

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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NOVEMBER 5-6, 2020

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

MEMBERS

SCIENTIFIC COMMUNITY

AARON BOWMAN  
MARK CATLIN  
KENNETH SILVER  
MIKE VAN DYKE

MEDICAL COMMUNITY

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

CLAIMANT COMMUNITY

JIM KEY  
DURONDA POPE  
CALIN TEBAY  
DIANNE WHITTEN

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

**THURSDAY, NOVEMBER 5, 2020**

**Introductions:**

Mr. Chance called the meeting to order at 11:12 a.m. and welcomed returning and newly-appointed Board members. He noted that several guest speakers from the Office of Workers' Compensation Programs (OWCP) and the Office of the Solicitor (SOL) were scheduled to address the Board and provide helpful information to new members. This meeting was conducted via teleconference as a precaution against the COVID-19 pandemic. Mr. Chance reminded Board members that some of the materials they received in their capacity as special government employees, including private contracts, could not be shared or discussed publicly. Steven Markowitz, Board Chair, shared a brief overview of the Energy Employees Occupational Illness Compensation Program (EEOICP) and its purpose for the benefit of new Board members.

**Welcome:**

Julia Hearthway, Director of the Office of Workers' Compensation Programs, welcomed the Board members and outlined the work of claims examiners in adjudicating cases. She summarized some of OWCP's recent activities, including an increased focus on individual employee performance through case action sample reviews and the addition of a quality assurance analyst, who will conduct quality reviews on a weekly basis to help guide policy and training management.

**Review of Agenda:**

The above-listed Board members were in attendance. After a round of introductions, Chair Markowitz outlined the day's agenda. He noted that in addition to the items noted on the agenda, Gregory Lewis from the Office of Health and Safety at the Department of Energy (DOE) would be addressing DOE's role in relation to the compensation program.

**FACA Review:**

Joe Plick, Counsel for FOIA and Information Law from the Solicitor's Office, presented an overview of the Federal Advisory Committee Act (FACA) and its requirements. Under FACA, each committee's charter must be approved by the General Services Administration (GSA). Meetings are generally open to the public, and detailed minutes of those meetings must be kept.

The statute also requires that members of the public be allowed to provide written comments before or shortly after each meeting.

Under FACA, agencies must maintain several positions with respect to committees, including the Designated Federal Official, who is required to attend all meetings, perform administrative functions, and has the authority to approve, call and adjourn meetings and approve the agenda. The agency is also responsible for collaborating with the committee to set priorities and objectives for its work and ensure that the committee's advice is independent.

While most meetings are open to the public, committees may hold closed meetings in accordance with exemptions in the Freedom of Information Act (FOIA). Closed meetings, which could be convened to discuss personal matters or national security concerns, require approval from the head of the agency and the general counsel and must be noticed 30 days in advance. Subcommittees are also permitted by FACA and are not subject to FACA requirements.

#### **Energy Statute/Creation of the Board:**

Tom Gilbin, Associate Solicitor for the Federal Employees' and Energy Workers' Compensation (FEEWC) Division in SOL, discussed the history of the EEOICP program and its governing statute. EEOICPA was enacted in 2000 to provide medical compensation and benefits for workers in the nuclear weapons industry. It contains two parts that outline the compensation available for covered employees and their survivors. Part B provides uniform lump sum payments and benefits and covers employees at DOE, its predecessor agencies, certain vendors, contractors and subcontractors. It also provides smaller lump sum payments and benefits to individuals found eligible by the Department of Justice (DOJ) under Section 5 of the Radiation Exposure Compensation Act (RECA). Part E provides variable lump sum payments based on workers' permanent impairments of the whole body or qualifying calendar years of established wage loss. Part E covers DOE contractor employees and their survivors and provides the same benefits to uranium miners, millers and ore transporters covered by Section 5 of RECA.

Congress originally assigned responsibility for EEOICPA to President Bill Clinton, who delegated primary authority to DOL to administer the program, with additional responsibilities given to the Department of Health and Human Services (HHS), DOE,

and DOJ. The Secretary of Labor was given direct authority to administer Part E when it was created in 2004. OWCP adjudicates claims and pays benefits under EEOICPA, while HHS' National Institute for Occupational Safety and Health (NIOSH) estimates the amount of radiation received by employees who are alleged to have sustained cancer as a result of exposure and establishes guidelines followed by OWCP.

