

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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TUESDAY,  
JANUARY 30, 2018

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

MEMBERS

SCIENTIFIC COMMUNITY:

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

MEDICAL COMMUNITY:

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

CLAIMANT COMMUNITY:

DURONDA M. POPE  
KIRK D. DOMINA  
GARRY M. WHITLEY

JAMES H. TURNER  
FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

DOUG FITZGERALD

ALSO PRESENT:

KEVIN BIRD, SIDEM  
CARRIE RHOADS, Alternate DFO

### **Call to order and introductions:**

Mr. Fitzgerald called the meeting to order at 1:07 p.m. Eastern Time. The above-listed board members were in attendance and Mr. Fitzgerald called the roll. Chair Markowitz made note of the passing of Dr. Jim Melius, an occupational medical physician who served as the Chair of the Department of Energy's Radiation Advisory Board. Dr. Melius was instrumental in creating health and compensation programs for World Trade Center workers and he will be greatly missed.

Chair Markowitz outlined the agenda for the call, including a review of and votes on the Board's draft replies to the Department of Labor's comments on the Board's recommendations. Time permitting, the agenda would include subcommittee reports and discussion of topics for the next Board to take up. He noted that almost all of the board members' terms would end on February 16, with Member Vlieger's term continuing for several weeks afterward.

### **Response to program's recommendation responses and requests for information**

*Draft on IOM databases (#2, October 2016)*

The Board suggested incorporating reports from IARC, the EPA's IRIS database, and the National Toxicology Program to expand the causal links between exposure and disease in the Site Exposure Matrix (SEM).

Chair Markowitz suggested adding the term "peer reviewed" to describe these data sources and clarifying that competence in epidemiology and occupational medicine should be requirements for the implementation team identified by DEEOIC. Member Friedman-Jimenez voiced his support. Chair Markowitz said that it was unclear where epidemiological expertise existed in the Office of Workers' Compensation Programs (OWCP), as it seemed that the contractor Paragon mostly focused on exposure, and the National Office had expertise in toxicology and occupational medicine. Member Friedman-Jimenez asked about adding industrial hygiene as well, and Member Welch replied that they did not want people to second-guess all of these sources that have already been peer-reviewed. Members Cassano and Silver added their agreement. Members Friedman-Jimenez and Welch proposed specifying that the SEM include exposure-disease links for IARC group Group 2A. The Board voted to accept the draft.

*Draft on hiring former workers (#3, October 2016)*

The Board recommended hiring former DOE workers to administer OHQs at the Resource Centers and DOL agreed that this would be beneficial. Chair Markowitz suggested some more detailed questions about how former DOE workers were used in the recent past, including: how much time they spent administering OHQs; how many OHQs were administered by former DOE workers; what job titles these workers had when they worked at DOE; whether any Resource Centers were not accomplishing their goals of hiring former DOE workers; and whether Resource Centers who were recruiting specifically addressed the desire to hire former DOE workers.

Dr. Cassano suggested looking at the relevant Requests for Proposal (RFPs) and contract language to find out whether they prioritized hiring former DOE workers over other applicants.

The Board voted to accept the draft.

*Draft on physicians/organization's structure (#7, October 2016)*

The Board suggested that occupational medicine physicians working on EEOICP be blended with physicians working on other compensation programs. Creating a more collegial environment could improve the quality of work and in particular alleviate concerns about physicians practicing in isolation. The Board awaits further information from the program, and, essentially, this was an information request to provoke continued discussion.

The Board voted to accept the draft.

*Draft on IH/CMC viewing entire case file (#8, October 2016)*

The Board's suggestion that CMCs and IHs receive the entire claims file for cases they are reviewing was rejected by the Department as inappropriate and impractical. The revised recommendation consists of the Board's responses to each concern.

The addition of a case map to each file would make it less cumbersome for professionals to look through the entire record. The Board felt that unless the CMCs and IHs were able to review pertinent documents it was inappropriate to ask them to form an opinion. When these professionals provide expert medical opinions to other federal agencies, those contracts require them to have the entire record.

