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

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

MEMBERS

SCIENTIFIC COMMUNITY:

LESLIE I. BODEN
KENNETH Z. SILVER

MEDICAL COMMUNITY:

VICTORIA A. CASSANO, Co-Chair
ROSEMARY K. SOKAS, Co-Chair
STEVEN MARKOWITZ

CLAIMANT COMMUNITY:

FAYE VLIEGER

DESIGNATED FEDERAL OFFICER:

CARRIE RHOADS

ALSO PRESENT:

MELISSA SCHROEDER, SIDEM

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

1:07 p.m.

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

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

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

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

(No audible response.)

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

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

DR. CASSANO: I'm here!

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

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

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

MS. VLIEGER: Yes, I'm here.

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

Dr. Ken Silver.

(No audible response.)

MS. RHOADS: Okay.

MS. VLIEGER: Maybe he's mute.

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

DR. SOKAS: Here.

MS. RHOADS: And the members are, Ms.

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

DR. MARKOWITZ: I'm here.

MS. RHOADS: Great.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Can everybody mute their phones, please?

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

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

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

within 30 days.

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

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

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

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

Go ahead, Dr. Sokas.

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

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

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

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

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

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

(No audible response.)

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

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

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

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

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

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

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

approached the issue of weight of medical evidence.

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

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

So since that time, we've been notified

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

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

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

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

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

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

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

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

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

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

And that's mostly what I have to say

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

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

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

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

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

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

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

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

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

DR. SOKAS: Thank you.

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

(No audible response.)

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

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

And I don't know. Dr. Markowitz may

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

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

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

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

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

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

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

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

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

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

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

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

So I don't know. And it largely is

affected by the potential for change in the Board.

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

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

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

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

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

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

DR. CASSANO: What?

DR. MARKOWITZ: Never mind.

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

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

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

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

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

DR. SOKAS: Good, okay.

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

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

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

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

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

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

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

So that's another reason for just one.

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

little bit more in the next section.

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

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

DR. SOKAS: Okay.

DR. BODEN: So consider my silence agreement.

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

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

(No audible response.)

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

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

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

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

Other than that, I haven't.

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

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

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

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

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

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

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

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

But I have nothing brilliant to add at this stage.

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

DR. MARKOWITZ: Rosie, this is Steve.

DR. SOKAS: Steve?

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

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

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

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

DR. SOKAS: Okay.

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

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

DR. MARKOWITZ: Right.

DR. SOKAS: Okay. Any other comments

on that one?

(No audible response.)

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

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

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

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

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

Thank you. Thanks, Steve.

Okay, I'm going to -- yes?

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

DR. SOKAS: Okay, that's helpful.

Thank you.

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

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

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

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

So I think we do have some questions

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

DR. CASSANO: Yes, Tori again.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I think we're still going to be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DR. SOKAS: Yes.

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

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

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

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

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

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

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

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

I think we should discuss that at the next meeting.

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

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

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

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

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

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

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

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

DR. MARKOWITZ: Okay.

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

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

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

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

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

DR. MARKOWITZ: Okay. So are they on

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

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

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

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

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

DR. SOKAS: Yes, so --

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

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

I mean what it does is I think when we

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

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

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

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

the problems were.

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

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

Now, I don't --

DR. SOKAS: So --

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

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

Okay, that's all I have to say.

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

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

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

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

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

DR. SOKAS: No we have not.

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

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

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

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

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

DR. SOKAS: Yes, okay.

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

(Simultaneous speaking.)

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

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

is arduous at best.

DR. SOKAS: Right.

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

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

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

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

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

DR. CASSANO: That sounds good.

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

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

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

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

DR. MARKOWITZ: Sure.

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

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

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

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

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

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

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

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

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

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

DR. CASSANO: Interesting.

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

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

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

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

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

DR. CASSANO: That's a great idea,

Rosie, that we create it.

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

DR. SOKAS: Okay, great.

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

MS. RHOADS: Okay.

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

DR. CASSANO: I'm good.

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

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

So, thanks, everybody for joining the

call today and we'll see you in November.

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