

OFFICE OF SUPERINTENDENT OF INSURANCE
PATIENTS' COMPENSATION FUND ADVISORY BOARD MEETING

TRANSCRIPT OF PROCEEDINGS
January 8, 2024
9:12 a.m.
New Mexico Hospital Association
7471 Pan American Freeway, Northeast
Albuquerque, New Mexico

BOARD CHAIR: WILLIAM RITCHIE, M.D.

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2	<p>1 SUPERINTENDENT OF INSURANCE</p> <p>2 MS. ALICE KANE (VIA ZOOM)</p> <p>3 ALSO PRESENT</p> <p>4 MS. DEBBIE LUERA, Integrion Administrator</p> <p>5 debbiel@integriongroup.com</p> <p>6 MR. CHRIS DeWALD, Liability Claims Manager</p> <p>7 of Integrion (VIA ZOOM)</p> <p>8 MS. JENNIFER FETHEROLF, PCF Administrator</p> <p>9 MS. ANNIE JUNG, Medical Society Observer</p> <p>10 MS. JULIANNA KOOB, Guest (VIA ZOOM)</p> <p>11 I N D E X</p> <p>12 EXHIBIT</p> <p>13 A 2024 Annual Report of the PCF Advisory Board to the NM Legislature 98</p> <p>14</p> <p>15 REPORTER'S CERTIFICATE 99</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
3	<p>1 CHAIRMAN RITCHIE: We'll call the meeting</p> <p>2 to order this morning. Everyone should have gotten</p> <p>3 their agenda. And so starting on the agenda, welcome</p> <p>4 everyone. Thank you for attending.</p> <p>5 We'll start with our usual Board roll call,</p> <p>6 please.</p> <p>7 MS. LUERA: Chairman Ritchie.</p> <p>8 CHAIRMAN RITCHIE: Present.</p> <p>9 MS. LUERA: Vice Chair Love.</p> <p>10 VICE CHAIR LOVE: Present.</p> <p>11 MS. LUERA: Mr. Clark.</p> <p>12 MR. CLARK: Here.</p> <p>13 MS. LUERA: Mr. Autio.</p> <p>14 MR. AUTIO: Here.</p> <p>15 MS. LUERA: Mr. Dekleva.</p> <p>16 MR. DEKLEVA: Here.</p> <p>17 MS. LUERA: Mr. Martinez will not be here.</p> <p>18 Mr. Spitzer.</p> <p>19 VICE CHAIR LOVE: He must be reaching for</p> <p>20 the mute button, but he's present on Zoom.</p> <p>21 MS. LUERA: Okay. Thank you.</p> <p>22 Ms. Stevens.</p> <p>23 MS. STEVENS: Present.</p> <p>24 MS. LUERA: And Mr. Vargas.</p> <p>25 MR. VARGAS: Here.</p>	5

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1 CHAIR RITCHIE: Thanks again for showing
 2 up, at least figuratively.
 3 We'll call for any objections to the
 4 agenda. Any comments or additions or subtractions to
 5 the agenda? Then we will take that as an approval.
 6 Next, we have minutes from the last
 7 meeting.
 8 MS. LUERA: Not from the last meeting, but
 9 the prior meeting.
 10 CHAIR RITCHIE: Right.
 11 MS. LUERA: And those were supposed to have
 12 been reviewed so that you could approve those this
 13 meeting.
 14 CHAIR RITCHIE: Right. So we're one
 15 meeting in arrears?
 16 MS. LUERA: Yes.
 17 CHAIR RITCHIE: Okay. So approval of the
 18 meeting minutes from not the last meeting, from the
 19 meeting before. Do I hear any comments, additions,
 20 subtractions to those minutes?
 21 MR. CLARK: Motion to approve.
 22 CHAIR RITCHIE: Okay. Motion to approve.
 23 MR. AUTIO: Second.
 24 CHAIR RITCHIE: Okay. Second.
 25 Any objections?

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1 Okay. They're approved then.
 2 So on to the next order of business, the
 3 Report to the Legislature. We all thank the
 4 subcommittee for working on this report. It's not an
 5 easy thing to do. And that came out to the committee
 6 this morning, and so there's been very little time to
 7 look it over. So we are going to spend time here --
 8 hopefully not too long a time -- discussing it, and
 9 finalizing that report to send to the Legislature on
 10 the opening day.
 11 So I want to call on someone from that
 12 subcommittee to present the report as is. I believe
 13 that's Ms. Love or Mr. Autio.
 14 MR. AUTIO: Chairman Ritchie, I don't want
 15 to volunteer Ms. Love for work, but she, frankly, did
 16 most of the work on this report, and we are greatly
 17 appreciative of it.
 18 Ms. Love, do you want to go through the
 19 basics of the report? I can do so, if you don't want
 20 to, but just whatever you think is best.
 21 VICE CHAIR LOVE: Yes, I'm happy to do
 22 that.
 23 So let's start out sort of just going
 24 through it section by section. The intention behind
 25 the Operations of the Fund section is just to sort of

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1 advise the Legislature on essentially, you know, the
 2 major issues that the fund has been dealing with. I
 3 have got a section on the Batch Claim Re-insurance to
 4 advise them about what the status of that insurance
 5 is and, you know, the fact that it was awfully
 6 expensive to purchase, and didn't seem necessary at
 7 this point.
 8 We are advising them how many carriers
 9 there are that are participating in the fund, the
 10 number of participants, which I don't think that
 11 we've ever really put before the Legislature before
 12 so I thought that was interesting for them to see,
 13 and then the categories of the type of specialties
 14 and the major entities that are participating in the
 15 fund.
 16 The Operational Expenses of the fund is
 17 identified here, and that comes from the information
 18 that was presented in both the report and by
 19 Integriion at a couple of our meetings. The tracking
 20 of it was important to include an update on tracking
 21 of settlement data because the Board identified that
 22 as one of the major issues that was causing some
 23 difficulty in identifying how the deficit should be
 24 apportioned, and also, of course, it's important for
 25 risk assessment, so I included that in there.

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1 You know, of course, everybody -- the
 2 Legislature wants to know the bottom line, so that's
 3 why we included the Financial Condition of the Fund
 4 in the next section. And then, of course, what the
 5 purpose of our hearing was to identify the
 6 appropriate recommendations for the surcharge
 7 setting, and then I go into a little bit more
 8 explanation of what the current deficit is.
 9 And, you know, I thought it was important
 10 because, you know, of course, one of the questions
 11 that the Legislature has, at least what I hear from
 12 legislators, is we pulled up a couple of years ago
 13 that there was a deficit, and then they came to us
 14 and asked us for money. And so, you know, why is it
 15 that after we've given you this infusion of money
 16 that you continue to operate at a deficit? So I
 17 thought it was important to include that explanation
 18 in here.
 19 And then you'll see a markup by Mr. Autio
 20 that goes into all of the requests that the Medical
 21 Society and, I think, that other providers would like
 22 to see happen with the Medical Malpractice Act, and
 23 we can address that in a moment.
 24 And then, you know, of course, there's the
 25 question about the apportionments of the deficit

<p style="text-align: right;">10</p> <p>1 because with the problems with tracking of 2 settlements, it was hard to identify how the deficit 3 should be apportioned between independent providers 4 and hospitals, and so there's a section on that, a 5 little section here on the trends that we're seeing 6 now that we have better data. The Consumer Price 7 Index is what that adds to the fund outlook and the 8 need for surcharges. A little comment in here about 9 the fact that -- and, of course, the Superintendent 10 had long before us already identified, you know, as a 11 possibility of being able to invest these funds a 12 little bit better so there's a return on the 13 investment that sort of takes some of the load off of 14 the providers with their surcharges.</p> <p>15 And then I give an explanation of what the 16 Surcharge Rate Increases were that were recommended 17 and split up between the providers and hospitals, and 18 then a section on the Entities. I tried to explain 19 the issue with the Independent Outpatient Healthcare 20 Facilities, and that is it.</p> <p>21 And so I don't know. I think probably what 22 I would like to do, if you don't mind, is make a 23 recommendation. You know, obviously, this section 24 that Mr. Autio added, which is all in blue starting 25 on Page 5 and going onto 6, which is basically a wish</p>	<p style="text-align: right;">12</p> <p>1 remove that and keep this as a non-political report 2 to the Legislature on behalf of all of the members of 3 the Board, then I think that we could remove it and 4 perhaps include it as an attachment in an exhibit and 5 make it clear that it is the provider representatives 6 who want this information included before the 7 Legislature and not the other members of the Board.</p> <p>8 So that's what I propose. And I'll defer 9 to Dr. Ritchie on how you'd like to go about 10 addressing these issues.</p> <p>11 CHAIR RITCHIE: All right. Thank you very 12 much. And that was a lot of work you put into this. 13 I appreciate that.</p> <p>14 So let's go back to section by section. 15 There are still markups, et cetera, in here, so we 16 need to fill in the blanks as we see on this 17 proposal.</p> <p>18 So we will list all the dates and meetings. 19 We'll certainly get that into the report. Make sure 20 we have your proper dates there in the first 21 paragraph. Then in the Operations of the Fund --</p> <p>22 MS. LUERA: Excuse me, Chairman? 23 CHAIR RITCHIE: Yes. 24 MS. LUERA: May I ask Ms. Love if she would 25 mind sharing the document on the screen?</p>
<p style="text-align: right;">11</p> <p>1 list for changes for the Medical Malpractice Act, 2 reopening this compromise, I propose to add to the 3 end of the letter because, obviously, that's not 4 something that I will agree to, and I think that 5 there are probably others on the Board who don't 6 agree with that request.</p> <p>7 What I would propose that we do is at the 8 end of the letter, at the very end, is add a sentence 9 essentially explaining that whoever is in favor of 10 including this information -- and I assume that's 11 probably the doctor representatives, and I don't know 12 about the hospital representatives -- that we take 13 that out and leave that for the Legislature to 14 decide. I mean, that's what I think should happen 15 with this.</p> <p>16 We may be able to come up with some 17 alternative suggestions, if the Board doesn't agree 18 to that. I'll just tell you that the things that I 19 told you at the last meeting, which is I think that 20 that is not appropriate to include in this report, 21 and I think, you know, it's information that all of 22 the providers and the Medical Society can pitch to 23 the Legislature separately in their lobbying after 24 the Legislature.</p> <p>25 Alternatively, if you won't agree just to</p>	<p style="text-align: right;">13</p> <p>1 CHAIR RITCHIE: Oh, sure. I didn't realize 2 that she was doing that, or that she wasn't --</p> <p>3 MS. LUERA: Yes.</p> <p>4 Ms. Love, are you able to share the 5 document on the screen, or would you like me to do 6 that?</p> <p>7 VICE CHAIR LOVE: No, I can do that. No 8 problem.</p> <p>9 MS. LUERA: Thank you so much.</p> <p>10 CHAIR RITCHIE: Okay. I didn't realize she 11 had that control.</p> <p>12 MS. LUERA: Mr. Martinez is now on the 13 call.</p> <p>14 CHAIR RITCHIE: Yes. Thank you. 15 Mr. Martinez, welcome. Thank you for 16 coming.</p> <p>17 MR. MARTINEZ: Hi, guys.</p> <p>18 MR. WARD: Just as a point of order, can we 19 make sure that somebody is designated to make the 20 corrections to the document? Somebody needs to have 21 sort of document control.</p> <p>22 CHAIR RITCHIE: Absolutely. Thank you, 23 Mr. Ward.</p> <p>24 So a member of the subcommittee, or who 25 wants to take that on?</p>

14	<p>1 Kathy.</p> <p>2 VICE CHAIR LOVE: Well, I'll tell you, I</p> <p>3 think it depends honestly on whether this is going to</p> <p>4 contain a bunch of recommendations for legislative</p> <p>5 changes. You know, I'm happy to help out if this</p> <p>6 report is going to be strictly a report about the</p> <p>7 status of the fund and the operations. Because if</p> <p>8 this is going to be a wish list of legislative</p> <p>9 changes, you know, somebody else can make those.</p> <p>10 Can you see my screen now?</p> <p>11 CHAIR RITCHIE: Yes, we can.</p> <p>12 MS. LUERA: Yes.</p> <p>13 MR. CLARK: Mr. Chair?</p> <p>14 CHAIR RITCHIE: Yes.</p> <p>15 MR. CLARK: This is Troy Clark. Could I</p> <p>16 make a recommendation that we go through -- and it</p> <p>17 may be where you were headed -- the entire document</p> <p>18 absent the issue that Ms. Love has raised about the</p> <p>19 potential political issue -- I don't know how else to</p> <p>20 categorize it -- and let's get it all cleaned up, and</p> <p>21 then come back to that?</p> <p>22 CHAIR RITCHIE: That's exactly --</p> <p>23 MR. CLARK: Then if it's a process, I would</p> <p>24 make a motion that Ms. Love or Vince Ward to be</p> <p>25 granted the authority to edit the document up to that</p>	16	<p>1 capital letters. This date and the dates of the</p> <p>2 meetings will be included later.</p> <p>3 CHAIR RITCHIE: Correct.</p> <p>4 VICE CHAIR LOVE: This date can be included</p> <p>5 later. The same with all these.</p> <p>6 CHAIR RITCHIE: Right.</p> <p>7 VICE CHAIR LOVE: Then the next one that we</p> <p>8 can discuss is this change.</p> <p>9 CHAIR RITCHIE: Under the paragraph that</p> <p>10 begins "Integrion"?</p> <p>11 VICE CHAIR LOVE: Yes.</p> <p>12 CHAIR RITCHIE: Right.</p> <p>13 MR. AUTIO: And, Mr. Chair, I'm happy to</p> <p>14 explain the proposed amendment I made, if you'd like.</p> <p>15 CHAIR RITCHIE: Please, Mr. Autio.</p> <p>16 MR. AUTIO: And, once again, I want to</p> <p>17 thank Kathy for all the work she did on this, and</p> <p>18 it's really just to help the Legislature understand</p> <p>19 why we believe the risk is low, and that is because</p> <p>20 there's a three-occurrence limit set forth in 41-5-5.</p> <p>21 So I just wanted to set -- you know, put that in</p> <p>22 there so that folks who are not as familiar with the</p> <p>23 fund as we are would understand why we don't believe</p> <p>24 there is a large potential risk there because there's</p> <p>25 a statutory limit of three occurrences. So that was</p>
15	<p>1 point, and then if she chooses to not just because</p> <p>2 she's got the document online and sharing it would</p> <p>3 make no sense.</p> <p>4 CHAIR RITCHIE: And I concur with that.</p> <p>5 That is exactly where I was going. We want to save</p> <p>6 the best for last.</p> <p>7 So, Ms. Love, are you willing to do the</p> <p>8 editing since you have the document there under your</p> <p>9 control?</p> <p>10 VICE CHAIR LOVE: I'll do it, sure.</p> <p>11 CHAIR RITCHIE: Okay. We'll leave out the</p> <p>12 controversial stuff until the very end.</p> <p>13 VICE CHAIR LOVE: All right. Let me make a</p> <p>14 new screen of this.</p> <p>15 CHAIR RITCHIE: Ms. Luera, do you have our</p> <p>16 meeting dates?</p> <p>17 MS. LUERA: Yes, I can provide a list --</p> <p>18 CHAIR RITCHIE: Okay.</p> <p>19 MS. LUERA: -- yes.</p> <p>20 CHAIR RITCHIE: Because I see that first</p> <p>21 blank we have.</p> <p>22 MS. LUERA: Yes. I'll provide that.</p> <p>23 CHAIR RITCHIE: Okay.</p> <p>24 VICE CHAIR LOVE: I'm going to accept these</p> <p>25 changes here because this suggests a couple of</p>	17	<p>1 that amendment there.</p> <p>2 CHAIR RITCHIE: Okay. Any questions to</p> <p>3 that? Any discussion?</p> <p>4 VICE CHAIR LOVE: I don't have a problem</p> <p>5 with that change. I'm happy to accept that.</p> <p>6 CHAIR RITCHIE: Okay. Then hearing no</p> <p>7 objection, let's make that change, please.</p> <p>8 VICE CHAIR LOVE: The next one, I think,</p> <p>9 Mike Dekleva, you added -- you made a little edit</p> <p>10 here, and no problem. It's the number is 11</p> <p>11 carriers. But here's my question for you, Mike. It</p> <p>12 says, "Those three are responsible for 88 percent of</p> <p>13 the surcharges collected." Are you saying that 11</p> <p>14 insurance companies pay 88 percent of the surcharges?</p> <p>15 MR. DEKLEVA: I think it's that the three</p> <p>16 insurance companies do that. And I'm going to ask</p> <p>17 Debbie to comment because this information came from</p> <p>18 Debbie Luera, and we may need to rephrase that,</p> <p>19 Kathy, if it's unclear.</p> <p>20 MR. VARGAS: This is Ray Vargas. I had a</p> <p>21 question about that, too. I mean, do carriers, in</p> <p>22 fact, pay surcharges? I thought it was the</p> <p>23 individual providers, and then hospitals would pay</p> <p>24 the surcharges and then the carriers collect premiums</p> <p>25 for their coverage?</p>

