CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

EXECUTIVE COMMITTEE MEETING

November 29, 2016 - 10:00 A.M.

CJPRMA Main Office
3201 Doolan Road, Suite 285
Livermore, CA 94551

(925) 837-0667

Webex Meeting
When it's time, join the meeting from here:

https://meetings.webex.com/collabs/meetings/join?uuid=M7V2QT329YF8DMWFMM51ADJQN0-NVIL

Dial In # 855-797-9485
Meeting #: 194 849 033

1. *City of Livermore, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
2. *City of Richmond, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
3. *City of Lodi, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
4. *YCPARMIA, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
5. *SCORE, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
6. *City of Vacaville, 3201 Doolan Road, Suite 285, Livermore, CA 94551*
7. *City of Roseville, 311 Vernon Street., Roseville, CA 95678*
8. *Gibbons & Conley, 3201 Doolan Road, Suite 285, Livermore, CA 94551*

AGENDA

I. CALL TO ORDER: 10:00 A.M.

II. ROLL CALL

III. PRESENTATIONS

- None

IV. APPROVAL OF MINUTES

1. Minutes of the Executive Committee meeting held July 21, 2016 (Pages 4-7)

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact CJPRMA at (925) 837-0667 24 hours in advance of the meeting.

V. COMMUNICATIONS

1. Executive Committee Members
2. General Manager/Secretary
3. Next Scheduled Meetings: Board of Directors (12/15/2016) CJPRMA
   Executive Committee (1/26/2017) TBD

VI. CONSENT CALENDAR

- None

VII. THIS TIME IS RESERVED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE EXECUTIVE COMMITTEE ON MATTERS OF EXECUTIVE COMMITTEE BUSINESS

VIII. ACTION CALENDAR

1. Review Implementation Options for CJPRMA Excess Worker's Compensation Program ***(I)*** (Pages 8-9)

2. Business Calendar for 2016 and 2017 ***(I)*** (Pages 10-19)

3. Approval of 2016-2019 Strategic Plan (A***)*** (Pages 20-40)

4. Status Update of General Manager's Goals and Objectives 2013-2016 with Accomplishments *(I)* (Pages 41-55)

5. Review of Board Adopted Meeting Schedule for 2017 ***(I)*** (Pages 56-60)

6. Review of Succession Planning ***(I)*** (Page 61)

7. Risk Management Issues ***(I)*** (Pages 62-81)

IX. CLOSED SESSION

1. **Government Code Section 54957**
   Public Employee Performance Evaluation

   Title: General Manager

2. **Government Code Section 54957.6**
   Conference with Labor Negotiator

   Agency Designated Representative: Janet Hamilton, Vice President
   Unrepresented Employee: David Clovis, General Manager

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact CJPRMA at (925) 837-0667 24 hours in advance of the meeting.

3. **<u>Government Code Section 54956.9 (a)</u>**
Conference with Legal Counsel – Litigation

Name of Case: McDonald, S. v. City of Santa Rosa
Court: Superior Court of the State of California County of Sonoma
Case No.: SCV256495

4. **<u>Government Code Section 54956.9 (a)</u>**
Conference with Legal Counsel – Litigation

Name of Case: Machado, A. v. City of San Rafael
Court: Superior Court of the State of California County of Marin
Case No.: CV1504117

5. **<u>Government Code Section 54956.9 (a)</u>**
Conference with Legal Counsel - Pending Litigation

Name of Case: Waters, A v. City of Petaluma
Court: Superior Court of California, County of Sonoma
Case No.: SCV256309

6. **<u>Government Code Section 54956.9 (a)</u>**
Conference with Legal Counsel - Pending Litigation

Name of Case: Milan v. City of Vallejo
Court: Superior Court of California, County of Solano
Case No.: FCS042585

X. ACTION ON CLOSED SESSION ITEMS

XI. ADJOURNMENT

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact CJPRMA at (925) 837-0667 24 hours in advance of the meeting.

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CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

EXECUTIVE COMMITTEE MEETING
July 21, 2016 - 10:00 A.M.

City of Livermore
CJPRMA Office
3201 Doolan Road, Suite 285
Livermore, CA 94551
925-837-0667

MINUTES

I. CALL TO ORDER:

- President Hamilton called the meeting to order at 10:03a.m.

II. ROLL CALL

PRESENT

1) Janet Hamilton, *Livermore*
2) Kim Greer, *Richmond*
3) Celeste Garrett, *Vacaville*
4) Janice Magdich, *Lodi*
5) David Rawe, *Roseville*
6) Roger Carroll, *SCORE*
7) Jeff Tonks, *YCPARMIA*

ABSENT

None

OTHERS PRESENT

8) David Clovis, *CJPRMA*
9) Craig Schweikhard, *CJPRMA*
10) Byrne Conley, *Gibbons & Conley*
11) Saima Kumar, *CJPRMA*
12) Susanna Banuelos, CJPRMA
13) Jas Sidhu, *City of Livermore*

III. PRESENTATIONS

- None

IV. APPROVAL OF MINUTES

- A motion made by Director Rawe and seconded by Director Magdich to approve the minutes of April 27, 2016 Executive Committee meeting. Directors Hamilton, Greer, Carroll, Magdich, Garrett, Rawe and Tonks voted for the approval of the minutes. Motion passes.

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V. COMMUNICATIONS

1. Executive Committee Members
2. General Manager/Secretary
3. Next Scheduled Meetings: Annual Membership Meeting (10/26-10/27/2016) Livermore
   Executive Committee (9/13/2016) Lake Tahoe

VI. CONSENT CALENDAR

- None

VII. THIS TIME IS RESERVED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE EXECUTIVE COMMITTEE ON MATTERS OF EXECUTIVE COMMITTEE BUSINESS

VIII. ACTION CALENDAR

1. Business Calendar for 2016

The CJPRMA 2016 Business Calendar was provided as a standing agenda item for the Executive Committee. This calendar provides Committee members and staff with a listing of key business items and the required dates for completion.

No action was required on this item.

2. Succession Planning

This is a standing agenda item. The Executive Committee and the general manager have begun discussions regarding a succession plan for CJPRMA. The general manager informed the committee that he is in the process of staffing the newly adopted Risk Management Analyst position and will fill any other staff position affected by this new position.

No action was required on this item.

3. Approve Proposed Contract Renewal with Ventiv Technologies for the Risk Console System (*A*)

The general manager informed the Executive Committee that Ventiv Risk Console (RIMS) contract is up for renewal. The current contract will expire on August 29, 2016. The expiring contract was a five year annual cost of service that included a 15% discount for all members and ongoing conversion service fees. The new proposed rates are as follows:

Year 1	$60,973
Year 2	$62,802
Year 3	$64,686

He said that the new proposal has zero increase in the first year with a three percent increase in year two and three. The general manager said staff recommends approving the three extensions.

A motion by Director Rawe, seconded by Director Garrett to approve a three year contract extension with Ventiv Technologies for the Risk Console System. Directors Hamilton, Greer, Rawe, Magdich, Carroll and Garrett voted to approve the motion. Director Tonks voted no on the motion. Motion passes.

4. October Strategic Planning Session *(I)*

The general manager discussed the 2016 October Strategic Planning Session with the Executive Committee. He said based on discussions with President Hamilton, it appears that the session should be a quick review of the current plan and then focus on development of program and services that will enhance the organization over the next two years. The committee directed the general manger to create an updated Strategic Plan and present it at the October meeting. Director Tonks said that he would prefer not to hire a facilitator and instead have the general manager facilitate the meeting. The general manager said the he will incorporate the feedback from the committee, in preparation for the October Strategic Planning Session.

No action was required on this item.

5. Approve General Manager's Goals and Objectives 2013-2016 *(A)*

The general manager presented his goals and objectives for 2013-2016 to be approved by the committee. He said that the new goals and objectives adopted at the April 2014 meeting were designed for a two-year period. He said that at the time discussions by the Executive Committee indicated that it was difficult and time consuming to recreate the goals and objectives on an annual basis. It was determined that the two-year duration on the goals will allow the organization to continue with a long-range approach to the operation of CJPRMA.

The general manager also provided the current accomplishments year to date for the committee to review. He stated that the Board of Directors will participate in a strategic planning process at the scheduled October 2016 meeting. After that meeting, once goals and objectives are clarified, the Executive Committee will meet with him to modify the current goals and objectives as appropriate.

A motion by Director Carroll and seconded by Director Rawe to approve General Manager's Goals and Objectives 2013-2016. Directors Hamilton, Greer, Carroll, Magdich, Garrett, Rawe and Tonks voted for to approve the General Manager's Goals and Objectives for 2013-2016. Motion passes.

6. Risk Management Issues *(I)*

Director Hamilton wanted to know if CJPRMA or any members have training material related to PIOs on what to "say/not to say". Committee said that they would look into it and provide information if available.

IX. CLOSED SESSION

1. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation

Name of Case: Andriano, Rene, v. City of Vallejo
Court: Superior Court of California, County of Solano
Case No.: FCS044401

2. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation

Name of Case: Fang, Joanne v. City of Fremont
Court: Superior Court of California, County of Alameda
Case No.: HG14732845

X. ACTION ON CLOSED SESSION ITEMS

- The Executive Committee conferred with staff regarding litigated claims and provided direction. There was no reportable action.

XI. ADJOURNMENT

- A motion by Director Magdich and seconded by Director Carroll to adjourned the meeting at 11:30 a.m. Directors Hamilton, Greer, Carroll, Magdich, Garrett, Rawe and Tonks voted to adjourn the meeting. Motion passed.

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: *1*	***TITLE:*** **REVIEW IMPLEMENTATION OPTIONS FOR CJPRMA EXCESS WORKER'S COMPENSATION PROGRAM**
MEETING: *11/29/2016*	
GENERAL MANAGER: J.T.C.	

Recommended Actions:

Staff requests that the Executive Committee review the proposed implementation of the Excess Worker's Compensation Program and to direct staff to evaluate options on the structure and rates for the program to be presented at the Board of Director's December meeting.

Strategic Direction:

This items addresses Strategic Goal 1: Core Products and Services Innovation

Item Explanation:

Staff and Aon Risk Services presented options to the Board of Directors in 2014 to re-establish an Excess Workers' Compensation Program. There was significant interest by the Board and many members submitted data for consideration. At that point in time it was determined that the cost of the program proposed would not provide a significant reduction in savings to many of the members considering the program and the program was not adopted.

Staff discussed options with many members regarding an opportunity to resurrect this discussion and it was perceived that based upon increased costs within the industry, it would be prudent to once again evaluate options for creating the program. Staff is working with Dr. William Deeb, Aon Risk Services to determine the feasibility of this program. The purpose of this agenda bill is to present the preliminary rates obtained by our broker and to request the members interested in the program be prepared to tentatively commit to participation in the program by January 1, 2017.

At this point in time, we have not determined coverage limits, SIR's, program requirements, TPA requirements or any of the actual details required in the program. These items will be created once we determine the number of members interested in developing the program and the appropriate retention levels to be determined based upon the underwriters quotes. Staff will work with Mujtaba Datoo, CJPRMA's actuary to develop rate structures and recommended retention levels.

Dr. Deeb is working with the underwriters to develop a preliminary quotation based upon the payroll submitted to date. Staff will distribute the preliminary estimates to the Board of Directors prior to the meeting once they are finalized. Dr. Deeb will provide final documentation of his efforts with the underwriters at the meeting.

Back to Agenda

This meeting will be scheduled as a teleconference and will utilize webex to provide access to the materials that will be presented at the meeting. Directions for participating in this meeting will be provided separately to the Board of Directors.

Staff recommends the Executive Committee review the proposed implementation of the Excess Worker's Compensation Program effective July 1, 2017 and to direct staff to evaluate options on the structure and rates for the program to be presented at the Board of Director's December meeting.

Dr. Deeb and staff will be available to answer questions regarding the opportunity to develop an Excess Worker's Compensation program.

Fiscal Impact:

To Be Determined

Exhibits:

To be provided prior to the meeting under separate cover.

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: *2*	***TITLE:*** **BUSINESS CALENDAR FOR 2016 AND 2017**
MEETING: *11/29/2016*	
GENERAL MANAGER: J.T.C.	

Recommended Actions:

None: This item is being provided for information only.

Strategic Direction:

This item addresses Strategic Goal 2, Member Education and Training Initiative.

Item Explanation:

The CJPRMA 2016 and 2017 Business Calendar will be provided as a standing agenda item for Executive Committee meetings and Board of Director Meetings. This calendar provides board members and staff with a listing of key business items and the required dates for completion.

Fiscal Impact:

None

Exhibits:

1. CJPRMA 2016 Business Calendar
2. CJPRMA 2017 Business Calendar
3. CJPRMA Training Flyers

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

2016 BUSINESS CALENDAR

January

- Distribution of Executive Committee Agenda – 1/14/2016
- Executive Committee Meeting – 01/21/2016
- Member Quarterly Payroll Reports – 01/29/2016
- Distribution of Summary of Property Values
- Distribution of Summary of APD Values
- Distribution of Summary of Boiler & Machinery Values

February

- FPPC Form 700 Filing Requests Sent Out
- PARMA Conference (02/23/2016 – 02/26/2016)
- Deadline for Members to submit Agenda items for March Meeting – 02/18/2016
- Redistribution of Equity Checks

March

- Distribution of Board of Directors Meeting Agenda – 03/10/2016
- Board of Directors Meeting – 03/17/2016
- Annual Meeting Room Requests
- Return APD, Property and Boiler & Machinery Renewals Lists to Staff

April

- FPPC Form 700 Filing Deadline April 1, 2016
- Distribution of Executive Committee Meeting Agenda – 04/20/2016
- Executive Committee Meeting – 04/27/2016
- Distribution of Certificate of Coverage Renewals Lists
- Requests for Nominations for President/Vice President (Bi-annually)
- Deadline for Members to submit Agenda items for Annual Meeting – 04/28/2016
- ARM 55 Class – (04/20/2016– 04/22/2016)
- Distribute nomination for President and Vice President (even numbered years)
- Member Quarterly Payroll Reports – 04/30/2016

May

- Distribution of Board of Directors Annual Meeting Agenda– 05/10/2016
- Board of Directors Annual Meeting – 05/17/2016 – 05/19/2016
    - Commercial Insurance Renewals
    - Proposed Budget for 2016-2017
    - Claims Audit Presentation
    - AB 1234 Ethics Training (even numbered years)
- Return Certificate of Coverage Renewals Lists to Staff
- Deadline for Members to submit Agenda items for June Meeting – 05/26/2016

June

- Distribution of Board of Directors Meeting Agenda – 06/9/2016
- CJPRMA Board Member Orientation – TBD
- Board of Directors Meeting – 06/16/2016
    - Bi-annual election of President and Vice President (even numbered years)
    - Election of Executive Committee Members
    - Bi-annual Review of Conflict of Interest Code (odd numbered years)
    - Bi-annual Appointment of Treasurer (even numbered years)
- Certificates of Coverage Renewals mailed to certificate holders (6/30/2016)
- Risk Management Plan Revisions
- Requests for reimbursement of liability training expenses due by August 31,2016

