**STATE OF CALIFORNIA**
**FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes**
**Sacramento, California**
**June 17, 2009**

In attendance: William Zachry, Chair, and Commission Members Jiles Smith, Carol Schatz, Lilia Garcia, Lisa Middleton and Chuck Center.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chairman William Zachry opened with an agenda overview of the meeting and raised the issue as to whether there were any corrections to the submitted minutes from January 13, 2009.

**Motion**
Commission member Carol Schatz made the motion to accept the minutes as submitted.

**Action**
The minutes were unanimously passed.

Chairman Zachry introduced Archie Anderson. Mr. Anderson is the president and CEO of Options and Choices, Incorporated (OCI).

Mr. Anderson addressed the Commission. He reported that OCI is based in Denver, Colorado, and is a business information management organization that aggregates and integrates data and provides a lot of business intelligence services to employers, insurers and payers across the employee benefits and the risk management, workers' compensation spectrum.

Based on a discussion with Mr. Zachry, OCI began a research project to analyze if there were duplicate billings to group health on an actual workers' compensation claim. The database used has approximately 450 million claim records and OCI chose to look at a sampling of one large national employer with more than 100,000 employees with more than 11,000 workers' compensation claims annually. OCI found that 1,000 of the total number of claims were actually duplicates billed to the health care system.

Breaking out the two largest states (California and Texas), OCI determined that just over four percent of those workers' compensation claims had a duplicate health care claim. Of those duplicate filed claims, 57 percent actually received a

payment totaling 1.3 million dollars. Of those duplicate claims, 32 percent actually were paid more than what was originally billed, which this sample totaled about $100,000. “So the conclusion was that the combined cost on the total duplicate bill was four times more than the original workers’ comp only bill,” stated Anderson.

OCI believes there is duplicate billing of the medical system across workers’ comp and group health. “Group health results indicate enough to warrant further investigation and exploration” stated Anderson.

According to the National Academy of Social Insurance, total workers’ comp costs in the United State are somewhere between 56 and 60 billion dollars, of which approximately 35 billion is medical – actual medical cost of workers’ compensation. Therefore, if one percent of that were duplicate bills, that translates into a 350 million dollar problem.

Chairman Bill Zachry remarked that OCI addresses the issue that clearly we are missing the connectivity between the group health and workers’ compensation systems.

John Duncan, Director of the Department of Industrial Relations (DIR), addressed the Fraud Assessment Commission regarding the implementation of SB 869. SB 869 created a program to target the unlawfully uninsured by matching records. “Using data from the Employment Development Department, we cross-referenced with the Workers’ Compensation Rating Bureau to determine who had insurance. Then the Labor Commissioner’s office would communicate through a letter and request proof of insurance etc.,” stated Director Duncan.

In the first five quarters of the project, DIR screened 2000 employers (500 per quarter). Out of 585 employers investigated, 225 employers had no workers’ compensation coverage. This resulted in 12 percent of those employers coming into compliance and penalties for those uninsured totaling $563,383.

Issues were raised by the FAC and one in particular that DIR communicating with employers would be something that would not be cost prohibitive noted, Commissioner Schatz. DIR designed the program to pay for itself through penalties collected commented Duncan. Commissioner Jiles Smith remarked that he was pleased to hear that the project did not target specific industries and that DIR was interested in urging employers into compliance and not “beating them over the head with a stick”.

Chairman Zachry thanked Director Duncan and commented on how useful the information was and applauded the accomplishments of the project.

Dori Rose Inda, spoke on behalf of the Workers' Compensation Enforcement Collaborative (WCEC) and provided an update on their activities. Ms. Inda commented on her appreciation for the work being done by Director Duncan and DIR for their efforts in the new pilot project.

Helping injured workers who have uninsured employers is very difficult. Currently, the Collaborative is contacting local sheriffs, community clinics and other medical services to provide assistance to the injured workers. Also, WCEC works with the California Applicant Attorneys Association (CAAA) to determine the amount of time necessary to work uninsured employer cases with minimal information.

Furthermore, WCEC had a presentation from Frank Neuhauser, U.C. Berkeley researcher, who provided information on the workers' compensation system and the underground economy.

Both Monterey and Santa Cruz counties have gathered the tools for an employer questionnaire that can be distributed to various target groups. Finally, WCEC is working on very low literacy, bilingual employer education materials for small businesses to assist employers in understanding their responsibility under workers' compensation.

**Fraud Division Report**

After a short break, the Fraud Assessment Commission resumed and began with an overview from the Enforcement Branch, Fraud Division on the distribution of funding to district attorneys through the Review Panel process.

Rick Plein, Enforcement Branch Deputy Commissioner reported that per California Code of Regulations the Insurance Commissioner convenes a Review Panel to evaluate applying counties applications for workers' compensation funding. The Panel convened on June 3, 2009. The department received 37 applications, representing 41 counties, requesting $32,444,108 in funding.

The Review Panel is comprised of the following: Two members of the Fraud Assessment Commission, William Zachry and Lisa Middleton; the Director or designee of the Department of Industrial Relations (DIR), David Rowan, Chief Deputy Director; an expert in consumer crimes and prosecutions appointed by the Insurance Commissioner, Jerry Treadway, retired CDI Bureau Chief; and the Deputy Commissioner of the Enforcement Branch or his designee, Rick Plein.