18	<p>1 MR. CLARK: Mr. Chair, I have the same 2 question. I think these three carriers or 11 3 carriers, whichever one you're talking about, may 4 provide the underwriting for the base for the excess, 5 but they're not the actual ones paying the 6 surcharges.</p> <p>7 CHAIRMAN RITCHIE: Correct, at least for 8 independent practitioners. Generally, their carrier 9 collects the surcharges on behalf of the fund just to 10 roll it all into one bill. I can't speak for 11 hospitals, but that's the way it works for the 12 independent physicians.</p> <p>13 VICE CHAIR LOVE: That's correct. And the 14 change that I suggested there is because the original 15 language said 90 percent of the policies written, 16 which we don't really track numbers of policies, but 17 we do track the surcharges collected. I mean, AEIX 18 writes one policy for all of Presbyterian. So, you 19 know, they wouldn't be writing most of the policies, 20 but they are collecting most of the surcharges. So 21 that was the clarification I made.</p> <p>22 MR. VARGAS: And, Mr. Chair, I think it 23 would be more accurate than if we said those three 24 are responsible for collecting 88 percent of the 25 surcharges collected.</p>	20	<p>1 Participants, just one little error on the CRNA. I 2 like this addition, Ms. Love. I'm glad you included 3 a lot more dating here for the Legislature. And so 4 are there any comments even going down through 5 Tracking of Settlement Data? This whole section, 6 does anyone have any comments on that before 7 Financial Condition of the Fund?</p> <p>8 MR. CLARK: Mr. Chair, this is Troy. I 9 have one -- where are we at here -- two paragraphs 10 below the first chart. The sentence reads, "The top 11 10 entities participating in the Patient's 12 Compensation Fund by number of providers." I might 13 make a recommendation that we say, "Number of 14 independent providers" because the list below is a 15 covering of independent providers, not all providers.</p> <p>16 CHAIR RITCHIE: Correct. Thank you. I 17 think that does clarify that because you're 18 absolutely correct. That's independent providers. 19 Those are not hospital employed in that list.</p> <p>20 MR. BERENBERG: This is Barry. I don't 21 have the statute up in front of me, but I know the 22 new statute had a definition for independent 23 providers, and I can't remember if independent 24 providers are included under entities that are 25 non-hospitals. So it might be prudent to check the</p>
19	<p>1 VICE CHAIR LOVE: Why don't we just delete 2 this whole sentence that says those three are 3 responsible for 88 percent of the surcharges 4 collected because --</p> <p>5 CHAIR RITCHIE: We have one more comment 6 here. Please go ahead.</p> <p>7 MR. BERENBERG: This is Barry. I suggest 8 if you want to keep something in like that, you could 9 say that providers insured by those three carriers 10 are responsible for 88 percent of the surcharges 11 collected.</p> <p>12 CHAIR RITCHIE: Right, because the carriers 13 are representing them as collecting their surcharges. 14 I believe that was the intention. Is there any 15 discussion of that?</p> <p>16 MR. AUTIO: I don't have any objection to 17 that, Mr. Chair.</p> <p>18 MR. CLARK: I don't get that.</p> <p>19 CHAIR RITCHIE: Okay. Anyone online have 20 a --</p> <p>21 MR. CLARK: I guess it reads more accurate.</p> <p>22 CHAIR RITCHIE: -- question of that? 23 Okay. Then thank you for the changes 24 that -- I believe that's the change you want. 25 So now on Carriers, Numbers of</p>	21	<p>1 statute. I can try to --</p> <p>2 MR. AUTIO: They are.</p> <p>3 MR. BERENBERG: They are?</p> <p>4 MR. AUTIO: Yeah.</p> <p>5 MR. BERENBERG: Okay.</p> <p>6 MR. AUTIO: I mean, please check, but it's 7 my understanding that they are.</p> <p>8 CHAIR RITCHIE: Okay. So, Mr. Autio, you 9 have no problem with that then --</p> <p>10 MR. AUTIO: I have no objection adding 11 independent providers then.</p> <p>12 CHAIR RITCHIE: -- to include independent 13 providers? From my reading of that, that makes 14 sense.</p> <p>15 So unless there's an objection to that, 16 let's make that change and move on to the 17 "Operational Expenses, Tracking of Settlement Data." 18 There's no changes there.</p> <p>19 MR. CLARK: Mr. Chair, this is Troy again. 20 On the paragraph that starts, "The expenses to 21 operate," the first paragraph under "PCF Operational 22 Expenses" -- and this is a question -- are these 23 administrative expenses? Is it more appropriate to 24 refer to them because we discuss the payouts down 25 below under "Settlement Data and Settlements"? These</p>

<p style="text-align: right;">22</p> <p>1 all seem to be administrative expenses, not all 2 expenses. And maybe it's clarified. 3 VICE CHAIR LOVE: Yeah, they're the 4 expenses that it takes to operate the fund. 5 CHAIR RITCHIE: Although does primary 6 insurance, though, count as an administrative expense 7 then would be the question? 8 MR. CLARK: Well, I guess my question is, 9 operating the fund, I think, includes the payout of 10 the settlements and operations. That's what the fund 11 is set up for. So I think these are the 12 administrative expenses to operate the fund. 13 CHAIR RITCHIE: Right. But would you 14 include that primary insurance under the Operational 15 Expenses? 16 MR. CLARK: I don't know. I would. I 17 would just -- my recommendation is if that's the case 18 that we have the word "administrative," the 19 administrative expenses to operate the Patient 20 Compensation Fund are as listed below. 21 CHAIR RITCHIE: All right. Any discussion 22 of that? That looks great, Ms. Love. 23 Then the next section, "Tracking of 24 Settlement Data." Any questions there or of that 25 table or graph?</p>	<p style="text-align: right;">24</p> <p>1 "Current Deficit"? 2 MR. CLARK: Mr. Chair, this is Troy Clark. 3 I might just say we are holding off on the political 4 issue -- 5 CHAIR RITCHIE: Right. 6 MR. CLARK: -- until they heard I have a 7 comment titled this at that point. 8 CHAIR RITCHIE: Okay. That's what I was 9 about to say. 10 Going to the bottom of the table, so we 11 will come back to everything in red below the table, 12 blue on here below the table. We'll come back to 13 that. 14 So next will be "Apportionment of the 15 Deficit." I believe this is straightforward. I 16 think everyone understood this part of it. An 17 adjustment factor of 6.4 percent, the only comment I 18 might make was do we want to include -- I don't know 19 if we want to include where it started at. It 20 originally started at 750,000. Now it's up to 21 854,000, 855,000. 22 MR. AUTIO: Mr. Chair, what section are you 23 referring to? 24 CHAIR RITCHIE: "Consumer Price Index" per 25 the statute, the changes of the initial statute, it</p>
<p style="text-align: right;">23</p> <p>1 So next will be "Financial Condition of the 2 Fund." The addition, "And the payment of judgments," 3 I can't tell who added that. 4 MR. AUTIO: Mr. Chair, I added that. 5 VICE CHAIR LOVE: I think Nick added it. 6 It makes sense. 7 CHAIR RITCHIE: Okay. Any comments -- 8 MR. CLARK: Agreed. 9 CHAIR RITCHIE: -- on that? All right. 10 Then the next paragraph after the list of 11 the surcharges and who they're collected from, 12 Hearing Officer Gabrielle Adams, Mr. Walling 13 actuaries, I think those are all good corrections. 14 VICE CHAIR LOVE: We will need some help 15 from you on filling in. 16 MS. LUERA: The name you're missing is 17 Daniel Linton, L-i-n-t-o-n. 18 CHAIR RITCHIE: The award was issued on 19 October 31. 20 VICE CHAIR LOVE: These are all fine. 21 CHAIR RITCHIE: Yeah, just wordsmithing, 22 essentially. 23 Then let's move on to "Current Deficit" if 24 no one has any comments. So are there any comments, 25 additions, subtractions to this section on the</p>	<p style="text-align: right;">25</p> <p>1 was set at 250,000. Per the increases according to 2 the CPI, it is now up to 855,000, essentially. 3 MR. CLARK: Mr. Chair, just for 4 clarification, I think what you're -- if I understand 5 correctly -- what you're recommending or asking is we 6 show in here right now the increase for '22, which 7 goes from 803 to 854, and you're asking whether or 8 not we should make a statement that it actually 9 started at 750 in the prior year; is that correct? 10 CHAIR RITCHIE: Right. And I'm -- 11 MR. CLARK: I don't think you're asking to 12 change the numbers that are in here? 13 CHAIR RITCHIE: Right. 14 MR. CLARK: Just adding one more point of 15 reference? 16 CHAIR RITCHIE: Right, just a point of 17 reference that with the changes -- the original 18 changes in the Act from two years ago, the Act was 19 set at 750, but then with the CPI indexing, and that 20 now, we're at 855. But it's all based on the 21 original 750. That's all. 22 MR. AUTIO: I don't have any objection to 23 including that. We can include a, you know, sentence 24 at the end that indicated that the cap was set at 25 \$750,000 or was \$750,000 in 2022, or something along</p>

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1 those lines.

2 CHAIR RITCHIE: Right, that the original
3 cap was set by Legislature at \$750,000 as of 2022.

4 VICE CHAIR LOVE: Where does your
5 information on the CPI come from?

6 CHAIR RITCHIE: Well, prior to that, the
7 CPI was not used at all, and then there was no
8 indexing. And so there's only been two years of
9 indexing, '22-'23, '23- -- well, '22 and '23. Now
10 we're going to '23-'24 as setting the rates.

11 VICE CHAIR LOVE: I don't think that has
12 anything to do with the Consumer Price Index. So
13 you're just saying that you want to say that changes
14 occur -- I mean, this says the result of an increase.

15 CHAIR RITCHIE: Right, but --

16 VICE CHAIR LOVE: And maybe I'm not
17 understanding what you're asking.

18 CHAIR RITCHIE: Well, I'm just going back
19 to the original statute as changed by HP-75, I
20 believe, which placed it at 750. And so we're just
21 basing everything off that because that's right where
22 we started at, and I'm just trying to tie it back to
23 where we started. That's all. And it's good
24 knowledge for the legislators, particularly maybe new
25 legislators that weren't in office at that time.

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1 MR. AUTIO: Ms. Love, I think just the
2 point that Dr. Ritchie is making or Chair Ritchie is
3 making is to just, you know, inform the legislators
4 as to what the cap started at. So it started at 750,
5 and over the last two years, it increased to 854. I
6 think that's what Chair Ritchie would like included.

7 MR. CLARK: Do we have a proposed language
8 to accomplish that? And I think if I hear right,
9 we're trying to just say, under Consumer Price Index,
10 we start at 750, and because of the Consumer Price
11 Index, there's been two increases. We only currently
12 are discussing the most recent increase to it. So
13 you'd like to add the starting point in there. Do
14 you have a recommendation of how you would like that
15 included?

16 VICE CHAIR LOVE: We'll say 803,224 in --
17 what year was that, 2022? Wait. 2023?

18 MR. CLARK: No. 2023.

19 MR. BERENBERG: Could I suggest a table
20 that has the year and the cap?

21 CHAIR RITCHIE: That may be the simplest,
22 you're right. Rather than words, it may be simplest
23 just to put it into a table. It could show us the
24 effects of where we started and where we are now.

25 So the table would be 2021. It was at 7 --

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1 or that the rate setting for 2022, we were at 750.

