, the ones that were problematic what

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1 the problems were.

2 And then Mr. Vance, in a follow-up memo
3 of May 18, 2017, he actually goes through them one
4 by one and discusses Dr. Armstrong's observation
5 and his own examination of the claim and makes, I
6 think, the recommendations to Rachel -- I'm not
7 sure but in any case, about the particular claim
8 what ought to be done with it.

9 So these are very interesting and,
10 clearly, this goes to the heart of a quality review
11 and correction of claims. And I think we ought to
12 take advantage of this work and discuss it.

13 Now, I don't --

14 DR. SOKAS: So --

15 DR. MARKOWITZ: One last thing, Rosie,
16 I need to say.

17 We can request that the full Board
18 members take a look at these things, read these
19 things before the Board and they may or may not.
20 But committee members can and lead a
21 discussion -- present the results and lead a
22 discussion about these things.

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1 Okay, that's all I have to say.

2 DR. SOKAS: Right. I mean I think
3 there are several comments that you can -- that
4 could be made based on what you've described. I
5 think it might be important to have the actual chart
6 to review before kind of a full set of comments
7 would be useful.

8 And I don't know if I'm -- you know I
9 could be persuaded one way or the other on this.
10 I don't know if anybody else has had a chance to
11 peak at those.

12 So I'm not saying that you know kind of
13 definitively. Just I have thought that it might
14 be useful to actually take the case back to being
15 described by one and then the other and take a look
16 at it in full before trying to do that comparison.

17 I mean there are some aspects of the
18 process that might be able to be discussed in public
19 before then. So we could do it that way.

20 DR. MARKOWITZ: Yes, it's in part, a
21 timing issue -- have we submitted a request to see
22 the full files de-identified? I can't remember.

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1 DR. SOKAS: No we have not.

2 DR. MARKOWITZ: Okay but even if we
3 had, it would take a while to get. And then we're
4 into next year and I just think at whatever level
5 we can discuss these reports and memos, I think we
6 should learn from them what we can and realize that
7 we're looking at a secondary analysis, not the
8 primary data ourselves but still gain from them.

9 DR. SOKAS: Sure, okay. I mean and
10 Tori, I am happy to defer to you. I'm happy to do
11 that. I think it should come out of our joint
12 committee effort, basically.

13 DR. CASSANO: I agree, Rosie. I think
14 we need a better look at things and try to
15 incorporate the agency's perspective on what we
16 intend -- you know how we intend to review these.

17 But again, without seeing a full file,
18 you don't know what comments are correct. You also
19 need to not just look at the ones where Dr.
20 Armstrong found problems but you need to look at
21 the ones where there apparently were no problems
22 found, too.

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1 So you really do need a rather robust
2 review to accomplish all this.

3 DR. SOKAS: Yes, okay.

4 DR. SILVER: And if we're going to
5 proceed with the idea of a more expansive review
6 of case files from the primary data, we have to
7 distinguish it from what we have now, which is
8 audits and already an audit of the audits.

9 (Simultaneous speaking.)

10 DR. SILVER: -- propose something
11 above and beyond that.

12 DR. CASSANO: Well one of the things we
13 might ask, and I think I've said this before is in
14 order to enable us to do this, is to request that
15 some of us, whether it is the industrial hygienist
16 -- a couple of the industrial hygienists or the
17 physicians actually have access to the OIS system,
18 which is the imaging system they use and that's how
19 the claims examiners go through the file. And it's
20 very well-indexed and it's very easy to find stuff.
21 And it would make a lot of sense for us to be able
22 to use that system, rather than using a PDF, which

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1 is arduous at best.

2 DR. SOKAS: Right.

3 DR. CASSANO: So I don't know if
4 there's a possibility of getting access. I think
5 the issue -- we've asked for this before and the
6 issue was well once they get us access, we can go
7 anywhere. We are physicians and we are industrial
8 hygienists and the part that we have access to, we
9 only go where we're supposed to go. We don't go
10 looking up our friends and other people that we have
11 no right to look at. That's just part of the
12 ethical construct of both of our professions.

13 DR. SOKAS: Well and I would just like
14 to sort of suggest that -- this is Rosie again --
15 that if what we're talking about is having
16 subcontractors follow a specific set of guidelines
17 for reviewing this issue, rather than having Board
18 members do it, then if the subcontractors are paid,
19 maybe they can just struggle with the PDFs the way
20 we've done in the past.