July

- Distribution of Executive Committee Meeting Agenda – 07/14/2016
- Executive Committee Meeting – 07/21/2016
- General Liability Premiums Billed
- Auto Physical Damage Program Premiums Billed
- Property Program Premiums Billed
- Boiler & Machinery Premiums Billed
- Member Quarterly Payroll Reports -07/31/2016

August

- Financial Audit in process
- Actuarial Study in process

September

- Distribution of Executive Committee Agenda – 09/08/2016
- Executive Committee Meeting – 09/13/2016 at CAJPA
- CAJPA Conference 09/13/2016 – 09/16/2016

October

- Deadline for Members to submit Agenda items for October Meeting – 10/06/2016
- Distribution of Board of Directors Meeting Agenda – 10/20/2016
- Board of Directors Strategic Planning Meeting – 10/26/16 –10/27/16
    - Actuarial Study Presented
    - Approval of Annual Meeting and Holiday Calendars
- Member Quarterly Payroll Reports – 10/31/2016

November

- Distribution of Executive Committee Meeting Agenda – 11/10/2016
- Executive Committee Meeting – 11/17/2016
- Deadline for Members to submit Agenda items for December Meeting – 11/23/2016

December

- After Ferguson: Police Use of Deadly Force, an Uncertain Future – 12/01/2016
- Distribution of Board of Directors Meeting Agenda – 12/8/2016
- Board of Directors Meeting – 12/15/2016
    - Annual Report Presented
    - Financial Audit Presented
    - Annual Review of Investment Policy
- Deadline for change to SIR or withdrawal from any CJPRMA program – 12/31/2016

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

2017 BUSINESS CALENDAR

January

- Distribution of Executive Committee Agenda – 1/19/2017
- Executive Committee Meeting – 01/26/2017
- Member Quarterly Payroll Reports – 01/31/2017
- Distribution of Summary of Property Values
- Distribution of Summary of APD Values
- Distribution of Summary of Boiler & Machinery Values
- Risk Management & Liability Prevention for Law Enforcement Leaders – 01/25-01/26/2017

February

- FPPC Form 700 Filing Requests Sent Out
- PARMA Conference (02/12/2017 – 02/15/2017)
- Deadline for Members to submit Agenda items for March Meeting – 02/23/2017
- Redistribution of Equity Checks
- Return APD, Property and Boiler & Machinery Renewals Lists to Staff
- CPSI Playground Safety Training – TBA

March

- Distribution of Board of Directors Meeting Agenda – 03/9/2017
- Board of Directors Meeting – 03/16/2017
- Annual Meeting Room Requests

April

- FPPC Form 700 Filing Deadline April 1, 2017
- Distribution of Executive Committee Meeting Agenda – 04/13/2017
- Executive Committee Meeting – 04/20/2017
- Distribution of Certificate of Coverage Renewals Lists
- Requests for Nominations for President/Vice President (Bi-annually)
- Deadline for Members to submit Agenda items for Annual Meeting – 04/27/2017
- ARM 56 Class – TBA
- Distribute nomination for President and Vice President (even numbered years)
- Member Quarterly Payroll Reports – 04/28/2017

May

- Distribution of Board of Directors Annual Meeting Agenda– 05/11/2017
- Board of Directors Annual Meeting – 05/17/2017 – 05/18/2017
    - Commercial Insurance Renewals
    - Proposed Budget for 2017-2018
    - Claims Audit Presentation
    - AB 1234 Ethics Training (even numbered years)
- Return Certificate of Coverage Renewals Lists to Staff
- Deadline for Members to submit Agenda items for June Meeting – 05/25/2017

June

- Distribution of Board of Directors Meeting Agenda – 06/8/2017
- CJPRMA Board Member Orientation – TBD
- Board of Directors Meeting – 06/15/2017
    - Bi-annual election of President and Vice President (even numbered years)
    - Election of Executive Committee Members
    - Bi-annual Review of Conflict of Interest Code (odd numbered years)
    - Bi-annual Appointment of Treasurer (even numbered years)
- Certificates of Coverage Renewals mailed to certificate holders (6/30/2017)
- Risk Management Plan Revisions
- Requests for reimbursement of liability training expenses due by August 31,2017

July

- Distribution of Executive Committee Meeting Agenda – 07/13/2017
- Executive Committee Meeting – 07/20/2017
- General Liability Premiums Billed
- Auto Physical Damage Program Premiums Billed
- Property Program Premiums Billed
- Boiler & Machinery Premiums Billed
- Member Quarterly Payroll Reports -07/31/2017

August

- Financial Audit in process
- Actuarial Study in process

September

- Distribution of Executive Committee Agenda – 09/21/2016
- Executive Committee Meeting – 09/28/2017
- CAJPA Conference 09/12/2017 – 09/15/2017

October

- Deadline for Members to submit Agenda items for October Meeting – 10/06/2016
- Distribution of Board of Directors Meeting Agenda – 10/19/2017
- Board of Directors – 10/26/17
  - Actuarial Study Presented
  - Approval of Annual Meeting and Holiday Calendars
- Member Quarterly Payroll Reports – 10/31/2017

November

- Distribution of Executive Committee Meeting Agenda – 11/9/2017
- Executive Committee Meeting – 11/16/2017
- Deadline for Members to submit Agenda items for December Meeting – 11/30/2017

December

- Distribution of Board of Directors Meeting Agenda – 12/07/2017
- Board of Directors Meeting – 12/14/2017
  - Annual Report Presented
  - Financial Audit Presented
  - Annual Review of Investment Policy
- Deadline for change to SIR or withdrawal from any CJPRMA program – 12/29/2017

California Joint Powers Risk Management Authority
Training Announcement

After Ferguson: Police Use of Deadly Force, an Uncertain Future

Presented by
Gregory M. Fox, Partner, Bertrand, Fox, Elliot, Osman & Wenzel
Thursday, December 01, 2016

City of Redding
City Council Chambers
777 Cypress Avenue
Redding, CA 96001

The California Joint Powers Risk Management Authority (CJPRMA) is a statewide risk retention pool that was established in 1986 to provide excess general liability coverage for its members. Currently, its membership is composed of 17 cities and 4 joint powers authorities. The combined membership represents 99 public entities throughout the state.

This session will cover the legal evolution of police uses of force; changes in police training on deadly force; police handling of mentally ill and a duty to accommodate; new liability for police command staff and supervisors. We will discuss policing methods that will minimize the anticipated impacts created by the increased public scrutiny and changing case law. In addition, we will go over what judges and juries think and how do they decide cases.

At the completion of this session, attendees will be able to:

- **Evaluate the risk and liability from police use of deadly force;**
- **Work with your police agency on training and policies for police use of force; and**
- **Devise a successful strategy for defending a federal civil right action.**

In addition to the above presentation by Mr. Fox, the CJPRMA General Manager, Mr. David J. Clovis will present an update on police loses and how they affect CJPRMA members

WHO SHOULD ATTEND: **Police Staff, Command Staff, Risk Managers, City Attorneys, Supervisors**

TIME: **1:00 p.m. to 3:30 p.m.**

TO REGISTER: Contact Chris Carmona at ccarmona@ci.redding.ca.us or (530) 225-4387

California Joint Powers Risk Management Authority
Training Announcement

[Risk Management & Liability Prevention for Law Enforcement Leaders]

Presented by Randy Means, J.D.

CJPRMA will be hosting a new seminar featuring high risk and high liability areas of law enforcement. Police Managers are constantly concerned with the repercussions of injury, death, and the threat of civil liability. Today, lawsuits question whether a law enforcement agency has responsibly planned and managed a broad array of operational and administrative dynamics. The agency's written policies are challenged and its methods of hiring, training, supervision and discipline are closely scrutinized. If police officials have not dealt adequately with these matters, supervisory liability, liability for negligent training, and municipal liability will follow.

This program is a one day course that explains how, through responsible and systematic planning and implementation, law enforcement administrators can minimize the risk of officer misconduct, maximize organizational effectiveness, sharply reduce the threat of injury, death, lawsuits and liability—and improve public trust. This seminar teaches the keys to these successes. Program orientation will be positive, proactive, practical and very specific.

Risk Management & Liability Prevention topics to be discussed:

- Pinpointing the Exact Causes of Police Liability
- Risk Identification and Prioritization
- Litigation trends: "Understanding the "Battlefield"
- Ten Keys to Success in Law Enforcement Risk Management

Randy Means is a nationally recognized career police legal advisor and risk management consultant and has conducted law enforcement training in every state and Canada.

Past head of the National Association of Police Attorneys, former military officer then Department Head at a state Law Enforcement Training Center, nearly 10 years a full-time major city Police Attorney, 25 years in a prominent national police management and training firm, Randy Means is perhaps uniquely qualified to teach principles of risk management in police organizations, paramilitary environments laden with administrative and operational legal constrictions and teeming with risk of physical injury, death and legal liability. His work has been mentioned in the *Wall Street Journal*, discussed on *60 Minutes* and featured on LETN and FBI Training Network.

One of the most respected police trainers in America; he has taught more than a half-million law enforcement officials and provided consulting services to hundreds of agencies, including many of the largest and best in the country. Long time legal and risk management instructor for the IACP and featured speaker at 10 of their annual conferences, he has also spoken at multiple national conferences of the FBINAA and PRIMA. Author of a police law text, 100+ published articles, and the risk management column for *Law & Order* magazine, his new book: *Essential Law Enforcement Risk Management.*

WHO SHOULD ATTEND:	All Law Enforcement Managers and Administrators, Chiefs and Sheriffs, Law Enforcement Legal Advisors, Risk Managers, and all personnel responsible for the standards followed by law enforcement professionals
TIME:	10:00 a.m. to 4:00 p.m. Registration will start at 9:30 a.m. Lunch and an afternoon snack are included.

When	Where	Time
January 25th, 2017	**Embassy Suites – San Rafael** * **Marin County** 101 McInnis Parkway, San Rafael	10:00 am to 4:00 pm
January 26th, 2017	**Embassy Suites – Sacramento** ** **Riverfront Promenade** 100 Capitol Mall, Sacramento	10:00 am to 4:00 pm

REGISTRATION INFORMATION

Go to http://www.cjprma.org/training_registration.php

- No fee for CJPRMA Members
- $125 fee for Non-CJPRMA Members (non refundable)
- REGISTRATION DEADLINE for EACH SEMINAR: **JANUARY 17TH, 2017**

IMPORTANT HOTEL AND PARKING INFORMATION:

Embassy Suites – San Rafael

* Complimentary parking is available on site.

* Hotel rooms are available at the attendees' expense for the night of January 24th, please book online before December 27th:
(http://embassysuites.hilton.com/en/es/groups/personalized/S/SFORFES-CPJ-20170124/index.jhtml?WT.mc_id=POG)

(Accommodations in San Rafael include: Single occupancy $145.00, hot, cooked to order breakfast in the morning and complimentary "Evening Reception". Check-in after 3pm, check out, 12pm. Cancellations must be made 24 hours prior to arrival, so you will not be charged.)

Embassy Suites – Sacramento:

** Convenient parking is available at the attendees' expense across the street from the Embassy Suites-Sacramento at the Tower Bridge Garage the fee is $1.50 per half hour, with a $15 daily max.

** Meeting attendees are responsible for hotel accommodations if needed.

If you have questions, please contact Marcia Hart at marcia@cjprma.org.

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: *3*	***TITLE:*** **APPROVAL OF 2016-2019 STRATEGIC PLAN**
MEETING: *11/29/2016*	
GENERAL MANAGER: *A.T.C.*	

Recommended Actions:

Staff recommends the Executive Committee approve and refer to the Board of Directors the 2016-2019 Strategic Plan created by the general manager with direction provided at the Strategic Planning Session in October.

Item Explanation:

The Board of Directors adopted its current strategic plan at the October board meeting in 2013. The Board determined that the plan created in 2013 was pertinent at the time and determined that the strategic plan as developed would serve as a valid tool for three years.

Staff created a draft strategic plan that was presented to the Board of Directors at the Strategic Planning Session on October 26, 2016. Ms. Lisa Yates, ACS Quantum Strategies facilitated the discussion at the meeting. Based upon the outcome of the discussion the general manager modified the draft presented at the meeting to incorporate the recommendations. A copy of the revised Strategic Plan is attached to this agenda bill as exhibit number 1.

ACS Quantum Strategies provided CJPRMA with a copy of the notes from the planning session. The notes are attached to this agenda bill as exhibit number 2. The latest draft of the strategic plan has also been updated to include the designated responsible party and the anticipated date of completion.

Once the draft strategic plan has been reviewed and approved by the Executive Committee than it will be presented to the Board of Directors for their approval.

The general manager will be present to discuss the modifications to the original draft and to present information on responsible parties and anticipated dates of completion. Once adopted by the Board of Directors the Executive Committee and the general manager will develop a set of Goals and Objectives for the general manager.

The general manager recommends the Executive Committee approve this draft of the strategic plan for recommendation to the Board of Directors for their approval in December.

Fiscal Impact:

1. Unknown at this time. Fiscal impacts to be determined based upon actions taken by the Board of Directors

Exhibits:

1. Draft 2016-2019 Strategic Plan
2. ACS Quantum Strategies notes of strategic planning session

CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

EST. 1986

STRATEGIC PLAN
2017 - 2020

Mission Statement

The California Joint Powers Risk Management Authority is a member-directed excess liability risk retention pool that is dedicated to protecting its members from catastrophic losses and meeting the needs of its members by:

- ***Providing comprehensive, stable, and affordable excess liability coverage***
- ***Offering competitive and flexible coverage programs***
- ***Delivering quality risk management services***
- ***Preserving financial strength and solvency***

Vision Statement

CJPRMA continually exceeds expectations and ensures organizational vitality.