2 The rate setting for 2023, we were at 803. And the
3 rate setting for 2024, we are at 855.

4 VICE CHAIR LOVE: Well, if somebody can
5 draft that and send it to me, and I could draft in
6 what you're proposing.

7 CHAIR RITCHIE: Okay. Then "Investments,"
8 which is kind of a new section we didn't have last
9 year. Is there any comments, additions, or
10 subtractions to that? I'm very glad we have that in
11 there.

12 MR. CLARK: Thank you for including that.

13 CHAIR RITCHIE: Exactly.

14 If no comments on that, the next section
15 is, "Surcharge Rate Increases for Independent
16 Providers." This represents everyone's
17 understanding, but are there any comments?

18 VICE CHAIR LOVE: Troy, I don't know why I
19 didn't know this number. Do you happen to know that
20 answer, what the 75 percent Confidence Level would
21 have been?

22 MR. CLARK: I don't off the top of my head,
23 but sometime during the meeting I'll run back to my
24 office and grab the presentation and get it for us.

25 VICE CHAIR LOVE: Thank you.

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1 MR. CLARK: Okay.

2 CHAIR RITCHIE: All right. So "Entities,"
3 that was all part of the Act previously. We haven't
4 changed anything there.

5 "Independent Outpatient Healthcare
6 Facilities." So this was the discussion, legislative
7 and in the Board, to stay at the 10 percent. So any
8 end with the recommendation that we can accommodate
9 it for the future? Any questions on that part?

10 So, again, the Board's recommendations were
11 not completely followed to try to keep down expenses
12 for -- particularly for independent practitioners.
13 The addition -- is that from you, Mr. Autio -- on
14 respectfully encourage the Legislature appropriate
15 funding?

16 MR. AUTIO: Yeah, yeah. I've added that in
17 the class, once again, for Legislative funding to
18 help reduce the PCF's deficit. You know, I think the
19 problem that we've tried to address in the past with
20 the growing deficit remains. As we've seen, it's
21 still over \$90 million. I'm greatly concerned about
22 the ability to reduce that deficit and what it will
23 do to PCF participation. So it's my opinion that we
24 should include another request for Legislative
25 funding to reduce the deficit.

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1 CHAIR RITCHIE: And, I believe, Ms. Love,
 2 you made a comment at the very start about we're
 3 supplying legislators or something to the effect of
 4 addressing the increasing amount of debts that even
 5 though that money has been allocated by the
 6 Legislature, yet the deficit has increased. And I
 7 think that's something that they would like to have
 8 an answer from us. And so I think this asked for
 9 more money, but it doesn't address, you know, why,
 10 obviously, we need more money because the deficit is
 11 still there, but it does not address why the deficit
 12 is increasing in particular.
 13 VICE CHAIR LOVE: Well, I think that that
 14 is in this report higher up. Let me see if I can
 15 find it for you.
 16 CHAIR RITCHIE: Under the Current Deficit,
 17 it's addressed somewhere.
 18 VICE CHAIR LOVE: There we go. It's right
 19 there.
 20 CHAIR RITCHIE: But if I was a legislator
 21 and reading this, I don't know if I would be able to
 22 gather from that really the answer to that question,
 23 you know. The legislature put in more money.
 24 Elsewhere in here, there is -- we also say that there
 25 was better than expected results from the independent

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1 physicians as far as losses and were worse regards to
 2 the hospitals. But it still doesn't quite address,
 3 at least it doesn't seem like to me, why the PCF is
 4 increasing even though the legislature's put in \$62
 5 million in the last two years.
 6 MR. AUTIO: And, Chair Ritchie, you know,
 7 I'm happy to discuss these points. I think at that
 8 point, though, we're going to be moving into the
 9 discussion of what's going to be contentious with
 10 this meeting. So do we want to kind of finalize the
 11 work we've done, and then have that next discussion?
 12 CHAIR RITCHIE: And I'm afraid we might get
 13 into that, but I just wanted to address it with what
 14 we've already spoken to, that if there's anywhere
 15 else in here I'm missing, that we address that.
 16 So then with what we have already discussed
 17 to finalize the product, absent what was added within
 18 that section of the Current Deficit at the end of it,
 19 does anyone have any objections?
 20 MR. CLARK: Mr. Chair, Troy Clark again.
 21 Ms. Love, I found on the Pinnacle Actuarial
 22 Report, Page 6, the amount for the 75 percent
 23 confidence level is 20.9, that's two zero point nine,
 24 percent.
 25 VICE CHAIR LOVE: Thank you.

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1 CHAIR RITCHIE: Okay. Excellent.
 2 Then, Mr. Ward, would we want to vote on
 3 what we have already discussed, or just vote on the
 4 final total document?
 5 MR. WARD: I would just get through -- I
 6 think if you -- unless there's an objection to what
 7 you have done before or what you guys have agreed to,
 8 I would just keep moving through the document.
 9 CHAIR RITCHIE: Okay. That's what I
 10 thought. Thank you.
 11 So, again, though, with what we have
 12 already discussed so far, are there any additions
 13 subtractions, comments for the document, or is it
 14 ready to go except for this last part under the last
 15 part of the Current Deficit?
 16 Hearing none, then we're now down to, as I
 17 said, the section under the big table of the Patient
 18 Compensation Fund from 1986 through 2024 with all the
 19 reports and rate changes. And then under that, the
 20 section was added by Mr. Autio, as I understand. So,
 21 if you would, please present that
 22 MR. AUTIO: Mr. Chair, I've added these
 23 recommendations, and respectfully, I disagree with
 24 Ms. Love that these are a Medical Society wish list.
 25 In fact, these are recommendations that were directly

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1 taken from the prior Superintendent's final order on
 2 PCF surcharges which was in there on October 7 of
 3 2022. So this isn't a Medical Society wish list.
 4 These are recommendations taken from the
 5 Superintendent's prior order, and then it's taken
 6 virtually verbatim. Some of the sections, the
 7 statutory sections and subsections cited have changed
 8 because of amendments made to the Medical Malpractice
 9 Act in 2023, but this is taken pretty much verbatim
 10 from the Superintendent's order.
 11 As Ms. Love indicated -- and I agree with
 12 her -- that the purpose of this report is to advise
 13 the Legislature on major issues in the fund. And you
 14 know, it's interesting when you look at just the
 15 basic definition of "advise," that means to give a
 16 recommendation about what should be done. I don't
 17 think we, as an Advisory Board, are serving the
 18 Legislature well if we simply report that the fund is
 19 in bad shape. I think that this Board was created
 20 with nine members with expertise in this area to
 21 advise the Legislature, and that includes giving
 22 recommendations as to what should be done. We have
 23 seen over the last several years that despite \$77.5
 24 million of money that's been provided by the
 25 Legislature, we still have a deficit that's over \$90

<p style="text-align: right;">34</p> <p>1 million.</p> <p>2 So in my view, we need to provide the</p> <p>3 Legislature with recommendations as to what it could</p> <p>4 do to improve the financial status of the fund, and</p> <p>5 the recommendations provided by the Superintendent</p> <p>6 seem to make a lot of sense as to how the fund can be</p> <p>7 approved. And in my view, it does so while striking</p> <p>8 a balance between the interests of the hospitals,</p> <p>9 clinicians, and patients. The prior Superintendent</p> <p>10 and these recommendations did not suggest that we</p> <p>11 should reduce tax on what can be recovered. Instead,</p> <p>12 these are just changes to decrease what I see is the</p> <p>13 volatility of the fund to help stabilize the fund and</p> <p>14 reduce the deficit.</p> <p>15 So that's why I've proposed the inclusion</p> <p>16 of these recommendations to give the answers. And as</p> <p>17 Ms. Love indicated, you know, one of the questions</p> <p>18 that we all feel legislators getting is, you know,</p> <p>19 why does the deficit keep growing despite the</p> <p>20 infusion of money. This can provide some solutions</p> <p>21 for the Legislature. I think there's a great deal of</p> <p>22 frustration as to why that deficit keeps growing, and</p> <p>23 these recommendations, in my view, provide solutions,</p> <p>24 which is part of our role as advising.</p> <p>25 So I'd be happy to answer any questions</p>	<p style="text-align: right;">36</p> <p>1 section.</p> <p>2 MR. AUTIO: Mr. Chair, just before we have</p> <p>3 that vote, can I make a comment?</p> <p>4 CHAIR RITCHIE: Yes.</p> <p>5 MR. AUTIO: In my view we, in creating this</p> <p>6 report, are fulfilling our statutory duties. We are</p> <p>7 not -- we are no longer in the role of a hearing</p> <p>8 officer as we were in the Surcharge Rate Hearing. So</p> <p>9 the fact that we have not taken evidence on this</p> <p>10 specific point, to me there's no requirement that we</p> <p>11 take specific evidence on recommendations for making</p> <p>12 this report. Although that would be the case in our</p> <p>13 role as a hearing officer in proposing surcharge</p> <p>14 rates, that's certainly not a requirement in our role</p> <p>15 here today in creating a report of recommendations</p> <p>16 for the Legislature.</p> <p>17 And secondly, I would submit that we -- and</p> <p>18 I believe after these recommendations were made in</p> <p>19 2022, these recommendations were previously attached</p> <p>20 to the PCF Advisory Board's Report to the</p> <p>21 Legislature. So we included -- or the Board at the</p> <p>22 time included these as an attachment to the prior</p> <p>23 report, and really just putting them in the body will</p> <p>24 bring attention to these. So that's the only comment</p> <p>25 I have, but, you know, stand ready to take a vote on</p>
<p style="text-align: right;">35</p> <p>1 regarding my proposals here, but I do think it</p> <p>2 fulfills our role to advise the Legislature.</p> <p>3 CHAIR RITCHIE: Okay.</p> <p>4 MR. VARGAS: This is Ray Vargas.</p> <p>5 CHAIR RITCHIE: Thank you. Yes, Ray.</p> <p>6 MR. VARGAS: In my view, I think we're</p> <p>7 really stepping far outside of our role to make these</p> <p>8 recommendations because we have assumed the role of</p> <p>9 the trier of fact and the fact finder with respect to</p> <p>10 rates, and we had made recommendations based upon the</p> <p>11 evidence that we were presented. I think it would</p> <p>12 confuse the Legislature and misrepresent the fact</p> <p>13 that we have taken evidence on any of these issues</p> <p>14 when, in fact, we have not. We have undertaken no</p> <p>15 study. We have no idea what effect, if any, these</p> <p>16 proposals would make. And, unfortunately, I think</p> <p>17 this has become a gross politicization of this</p> <p>18 committee and stepping outside of our appointed role</p> <p>19 and our historical role.</p> <p>20 I know we have not been a committee for</p> <p>21 very long, but we have not stepped into this</p> <p>22 particular political foray, and I think it would be a</p> <p>23 very bad step to take and a slippery slope. And as a</p> <p>24 consequence, I make a motion to omit this section</p> <p>25 from the report and adopt the report without this</p>	<p style="text-align: right;">37</p> <p>1 it.</p> <p>2 MR. VARGAS: I would like to respond to</p> <p>3 that, if I could.</p> <p>4 CHAIR RITCHIE: Well, first off, let's keep</p> <p>5 this in order. Is there a second to that motion?</p> <p>6 VICE CHAIR LOVE: I'll second.</p> <p>7 CHAIR RITCHIE: Okay. So we're in</p> <p>8 discussion now. Go ahead, please.</p> <p>9 MR. VARGAS: Thank you. The fact that it</p> <p>10 was already attached means that he would be surplusd</p> <p>11 at this point and not necessary. And second, if we</p> <p>12 are not going to take evidence or do a study on this,</p> <p>13 then we can put any type of recommendation any of us</p> <p>14 want to make up. For example, I could insist that we</p> <p>15 have yet another way to decrease the surplus is to</p> <p>16 simply abolish the fund completely.</p> <p>17 And, again, if we take this step, it is a</p> <p>18 slippery slope because the next step is to say, well,</p> <p>19 some members think that there should be no Patient</p> <p>20 Compensation Fund for the Medical Malpractice Act.</p> <p>21 It's a politicization of this committee and it's a</p> <p>22 step that we should very carefully take, if we're</p> <p>23 going to take it. And I don't think we have a quorum</p> <p>24 on this, and I would very vehemently recommend that</p> <p>25 we omit this section, and let's vote on it.</p>

<p style="text-align: right;">38</p> <p>1 CHAIR RITCHIE: Other comments? 2 MR. CLARK: Mr. Chair, this is Troy Clark. 3 I guess I would ask the question to the group that 4 the paragraphs beginning under the "Current Deficit," 5 I think the first paragraph just kind of states what 6 the facts are. But the next paragraph in the 7 included table attempts to try to explain to the 8 Legislature what the causes or underlying drivers for 9 the expense of the Patient Compensation Fund are. We 10 talk about a -- let me pick my words here -- we talk 11 about an implication of the previous Superintendents 12 of Insurance assessing a rate lower than was 13 recommended by the actuarial reports through the 14 table over the years as a cause of the shortfall or 15 the deficit. 16 However, that is only one piece of what the 17 deficit is. As I look at it, I read, for the most 18 part, Mr. Autio's recommendations are other drivers 19 that drive the outflows of funds from the PCF that 20 are operational implications. I will say from this, 21 there are two in here that I think could be argued 22 that prove out over time -- they are listed as 41-5-7 23 and 41-5-25 -- both have to do with lump summing of 24 expenses. There could be an argument that that is a 25 net neutral position to the PCF. It is not an</p>	<p style="text-align: right;">40</p> <p>1 deficit in the same means that the table above of 2 Undersetting Rate Charges, if we want to use that 3 term, compared to the actuarial recommendations. 4 I think those are all contributing factors, 5 and I would make -- I would strongly encourage that 6 if we're going to include one, we include all. I 7 think to include one area of the cause of the deficit 8 without the others that could impact the changes is 9 not a political statement. It's a statement of this 10 Advisory Board in regards to the fund if our job is 11 to make a recommendation of how do we make this fund 12 sustainable and work, those are the realities, those 13 are the issues that are driving it 14 MR. VARGAS: Mr. Chairman, this is Ray 15 Vargas. 16 CHAIR RITCHIE: Yes, sir. 17 MR. VARGAS: I think in response to that I 18 would say that the table is that historical data 19 where these other elected drivers have no such 20 supporting data. They just think there are 21 assumptions that are being made. So I don't view 22 those as the same thing when one is actual, factual 23 data and another is this is what we think. And if 24 you want to use the definition of occurrence as an 25 example, I understand that there are many cases, and</p>
<p style="text-align: right;">39</p> <p>1 operational implication. You can also argue the 2 other side that says, well, it is because you're 3 making an estimate on the front end versus actual 4 expense on the back end. 5 The others all seem to me to be drivers 6 just like the table above. Up here are things that 7 cause the deficit. As you go through each of the 8 points that are in there -- and I'm not going to go 9 through each one -- but I'll go through the 10 definition of occurrence. If a single event is 11 defined as multiple occurrences, that impacts the 12 outflow of funds from the fund that we are sitting 13 here -- we are not a fiduciary Board, but we are an 14 Advisory Board -- in the same means to look and say 15 what are causing the outflows from the fund, how 16 occurrence is defined and in settlements and in 17 judgments impacts those outflows. The same thing on 18 the next line on paying out based on charges versus 19 negotiated rates. That has a direct impact on the 20 fund. 21 So I would -- and I can go through the 22 others. I've highlighted the two that I think could 23 be possibly viewed as neutral, but the rest have a 24 direct impact on outflows of the fund, outflows of 25 performance of the fund which contributes to the</p>	<p style="text-align: right;">41</p> <p>1 some of which the Superintendent's Office is a part 2 of where the courts have yet to determine what an 3 occurrence is and whether multiple occurrences will 4 be allowed. Those are before the New Mexico courts. 5 We may someday have an answer to that 6 question, and when we do, then we will have data to 7 point to. But for right now, we're making some 8 pretty broad assumptions. There's data, and then 9 there is what we think is data. And then at this 10 point, the charger data, the rest is what anyone -- 11 and I think Mr. Clark made the point himself where he 12 said, You could argue the other side. And, again, 13 that's not data. That's not fact. And I think it's 14 a dangerous move to include these, and, you know, 15 that means if the Board needs to remove the data as 16 well, then perhaps that needs to happen. But I would 17 like to vote on my motion, if I could, please. 18 CHAIR RITCHIE: Well, we're still in 19 discussion. 20 I have a question for you, Mr. Vargas. So 21 that 41-5-6B, "Change Consumer Price Index for 22 consumers to different medical sub category or plus 23 one increase until PCF reaches solvency," do you not 24 find that factual enough? I mean, that the CPI 25 increasing annually, the cap will, obviously,</p>