The Advisory Board on Toxic Substances and Worker Health was created under a provision in the 2015 National Defense Authorization Act (NDAA). The provision was amended in 2018 to extend the life of the Board by five years, and again in 2020 to expand the Board's duties and mandate certain actions. One of the Board's primary duties is to give advice on five subjects: the Site Exposure Matrices in DOL; medical guidance for claims examiners reviewing claims under Part E; evidentiary requirements for claims under Part B related to lung disease; the work of industrial hygienists (IHs), staff physicians and consulting physicians in DOL and reports of the IHs and physicians to ensure quality, objectivity and consistency; and the claims adjudication process, including review of Procedure Manual (PM) changes. The Board is also responsible for coordinating and exchanging data and findings with HHS' Advisory Board on Radiation and Worker Health.

Amendments to the statute in 2020 mandated that the Secretary of Labor provide the Board with access to information that the Board considers relevant to carry out its responsibilities. It also required that the Secretary publicly state whether they accept or reject the Board's recommendations, and provide either a timeline for implementing the recommendations or a rationale for disagreement.

#### **Ethics Rules:**

Zachary Mancher, Senior Ethics Attorney in the Ethics Division of the Solicitor's Office, gave an overview of the ethics rules for special government employees (SGEs). He outlined the financial conflict of interest statute, which prevents SGEs from participating in matters that would have direct and predictable effects on their financial interests or those of people close to them, with some exceptions. He also summarized the appearance of bias rule.

Mr. Mancher explained that SGEs could engage in non-government activities, including for pay, as long as those activities did not create a conflict with their official duties. The rule also

allows Board members to teach as long as it is part of the regularly established curriculum at an accredited institution. When it comes to politics, the Hatch Act prevents SGEs from participating in partisan political activities while on duty, in a federal building, or using federal resources. It also prevents SGEs from fundraising, soliciting, accepting, or receiving political contributions on days when they are serving in their official capacity.

Board members may not serve as expert witnesses in cases involving their participation on the Board unless it has been approved by the Solicitor's Office. As federal employees, they may not contact other federal officials to influence government actions, though the rules in this area are limited in their application to SGEs. Mr. Mancher summarized the policies on bribes, salary supplementations, and the optics concerns about the appearance of favoritism or impropriety. He also addressed restrictions related to the receipt of gifts and many relevant exceptions that apply to SGEs, as well as misuse of government resources.

Member Friedman-Jimenez asked Mr. Mancher to define the word bias in the context of his presentation. Mr. Mancher said that the appearance of bias rule dictated that SGEs could not work on any particular matter involving specific parties when a reasonable person would question the SGEs' impartiality in the matter. Member Bowman asked if it was appropriate for Board members to list their position on the Advisory Board on their curriculum vitae, and Mr. Mancher said that it was appropriate. Member Goldman asked if signing a petition as an individual would be problematic, and Mr. Mancher said that he would need more information to make a definitive statement but that the rule was narrow in its restrictions on SGEs.

#### **Overview of EEOICPA Statutory Areas for the Board:**

Rachel Pond, Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC), gave an overview of the program's work and the Board's statutory duties under EEOICPA. The energy program administers EEOICPA and provides lump sum compensation and medical benefits to current and former nuclear weapons workers and their survivors. The program uses employment evidence, medical evidence and survivors' evidence to evaluate claims, and the evaluation and adjudication of those claims differs under Parts B and E. The majority of the Board's duties are related to Part E. Four categories of conditions are covered under Part B: cancer, covered beryllium illness,

chronic silicosis, and RECA Section 5 awardees. Part E covers any condition where exposure is a significant factor in causing, contributing to or aggravating the claimant's condition. Benefits for employees and survivors are also calculated and administered differently under the two parts.

Under Part B Congress established four Special Exposure Cohorts (SEC), including gaseous diffusion plants (GDPs) and Amchitka Island. Workers in SECs have a presumption of causation and do not have to undergo the dose reconstruction process. To qualify for SEC designation workers must show that they worked in a specific location or at a specific job for 250 work days during the period that the facility was designated in a class, and they must have one of 22 specified cancers named in EEOICPA. Individuals can petition NIOSH to add a class of employees to the SEC, and if NIOSH determines that they cannot do a dose reconstruction at a particular site, they can add an SEC. Since the original four SECs were established, NIOSH has added over 130 new classes. The dose reconstruction process, conducted by NIOSH for cancer claims that do not fit into an SEC, involves an interview process, review of records from individual sites, and a final report. Based on this final report, the energy program determines whether there is a 50 percent or higher likelihood that the individual had sufficient radiation exposure to receive benefits under the program.

