

AGENDA

THE MEETING OF THE DISABILITY PROCEDURES AND SERVICES COMMITTEE and BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

**300 NORTH LAKE AVENUE, SUITE 810
PASADENA, CA 91101**

9:00 A.M., THURSDAY, June 1, 2017 **

*The Committee may take action on any item on the agenda,
and agenda items may be taken out of order.*

COMMITTEE MEMBERS:

Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of May 11, 2017.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Panel Physician Termination of Contract for Services – Robert B. Fenton, M.D.

V. REPORT ON STAFF ACTION ITEMS

VI. GOOD OF THE ORDER

(For information purposes only)

VII. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

****Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.

MINUTES OF THE MEETING OF THE
DISABILITY PROCEDURES AND SERVICES COMMITTEE
and
Board of Retirement**

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Thursday, May 11, 2017 10:30 A.M. – 11:24 A.M.

COMMITTEE MEMBERS

PRESENT: Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

ABSENT: Vivian H. Gray, Chair

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Anthony Bravo
William Pryor
Vito M. Campese, M.D.

STAFF, ADVISORS, PARTICIPANTS

Gregg Rademacher	Ricki Contreras	Ricardo Salinas
JJ Popowich	Vickie Neely	Maria Silva
Steven Rice	Tamara Caldwell	Robert Hill
Vincent Lim	Anna Kwan	Mike Herrera
Eugenia Der	James Pu	Karla Sarni
Allison E. Barrett	Debbie Semnanian	Kerri Wilson
Frank Boyd	Mario Garrido	
Sandra Cortez	Debra Martin	
Angie Guererro	Marco Legaspi	
Maria Muro	Marilu Bretado	
Michelle Yanes	Thomas Wicke	
Barbara Tuncay	Hernan Barrientos	

ATTORNEYS
Thomas J. Wicke

GUEST SPEAKER
None

The meeting was called to order by Vice Chair Adams at 10:30 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of April 5, 2017

Mr. Okum made a motion, Mr. Muir seconded, to approve the minutes of the regular meeting of April 5, 2017. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Incapacity, Permanence, and the Likelihood of Recovery and/or Return to Work – Presentation as submitted by Jack Rothberg, M.D., Ph.D.

Ms. Contreras introduced Dr. Jack Rothberg, panel physician for LACERA.

Dr. Rothberg stated the it is difficult to answer the question "What determines reaction to a specific injury?" however, Dr. Rothberg will be addressing genetic factors, developmental/dynamic factors, cultural factors, primary and secondary gain, motivational factors, ratio between positive and negative reinforcement, duration of disability, employer support and accommodation, and miscellaneous issues, such as credibility and unique dynamic influences.

Dr. Rothberg stated that psychological testing is done but it is not completely "fool proof." It has to be weighed and considered to determine how much value it has. Dr. Rothberg also stated that the MMPI can produce invalid results even if the patient is actually ill to an extent.

Mr. Bernstein asked if Dr. Rothberg has any thoughts to add regarding alcoholism and the permanence and psychiatry of it because some people may think it is temporal and some may think it is permanent. Dr. Rothberg stated that it depends on the situation and it can go either way.

Mr. Okum asked for Dr. Rothberg's insight on service-connected disability vs. nonservice connected disability and if there are any factors that can determine this right away. Dr. Rothberg stated that most of the time it is difficult to tell right away if it is a service-connected disability and there are times when you need to find out from other people what actually happened at work.

Dr. Rothberg stated that there are some people who will go back to work right away and others will take a lot longer and this depends on the motivational factors. This also raises a psychological question "what is the line between unwilling and unable?" Dr. Rothberg stated that some of these individuals are willing to go back to work but physically they feel that they are unable to and in the end they cannot get themselves back to work and these people may not have the capability of dealing with stress.

Mr. Boyd asked if there are any other tests that can be administered besides the Caldwell report but Dr. Rothberg stated that the Caldwell report is the most elaborate and rich in its content.

Dr. Rothberg concluded that each case is different and in the end you will need to try and get to know the person to determine if they are actually disabled.

V. GOOD OF THE ORDER

Committee members thanked Dr. Rothberg for the presentation.

Mr. Bernstein stated that he appreciated the presentation and as a diversity expert, he acknowledged that today there was no female perspective and he would have liked to hear a different perspective as it relates to Dr. Rothberg's presentation.