<p style="text-align: right;">42</p> <p>1 increase the costs to the fund. So, I mean, 2 that's --</p> <p>3 MR. VARGAS: Again, that just means that 4 you're assuming that every settlement or judgment is 5 going to be a cap judgment. The fact of the matter 6 is, every plaintiff has to prove their damages, and 7 it could simply be that the vast majority of those 8 are well below the cap, and therefore, not increasing 9 any burden on the fund. This is why we need data.</p> <p>10 CHAIR RITCHIE: Except that is that 11 information not used to set rates, that that cap 12 going up is used to set the rates that are charged? 13 So --</p> <p>14 MR. VARGAS: I don't think that's correct. 15 I think it's the actual claims experience that drives 16 the rates.</p> <p>17 CHAIR RITCHIE: I believe it is -- we don't 18 have Ms. Luera. Do we have anyone that could answer 19 that because I believe --</p> <p>20 MS. FETHEROLF: She would be the best one 21 to answer that, honestly.</p> <p>22 CHAIR RITCHIE: Yeah.</p> <p>23 MS. FETHEROLF: Yeah.</p> <p>24 CHAIR RITCHIE: So to my knowledge -- I 25 mean, and it's even said in here.</p>	<p style="text-align: right;">44</p> <p>1 take a call. So we can get that information, 2 hopefully, very soon. However, you know, I believe 3 that that is fairly straightforward. And if we go 4 back through the actuary's report, he states that 5 specifically, that there is an amount recommended for 6 the increase in rates that is attributed to the 7 increase in the caps from the CPI, as I recall. I 8 believe we can find that if we look for it in the 9 report, if that is there. So that's at least one 10 part of this that certainly is factual.</p> <p>11 So any more discussions of perhaps specific 12 parts of this?</p> <p>13 VICE CHAIR LOVE: This is Kathy Love. I 14 just want to highlight what Ray has already stated, 15 which is that there are a number of things that could 16 be done related to the Patient Compensation Fund that 17 this Board could dive into including how some of the 18 discussions are conducted with Integrion in the room, 19 how the policies have affected litigation in reality 20 on these cases. And I think that if we start getting 21 into what one side thinks should happen with the Act 22 versus what another side thinks should happen with 23 the Act. We're just getting into personal opinions 24 that have not been presented before this Board and 25 are outside of the purview of this Board. And I</p>
<p style="text-align: right;">43</p> <p>1 MR. MARTINEZ: (Inaudible crosstalk.) 2 VICE CHAIR LOVE: (Inaudible crosstalk.) 3 CHAIR RITCHIE: I'm sorry. I don't know 4 who that is.</p> <p>5 MR. AUTIO: Mr. Martinez, if you could mute 6 yourself.</p> <p>7 VICE CHAIR LOVE: (Inaudible crosstalk.) 8 CHAIR RITCHIE: Please mute yourself if 9 you're not speaking.</p> <p>10 I believe these rates cannot be set on 11 experience because they would be in arrears by at 12 least three years. If these rates are set by an 13 actuary on possibilities, and that is in part driven 14 by the possibilities of a maximum settlement. So I 15 believe the rates are, in fact, set by -- in part by 16 the caps, absolutely.</p> <p>17 MR. VARGAS: Do we have an answer to that? 18 Because it sounds like we don't. It sounds like we 19 have a disagreement about our beliefs, and we don't 20 have the actual answer.</p> <p>21 CHAIR RITCHIE: We just don't have the 22 person here to answer it right now.</p> <p>23 MS. FETHEROLF: She had to take a call that 24 could not be avoided.</p> <p>25 CHAIR RITCHIE: Ms. Luera had to leave to</p>	<p style="text-align: right;">45</p> <p>1 think that it's a real problem, as Ray said a 2 slippery slope, to start adding those things.</p> <p>3 If we were to add what some think should 4 happen with the Patient Compensation Fund, some 5 things that just simply are not sustainable and 6 should be abolished entirely, and that patients 7 aren't being treated fairly as part of this process 8 by continuing to reduce the fair recovery that's 9 already been limited by the Medical Malpractice Act. 10 And so I just think we're getting into issues that 11 should be presented to the Legislature and discussed 12 in terms of policies, and they're not appropriate for 13 this Board.</p> <p>14 CHAIR RITCHIE: Can you think of a way, 15 though, for us to complete our responsibility to 16 advise the Superintendent as fiduciary of the Board, 17 to complete that responsibility in that we have 18 addressed the -- basically the intake, the rate 19 setting and the intake of funds to keep the fund 20 solvent? We have addressed that, but, you know 21 it's -- there's two sides to it. You also have to 22 address the outflow from the fund. And so how do we 23 address that? The only way we've addressed it so 24 far -- and we have addressed it a little bit, so it's 25 not like we have ignored it and we've acknowledged</p>

<p style="text-align: right;">46</p> <p>1 that we should address it is we've addressed it in 2 the Batch Claims and spoken of how, you know, they 3 should not occur for independent practitioners, and 4 we shouldn't have to pay for extra insurance for 5 that, et cetera.</p> <p>6 So we have established that we can address 7 that part of it. Then how do we address it more 8 fully to decrease the outflow? Because that is also 9 a very important part of keeping the fund solvent and 10 the fiduciary responsibility of the Superintendent of 11 Insurance.</p> <p>12 VICE CHAIR LOVE: Chairman Ritchie, this is 13 Kathy Love again. First of all, I think that the 14 evidence that was presented to this Board indicates 15 that the claims experience has remained steady in 16 terms of the numbers of claims, and there was some 17 evidence that the severity of claims, meaning how 18 much is paid out -- and first, keep in mind these are 19 averages as well. So these averages could be thrown 20 off by a couple of particularly severe cases.</p> <p>21 So we don't have full evidence in front of 22 us about the severity of claims, but we know that the 23 numbers of claims through the years have remained 24 steady. The payouts, the severity, has increased to 25 some extent, but we don't know -- we don't have the</p>	<p style="text-align: right;">48</p> <p>1 Kane. Thank you.</p> <p>2 SUPERINTENDENT KANE: Okay. So I'm 3 somewhat new to this, as you all know. I guess I'd 4 say one thing. You do make a terrible statement 5 about mismanagement by the former Superintendent. I 6 understand the fact is that they didn't accept the 7 actuarial recommendation. I don't know if that goes 8 to the level of mismanagement because you really 9 don't understand what some of the reasoning was. 10 I've been told by many people a lot of this was the 11 provider crisis and trying to keep providers in the 12 state. I don't know if you had to characterize it 13 that way, but it's certainly a fact that they -- that 14 the former Superintendents did not uphold the 15 recommendation. I guess I think that's rather a 16 harsh judgment not having my predecessors here who 17 did wonderful.</p> <p>18 So that's one piece. I think it -- this is 19 a very complicated situation as you-all know if you 20 participate and it's on a daily basis. I think 21 whatever facts you put in, I think you might want to 22 say there are many any other factors that are 23 involved here that the Legislature has to handle, but 24 this is an incredibly comprehensive report that's 25 very impressive, but there are many -- there are</p>
<p style="text-align: right;">47</p> <p>1 evidence before us -- about whether or not that 2 severity is attributable to the higher cost of 3 living, increased salaries which would be paid out of 4 lost income, and increased medical expenses, which 5 everybody knows is a major issue all across the 6 nation.</p> <p>7 So we don't really have any evidence before 8 us to show what is the reason for those increased 9 severities. But what we do know is that when the 10 actuary does their risk assessment, they evaluate the 11 likely payouts that will have to be paid. And in 12 order to cover those likely payouts, enough money has 13 to be brought in, and that simply has not happened 14 over many, many, many years. That is a really simple 15 reason for the increasing deficit. It's not that 16 more is being paid out necessarily. We just don't 17 have that evidence before us. And I think we have 18 all of this information presented in the letter about 19 the data that shows the claims experience as 20 presented to the Board acting as a hearing officer as 21 presented through the actuaries.</p> <p>22 SUPERINTENDENT KANE: This is Alice Kane. 23 I don't know if I'm permitted to speak in this 24 meeting. I don't know the protocol.</p> <p>25 CHAIR RITCHIE: I welcome you to speak, Ms.</p>	<p style="text-align: right;">49</p> <p>1 other factors that impact the situation. So I don't 2 know how you want to handle that, but that's just 3 something that -- a statement I would like to make.</p> <p>4 CHAIR RITCHIE: Okay. Thank you. Thank 5 you very much.</p> <p>6 MR. CLARK: Mr. Chair?</p> <p>7 CHAIR RITCHIE: Yes.</p> <p>8 MR. CLARK: This is Troy Clark. Given that 9 I was reading this on the fly as we were going, I see 10 one area. I don't know if it solves all the concerns 11 raised by Ms. Love and Mr. Vargas, but the last 12 sentence of the first paragraph under the table which 13 currently reads, "The Advisory Board encourages the 14 Legislature to adopt the Superintendent's 15 recommendation." I would propose, based on my 16 previous comments, if we are calling out causes of 17 performance of the deficits, I do believe that 18 writing and encouraging the Legislature to adopt is a 19 political statement as opposed to a presentation of 20 fact.</p> <p>21 I will continue to disagree with 22 Mr. Vargas, a friendly disagreement, that the items 23 listed below are not fact. It's pretty clear that if 24 you raise the CPI at a higher level than others, that 25 has a negative impact on the fund. If you pay out of</p>

50	<p>1 charges based -- as opposed to normal reimbursable</p> <p>2 rates, that has a negative impact on the fund.</p> <p>3 I would make the motion to alter that last</p> <p>4 sentence to say, "The Advisory Board identifies to</p> <p>5 the Legislature the Superintendent's recommended</p> <p>6 changes to the sections of the Medical Malpractice</p> <p>7 Act identified below which would improve the</p> <p>8 operation of the PCF." Keep it on a factual basis.</p> <p>9 Here are the things we talk about above,</p> <p>10 the changes that were either made consistent or</p> <p>11 inconsistent with the actuarial recommendations, and</p> <p>12 here are the other items that have an impact on the</p> <p>13 fund as opposed to encouraging adoption. I do</p> <p>14 believe we keep that. I don't know if that's viewed</p> <p>15 as a friendly amendment for Mr. Autio or not, but I</p> <p>16 think that would be consistent with our role of the</p> <p>17 Advisory Board of the fund of what are the areas that</p> <p>18 implicate and cause performance of the fund to</p> <p>19 improve or degrade and call those out to make it</p> <p>20 aware of, here are the factors that drive that</p> <p>21 change.</p> <p>22 MR. VARGAS: Mr. Chair, this is Ray Vargas.</p> <p>23 I have a motion pending, it was seconded, so I would</p> <p>24 like to call the question.</p> <p>25 CHAIR RITCHIE: Yeah, that's fine. That is</p>	52	<p>1 Mr. Autio.</p> <p>2 MR. AUTIO: No.</p> <p>3 CHAIR RITCHIE: Mr. Dekleva.</p> <p>4 MR. DEKLEVA: No.</p> <p>5 CHAIR RITCHIE: Mr. Martinez.</p> <p>6 MR. MARTINEZ: No.</p> <p>7 CHAIR RITCHIE: Mr. Spitzer.</p> <p>8 MS. SPITZER: Yes.</p> <p>9 CHAIR RITCHIE: Thank you.</p> <p>10 Ms. Stevens.</p> <p>11 MS. STEVENS: Yeah.</p> <p>12 CHAIR RITCHIE: That's a "yes?"</p> <p>13 Mr. Vargas.</p> <p>14 MR. VARGAS: Yes.</p> <p>15 CHAIR RITCHIE: And Chairman Ritchie is a</p> <p>16 no. That's five "noes" to four "yesses." So that</p> <p>17 motion does not pass.</p> <p>18 So we are still then back to accepting the</p> <p>19 report either with the -- with this inclusion or with</p> <p>20 this inclusion as amended. I believe now is time to</p> <p>21 make the motion to amend.</p> <p>22 MR. CLARK: This is Troy Clark, Mr. Chair.</p> <p>23 I will now make my motion. I apologize for getting</p> <p>24 out of order.</p> <p>25 Again, to the last sentence of the first</p>
51	<p>1 in order. So we can call the vote, and then we will</p> <p>2 address that later depending on the outcome of the</p> <p>3 vote.</p> <p>4 And so we do not have Ms. Luera here to go</p> <p>5 through the roll.</p> <p>6 Do you have the roll of all the members?</p> <p>7 MR. DEKLEVA: It would help, I think, Mr.</p> <p>8 Chairman -- this is Mike Dekleva -- if we are</p> <p>9 reminded what Ray's motion was, and then, of course,</p> <p>10 we could get to Troy's motion because I'm now lost.</p> <p>11 CHAIR RITCHIE: Yes. Thank you. My</p> <p>12 apologies. Excellent point. So please restate, yes,</p> <p>13 the motion on the floor.</p> <p>14 MR. VARGAS: The motion is to adopt the</p> <p>15 report as amended today without Mr. Autio's addition</p> <p>16 regarding those recommendations.</p> <p>17 CHAIR RITCHIE: Okay. And that is how I</p> <p>18 understand it as well.</p> <p>19 Then for the roll call, then let's go down</p> <p>20 the roll call for the vote. Vice Chair Love.</p> <p>21 VICE CHAIR LOVE: Yes.</p> <p>22 CHAIR RITCHIE: So yes to adopt without the</p> <p>23 addition of Mr. Autio's addition.</p> <p>24 Mr. Clark.</p> <p>25 MR. CLARK: No.</p>	53	<p>1 paragraph following the table, amending that sentence</p> <p>2 to read, The Advisory Board identifies to the</p> <p>3 Legislature the Superintendent's recommended changes</p> <p>4 to the sections of the Medical Malpractice Act</p> <p>5 identified below which would improve the operation of</p> <p>6 the PCF.</p> <p>7 MR. AUTIO: And, Mr. Chair, I don't have</p> <p>8 any objection to that proposed amendment. I would</p> <p>9 propose that we indicate however we see fit that this</p> <p>10 was the former Superintendent.</p> <p>11 CHAIR RITCHIE: Okay.</p> <p>12 MR. AUTIO: I just don't want to attribute</p> <p>13 these changes to the current Superintendent because</p> <p>14 they are not her recommendations, so however we want</p> <p>15 to accomplish that.</p> <p>16 CHAIR RITCHIE: So say "Superintendent</p> <p>17 Toal" or "former Superintendent," "past</p> <p>18 Superintendent."</p> <p>19 MR. AUTIO: Former Superintendent, I think,</p> <p>20 works.</p> <p>21 CHAIR RITCHIE: Okay. So we don't have --</p> <p>22 MR. CLARK: Mr. Chair, I think --</p> <p>23 CHAIR RITCHIE: We need to have that</p> <p>24 written out for everyone to see.</p> <p>25 MR. CLARK: I would say I think we need to</p>