Member Boden addressed the Department's concern that the claims examiner's (CE's) position as the finder of fact would be undermined by sending additional information to the CMCs and IHs. Finders of fact in other realms such as the justice system often rely on experts and weigh their evidence to come to a conclusion, and this does not undermine their authority. In addition, access to the entire case file would not affect the CE's ability to ask the experts specific questions; it would merely expand the scope of the information that the expert could draw upon to answer those questions, even if that information was not recognized as relevant by the CE.

The Board voted to accept the draft.

*Draft on asbestos recommendation (#1, April 2017)*

Chair Markowitz said that on the issue of asbestos, the Department and the Board were largely in agreement. The DOL agreed that in the past they had not recognized in writing the issue of asbestos and lung cancer, and that certain time parameters were important. The Board revised this recommendation to include specifics that they would like to see for asbestos-related disease.

The Board used the term exposure criteria to talk about what is sufficient to be causal if the person has the disease in question, whereas the DOL was more focused on whether or not the exposure is significant. Using the term "exposure" versus "causation" presumption was mostly a linguistic difference between the approaches of the Board and the DEEOIC rather than a substantive difference in definition.

The DOL also wanted more documentation about the list of job titles, which the Board will provide. The Board's recommendation was for all construction and maintenance workers, which is broader than the List A currently in use. Chair Markowitz wondered why DOL does not use the Standard Occupational Category (SOC) classification system, which is the federal standard. He questioned the Board's proposed inclusion of the SOC system and whether it was a useful part of this recommendation, since the DOL has its own lists of jobs and categories that it has been using.

The Board recommended that if workers performed maintenance and construction tasks for 250 days or more prior to 2005, it should be presumed that they have sufficient asbestos-related exposure to aggravate, contribute to, or cause asbestos-related disease.

DOL requested documentation that 2005 was an important year in terms of exposure, such as inspection data or a change in DOE policy and procedure. Chair Markowitz said that as of this meeting they had been unable to find such documentation. He recommended that the Board use 1995 for the date of presumption, since the DOE issued Order 440.1 in that year. While the order did not immediately make it mandatory for contractors to change their procedures, it did provide a plausible marker in time, which is an important part of establishing a presumption for asbestos that would cover a great number of people.

Member Welch said including the SOC jobs would be a good idea because they often hear requests from OWCP to provide a more specific list of job titles. Member Domina said that he was fine with using these job titles but that everyone needed to be aware that they were not inclusive and that the way that Paragon grouped job titles together was not necessarily correct. Chair Markowitz said that he agreed but that this was just a list of construction and maintenance titles but that it would be difficult to compile a list of all job titles for which a presumption of asbestos exposure could be developed.

Member Dement said that the only way the SOC list would be useful is if people who used it could map their job titles into one or more SOC titles. Member Cassano agreed and added that as they have seen in the past, if a worker's job title is not covered under the presumption their claim is likely to get denied. She suggested that if they are not covered under the presumption their claim needs to be evaluated by an IH or CMC. Member Boden wondered if listing the SOCs helped the DOL determine whether someone is a construction or maintenance worker and suggested that it might be good to get feedback on this topic from someone at DOL.

Chair Markowitz said that he shared Member Welch's thoughts about the incomplete nature of previous lists but he did not want the issue of switching to use of the SOC system to distract from adopting a presumption about asbestos. Member Whitley said that they are reminded over and over that the SEM is not used to deny cases. Member Vlieger said that that is inaccurate and that they do need to be more specific. There are many job titles that are required to be in the field but are not on the list and this should be addressed. Chair Markowitz said that the problem is defining the boundaries of that category and that it was important to achieve that first. Member Cassano said that an incremental response would be best and suggested that if they got this simpler version passed, then they or a future board

could revisit it at a later date.

Member Silver asked if the Board could get data from DOL about people who didn't meet the presumption, because their exposure occurred after 1995. He and Chair Markowitz agreed that it would be good to get a system in place to track this. Chair Markowitz suggested that, in the interest of keeping it simple, they remove reference to the SOC. Member Domina expressed his concern that some workers who worked with asbestos would still be left out, and Member Pope voiced her agreement.