Mr. Boyd acknowledged Mr. Chery and stated he appreciated the time Mr. Chery put in for the members at LACERA.

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 11:24 a.m.

**The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.



May 22, 2017

To: Each Member,
Disability Procedures & Services Committee

From: Francis J. Boyd, 
Senior Staff Counsel

Subject: **PANEL PHYSICIAN TERMINATION OF CONTRACT FOR SERVICES
ROBERT B. FENTON, M.D.**

FOR INFORMATION ONLY

On May 11, 2017, I learned that criminal charges for insurance fraud had been filed against Robert B. Fenton, M.D., an orthopedist on LACERA's panel of physicians. The charges were described in an April 20, 2017 press release from the California Department of Insurance which was sent to me by email.

The press release indicates that the Insurance Commissioner for the California Department of Insurance and the Orange County District Attorney had shut down a \$40 million fraudulent medical billing and kickback operation with the filing of charges against more than two dozen doctors, pharmacists, and business owners. Dr. Fenton was included on the list of defendants. (Ex. A.)

On April 20, 2017, Dr. Fenton was charged with the following violations: one count of conspiracy to commit medical insurance fraud, Cal Pen Code §550(a)(6); two counts of solicitation, acceptance or referral of business with knowledge of, or disregard for, intent to file fraudulent claim, Cal Pen Code §549; three counts of unlawful referral of patients, rebates for patient referrals, Cal Bus & Prof Code §650; and six counts of insurance fraud, Cal Pen Code §550(b)(3). Dr. Fenton is scheduled to be arraigned on June 13, 2017. The Orange County Superior Court case number is 17CF0798. (Ex. B.)

Dr. Fenton's contract to provide services as a panel physician for LACERA states that he "shall immediately notify LACERA if any license required by this Agreement is suspended or revoked, *or if any proceeding or investigation is commenced by a licensing agency relating to Physician's license.*" (Emphasis added.)

Dr. Fenton failed to notify LACERA of the charges and proceedings commenced against him by the District Attorney for the California Department of Insurance relating to his license to practice medicine.

On May 12, 2017, I sent a letter to Dr. Fenton informing him that his failure to notify LACERA of the criminal charges against him constitutes a material breach of his contract, and as such, his contract with LACERA is terminated. (Ex. C.)

Disability Retirement Services' records show that Dr. Fenton was the evaluating physician in two active applications. One applicant was evaluated on March 7, 2017,

Re: Termination of Contract – Robert B. Fenton, M.D.

May 22, 2017

Page 2 of 2

and the other was evaluated on May 8, 2017. In order to maintain the integrity of the disability retirement process, both applicants have been scheduled for an evaluation with another orthopedic surgeon on LACERA's panel of physicians.

Dr. Fenton was also the evaluating physician in one appeal case. I notified LACERA's Disability Litigation Office of the Dr. Fenton matter on May 11, 2017.

Attachments

FB:mb

EXHIBIT A



26 doctors, pharmacists and business owners charged in \$40 million kickback scheme

News: 2017 Press Release

For Release: April 20, 2017

Media Calls Only: 916-492-3566

26 doctors, pharmacists and business owners charged in \$40 million kickback scheme

13,000 patients affected in statewide workers' comp fraud

ORANGE COUNTY, Calif. — Insurance Commissioner Dave Jones and Orange County District Attorney (OCDA) Tony Rackauckas announced a shutdown of a \$40 million fraudulent medical billing and kickback operation with the filing of charges against more than two dozen doctors, pharmacists and business owners.

Tanya Moreland King, 37, and her husband Christopher King, 38, both of Beverly Hills, own medical billing and medical management companies Monarch Medical Group, Inc., King Medical Management, Inc. and One Source Laboratoires, Inc. The defendants are accused of masterminding a complex insurance fraud scheme of recruiting doctors and pharmacists to prescribe unnecessary treatment for workers' compensation insurance patients.

Irvine pharmacists Charles Bonner, RPh., 56, and Mervyn Miller, RPh., 66, both owners of Steven's Pharmacy, are accused of conspiring with Christopher and Tanya King by selling more than \$1 million in compound creams that were not FDA approved nor have known medical benefits.

"The Kings and their co-conspirators played with patients' lives, buying and selling them for profit without regard to patient safety," said Commissioner Dave Jones. "Patients have the right to expect treatment decisions by health care professionals are based on medical need and not unadulterated greed. The magnitude of this alleged crime is an affront to ethical medical professionals."