STRATEGIC GOAL 1: Employ Customizable Products and Services to be Competitive Key Message: Enhance programs to minimize losses keeping premium rates and program costs competitive with the marketplace		
PRIORITY ACTIONS	**RESPONSIBLE PARTIES**	**TIMELINE**
1. Identify alternative forms of asset management while exploring alternative investment markets to enhance CJPRMA's return on investment.	Staff/Executive Committee	July 2017
2. Determine the adequacy of the current contribution methodology of members and develop a three- to five-year program to optimize CJPRMA's funding. • Include loss development ex-modification.	Staff/Executive Committee	October 2017
3. Evaluate existing approaches to loss experience and develop an equitable methodology to respond to members that adversely impact the program.	Staff/Executive Committee	October 2017
4. Conduct a focused evaluation of current CJPRMA's liability market conditions and implement programs and coverage options that optimize the delivery of services to members.	Staff/Coverage Committee/Brokers	April 2017
5. Promote effective risk management by providing support to members. • Evaluate options for implementing a TPA-style claims management service for members.	Staff/Executive Committee	January 2018

STRATEGIC GOAL 2: Invest Organizational Capital in the Development of Targeted Educational and Training Programs Key Message: Train and retain members that contribute to the fiduciary health of CJPRMA		
PRIORITY ACTIONS	**RESPONSIBLE PARTIES**	**TIMELINE**
1. Implement a Board of Directors education academy to enhance the effectiveness and fiduciary stability of CJPRMA. • Identify existing state-of-the-industry trainings, if available, rather than reinventing the wheel. Communicate to members. • Offer online/webinar trainings. • Integrate success stories and best practices in addition to theory.	Staff/General Manager	May 2017
2. Develop a Board of Directors mentoring program to facilitate enhanced learning by new directors. • Invite new members to attend a CJPRMA Executive Committee meeting.	Staff/Executive Committee	March 2017
3. Provide customized and targeted trainings to members and their agencies on critical loss experience areas.	Staff	April 2017, 2018, 2019
4. Implement a Risk Management Training Series for members and create a multi-year curriculum to enhance the loss mitigation activities of members. • Mandate board members attend at least one training annually.	Staff/Executive Committee	April 2017
5. Take advantage of current marketplace training opportunities. Make programs available to members from select organizations, such as CAJPA and PARMA, or forge partnerships with other pooling organizations.	Staff	July 2017, 2018, 2019

STRATEGIC GOAL 3: Foster Informed and Engaged Board Leadership Key Message: Ensure all members understand and embrace risk management and claims management and are active in CJPRMA		
PRIORITY ACTIONS	**RESPONSIBLE PARTIES**	**TIMELINE**
1. Develop and implement a claims management process that integrates clear accountability to ensure long-term sustainability of the program.	Staff/Claims Committee	May 2017
2. Create a framework to provide post-litigation debriefings based on best practices with executive staff members of agencies experiencing losses.	Staff/Claims Committee	February 2017
3. Institute an agency-wide "Litigation Panel" or recommended vendor list of attorneys with an incentive for members to use recommended vendors. Develop a litigation management policy based on best practices.	Staff/Claims Committee	July 2017
4. Create item specific ad-hoc committees of the Board of Directors for evaluation and creation of specific programs. Programs to include, but not be limited to, risk management, claims management and program development. • CJPRMA to fully staff committees. • Clearly establish goals, timelines and deliverables.	President	On-Going
5. Formalize and put the succession plan into practice to ensure CJPRMA's continuity.	General Manager/ Executive Committee	July 2017

STRATEGIC GOAL 4: Actively Market the Value of CJPRMA Both Externally and Internally Key Message: Build a "healthy" membership for long-term stability		
PRIORITY ACTIONS	**RESPONSIBLE PARTIES**	**TIMELINE**
1. Enhance the availability of CJPRMA benchmarking and industry tools via the website and other electronic media. • Educate TPAs and members on loss-coding methodologies.	Staff/ Claims Committee	January 2018
2. Provide enhanced data and risk-management-related materials to convey the importance of participating in pooling and the value of membership in CJPRMA. • Deliver detailed risk management loss information to membership directed at eliminating losses.	Staff/Executive Committee	March 2017
3. Create presentations on the value of CJPRMA and present them to all members' executive teams or elected bodies. Use success stories.	Staff	April 2017
4. Identify potential members from the public-sector marketplace and communicate the benefits of joining CJPRMA.	General Manager/ Executive Committee	On-Going

2016 STRATEGIC PLANNING SUMMARY

WELCOME AND OVERVIEW

- Put your CJPRMA hat on today to determine what we will be doing.
- "For when you assemble a number of men [and women] to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected?" – Benjamin Franklin. Keep that in mind today. I'm looking for the wisdom piece to create a sustainable plan for the next three to five years that serves the needs of our membership.

EXPECTATIONS AND OUTCOMES (From the Interviews)

- Focused direction – confirmation that CJPRMA is headed in the right direction.
- A realistic plan that:
    - Reflects the direction for the pool and includes realistic goals and priorities.
    - Emphasizes the value of risk management/managers.
    - Focuses on keeping premiums down and coverage strong.
    - Reflects alignment of board and staff.
- None.

ACCOMPLISHMENTS DURING THE CURRENT THREE-YEAR STRATEGIC PLAN

- Developed and implemented a new property program with significant improvements
- Maintained liability rates
- Provided coverage for all members' losses
- Effectively managed significant litigated cases while ensuring the best fiscal outcomes for members
- Delivered risk management consulting services to enhance members' programs
- Provided enhanced training to members
- Delivered CJPRMA lessons learned newsletter

TAKEAWAYS

- Adverse ruling on Vallejo employment practices liability (EPL) Case
- Adverse quote on auto physical damage (APD) due to significant loss history
- Developed a loss rating mechanism for property and APD program that was not implemented
- No new agencies joined CJPRMA

DISCUSSION

- In terms of seeking new members, is that something the organization is actively pursuing or only when someone contacts CJPRMA?
    - That is what we're here to talk about today. For a while we were gung-ho about growing the organization, but there has been conversation about "at what cost."
    - We haven't used aggressive marketing. When people come to us, we provide them with data, look at their organization, underwrite them and provide a quote. We look at what members will fit. We will not take anyone. We will take members who are as good as or better than us.
- We heard quite a bit about CSAC in terms of offering competitive programs. Can you compete with CSAC?
    - Not sure we want to compete with CSAC. They take anyone. They don't do a lot of underwriting in letting people join their programs. They've had issues over the years.
    - CSAC is a direct dollars-and-cents organization. They compete with other organizations purely on costs of premium and services. That is an important factor when money is tight. If we aren't better than them, they'll start picking off our pool. If you don't know what your competition in doing and it's purely about dollars and cents, you need to know that.
    - Not here to defend CSAC. They do some pretty high-level underwriting. They do look at the numbers. They have a large pool of money and bargaining power, but they lose control. They do offer a lot of services, which is good for small members who don't have resources.

LOOKING FORWARD – HIGHLIGHTS FOR CONSIDERATION

KEEPING IN MIND OUTSIDE INFLUENCES

- Increasing Litigation and Cost of Liability Claims/Litigation/Losses
- Decreasing Rate of Return on Investments
- Increasing Competition and Purchasing Power of Large Pools Leading to Consolidation
- Decreasing Reliance on and Value of Risk Management
- Increasing Reliance on Technology and Data

Any Surprises? Anything Missing?

- Why is there is a decreasing reliance on and value of risk management? Are we not communicating it well or selling it well? What can we do about it?
    - The value of the risk management function is decreasing or becoming fragmented..
- Is it strictly budget cuts?
    - Yes, mainly.
    - It's indicative of us doing a good job. The program is doing well, so we're cut. It's because we've been doing a good job.
    - The value of risk and HR is that we're the last to know. We're always playing catch up.

- Insurance is viewed as a commodity. You have to add value – find places to help people and communicate it better. As long as it's a commodity, it goes to the back of the bus.
    - It's hard to put a dollar value on something if it's going well. It's hard to quantify it.
    - It's a communication function in many ways, but it's more than that.
    - If someone executes a contract and doesn't communicate it to me, they get a time out. The decline of risk management isn't new. It's been happening for years. If a risk manager retires or resigns, the agency isn't replacing the manager – the work is divvied up. They don't backfill the position.
    - The biggest difference between public and private agencies is being reactive and proactive. Private is much more proactive – public not so much. In good times, we're doing great. In bad times, the public says let's cut risk management, which results in claims upticks – the private sector doesn't let it get to the crisis mode. How do we embrace the other side of the house to get them to see this?
- Increasing reliance on technology and data…what does it mean?
    - Having better and higher claims data to show people numbers and differences in costs – how much it's actually costing you. In the long run, you need that data to back up what you're advocating – you will be in a stronger position.
- The others [outside influencers] had a negative quality – wasn't sure how the last one fit in.
    - If you're not watching your data and not confident in it, your competitors will take your membership. If you don't have the data and your competitors do, you'll lose members.
    - Technology is one distinction between CSAC and this organization – don't have that same access with CJPRMA.
    - Agree with the points – we need to have good data to justify ourselves – also look at change happening to us from outside influences. Things are changing quickly – a system could go down in a minute with cyber-attacks. We actually need more risk management now – we need to make that point.
- Response to not getting data from CJPRMA: We need to do a better job of educating people on how to find the data. It needs to be readily available. We have some projects dealing with that. It's there but may not be in the format you want.
- If we don't have supportive technology that gives us the data we need, we'll be in trouble.
- We talk about why risk management is important, how many of you have losses and injuries (comp side) and have said, well, that will just happen? Cops and public works people will get hurt. How many of you have worked in the private sector and said you will not have injuries and if you do, you will be fired. It's a norm not accepted in private industry. We've done well in risk management, but we're not good salespeople. We have not communicated with constituents why the accidents aren't happening. We have to own it or not. It's part of the watering down of risk management. This is not brand new. We need to get in front of it and try to make it

better. Build the reliance on risk management within your organizations to make sure we're not going to allow the incidents to occur.

- Surveyed Compaq computers – they had 27,000 employees nationally. Had an employee contract that they would not get injured. Went for 4.5 years without a reportable workers' comp injury. It was fear. Employees didn't want to file in fear they would lose their jobs. Each department was rated on it.
- In the last 20 years, the courts have thrown those private sector cases out in California. Employees testified they were afraid to report their injuries. Courts are ruling it's discriminatory – you're putting fear in employees. It's scary in California.
- There has to be some middle ground.
- The difference is the private sector has run forward with being proactive on risk – the public sector is reactive – probably because of the cuts. The risk function gets shoved to HR or downgraded on the chain. It's not viewed the same. We're paying the consequences for not being proactive. We need to pay the money now (such as for training) to save dollars later. Need to value what risk managers do. There are professional risk managers. There is value to that. CJPRMA has been great and is facilitating training to increase the certification and professionalism of the position.
- It's more about a cultural change in organizations. We can get complacent. Everything is about the bottom-line dollar in the private sector. In government, that mentality of profitability doesn't exist. It doesn't translate into direct jobs and raises. The temptation to slip into complacency is there.
- A group designed a way for risk managers to explain their value to the C-suite. Showed that if you move up a step in risk management, you decrease your vulnerability. Not sure how you can do it with the public sector. Public risk managers have to figure out how to prove their value.
- When talking about the value of risk management, feel the role in a public entity is a weird compilation of a bunch of things. Liability is a completely different animal from workers' compensation. Have to manage the claims. How to prevent workers' compensation vs. liability claims is very different. For the risk management role, if you keep that together, it's unique. It's easy to split up. Doesn't fit in HR, in attorney's office – hard to say a risk manager does this. Don't thing councils and city managers understand it. They only care when you put it in dollars and cents. You're dealing with two different databases and ways of paying out. When a risk management position comes open, it's easy to disburse it in a different way. Came into this position knowing zero about liability. Other people come in handed workers' comp knowing nothing about it.
- Where does risk management fit? HR? Finance? Facilities? Aon has created risk management as a direct report to the CEO…accountable to all departments.
- It's so interdisciplinary that the most successful risk management programs are direct reports to the city manager. It touches everything and needs a certain level of independence or the risk management will be focused in one area. It needs its own niche. The champion has to be the CEO.

    - If the role doesn't have authority, the risk manager has to plead, threaten, beg…and the departments march on and don't have to listen to the risk manager.

Primary Strengths to Leverage

- Agility, Dedication, Knowledge and Homogeneity of Membership
- Financially Sound Organization
- Customizable, Quality Programs/Services
- Leadership and Talents of Staff

Primary Weaknesses to Mitigate

- Development of Innovative, Competitive and Viable Programs and Products
- Visibility – Marketing/Communication of CJPRMA and Programs/Services
- Broad, Variability of Experience of Membership/Board (Consensus, Complacency, Close-Mindedness)

Opportunities for Greater Stability

- Marketing and Product Development: Competitive Products and Services
- Increase Education and Awareness of Value of Pools and Types of Programs/Services
- Provide Effective Trainings and Tools to Elevate Value and Role and Outcomes of Risk Management
- Recruit Quality Members that Bring Value to Organization
- Implement Structured Board Development Programs

Any Surprises? Anything Missing?

- What's the last one, "Implement Structured Board Development Programs"?
    - We heard we have a big board and varying levels of degrees of understanding of the role we play. We need to get the board members at the same level and raise the conversation, so we're not making decisions using the lowest common denominator. Raise the expertise of the board.

STRATEGIC GOAL BUCKETS

The following bucket areas were identified by David:

- Products and Services
- Educational and Training Programs
- Marketing and Communications
- Board Leadership

DISCUSSION

- Are these bucket areas in alignment with what we just discussed, including the results of the confidential interviews?
- Yes

- Note: Keep in mind there is an overriding pitcher of CJPRMA being financially stable to be able to fill the buckets. Everything I am recommending depends on having the financial stability to do it.

CJPRMA'S STRATEGIC GOALS AND PRIORITIES

An organization's mission and vision are two key cornerstones to good strategic planning.

CJPRMA'S MISSION
The California Joint Powers Risk Management Authority is a member-directed excess liability risk retention pool that is dedicated to protecting its members from catastrophic losses and meeting the needs of its members by:

- Providing comprehensive, stable, and affordable excess liability coverage
- Offering competitive and flexible coverage programs
- Delivering quality risk management services
- Preserving financial strength and solvency

VISION TO GUIDE STRATEGIC GOALS (Created by David to develop goals.)

- CJPRMA provides industry-leading risk management services to members that continually exceed expectations and ensure organizational vitality.

DISCUSSION

- Would take the first part of the statement out. Change it to: CJPRMA continually exceeds expectations and ensures organizational vitality.

CJPRMA'S STRATEGIC GOALS AND CORRESPONDING KEY MESSAGES

- Goal #1: Employ Innovative Products and Services to be Competitive
  - Key Message: Maintain programs to minimize losses keeping premium rates and program costs competitive with the marketplace
- Goal #2: Invest Organizational Capital in the Development of Targeted Educational and Training Programs
  - Key Message: Train and retain members that contribute to the fiduciary health of CJPRMA
- Goal #3: Aggressively Market the Value of CJPRMA Both Externally and Internally
  - Key Message: Build a "healthy" membership for long-term stability
- Goal #4: Foster Informed and Engaged Board Leadership
  - Key Message: Ensure all members understand and embrace risk management and claims management and are active in CJPRMA

DISCUSSION

- I do not think this organization needs to be fixed. I think we're already great. We're really good now. I think we need the momentum to keep us going. We needed to be fixed six years ago. We are a different organization now than we were.

- I think we're looking at a trend. Not from our organization but from the vendors. Some organizations are not replacing their risk managers and are devaluing the role. We need to proactively address that trend.
- We also need active engagement from all members at the table. We can't have members riding coattails. All members need to be involved.
- This is the key to this organization's financially stability. If you have a member doing a good job and is solid but doesn't bring a high level person to the board, why is that bad. Have heard, "that person's not here." They have a good program and don't need to be here.
- Financial stability is key, but there are so many factors to take into consideration to be stable.
- My response is, are you good or just lucky? How do we know? How do you measure the worth of members? You share best practices and hold each other accountable. The opposite is what I see happening. Someone gets a nasty bad loss and we react to that because we don't know if they're good or just lucky. We won't overact to that if they're engaged and we know what's going on.

BREAK-OUT GROUPS:
Referring to the Draft Strategic Plan:
- Based on industry trends and the opportunities facing CJPRMA, do you believe the strategic goals and priorities position CJPRMA for the future? If not, please be prepared to the share your group's conclusions with the entire group.
- Are there goals or priorities that should be included that are not listed?

