

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
November 19, 2024**

This meeting was a hybrid meeting with the option for the public to attend in person or via teleconference. Commissioners personally in attendance: Chairperson Jay Bobrowsky, Vice-Chairperson Branden Lopez, and Commissioners Dan Calamuci, Joseph Carresi, Tim Cloney, Tyrone Spears, and Soraya Wright.

Others present: Eric Charlick, Deputy Commissioner (DC), California Department of Insurance (CDI) Enforcement Branch; Victoria Martinez, Acting Division Chief, CDI Fraud Division, Felicia Lieb, and Eric Williams, Deputy Chiefs, CDI Fraud Division and Susan Burns, Acting Deputy Chief, CDI Fraud Division.

Yvonne Hauscarriague, Senior Staff Counsel, CDI Government Law Bureau, and Shawn Conner, Deputy Chief, CDI Fraud Division attended via teleconference.

I. Fraud Assessment Commission

Chairperson Bobrowsky opened the meeting at 10:30 am. Chairperson Bobrowsky read the process to request documents presented today and how to make public comments if calling in or attending via Zoom. All votes will be conducted by roll call vote.

a. Opening Remarks

Chairperson Bobrowsky thanked LAU for all their work. He appreciated William Lee's presentation at the previous meeting. He heard a lot about consistent funding; he also believes consistent results are important.

Chairperson Bobrowsky asked the Commissioners if they have any opening remarks. No opening remarks.

b. Approval of the Summary Meeting Minutes

Chairperson Bobrowsky then proceeded to ask the Commissioners to review the meeting minutes from the November 5, 2024 meeting.

Motion

Commissioner Cloney made a motion to accept the minutes. Commissioner Wright seconded the motion.

Action

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

c. Public Comments

Chairperson Bobrowsky asked if there were any public comments and explained the process for online participants to make comments. There were no public comments. He then turned the meeting over to Deputy Commissioner Eric Charlick of the Enforcement Branch.

II. Enforcement Branch Report

a. Administrative Update

Deputy Commissioner Eric Charlick provided a recruitment update. Commissioner Cloney asked about the vacancy rate. DC Charlick replied 40 detectives have been placed in background and 30 are still in background. Chairperson Bobrowsky asked if there is a FY 25-26 projection for vacancy. DC Charlick said we try to project retirements, but other than that it's difficult to project vacancies.

Regarding Commissioner Cloney's average case time question from the last meeting, DC Charlick gave some background on the process of reviewing, assigning, and investigating cases. He then provided the average number of days for investigations by case type. Commissioner Cloney said they send a supplemental narrative after their FD-1. He's concerned that the narrative isn't being read if the FD-1 is rejected. DC Charlick replied that if the case is rejected based on what is in the FD-1, they could always reach out to CDI to discuss the case and it can be opened after it's rejected, if the case merits it. Commissioner Cloney asked if a case is closed due to a lack of resources is it later reopened if staffing increases? DC Charlick advised yes it can be.

Chairperson Bobrowsky asked if DC Charlick is happy with the cycle times. DC Charlick replied that they went out to each regional office last year and one of the items discussed was case efficiency. Since then, the efficiency has improved and of course there's always room for improvement.

Commissioner Cloney said he is not happy with the numbers presented. He said that a Claimant Fraud case shouldn't take 9 months as it should be worked by the insurer before it gets to CDI and therefore it shouldn't take CDI 9 months to wrap it up before sending it to the DAs to prosecute. DC Charlick replied that it can be months before the detectives starts working on the case. He said that we can calculate the number of hours spent on fraud type and get that for the January meeting.

Commissioner Spears asked if there is data on the number of cases closed due to lack of resources. DC Charlick replied that in 22-23 it was 875 and in 21-22 it was 1,102, so it has improved.

Commissioner Wright stated many insurers feel they are being aggressive when investigating and she wanted to know if the insurers get updates on the cases they worked on. DC Charlick said we communicate with the party who submitted the FD-1. If it's a TPA submitting the FD-1 for a self-insurer, it would be the TPA who gets the updates.

