# STATE OF CALIFORNIA
# FRAUD ASSESSMENT COMMISSION

## Summary Meeting Minutes
## Sacramento, California
## June 17, 2015

In attendance: Don Marshall, Chair; Commission Members Lilia Garcia-Brower, Joel Sherman, Jiles Smith and Vernon Steiner.

Others present: Martin Gonzalez, Acting Deputy Commissioner, Enforcement Branch, California Department of Insurance (CDI); Laureen Pedroza, Bureau Chief, CDI Fraud Division; Vanessa Himelblau, Senior Staff Counsel, CDI Legal Division.

Chairperson Don Marshall opened the meeting; after asking the Commissioners if they have any comments he moved forward to the approval of the summary minutes from the January 14, 2015, meeting. Commissioner Sherman stated there was an error in the minutes: Mr. Smith, not Mr. Steiner, is the second member of the subcommittee evaluating the Goals and Objectives.

**Motion**
Commission Member Steiner made a motion to accept the summary minutes with the correction to read "Commissioner Smith". Commissioner Garcia-Brower seconded the motion.

**Action**
The summary minutes with the correction were unanimously accepted.

Chairperson Marshall moved to the next agenda item.

**Fraud Division Report**
Acting Deputy Commissioner Martin Gonzalez began by thanking the Enforcement Branch staff for all their work for both the Workers' Compensation Review Panel and today's meeting.

Acting Deputy Commissioner Gonzalez stated that per the California Code of Regulations, the Insurance Commissioner convenes a Review Panel. This year's panel convened on June 10, 2015. The review panelists were Don Marshall, Fraud Assessment Commission (FAC) Chair; Lilia Garcia-Brower, FAC Commissioner; Glenn Shor, representing the Department of Industrial Relations; Dale Banda, an expert in consumer crime and prosecution designated by the Insurance Commissioner; and Bureau Chief Laureen Pedroza representing the Department of Insurance. The Review Panel's funding recommendations are presented to the Insurance Commissioner for his determination on the most effective distribution of funds.

On September 10, 2014, the Fraud Assessment Commission determined a funding level of $34,951,831 to be available for distribution to the District Attorneys for fiscal year 2015/16. This year the Department received 37 applications representing 42 counties, requesting $38,991,037, which was $4,039,037 more than what was available in funding. Acting Deputy Commissioner Gonzalez then asked if any of the Review Panel members had any comments.

Commissioner Garcia-Brower stated that she saw a distinctive improvement from the last time she was on the Review Panel, and that the District Attorneys are doing an exceptional job.

Chairperson Marshall stated he was very happy with what took place and the direction the prosecutors are going, with the understanding and belief that this good work will continue.

On June 12, 2015, Acting Deputy Commissioner Gonzalez and Bureau Chief Pedroza met with the Insurance Commissioner; many questions were asked and answered. The Insurance Commissioner made nine modifications to the Review Panel's Recommendations: Alameda County from $1,523,933 to $1,511,933; Fresno County from $1,250,000 to $1,236,000; Los Angeles County from $6,273,000 to $6,458,643; Orange County from $3,990,000 to $3,966,000; Riverside County from $2,030,000 to $2,020,000; San Diego County from $5,074,740 to $4,990,459; San Francisco County from $740,000 to $713,943; San Mateo County from $696,588 to $691,588; and Santa Cruz County from $128,528 to $118,223.

The Insurance Commissioner expressed his sincere appreciation for the contributions made by the District Attorneys for their battle against Workers' Compensation fraud. The letter from the Insurance Commissioner was read into the record and submitted to the FAC for advice and consent. Copies of this letter and the funding award chart were available to the audience.

**Public Comment**
Chairperson Marshall opened the floor for public comment; there being none, he asked the Commissioners for comments.

Commissioner Smith said it seems the Insurance Commissioner raised the funding for Los Angeles and lowered the others. In review of LA's numbers, they really stepped up to the table the last couple of years.

Chairperson Marshall responded that in his humble opinion, he believes the Los Angeles program is in the best shape it's been for as long as he can remember.