"The Orange County District Attorney's Office will continue to be a leader in the state in prosecuting these types of crimes, because they affect the health of our economy and wellness of our bodies," stated OCDA Rackauckas. "In order for the system to survive, we must have ethical doctors who abide by their Hippocratic Oath to 'do no harm.' The intent of many of the laws surrounding the insurance industry is to keep the three Ps – Physician – Patients – and Profit separate. We have a track record of putting these types of fraudsters behind bars for a long time and we intend to do just that again," Rackauckas concluded.

From 2011 to 2015, the defendants are charged for their part in the fraudulent scheme of billing for unnecessary creams, tests and treatments to maximize profits. More than 13,000 patients and at least 27 insurance carriers were victims in the scheme. The California Department of Insurance led the investigation with assistance from the Orange County District Attorney's Office Bureau of Investigation, the FBI, and the National Insurance Crime Bureau. Approximately \$23.2 million was paid out to the defendants, but a total of \$40 million was billed to insurers.

Circumstances of the CaseThe Kings are accused of making oral and written agreements with doctors across the state paying them each time they prescribed a compound cream or oral medication or ordered a urine drug test. The doctors or the companies connected to them are accused of labeling the payments "marketing expenses" in an attempt to conceal the kickbacks. The Kings are accused of rewarding doctors who provided higher volume by paying for office technicians.

Snake Oil Scam

The Kings are accused of working with pharmacist and co-defendant Charles Bonner, owner of Stevens Pharmacy in Costa Mesa, to manufacture a variety of creams with unknown effects from Steven's Pharmacy that were not FDA approved. The Kings purchased the creams for between \$15 and \$40 per tube. These products were then billed to patients' workers' compensation insurance carriers for between \$250 and \$700 dollars per tube. Tanya King is accused of recruiting physicians to participate in this scam by paying a flat \$50 rate or a share in the profits.

Medication Kickback Scam

The Kings are accused of purchasing repackaged oral pain medications from two companies: NuCare Pharmaceuticals in Orange and A-S Medication Solutions in Costa Mesa. Using their company Monarch Medical Group as a cover, the Kings are accused of repackaging meds sent directly to the physicians involved in the scam. As the doctors dispensed the medication, the bar code on the packaging was scanned, notifying the Kings. The Kings are accused of billing workers' compensation insurance carriers without disclosing the wholesale cost or the fact they had purchased the medication on behalf of the physicians who ultimately prescribed it. Once the Kings received the payment, they are accused of splitting the profits with the prescribing physician based upon a pre-arranged agreement.

Bogus Urine Test Scam

The Kings are accused of providing technical staff to participating physician's offices through their company One Source Labs. The doctors are accused of ordering unnecessary urine tests, under the guise of verifying patients on workers' compensation insurance were taking their medications as prescribed. The urine samples were then tested by One Source Lab technicians or the doctors' staff and billed to the insurance company on behalf of the physicians by King Medical Management. The results were then referred to Pacific Toxicology Laboratory for additional testing, regardless of results. Through their company One Source Labs, the Kings are accused of paying Pacific Toxicology a flat rate of \$60 per test and billing the insurance carriers hundreds of dollars per patient.

Defendants:

Tanya King, 37, Beverly Hills
Christopher King, 38, Beverly Hills
Charles Bonner, RPh., 56, Irvine
Mervyn Miller, RPh., 66, Irvine
Rafael Chavez, P.A., 53, Apple Valley
Dr. Jerome Robson, 68, Modesto
Dr. Eric Schmidt, 63, Santa Rosa
Dr. Chris Chen, 55, Pleasanton
Dr. Duke Ahn, 49, Los Alamitos
Dr. Robert E. Caton, 65, Modesto
Dr. Ismael Silva Jr., 63, Newport Coast
Dr. Ismael Geli Silva, 38, Huntington Beach
Dr. Paul A. Stanton, 54, Victorville
Dr. William Pistel, 53, Modesto
Dr. Kevin Park, 49, Buena Park
Dr. Kouros Shamlou, 49, Newport Coast
Dr. Mannie Joel, 67, Pleasanton
Dr. Parvez Fatteh, 46, Pleasanton
Dr. Robert Fenton, 68, Rancho Palos Verdes
Dr. Michael Henry, 61, Granite Bay
Dr. Howard Oliver, 70, Long Beach
Dr. Eduardo T. Lin I, 55, Pleasanton
Dr. Paul Kaplan, 76, Folsom
Dr. Mohamed Ibrahim, 40, Danville
Dr. Jonathan Cohen, 57, Modesto
Dr. John Casey Jr., 65, Modesto