GOAL #1 DISCUSSION

Goal #1: Employ Innovative Products and Services to be Competitive
Key Message: Maintain programs to minimize losses keeping premium rates and program costs competitive with the marketplace

Group One
- Go for #1 – there's no harm/foul in looking at alternative options to increase revenue and equity.
- #2 **Include loss development ex-modification – slow the trend to avoid member exodus.** Don't want it to result in sharp spikes.
- #3 **Be careful not to shrink membership.** Presentation is everything – present in a manner understandable by lay people.
- CJPRMA needs an "elevator speech" re: comparative with other pools.

Group Two
- General agreement with everything. There was a lot of history the group didn't have. We had to bring people up to speed.
- **Not too much interest in other forms of asset management.**
- Evaluating an ex-mod factor – thought was to go toward dollars. **An alternative, if you have losses, there is a mandate to come up with a program to prevent/minimize those losses in the future. Could also roll out the program to others.** Otherwise, it would be too punitive. Find a way of taking your experience

into consideration but not to the extent of penalizing someone if the history of claims occurs in a short period of time.

Group Three

- For the goal, we discussed if we are really trying to be innovative. Talked about cutting-edge. The customizable and responsiveness of CJPRMA – the boutique flavor. **Add customizable or replace innovative with customizable.**
- **In the Key Message, use enhance, improve or evolve rather than maintain.**
- #2 Adequacy of the current contribution methodology – **need clarification on the rate basis. Make it more understandable.**
- #3 **Add the word equitable**.
- #4 **Yes…but needs to be focused.** Do we really want to go far beyond our liability focus? Do we want to be something else or stay where we are?
    - Don't think we want to be CSAC offering everything under the sun. Don't want to dilute being a liability pool. That would require a lot of time and resources. Look at what's out there to see what is of interest. **Maintain focus on being a liability pool first and foremost.**
- #5 **Not sure we want to be an industry leader** – the rest is okay.

Group Four

- #1 50/50 – felt there are potential opportunities.
- #2 and #3 are important.
- #4 **Not important – should be the members' responsibility.** Example: the cyber liability program doesn't fit the needs of all members.
- #5 Effective risk management and providing support are important. **Consider having an in-house TPA/claims management. Take off the last phrase "in their regular duties."**

GOAL #2 DISCUSSION

Goal #2: Invest Organizational Capital in the Development of Targeted Educational and Training Programs
Key Message: Train and retain members that contribute to the fiduciary health of CJPRMA

Group One

- Lots of the items are already occurring. This will make it a more formal process.
- Mentoring program is fantastic.
- **The mentor concept for new members would be very useful.**
- **New members need to attend an Executive Committee meeting.**
- **An historical viewpoint of losses would be beneficial…board-wide not just agency by agency.**
- #4 and #5 are already happening – **include a mandate for board members to attend at least one training annually.**
    - We do training, but it's not as defined as what I'm thinking here. For board-member orientation, we will define curriculum for a defined period and

frequency as webinars or in-person. We will define the curriculum that people really need and focus on that to develop core competencies for them.

Group Two

- #1 and #2 We're concerned about the time commitment it would take for staff coming out for multiple trainings. **Alternatively, offer online/webinar training (similar to Target Solutions – slideshows) for existing board members and especially for new members.**
- **Add one hour to annual or board meetings dedicated to training new staff and allow them to attend the meeting.**
- **For mentoring and supportive programs, create exposure to issues facing the pool and cities.**
- #3 is critical. An excellent priority action and **should be given highest regard**.
- #4 is part of the ARM training CJPRMA provides. The outcome of trainings depends on participation.
- #5 Absolutely. Continue with CJPRMA-funded trainings for board members to attend.
- Develop an elevator speech for board members.

Group Three

- Agree with all priority actions.
- **Ensure accountability (to make sure members participate) as well as value added and a hybrid approach**.
- #3 **Change "core" to "customized, targeted" trainings**.

Group Four

- Generally agreed with all the information.
- #3 is the most important.
- **Use success stories and best practices as part of the training (not just theory). Have people bring in other people from agencies, not just risk managers.**
- #5 There might be huge potential if one group is training on an issue and another agency can take advantage of that training. May not be the most valuable use of time.
- **Need to do a better job of letting our membership know about other trainings and better support them in attending those.**
- CJPRMA staff could be wasting time creating programs if there are programs that have high value and already exist – **let members know about them and facilitate them signing up rather than creating our own programs**.
- Recreational pool has expertise all of us could use. **Pay them to do a half-day seminar** on recreational epi-pens, forms, etc. that they may have in place. Send our staff to the experts in the field. Recreation is one of my scary points. **Find an expert to do a half-day seminar in areas we may have concerns**.

GOAL #3 DISCUSSION

Goal #3: Aggressively Market the Value of CJPRMA Both Externally and Internally
Key Message: Build a "healthy" membership for long-term stability

Group One

- Generally agreed with most things.
- **For the emphasis on internal marketing, particularly with #1, use success stories.**
- **"Aggressively" market was not hitting everyone the same way** – it isn't the highest priority.
- Of the three goals, this goal is the lowest priority.
- Concerned about the time staff would spend on marketing especially if it takes away from other activities for membership. We want marketing but not at the expense of training for members.

Group Two

- Yes, to all four priority actions.
- #1 Likened to a stewardship report – a memorialization of what the pool is doing for members.
- #3 The benchmarking is huge. Perry doesn't do it anymore. CJAPA bought Perry. You need a built-in group with data to benchmark for your own group's use – this is huge.

Group Three

- #1 It's fine to create a presentation. There's value to that. Hype us up internally. But **don't lose sight of what CJPRMA is – we are an excess liability pool and it's working**.
- #2 **Convey the importance of CJPRMA vs. competitors – talk about all the good things. Establish facts regarding our stability, price/costs, services/programs we provide, easy access to information. Talk about how competitive we are with other pools and financially solvent. Talk about our strengths.**
- #3 Benchmarking – the term irritates me. Think it's a waste. What's the criteria? What are we going to benchmark against? The state? **Let's evaluate the collection of member data we already have. Cities have a lot of information. Benchmark that. Figure out what the methodology will be.**
- #4 All agree with it.
- We talked about how the goals are going to be accomplished. Driving to Livermore is difficult. Consider piggybacking trainings on meetings. Present information about CJPRMA to board members to present to others to alleviate staff time on presenting in person.

Group Four

- The goal is useful if we want to grow. Remove aggressively. Do we want to grow?
- Why should we have staff time devoted to a new website if it's not going to be used?
    - We spent money on various platforms and the website. If we're not going to use it, why spend resources on something we won't use. Reevaluate the priorities.

- If there is an amazing attractive member out there, how do we make ourselves attractive? But it has to be the best fit.
    - Agree that it has to be the best fit. We have not been willing to accept just any member. Internal marketing is a bad term. We need to blow our own horn on why we are good, why it makes sense for you as an entity. If we are that good internally, that's where we get our membership. All of you are a strong marketing piece of us as anyone. We reach out to outside groups and talk to people. The more internally our membership (cities, executive teams) understand CJPRMA is not just money, then we're doing our job.
    - **Change "aggressively" to actively**.
- Keep what we have – build a healthy membership from inside.
- Ex-mod rates could have an adverse impact on one member and if we lose that member, we will no longer be at an optimal size.
- Be proactive by having ideas in place for members – the boutique concept.
- **Provide a listserv accessible on the website.** This would be helpful for members.
- #1 Presentations are very well received by our city council. Provide an annual report from CJPRMA's general manager with a recap/overview for members to give to policy decision-makers and staff. It would alleviate the need for staff to visit every member.
    - How many people disseminated past annual reports? [Very few hands were raised.]
    - The live report goes over well with our group.
    - The annual report used to be too slick…it was spiral bound with fancy photographs and charts and suggested CJPRMA had a whole lot of money and was a hotshot insurance company. And it was too long. Nobody wants to read 25 pages. It has to be three pages and relevant to what's happening to that organization such as the cost of police and sidewalk claims.
    - #2 No one likes a hard sell or slick stuff. Have an elevator speech to use with causal peers. All board members should have four bullet points on why we're a good pool, priced competitively, provide services designed for a city of your size, etc. **We need an elevator speech that is true and resonates to use when talking to peers and potential members.**
    - Talking points that could apply to all the different audiences.
- Benchmarking is important – as the saying goes, "if you can measure it, you can manage it." I want to measure how my program is doing with the homogony of the group – how I am performing. We need to have consistency in our coding. **Educate TPA and members on coding processes**.

GOAL #4 DISCUSSION

Goal #4: Foster Informed and Engaged Board Leadership
Key Message: Ensure all members understand and embrace risk management and claims management and are active in CJPRMA

Group One

- #1 Yes. Should be on the member level.
- #2 Yes but **based on best practices**.

- #3 Fine/good. Already do that now by calling for references.
- #4 Scratch it. We don't need ad hoc committees. Keep it at the staff level to bring to the board.
- #5 Agree there should be succession planning; there should be a plan in place. It's already being discussed. We need to **put the plan into practice and follow through with it**.

Group Two

- #1 Needs clarification. Claims management is important for agencies experiencing turnover and something should be done, but enforcement shouldn't come from the pool level. It should come from individual members.
- #2 Yes.
- #3 A litigation panel to the extent it's a recommended vendor list and we're not paying attorneys to learn public entity defenses, etc. Concerned that if you're negotiating a bottom dollar for a better hourly rate, they might abuse it by spending time handling the same task again and again and charging for it.
- #4 Ad hoc committees might be alright if clear goals are established in advance with a timeline, accountability, guidance to keep them on track and a measurable ending and deliverables. Or come up with an alternative method to reach the same goals of ad hoc committees without using board members' time.
    - David's reasoning for the ad hoc committee: Board members are involved in specific subject areas – it's also a time to educate board members on what we do. They develop a product for CJPRMA and, at the same time, develop themselves. A loop to get feedback from members in a different environment than at a board meeting. Select members look at an issue, finalize it and kick it to the executive committee.
- #5 Yes.

Group Three

- #1 is confusing. Understand it's agencies that have a case and it's going to erode SIR. The agency could have gotten rid of it early on for less. We need strategies for working together to ensure it doesn't happen again. We have a process in place to take a case if an entity makes a poor choice/decides to try a case in opposition to CJPRMA's advice. Good thought, but we couldn't figure out where to go with it.
- #2 Post-litigation briefings are great. **Requiring a response to the audit would be great** – gets communication going and gets TPA and the person handling claims involved. Good for litigation and claims.
- #3 Litigation panel – don't think it will grow any legs. We have a city attorney who uses a police defense practices guide that charges $280/hour. We won't get away from it. **Consider a litigation management policy based on best practices** – a list of attorneys, what they can charge for (attorneys, paralegals, etc.) – a policy vs. a panel. If our defense attorney isn't on the panel, we'll have problems.
- #4 Doesn't work at all. Would consider a different mechanism to accomplish it. We've done them repeatedly. We meet, they fizzle away. Whoever's in charge will do 95 percent of the work. Don't think they'll work. Like the concept, but they've

proven not to work. Have to think about everybody's time. Not a lot of support from our group for ad hoc committees.

  - If you have staff support for the ad hoc committee – staff members who do the work – that might work, but the chairman will probably do all the work.
  - We've always had a staff member on ad hoc committees.
  - We previously had mandatory participation on ad hoc committees – there was no problem to work on unless the chair was really specific. We need clear direction of what you need to solve.

- #5 The succession plan is on the executive committee's agenda. It needs to go forward. Have to start thinking about it right away.

Group Four

- #1 is controversial and confusing. Our takeaway – if there is a claims process in place (reporting process with an itemized list of criteria for reporting), finalize it and prepare a draft policy and expand on the current claims process. Massage a policy and present it to us for our buy-in, so it doesn't sound like you're dictating what we're doing in our SIRs. **Formalize the existing claims reporting requirements/process. Ensure membership accountability. Where are the standards based on prior members' primary claims audits? What are the consequences to members regarding standards?**
- #2 Post-litigation – it's okay for CJPRMA to **provide lessons learned** and reach out to cities one on one after losses.
- #3 Okay for **CJPRMA to put together a list of attorneys by specialty with discounted rates**; however, if it's within our SIR, our attorney will select who she wants to use. **Okay to make a policy but don't make it a standard for the city**.
- #4 Scrap it. What's the purpose?
- #5 Remove. Formal succession planning – not clear – it's not a strategic action.
  - #5 Succession planning is important for CJPRMA's continuity. It's important to have a formal plan in place – especially for David's position – it's a key role, and he's the glue holding the organization together. Have heard of organizations that hired new general managers who were gone in a few months because they didn't fit the goals. There's a commonality of what every board member here is interested in or has the desire to maintain. I want a new person on board to take the leadership approach and understand what this organization stands for.

GENERAL DISCUSSION ABOUT GOAL #4

- From this morning's conversations and when I first read the goal, I said, "Good luck." Cities do go through changes and have priorities and budgets that change over time. With this goal and the desire that every city has a highly skilled risk manager, it's not reality. There's a changing dynamic. There's not a connection between these actions and that goal. Think about mitigating the fact that things are changing instead of trying to hold to the old model. Talk about checklists of where you want to be rather than mandating how many times you are here and who is here.
- Hear what you're saying. It sounded from this morning that every member should have a risk manager. I'm not a risk manager…I'm a finance director. We want

people who are willing to learn and do a good job. We want board members who are here to be engaged.

- If it's not a risk management position, what position does mind the store to reduce liabilities to keep the organization safe and minimize claims if you don't have that. What part of the organization oversees that function?
    - There needs to be allowance for each city. Depends on the council and city manager. Instead of who's here at the table, there are other ways to ensure the function is happening. In other pools, there were ways to get to that point without being as prescriptive about the number of meetings to attend, etc.
    - The risk management function changes with the job title that's vacant at the time. This organization needs a person with authority to come and learn. Agree that if you have to know this stuff, the city's realm doesn't have this – it's a transient position for some cities. There is no risk manager because there's not a job title that a lot of our members' respect. The organization needs to know that and train for it – who in the position has the ability to learn.
    - There has to be someone who is functioning and overseeing the risk management function. I'm not a risk manager – I'm a city attorney. What's important is that agencies commit to having someone at the table who is in a decision-making capacity. In the past, we've had people so low on the city's org chart, that they were not in a position to effect change. They just filled a spot. We're small enough that we will need everyone to buy in.
    - If it's a problem, instead of fighting against it, what are the innovative ways we could look at to mitigate the fact it's happening. Example: In another pool, the pool paid somebody to come up with a list of risk management strategies each year. The city had to do it whether they had a risk manager or not. The tasks to mitigate the risks were part of the pool and applied to all departments. It was customized with a checklist.
    - Apologize if you got the impression we're saying you have to be a risk manager. It's not in our bylaws. But someone at the city has to manage risk. There might be three/four people managing risk. If there's nobody who has a concept of what risk is or a concept that if you don't have active policies, you'll have losses, that impacts this whole organization. If you minimize the losses you have, you minimize the losses we have. It doesn't take a risk manager, per se. As long as we have a concept of someone managing risk, that's fine. When it starts to fragment, there's not one person to go to and find out what's being done. You have to embrace the breadth of what happens in the organization to manage that loss to ensure it doesn't happen in the future.
    - The pool could say this is what has to be managed.
    - It's the buy-in. Part of it is cultural. Get the right people at the table. Managing risk is everybody in the organizations job – there needs to be someone coordinating it. You need buy-in and an understanding of why it's important.