Commissioner Garcia-Brower agreed with Chairperson Marshall that Los Angeles' operation is the best it's been in her tenure on the Commission; they are aggressively working. With regards to the panel's recommendations, there were other things Commissioner Jones was taking into consideration.

Commissioner Smith stated there were some issues as far as ongoing investigations, etc. Chairman Marshall responded that the Commissioner is privy to more information than the Panel is given information about, and he is sure that was taken into consideration.

Commissioner Steiner stated that in every assessment of the cost of workers' compensation throughout California, Los Angeles costs more and this is a huge driver. It makes a lot of sense to him to double-down on it.

Commissioner Sherman stated it appears everyone asked for more money this time as there is more available; and, about 90% actually did receive more funding this year than they had in the prior year. He is very hopeful that the additional funding is going to result in additional convictions and prosecutions so that we can look at what we did with the money and actually point to something that was accomplished by raising the rate.

Commissioner Garcia-Brower added that they had not increased the assessment for about six years, and when the Commission voted the increased assessment, they made it very clear that it's about continuing for higher expectations and continuing to get the best return on investment for the funds. She is confident that, in the applications she reviewed and in the dialogue at the Review Panel, that is exactly what is happening.

**Public Comment**
Chairperson Marshall called for public comment; there being none, he asked for a motion to accept the funding allocation for funding to the district attorneys made by the Commissioner.

**Motion**
Commissioner Garcia-Brower moved to accept the assessment of $34,951,831 and the distribution as it had been laid out by Commissioner Jones. Commissioner Smith seconded the motion.

**Action**
The FAC unanimously approved the allocation as presented.

Chairperson Marshall then turned the meeting over to Commissioner Sherman to discuss his and Commissioner Smith's work on the next year's goals and objectives; copies of the current year's FAC Goals and Objectives and the Insurance Commissioner's Goals and Objectives were made available, and copies of the "2015-2016 Goals and Objectives Review" were handed out.

Commissioner Sherman and Commissioner Smith's review discussed the differences between the FAC's and the Commissioner's 2015/16 goals and objectives. The two documents are similar in most respects. The review identified the following differences:

1. The Insurance Commissioner has singled out Medical Provider Fraud for priority status.
2. The FAC makes specific mention of the use of joint plans and memorandums of understanding, but little is done to update the commission on the success of continuing joint efforts. Thus, it might be reasonable to emphasize the need for a joint update at one of the three FAC public meetings.
3. The FAC document should be revised in regards to balanced case load approach in order to reflect the higher priority assigned to medical fraud for the near future.
4. Outreach is given a higher priority than in the FAC document. This should be discussed. It is important to remember that outreach should include cross-communication between all investigative prosecuting entities as well as the affected community at large.
5. The FAC document contains a section on Statutes and Regulations; this should be discussed.

After some discussion with legal counsel, it was decided that Commissioners Sherman and Smith would rewrite the Goals and Objectives and present at the September meeting for discussion and public comment.

Chairperson Marshall stated the next meeting is September 9, 2015. At that meeting, in addition to the goals and objectives, the main purpose is the determination of the assessment.

Commissioner Smith then asked if it would be appropriate at the next meeting to do some statistical analysis of the last three years. Chairperson Marshall asked historically what statistics are given at the September meeting and staff answered one year. Chairperson Marshall then asked Acting Deputy Commissioner Gonzalez and Bureau Chief Pedroza if they would put together a presentation similar to last year's joint presentation with CDI and the District Attorneys.

Commissioner Smith stated we should also be asking what does fraud look like in the future, as it is constantly evolving. Chairperson Marshall responded it makes sense not only for where we are today but where we are going to be; he stated that last year's presentation addressed that, but much had to do not necessarily with statistics but the reality of litigation. He continued that statistics needed to be included as <u>part</u> of the presentation.

Commissioner Steiner stated that when looking at statistics, you need to be careful what you measure because it doesn't necessarily show the full picture. Ultimately, we are trying to reduce fraud in the state and therefore make workers' compensation rates lower for employers and potentially higher benefits for injured workers.