DC Charlick asked if there are any questions on the Annual Report. Commissioner Cloney said he feels the percentage of convictions per FD-1s is too low and asked what outreach is being done to address the quality of FD-1s. DC Charlick said that Steve Smith will address some of that in a moment. He also said we added a checkbox to report if the FD-1 is lacking information to try and address that with the carrier in the future.

b. SIU Overview

Steve Smith, Manager of EBHQ Audits began a PowerPoint presentation. The Enforcement Branch SIU Compliance team regulates multiple lines of insurance, not just Workers' Compensation. The unit does full scope examinations on insurers' SIU operations. It also does limited scope, targeted audits on insurers for items such as FD-1s lacking quality. The team also

administers SIU Annual Reports, handles fraud awareness and assists DA offices when an insurer is not responsive.

The SIU Compliance team does 4-8 outreach events a year by participating at several conferences. If there are statute or regulation changes, they hold virtual presentations. The team also does targeted outreach to large insurers when there's been a large amount of FD-1s closed due to lack of evidence from them. The Fraud Division has an intake procedure where poor quality FD-1s are flagged and the SIU Compliance team analyzes those cases and decides when feedback is needed.

Mr. Smith discussed CIC 1875.20 – 1875.23 (insurer's SIU requirements) and CCR 2698.32 (staffing and operations). He then covered SIU investigation reviews and what is required in an SIU investigation. Mr. Smith then explained the trigger for fraud referrals is if there's "reasonable belief" fraud may have occurred. Something to keep in mind is that the statute says "regardless of payment status", if there is a reasonable belief fraud may have occurred the FD-1 needs to be submitted. Regarding Commissioner Cloney's question at the last meeting, if the case was settled before the investigation was finalized, should the insurer send the FD-1, yes the insurer should send the referral.

Mr. Smith then reviewed the components to completing an FD-1.

Vice-Chairperson Lopez asked what happens if an insurer SIU doesn't follow the regulations. Mr. Smith advised under the regulations there are penalties and depending on the severity of the non-compliance, the amount and type of penalties vary. Vice-Chairperson Lopez asked if there are statistics on which carriers have been penalized. Mr. Smith said yes, they can gather it. Vice-Chairperson Lopez suggested maybe CDI send that information out to insurers as a deterrent. Commissioners Spears asked if there is any friction with the insurers and CDI about the number of cases that CDI rejects due to lack of resources while the insurers may later get penalized for incomplete FD-1s. Mr. Smith said yes and those conversations do come up when they're out in the field.

Commissioner Carresi asked if the SIU examinations are posted publicly. Mr. Smith confirmed they are not and the thought process was it could give people intending on committing fraud an idea of which insurer is a better target. Commissioner Cloney said there's only 2 referrals from self-insurers last year and asked what are their requirements. Mr. Smith replied that unfortunately self-insurers don't have the same requirements and the statute doesn't give CDI authority to penalize them so it is more difficult to enforce. Self-insurers are only required to submit the FD-1 and respond to demand letters.

Chairperson Bobrowsky said more and more insurers have left the state. He asked if CDI has seen a difference in the quality of investigations done by insurers who have desk-SIUs compared to others that do not. Mr. Smith said that they do see some issues with the quality of investigations, however they are still meeting the regulations so they cannot be penalized.

Commissioner Wright said there is an opportunity through outreach to connect with self-insurers.

