

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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JANUARY 28, 2020

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

MEMBERS

SCIENTIFIC COMMUNITY

JOHN DEMENT  
GEORGE FRIEDMAN-JIMENEZ  
MAREK MIKULSKI  
KENNETH SILVER

MEDICAL COMMUNITY

MANIJEH BERENJI  
ROSE GOLDMAN  
STEVEN MARKOWITZ, Chair  
CARRIE A. REDLICH

CLAIMANT COMMUNITY

KIRK D. DOMINA  
RON MAHS  
DURONDA M. POPE  
CALIN TEBAY

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

## **Welcome and Introductions:**

Mr. Chance called the meeting to order at 1:04 p.m. Eastern Time. The above-listed board members were in attendance. After a round of introductions, Steven Markowitz, Board Chair, welcomed participants and outlined the day's agenda.

## **Review of DOL Responses to Board Recommendations, December 18, 2019:**

Board members discussed their recommendations to the Department of Labor from December 18, 2019, and DOL's responses to those recommendations.

### *Asthma*

Member Redlich summarized the Board's four recommendations regarding work-related asthma. DOL generally agreed with and incorporated three of the recommendations regarding the definition and diagnosis of occupational asthma. On the fourth recommendation, concerning the Procedure Manual's wording and the criteria used to diagnose work-related asthma, DOL disagreed and preferred to maintain the existing language used in the PM. Member Redlich said that a good ending to this discussion would be to state that the Advisory Board and the DOL respectfully differ in their interpretation of a toxic substance. Chair Markowitz said that the issue is actually the word "mechanism" and not "toxic substance." After some discussion, the Board voted unanimously to recommend that in Item 2 of the relevant section of the PM new modified language conforming to the following should be used to replace existing language as indicated: The qualified physician must provide a well-rationalized explanation for his or her conclusions. ~~The qualified physician must provide a well rationalized explanation with specific information on the mechanism for causing, contributing to, or aggravating the conditions.~~

### *Asbestos*

Chair Markowitz said that most of the Board's recommendation was accepted by DOL. The pending issue is whether there should be an amended list or table in the PM with additional occupational titles and job categories that are presumed to have asbestos exposure. Several Board members submitted additional job titles that should be included in the list. DOL asked them to provide published references and scientific rationale supporting these suggestions, and members will present on this topic at the

Board's next meeting in April.

#### *Occupational Health Questionnaire*

Member Dement reviewed the history of the Board's OHQ recommendation and said that while the Board has not yet been provided with a copy of the redrafted OHQ, members are hopeful that their recommendations will be incorporated. This included the suggestion that information to stimulate claimants' recall of exposures be added to the OHQ, as well as substances for direct disease links in the SEM. The relationship of exposures to COPD is a topic that the Board has addressed throughout its existence. In DOL's response, they said that they did not feel it was appropriate to have a linkage between a specific toxic substance and a disease in the OHQ. Member Dement pointed out that that is not what the Board recommended; the Board was suggesting that substances that are known to be related to COPD should be added to the OHQ. Chair Markowitz asked about the timetable for the draft OHQ, and Ms. Leiton said that it should be available by the time of the next Board meeting, but pilot testing will probably begin before then.

#### *Resources for Claims Review*

Chair Markowitz reminded the Board of their request for resources to assist in claims review. DOL's response was that they would confer with Chair Markowitz to explore options for providing contractor support.

#### *Industrial Hygiene Reports Text*

Member Dement summarized the Board's observation that industrial hygienist (IH) reports consistently use language that assumes that exposures after 1995 were within regulatory limits. The Board's recommendation to DOL was to omit this language in IH reports. DOL maintained that in the absence of definitive monitoring data it is not appropriate to assume that a much higher exposure would occur. Member Dement said that the Board is not recommending a presumption of exposure to toxic substances after the mid-1990s, but it should also not be assumed that all exposures were within regulatory limits during that period. The current language places individuals whose exposures were predominantly post-1995 at a higher burden of proof. Member Dement said that he would like to review some claims that were denied based on lack of exposure post-1995 and recommended reaffirming the Board's position on this issue.

Chair Markowitz commented that CMCs often use IH reports as their expert source of information on exposure and this language has a real, practical impact. He suggested that they authorize a subset of the Board to write a response to DOL summarizing all of these points. Member Dement said that this type of case requires the IH to dive deeper and talk to the worker about how the exposure occurred.