The program created the Site Exposure Matrices (SEM), a repository of information on toxic substances that were present at DOE and RECA sites covered under Part E, to assist claimants in determining which substances they may have been exposed to on the job. The SEM includes information about particular toxic substances at each site, as well as scientific links between toxic substances and certain illnesses.

In the claims process the burden of proof lies with the claimant, who must submit relevant records and information requested by the program. The program has several mechanisms to help with successful claims applications, including 11 Resource Centers across the country, four District Office locations, and the DEEOIC website. The Resource Centers provide many services including claim intake, guiding claimants through the EEOICPA process, maintaining communication with DOL, and administering the Occupational History Questionnaire (OHQ). The OHQ is used in Part E cases to obtain information from claimants about where they worked and which substances they may have been exposed to. Once a claim is submitted, the Resource Center or District Office requests employment verification from DOE.

The District Office then begins claim development, which consists of obtaining medical evidence, including diagnosis and causation, and employment information. The program communicates with treating physicians to learn more about possible exposures and causal relationships. If more information is needed, they will prepare a Statement of Accepted Facts (SOAF) and refer it to DEEOIC specialists, including IHs and contract medical consultants (CMCs). The program employs two federal IHs as well as an IH contractor to assist in evaluating the extent and frequency of exposure. Industrial hygienists gather records provided by DOE, the SOAF, the OHQ, and the program's review of the SEM and refer these materials to CMCs, who send back detailed reports. Federal industrial hygienists evaluate those reports for consistency and send them to claims examiners, who review them in the course of evaluating the case and making their determination. The program consults CMCs on a variety of topics including causation assessment, impairment, wage loss, and medical diagnosis.

Once all of the relevant information is collected, the District Office issues a recommended decision and sends it to the claimant, who has the right to object to the decision. The case then goes to the Final Adjudication Branch (FAB), where hearing representatives review the facts and the claimant is able to discuss their objections or submit additional information. The FAB then affirms, remands, or reverses the decision. If the claimant still wishes to object they may ask for the case to be reconsidered or reopened.

Ms. Pond outlined the Board's statutory duties under EEOICPA and addressed conflicts between different medical opinions on impairment. The program uses the AMA Guide to the Evaluation of Permanent Impairment to determine an employee's percentage of whole body impairment based on a covered condition. The evaluation of this whole body impairment is performed by the treating physician or a CMC, and claims examiners often consult the program's Medical Director if questions arise. The program has found conflicts with regard to tests used to determine different classes of impairment. In November of 2020 the program sent a letter to the Board which laid out the issues and posed a series of questions to solicit the Board's advice.

Member Bowman asked what percentages of cases are referred to IHs and CMCs, and how the program decides which cases to refer. Ms. Pond said that IHs only review cases covered under Part E, and the program refers most cases that have at least some

information about exposure and conditions. Chair Markowitz outlined the various types of documentation that claims examiners receive and summarized the Board's previous request for IHS to be allowed to conduct occupational health interviews.

Member Silver asked whether the program had ever gone back and reexamined claims after Board-recommended changes to the PM were accepted. Ms. Pond confirmed that whenever substantive changes were made, the program went back to review claims whose outcomes may have been affected by those changes. Chair Markowitz asked if the program had transitioned to a new IH contractor within the past year, and John Vance, DEEOIC Branch Chief for Policy, Regulations, and Procedures, confirmed that they had and that the new contractor also consisted of several IHS with previous experience in the DOE complex.

Chair Markowitz presented a spreadsheet of data that the Department had previously made available to the Board in response to a request for information about claimed conditions. The spreadsheet contained claims submitted from 2016 to 2019 for conditions including cancers, respiratory illnesses, neurologic diseases, renal diseases, beryllium sensitivity, and chronic silicosis. For each condition the table listed the number of claims submitted and what percentage of those claims were accepted, as well as the explanation for those that were denied. Chair Markowitz asked the program whether consequential conditions were included in the table of claims data, or if it was limited to the primary claimed diagnosis. Mr. Vance said that it would most likely include both primary and secondary diagnoses.