NEXT STEPS

- Summary Notes to CJPRMA – November 7
- Present Draft Plan to Executive Committee – November 17
- Present Final Draft Plan to Full Board – December 15

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: 4	***TITLE:*** **STATUS UPDATE ON GENERAL MANAGER'S GOALS & OBJECTIVES 2013-2016 WITH ACCOMPLISHMENTS**
MEETING: *11/29/2016*	
GENERAL MANAGER:	

Recommended Actions:

None. This item is being provided to the Executive Committee as an update on the 2013-2016 Goals and Objectives with the accomplishments of the General Manager.

Strategic Direction:

This item addresses all of the strategic goals adopted by the organization.

Item Explanation:

The General Manager's Goals and Objectives FY 2013-2016 were created to identify the areas of priority for staff in meeting the objectives of the adopted strategic plan.

The Executive Committee and general manager review and discuss the goals and objectives at their meetings. At the October 2013 Board of Directors Meeting, the Board referred authority to the Executive Committee to adopt the General Manager Goals and Objectives for the FY 2013-2016.

This document has been the key document utilized by the Executive Committee for the purpose of evaluating the performance of the general manager. It has also been used as a communication tool to keep both the Board of Directors and the Executive Committee informed of the accomplishments of the CJPRMA team. The Board of Directors has referred the responsibility of monitoring the general manager's accomplishments and activities to the Executive Committee.

The new goals and objectives adopted at the April 2014 meeting were designed for a two-year period. Discussions by the Executive Committee indicated that it was difficult and time consuming to recreate the goals and objectives on an annual basis. The two-year duration on the goals will allow the organization to continue with a long-range approach to the operation of CJPRMA.

The Board of Directors discussed the new proposed Strategic Plan at the October Meeting. That item is included with this agenda for discussion by the Executive Committee. The updated strategic plan will be presented to the Board of Directors for adoption at the December Meeting. The Executive Committee and general manager will create a new set of goals and objectives for program years 2016-2018 based upon the newly adopted strategic plan.

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Current accomplishments year-to-date have been added to the format for review. This agenda bill will be provided to the Board of Directors at the May and October meetings. This item will be included on the "Consent Calendar" of the agenda. The purpose of this item is to keep the Board informed of the activities of the general manager and staff. This document will also provide the Board of Directors with feedback regarding the status of the current Strategic Plan and will document activities meeting those objectives.

This item is being provided as a discussion item only and the Executive Committee is not required to take any action.

Fiscal Impact:

None.

Exhibits:

1. General Manager's Goals and Objectives 2013-2016 with accomplishments
2. Strategic Goals FY 2013-2016

GENERAL MANAGER GOALS & OBJECTIVES FOR 2013- 2016

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Financial Strength and Solvency 15%	The general manager will monitor the development of programs and services for the organization that maintain the invested assets of CJPRMA, maintain or reduce the current costs to members and provide enhanced excess/reinsurance coverage to member exposures. Will make recommendation to the Board of Directors as needed.	Executive Committee	• **Continuing to work with Real Estate Broker to update the lease terms for DaVita for an improved return for CJPRMA** • **Worked with Alliant to create and implement a new property program with enhanced features and significant savings to members** • **Working with broker and underwriters on PY16/17 renewals.** • **Working with Aon to gather data to evaluate the options for re –creating the Excess WC program** • **Established guidelines for APD program due to excessive losses** • **Implemented new Cyber and Pollution Program with significant reduction in cost** • **Worked extensively with Claims Administrators and members to resolve cases via mediation at significant cost reductions for members** • **Worked extensively to resolve West Sac and Anderson sexual misconduct cases** • **Worked with Mujtaba Datoo to insure the cost allocation for program is effective in tracking costs** • **Advise membership that significant losses development would require adjustment on rates and removing prepaid interest for members.** **Pursuing litigation against George Hills on Richmond matter**

Updated 11-29-16

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Develop core products and services with innovation. 15%	The general manager will continue to evaluate and monitor the core products and services provided to members. These products and services will be driven to insure financial strength and solvency to CJPRMA. CJPRMA will also attempt to broaden coverage and services that meet the needs for cost effective services for our members. The primary areas of focus for the achievement of this goal will include the following: 1. Risk Management Information Services 2. Coverage 3. Claims Management	General Manager	• **Developed new property program for members** • **New Cyber and Pollution Programs** • **Working on providing enhance options for the property program to include DIC coverage** • **Working to extend the service options within Risk Console with mapping, MMSEA and Flex Forms** • **Selected new claims auditor and worked with subcommittee of the Board of Directors, to develop a new written guidelines for audits** • **Provided semi-annual updates to Board on losses and developments** • **Developed new methodology to deliver information on historic cases including risk management recommendations.** • **Conducted training for Stockton on contract risk transfer with Bob Marshburn.** • **Presented numerous topics for Board at annual meeting.** • **Held ARM 55 class at CJPRMA** • **Presented program orientation to Stockton** • **Schedule multiple police training session by Greg Fox and Randy Means**

Updated 11-29-16

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Develop and deliver targeted training programs to members based upon CJPRMA and member loss history. 10%	Collect the necessary data for the purpose of identifying the primary loss exposures for CJPRMA and our members. Utilize the data for the purpose of developing state of the art, effective training sessions for members. The primary areas of focus for completing this objective include the following: 1. Targeted training-Aligned to loss history and actual trends. 2. Member Education – Develop a training program for member management and operations. 3. Director Education and Training – Enhance skills of Directors through education and training.	General Manager	• **Evaluated Police training series "Line of Duty"** • **Using Video Technology to capture training from mobile access** • **Reviewed new RM Program created by Norman Peterson and CPS HR** • **ARM 55 class** • **Stockton training on contractual risk transfer** • **Annual meeting presentation on EPL and Police Liability, RM issues** • **Developed lessons learned series for high exposure cases based upon historical losses by creating CJPRMA Quarterly Newsletter** • **Focused on audits to determine reporting issues and lack of ability to resolve cases** • **Worked with numerous cities on specific claims related issues including developing settlement and defense strategies** • **Preparing work for October Strategic Planning session that will include a facilitated discussion on training program development.**

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Create an approach to marketing the value of CJPRMA to its members and identify market opportunities for control growth of the organization. 10%	Develop a member outreach program that provides members with key information identifying the value of CJPRMA to its members. In addition, evaluate the opportunities for development of a targeted marketing effort to organizations that meet and or exceed current member standards. The primary initiatives for the delivery of an effective outreach program will include: 1. Marketing communication brochure 2. Exclusions and alternative coverage 3. Market definition and outreach		• **Conducted new board member orientation** • **Provided quotes to So Cal city for program participation** • **Evaluated options of So Cal pool joining CJPRMA. Rejected based upon their excessive loss history** • **Preparing work for October Strategic Planning session** • **Worked extensively to create experience rating factor for the APD and Property Programs**
Implement and monitor an information technology upgrade to all CJPRMA systems. 10%	CJPRMA is implementing a new RMIS System. The system will be utilized as the primary workflow product for the organization and will provide membership with the opportunity to utilize multiple modules within the system for a significantly discounted pricing. In addition CJPRMA will evaluate all of its technology solutions and will expressly evaluate for following key areas: 1. Claims Management Technology 2. Member information upgrade 3. Exposure Data 4. Webinars	General Manager	• **Continue to embrace the technology available within Risk Console for benefit of membership** • **Evaluated options for Video Conferencing for Board meetings** • **Implemented electronic filing system for FPPC** • **Upgraded CJPRMA telephone system** • **Working on a member portal within risk console**

Updated 11-29-16

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Provide consultation to board members and individual member agencies by resolving questions and issues concerning agency risk management practices and procedures. 10%	The general manager is available to assist board members and their agencies by reviewing contracts, performing audits, reviewing policies and by making practices for best practice risk management. General manager will work with ad-hoc committee to develop CJPRMA standards for risk transfer and will populate the new Risk Console System with standardized contract requirements.		• **Ongoing work with multiple board members on issues related to risk transfer, claim management, litigation management and multiple risk management issues** • **Help members with contract reviews**
Provide updated information to members on CJPRMA programs, services and provide ongoing updates on legislative changes including results of litigation affecting our industry. 5%	CJPRMA staff will provide ongoing updates to members on programs and services and shall provide training on an annual basis that will include: 1. New board member orientation 2. Update on all memorandum of coverage documents 3. Claims update 4. Case law updates	General Manager and Staff	• **Staff assigned to legislative committee of CAJPA** • **Communicate with board of issues of legislative concern** • **Disseminate information to Board Members on case law out of court of appeals both within CJPRMA and within the public sector environment**
Enhance the CJPRMA claims processing, litigation management program and the delivery of litigation/claim information to the board of directors. 10%	The general manager will work with staff to continue to improve the delivery of claims management to members. Staff will review options for a preferred provider network of legal counsel, develop improved reporting to the board of directors on all claims and continue to provide semi-annual updates on the overall claims management process and organization experience	General Manager and Staff	• **Implementing Risk Console allowed the organization to intake electronic documents** • **Claims administrator works closely with each member on cases of liability within the member's layer and CJPRMA layer** • **Work aggressively on litigated matters and strive to identify cases of clear liability for resolution**

GOALS	OUTCOMES	COMMITTEE ASSIGNMENT	TASKS COMPLETED
Manage all aspects of the operation of CJPRMA including staff, operations and outside vendors. 10%	The general manager has the overall responsibility to oversee the performance of staff and to work with staff to develop capabilities within CJPRMA. General manager must also oversee all outside vendors to insure the highest quality and most efficient use of resources for the delivery of service to the organization and its members.	General Manager	• **Hired new staff member for the Admin Assistant position and the person has completed one year of service** • **Hired Risk Analyst and Executive Assistant** • **Worked with numerous vendors maintaining the CJPRMA building.** • **Delivered annual meeting at Seascape with outstanding evaluations from members**
Manage the CJPRMA facility and coordinate all aspects of building maintenance and maintain relationship with tenant. 5%	General Manager will be responsible for maintaining all operations of the new facility and provide oversight and coordination of tenant relationship and coordination of other condo owners at facility.	General Manager	• **Hired and outside vendor to facilitate building maintenance** • **Developing renewal proposal for 5 year extension on DaVita lease.** • **Managing the operation of the office. Work with tenant and owner of other suites to preserve CJPRMA asset.** • **Continue ongoing management of all IT systems, security systems and all other building related infrastructure.**

California Joint Powers Risk Management Authority
Strategic Goals FY 2013 - 2016
Critical Success Factor – Financial Strength and Solvency

STRATEGIC GOAL 1: CORE PRODUCTS AND SERVICES INNOVATION

Initiative 1.1 Financial Strength and Solvency - new addition

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
FY 2013-2016	GM & Staff	Monitor investment income and provide program contributions based upon rolling six year average.				Monitor contribution to ELF to achieve member contribution stabilization.
FY 2013-2016	GM & Board	Review investment portfolio results and continue to monitor program for achieving long term investment yield.				Provide Board of Directors with actual investment returns and identify impact on contributions.

Initiative 1.2 Risk Management Information Services

6/30/2014	GM & Staff	Implement the electronic resource for the tracking of Certificates of Insurance by members				
12/31/2014	GM & Staff	Create a Best Practices Risk Management Tool Kit				*To be based upon recommended standards*
FY 2014-2016	GM & Staff	Model Policies and Procedures				
FY 2014-2015	GM & Board	Develop risk management advisory standards and audit members for compliance				*To be based upon recommended standards*

Initiative 1.3 Coverages

Ongoing	GM & Staff	Review all CJPRMA coverage programs and evaluate market alternatives				

STRATEGIC GOAL 1: CORE PRODUCTS AND SERVICES INNOVATION

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
Ongoing	GM & Board	Define optimum coverage attachements				To be completed annually at renewal
Ongoing	GM & Staff	Review availability of optional programs				
Ongoing	GM & Staff	Identify market coverage programs based upon member needs				Re-evaluate the Excess Worker's Compensation option during the 2015

Initiative 1.4 Claims Management

FY 2014-2015	GM & Staff	Develop best claims management practices and procedures				*In process - as yet to be defined*
FY 2014-2015	GM & Staff	Litigation Management (rate survey, panel list)				*To be completed yearly*
Ongoing	GM & Staff	Expanded Claims Audit to include primary exposures				
6/30/2014	GM & Staff	Input historical claims data information into risk console				
Ongoing	GM & Staff	Bi annual statistical review of claims				

STRATEGIC GOAL 2: MEMBER EDUCATION AND TRAINING INITIATIVE

Initiative 2.1 Targeted Training and Member Education - Aligned to loss history and actual trends/Develop a training program for member management and operations

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
FY 2014-2015	GM & Staff	Identify loss history by type of loss and survey members for suggestions				*To be based upon collected data*
FY 2014-2015	GM & Staff	Develop a training portfolio for members				
FY 2014-2015	GM & Staff	Evaluate a risk management academy program				
FY 2014-2015	GM & Staff	Claims management training				
FY 2014-2015	GM & Staff	Create targeted training program focusing on loss history				To be based upon collected data
FY 2014-2015	GM & Staff	Prepare a set of core competency training programs				

STRATEGIC GOAL 2: MEMBER EDUCATION AND TRAINING INITIATIVE

Initiative 2.3 Director Education and Training - Enhance skills of Directors through education and training

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
12/31/2014	GM & Staff	Provide annual property & liability MOC training/updates				
12/31/2014	GM & Staff	New member orientation				
Ongoing	GM & Staff	ARM series presentations				
2014	GM & Staff	Governance training				
2014	GM & Staff	Use technology to record trainings and make available online				

STRATEGIC GOAL 3: MARKETING AND COMMUNICATION OUTREACH

Initiative 3.1 Exclusions and Alternative Coverages

12/31/2014	GM & Staff	Create an overview of exclusions and alternative coverages for those exclusions				
FY 2014-2015	Board & GM	Evaluate coverage options and extensions within MOC				

Initiative 3.2 Market Definition and Outreach

FY 2014-2015	GM & Staff	Define target market and potential members				
FY 2014-2015	GM & Staff	Evaluate outreach options and develop appropriate materials for targeted audience				
FY 2014-2015	GM & Staff	Explore expansion of super pool concept evaluating alternative attachments and excess				
2014	Board & GM	Deliver CJPRMA overview to member Council & Executive Staff				
2014	Board & GM	Form a Marketing Task Force to explore ideas and provide direction for marketing outreach				*Explore engaging a professional consultant or firm to assist*

STRATEGIC GOAL 4: INFORMATION TECHNOLOGY UPGRADE

Initiative 4.1 Claims Management Technology

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
6/30/2014	GM & Staff	Implementation of Risk Console				
Ongoing	GM & Staff	Provide member support for utilization of RMIS				
12/31/2014	GM & Staff	Create uniform coding for membership				
Ongoing	GM & Staff	Support member transition and utilization of Risk Console				
FY 2014-2015	Gm & Staff	Promote data collection and include primary exposures				

Initiative 4.2 Member Information Upgrade

FY 2014-2015	GM & Staff	Website enhancement				
FY 2014-2015	GM & Staff	Evaluate member portal options				

Initiative 4.3 Exposure Data

12/31/2014	GM & Staff	Create reports identifying claims exposure data for members				
Ongoing	Board & GM	Collect member expsoures for marketing of programs				

STRATEGIC GOAL 4: INFORMATION TECHNOLOGY UPGRADE

Initiative 4.4 Webinars

WHEN	WHO	ACTION STEP	STATUS			COMMENTS
			DONE	ON TARGET	REVISED	
12/31/2014	GM & Staff	Create short subject activity specific webinars				
FY 2014-2015	GM & Staff	Identify resources for creation of webinars/online meetings				
12/31/2014	GM & Staff	Utilize technololgy to enhance member participation				

Initiative 4.5 Enhanced Financial Reporting

FY 2015-2016	GM & Staff	Provide desktop tools for members to evaluate claims and exposures				

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: *5*	***TITLE:*** **REVIEW OF BOARD ADOPTED MEETING SCHEDULE FOR 2017**
MEETING: *11/29/2016*	
GENERAL MANAGER: *J.T.C.*	

Recommended Actions:

The general manager recommends the Executive Committee review the 2017 Board Meeting Schedule and review alternatives for meeting scheduling modifications for the 2017 program year.