**New Board Duties per Amendments to EEOICPA (December 30, 2019 Letter from DOL):**

Chair Markowitz explained that as a result of Congressional amendments to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Board has been given additional duties. They are tasked with providing advice on the claims adjudication process. Member Silver said that he interpreted the language to mean that Congress has confidence in the Board's work and hopes to extend its scope. He expressed concern about the language in the DOL letter that says OWCP will publish changes within ten days of submitting them to the Board, and several members agreed that this was a very tight time frame. Chair Markowitz commented that a real example of this short time frame was Bulletin 20-02, a 69-page document that the Board received the day before the meeting and which is scheduled to be published on February 10th. It is unlikely that the Board as a whole will be able to fully discuss the document and make recommendations within the 10-day period, and this process may require the Board to work in a different way. After some discussion, the Board decided that it would postpone the formation of a subgroup to look at Bulletin 20-02.

In addition, as part of the EEOICPA amendments, OWCP is now required to make the medical director, toxicologist, IH, and support contractors available to respond to questions from the Board. Chair Markowitz asked if these consist only of written interactions, and Ms. Leiton said that the initial conversation would be in writing, while follow-up questions requiring further interaction could possibly involve face-to-face meetings. The Secretary of Labor will respond to the Board's recommendations within 60 days of submission, and the Board will advise the Secretary with respect to other matters that the Secretary deems appropriate.

**Review of Public Comments:**

Chair Markowitz reviewed several public comments received at the last Board meeting in November 2019. Ms. Terrie Barrie submitted

a comment concerning letters of medical necessity, which the Board will discuss later as it pertains to Bulletin 20-02. She also commented on part of the PM, Exhibit 18-1, which is a matrix devised by Econometrica. Board members have raised concerns in the past about this Exhibit because it is increasingly discrepant with other areas of the PM. Board members opined that the Program should take a serious look at Exhibit 18-1 and consider either correcting it or removing it. Ms. Faye Vlieger raised the issue of an inordinate delay in the receipt of well-rationalized medical opinions from personal physicians. Ms. Leiton said that the Program asks for these early on, because they want to give claimants the opportunity to provide opinions from their own doctors, and the Program's statistics do not show that this results in delays to the claims process.

**DOL's Responses to Board's Information Requests, November 2019 Meeting:**

*Request to review 20 lung cancer claims from 2013 to present denied under Part E*

DOL responded that their system does not permit them to retrieve these cases without a manual review. Chair Markowitz noted that Report 682 (provided by OWCP) lists denied lung cancer claims from the time period, along with job title and earliest date of employment, and questioned why it would require manual review to find those cases. He arranged to follow up on this question after the meeting with Ms. Leiton and John Vance.

*Does DOL have a guide for treating physicians on how to use the SEM?*

DOL does not have a guide, but there are resources available online. Multiple Board members agreed that it was not likely that treating physicians would go looking for information in the SEM. Member Goldman suggested that it might be easier for treating physicians to look at the new OHQ that is being developed.

*How many public submissions were made to the SEM in 2019? What was the outcome for those submissions?*

There were 32 toxic substance inputs and 8 disease inputs in 2019, and DOL provided information on the outcome of each submission.

*From 2018 to the present, what changes have been made to the SEM regarding exposure-disease links?*

DOL provided a table of the changes made. There were 32 actions taken; in 22 of those instances some disease-exposure link was added, and in 10 they were deleted.

*How many CMC reports were issued each month in 2019?*

DOL provided the number of CMC reports issued by month, with a total of almost 2,400 reports.

*Request for an update on the status of re-opened cases*

DOL provided a chart detailing the status of cases that were re-opened in part as a result of Board recommendations.

*In DOL RPT 1158, how old are the "pending claims"?*

DOL's response was that they are unable to answer the question and they requested that the Board develop a more specific inquiry. Chair Markowitz said that he was not inclined to pursue this item.

*How is a quality assessment evaluation of the work of industrial hygienists performed? How will it be done under the new contract?*

The IH contractor, BGI, completes industrial hygienist evaluations, which are reviewed and corrected internally. Those reports are sent to the National Office, where federal hygienists check them for technical accuracy and consistency.