Each Panel member read the counties' request for application, asked questions of the counties during the hearing process, and then made funding recommendations based on the funding criteria used. The recommendations went forward to the Insurance Commissioner for his determination, with the advice and consent of the Fraud Division as to the most effective distribution of

money. The FAC is asked for their advice and consent on the determination for distribution of funds to the district attorneys.

“The FAC determined a funding level of up to $29,827,500, plus an additional $300,000 for computer forensics equipment and software for fiscal year 09/10 to assist with the collection and analysis of evidence and would be applied for through the normal funding process” stated Plein.

Deputy Commissioner Plein submitted a letter from the Insurance Commissioner, Steve Poizner, into the record. “The Review Panel recommended a total distribution of $29,827,500. Based on this distribution amount, I have made some adjustments to the Review Panel recommendations. The net effect of these adjustments has not changed the total recommended distribution amount of $29,827,500” stated Poizner. The total distribution does not include the amount for computer forensics.

Chairman Zachry made a comment that $300,000 was set aside for computer forensics; however, only $58,907 of that amount was applied for and awarded. The remaining balance of $241,093 will be rolled over into next year’s funding.

**Public Comment**
Steve Zeltzer, Chair of the California Coalition for Workers’ Memorial Day, commented that he had a problem with the lack of prosecution of the insurance industry for fraud. “How many cases of prosecution of insurance fraud by the insurance industry has been done by this department. I think that’s an appropriate question as far as giving money for prosecution” stated Zeltzer.

Two additional public comments were made regarding specific cases and counties the individuals had issues with. “The Fraud Commission is not set up, nor does it get involved directly, with specific cases” stated Zachry. The district attorney offices determine which cases to prosecute and how to prosecute them, not the Commission.

**Motion**
Commissioner Smith made the motion to accept the recommendation of Insurance Commissioner Poizner for the funding for the district attorneys of California for the next fiscal year.

Commissioner Schatz seconded the motion.

**Action**
The motion passed unanimously.

John Riggs, representing the Walt Disney Company, made a presentation to the FAC on a program to provide injured workers with additional transparency and a statement of workers’ compensation benefits paid. He believes there could be

some duplicate issues that cross over without any knowledge and wants to "increase the goodwill between the injured workers and the employer." In order to raise awareness to this issue, the provider will be notified that a copy of this statement is being sent to the injured worker.

Chairman Zachry stated that he would like to see what kind of data Mr. Riggs is getting in the future in response to this effort.

Lori Kammerer made a presentation regarding SB 313 for the Commission's consideration in supporting the bill. The bill, authored by Senator Mark DeSaulnier will look at payroll records of uninsured employers for the past three years in order to collect the uninsured employers' premium. SB 313 will allow the Department of Industrial Relations (DIR) to determine the average premium paid over the period of time in which the employer was uninsured and collect that amount.

Chairman Zachry asked if the Commission could send individual letters of support from their own organizations. Ms. Kammerer stated yes and that she would appreciate their support.

**Public Comment**

Steve Zeltzer made a presentation on cost shifting fraud in the biotech and nanotech industries. "These industries are virtually unregulated and lead to a situation in which injured workers are getting infected by toxins by the genetic engineering process" stated Zeltzer. According to Mr. Zeltzer, this is what happened in the case of David Bell.

Commissioner Garcia asked Mr. Zeltzer if he knew how many employers and employees are involved in this industry in California. "Probably thousands of companies" stated Zeltzer. Although not within the purview of the Commission, Chairman Zachry thanked Mr. Zeltzer for bringing this issue to their attention

**District Attorneys**

Gary Fagan, co-chair of the California District Attorneys Association Insurance Fraud Committee addressed the outlook for law enforcement and prosecutors for the next two years. All counties in the state are looking at a large reduction in funding in the upcoming years, which will have an affect on the ability of the district attorney offices to investigate and prosecute insurance fraud. "The ability of county DA's offices to commit non-funded resources over the next two years for most counties is going to cease to exist" stated Fagan.

The governor's office is proposing to change some insurance fraud crimes from wobblers to misdemeanors. One of the issues with this modification to the Penal Code is that search warrants cannot be executed on misdemeanor crimes. Another issue is the statute of limitations will be changed from four years from the date of discovery to one year after the date of the commission of the offense

for misdemeanor crimes. This will have a major effect on the district attorneys offices in that most major prosecutions can take up to several years from inception to the conclusion of a case.

Commissioner Schatz remarked that it would be helpful to be updated as to the potential for this legislation.

Commissioner Garcia asked Mr. Fagan if he saw any value in matching records between EDD and the Workers' Compensation Insurance Rating Bureau as discussed earlier in John Duncan's presentation. Mr. Fagan stated, "…if that gets to the street level where we have people that are identified, yes, that's some value." The goal is to have those companies brought into compliance.

Dominic Dugo, San Diego County District Attorney's Office, made a comment that several premium fraud cases involve other crimes such as tax evasion that generate income for the state. "To reduce premium fraud to a misdemeanor will probably eliminate our efforts in doing tax evasion as it relates to premium fraud, which could actually increase the deficit in California" stated Dugo.

Mr. Dugo was asked by Commissioner Garcia to discuss San Diego County's billboard program to fight insurance fraud. The goal of the program is to stop insurance fraud before it's committed. These ads are in English and Spanish and contain a variety of messages. As a result of this program, several referrals have been received by the county. Mr. Dugo stated that the county has also debated creating posters that target uninsured employers throughout the state.

The meeting adjourned at 12:17 p.m.