Chairperson Bobrowsky said he's heard about compliance, but what about commitment. Mr. Smith said that for the most part our only recourse are penalties as commitment has to come from within the insurer.

c. Potential Assessment Split

DC Charlick advised currently, per the statute, the aggregate assessment is split between CDI and the DAs with a minimum of 40% going to each and the remaining 20% is discretionary, with that discretionary amount going to the DAs up until this year. Commissioner Lara adjusted the discretionary portion by 6.76% for the current fiscal year with 47% going to CDI and 53% to the DAs due to \$8.785 million in unspent FY 22-23 DA funds. For FY 23-24 the DAs underspent \$7.773 million, with \$3.93 million being requested as carryover and approximately \$3.86 million being returned to CDI to be redistributed to the DAs in FY 25-26. Additionally, CDI underspent \$321,000 and there was \$343,000 in fines and penalties collected, which is a combined \$664,000. If the FAC votes to use the \$664,000 to augment the DAs funding, the additional funds available to the DAs for FY 25-26 will be \$4.524 million. The Fraud Division is currently working on a proposal for Commissioner Lara's review to make a 1-time adjustment of the split for FY 25-26 of 4.76%, resulting in 45% of the assessment to CDI and 55% to the DAs. The 4.76% adjustment would be equal to \$4.23 million, which is less than the amount of additional funding to the DAs should the FAC vote to augment the DAs funding. If Commissioner Lara approves the proposal, it will be presented at the January FAC meeting. CDI is asking the Commissioners to keep the assessment at the current level of \$89,985,405.

Vice-Chairperson Lopez confirmed some of the unspent \$8 million is requested as carryover and asked to confirm that the potential split is not taking money from the DA's requested carryover. DC Charlick confirmed that is correct.

Commissioner Wright said many DAs have said they need to stabilize funding to invest in their future. DC Charlick said that we are only looking at a split that is less than what is being returned by the DAs, so it would still result in an increase of \$920,000 to the DAs compared to last year. He said it would be a one-time adjustment if Commissioner Lara seeks the adjustment.

Commissioner Calamuci asked if CDI has had discussions with Mr. Lee about the split adjustment. DC Charlick replied he let Mr. Lee know of CDI's intentions.

Chairperson Bobrowsky clarified that the potential split change is due to unspent DA funds, but once CDI and the DAs have increased staff and if more funds are needed, an assessment increase would be sought at that time. DC Charlick confirmed that is correct.

Commissioner Cloney said there is a \$3 million increase in the funding requested by CDI. DC Charlick explained that is an increase when comparing to the 60/40 split. He said that CDI has historically has had to use unfunded contributions and in FY 22-23 it was \$4.5 million.

Commissioner Calamuci asked where the fines and penalties are sitting and what would happen to it if the FAC doesn't vote to augment the DA funding. DC Charlick replied it is currently in the WC fund and if it doesn't augment the DA funding the \$321,000 would offset the aggregate assessment of \$89 million.

d. Public Comments

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

III. Aggregate Assessment

a. Discussion

Chairperson Bobrowsky provided some history on the unspent CDI funds and fines and penalties and explained those funds were used to offset the assessment. After the BSA audit

recommendation that those funds be used to augment the DA funding, AB 2046 was created to allow the FAC to augment the DA funds instead of offsetting the assessment. In 2018, the FAC voted to augment the DA funding with those funds and that is the last time it was voted on.

b. Public Comments

Chairperson Bobrowsky asked for any public comments.

Motion

Vice-Chairperson Lopez made a motion to use the unspent CDI funds and the fines and penalties to augment the DA funding. Commissioner Spears seconded the motion.

Action

A roll call vote was taken and the motion passed unanimously.

c. Continued Discussion

Chairperson Bobrowsky advised the one-time assessment split has ended. He read the funding amounts for CDI and the DAs if the assessment amount doesn't change for FY 25-26.

Commissioner Cloney said there was 14% unspent by DAs with 7% going back to the DAs. He said that he isn't happy with results from CDI and the DAs. He feels some counties are not using their money wisely. He said he plans to vote to keep the assessment the same, but he expects the counties to improve their productivity.

Commissioner Wright said she agrees with Commissioner Cloney and wants counties to start planning for the future and to strategize.

Chairperson Bobrowsky said that this past year the Commissioners who participated in the grant review panel did a good job of moving money from counties who weren't performing and giving it to counties who were.

