

**STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes  
Sacramento, California  
September 6, 2023**

Pursuant to SB-189 approved by Governor Gavin Newsom on June 30, 2022, this meeting was a hybrid meeting with the option for the public to attend in person or via Zoom Video Conferencing services with options to participate online and via telephone.

Commissioners in attendance: Chairperson Don Marshall, Vice-Chairperson Jay R. Bobrowsky, Dan Calamuci, Branden Lopez, and John Riggs.

Others present: CDI Enforcement Branch George Mueller, Deputy Commissioner; Eric Charlick, Chief; Victoria Martinez, Deputy Chief; and Felicia Lieb, Deputy Chief. Attending remotely: Yvonne Hauscarriague, Senior Staff Counsel, CDI Government Law Bureau.

**I. Fraud Assessment Commission**

**a. Opening Remarks**

Chairperson Marshall opened the meeting at 10:32 a.m. and provided an explanation of the logistics for the online and telephonic meeting. Presentations will only be allowed in person, but public comments and questions are available online and over the phone. It was stated that materials provided to the Commissioners are available to the public by sending a request to LAU@insurance.ca.gov. Chairperson Marshall introduced Commissioner Calamuci.

Chairperson Marshall asked the Commissioners if they wished to make any opening comments. Commissioner Bobrowsky thanked CDI and LAU for their efforts. Commissioner Calamuci thanked everyone for the warm welcome. There were no other opening comments.

**b. Approval of the Summary Meeting Minutes**

Chairperson Marshall then proceeded with the approval of the summary minutes from the June 28, 2023 meeting.

**Motion**

Commissioner Lopez requested a change to the minutes. On page 4 he made a comment about prosecution issuing press releases. He would like it to be changed to “also publishing successful prosecutions via press releases”. Commissioner Bobrowsky made

a motion to accept the minutes with Commissioner Lopez's changes. Commissioner Riggs seconded the motion.

### **Action**

The summary minutes were unanimously accepted via a roll call vote.

#### **c. Public Comments**

Chairperson Marshall asked if there were any public comments and there were none. He then turned the meeting over to DC George Mueller of the Enforcement Branch.

### **II. Enforcement Branch Report and**

### **III. Workers' Compensation Program Overview**

#### **a. Administrative Update & Program Overview**

DC Mueller thanked the LAU team for their efforts. He advised there's been some restructuring and Deputy Chief Lieb will be overseeing LAU. Deputy Chief Martinez advised she enjoyed her time working with LAU, the DAs, GMS and GCMS systems. DC Mueller advised there's a copy of CDI's annual report on the back table; and it is available to request via email. He advised an increase in the aggregate assessment for CDI is not needed based on current staffing and retirements, although should the FAC increase the assessment, the Fraud Division could hire more detectives and offset future unknown costs. He then stated the online Grant Management System, GMS, Post Award system should be rolled out in Fall 2023. Also, this fall CDI should be doing beta testing for GCMS. DC Mueller advised CDI's hiring and recruitment efforts are outlined in the Annual Report.

DC Mueller opened the floor for questions and comments. Chairperson Marshall thanked DC Mueller for the changes made to the annual report, and asked questions about CDI exhaustion of funds, the number of prospects in background, and the detective vacancy rate. CDI responded they did not run out of funds; they have about 25 in background, and a 24% vacancy rate. Chairperson Marshall asked if pay is an issue for CDI with competitive hiring. DC Mueller responded affirmatively, and he is working on addressing this issue.

Commissioner Bobrowsky asked how long after academy is a CDI detective fully up to speed. DC Mueller responded it takes about 2-3 years on the job. DC Mueller acknowledged we are losing people to other LE agencies due to the pay differential.

#### **b. Public Comments**

Chairperson Marshall asked if there were any public comments and there were none.

### **IV. CDAA Update and DA Presentation**

Mr. William Lee of San Bernardino reported the CDAA Fraud Symposium is planned for early February 2024, at the Hyatt in Newport Beach. He then turned the presentation over to Ms. Shaddi Kamiabipour, from the Orange County District Attorney's Office.

Ms. Kamiabipour advised she's been in the criminal justice system for 28 years, 14 years in the insurance fraud unit. When she first started in the unit she felt like a new attorney again due to the learning curve and the uniqueness of these cases. In order to be successful in the insurance fraud unit it takes time and continuity. She recognizes the assessment money comes from the employers and it costs money. The pandemic had a lot of negatives, but the good that came out of it is it increased online communication and collaboration amongst the DA offices. She is dismayed about the concept of taking funding away from one county to give it to give to another county because of jurisdictions; they can't prosecute cases in other counties. These are things that she wants the FAC to consider when deciding to increase the assessment or not. Fraud has not disappeared, even though fraud referrals have dropped significantly. Continuity, collaboration and sustaining programs should be the priority.

Commissioner Bobrowsky stated he understands their point about competition, but if there are DA offices who aren't performing, shouldn't their funding be reduced? Ms. Kamiabipour replied that if one county doesn't do their job, due to jurisdiction other counties can't do their prosecutions for them.