Member Whitten asked if the program recorded the time from the initial claim filing to the final decision. Ms. Pond said that they had a robust system for measuring the length of claims evaluations. Member Bowman asked if the program tracked the frequency of the submittal of certain types of claims from certain populations with the aim of someday conducting a retroactive examination. Ms. Pond said that ideally the program would have a research arm to evaluate that data, but all of their resources are dedicated to adjudication.

#### **Program Updates, Last 12 Months:**

Mr. Vance gave the Board an overview of the program's activities and interactions with the Board over the previous year. He explained that the Procedure Manual is a public-facing, living document that provides information about the claims evaluation



process. It helps the program with the difficult task of recreating work histories and occupational exposure histories for cases as far back as 1942. Much of the Board's work on the PM has focused on Chapter 15 and Part E causation analysis.

Version 4.3 of the PM was published on September 14, 2020 and contains several revisions. Cases are now assigned to District Offices on an equitable rotation basis rather than by the last location of covered employment. After receiving feedback from the Board, the program updated the PM to include Parkinsonism as an alias for Parkinson's disease, paralysis agitans, and hemi-parkinsonism. Input from the Board also prompted the program to add language to the asthma presumptive standard. The new language requires a qualified physician to provide a well-rationalized explanation identifying the mechanism for causing or contributing to a condition.

The program also revised the OHQ, which can be found at Exhibit 10-1 of the PM. It is now geared toward a more robust data collection effort, with a free-flowing structure and more broad and open-ended questions. The program has begun implementing the new OHQ, and since July of 2020 they have completed over 612 OHQ interviews with the new format. Language which previously suggested that an employee needed to count a certain number of exposure days was revised for clarity. The program deleted Exhibit 18-1, a matrix listing common characteristics of diseases and their diagnostic criteria, in response to confusion about requirements for claimant diagnoses. They also added a more detailed outline for assessment of requests for home and vehicle modifications.

In response to an earlier question from Chair Markowitz, Mr. Vance said that he was not aware of a substantial number of IH interviews with claimants, and that the additional information collected from OHQs was helping to characterize claimants' understanding of their exposures. In Exhibit 15-4, presumptive standards, the program has revised definitions for conditions such as chronic respiratory disorder and added new presumptive standards to other conditions, including non-Hodgkin's lymphoma. In response to a request from the Board, the SEM contractor, Paragon, has conducted an asbestos labor analysis.

Member Whitten asked how the program continued to fully utilize site-specific data accumulated over time under their new case assignment system. Mr. Vance said that CEs use the SEM to establish a factual framework of their cases no matter which site they originated from. Ms. Pond added that when they

switched to the new system some District Offices had accumulated knowledge of the particularities of certain sites. The program conducted in-depth training for the CEs with experts on each site, and they maintain points of contact (POCs) in the District Offices to answer site-specific questions.

Member Silver asked whether any of the claimant interviews conducted using the new OHQ were for cases that were originally adjudicated using the old OHQ. Mr. Vance said that all of the new OHQ interviews conducted so far were for new, incoming cases. Member Silver asked whether the program would be open to re-interviewing claimants using the new OHQ. Ms. Pond said that it would be difficult to pull all of those cases and re-interview claimants at a systematic level, though individual claimants could ask to re-open their cases at any time. Chair Markowitz asked about the program's plan to evaluate the effectiveness of the new OHQ, and Ms. Pond said that they would consult the Resource Centers for feedback.

**Public Comment Period:**

*Terrie Barrie, Alliance of Nuclear Worker Advocacy Groups*

Ms. Barrie noted that the agency did not seem able to realize the full scope of the job responsibilities of guards and first responders. She suggested that the SEM administrator schedule teleconferences with first responders to understand the exposures involved in those employees' work experience. She also noted that the statute requires DOL to supply the Board with requested documentation, and that requiring the Board to provide a rationale for each request only delayed their work. Similarly, the Board has requested a technical contractor for several years and has only recently been asked to provide written justification. Ms. Barrie praised former EEOICPA Ombudsman Malcolm Nelson and his staff for their assistance to the claimant community and to DOL.

In a recent FOIA request concerning impairment claims, ANWAG requested copies of any documents discussing audits of the independent physicians who submit impairment rating reports. DEEOIC stated that they did not have any such documents and referred ANWAG to Chapter 21 of the PM. Ms. Barrie commented that it seemed unlikely that the program did not have these documents, given that numerous impairment ratings from the same physician had been reviewed by the Medical Director.