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Media Notes:

[Charging document](#)
[Tanya Moreland King complaint document](#)
[Christopher King complaint document](#)
[Mervyn Miller and Charles Bonner complaint document](#)
[Ismael Silva Jr. and Ismael Geli Silva complaint document](#)
[Christopher Chen MD complaint document](#)
[Slideshow](#) from press conference
[Photos from CDI's Flickr](#)
[Video streamed live](#) on April 20, 2017 news conference

The California Department of Insurance, established in 1868, is the largest consumer protection agency in California. Insurers collect \$288 billion in premiums annually in California. Since 2011 the California Department of Insurance received more than 1,000,000 calls from consumers and helped recover over \$394 million in claims and premiums. Please visit the Department of Insurance web site at www.insurance.ca.gov. Non-media inquiries should be directed to the Consumer Hotline at 800.927.HELP or 213.897.8921. Telecommunications Devices for the Deaf (TDD), please dial 800.482.4833.

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EXHIBIT B

Case Summary

Case Number: 17CF0798

OC Pay Number: 9113322

Originating Court: Central

Defendant: Fenton, Robert Brant

Demographics:

Eyes: Brown

Hair: Brown

Height(ft/in) : 6'0"

Weight (lbs): 175

Names

:

Last Name	First Name	Middle Name	Type
Fenton	Robert	Brant	Real Name

Case

Status:

Status: Open
Case Stage:
Release Status: Conditional Release
Warrant: N
DMV Hold : N
Charging Document: Complaint
Mandatory Appearance: Y
Owner's Resp: N
Amendment #: 0

Counts:

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Disposition Date
4	0	04/04/2014	650 BP	F	Unlawful Referral of Patients/Clients				
5	0	04/14/2014	650 BP	F	Unlawful Referral of Patients/Clients				
2	0	04/04/2014	549 PC	F	False or fraudulent claims, solicitation, acceptance or				

					referral of business
11	0	04/14/2014	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim
9	0	02/04/2014	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim
7	0	08/09/2013	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim
3	0	04/04/2014	549 PC	F	False or fraudulent claims, solicitation, acceptance or referral of business
12	0	07/26/2013	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim
1	0	07/11/2011	550(a)(6) PC	F	Fraudulent claim for health benefit
8	0	02/27/2014	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim
6	0	04/04/2014	650 BP	F	Unlawful Referral of Patients/Clients
10	0	06/26/2013	550(b)(3) PC	F	Fraudulent Insurance Benefit Claim

Participants:

Role	Badge	Agency	Name	Vacation Start	Vacation End
District Attorney		OCDA	Kamiabipour, Shaddi		

Scheduled Hearing:

Date	Hearing Type - Reason	Courtroom
06/13/2017	Arraignment -	C55

Heard

Hearings:

Date	Hearing Type - Reason	Courtroom	Hearing Status	Special Hearing Result
04/20/2017	Arraignment -	C55	Heard	waives statutory time for
04/20/2017	Arraignment -	C55	Heard	Waives arraignment today

EXHIBIT C



May 12, 2017

Robert B. Fenton, M.D.
3475 Torrance Boulevard, Suite F
Torrance, CA 90503

Re: Termination of Contract for Services

Dear Dr. Fenton:

I am the advisory attorney for LACERA's Disability Retirement Services. Yesterday, I learned that you have been part of a California Department of Insurance investigation which resulted in criminal charges filed against you for insurance fraud. The charges were described in an April 20, 2017 press release from the California Department of Insurance.

Your contract for services requires you to "immediately notify LACERA . . . if any proceeding or investigation is commenced by a licensing agency relating to **PHYSICAN's** license." You did not notify LACERA that you had been charged with insurance fraud. In fact, the above noted press release is dated April 20, 2017, and our records reflect that you evaluated a LACERA applicant on May 8, 2017.

Your failure to notify LACERA of the criminal charges amounts to a material breach of contract. We are therefore terminating your contract.

Very truly yours,

Francis J. Boyd
Sr. Staff Counsel

FJB:se

Boyd to Dr. Fenton 5 12 17