The Board voted to accept the draft.

*Draft on work-related asthma (#2, April 2017)*

Member Redlich explained that this recommendation was already incorporated into the last manual, and that she looked not only at the DOL's comments but at how the recommendation was implemented. The DOL agreed that "work-related asthma" should include both new onset asthma and work-exacerbated asthma, and the recommendation was appropriately incorporated into the revised manual.

Criteria such as a physician's diagnosis or assigned asthma medication was considered to be just as sufficient as a demonstration of reversible airflow obstruction to make a diagnosis of asthma. Some of the wording in the revised manual could be improved. Establishing a careful history and temporal relationship between work and asthma is important when determining an association, and while there could be a specific triggering event, it is more common to have repeated and mixed types of exposure. In this draft the Board tried to clarify the meaning of what a toxic substance is, emphasizing the fact that it is often a mixture of substances.

Chair Markowitz asked whether the CE has to identify a specific toxic substance during the claims evaluation process. Member Redlich confirmed that they do not. She added that since it is difficult to teach practitioners how to diagnose work-related asthma, the training materials need attention.

The Board voted to accept the draft.

*Draft on COPD (#3, April 2017)*

The OWCP did not accept the Board's recommendation on exposure to vapors, gases, dust, and fumes (VGDF) and cited several

objections. Presumption and compensation would have to be due to a specific toxic substance, and according to the program's definition of toxic substance, VGDF is too broad. The Board's recommendation of five years of exposure as sufficient in a presumption was inconsistent with the current presumption of 20 years for COPD, and OWCP requested clarification of the job categories.

Member Welch introduced new language that named more specific agents in relation to VGDF. There are multiple ways that a presumption of significant exposure can be accepted as causing COPD, including: five years of work with any on a list of specific agents; five years of work in one of the job titles encompassed by major job categories; or five years of exposure with agents that fall into one of the toxic substance groups in the SEM.

Chair Markowitz said that he thought this amendment overcame the principal reluctance that DOL had about VGDF. He and Member Welch agreed that the language around job titles and construction and maintenance should be parallel to the asbestos recommendation. Member Welch added that Item 2 sections a), b), and c) may seem to be redundant, but the idea was to be redundant so that no categories slip between the cracks. Member Dement pointed out that the categories in Item 2c were broad but not always inclusive of all toxic substances. Member Redlich noted that the latest version of the procedure manual needed review and revision around the medical criteria for COPD diagnosis. Chair Markowitz said that this should be a topic of review for the next Board.

The Board voted to accept the draft.

*Draft on OHQ changes (#4, April 2017)*

OWCP believed that they had already updated the OHQ and stated again that they did not accept the recommendation on VGDF. The Board felt that they should retain questions of task-based exposures and reiterated their view that the OHQ should gather as much information as possible that is useful to the hygienists. Chair Markowitz asked how the Board's recommendation differed from what the DOL is doing, and Member Dement said that the difference was in how the Board asked about the task that is generating the exposure. If a worker flagged an exposure, they could respond to the question of how they were exposed with a free text description. The nature of certain tasks, combined with the frequency and duration of the worker's participation in



the tasks, may be a good predictor of disease outcomes. Member Silver added his support for the importance of free text descriptions.

The Board voted to accept the draft.

*Draft on science/technical capacity (#5, April 2017)*

The DOL agreed that it would be useful to have additional capability. Chair Markowitz said that despite the program's resources, based upon the Board's review of the program there were gaps, including: the IOM report; the contract with Haz-Map, which links exposure with disease; and the evaluation of claims for conditions with evolving knowledge bases. The Board can assist with these, but there should also be a sustained function within the organization above and beyond what exists now.

The Board voted to accept the draft.

*Draft on quality assessment CMC/IH (#7, April 2017)*

Chair Markowitz said that one of the Board's four tasks is to look at the work of IHs, staff physicians and consulting physicians to ensure quality, objectivity, and consistency. The Board cannot do this unless they can oversee the examination of a sizable number of relevant reports and reach their own conclusions. The DOL's medical director conducted audits and found problems in 13 out of 82 reviewed reports. Member Welch added these were not all causation cases. Chair Markowitz said that there were certain issues that the medical director's report did not address, and that the Board needs to look at several hundred claims or reports, not just 50 as was previously suggested.