*Faye Vlieger*

Ms. Vlieger focused her comments on recent actions taken by Ms. Pond and the program's Medical Director, Dr. Armstrong. In March of 2020 Ms. Vlieger became aware that impairment rating reports from an independent physician were sent to Dr. Armstrong per his request. He has since instructed CEs and District Offices to send him any impairment rating reports that contain certain words and phrases that are, according to Dr. Armstrong, not in accordance with the fifth edition of the AMA Guide. Ms. Vlieger filed a FOIA request, to which DEEOIC responded that they could not release documents related to claimant files. She requested that the Board review Dr. Armstrong's directives, communications, and personal opinions within the claims adjudication process and make recommendations to address issues of undue influence.

*Donna Hand*

Ms. Hand spoke about the issue of impairment ratings. She noted that Dr. Brigham, the author of the AMA Guide, said that most impairment doctors do not use Chapters 1 and 2 of the guide when making their determinations. In 2006 several senators wrote to the Department to specify that all impairments must be included in the rating. Despite this directive, and the fact that some states, including California, use the Global Assessment of Functioning Scale to measure psychiatric impairments, many physicians continue to state that they cannot include certain conditions. She also requested clarification around the definition of a well-rationalized report.

**Department of Energy Presentation to the Advisory Board on Toxic Substances and Worker Health:**

Greg Lewis, Director of the Office of Worker Screening and Compensation Support at the Department of Energy, gave an overview of the relationship between DOE and the program. Mr. Lewis' office administers the Former Worker Medical Screening Program and supports DOL and NIOSH in implementing the compensation program. They provide records and information related to individual claims, support larger-scale site characterization projects like the SEM, and conduct research on issues related to covered facility designations.

For individual claims the office obtains employment verification for DOL, radiological dose records for NIOSH in Part B claims, and Document Acquisition Requests (DAR) for DOL. Each DOE site

has a site POC to spearhead the record acquisition process, facilitate worker interviews, and provide onsite EEOICPA information to workers. These POCs receive individual claims through the Secure Electronic Records Transfer (SERT) system and send requests to responsive records areas at the relevant DOE sites. Each record area conducts a search of their holdings, which can include many different electronic and physical locations for each type of record.

The office conducts approximately 16,000 records responses per year across all three areas of work, from over 25 different DOE locations. In FY19 DOE had a 98 percent on-time response rate with a 60-day goal, though FY20 numbers will be different due to the COVID-19 pandemic. Mr. Lewis summarized DOE's role in the creation of the SEM and the review of the SEM for classification and release to the public in 2009. DOE continues to support DOL in adding data to the SEM and participates in the Joint Outreach Task Group meetings with DOL, NIOSH, DOL's Ombudsman and the Former Worker Medical Screening Program. The latter was established in 1996 to identify and notify former workers at risk for occupational disease and offer them medical screening that can lead to early detection and treatment.

Member Goldman asked about the focus of the Former Worker Medical Screening Program. Chair Markowitz said that they primarily screen for general occupational diseases such as chronic lung disease, hearing loss, beryllium sensitivity or disease, and some cancers. Member Silver asked how frequently DOE was contacted by individuals or advocacy groups outside of the DOL to DOE line of communication. Mr. Lewis said that they were contacted on a weekly basis, and when they receive those communications they do their best to go back and find information that they may have missed.

**Adjournment:**

Chair Markowitz adjourned the meeting for the day at 4:31 p.m.

**FRIDAY, NOVEMBER 6, 2020**

**Call to Order:**

Chair Markowitz called the meeting to order at 11:07 a.m.

**SEM Demonstration:**

Mr. Vance presented information about the SEM and its role in

the case adjudication process. The SEM is a searchable database with facility-specific inventories of toxic substances used during production of atomic weapons. The data in the SEM are derived from historical documentation describing operations that occurred at each weapons facility. Along with other case evidence and claimant-submitted information, the SEM assists in establishing the factual framework of an employee's likely toxic substances exposure profile. Physicians consider this profile when establishing a causal relationship. DOL's contractor, Paragon, manages the collection of information and maintenance of the SEM. The SEM has two variants: the internal version is available to employees and is constantly updated with new information, which is then reviewed by DOE and updated on the public SEM every six months.