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1 include that in the preceding sentences. I left it
 2 as is, and my recommendation is the previous
 3 sentences refer to that Superintendent's final
 4 order --
 5 CHAIR RITCHIE: Right.
 6 MR. CLARK: -- so we've got to be
 7 consistent all the way through.
 8 CHAIR RITCHIE: So, Ms. Love, do you want
 9 to go back into this editing to show what these
 10 changes would be on this section?
 11 VICE CHAIR LOVE: First of all, if we could
 12 have Troy tell me the language exactly again so that
 13 I can write it down. And I want to make a comment,
 14 if I may.
 15 CHAIR RITCHIE: Certainly. We need this
 16 first, and then we can have a discussion, absolutely.
 17 MR. CLARK: I will do my best. I will try
 18 and do it the way I did it here. So "The Advisory
 19 Board" is the first three words. Leave those.
 20 Scratch the word "encourages" and replace that with
 21 "identifies to" leave the words "the Legislature,"
 22 scratch the words "to adopt." Then go down to the
 23 last phrase of that sentence which currently says,
 24 "which will improve," scratch the word "will" and
 25 replace it with the word "would." And I believe that

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1 accomplishes what I was making a recommendation for.
 2 CHAIR RITCHIE: Now, as part of that, do
 3 you also --
 4 VICE CHAIR LOVE: Let me read it. "The
 5 Advisory Board identifies to the Legislature the
 6 Superintendent's recommended changes to the sections
 7 of the Medical Malpractice Act identified below which
 8 would improve the operation of the PCF."
 9 MR. CLARK: Yes, that is consistent with my
 10 recommendation.
 11 VICE CHAIR LOVE: And I think you, at some
 12 point, said, "former Superintendent?"
 13 MR. CLARK: Yes.
 14 CHAIR RITCHIE: As part of the discussions,
 15 we want to put "former Superintendent" throughout
 16 that paragraph. Whenever "Superintendent" is used,
 17 replace that with "former Superintendent".
 18 MR. AUTIO: I don't know if we need to
 19 replace that because it's all predicated on the
 20 Superintendent's prior final order which is an
 21 accurate statement. I mean, if you want it to be
 22 "former" throughout, that's fine. But I, just in
 23 this last sentence, I want to make it clear that, you
 24 know, this was the former Superintendent.
 25 CHAIR RITCHIE: True, because everywhere

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1 else it says the order ended October of 2022, which
 2 would have been the former Superintendent.
 3 SUPERINTENDENT KANE: Yeah. I'd appreciate
 4 if you make it former to be consistent, please.
 5 Thank you.
 6 CHAIR RITCHIE: You're welcome. So,
 7 Ms. Love, do you have all that?
 8 VICE CHAIR LOVE: Yes.
 9 CHAIR RITCHIE: Excellent.
 10 VICE CHAIR LOVE: I think it shows up one,
 11 two, three, four times in that paragraph. If you
 12 want to ask for a second on that and then have
 13 discussion?
 14 CHAIR RITCHIE: Yes, it is four times.
 15 Then, yes, may I hear a second now on that motion.
 16 MR. AUTIO: I second.
 17 CHAIR RITCHIE: Okay. So yes, open to
 18 discussion. Ms. Love, I think you're ready.
 19 VICE CHAIR LOVE: Okay. Well, I just want
 20 to make clear that I will not sign off on a report
 21 that includes these recommendations as stated. I
 22 will not agree to have my name appear on this letter
 23 to the Legislature. And the only alternative that I
 24 can think of that would be an attempt at a
 25 conciliatory way of handling this would be to, as

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1 this is the very end, that indicates that certain
 2 members of the Board can be identified by name, if
 3 you would like, would like to make these
 4 recommendations to the Legislature and attach this as
 5 an exhibit to the report indicating also that four
 6 members of this Board do not agree that this should
 7 be included in the report and just leave it as an
 8 attachment.
 9 That's the only thing that I think that I
 10 would agree to on this. Otherwise, I'm inclined
 11 to -- well, I'll just say that. I will not allow my
 12 name to go on this report if this is included.
 13 CHAIR RITCHIE: Okay. Any other comments,
 14 discussions? So, first off, then we have to have a
 15 vote.
 16 MR. VARGAS: Mr. Speaker, this is Ray
 17 Vargas. I was having trouble with my computer.
 18 CHAIR RITCHIE: Oh, sorry.
 19 MR. VARGAS: That's all right. I would
 20 like to echo Ms. Love's comments. I likewise would
 21 not agree to have my name on a report that contains
 22 these recommendations unless those qualifiers and
 23 attachment as an exhibit are made.
 24 CHAIR RITCHIE: Okay. Mr. Ward.
 25 MS. STEVENS: This is Ellen. I'm with Ray

1 and Kathy Love.

2 CHAIR RITCHIE: Okay.

3 Mr. Ward, do you have any input or words of
4 wisdom here for a Board representative?

5 MR. WARD: Yes, I do. The last time I
6 dealt with this issue was probably, man, 20 years
7 ago, and the approach that Ms. Love is suggesting is
8 one that is definitely seen in practice in scenarios
9 where a Board does not have a unanimous voice. And I
10 have seen reports indicate the voting, who voted in
11 what way, and I have seen the inclusion of minority
12 reports as well.

13 So in my view, that's something that the
14 Legislature is used to seeing, and I think that it's
15 consistent with these sort of statutory schemes.

16 CHAIR RITCHIE: Okay. As I see it then, we
17 can hold the vote now, obviously, on whether we're
18 going to accept it or not because that will trigger
19 then the minority possibly wanting to do something
20 different, and then we can vote on that, discuss
21 that, and vote on that.

22 But first we need to vote on the report as
23 a whole. So I believe we have that motion up before
24 us, the report on the vote, the report as a whole, or
25 do we?

1 VICE CHAIR LOVE: No. Thanks.

2 CHAIR RITCHIE: Okay. All right.

3 So this is just a vote just on changing the
4 wording in that paragraph. It's not a vote yet on
5 the final submission to the Legislature or any other
6 changes to that submission.

7 So Ms. Love.

8 VICE CHAIR LOVE: I'm going to abstain on
9 this section on voting upon any changes to this
10 section.

11 CHAIR RITCHIE: Abstain.

12 Mr. Clark.

13 MR. CLARK: Yes.

14 CHAIR RITCHIE: Mr. Autio.

15 MR. AUTIO: Yes.

16 CHAIR RITCHIE: Mr. Dekleva.

17 MR. DEKLEVA: Yes.

18 CHAIR RITCHIE: Mr. Martinez.

19 UNIDENTIFIED SPEAKER: This is Rachel
20 (inaudible.) I'm with New Mexico Certified Nurse
21 Practitioner Counsel. He's our representative. He
22 had to pop off to go see a patient, but he had asked
23 me to hop on. That his vote for this was no. I'm
24 not sure if I'm allowed to do that, but I did want to
25 communicate that because he asked me to hop on longer

1 VICE CHAIR LOVE: I'm sorry. I have that
2 there was a pending motion by Troy to change some
3 language to that paragraph before the
4 recommendations.

5 CHAIR RITCHIE: Right. I'm sorry. That is
6 correct. That is actually the motion that is before
7 us.

8 So then hearing no further discussion on
9 this matter, we'll vote on the motion just to change
10 the wording in that first paragraph at the -- on the
11 last sentence and about the former Superintendent,
12 so --

13 VICE CHAIR LOVE: And may I also ask a
14 question of counsel this word. My understanding from
15 the last meeting that we had is that proxies are not
16 acceptable; is that right?

17 MR. WARD: Yes. So there isn't really a
18 proxy exception under the Open Meetings Act. So, you
19 know, the Open Meetings Act requires, you know, a
20 quorum, and the quorum is based on personal
21 participating in the meeting. And there isn't sort
22 of this motion that there can be a -- somebody could
23 provide a proxy for a vote.

24 CHAIR RITCHIE: Okay.

25 Anything more, Ms. Love?

1 to go see a patient.

2 CHAIR RITCHIE: Actually, that was the
3 discussion we just had that you cannot have a
4 discussion.

5 UNIDENTIFIED SPEAKER: I know. Okay.

6 CHAIR RITCHIE: Mr. Spitzer.

7 MS. SPITZER: No.

8 CHAIR RITCHIE: Ms. Stevens.

9 MS. STEVENS: No.

10 CHAIR RITCHIE: Mr. De Vargas.

11 MR. VARGAS: No.

12 CHAIR RITCHIE: Chair Ritchie would be a
13 yes.

14 So with the abstention, that's still four
15 "yesses" to three "noes," and so the wording would be
16 changed. So the wording is now changed to now
17 discuss the full submission to the Legislature. A
18 motion can be made, Ms. Love, or someone, a motion
19 can be made on a way to alter that submission, and I
20 think that would be in order now.

21 So is there -- first off, we need a motion
22 to submit what's here, and then we can have a
23 discussion and any motions to amend it. So is there
24 a motion, first off, to submit what we have now with
25 the changed wording?

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1 MR. AUTIO: So moved.
 2 CHAIR RITCHIE: And a second?
 3 MR. CLARK: I second that.
 4 CHAIR RITCHIE: Okay.
 5 VICE CHAIR LOVE: What's the motion?
 6 CHAIR RITCHIE: The motion is to submit
 7 what we have before us with the changed wording. Now
 8 the floor is open to discussion and possibly
 9 amendments to change the submission, you know, with
 10 some of the things that Mr. Ward said.
 11 MR. CLARK: Ms. Love, this is Troy again.
 12 Could you restate your recommendation or what you
 13 were starting to recommend before we got back into
 14 voting on the language itself on something to the
 15 effect of moving it to an exhibit?
 16 VICE CHAIR LOVE: Sure. My suggestion was
 17 that -- well, what I'm saying is that I will not
 18 agree to sign off on this report. I would agree to
 19 sign off on the report as it's written with all of
 20 Mr. Autio's recommendations pulled out of it,
 21 attached as an exhibit, and where it makes clear who
 22 wants to make those recommendations from the Board,
 23 and those of us who do not want to make those
 24 recommendations.
 25 MR. CLARK: Point of clarification for

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1 Ms. Love. Would you also then -- are you
 2 recommending only pulling out Mr. Autio's
 3 recommendations and not the second paragraph and
 4 associated table, or would you remove all of that?
 5 VICE CHAIR LOVE: I'm sorry. The second
 6 paragraph and associated table.
 7 MR. CLARK: Yeah. So the paragraph that
 8 starts, "The Board found that the deficit" and then a
 9 parenthetical and the associated table, would all of
 10 that go to the addendum or exhibit or just the -- I
 11 guess I'm trying to figure out how this would be
 12 split, if it would be split at all.
 13 VICE CHAIR LOVE: My suggestion is just to
 14 take out everything that we still have under the
 15 table that shows what was -- the table that shows
 16 what was recommended by the actuary in terms of
 17 surcharge increases and what was actually
 18 implemented. I would propose that we take out all of
 19 the edits in the paragraphs below that that go
 20 through the paragraph, "Lastly, the Legislature
 21 should" blah, blah, blah.
 22 And then I would also propose to take out
 23 the last paragraph where the Board asks the
 24 Legislature to appropriate more funding, take both of
 25 those sections, drop it into an exhibit, make it

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1 clear who and what their association is is
 2 recommending those changes, who does not agree with
 3 those changes, or that those changes are appropriate
 4 for this letter to the Legislature and then accept
 5 the rest of it as is.
 6 MR. CLARK: Okay.
 7 VICE CHAIR LOVE: But I'm happy to have a
 8 vote on the pending motion.
 9 MR. CLARK: One more follow-up point of
 10 clarification, but I know we put this off earlier.
 11 Can you help me understand -- are you in opposition
 12 to asking the Legislature for additional funding? Is
 13 that why you want that last paragraph removed as
 14 well?
 15 VICE CHAIR LOVE: Well, I opposed the Board
 16 asking for that in this setting this year.
 17 Personally, if a legislator were to ask me whether
 18 there should be more funding to the PCF, I probably
 19 would say that I'm not opposed it, but I don't think
 20 it goes into this report.
 21 CHAIR RITCHIE: Well, now, see, that's not
 22 what's before us.
 23 VICE CHAIR LOVE: What's not before us?
 24 CHAIR RITCHIE: Well, when we said that we
 25 would address all of the report except for the

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1 section by Mr. Autio under the Current Deficit, that
 2 last section that you were just referring to is under
 3 Independent Outpatient Healthcare Facilities, and at
 4 the very end, that is not included. So we have
 5 accepted that by vote so far.
 6 MR. AUTIO: And, Mr. Chair, in all fairness
 7 to Ms. Love, I think it was somewhat vague. I think
 8 there easily could have been an understanding that we
 9 were voting on the report besides all of the
 10 amendments that I made. So I don't know if we've
 11 accepted that last paragraph, in all fairness to
 12 Ms. Love, if there was confusion there.
 13 VICE CHAIR LOVE: And thanks for that,
 14 Nick. I have not accepted that in my editing. My
 15 understanding was that that was part of the
 16 discussion that goes along with the other sections on
 17 Pages 5 and 6.
 18 CHAIR RITCHIE: Okay. Well, with that
 19 understanding then, as long as everyone on the Board
 20 has that understanding, then we can address that
 21 sentence or a couple of sentences along with all that
 22 above.
 23 So is Mr. Martinez on?
 24 UNIDENTIFIED SPEAKER: No, he's not. I'm
 25 trying to get him back on.