Vice-Chairperson Lopez appreciates that the DAs are the only ones who can prosecute people who commit WC insurance fraud. As the Executive Director of the Center for Contract Compliance, he had to face hurdles on how to get results with limited resources. Their solution was to hire experts in the field. He understands government operations have different obstacles, but hopes an approach like that could be helpful.

Vice-Chairperson Lopez reviewed the statistical data provided at the last meeting and he believes medical provider and denial of workers' compensation benefit cases are being overlooked. It is essential for all offices to establish a strategy to overcome staffing shortages and get new staff up to speed as quickly as possible. He is pleased to see more collaboration and thanked DC Charlick for being transparent with the potential of seeking another one-time split change. He said having attended several conferences, he observed a reoccurring theme of going back to basics. He had some questions for the county DAs and CDI to consider:

1. Staffing
 - 1) What steps will you take if you can't secure the staff you desire?
 - 2) Is there a strategy in place to leverage the team you currently have?
 - 3) What safeguards do you have in place to mitigate the setbacks that are inevitable when an experienced detective or attorney leaves their position?
2. Alignment
 - 1) Should you reevaluate your priorities?

- 2) Where can you best allocate your resources to align with the objectives set by the Insurance Commissioner?
3. Effectiveness
 - 1) Can technology play a role in enhancing your efforts? AI to review cases.
 - 2) Prosecutors' emphasis that they do not give legal advice. Who gives legal advice to CDI detectives when handling complex insurance fraud investigations?
 - 3) Does CDI have a criminal legal team available to its detectives to guide and protect them?

d. Public Comments

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

e. Determination of Aggregate Assessment for Fiscal Year 2025-26

Chairperson Bobrowsky said he'd like to entertain a motion for the assessment to remain at \$89,985,405. Commissioner Cloney made the motion and Commissioner Caressi seconded. The motion to keep the FY 2025-26 aggregate assessment at \$89,985,405 was unanimously accepted via a roll call vote.

IV. Other Business

a. Next Scheduled Meetings

Chairperson Bobrowsky announced the next scheduled meeting is January 8, 2025. He wishes to set 2025 meeting dates at the next meeting.

b. Goals and Objectives

Chairperson Bobrowsky stated the FAC Goals and Objectives were revised last year, however there are several new Commissioners so he'd entertain a vote for a subcommittee to be created to revise the FAC Goals and Objectives. He stated due to Bagley-Keene only two Commissioners could be on the sub-committee.

Commissioner Calamuci recommended they establish a sub-committee since there are several new FAC Commissioners.

c. Public Comments

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

Motion

Commissioner Cloney made a motion for a subcommittee to be created to revise the FAC Goals and Objectives. Commissioner Calamuci seconded.

Action

A roll call vote was taken and the motion passed unanimously. Commissioners Cloney and Wright will serve on the subcommittee.

V. Public Comments

Chairperson Bobrowsky asked if there were any public comments on any agenda item today. There were none.

VI. Closing Remarks

Chairperson Bobrowsky thanked LAU again. He also stated he appreciated CDIs and the DAs work. He thinks it's important to focus on employer fraud and provider fraud. He believes it's

important to have a balanced caseload and to be successful they need experienced staff. Lastly, outreach is very important.

Chairperson Bobrowsky asked the other Commissioners if they wished to make any closing comments. Commissioner Calamuci appreciated being able to push this meeting to November. Commissioner Caressi thanked LAU too. He also echoes much of what Chairperson Bobrowsky said. Commissioner Cloney said he is very passionate about workers' compensation insurance fraud and he appreciates all the hard work everyone does. Vice- Chairperson Lopez said he wants to see CDI and the DAs use the money given and if a county has extra money, he'd like to see them use it for outreach or other approved expenses rather than carry it over. Commissioner Wright thanked everyone for their efforts and appreciates the informative presentations. She echoed the comments on using the funds received instead of carrying it over.

Motion

Commissioner Spears made a motion to adjourn and Vice-Chairperson Lopez seconded the motion.

Action

The Commissioners unanimously approved via a roll call vote and the meeting adjourned at 12:12 pm.