Commissioner Lopez commented that fraud is usually not limited to one county. He echoed the importance of continuity. He said a 0% increase is really a decrease in funding.

Commissioner Calamuci appreciated her comments on increased collaboration. He asked her to clarify on her comment that insurance companies sabotage their investigations. Ms. Kamiabipour replied that insurance companies are not sending referrals at the same rate as they used to. Also, an issue is insurers are using electronic documents; the signature on the paper referrals certified the accuracy of the contents, but the electronic version has no such certification. Also, there seems to be a lack of preservation of evidence from the insurer.

Commissioner Bobrowsky confirmed State Fund is not an issue for the DAs when it comes to evidence and referrals.

Commissioner Riggs said that reducing funding or defunding a county is a basis of holding the county accountable. Ms. Kamiabipour replied that the reality is that the DAs will still prosecute cases if there's a certain need, however without funding other cases will fall through the cracks.

Chairperson Marshall asked Steve Smith about how many insurance companies that are licensed to do business in CA. Mr. Smith said that it is difficult to say how many WC insurers there are, but off the top of his head, there's about 1,200 insurers and subsidiaries writing insurance policies in CA. Marshall said that in some cases he gets

calls from businesses saying they can't get return calls from certain counties. Not all counties operate at the same level of quality. He said that some counties are more committed than others. He also said a number of entities believe Capping is a \$1.2-billion problem, yet these entities cannot get a DA office to be interested in pursuing this. Ms. Kamiabipour replied that she finds that when a Prosecutor brushes off a case, it's due to a lack of knowledge and understanding. She agreed Capping is a problem and it cannot be stopped by the private sector; it can only be stopped by law enforcement. Marshall added that it also needs to include collaboration across counties as Capping typically crosses multiple counties.

William Lee came back up and wanted to add that the counties have worked very hard to improve collaboration and are more team-work oriented. He said if there is no increase in the assessment and their need to get an increase in funding depends on another county failing, it discourages a county from wanting to work together with other counties.

Sean Brunton came up to the podium. He joined the Santa Barbara DA's office in 2020 after their program was completely decimated; there was no cross training. Santa Barbara County is an example of what happens when a county's funding is cut, loses its staff, and then tries to rebuild. It takes years to get back up to speed. They've been rebuilding the program by reaching out to colleagues in other counties and the learning curve is brutal. When funding is cut, people start wearing more hats, and when that happens focus on cases is diluted and outreach dwindles, then staff leaves and institutional knowledge is lost.

Commissioner Lopez asked if there is universal training for DAs other than conferences. Mr. Brunton responded that every DA office is different, but in his experience, there is no standardized training available. Chairperson Marshall advised that if someone reaches out to him, he will set them up with someone from the industry to get them up to speed.

Jonathon Vanarelli from Ventura County came up to the podium. He said the simplest thing they do is 3700.5s. The next thing, in the matter of complexity, is a Claimant case. That will take a few months to put the case together and involves more insurance company involvement. Next is Premium Fraud cases that they get via SFCs. The most time intensive cases are self-generated Premium Fraud cases they discovered via SARs. No insurer SIU or legal department can generate those type of cases or serve search warrants due to their lack of access and authority. The only way the counties can keep providing the work they've been doing is with continued funding. Commissioner Lopez echoed that SIUs cannot do what the DA offices can. Commissioner Lopez said the DA offices are the only resource to stop the bleeding.

Steve Smith provided an update with the number of CA Workers' Comp carriers. He said that there are 110 primary WC carriers with about 308 subsidiaries, but not all subsidiaries do WC.

The next speaker was Chris Bouffard from Riverside County. He's been in the insurance fraud unit for about 18 months, although he has many years being a Prosecutor. It takes

money to retain quality attorneys and to recruit successful prosecutors. The stats are important, but they aren't the full picture. Yes, SFCs are going down, but he doubts anyone in the room believes WC fraud is going down. If there are reduced deterrents then crime will increase, and if they aren't funded appropriately there will be less prosecutions and therefore less deterrents. Commissioner Bobrowsky asked what are the DA offices plans to turn around staffing issues and also what is their plan to increase SFCs. Mr. Bouffard said each DA office is unique, but in his office, he believes the key is to recruit internally. Commissioner Bobrowsky asked how many DAs are they down in their office. He replied about 40 out of 220. In regard to increasing SFCs, he feels there are certain insurers who do the bare minimum. Commissioner Riggs asked if CDI audits insurers regarding FD1s; Steve Smith replied they have statistics by carrier. In 2020, there was a regulation change about when SFCs are submitted. The goal was to improve the quality of the SFCs received. However, that regulation change requires a certain level of investigation being done before submitting an SFC. He said the CDI SIU team is only 9 people and it would take a large amount of resources, time, and money to audit and see which companies are not submitting as many SFCs as they should. But we also need to be careful to not be overly prescriptive about how insurers do investigations.

Commissioner Lopez asked Mr. Bouffard if funding is increased, can they incentivize staff to come over to their unit? He said there's some instances where the elected DA will move someone to their unit. For those who want to join the unit, there is more motivation to perform if there is opportunity to promote. Riverside is very appreciative of the increase they got this year, but it's not enough still to fully fund their program and it doesn't feel good knowing they got that increase due to another county having their funding reduced. He said that if a county's chance of getting an increase in funding is reliant on another county being reduced, it will ultimately reduce collaboration amongst DA offices.