Strategic Direction:

This item addresses Strategic Goal 2 Member Education and Training Initiative.

Item Explanation:

The Board of Directors approved the meeting schedule for 2017 at the October Meeting. A copy of the approved schedule is attached as exhibit number one to this agenda bill.

Board Members noted that the existing meeting schedule creates conflicts throughout the year and many members expressed an interest in reducing the total number of scheduled meetings. Staff recognizes the value in the attendance by Board Members at the scheduled meetings and believes the quality of this organization is optimized by their attendance. However, Board Members are very busy and their schedules are not permitting their attendance at these meeting.

Staff has reviewed the appropriate language within the bylaws regarding the number of meetings that are currently required.

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The current CJPRMA Bylaw, Article V states the following:

ARTICLE V

MEETINGS

Board of Directors Meetings

There shall be at least four regular meetings of the *Board of Directors* each year, one of which shall be designated as the Annual Membership Meeting. At the final *Board* meeting of each calendar year, the *Board* shall fix the date, hour and location at which each regular meeting in the succeeding year is to be held. The *General Manager/Secretary* may request special meetings of the *entire Board* as needs dictate. Special meetings may also be called by the President or one-third of the *Board*. Notice of such special meetings shall be delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the *Board* may be cancelled or postponed by the *General Manager/Secretary* or President by notice delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meeting. The Annual Membership Meeting may be postponed but not cancelled.

Executive Committee Meetings

The *Executive Committee* shall hold at least six regular meetings each year, some of which may coincide with meetings of the *Board of Directors*. The President, at the final *Executive Committee* meeting in each calendar year, shall fix the date, hour and location at which the regular meetings in the succeeding year are to be held and notify all *directors* of such dates, times and locations. The President or *General Manager/Secretary* may request special meetings as needs dictate. Notice of such special meetings shall be delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meetings.

A regular or special meeting of the *Executive Committee* may be cancelled or postponed by the President or *General Manager/Secretary* by notice delivered personally, by electronic facsimile transmission or by mail, as provided by state law, to each *Board* member at least twenty-four (24) hours before the time of such meeting.

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Staff reviewed the current adopted schedule and determined that the organization would still be effective by reducing the total number of Board meetings from five to four meetings per program year. The proposed Board of Directors meeting would be scheduled as follows:

1. March 9, 2017
2. May 24 & 25, 2017
3. August 17, 2017
4. November 16, 2017

The new proposed board meeting schedule complies with the current by-laws which state the following:

"There shall be at least four regular meetings of the Board of Directors each year, one of which shall be designated as the Annual Membership Meeting."

If this schedule is found to be acceptable, we would then propose reducing Executive Committee meetings from six to four meetings per program year. The organization would still be effective by reducing the number of Executive Committee meetings to four. The proposed Executive Committee meeting would be scheduled as follows:

1. January 18, 2017
2. April 19, 2017
3. June 22, 2017
4. September 28, 2017

The new proposed meeting schedule for the Executive Committee would require the current by-laws to be modified. As it stands the current by-laws state the following:

"The Executive Committee shall hold at least six regular meetings each year, some of which may coincide with meetings of the Board of Directors"

Based on these proposed changes, the Board should consider expanding the current authority and responsibilities granted to the Executive Committee.

Staff determined that the operations of CJPRMA would allow for these changes and would make the meeting schedule more efficient for the Board Members. This schedule would not in any way impact the services of CJPRMA to our members and would provide additional opportunity for training sessions and other related benefits to the membership.

Staff will be present to discuss the new proposed schedule for consideration by the Executive Committee, recommending that this item be placed on the agenda for the December Board Meeting.

Fiscal Impact:

None

Exhibits:

1. Adopted meeting schedule for 2017
2. Proposed modified schedule for 2017

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

2017 MEETING SCHEDULE

Executive Committee	Thursday, January 26, 2017
Board of Directors	Thursday, March 16, 2017
Executive Committee	Thursday, April 20, 2017
Board of Directors (Annual Membership Meeting)	Wednesday & Thursday, May 17 & 18, 2017
Board of Directors	Thursday, June 15, 2017
Executive Committee	Thursday, July 20, 2017
Executive Committee	Thursday, September 28, 2017
Board of Directors	Thursday, October 26, 2017
Executive Committee	Thursday, November 16, 2017
Board of Directors	Thursday, December 14, 2017

No meetings are scheduled for February or August.

Approved by BOD: 10/27/2016

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

2017 MEETING SCHEDULE

Executive Committee..Wednesday, January 18, 2017

Board of Directors .... Thursday, March 9, 2017

Executive Committee..Wednesday, April 19, 2017

Board of Directors ....Wednesday & Thursday,
(Annual Membership Meeting) May 24 & 25, 2017

Executive Committee.. Thursday, June 22, 2017

Board of Directors .... Thursday, August 17, 2017

Executive Committee.. Thursday, September 28, 2017

Board of Directors ....Thursday, November 16, 2017

No meetings are scheduled for February or December

Waiting on approval by BOD:

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM: *6*	***TITLE:*** **REVIEW OF SUCCESSION PLANNING**
MEETING: *11/29/2016*	
GENERAL MANAGER: *J.T.C.*	

Recommended Actions:

None. There is no recommended action at this time.

Strategic Direction:

This item addresses all of the strategic goals of the organization.

Item Explanation:

The Executive Committee and the general manager began preliminary discussions regarding a succession plan for the future of CJPRMA. The general manager is contemplating retirement from the organization within the next five years and the Executive Committee requested that this committee create this item as a standing agenda item for review. As the succession plan develops, additional information will be included within future agenda bills. This agenda bill will provide the committee with an opportunity to prepare the organization for a seamless replacement of the general manager.

The general manager will be available to discuss succession with the Executive Committee.

Fiscal Impact:

1. None

Exhibits:

1. None

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CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

AGENDA BILL

ITEM:* *7	***TITLE:* RISK MANAGEMENT ISSUES**
MEETING: *11/29/2016*	
GENERAL MANAGER: *J.T.C.*	

Recommended Actions:

None. This item is being provided for information only.

Strategic Direction:

This item addresses Strategic Goal 2, Member Education and Training Initiative.

Item Explanation:

This item is reserved for the discussion of risk management issues that are of concern to the members and for the provision of status updates on the risk management program.

Issues that have been requested to be listed for discussion are set forth below:

1. Design Consultant Contract and Insurance (*Celeste Garrett – Vacaville*)
2. Government Code Section 34090-34095, regarding destroying of recordings of routine video monitoring, *(Craig Schweikhard- CJPRMA)*
3. Driverless Cars, *(David Clovis- CJPRMA)*
4. CWCI report on potential impacts of legalizing recreational marijuana use on WC and workplace safety, *(Craig Schweikhard – CJPRMA)*

Fiscal Impact

None

Exhibits:

1. Government Code Section 34090-34095
2. CWCI Report on Proposition 64

GOVERNMENT CODE
SECTION 34090-34095

34090. Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

(a) Records affecting the title to real property or liens thereon.

(b) Court records.

(c) Records required to be kept by statute.

(d) Records less than two years old.

(e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

34090.5. Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all of the records, documents, instruments, books, and papers, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

A REPORT TO THE INDUSTRY

Working Through the Haze:

Implications of

Legalized Marijuana for California

Workers' Compensation System

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Working Through the Haze: Implications of Legalized Marijuana for California Workers' Compensation System

California employers have been dealing with the ramifications of legal medicinal marijuana for years. Now that voters have passed Proposition 64,[1] legalizing so-called "recreational" marijuana use, employers face a new reality of potentially outdated workplace policies, employee accommodation, and the applicability of drug-free workplace guidelines. Workers' compensation carriers and self-insured employers in particular must begin to consider the impact that Proposition 64 may have on claims processing.

America's Journey from Compassionate Use to Recreational Use

In 1996, California passed the Compassionate Use Act (Prop 215), becoming the first state in the nation to legalize medical marijuana.[2] Oakland was the first city in the country to license (and tax) a medical marijuana dispensary.[3] As of November 1, 2016, 25 states and the District of Columbia had legalized medical marijuana[4]; four states and the District of Columbia had legalized recreational use of marijuana.[5]

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[1] The informal title of the initiative is "Adult Use of Marijuana Act (AUMA)." The initiative allows Californians to possess and use up to an ounce of marijuana, effective immediately; however, the state has until January 1, 2018, to develop a regulatory system for licensing growers, transporters, and sellers of marijuana for recreational use. So, like John Travolta explained in *Pulp Fiction*, "It's legal, but it ain't hundred percent legal." Californians can legally possess marijuana for personal use, but will not be able to legally purchase it until sometime in 2018.

[2] California Health and Safety Code §11362.5. The legislation allows qualified patients and their caregivers to possess up to 8 ounces of marijuana and/or six mature plants.

[3] Unlike many other municipalities, Oakland continues to expand the number and types of permits for operation of medical marijuana businesses. Oakland currently has eight licensed dispensaries operating within the city; for 2016, the city projected approximately 100 licensed businesses, including 30 cultivators, 12 delivery businesses, five distributors, five transporters, two testing facilities and 28 manufacturing businesses. "Oakland looks to bring pot industry out of the shadows, raise revenue," *San Francisco Chronicle,* May 2, 2016.

[4] Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio (eff. 09/01/2016), Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, and the District of Columbia have legalized medical marijuana.

[5] Alaska, Colorado, Oregon, Washington, and the District of Columbia have statutes permitting recreational use of marijuana.

25 states plus DC now have medical marijuana laws

[6]

Legalization of recreational marijuana, as distinguished from medical marijuana, has been shown to affect individual use. In Colorado, where recreational marijuana was legalized in 2012, surveys by the federal government have found that the percent of residents using the drug increased more than 45% in two years.[7]

On November 8, 2016, voters in four states considered measures calling for the legalization of medical marijuana,[8] while several others had ballot initiatives calling for the legalization of recreational marijuana.[9] In California, the ballot initiative was titled "The Control, Regulate, and Tax Adult Use of Marijuana Initiative." Proposition 64 was designed to legalize marijuana and hemp under state law, and enact a 15% sales tax along with other regulations and restrictions. It was supported by Lieutenant Governor Gavin Newsom, Senator Bernie Sanders, the National Organization for the Reform of Marijuana Laws (NORML), the NAACP, and the California Medical Association, with major funding from Napster founder and former Facebook president Sean Parker. Opposition included the California Hospital Association, the California Teamsters, and a consortium of small growers.

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[6] Source: "25 States Now Call Marijuana 'Medicine.' Why Doesn't the DEA?" *Washington Post*, June 9, 2016 (https://www.washingtonpost.com/news/wonk/wp/2016/06/09/25-states-now-call-marijuana-medicine-why-doesnt-the-dea/).

[7] "Cannabis Critics Fear Marketing to Masses," *San Francisco Chronicle*, October 18, 2016. The government study showed an increase in marijuana from 10.2% in 2012 to 14.9% in 2014.

[8] Arkansas, Florida, North Dakota, and Montana.

[9] In addition to California, similar measures were on the ballot in Arizona, Maine, Massachusetts, and Nevada.

What Does the Federal Government Have To Say About All This?

Federal law prohibits marijuana use as it has been designated by the Drug Enforcement Administration (DEA) as a Schedule I controlled substance with "no currently accepted medical use," a lack of accepted safety for use under medical supervision, and a high potential for abuse. As a Schedule I drug under the Controlled Substances Act, marijuana may not be prescribed, administered, or dispensed, and it is illegal to possess, use, purchase, sell, or cultivate.[10] Meanwhile, Schedule II drugs are legal, albeit highly regulated; these drugs have been determined to have some level of medicinal value but a high potential for abuse which could lead to severe psychological or physical dependence.[11]

In August 2016, the National Conference of State Legislatures adopted a resolution asking the federal government to remove marijuana from Schedule I. But the following day, the Drug Enforcement Agency announced that it would not remove marijuana from its Schedule I classification, reaffirming its determination that the drug's therapeutic value has not been scientifically proven.[12]

So on a federal level, cannabis remains illegal throughout the United States[13] and is not approved for prescription as medicine.[14] Federal law prohibits doctors from prescribing marijuana; thus, even in states where medical marijuana is legal, doctors can only write a "recommendation" for the remedy.

But the federal government has decided it has higher priorities than enforcement of its anti-marijuana stance. The US Department of Justice has actually formalized a "hands-off" policy, leaving enforcement of minor drug activity up to the states, while the federal government's priorities have been restricted to eight significant issues, including the operation of drug cartels, narcotics activity leading to violence, and preventing drugs from being provided to minors. "For states…that have enacted laws to authorize the production, distribution, and possession of marijuana, the Department expects these states to establish strict regulatory schemes that protect the [priority] interests identified by the Department," leaving the decision on whether to enforce

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[10] Controlled Substances Act of 1970, 21 U.S.C. 801 *et seq.* Schedule I drugs are illegal in virtually all circumstances, and include substances such as heroin, LSD, peyote, and ecstasy.

[11] Controlled Substances Act of 1970, 21 U.S.C. 801 *et seq.* Schedule II classification includes most narcotic painkillers, opioid medications such as oxycodone, and even methamphetamine.

[12] "US Affirms Its Prohibition on Medical Marijuana," *The Washington Post*, August 11, 2016.