Mr. Vance summarized best SEM usage practices, which can be found in Chapter 15 of the PM and on DEEOIC's website. Searches must reasonably connect unique features of claim information to SEM data filters, and search criteria should correspond specifically to information relevant to the claimant. The SEM contains a large amount of very unique, customized data related to the facilities, and searches should balance the need for accurate information and detailed analysis with the need to compensate claimants in a timely manner. The SEM does not provide temporal toxic data or data on levels of exposure, and the latter is often left up to the judgment of the IH. In addition to the SEM, DOL has a portal that allows claimants, toxicologists, and epidemiologists to submit information about toxins, facilities, and disease-specific information. Mr. Vance demonstrated a basic SEM search process for the Board. He noted that the SEM is not a decision-making tool; it is an information resource that can be utilized to help inform the factual framework of a case.

Member Goldman asked about workers with exposure to toxins that were not necessarily linked to their job category, such as security guards who were exposed to welding fumes. Mr. Vance said that in that scenario he would look for information in the SEM about the employee's tasks and duties that brought them into proximity with those toxins. Rather than searching the SEM by labor category, a claims examiner could search by work process to find a reasonable connection to the exposure and turn to the IH to further define the extent and nature of the exposure. Member Whitten said that every time the SEM was updated chemicals disappeared from certain facilities. She asked if it would be beneficial to add a date range filter to the search function. Mr. Vance said that adding more temporal data to the

SEM would be very complicated and might actually be to the detriment of certain claimants.

Member Catlin asked how DOL ensures consistency among CEs using the SEM. Mr. Vance said that given the unique nature of most cases, the program uses mechanisms like independent reviews and quality assurance to look for consistent application of the process rather than consistent outcomes. Member Bowman echoed Member Whitten's question about the decreasing number of chemicals at certain sites. Mr. Vance said that the same toxic substances remain in the SEM, but as the Department receives more information about those substances, connections to certain filtering criteria may be removed. Member Bowman asked how the program weighs different types of studies submitted as evidence. Mr. Vance said that in addition to human epidemiological data that establishes causal relationships, the program allows physicians to submit data that meets the more flexible standard of contributing to or aggravating conditions.

#### **Board Discussion:**

Chair Markowitz noted that in the past, the Board has used subcommittees and working groups as mechanisms to continue work between full Board meetings. Subcommittees are broader in scope, subject to FACA rules, and formulate options for the full Board to discuss. Working groups are not subject to FACA, typically focus on one specific issue, and can review and discuss documents that are not open to the public. The Board's work products include recommendations to DOL and data requests for claims to review, both of which require written rationales.

##### *a. Board request for SEM documentation for selected job titles*

Chair Markowitz outlined the Board's past recommendation that DOL identify certain site-wide job titles and incorporate them into the SEM. He also shared DOL's response and summarized the Board's decision to look at cases from the GDPs. The Board observed that these job titles, which performed very similar functions, had differing numbers of agents listed in the SEM for the same job categories. Chair Markowitz presented the agents listed as security guards for all three GDP plants and noted that while the discrepancy in numbers was presumably due to different levels of documentation available to the SEM, it was unlikely that guards at the three sites had very different exposures in reality. After they reviewed the data, in April 2020 the Board requested the SEM documentation in order to better understand this issue. In November 2020 the DOL provided

the Board with a list of 258 sources of information on toxins for guards and health physics technicians at the GDPs.

Chair Markowitz noted that the Board did not have the resources to examine 258 sources and that the SEM is constructed based on available documentation. The issue is not the level of documentation that exists for these job categories, which varies widely between DOE sites; the issue is whether or not a claims examiner can make exposure presumptions for a limited number of site-wide job titles (e.g., security guards, firefighters).

Member Key suggested that the fire department should be added to the list of job titles for Paducah. Chair Markowitz said that the idea of exposure presumptions was built into the statute, and it was important because it made up for some of the limitations of the SEM. Member Catlin asked if there was a list of agreed-upon site-wide job categories. Chair Markowitz said that there was not a list, but if the recommendation was accepted, then the Department would most likely identify the job categories with the Board's input.

Member Catlin asked whether this recommendation would result in cases going to the IH for review rather than being filtered through the SEM. Mr. Vance said that the CEs were responsible for evaluating the evidence and identifying the toxins that were most likely connected to the claimed disease. The IH would then profile those toxins and provide additional details which the physician could consider when weighing an opinion on a causal relationship. Member Whitten asked if the Board would be able to review the language of the presumptions before they were implemented. Mr. Vance said that if DOL agrees to the recommendation, they will act on it as efficiently as possible and then take further feedback from the Board.