Commissioner Bobrowsky stated the money came from 2 counties who are not performing, and not across the board.

William Lee came back up to the podium. In regards to accountability and funding, the ongoing approach of poaching money from other counties who are underperforming will create an incentive to not cooperate and collaborate amongst each other. He said their county previously started underperforming due to a loss of an attorney, and their funding was reduced. Since then they still have not been able to gain that attorney position back. The incentive of taking funding from underperforming counties will create a culture of non-collaboration.

Mr. Lee then started his presentation. He said WC fraud is a multi-billion industry and if people aren't held accountable, fraud will increase. Provider fraud cases rose from FY 13-14 to 20-21. There has been a 70% reduction in lien filings since SB 1160 and AB 1244. They do trainings, outreach, and collaborations. They can only do this if they have the financial support to support their staffing needs. As Commissioner Lopez said, no increase is a cut. DA's projected deficit is 16.2%, which is historically high. A small increase every year is preferred to larger increases every few years. He came up with a hypothetical cost to an employer: If they had a \$1 million payroll, a 5% increase would

only add \$3.97 per year, a 10% increase would be \$7.93 per year, and a 15% increase would be \$11.90 per year. He provided a bar graph showing premiums since 2005. It showed since 2014 the premium has gone down every year.

The Subsequent Injuries Benefits Trust Fund (SIBTF) graph shows in 12 years there has been a 1,529% increase, from \$26,439,000 in FY 2010-11 to \$430,900,000 in FY 2022-23. The take-away is that increasing the fraud fund is not the cost driver in premiums and there is probably fraud. He said they are not the cost drivers in the employers' premium, but rather a cost saver. They are requesting an increase of 16% in the assessment.

Commissioner Bobrowsky asked if increased fraud funding would fight fraud in the SIBTF. Mr. Lee said he believes so. Chairperson Marshall said to his knowledge the SIBTF does not have a fraud unit.

Commissioner Calamuci asked about generating SFCs. Mr. Lee said they are working with banking institutions to generate new leads. Commissioner Calamuci agreed that a 0% increase is essentially a decrease with inflation.

Commissioner Lopez asked about the statistic of lower premium cost and where it came from. Mr. Lee said it came from the WCRB. He's not sure why the premium is lower now than it was years ago, but he speculates outreach has impacted the amount of fraud.

Commissioner Bobrowsky agreed with Commissioner Lopez that a 0% increase is like a decrease.

Chairperson Marshall said that the total assessment is \$1.5 billion; that is a lot of money being paid by employers for fraud assessment; you can't piece out the assessment and say it's not much money, because as a whole it is a lot of money. Mr. Lee said he disagrees as they cannot be held accountable for the other assessments and they are the ones trying to fight fraud to lower premiums. Chairperson Marshall asked if SFCs are going down and workloads are going down, wouldn't it be logical to reduce staff? Mr. Lee said that the assessment is for FY 2024-25, so that's something to consider. But also, fraud is not going down, so the need is there. Chairperson Marshall asked if SFCs, investigations, and prosecutions are down, what are the DA office staff doing? Mr. Lee said he can't speak for all counties, but he believes more outreach and self-generating SFCs.

Chairperson Marshall confirmed Mr. Lee's 16% increase request is based on the county's projected budgets. He asked is it possible that maybe some counties overestimated in their projected budgets? Mr. Lee said yes it is possible, however it is also possible that counties could fill more positions in FY 24-25 than budgeted. He also said that since there was no increase last year, there is 2 years' worth of salary increases.

Commissioner Lopez said he found 7 out of 10 contractors that came to his house had no WC insurance and the more you look, the more fraud you'll find. He said going into

next week's meeting he will be focusing on what can be done to incentivize employees to stay on.

Chairperson Marshall asked if there are any public comments. Ms. Hauscarriague suggested a 5-minute break before proceeding and also reminded online participants to use the raised hand function if they wish to make a public comment.

#### **a. Public Comments**

Chairperson Marshall opened the floor for public comments. No in person comments.

Jill Nerone made a comment via Zoom. She said that she knows her office has a 4% salary increase. She commented on continuity. She said that she would like to see what is going on with the SIBTF too.

#### **V. Public Comments**

The floor was opened for public comment on any agenda items and there were none.

#### **VI. Closing Remarks**

Chairperson Marshall asked the Commissioners if they wished to make any closing comments.

Commissioner Bobrowsky said that they don't want to cut county's funding, they want better value. He doesn't think more money is the answer, but it's getting a better value for the money.

Commissioner Calamuci thanked everyone for the great discussion.

Chairperson Marshall advised the next scheduled meeting is September 13<sup>th</sup> in this room and then after that is January 10, 2024.

#### **Motion**

Commissioner Lopez made a motion to adjourn and Commissioner Bobrowsky seconded the motion.

#### **Action**

The Commissioners unanimously approved via a roll call vote and the meeting adjourned at 1:43 p.m.