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1 CHAIR RITCHIE: Because as it stands, it
 2 appears we, more than likely, would just have a tie
 3 vote and not get anywhere.
 4 And so, Mr. Ward, if he cannot get back --
 5 right back on, could we then continue this meeting,
 6 not end it -- I realize we can't do that with the
 7 Opening Meetings Act -- but continue it very shortly
 8 after this at a time that we can all be here to vote?
 9 MR. WARD: Yes, you could do it that way.
 10 So what is the particular vote that you're wanting
 11 Mr. Martinez to take action on?
 12 CHAIR RITCHIE: Well, I think it's going to
 13 be on including everything as it is in the report or
 14 including it with a minority stance --
 15 MR. WARD: A minority stance?
 16 CHAIR RITCHIE: -- in some fashion. And
 17 now, we could discuss the fashion of that minority
 18 stance right now, and see if Mr. Martinez can come
 19 on.
 20 MR. WARD: Yeah. I would say that the best
 21 practice in this situation is that since he
 22 participated in some of the vote would probably be to
 23 see if he would participate in this discussion, but I
 24 think really it's the Board's discretion about how
 25 they wanted to deal with this.

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1 I do think that this is just a reminder
 2 that if a member isn't able to stay through the
 3 entire meeting, they should announce that so that
 4 that could be taken into consideration on the voting.
 5 CHAIR RITCHIE: Correct.
 6 VICE CHAIR LOVE: But in my understanding,
 7 that's not what the vote currently is. Chairman
 8 Ritchie, I didn't hear any motion on how the minority
 9 vote should happen. If you would like to entertain a
 10 motion, I can propose a motion to deal with that.
 11 CHAIR RITCHIE: Well, that was my point.
 12 MS. LUERA: He's back on. It looks like
 13 he's back on. Mr. Martinez is back on. But as I
 14 believe that we could possibly make it an order. I'm
 15 not sure how people might be comfortable with how the
 16 minority portion was done. I do not wish to have the
 17 minority not have a voice here. And so, for
 18 instance, everyone not voting for it, just refuse to
 19 sign it, I'm not sure that that indicates a very
 20 well-functioning Board.
 21 MR. WARD: Well, I can speak to this issue.
 22 I think that the easiest thing is if there's going to
 23 be a minority report, which is totally appropriate,
 24 then the only thing that happens is that the minority
 25 prepares whatever they want to attach as that part of

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1 the report. So all that's happening is you're making
 2 it -- you know, you're agreeing to a minority report,
 3 and then whatever the minority chooses to include as
 4 part of that report is what gets on there.
 5 CHAIR RITCHIE: Okay. And that was my
 6 question -- was going to be a question to you is who
 7 decides that. And the minority can do it any way
 8 they want to is what you're saying?
 9 MR. WARD: Right.
 10 CHAIR RITCHIE: All right.
 11 MR. WARD: Correct. They just attach
 12 whatever it is that they want to say as part of their
 13 opposition to a majority vote.
 14 CHAIR RITCHIE: Okay.
 15 VICE CHAIR LOVE: Can I make a motion while
 16 there's already a motion pending?
 17 CHAIR RITCHIE: Only for an amendment or to
 18 call the vote, I believe.
 19 MR. CLARK: Is there a motion pending?
 20 CHAIR RITCHIE: I believe there's a -- yes,
 21 one of you guys made one, seconded it, motion to
 22 second the report, I thought --
 23 MR. AUTIO: Yes.
 24 CHAIR RITCHIE: -- as amended.
 25 MR. AUTIO: Yes, that's been --

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1 CHAIR RITCHIE: Yes, I believe that is
 2 pending. You can make a motion to an amendment. You
 3 know, I'm open to hearing a comment by you, Ms. Love,
 4 if you have one.
 5 VICE CHAIR LOVE: So whoever made the
 6 pending motion could withdraw that. And if that were
 7 done, the motion that I would make would be to move
 8 all of the language that's in question on which there
 9 are four "no" votes, to an exhibit that we attach to
 10 this letter, and add a sentence at the bottom of the
 11 report after the paragraph that says, "The
 12 Superintendent of Insurance accepted some of the
 13 Board's recommendations, but did not raise the
 14 surcharge rates as high as recommended." And then
 15 there's a citation.
 16 I would propose to add that the -- I would
 17 propose to identify by name and the organization that
 18 which represent the five members of this Board who
 19 asked the Legislature to consider the recommendations
 20 attached in Exhibit "blank" -- and we'll add that as
 21 an exhibit -- and that -- and then identify the four
 22 who disagree with those recommendations and state
 23 that those four believe that those recommendations
 24 are not appropriate recommendations from this
 25 Advisory Board, and then attach all of those items in

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1 an exhibit. If we were to do that, then I would
 2 agree to sign off on the report.
 3 CHAIR RITCHIE: Well, that would require
 4 withdrawal of the motion.
 5 VICE CHAIR LOVE: Indeed.
 6 CHAIR RITCHIE: And so --
 7 MR. AUTIO: Was it Mr. Clark's motion or my
 8 motion? I forget at this point.
 9 CHAIR RITCHIE: You should have that. Who
 10 made the motion, the last motion?
 11 MS. FETHEROLF: Mr. Clark made the last
 12 motion.
 13 CHAIR RITCHIE: Was it Mr. Clark's?
 14 MS. FETHEROLF: Yes.
 15 CHAIR RITCHIE: Thank you.
 16 And Mr. Autio seconded it?
 17 MR. CLARK: I'll withdraw my motion for
 18 discussion purposes --
 19 CHAIR RITCHIE: Okay.
 20 MR. CLARK: -- to allow us the freedom to
 21 move forward --
 22 CHAIR RITCHIE: Okay.
 23 MR. CLARK: -- with other options. We'll
 24 come back to it.
 25 CHAIR RITCHIE: So the motion is withdrawn,

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1 but now we are back to discussion of the report as it
 2 stands or as might be amended.
 3 So is there any discussion on the report as
 4 it stands with the amendment or with the changes
 5 we've already made, the amendments have been made and
 6 voted on to change language to the former
 7 Superintendent? So is there any discussion?
 8 Do we have a motion then?
 9 VICE CHAIR LOVE: Yes. I'm working on some
 10 language here. Could we take a five-minute break,
 11 and I'll work on the language and make a proposed
 12 motion?
 13 MR. AUTIO: Mr. Chair, I don't oppose
 14 taking a break. I have an 11:30 hearing in court
 15 that I cannot miss. It's telephonic, so I can
 16 literally step out. But I would -- you know, if the
 17 Board is still meeting at 11:30, I would ask that we
 18 break at that point, too, so I can do my hearing --
 19 it should be brief -- and then reconvene. But if we
 20 can agree on that -- hopefully, we're done by
 21 11:30 -- but if we can agree on that, I don't have
 22 any opposition in taking a five-minute break.
 23 VICE CHAIR LOVE: Well, how about if we do
 24 it this way? As long as it doesn't have to be exact,
 25 precise language, here's my motion. I will make a

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1 motion. I will move to add -- well, first of all, I
 2 will make a motion to delete all of the language
 3 added by Mr. Autio regarding recommendations to the
 4 Legislature that appear on Pages 5 and 6 as well as
 5 removing the paragraph that says, "The Board, once
 6 again, respectfully encourages the Legislature to
 7 appropriate funding," remove those -- that language,
 8 place it into an exhibit, and add at the end of the
 9 letter the following language. "Five members of the
 10 Advisory Board," and then identify each by name and
 11 the organization that they represent, "identify to
 12 the Legislature the former Superintendent's
 13 recommended changes to the sections of the Medical
 14 Malpractice Act identified in the attached exhibit,"
 15 and number it, "which they believe would improve the
 16 operation of the PCF. Four members of the Advisory
 17 Board," identify each of the four by name and
 18 organization here, "disagree and take the position
 19 that such recommendations are not appropriate for
 20 this Board."
 21 CHAIR RITCHIE: Would you accept an
 22 amendment to change "operation" to "solvency" of the
 23 fund?
 24 VICE CHAIR LOVE: Sure.
 25 MR. VARGAS: I can second that motion.

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1 CHAIR RITCHIE: Now, the floor is open to
 2 discussion. It's been seconded.
 3 MR. CLARK: Mr. Chair, this is Mr. Clark.
 4 Ms. Love, I guess I'm still -- I appreciate
 5 the amendment. I'm not quite understanding the
 6 objection to what is currently the last paragraph --
 7 I don't know how else to describe it -- about the
 8 request for continuing appropriate funding to reduce
 9 the PCF deficit from the Legislature. Is there a
 10 connection that you're seeing between that and the
 11 items that I'll refer to as Mr. Autio's additions
 12 that we have been discussing? I guess I'm trying to
 13 figure out, as a Board, why we would be against
 14 asking the Legislature to approve additional funding?
 15 VICE CHAIR LOVE: I think that we
 16 recommended it in the past before we understood and
 17 knew and had the evidence that explains where the
 18 deficit comes from. And I think that now this Board
 19 understands that the deficit arises in large part of
 20 the revenue in this report from the fact that
 21 historically the OSI has not raised the surcharges to
 22 the rates that were recommended by the actuaries.
 23 That at this point, the issue of continuing
 24 to fund the PCF by infusions from the Legislature is
 25 sort of a political issue, is an issue of whether or

<p style="text-align: right;">74</p> <p>1 not this is something that providers should have to 2 pay for now because they haven't paid out of the 3 surcharges, or if it is an issue that the State 4 should have to foot the bill for failing to raise the 5 money that was required to keep the fund solvent. 6 That's why I think it should be separate now going 7 forward. 8 MR. CLARK: So this is Troy again. I guess 9 my -- I'm trying to put myself in a position of the 10 Advisory Board member to the fund. And as we look at 11 the solvency of the fund, the operations of the fund, 12 or however you want to refer to it, and we refer to 13 Superintendent Kane's comment earlier that while 14 those decisions may have been to veer from the 15 actuary, if there were reasons from a State policy 16 perspective, as I believe she mentioned of provider 17 access, then it would be appropriate for us to -- in 18 either regard, it's appropriate for us to state and 19 ask if there's additional funds to come in to keep 20 the fund solvent, that we would ask and encourage for 21 that funding to be made by the Legislature as we sit 22 as a fiduciary -- I'm sorry, as we sit as an Advisory 23 Board to the fund. 24 And so, I guess, I'm maybe just going to 25 ask, is it an adamant position from yourself that</p>	<p style="text-align: right;">76</p> <p>1 VICE CHAIR LOVE: And this is Kathy Love 2 again. The other thing that I'd like to add is that 3 one of the concerns with this deficit is that there 4 are a few patients who are currently having their 5 future medicals paid as they go by the fund, and 6 there's a great concern about whether or not that 7 money has been set aside for those patients. I know 8 my firm has a client who went before the court, had a 9 hearing on the future meds, and was ordered that -- I 10 can't remember if it was \$8 million -- I can't 11 remember the amount off the top of my head -- but 12 that be set aside for this patient for future meds, 13 and we don't know whether that has actually been 14 earmarked for that patient. 15 And so I think that there should be a 16 conversation outside of this setting about whether or 17 not that money -- if there's going to be more money 18 infused into the PCF, how is the State going to 19 ensure that patients who are relying on future med 20 payout are going to be secure and have that money set 21 aside for them. And so that's part of the reason why 22 I think that's no longer an issue for this Board. 23 MR. CLARK: Mr. Chair, I guess that just 24 further confuses me because I would think if the 25 concern is -- you didn't use these words -- but the</p>
<p style="text-align: right;">75</p> <p>1 both of those be moved to an exhibit, both of those 2 sections? Hopefully, that's clear to you what I'm 3 talking about -- if not, I can clarify -- or is there 4 any openness to keeping that? As a Board, are we not 5 in agreement that we should -- that receiving 6 additional funds from the Legislature is a good thing 7 for the operations of the PCF fund? 8 VICE CHAIR LOVE: I'm sticking to my 9 position on that. I would be happy to have a 10 conversation outside of the setting of the Advisory 11 Board about whether, you know, a contingent of some 12 of us want to go in our official capacities 13 representing the organizations that we represent and 14 ask for this money, but I don't believe that's 15 appropriating more for this Board. 16 MS. SPITZER: This is Ezra as well. I do 17 (inaudible) that this should not be part of the 18 report. I mean, just as a New Mexican, I believe 19 it's important that we flag for Legislature that 20 there's a problem, but I think that we need to leave 21 it up to them about if they want to infuse money, if 22 they want to get out of the insurance business, I 23 just don't feel like it's appropriate for us to tell 24 them how to solve the problem. I think it is 25 appropriate for us to identify the problem.</p>	<p style="text-align: right;">77</p> <p>1 solvency of the fund, additional infusions into the 2 fund to ensure that those dollars are there for the 3 payout is better for that patient in specifics -- 4 which I do agree we shouldn't get into patient 5 specifics in this setting -- but for the fund as a 6 whole. 7 And I say this in spite of knowing that the 8 current recommendations or current -- I shouldn't say 9 recommendations -- but current proposals being put 10 forth in this legislative session would allocate 11 additional funds not even to hospitals. So I'm 12 trying to say that this is the neutral party here of 13 the fund asking the Legislature for more money into 14 the fund increases its solvency. So, I guess, I'm 15 struggling with the connection of these two different 16 issues in separating the simple one out. 17 VICE CHAIR LOVE: Yeah. I understand your 18 point. But the problem is that the deficit is 19 growing, and so if we could -- if the deficit -- if 20 we were talking about paying off only the old 21 deficit, and we had some assurances that enough money 22 would be collected in surcharges in the future to pay 23 out future risks, then that would seem like a fair 24 wash. But the way it's been operating is that the 25 infusions that came in wasn't necessarily just</p>

