STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION

Summary Meeting Minutes
Sacramento, California
September 9, 2015

In attendance: Don Marshall, Chairperson; Commissioners Lilia Garcia-Brower, Dr. Karla Rhay, John Riggs, and Joel Sherman.

Others present: George Mueller, Deputy Commissioner (DC), Enforcement Branch, California Department of Insurance; Laureen Pedroza, Bureau Chief, Enforcement Branch; Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Opening Remarks

Chairperson Marshall opened the meeting and noted that Commissioner Steiner and Commissioner Williams were unable to attend. He then introduced the newest Commission member, Dr. Karla Rhay, of the San Bernardino County Superintendent of Schools.

Chairperson Marshall asked for a motion to approve the submitted summary minutes from the June 17, 2015, meeting.

Motion

Commissioner Garcia-Brower made a motion to accept the June 17, 2015 summary minutes as submitted. Commissioner Riggs seconded the motion.

Action

The Fraud Assessment Commission (FAC), voted 4-0 to approve the summary meeting minutes; Dr. Karla Rhay abstained.

Chairperson Marshall turned the meeting over to Vern Pierson, District Attorney for El Dorado County and Co-Chair of the California District Attorney Association's Insurance Fraud Committee.

Workers' Compensation Program Overview

District Attorney Pierson introduced George Mueller, Enforcement Branch Deputy Commissioner, and they jointly presented the Workers' Compensation Program Overview for Fiscal Year (FY) 2014/15 and the goals for next fiscal year. The presentation included a video put together by the Enforcement Branch and the Insurance Commissioner's Press Office, which showed examples of statewide county successes in the Workers' Compensation Program areas.

DC Mueller talked about our mission and goals in protecting our injured workers, leveling the playing field, deterring the willfully uninsured, educating and enforcing outreach. He said that medical provider fraud is the most costly and serious challenge facing the healthcare system today; it is a cost driver in the workers' compensation

system. He then talked about several cases statewide, which were successful through collaborative efforts between district attorneys, CDI, allied law enforcement and other stakeholders.

DC Mueller also talked about various claimant fraud cases from different counties, citing one in particular that used Penal Code 186.11, the seize and freeze order, which basically takes away the profit from the illegal gains. He then continued with what he cites as one of the biggest problems: employer premium fraud. A report by the Little Hoover Commission dated March 9, 2015, addressed the multibillion dollar underground economy problem, which is estimated at $8.5 billion. Businesses that operate in the underground economy obtain an unfair competitive advantage over businesses that comply with the laws.

Prosecutors and investigators take their responsibility of protecting the honest business owners very seriously. DC Mueller highlighted numerous partnerships and task forces that have been established throughout the state. He then spoke of a few new cases, including one with restitution of almost $1.6 million, another with $1.4 million of ordered restitution, and a case with about $80 million in underreported payroll. DC Mueller then gave an update on some major ongoing cases. He followed that with highlights of some education and outreach that is happening throughout the state, including post disaster fraud prevention.

DC Mueller then introduced Nancy Kincaid, CDI's Press Secretary, who shared what CDI is doing in communication and outreach. District Attorney Pierson then relayed an example where outreach was specifically credited as the reason a recent sweep resulted in no arrests and no citations. DC Mueller summarized that it really comes down to collaboration. He then reviewed some specific numbers: FY 2014/15 funding was over $53 million, suspected fraud claims were 5,931, chargeable fraud was more than $646 million, and provider cases currently pending are $555 million. FY 2015/16 funding is $58 million due to a 10 percent increase. DC Mueller then thanked everyone for their time and opened the opportunity for questions.

Chairperson Marshall asked for public comment; there were none.

Determination of the Aggregate

Chairperson Marshall asked the Commission Members to discuss any questions or issues they have regarding the aggregate and the presentation.

Commissioner Garcia-Brower complimented and expressed her appreciation for the presentation by District Attorney Pierson and DC Mueller. She also spoke to the need that, in addition to traditional businesses which operate during normal business hours, there is a need to go after the fraud in nontraditional businesses that operate at night, such as the janitorial, garment and restaurant industries.

Commissioner Riggs expressed his appreciation for the excellent, informative and educational presentation. He is gratified to see the results of working together.

Commissioner Rhay stated that being a new Commissioner, she found the presentation very informative and she applauded the work that has been done.

Commissioner Sherman echoed the positive comments of his fellow Commissioners. He would like to see the outreach and education continued and perhaps broadened. He concluded that when a medical practice takes $150 million out of the system, it's not an insurance company that is being robbed; the money is being taken out of the pockets of California workers.

Chairperson Marshall stated that the presentation today was a collaboration in what is a competitive process. It's up to CDI and the counties to determine best practices, but there is an opportunity to continue building this team approach. There's an opportunity to explore within these collaborations another way to deal with the less difficult but not less important cases, so that resources can be moved to the complex cases. He also stated a need for broadened outreach.

Chairperson Marshall then stated he agreed with Mr. Pierson and Mr. Mueller on the continuance of the current assessment as it's too early to assess results of the last aggregate increase.

Public Comment

Chairperson Marshall opened the floor to the Commissioners for discussion. Commissioner Sherman commented that while he agrees this is probably not an appropriate time to consider an adjustment, they should not wait six years again.

Motion

Commission Member Sherman made a motion to maintain the assessment at $58,862,000. Commission Member Garcia-Brower seconded the motion.

Chairperson Marshall asked for public comment on the motion; with no public comment, he called for a vote.

Action

The Fraud Assessment Commission voted 5-0 to approve the FY 2016/17 Assessment at $58,862,000.

Fraud Assessment Commission's Goals and Objectives

Chairperson Marshall asked Commissioner Sherman for the status on the update of the Commission's goals and objectives. Commissioner Sherman presented the subcommittee's draft and stated that anyone who is interested may contact him with other recommendations and suggestions. The final draft will be presented in January for discussion and a vote. There was some discussion by the Commissioners on the history and role of the Fraud Assessment Commission's Goals and Objectives.

Public Comment

Chairperson Marshall opened the floor for public comments.

Jennifer Lentz Snyder from the Los Angeles District Attorney Office stated she would like to see a discussion on the metrics by which the counties' performances is measured, so that they can do the best possible job and more accurately and specifically identify what they can do better.

Commissioner Sherman stated that he thinks that there is a persistent feeling out there that insurance fraud is a victimless crime. He then raised a question as to whether changing the metrics by which District Attorneys are measured is actually more of a legislative approach.

Ms. Himelblau indicated that regulations set forth the vast majority of the criteria that have to be judged in order to come to funding recommendations; however, it does not set forth the prioritization of those criteria.

DC Mueller indicated that he has his staff looking at the grant application process.

Dominic Dugo from the San Diego District Attorney Office provided some history on the grant application process and committees involved in revisions.

Gary Fagan from the San Bernardino District Attorney Office suggested that the Commission may want to get involved with the Legislature so that the focus is not just on the perpetrator, but the economic health of the state. He also shared that the CDAA Fraud Seminar is at the end of October.

Commissioner Sherman agreed that it is the responsibility of the Commission to voice these concerns with members of the Legislature and the Division of Workers' Compensation.

Commissioner Garcia-Brower commented she sees and acknowledges the incredible progress that's been made, and thanked everyone for their service.

Chairperson Marshall stated that the next scheduled meeting will be Wednesday, January 13, 2016, and asked for a motion to adjourn the meeting.

Motion

Commissioner Garcia-Brower made a motion to adjourn. Commissioner Sherman seconded the motion.

Action

The Fraud Assessment Commission unanimously approved. The meeting was adjourned at 12:42 p.m.