Member Sokas said that there were also specific problems with the audits themselves; the audit instrument was inadequate, and the medical examiner seemed to have a narrow focus. She proposed some items for the Board to include in their response, including the need for a medical director's assessment of whether or not the CMC's determination is correct and for a second person in addition to the medical director to conduct reviews. Chair Markowitz asked if the items that Member Sokas listed were her only concerns, and she said that she saw those as the immediately fixable problems.

The Board voted to accept the draft.

## **Subcommittees (items not covered above)**

There were no subcommittee reports.

## **Administrative issues**

Chair Markowitz introduced a list of nine possible issues and goals that the next Board may wish to take on, which he compiled from the minutes of the November 2017 Board meeting.

1. Make additional progress on the issue of what it means to apply a standard of aggravated, contributed to, or caused by an exposure.
2. Revisit the SEM and relook at exposure assessment in the claims process.
3. Look more deeply at available claims data.
4. Look at the topic of durable medical equipment authorization.
5. Look at the program's performance on impairment ratings.
6. Gather additional data on the most commonly denied types of claims.
7. Take a closer look at neurologic illnesses.
8. Interact more with the physicians from DOL.
9. Have initial presentations from DOL to understand the program from the inception of the new Board.

Member Dement said that they had previously recommended a pilot process to evaluate the redrafted OHQ and the use of former DOE workers, and said that the new Board should be involved in the review of the pilot data. Chair Markowitz suggested Item 11, following up on Board recommendations made to date, and Item 12, monitoring the outcomes of changes made by DOL in response to Board recommendations. Member Boden added his support for this last item.

Member Cassano suggested adding non-respiratory cancers, like urological and hematologic cancers, to Item 7. Member Welch suggested having a process by which the DOL continues their relationship with the National Library of Medicine and Haz-Map. She said that Haz-Map is currently being updated. Chair Markowitz asked about other categories of illness that should be named, and Member Cassano suggested endocrine conditions.

Member Silver mentioned growing the internal talent pool of OWCP's claims examiners by offering credentialing and continuing education. Member Boden asked if there is a promotion ladder

within the program for CEs to move up, and Member Cassano said they had asked about education and career progression before and it was a good item to return to.

Chair Markowitz suggested they encourage the next Board to make sure that public comments are appropriately tracked and integrated into Board discussions. Member Sokas reiterated the fact that there are inconsistencies between the procedure manual and the training materials which should be addressed. Chair Markowitz said that that should be its own separate item, and Members Sokas and Cassano agreed. Member Friedman-Jimenez suggested that Item 2 should include IARC and NTP. Member Welch said that they did not need to include these sources because they were already addressed in one of the Board's other recommendations.

Member Boden expressed his thanks to Chair Markowitz for his work as chairman of the Board, and the other members echoed his sentiments. Chair Markowitz said that they had all worked well together and been productive during their time on the Board. He thanked the Department of Labor and SIDEM, and the members of the public who participated in Board meetings.

Member Redlich asked about the plan going forward. Chair Markowitz said that after these recommendations were edited they would be submitted to the DOL by February 9<sup>th</sup>, one week before the terms of most members will expire.


Mr. Fitzgerald said that he and Ms. Rhoads appreciated all of the Board's work and thanked Chair Markowitz for his leadership. Member Vlieger asked whether they knew the date for the announcement of the new members, and Mr. Fitzgerald said that he did not know. Member Redlich said that they had previously mentioned compiling lists of cases whose decisions they had questions about, and asked what they should do with those lists. Ms. Rhoads said that she would send an email about that.

**Adjournment**

Chair Markowitz closed the meeting at 4:31 p.m.

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

Submitted by:

  
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Steven Markowitz, MD, Dr.Ph.

Chair, Advisory Board on Toxic Substances and Worker Health

Date: 2/14/2018