**Board Recommendation:**

Chair Markowitz drafted a recommendation and after some discussion, the Board voted unanimously to submit the following as a formal recommendation to DOL: "The Board recommends that the Department develop and implement exposure presumptions indicating that job categories at DOE sites whose workers likely worked throughout their individual sites had potential exposure to all listed toxic substances at those facilities."

*b. Board request for resources*

Chair Markowitz reviewed the Board's previous request for

resources and said that while he was not sure whether or not the recommendation was ever officially accepted, DOL did advise the Board on the process of acquiring resources and asked for a statement of work. He shared a document in which the Board previously identified a need for assistance in fulfilling functions such as organizing and reviewing claims and evaluating certain scientific, technical, and medical aspects of the program. The document also listed the tasks involved and expertise required for each area. Chair Markowitz noted that the Board considered this outline to be a statement of work and that the goal at the current meeting was to move forward into an iterative process with the Department.

*c. Draft Board report on integration of IARC 2A carcinogens into SEM*

Chair Markowitz explained that the Board had previously raised the issue of whether the SEM and underlying Haz-Map database was fully inclusive of recognized relationships between carcinogens and human cancer. The Department asked for the Board's assistance in analyzing several recognized authoritative sources for possible integration into the SEM, including the International Agency for Research on Cancer (IARC). IARC's Group 2A contains 88 agents that are considered to be probably carcinogenic to humans.

The working group examined the most recent 22 agents to be added to Group 2A as well as other sources such as the National Toxicology Program (NTP) and the current exposure links in the SEM. They eliminated some substances and highlighted others that were more likely to be used by workers. During this process they noted that outside workers would occasionally come to DOE sites to apply pesticides, and this exposure was not always recorded. Member Goldman demonstrated the working group's method for researching agents and searching for information in the SEM. Given the large volume of information available in various sources, the group felt that it would be more effective to focus on IARC, which has very detailed data.

At the Board's spring 2020 meeting, the working group recommended that IARC 2A agents should be incorporated in the SEM along with their respective associations with certain cancers based on IARC monographs. Member Friedman-Jimenez agreed that it was reasonable to include 2A carcinogens in the SEM, and added that it may require further review by the physician to account for the degree of uncertainty about causation. He noted that both IARC and NTP are multidisciplinary, and there is a



fair amount of overlap between the two sources, so it may not be necessary to include NTP's list of chemicals reasonably anticipated to be human carcinogens. He added that only a small number of the Group 2A carcinogens, those that were deemed relevant to occupational exposure, would be added to the SEM.

Chair Markowitz noted that the statute set out a standard that a toxic substance needed to be at least as likely as not to cause, contribute to or aggravate a condition, and 2A carcinogens could be reasonably construed to surpass that threshold. He noted that the SEM links particular agents to particular cancer sites, and the 2A carcinogens would only be useful if they named the cancer sites related to each exposure, which was difficult. Member Goldman said that IARC did name specific cancers for some of the agents, and they could use those as a starting point. Member Friedman-Jimenez added that it was difficult to extrapolate from animal studies to humans and vice versa, and the toxins should be examined on a case-by-case basis. Chair Markowitz said that the Department may not be able to act on the recommendation unless the human cancer sites are identified, and the Department may not have the resources to identify them.

Member Goldman said that an article by Dana Loomis, et al., contained a list of occupational agents and several associated cancers. She suggested that the Board review that article and select some higher-priority agents that have more information about effects on human organs for inclusion in the SEM. Chair Markowitz suggested that the working group reconvene to examine the issue of specific cancer sites, and several members agreed. Member Goldman invited Member Bowman to join the working group, and Member Bowman accepted the invitation.

*d. Assessment of the quality, objectivity, and consistency of physicians and industrial hygienists in the claims process*

Chair Markowitz explained that this assessment is one of the Board's core tasks from the charter. He presented a summary of the quarterly CMC reports audited by the program's Medical Director from 2018 to 2019. The majority of the CMC reports were causation and impairment reviews; the Medical Director found that very few of the causation reports needed improvement, while almost one-third of the impairment reviews needed improvement. The Board previously drafted a recommendation that DOL develop an ongoing, independent third-party based system of evaluation for IHs and physicians, and implement a periodic audit of IH reports to provide another layer of quality assessment. Based on its past review of claims, the Board concluded that the Medical

Director likely underestimated the number of problematic causation judgements. The Board also questioned the persistently high level of faulty impairment ratings, and noted that there may be a sizable number of impairment claims that the Medical Director did not review that also need improvement.