21 So I mean I don't think we have to solve
22 this all ourselves is what I'm suggesting because

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1 we've all kind of wrestled with these at different
2 points.

3 So, Tori and I, I am going to propose,
4 will work together to do kind of a joint
5 presentation for the next Board meeting that
6 includes a review of these audits but in the context
7 of what we recommended in the past and what we think
8 we might want to modify, given what we know now.

9 DR. CASSANO: That sounds good.

10 DR. MARKOWITZ: When you look at these
11 reports or if you remember having looked at them,
12 I'm talking about Dr. Armstrong's summary, one
13 thing I couldn't find -- if you find it let me know
14 -- is I couldn't find where they looked at the
15 qualifications of the CMC.

16 DR. SOKAS: Oh, there's one report
17 where he comments specifically on the
18 qualification of one of the CMCs not being an
19 oncologist but being an internal medicine
20 specialist and they had requested an oncologist.

21 But he does -- so I don't know. I mean
22 we could sort of have this whole conversation now

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1 but I think it's probably best to discuss it at the
2 full Board meeting.

3 DR. MARKOWITZ: Sure.

4 MS. VLIEGER: This is Faye. In
5 reviewing those audit reports, there were a number
6 of findings that were duplicates, particularly in
7 the use of the word significant, which we discussed
8 before but I don't think the Department of Labor
9 took to heart.

10 And then when we're reviewing the
11 comments of an audit, we don't have any idea what
12 the training basis was for the people doing these
13 because the Department of Labor has not let us see
14 that because they consider it proprietary.

15 So when you're looking at an audit and
16 you're wondering what standard the people were
17 operating to without knowing the standard, it's
18 very hard to understand the conclusions.

19 So once again, I think we ought to be
20 able to see what standard CMCs are trained to.

21 DR. CASSANO: Well, Tori Cassano. I
22 think you know how the contractor does their

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1 business is one thing. But the RFP should be very
2 specific as far as how they are supposed to carry
3 out their function. And it should, in the RFP, say
4 that.

5 I don't know whether any of us looked
6 at the RFP or the actual contract language but
7 contract language is not proprietary.

8 MS. VLIEGER: The contract is not
9 specific to the --

10 DR. CASSANO: But it's an RFP and the
11 only thing that's proprietary, as far as I
12 understand it, is how much they're paying for it.

13 MS. VLIEGER: The training manual for
14 CMCs has not been released by the Department of
15 Labor, it's not on the public site. And the
16 contract itself, which I have looked at a couple
17 of the different contracts through the years, are
18 very vague. And so no, the contract is not
19 specific.

20 DR. CASSANO: Interesting.

21 DR. SOKAS: But I think the CVs of the
22 examining physicians are available to the -- so

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1 anyway, I think we should go through this and look
2 at it because I think they do get the CVs. They
3 know if somebody is boarded in something or
4 something else.

5 And that could be -- so I agree with Faye
6 that what we probably ought to be doing when we make
7 this next recommendation is maybe even setting up
8 the template for what the quality review might
9 include. And if there already is a template --
10 actually this is a great question for Carrie to
11 maybe supply for the next Board meeting.

12 But the question would be is there a
13 template that's used for the medical review of the
14 quality of the CMCs either by Dr. Armstrong or by
15 Mr. Vance.

16 So if they have a template that is
17 publicly available that could be shared, that would
18 be useful information. But otherwise, it may well
19 be something that the Board might want to do to say
20 well, these are the things that are useful to check
21 and maybe create that template.

22 DR. CASSANO: That's a great idea,

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1 Rosie, that we create it.

2 If they approve the use of the
3 subcontractors, then I think yes, we should work
4 on the template and make sure that they're looking
5 at the things that we consider important when doing
6 those reviews.

7 DR. SOKAS: Okay, great.

8 DR. MARKOWITZ: So, this is Steven.
9 They have circulated those templates. And Carrie,
10 if you could, because this stuff is hard to find,
11 if you can just make a point of sending those
12 around, that would be helpful.

13 MS. RHOADS: Okay.

14 DR. SOKAS: All right, any other
15 topics? Any other comments?

16 DR. CASSANO: I'm good.

17 DR. SOKAS: All right. Excellent.
18 Hearing none, I would like to turn it over to Carrie
19 to close out the meeting.

20 MS. RHOADS: Okay, great. There isn't
21 any procedure we need to go through.

22 So, thanks, everybody for joining the

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1 call today and we'll see you in November.

2 (Whereupon, the above-entitled matter
3 went off the record at 2:09 p.m.)
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