<p style="text-align: right;">78</p> <p>1 earmarked for past deficits.</p> <p>2 In fact, we continue to see that the</p> <p>3 actuary recommends, even not for the deficit,</p> <p>4 recommends surcharges at a certain level, and the</p> <p>5 surcharges are getting raised to meet even the lowest</p> <p>6 recommended -- I forgot that accounting word -- but</p> <p>7 the common entry. So that's why I think it's</p> <p>8 inappropriate for this Board.</p> <p>9 CHAIR RITCHIE: Let's go -- now we have</p> <p>10 Ms. Luera back real quick. I want to revisit what we</p> <p>11 said the question before in that the Consumer Price</p> <p>12 Index and what it's done to the caps, gone up from</p> <p>13 750 to 855 now, if that is not part of the</p> <p>14 calculation for the rate setting for the future. In</p> <p>15 other words, there was a rate setting to take into</p> <p>16 account the increase in the caps; correct?</p> <p>17 MS. LUERA: Correct.</p> <p>18 CHAIR RITCHIE: Okay. So it's not about</p> <p>19 the losses, the cost of the suits. It's about the</p> <p>20 caps that are there, and you have to account for</p> <p>21 possible going up to those caps, and those caps are</p> <p>22 increasing?</p> <p>23 MS. LUERA: Correct, that's something that</p> <p>24 the actuary takes into account.</p> <p>25 CHAIR RITCHIE: Right. There was a</p>	<p style="text-align: right;">80</p> <p>1 Board's recommendation. There are different ways of</p> <p>2 looking at all of these issues. And so that's why I</p> <p>3 say it's a political issue. And you are free to go</p> <p>4 and argue all of this with the Legislature, as I know</p> <p>5 you have been, but it doesn't belong in this report.</p> <p>6 CHAIR RITCHIE: And I think you may be</p> <p>7 mischaracterizing the wording a little bit because</p> <p>8 the wording says to -- that look for another way to</p> <p>9 base that index on, another form, that -- perhaps a</p> <p>10 cost of medical care. There is an index for the cost</p> <p>11 of medical care and to base it on that, or, you know,</p> <p>12 there are other ways to do it. And I think that's</p> <p>13 what the wording actually says.</p> <p>14 VICE CHAIR LOVE: Right. And the way these</p> <p>15 cases are evaluated, the way juries determine damages</p> <p>16 is they look at what the lost wages are for a patient</p> <p>17 who is injured and can no longer work, they look at</p> <p>18 the cost of the past medical expenses as well as the</p> <p>19 future medical expenses, and they look at -- they</p> <p>20 look at all these other things that are things that</p> <p>21 go up in cost through the years based on the Consumer</p> <p>22 Price Indexing and the cost of living essentially.</p> <p>23 So that's how juries make those decisions. And so</p> <p>24 that is why -- that is why there is sort of two</p> <p>25 different angles of looking at this.</p>
<p style="text-align: right;">79</p> <p>1 separate line item for it, in fact?</p> <p>2 MS. LUERA: Yes.</p> <p>3 CHAIR RITCHIE: Okay. And so that's the</p> <p>4 problem with this future moving target, and I think</p> <p>5 that's what the language that we were so -- that</p> <p>6 Mr. Autio included that was brought up is so -- why</p> <p>7 it was brought up. And that's all factual, and it's</p> <p>8 actuarially sound that that's what you do.</p> <p>9 So that's part of the problem I have with</p> <p>10 relegating all of this language to, you know, a</p> <p>11 subset to our report and also saying that, you know,</p> <p>12 a portion of the Board disagrees with those facts.</p> <p>13 VICE CHAIR LOVE: Well, there are also</p> <p>14 facts -- Chairman, this is Kathy Love. There are</p> <p>15 also facts that demonstrate that patients' medical</p> <p>16 expenses are going to go up, with the cost of living</p> <p>17 there's increases, and that there is a justification</p> <p>18 for the whole reason that there is a CPI. And so</p> <p>19 those are facts as well. And so it is a value-laden</p> <p>20 decision whether to reduce, you know, what patients</p> <p>21 can be compensated versus allowing providers not to</p> <p>22 have to pay for those full cost of living losses and</p> <p>23 damages.</p> <p>24 And so it doesn't change the analysis in</p> <p>25 terms of whether or not it's appropriate for the</p>	<p style="text-align: right;">81</p> <p>1 MR. AUTIO: And, Mr. Chair, you know, just</p> <p>2 respectfully, I doubt, you know, you guys are going</p> <p>3 to reach an agreement --</p> <p>4 CHAIR RITCHIE: Right.</p> <p>5 MR. AUTIO: -- on this point, and we have a</p> <p>6 pending motion.</p> <p>7 CHAIR RITCHIE: Right. So the current</p> <p>8 pending motion, to restate that, the current pending</p> <p>9 motion is, I believe, Ms. Love's motion to accept the</p> <p>10 report with the subset or an addendum, whatever, to</p> <p>11 the report containing Mr. Autio's additions to the</p> <p>12 report, and with a caveat within the report naming</p> <p>13 who supports the addendum and who doesn't. I believe</p> <p>14 that's the way to characterize that; is that correct?</p> <p>15 VICE CHAIR LOVE: Yes. I can read it to</p> <p>16 you, if you'd like.</p> <p>17 CHAIR RITCHIE: Please do for everyone.</p> <p>18 VICE CHAIR LOVE: Okay. "Five members of</p> <p>19 the Advisory Board," and then in parentheses I will</p> <p>20 name each member of the -- each of the five members</p> <p>21 and their organizations, "identified to the</p> <p>22 Legislature the former Superintendent's recommended</p> <p>23 changes to the sections of the Medical Malpractice</p> <p>24 Act identified in the attached Exhibit No. "blank"</p> <p>25 which they submit would improve the solvency of the</p>

82	<p>1 PCF. Four members of the Advisory Board," in 2 parentheses identified by name and organization, 3 "disagree and take the position that such 4 recommendations are not appropriate for this Board." 5 CHAIR RITCHIE: Okay. And so that would be 6 one way to do it; right? 7 VICE CHAIR LOVE: That is the motion. 8 CHAIR RITCHIE: That is the motion that has 9 been seconded. And so hearing no other discussion, 10 we will call the vote. I'll let you take that back 11 over and do this. 12 MR. CLARK: So I'm clear, you're still 13 including that last paragraph? 14 VICE CHAIR LOVE: Yes. 15 MS. LUERA: In the addendum? 16 MR. CLARK: Yeah, including moving it and 17 extracting it to the addendum. 18 CHAIR RITCHIE: Right. It's not just that 19 first section. It's just the last as well. 20 MS. LUERA: Okay. 21 Chairman Ritchie. 22 CHAIR RITCHIE: No. 23 MS. LUERA: Vice Chair Love. 24 VICE CHAIR LOVE: Yes. 25 MS. LUERA: Mr. Clark.</p>	84	<p>1 Is there any discussion? 2 VICE CHAIR LOVE: Yes. I just want to 3 state on the record that I think that my motion gave 4 you exactly what you wanted, which was to get in 5 front of the Legislature the recommended changes that 6 you would like to see in the Medical Malpractice Act 7 without forcing four members of this Advisory Board 8 to take a position with which they vehemently 9 disagree. I'm really disappointed to see that this 10 Board couldn't agree to this conciliatory effort. 11 And as a result, I am going to -- I will not agree to 12 allow you to put my name on this report. 13 MR. VARGAS: This is Ray Vargas. I totally 14 agree with Ms. Love's comment, and I will not be 15 putting my name on this report. 16 MS. SPITZER: This is Ezra Spitzer, and I 17 absolutely do not want my name on that report. Thank 18 you. 19 MS. STEVENS: Ellen Stevens. I do not want 20 my name on this report. 21 CHAIR RITCHIE: And so would there then be 22 a minority opinion that would be put forth and signed 23 by you, Ms. Love, and whoever else? 24 VICE CHAIR LOVE: We are going to discuss 25 that. But I'll tell you what. I'm going to let the</p>
83	<p>1 MR. CLARK: No. 2 MS. LUERA: Mr. Autio. 3 MR. AUTIO: No. 4 MS. LUERA: Mr. Dekleva. 5 MR. DEKLEVA: No. 6 MS. LUERA: Mr. Martinez. 7 MR. MARTINEZ: No. 8 MS. LUERA: Mr. Spitzer. 9 MS. SPITZER: Yes. 10 MS. LUERA: Ms. Stevens. 11 MS. STEVENS: Yes. 12 MS. LUERA: And Mr. Vargas. 13 MR. VARGAS: Yes. 14 CHAIR RITCHIE: Okay. So that motion does 15 not pass, so we're still back on sending the report 16 in. And so the floor is now open for another motion, 17 discussion and/or motion. 18 MR. AUTIO: Mr. Chair, I make a motion to 19 approve the reports with the revisions that were 20 previously agreed upon by the Board and with the 21 amendments that I've included in the draft we're 22 looking at. 23 CHAIR RITCHIE: Okay. Is there a second? 24 MR. CLARK: I'll second that. 25 CHAIR RITCHIE: There's a second.</p>	85	<p>1 Legislature know that this report that I drafted, 2 this report, except for these sections that were 3 added and offered an opportunity to handle this in a 4 more conciliatory manner, and that that is the reason 5 why four of the members of this Board should not sign 6 off on the report. 7 MS. SPITZER: I'm also curious if this 8 meeting is being recorded. It doesn't appear to be, 9 but I don't care. 10 CHAIR RITCHIE: It is being recorded by a 11 court reporter. 12 MR. WARD: Just jumping in here on the 13 process. I think that given the nature that it's a 14 minority report, I don't think that it's necessary 15 that they convene another meeting or anything like 16 that for purposes of that report. I think all you 17 need to do is just vote on that -- you know, that the 18 minority has the opportunity to provide a rebuttal, 19 you know, by some day certain, you know, so that 20 there's plenty of time to get the report in. 21 VICE CHAIR LOVE: You know, and I'll just 22 make clear that there's nothing that says that I 23 can't write a letter to the Legislature independently 24 without giving a minority report. 25 CHAIR RITCHIE: Not that I'm aware of. I</p>

<p style="text-align: right;">86</p> <p>1 don't know if Mr. Ward is aware of anything, but not 2 that I'm aware of you to stop you.</p> <p>3 MR. WARD: No. But I still think that, you 4 know, again, just from my past experience, I've been 5 given the opportunity when there's a split, when 6 you're not operating by consensus, I think that it's 7 good practice to allow the -- a minority voice to be 8 able to present a report. And all I'm saying is I 9 know we've got this way to go. We've got to convene 10 another meeting, you know, utilize resources, get 11 everybody back together. I think all you need to do 12 is just give the minority a deadline to produce that 13 part of the report so it could be attached to the 14 report and sent to the record -- to the Legislature. 15 I'm sorry.</p> <p>16 CHAIR RITCHIE: Okay. And so there would 17 be an opportunity, and that would be attached to the 18 official report as an addendum as it was proposed in 19 the last motion.</p> <p>20 MR. WARD: Yeah. I don't know what -- you 21 know, how do you want to call it? All it is is it's 22 just a minority report, right, whether you call it an 23 addendum or whatever. I don't think that part 24 matters. I just think they need to have something 25 that reflects and makes clear that this is a minority</p>	<p style="text-align: right;">88</p> <p>1 reasoning for it, I guess I struggle with that 2 knowing if we're -- why would we be against asking 3 for funds as a Board.</p> <p>4 We don't have the authority to grant. I 5 mean, it's not like we're voting on whether those 6 funds automatically come to us or not. It's making 7 the recommendation encouraging the Legislature to 8 help keep this fund solvent and operating. I think 9 it's -- I'll just make my similar statement. I think 10 it's disappointing that we would not support that as 11 a Board, yet I understand the reason for the other 12 items wanting to be looked to in an addendum or 13 exhibit.</p> <p>14 MR. AUTIO: Mr. Chair, I echo those 15 comments. You know, I think it's in everyone's 16 interest, patients, hospitals, clinicians, to have 17 the fund solvent. If we can obtain additional funds 18 from the Legislature to do that, I think that's 19 paramount in this process. So I echo Mr. Clark's 20 comments.</p> <p>21 VICE CHAIR LOVE: This is Kathy Love. 22 Would it change your vote if we changed that last 23 paragraph to, "The Board, once again, respectfully 24 encourages the Legislature to appropriate funding to 25 reduce the PCF's deficit"? And I'm not coming up</p>
<p style="text-align: right;">87</p> <p>1 position. And I think that addresses, by the way, 2 who's buying on to what, right, so the minority gets 3 the opportunity to identify themselves as the 4 designating articulating opposed position as opposed 5 to the position that the Board has taken on the 6 majority.</p> <p>7 CHAIR RITCHIE: Okay.</p> <p>8 MR. CLARK: Mr. Chair, this is Troy.</p> <p>9 CHAIR RITCHIE: Yes.</p> <p>10 MR. CLARK: I would like to at least 11 comment. I know we haven't called the vote yet, but 12 I appreciate Ms. Love's attempt for the conciliatory 13 solution that's there. I'm still just confused if we 14 are acting on behalf of this Board, why we would -- 15 why we have more members who are not in favor of 16 supporting asking for the funds. I understand the 17 other issues and moving them to an addendum.</p> <p>18 I just can't follow even with the -- it 19 seemed like the examples that were given supported 20 the need for more solvency or more funds regardless 21 of source of where they came into the fund from, 22 whether that comes from surcharges or from 23 Legislature infusion, that as they look at a bigger 24 picture, that if this is State policy, if this is an 25 attempt to address a statewide issue, whatever the</p>	<p style="text-align: right;">89</p> <p>1 with the right language yet, but essentially that 2 makes it clear that it goes to paying past deficit, 3 and it's not justification for continuing to fail to 4 raise surcharges as recommended by the actuary. 5 Somebody could come up with some better language than 6 that.</p> <p>7 MR. AUTIO: And, Mr. Chair, that wouldn't 8 change my vote. You know, I don't think it's just a 9 failure to raise surcharges, and that's precisely why 10 I added the language I did and included the former 11 Superintendent's comments that he wasn't raising 12 surcharges in accordance with the actuarial 13 recommendation because that would decrease the number 14 of providers participating in the fund.</p> <p>15 So I do not view this as just an issue of 16 raising rates on clinicians. I think that would have 17 the opposite effect, drive folks out of the fund, and 18 thereby, make it more vulnerable and increase the 19 deficit. So I would not support that.</p> <p>20 VICE CHAIR LOVE: I'm not sure I entirely 21 understand, and let me see if I can be clearer about 22 what my intention with this is. I want to make sure 23 that if the Legislature puts any more money into the 24 Patient Compensatory Fund that that money goes to pay 25 off the past deficits.</p>