[13] 21 U.S.C. § 801 *et seq.*

[14] Federal law does provide some prescription drug medicinal use. For example, Mariol (synthetic THC) is a Schedule III substance that is FDA approved for appetite stimulation and nausea in patients with cancer, AIDS, and multiple sclerosis; and Cesamet (nablione) (synthetic canniboid) is a Schedule II substance that is FDA approved for nausea and vomiting in cancer patients. Controlled Substances Act of 1970, 21 U.S.C. 801 *et seq.*

non-priority issues involving marijuana up to the states.[15] Thus, if California fails to enforce its restrictions on marijuana being sold to minors or trafficked to other states, federal authorities could step in with enforcement. Otherwise, states can decide to legalize, tax, and regulate marijuana.

Compensable Marijuana in Workers' Compensation Law

Since states first started legalizing medical marijuana, one of the main questions among workers' compensation payers is whether they must pay for the drug when prescribed for a claimant in a state where it is legal.

Out of 25 states that allow medical marijuana, only five explicitly exempt workers' compensation payers from liability for medical marijuana.[16] And at least one state[17] has no legislation or judicial case law either requiring or prohibiting workers' compensation payers from reimbursing an injured worker for medical marijuana.

The remainder of the states that allow medical marijuana, including California, rely on analogous statutory language that precludes a private health insurer from being forced to pay for marijuana. In California, Health and Safety Code Section 11362.785(d) specifically provides that nothing in the state's medical marijuana program shall require any other health insurance provider or health care service plan to be liable for reimbursement for the medical use of marijuana.[18]

But there may be a developing trend toward compelled compensation, if other states follow the lead of New Mexico. Beginning with a New Mexico Supreme Court case in 2014, New Mexico has required reimbursement for medical marijuana pursuant to that state's workers' compensation statute requiring provision of "reasonable and necessary" medical treatment services to an injured worker.[19] The following year, the New Mexico Supreme Court ruled that a

[15] "Guidance Regarding Marijuana Enforcement," US Department of Justice memorandum, August 29, 2013.

[16] Arizona, Michigan, Montana, Vermont, and Washington.

[17] Maryland.

[18] Health and Safety Code §11362.785(d): Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

[19] In *Vialpando v. Ben's Automotive Services* (331 P.3d 975 (N.M. Ct. App. 2014), cert. denied, 331 P.3d 924 (N.M. 2014); 2014 N.M. App. LEXIS 50), an employee was injured in 2000 while lifting a rear assembly out of a Saab. A failed back surgery left him in unrelenting pain, and in 2008 he was awarded 99% permanent disability. In 2013, he received approval to participate in a state-sanctioned medical cannabis program, for which he obtained two doctors' certifications. Because New Mexico's workers' compensation statute requires provision of "reasonable and necessary" treatment services to an injured worker, the court required reimbursement from the carrier to the injured worker for medical marijuana used to treat industrial low back pain despite the fact that it was not a prescription drug, reasoning that the "service" from a licensed dispensary qualifies as medical treatment.

physician's after-the-fact certification of recreational marijuana use transformed an employee's use under the same "reasonable and necessary" statutory language, and required reimbursement.[20] And in the most recent decision, the New Mexico Court of Appeals ruled that employers must compensate workers who are medical marijuana patients for the cost of medical marijuana.[21]

Shortly thereafter, the New Mexico Legislature established a fee schedule for medical marijuana in workers' compensation, effective 01/01/2016. Now, injured workers can get reimbursed up to $10,904 per year for up to 2 pounds of marijuana. Carriers are required to reimburse the injured worker for up to 8 ounces every three months.[22] Based on calculations by persons in a position to know, one ounce equals approximately 60 joints.[23] Therefore, the new fee schedule allows injured workers about 5 joints per day or 1,920 joints per year.

Insurance industry efforts to push back in New Mexico have not been successful. In January 2016, House Bill 195 was introduced, which would have removed any requirement that workers' compensation carriers reimburse claims for medical marijuana. The legislation passed the House, but following impassioned testimony from the original injured worker in the 2014 New Mexico Supreme Court case,[24] the legislation died in committee.

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[20] In *Maez v. Riley Industrial* (347 P.3d 732 (N.M. Ct. App. 2015)), the injured worker was prescribed injections, physical therapy, and opioid medication without benefit, and thereafter tested positive for marijuana. His primary treating physician subsequently certified the marijuana use on an industrial basis. The court determined that because the physician supported the use of marijuana, it should be deemed "reasonable and necessary" under workers' compensation.

[21] In *Lewis v. American General Media/Gallagher Bassett* (2015- NMCA-90), the employee's health care provider opined that the "benefits of medical marijuana outweigh the risk of hyper doses of narcotic medications." The court ruled in her favor and held that federal law classifying marijuana as a Schedule I illegal substance did not supersede New Mexico's law allowing marijuana use for medical purposes.

[22] The maximum limit of 8 ounces per quarter year is based on the New Mexico Department of Health rules restricting medical marijuana patients to the same amount.

[23] "The Cheapest Intoxicant," Dale Gieringer, Ph.D., Coordinator, California NORML, June 1994.

[24] "Emotional Testimony on Medical Cannabis May Sway GOP Votes," *The Santa Fe New Mexican*, February 4, 2016. Greg Vialpando, the injured worker in the precedent-setting case requiring employers to reimburse workers for medical marijuana, testified against the bill. According to his testimony, for more than 14 years after he injured his back, his employer's carrier had no complaints about paying for opiates including fentanyl, oxycodone, and oxycontin. He testified that he did not understand why carriers would be opposed to paying for something that costs less and works better for his back pain than narcotics.

Industry efforts in Arizona have had better luck. In 2015, Arizona lawmakers passed a bill that exempts workers' compensation carriers and self-insured employers from paying for medical marijuana.[25] The Arizona bill was introduced in direct response to the three court decisions in neighboring New Mexico.

But the trend toward finding compensability for marijuana treatment seems to be spreading. Beyond New Mexico, workers' compensation payers have been required to reimburse payments for medical cannabis in Minnesota, Maine, Connecticut, and Massachusetts.[26] In two cases from Maine, for example, the Appellate Division of the workers' compensation system upheld rulings from an administrative law judge that marijuana could be a compensable form of medical treatment for injured workers.[27]

Only two reported cases at the California WCAB have addressed a claims administrator's liability for marijuana treatment. The first, in 2012, *Cockrell v. Farmers*,[28] did not directly resolve the question of compensability for medical marijuana. Instead, the Appeals Board merely returned the matter to the trial level for consideration of the impact, if any, of the prohibition against payment for marijuana by health insurance providers under Health and Safety Code §11362.785(d). It appears the case was thereafter resolved by settlement. But in 2013, a second case, *Pedro de Dios v. Carroll's Tire Warehouse*,[29] specifically found that the workers' compensation carrier was not liable for reimbursement of medical marijuana under the Health and Safety Code exemption.

How Is Payment Made?

To date, legalized marijuana has been a cash-only business. This is because the drug is still classified as illegal under Federal law, which means payment for it cannot involve the federal banking system. As detailed above, New Mexico has required payment for medical marijuana under workers' compensation, but carriers are still challenged in how to issue the required

[25] AZ HB 2346.

[26] "Cannabis Reimbursement Trend Grows," *Risk & Insurance*, June 24, 2016. In addition, an injured worker in Iowa (a state without legal medical marijuana) who subsequently moved to Oregon obtained a doctor's recommendation for medical marijuana treatment for her industrial injuries. The Iowa Workers' Compensation Commission initially ordered reimbursement, but thereafter determined that there was no jurisdiction to enforce the order; the carrier did not make any payments for marijuana. *McKinney v. Labor Ready / ESIS*, No. 5005302.

[27] *Bourgoin v. Twin Rivers Paper Co.* and *Noll v. Lepage Bakeries* (en banc). Utilizing a "clear and convincing evidence" standard, the Appellate Division court found that medical marijuana was a reasonable and necessary medical treatment, given the workers' long history of chronic pain and the ineffectiveness of conventional drug treatments. Notably, the Appellate Division found that a provision in the state's Medical Use of Marijuana Act proscribing a "private health insurer" from being compelled to pay for medical marijuana was inapplicable to a self-insured employer. Both cases are currently on appeal to the Maine Supreme Judicial Court.

[28] ADJ504565; ADJ2584271.

[29] ADJ528481; ADJ602408.

payments. Certainly, payment cannot be made to a pharmacy since retail pharmacies do not keep marijuana in stock. That leaves carriers the choice of either paying the injured worker or paying the marijuana dispensary. Currently, the trend is toward reimbursing the injured worker who submits a receipt from a registered dispensary rather than directly paying the dispensary.

In each instance where workers' compensation payers have been ordered to fund cannabis purchases, a determinative factor seems to be a distinction between a requirement for reimbursement as opposed to an order for direct payment. "Judges evidently believe that requiring reimbursement insulates claims payers from federal law prohibiting the purchase of marijuana."[30] However, the theory that the distinction between reimbursement and direct payment is legally significant and insulates the payer has not been tested in any federal court.

The Curious Question of Compensability

In addition to reimbursement for marijuana as a medical treatment, the flip side of the compensability question is that of compensability of an injury, where a post-accident drug screen has revealed the presence of marijuana. The states where recreational marijuana has been legalized have approached the question of compensability of injury in very different ways.

For instance, in Colorado, injured workers face a rebuttable presumption that, where a controlled substance shows up on a post-injury drug screen, the industrial injury was caused by that substance. If the presumption is upheld, non-medical benefits can be cut in half and temporary disability benefits can be terminated even if workers used marijuana in the weeks before their accidents.[31]

Other states require a "proximate cause" connection between the drug and the injury – and that is often difficult to show. An Ohio employer was denied relief from a finding of compensability for failing to adhere to the strict requirements for drug testing. The injured worker initially refused to take a drug test following the industrial injury. When he did so six days later, the test was still positive – but the court disallowed the evidence because the test was not conducted within the 36 hours required by statute.[32]

California law also precludes compensability for injuries caused by intoxication. Thus, if an employer can prove that marijuana (whether medicinal or recreational) is the cause of a work-related injury, then the injury is not compensable.[33]

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[30] "Cannabis Reimbursement Trend Grows," *Risk & Insurance*, June 24, 2016.

[31] "Panel Will Hash Out Whether Medical Marijuana Is a Cure for Opioid Epidemic," *Work Comp Central News*, July 28, 2016.

[32] *Trent v. Stark Metals Sales,* 2015-Ohio-1115.

[33] Lab. C. §3600(a)(4) precludes liability for a claim of injury "caused by the intoxication, by alcohol or the <u>unlawful use</u> of a controlled substance, of the injured employee [emphasis added]." This discussion assumes that federal law making all marijuana use illegal prevails over any state law making it legal. Obviously, the recent legalization of marijuana could complicate the interpretation of this statute.

But proving that marijuana was the proximate cause of an accident presents an often insurmountable hurdle. Marijuana remains in a person's system longer than alcohol, but impairment cannot be objectively measured by any scientifically proven methodology.[34] That makes it much harder to pinpoint marijuana use as the proximate cause of the accident.[35] And in California, the burden of proof of intoxication rests solely on the employer.

Marijuana and the Drug-Free Workplace

Even if the comp claim is deemed compensable, employers still enjoy almost universal protection in disciplining employees for the presence of illegal substances, up to and including termination.

Studies have suggested specific links between marijuana use and adverse consequences in the workplace, such as increased risk for injury or accidents. One often-cited study of postal workers concluded that marijuana smokers are more likely than non-marijuana smokers to file workers' compensation claims.[36] According to that study by the National Institute on Drug Abuse, postal employees who tested positive for marijuana on a pre-employment urine drug test had 55% more industrial accidents, 85% more injuries, and a 75% increase in absenteeism compared with those who tested negative for marijuana use.[37]

A new report from the American Automobile Association discovered that fatal road crashes in Washington more than doubled after that state legalized recreational marijuana.[38] The study becomes particularly relevant to workers' compensation payers when it is recognized that transportation-related accidents are the leading cause of death in work-related accidents in California.[39]

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[34] Current testing permits identification only of the presence of marijuana metabolites or THC (the psychoactive ingredient in pot), not intoxication. Both can linger in the body for days after the drug's effects wear off, and individuals metabolize drugs differently.

[35] Despite the deficiencies, some states have adopted drugged driving standards. According to the American Automobile Association, Montana and Washington have implemented a *per se* limit for marijuana at 5 ng/mL; Nevada and Ohio have set a limit at 2 ng/mL; and Pennsylvania uses 1 ng/mL. Twelve states have strict *per se* laws that forbid the presence of any levels of marijuana. In Colorado, a blood concentration of 5 ng/mL or more gives rise to permissible inference that a person was driving under the influence of the drug. *AAA Newsroom*, May 10, 2016.

[36] *"The Efficacy of Pre-employment Drug Screening for Marijuana and Cocaine in Predicting Employment Outcome,"* (JAMA 1990).

[37] *"The Efficacy of Pre-employment Drug Screening for Marijuana and Cocaine in Predicting Employment Outcome,"* (JAMA 1990; 264(20):2639-2643).

[38] "Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014," AAA Foundation for Public Safety, May 2016. According to the data, the percentage of drivers involved in fatal crashes who had recently used marijuana increased from 8% to 17% following legalization.

[39] According to the most recent data from the DIR's Office of Policy, Research, and Legislation, released April 2016, California's Census of Fatal Occupational Injuries showed that 119 California workers were killed in traffic accidents in 2014; the next leading cause was workplace violence, responsible for 75 deaths.

As a result of these and other studies, many employers now have strict drug-free workplace policies. Legal issues have arisen as to whether the termination of a worker for their use of marijuana as a treatment modality in light of the employer's drug-free workplace policy would result in a claim for discrimination. Ten states that have legalized medical marijuana have included anti-discrimination provisions that (a) require employers to accommodate medical marijuana users, and (b) preclude an employer from firing or discriminating against an employee or job applicant who uses medical marijuana.[40] But across the nation, courts continue to be very protective of an employer's right to a drug-free workplace:

- In a seminal 2008 decision, the California Supreme Court dismissed a lawsuit by an employee who had tested positive for past use of marijuana in a pre-employment drug screen test. The court ruled that legalized medical marijuana did not create a general right to use medical marijuana, but only protected patients from criminal sanctions.[41]

- Likewise, the Washington Supreme Court in 2011 held that the state's Medical Use of Marijuana Act does not allow employees with marijuana prescriptions to sue their employers for wrongful termination when marijuana use was the reason for the discharge.[42]

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[40] Arizona, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New York, Pennsylvania, and Rhode Island.

[41] *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal. 4th 920, finding no fundamental public policy requiring employers to accommodate marijuana use by employees: "Under California law, an employer may require pre-employment drug tests and take illegal drug use into consideration in making employment decisions."

[42] *Roe v. TeleTech* (2011) 171 Wn.2d 736, 257 P.3d 586. The plaintiff testified that she used marijuana four times a day at home for her migraine headaches, and informed her prospective employer as part of the interview process. When her pre-employment drug screen came back positive for THC, she was terminated.