Commissioner Smith asked again about being given a three year snapshot which the RFA talks about, to get not just the numbers but the trends. The Districts Attorneys and CDI may know it, but for the FAC to know how we are working better together to get the results that is desired.

Commissioner Garcia-Brower stated that so many of the questions Commissioner Smith was asking were actually answered in the applications. The question is how to capture the efforts that were presented to the Review Panel without having all the Commissioners be on the panel.

Commissioner Sherman stated that a good middle ground would be during the September meeting to have a presentation of some sort of overall view of the success of the Workers' Compensation program at a state level, with what is going on jointly between all the entities involved.

Chairperson Marshall stated that by statute, only two commissioners sit on the panel. The Workers' Compensation Review Panel is not a Fraud Assessment Commission panel, but a Department of Insurance meeting. With that being said, Commissioners are free to come to the Review Panel as a member of the public and hear the presentations. John Riggs did that this year. Unfortunately he is not at this meeting today to share his thoughts because his flight was cancelled. It is up to the District Attorneys in the room to create a comfort level to the Commission; the information provided to the Panel and therefore being passed along to the Commission should show growth in the right direction and the impact, financial or otherwise, that it is having on the workers' compensation system in California.

**Public Comment**

Mr. Fagan stated two questions. The first was if there's a plan to seek District Attorney input in the formulating of the Goals and Objectives. The second is if the grant application process may be revisited.

Chairperson Marshall turned the first question to Commissioner Sherman, who asked legal counsel on the protocol. Ms. Himelblau stated the subcommittee can reach out to District Attorneys and use that input in formulating the proposed draft. Commissioner Sherman asked if anyone was interested in the process to give their card to him after the meeting. Commissioner Smith asked if Mr. Fagan would be speaking for the collective or as an individual; Mr. Fagan responded that he did not know and he's not certain that every District Attorney's office has the same view.

Commissioner Sherman responded that he sees the goals and objectives as more what they want to be doing as a state; if an individual county is not in alignment, if they explain accordingly, then it would not be a disqualifying point. Chairperson Marshall agreed; some smaller counties don't experience the type of medical fraud that the larger counties do. Both Chairperson Marshall and Commissioner Smith reiterated that they will accept input but it is the Commission's goals and objectives.

Chairperson Marshall stated that regarding the second question, this is his fifth year of being on the panel. The RFAs were thousands of pages of reading and he thinks it could be simplified in some areas. As the RFA is a Department of Insurance document, he asked legal counsel for clarification.

Ms. Himelblau stated the RFA and the contents therein are largely determined by the statutory and regulatory criteria that are required for review. The form itself and the application itself are CDI documents.

Chairperson Marshall stated he doesn't anticipate a change for next year; he would wait until Deputy Commissioner Mueller is in place and comfortable taking on what is really a significant project. Chairperson Marshall's recommendation to the Department of Insurance is, if they are so inclined, to please take a look at the current RFA process, document and paperwork and see if there is a better way of doing it.

Commissioner Steiner asked if it was possible to provide feedback from the RFAs to the counties. Chairperson Marshall responded that a feedback process would be nice, but there is a timing issue. Also, there is a turnover issue within the counties. Although CDI does provide detailed instructions, Chairperson Marshall stated apparently he is the only person that reads them. Commissioner Sherman stated CDI does a presentation on submission, so perhaps they can target some of the areas.

Acting Deputy Commissioner Gonzalez stated they would look at the issue and bring it to Deputy Commissioner Mueller's attention. Chairperson Marshall then called for any other Public Comments.

Mr. Dugo stated he wanted to add a comment about the goals and objectives from a small county's perspective. The small counties, there are about 13 or 14, are very different than the large counties such as San Diego. Imperial County has very limited resources: they have one-half of an investigator. Quite frankly, you can't do a premium fraud case or provider fraud case with those limited resources.

Chairperson Marshall thanked Mr. Dugo and asked for a motion to adjourn the meeting.

**Motion**
Commission Member Garcia-Brower made a motion to adjourn the meeting. Commission Member Smith seconded the motion.

**Action**
The FAC unanimously approved. The meeting was adjourned at 11:47 a.m.