Members Silver and Mikulski agreed with Chair Markowitz's summary of the issue. Member Friedman-Jimenez suggested that they add a recommendation for DOL to formally compile a report of the audits as they are completed so that the Board can see how the assessments change over time, and Chair Markowitz agreed and said that he would add that language to the rationale.

**Board Recommendation:**

Chair Markowitz drafted a recommendation and after some discussion, the Board voted unanimously to submit the following as a formal recommendation to DOL: "The Board recommends that the Department develop an ongoing independent third party-based system of reasonably frequent periodic evaluation of the objectivity, quality and consistency of both the individual claim reports and the aggregate audits of program industrial hygienists and physicians. The Board also recommends that the Department implement a periodic audit of the industrial hygiene reports and the industrial hygiene review process. The results of these evaluations and analyses should be reported to the Board in a timely and systematic fashion."

*e. Follow-up on prior Board recommendations*

Chair Markowitz noted that the Board had recently received a report from the program's SEM contractor concerning asbestos. He summarized the Board's past recommendation that additional job titles be added to the list of jobs that were presumed to have significant exposure to asbestos. The Board consulted the U.S. National Occupational Mortality Database and provided a review of relevant studies to the Department's SEM contractor, which endorsed some of the Board's suggested job titles and rejected others. Chair Markowitz proposed that several Board members review the contractor's report and, if necessary, prepare a response. Members Van Dyke, Catlin and Whitten volunteered to join Chair Markowitz in working on this issue.

Chair Markowitz asked program representatives if they had any further remarks about the new OHQ. Mr. Vance said that he spoke to the contracting officer in charge of the Resource Centers, and they are reporting that the new OHQ provides a much better

information collection process. Chair Markowitz suggested that it would be helpful to collect feedback from IHs and claims examiners as well. He asked Ms. Rhoads to note that request as an action item. Ms. Pond agreed that such an evaluation method would be useful.

*f. Additional and new issues*

Chair Markowitz summarized a letter from the Department to the Board dated November 3, 2020. The Department requested the Board's guidance concerning medical data used to make evaluations of pulmonary impairment, particularly the use of the VO2 max calculation versus pulmonary function tests. Members Mikulski and Friedman-Jimenez volunteered to join Chair Markowitz in drafting a response to the Department.

Chair Markowitz referenced Faye Vlieger's remarks from the previous day which involved impairment claims. He said that some of the issues raised were particular to the claims review process and to one or two providers, which was not necessarily within the Board's purview. He also noted that it is in the Board's charter to assess consistency and quality of medical input and the claims adjudication process. He proposed that a small group of Board members should look at the relevant documents that Ms. Vlieger provided and decide what role, if any, the Board should assume. Members Tebay and Pope volunteered to assist Chair Markowitz in reviewing the materials.

**Review of Public Comments:**

In addition to the public comments on the issue of impairment, the Board discussed comments sent in by the Alliance of Nuclear Worker Advocacy Groups (ANWAG). ANWAG commented on the vague definition of significant exposure in a recent IH report and the fact that the importance of bystander exposure seemed to be minimized.

**Board Work Plan:**

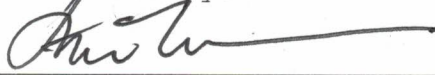
Chair Markowitz summarized the upcoming work tasks for the working groups on asbestos, IARC Group 2A carcinogens, DOL's request for input into the impairment process, and public comments about impairment. The full Board will meet again within six months, with a possible meeting in three months depending on the working groups' progress. He asked that all of the working groups meet telephonically within four weeks of the current meeting to discuss their various tasks. Member Silver echoed

Terrie Barrie's comments from the previous day about Malcolm Nelson's work as the Ombudsman. Chair Markowitz suggested that the Board issue a statement recognizing Mr. Nelson for his contributions, and Mr. Chance said that he would investigate whether or not that was within the Board's purview.

**Close of Meeting:**

Mr. Chance adjourned the meeting at 3:06 p.m.

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



Steven Markowitz, MD, DrPh  
Chair, Advisory Board on Toxic Substances and Worker Health  
Date:   2   /   9   / 2021