- Earlier this year, a US District Court in New Mexico ruled that an employer lawfully fired a medical marijuana patient after he tested positive in a post-offer, pre-employment drug test.[43]

Importantly, the cases upholding an employer's right to a drug-free workplace are not limited to early terminations following pre-employment drug screening:

- A federal appeals court upheld the termination of a five-year employee who tested positive for marijuana following a workers' compensation injury, even though Michigan's Medical Marijuana Act allowed for the use of marijuana for non-industrial cancer pain. The court reasoned that "[w]hatever protection the MMMA does provide users of medical marijuana, it does not reach to private employment."[44]

- Colorado's Supreme Court issued a unanimous decision in 2015 concluding that an employer lawfully terminated an employee for off-the-job medical marijuana use. The court determined that while medical marijuana use was legal in Colorado, it was illegal under federal law, and upheld the termination.[45]

- In the context of a drug test following a workplace injury, a state court in Washington held that an employer may terminate an employee for using marijuana, even when the employee had a prescription and used it off-duty. The court ruled that the employer "was under no legal obligation to make an exception to its [drug-free workplace] policy for Plaintiff, regardless of his medical marijuana prescription."[46]

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[43] *Garcia v. Tractor Supply Co.*, (2016) -- F. Supp.3d -- (2016 U.S. Dist. LEXIS 3494), finding a "fundamental difference between requiring compensation for medical treatment and affirmatively requiring an employer to accommodate an employer's use of a drug that is still illegal under federal law." The employee originally filed the case in state court; the employer removed it to federal court.

[44] *Casias v. Wal-Mart Stores, Inc.*, 764 F. Supp. 2d 914, 926 (W.D. Mich. 2011).

[45] *Coats v. Dish Network, LLC*, 350 P. 3d 849 (Colo. 2015). The case involved a paraplegic telephone customer service representative who used medical marijuana off duty. Prior to his hire, he told his employer of his medical marijuana use. But when he tested positive for THC, he was terminated. The court stated: "[U]nder the plain language of…Colorado's 'lawful activities statute,' the term 'lawful' refers only to those activities that are lawful under both state and federal law. Therefore, employees who engage in an activity such as medical marijuana use that is permitted by state law but unlawful under federal law are not protected by the statute."

[46] *Swaw v. Safeway, Inc.* (W.D. Wash. 2015). After a workplace injury, the employee tested positive for marijuana due to the legal use of medical marijuana outside of work, and was terminated pursuant to the employer's drug-free workplace policy. The employee alleged unlawful discrimination on the basis of a disability, and that he was treated more harshly than employees found to be intoxicated by alcohol at work. The court disagreed, holding that Washington law does not require employers to accommodate medical marijuana in drug-free workplaces. And because users of an illegal substance are not a protected class, the employee could not state a claim for discrimination on the basis of a disability.

- Most recently, a federal district court in California reaffirmed that an employer maintains the right to discipline employees even where the marijuana use is recommended by a physician: "It does not violate (California's laws against workplace discrimination) to terminate an employee based on their use of marijuana, regardless of why they use it….."[47]

These cases demonstrate the general rule that an employee can lawfully be fired for using marijuana legally. But the employer-friendly judicial interpretation is not universal: In August 2016, the Connecticut Supreme Court ruled that a state worker who was fired after being caught smoking marijuana *on the job* must be reinstated.[48]

California employers understandably want to know whether Proposition 64 will require them to accommodate an employee's use or possession of marijuana. The short answer is that employers will not have any such duty under the new law. The California law does not prohibit employers from banning the use or possession of marijuana on the job or taking other adverse action against employees for marijuana use.[49] Furthermore, federal laws, including the Americans with Disabilities Act and the Family Medical Leave Act, do not protect marijuana use.[50] As such, employers can likely continue to prohibit the use or possession of marijuana, including both medical and recreational marijuana, as part of their drug policies.

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[47] *Shepherd v. Kohl's Dep't Stores, Inc.*, No. 1:14-cv-01901-DAD-BAM (E.D. Cal. Aug. 2, 2016). The employee was hired in 2006 and was diagnosed with acute anxiety in 2011. He obtained a doctor's approval for medical marijuana but did not notify his employer. While he was being treated for a 2014 work-related injury, the employer's health care provider found traces of marijuana in his system and terminated him for reporting to work while impaired by drugs. The federal court rejected his argument that he was fired because of a disability that he was treating with marijuana, stating that "[t]here is no evidence before the court that [the employer] was actually motivated by [the employee's] disability rather than his chosen treatment for the disability."

[48] *State of Connecticut v. Conn. Employees Union Independent*, SC 19590 (August 30, 2016). The employee was terminated from his maintenance job at the University of Connecticut Health Center in 2012 after a police officer arrested him for smoking marijuana in a state-owned vehicle. The charges were later dismissed and the employee obtained a ruling from an arbitrator that he should have been suspended rather than terminated. The employer appealed, but in a unanimous decision the Supreme Court ruled that although state policy on drug use in the workplace allows for firing workers, it does not *require* it.

[49] Proposition 64 adds new Health & Safety Code §11362.45, providing that nothing in the law will "amend, repeal, affect, restrict, or preempt…[the] rights and obligations of public and private employers to maintain a drug and alcohol free workplace, or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law."

[50] Employers should be aware of related federal laws (such as the new anti-retaliation regulation from the federal Occupational Health and Safety Administration) that place restrictions on the use of post-accident drug-testing. The OSHA rule prohibits the use of drug screening as a form of punishment against workers who report an injury, and is scheduled to take effect December 1, 2016.

However, the issue is complex and careful legal analysis is required. Employers should make sure that their anti-marijuana policies are in writing and provided to employees. Employers who do not have a well-documented marijuana policy could expose themselves to allegations of discrimination. While employers can currently treat marijuana as an illegal drug that need not be accommodated in the workplace, close monitoring of developing case law is critical because court opinions could shift as public policy evolves in favor of marijuana in general.

Is Marijuana Medical Treatment?

A great deal of debate still rages as to the medical efficacy of marijuana. While marijuana treatment is usually invoked for chronic pain conditions, it has been found to be effective in varying degrees for numerous medical conditions.[51]

The scientific community simply does not share a universal view on the effectiveness of marijuana as a medical treatment. On the one hand, neither the American College of Occupational and Environmental Medicine nor the American Medical Association support marijuana use as a treatment option; the Official Disability Guidelines published by the American Pain Society expressly preclude marijuana as a treatment for pain.[52] Even the

[51] Medical conditions typically found eligible for medical marijuana include: AIDS, ALS, Alzheimer's, anxiety, arthritis, autoimmune disorder, cancer, chronic pain, chronic traumatic encephalopathy, Crohn's disease, epilepsy or other seizure disorder, fibromyalgia, glaucoma, hepatitis C, HIV, inflammatory bowel disease, kidney disease, lupus, multiple sclerosis, pain (chronic/intractable), Parkinson's disease, PTSD, sickle cell anemia, spinal cord conditions, stroke, Tourette's syndrome, traumatic brain injury, and ulcerative colitis. *See, e.g.,* "Medical Marijuana," Mayo Clinic, October 14, 2016; "Is Marijuana Medicine?" National Institute on Drug Abuse, July 2015; "How Effective Is Medical Marijuana?" *Prevention Magazine*, April 22, 2015.

[52] "Maine Appellate Division for Comp Board Orders Reimbursement for Medical Marijuana," *Work Comp Central News*, September 22, 2016. Without approval by these standard evidence-based guidelines for treatment of occupational injuries, many comp payers have been denying coverage altogether. "Medical Marijuana: A Growing Issue for Employers in Workers' Compensation," *Property Casualty 360°*, July 2, 2015.

American Society of Addiction Medicine has concluded that cannabis is not recommended due to a lack of clear evidence of efficacy: "For every disease and disorder for which marijuana has been recommended, there is a better, FDA-approved medication."[53]

But according to the largest research study on medical marijuana, published last year by the Journal of the American Medical Association, medical marijuana may alleviate muscle stiffness from chronic pain and multiple sclerosis, although there is not yet any good evidence of its ability to treat other conditions.[54] Another study in the journal Health Affairs found that the prescription of painkillers in states where medical marijuana was legal decreased as compared to states where marijuana is completely outlawed.[55]

The findings from these two studies that (a) marijuana can help treat chronic pain in particular, and (b) prescription of painkillers decreased where medical marijuana was available, seem to validate one of the major arguments for marijuana as a medical treatment: marijuana can be a substitute for opioid-based prescription painkillers. Proponents of legalized marijuana point to these studies as evidence that broader use of medical marijuana could save lives if provided in place of the powerful painkillers that cause tens of thousands of overdose deaths each year.[56]

Beyond the question of efficacy, marijuana as medicine raises other unanswered questions. Without a National Drug Code, or NDC, payers will encounter difficulty in tracking payments and prescriptions for marijuana.[57] In workers' compensation, claims administrators rely on utilization review to evaluate medical treatment concerns, such as whether a prescribed dosage is appropriate. But a determination of uniform dosage levels is difficult because the potency of marijuana varies depending on the strain, growing techniques, and method of application.

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[53] American Society of Addiction Medicine, 44th Annual Medical-Scientific Conference, April 25, 2013.

[54] *Cannabinoids For Medical Use: A Systemic Review and Meta-Analysis* (JAMA, 2015 Jun 23-30; 313(24): 2456-73). The JAMA review evaluated 79 studies that tested marijuana's medicinal effectiveness among nearly 6,500 patients. It concluded that there is "moderate-quality evidence" for medical marijuana treating chronic pain and muscle stiffness among multiple sclerosis patients, and "low-quality evidence" for pot improving nausea and vomiting due to chemotherapy, weight gain in HIV infection, sleep disorders, and Tourette's syndrome. And medical marijuana was linked to short-term adverse effects such as dizziness, dry mouth, nausea, fatigue, drowsiness, and confusion.

[55] *Medical Marijuana Laws Reduce Prescription Medication Use In Medicare Part D* (Health Affairs, July 2016 vol. 35 no. 7 1230-1236). Researchers analyzed data from Medicare Part D from 2010 to 2013, comparing states that had legalized medical marijuana against states that did not, to determine the impact that legal medical marijuana had in prescription drug trends. The research team looked at nine conditions for which marijuana might be considered as a substitute for FDA approved medications (anxiety, depression, nausea, pain, psychosis, seizures, sleep disorders, and spasticity). The researchers found that legal medical marijuana had the greatest effect on prescriptions for painkillers, counting 1,826 fewer daily doses of painkillers prescribed on average per year in states with legal medical marijuana.

[56] Of course, other pain-fighting options with zero addiction potential also exist -- including anti-inflammatory drugs, cognitive behavioral therapy, biofeedback, physical therapy, and acupuncture.

[57] While synthetic cannabinoids Cesamet and Marinol both have NDCs, neither "medical marijuana" nor any of the various different strains and "brand name" marijuana products has an NDC code.

Marijuana does not have a standardized dosing protocol for each medical condition, nor does it have a standardized method of delivery (marijuana can be smoked, vaporized, eaten, dissolved in an oral tincture, or administered through a transdermal patch). There simply is no accepted guideline on what is or is not appropriate.

Likewise, because marijuana is not regulated by the FDA, there is no standardized potency guideline. There are not yet any significant controls on the quality or type of marijuana being dispensed. There are a large number of cannabinoids, the active ingredients in marijuana, that have different effects and have not been fully studied. The result of all of this is that patients themselves ultimately determine the appropriate dosing. This is as problematic as a doctor simply saying opioids are reasonable without identifying what opioid to take, or the appropriate dosage, or how long opioid therapy should last. And it makes it extremely difficult to perform effective utilization review.

Marijuana in Workers' Compensation

For claims administrators, the primary concerns over the use of marijuana in workers' compensation center on the potential violations of the federal Controlled Substances Act, the lack of scientific evidence supporting medical use of marijuana, and the possibility that marijuana could cause other health problems for injured workers. The American Insurance Association is already on record in opposition to any state mandate that its members pay for medical marijuana. [58]

Some states have extended flexibility to carriers on the question of medical marijuana. Washington State law, for example, permits health insurers to develop coverage (or non-coverage) criteria for payment (or non-payment) of medical marijuana, in their sole discretion. New Mexico permits compensability for medical marijuana in workers' compensation, but requires a patient to obtain a registry ID card and maintain medical supervision and monitoring by licensed caregivers and practitioners.

With the advent of legalized recreational marijuana, individual Californians no longer need to satisfy any of the regulatory criteria necessary for medical marijuana because they will be able to simply purchase marijuana from a licensed dispensary. In the context of workers' compensation, some observers anticipate an increase in recommendations for use of recreational marijuana as a treatment modality for work-related injuries. In other words, medical professionals who previously lacked federal approval to prescribe controlled substances (*e.g.,* chiropractors, naturopaths, registered nurses) might now recommend the use of recreational marijuana as an alternative to opioid medications.

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[58] AIA Comments (submitted in response to New Mexico's proposed fee schedule), October 21, 2015: "[S]o long as the manufacture, distribution and dispensing of marijuana remains a federal crime, there is no objective medical evidence that marijuana is effective in treating workplace injuries, and marijuana is understood to have serious harmful health effects, AIA will object to state court decisions and agency rules requiring workers' compensation insurers to comply with the treatment of injured workers via marijuana."

Conclusions

Are workers' compensation payers in California obligated to provide payment or reimbursement for recreational marijuana as part of a treatment for work-related injuries? The simple answer is, nobody knows yet. Employers and carriers are required to provide medical treatment that is reasonably required to cure or relieve the effects of the injury.[59] But as a matter of federal law, marijuana is classified as a Schedule I controlled substance, and by definition is devoid of any medical value.

With recreational marijuana now legal in California, employers and insurers are well-advised to monitor this developing area of the law and its practical impact on claims processing requirements. Proposition 64 presents an opportunity for claims administrators to advise their employers to protect themselves by adopting a drug-free workplace policy and to make sure that all employees have been advised of the policy. Claims administrators should work to establish standards of review for requested marijuana treatment and payment. Any policies that are developed should also consider the impact of California's broad medical privacy laws,[60] and the potential conflicts under the Employer's Bill of Rights as codified in the Labor Code.[61]

In all likelihood, the development of case law will determine whether marijuana can be considered as a legitimate treatment modality for work-related injuries. But it is only a matter of time before a lawsuit is filed seeking to compel California insurance companies to violate federal law.

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[59] Lab. C. §4600(a).

[60] *See, e.g.,* Calif. Const. Art. 1 Sec. 1 (right to privacy), Civ. C. §§56.20-56.245 (California's Confidentiality of Medical Information Act), and Gov't Code §§ 12900–12996 (Fair Employment and Housing Act); *see also* Civ. C. §1798.81.5; Govt. C. §12940.

[61] Lab. C. §§3761 et seq. Section 3762 specifically requires the claims administrator to "discuss all elements of the claim file that affects the employer's premium with the employer," particularly including the diagnosis, the treatment provided, and any work restrictions.

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California Workers' Compensation Institute

The California Workers' Compensation Institute (CWCI), incorporated in 1964, is a private, nonprofit membership organization of insurers and self-insured employers. CWCI conducts and communicates research and analyses to improve California's workers' compensation system. CWCI members include insurers that collectively write more than 70 percent of California's workers' compensation direct written premium, as well as many of the largest public and private self-insured employers in the state. Additional information about CWCI research and activities is available on the CWCI's website (www.cwci.org).

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