#### **Review of Action Items for Board, November 2019 Meeting:**

*Follow-up on adding IOM-recommended information to SEM*

The Board has a working group dedicated to authoritative sources for use by the Department in updating SEM, and the working group expects to have an update by the April Board meeting. Chair Markowitz asked the working group to consider whether IARC's Group 2A carcinogens meet EEOICPA's standard ("at least as likely as not that exposure to the toxic substance...was a significant factor in aggravating, contributing to, or causing the illness") and whether they should be included in the SEM as exposure-disease links. Member Berenji, the chair of the working group, said that the group needed to look at the IARC approach

and evaluations in detail and compare it to other data sources that the DOL currently references, including HazMap.

**Assessing Quality, Objectivity and Consistency of Industrial Hygiene and Contract Medical Physicians in EEOIP Claims Evaluations:**

Chair Markowitz summarized for the Board his previous findings around the OWCP Medical Director evaluations and training for CMCs. He also reviewed the obligations of the contractor, QTC, with regard to quality control of CMCs. The performance threshold is that no more than five percent of the medical evaluations will need clarification, correction, completion, or re-performance, but this does not align with the Medical Director's finding that at least 25 percent from the last five quarters needed correction. Chair Markowitz asked for future clarification from the Program about this discrepancy. The Board is also interested in looking at the results of the periodic evaluations that the contractor is required to perform. Member Dement said that he would like to see the QC plan that the contractor is required to develop. Ms. Leiton said that some of these inquiries probably could not be answered because of contractual obligations.

Chair Markowitz asked the Board what a quality assessment program for CMCs would look like if the Board help to redesign it. Member Dement said that it might involve looking at a sample of CMC reports, as the Board is currently doing. He also said that there should be a peer-review component involving outside individuals with the expertise to review the cases, and several members agreed that there should be some sort of independent entity involved to provide more objectivity. Chair Markowitz added that it was difficult for one person to have broad enough set of knowledge to cover all of the areas encompassed by the Program. External entities could draw on experts from many different areas of knowledge.

Chair Markowitz returned briefly to DOL's response about quality assessment of industrial hygienists. He requested that DOL provide the Board with information about performance metrics such as those in the QTC contract. He also noted that consistency does not appear to be a problem in the IH reports. Member Dement said that these assessments depend on the knowledge and experience of the IHs who conduct them and they would also benefit from a peer-review process. Member Silver said that he was struck by the consistency of the cited sources. Chair Markowitz noted that if the OHQ is modified and more IH

interviews are conducted, it will be possible for the IH evaluations to have better information and less consistency, with more insight into likely levels of exposure.

#### **Request for Information from DOL:**

Member Dement presented draft language for a request for information from DOL. The Board would like to examine ten cases of workers whose first employment at a DOE-covered site occurred after 1995 and who had their claims denied due to negative causation. Member Dement suggested that they focus on four diseases in particular and requested that the Board receive some kind of index that would allow them to find key documents easily. Chair Markowitz seconded the proposal and it was approved unanimously.

#### **Parkinson's Disease: Update**

Member Mikulski updated the Board on the activities of the Parkinson's working group. They provided Board members with a write-up during the November meeting which provided answers to some of DOL's questions for the Board on definitions, symptomatology, and classification coding for Parkinsonism and Parkinson's, among other topics. They have also done a thorough review of the literature on the main risk factors associated with Parkinsonism and Parkinson's and reviewed a number of Parkinson's claims in the context of disease exposure. The working group is in the process of formulating final recommendations for DOL, which they plan to present at the April meeting.

#### **Next Board Meeting:**

Chair Markowitz said that staff were looking at the last two weeks in April for the Board's next in-person meeting. This provides some time to publish a notice in the Federal Register in the event that a telephonic meeting is necessary to close out final Board issues prior to mid-July, when the current Board's term will end. The Board has previously chosen meeting locations according to which sites have the most cases and claims, and, if they follow this pattern, the April meeting will take place in Las Vegas, Nevada. Member Domina requested that the Board avoid scheduling their meeting for the third week of April because the Advisory Board on Radiation and Worker Health will be meeting in Hanford that week.

**Close of Meeting:**

The meeting was adjourned at 4:37 p.m. Eastern Time.

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, Dr.Ph.

Chair, Advisory Board on Toxic Substances and Worker Health

Date: 3/13/2020