<p style="text-align: right;">90</p> <p>1 And my question is, if we come up with some 2 language for that last paragraph that makes it clear 3 that any additional money that we're encouraging the 4 Legislature to appropriate, we're encouraging that it 5 be for past deficits, then would that change the vote 6 as to whether or not we can remove everything else 7 and put it into an exhibit? Because I would be open 8 to that.</p> <p>9 MR. AUTIO: So, Ms. Love, I think you've 10 stated it very clearly. But just to be sure that we 11 would just be, you know, informing the Legislature 12 that any money that may be appropriated would be 13 devoted solely or appropriate solely for reducing the 14 deficit of the PCF; is that accurate?</p> <p>15 VICE CHAIR LOVE: Reducing the past 16 deficit, yes. Reducing the deficit that was incurred 17 in past years.</p> <p>18 MR. CLARK: Mr. Chair, let me ask a 19 question. I'm not sure if this meets what your 20 intent is, but in my mind it doesn't. So in the last 21 paragraph that currently says, "The Board, once 22 again, respectfully encourages the Legislature to 23 appropriate funding to reduce the PCF's deficit." If 24 we were to insert the word "past" just preceding the 25 letters "PCF," does that accomplish what you are -- I</p>	<p style="text-align: right;">92</p> <p>1 be to leave the last paragraph in with the revisions 2 that have been proposed by Ms. Love and remove the 3 revisions that I have made from Page 5 to Page 6 and 4 place them in an addendum to the report that will be 5 attached to our report with a -- with the language 6 that Ms. Love previously provided regarding the vote 7 count on this with identifying the organizations the 8 members are associated with. That is my motion. And 9 to be procedurally proper, I withdraw my previous 10 motion.</p> <p>11 VICE CHAIR LOVE: I would also suggest that 12 the two paragraphs be switched around so that the 13 Board's recommendation to reduce the past deficit 14 comes before the section about five members of the 15 Advisory Board and the exhibit attached and that be 16 the last paragraph.</p> <p>17 MR. CLARK: Would you please restate that 18 for myself who might be slow.</p> <p>19 VICE CHAIR LOVE: Yeah. I wasn't very 20 articulate.</p> <p>21 I'm just suggesting that the two final 22 paragraphs be swapped. So that after the paragraph 23 saying, "The Superintendent of Insurance accepted 24 some of the Board's recommendations," then the next 25 paragraph is, "The Board, once again, respectfully</p>
<p style="text-align: right;">91</p> <p>1 mean, I'm hearing two things mixed together. One 2 is -- one I don't have a problem with assessing it or 3 allocating it to past deficits, but the other 4 seems -- and maybe I'm misinterpreting -- seems to be 5 directing to any future Legislature should only be a 6 mandate to them that if you do allocate funds, then 7 it has to be here.</p> <p>8 What I'm reading is a sentence, two 9 sentences at the end of the paragraph that say we 10 encourage the Legislature to continue appropriating 11 funding, and I have no problem personally with adding 12 the word "past" before PCF deficit. Does that 13 accomplish what you're asking for, or am I misreading 14 that?</p> <p>15 VICE CHAIR LOVE: I think it accomplishes 16 it, but I would also propose to remove the last 17 sentence.</p> <p>18 MR. AUTIO: I have no objection to that. 19 That was drawn from a prior report. But I have no 20 objection to removing that and to hopefully 21 streamline this so I can get on my hearing shortly.</p> <p>22 CHAIR RITCHIE: Right.</p> <p>23 MR. AUTIO: I will motion to -- and, Kathy, 24 I'm trusting you've got the language for that last 25 paragraph -- but we will leave -- so the motion would</p>	<p style="text-align: right;">93</p> <p>1 encourages the Legislature to appropriate funding to 2 reduce the PCF's past deficit." And then the next 3 paragraph is, "Five members of the Advisory Board 4 identified to the Legislature," and so on.</p> <p>5 MR. AUTIO: I have no objection. So I will 6 adopt that proposed amendment as part of my motion 7 which will be the pending motion before the Board.</p> <p>8 CHAIR RITCHIE: Okay. Then now, let's look 9 for a second.</p> <p>10 MR. CLARK: I'll second that.</p> <p>11 CHAIR RITCHIE: Okay. Any further 12 discussion?</p> <p>13 MR. MARTINEZ: I have one last little 14 piece. This is Mr. Martinez.</p> <p>15 CHAIR RITCHIE: Yes, sir.</p> <p>16 MR. MARTINEZ: Instead of that last 17 sentence, "doing so will improve the operations," 18 would it be possible -- and I don't know how you-all 19 feel about this. We had asked the question of 20 actuarial study, whether it benefits us as the 21 Patient Compensation Fund to look out at the other 22 Patient Compensation Funds across the country with 23 the exemplar like Wisconsin has as a billion dollar 24 surplus, that we can study what it is that they're 25 doing in comparison with ours to help us become more</p>

94	<p>1 solvent?</p> <p>2 CHAIR RITCHIE: I think there was some</p> <p>3 discussion of that at the actuarial hearing.</p> <p>4 MS. LUERA: There was.</p> <p>5 CHAIR RITCHIE: There was discussion of</p> <p>6 that, and that was -- and then a part predicated or</p> <p>7 the Superintendent, I think, or the recommendation</p> <p>8 that the funds be invested more aggressively or more</p> <p>9 funds be invested.</p> <p>10 MR. AUTIO: And, Mr. Chair, I'm going to</p> <p>11 leave the room because I have to go to this hearing</p> <p>12 now. I don't want to delay. I don't want to have a</p> <p>13 tied vote on the motion that's here, but I cannot</p> <p>14 stay any longer. A judge is waiting on me.</p> <p>15 CHAIR RITCHIE: So, Mr. Martinez, I think</p> <p>16 that's been included; okay?</p> <p>17 MR. MARTINEZ: Okay.</p> <p>18 CHAIR RITCHIE: So then let's call the</p> <p>19 vote.</p> <p>20 MS. LUERA: Chairman Ritchie.</p> <p>21 CHAIR RITCHIE: Yes.</p> <p>22 MS. LUERA: Vice Chair Love.</p> <p>23 VICE CHAIR LOVE: Yes.</p> <p>24 MS. LUERA: Mr. Clark.</p> <p>25 MR. CLARK: Yes.</p>	96	<p>1 CHAIR RITCHIE: Yes, sir.</p> <p>2 MR. CLARK: -- I know it's tension between</p> <p>3 the two, but thank you for people talking through it</p> <p>4 and working to where we could get to a solution. I</p> <p>5 think that that's important for all of us.</p> <p>6 CHAIR RITCHIE: I think that's absolutely</p> <p>7 the case, and I was going to say that at the end.</p> <p>8 But let's go, first off, to any New</p> <p>9 Business.</p> <p>10 Do we have our next meeting set up? I</p> <p>11 believe we talked about that at our last meeting when</p> <p>12 our next meeting was going to be after this one,</p> <p>13 didn't we?</p> <p>14 MS. LUERA: I think so, but I don't have</p> <p>15 the transcript.</p> <p>16 CHAIR RITCHIE: Since we don't have the</p> <p>17 minutes and the transcript, we will visit that, and</p> <p>18 we will get out the next meeting.</p> <p>19 Public Comment then.</p> <p>20 Hearing none, I want to echo Mr. Clark. I</p> <p>21 think we had a very serious brewing schism there</p> <p>22 that, I think, we worked through. I appreciate</p> <p>23 everyone talking, everyone being open to compromise a</p> <p>24 little bit and try to see the other side's viewpoint.</p> <p>25 I know these are, you know, possibly critical,</p>
95	<p>1 MS. LUERA: Mr. Autio.</p> <p>2 MR. AUTIO: Yes.</p> <p>3 MS. LUERA: Mr. Dekleva.</p> <p>4 MR. DEKLEVA: Yes.</p> <p>5 MS. LUERA: Mr. Martinez.</p> <p>6 MR. MARTINEZ: Yes.</p> <p>7 MS. LUERA: Mr. Spitzer.</p> <p>8 MS. SPITZER: No.</p> <p>9 MS. LUERA: Ms. Stevens.</p> <p>10 MS. STEVENS: No.</p> <p>11 MS. LUERA: Mr. Vargas.</p> <p>12 MR. VARGAS: Yes.</p> <p>13 CHAIR RITCHIE: Six, three?</p> <p>14 MS. LUERA: Seven, two.</p> <p>15 CHAIR RITCHIE: Okay. So that motion</p> <p>16 passes. So we have the report. We do have one</p> <p>17 outstanding change to it, but we were just going to</p> <p>18 make it a table of the PCF rates to make it just more</p> <p>19 clear.</p> <p>20 MS. LUERA: I'll do that, and I will</p> <p>21 provide it to everyone.</p> <p>22 CHAIR RITCHIE: What they have done in '22,</p> <p>23 '23, and '24.</p> <p>24 So then let's go to the rest of the agenda.</p> <p>25 MR. CLARK: Mr. Chair, if I can just say --</p>	97	<p>1 although, to be honest, what we are talking about is</p> <p>2 the patients in the state, and that's what we need to</p> <p>3 keep our eye on. We're trying to keep the fund</p> <p>4 intact to reimburse future medical and other expenses</p> <p>5 for the patients in this state, and, you know, that's</p> <p>6 what we need to keep bringing ourselves back to. And</p> <p>7 so we need to focus on that and focus everything with</p> <p>8 respect to that.</p> <p>9 MR. SPITZER: This is Ezra. Mr. Chair, I</p> <p>10 would like to find out a location for these from now</p> <p>11 on.</p> <p>12 CHAIR RITCHIE: And if you would like -- I</p> <p>13 asked for Public Comment, but it's Public Comments</p> <p>14 for the Board, too. If you would like to explain</p> <p>15 that at all, or you don't have to, but I'm welcome to</p> <p>16 hear that.</p> <p>17 MS. SPITZER: Yeah. I mean, I think I made</p> <p>18 my personal opinion as a New Mexican clear. I just</p> <p>19 don't feel like it's appropriate for us to ask for</p> <p>20 the money from the Legislature. I think there are</p> <p>21 deeper issues at root. And I think one good question</p> <p>22 even why the State is in this line of work and not</p> <p>23 letting the market solve it on its own. So I just</p> <p>24 think it's a bad lump to go with our hands out.</p> <p>25 CHAIR RITCHIE: Okay. Certainly valid.</p>

1 Certainly a valid comment. There are funds that work
 2 well around the country, but there are not a whole
 3 bunch of them. So I think that, though, as
 4 Mr. Martinez talked about, brought up and it was
 5 brought up earlier, we tasked the Administrator to
 6 really look in the actuaries, to look at these other
 7 funds to look how it's done in other states, to look
 8 at investments, to look at ways to keep the fund
 9 solvent without having to go to the Legislature every
 10 year or something. So I think that the Board is
 11 taking that into account. I definitely -- you know,
 12 we don't want to go to the Legislature every year for
 13 money. That's certainly, I don't believe, the
 14 intention of the Superintendent or the Board. But
 15 thank you for that comment.
 16 Anyone else?
 17 Then I believe we can be adjourned. I
 18 thank everyone for participating today. The
 19 Superintendent, thank you for joining. I think that
 20 we had a report to go in, and I hope it gets read.
 21 Thank you everyone very much for all the help you've
 22 been.
 23 MS. LUERA: Good afternoon, everybody.
 24 (Exhibit A marked.)
 25 (The meeting adjourned at 11:32 a.m.)

1 RECEIPT
 2 JOB NUMBER: 8886N SMH January 8, 2024
 3 WITNESS NAME: Office of Superintendent Insurance
 4 CASE CAPTION: Patient's Compensation Fund Advisory
 5 Board Meeting
 6 *****
 7 ATTORNEY: MS. DEBBIE LUERA
 8 DOCUMENT: Transcript / Exhibits / Disks / Other ____
 9 DATE DELIVERED: _____ DEL'D BY: _____
 10 REC'D BY: _____ TIME: _____
 11 *****
 12 ATTORNEY: ATTY2
 13 DOCUMENT: Transcript / Exhibits / Disks / Other ____
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 15 REC'D BY: _____ TIME: _____
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 17 ATTORNEY: ATTY3
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 2) ss
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 4
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 7 Shorthand Reporter, DO HEREBY CERTIFY that I did
 8 report in stenographic shorthand the testimony set
 9 forth herein, and the foregoing is a true and correct
 10 transcription of the proceeding had upon the taking
 11 of this hearing.
 12 I FURTHER CERTIFY that I am neither employed by
 13 nor related to any of the parties or attorneys in
 14 this case, and that I have no interest whatsoever in
 15 the final disposition of this case in any court.
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8 forth herein, and the foregoing is a true and correct
9 transcription of the proceeding had upon the taking
10 of this hearing.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in
13 this case, and that I have no interest whatsoever in
14 the final disposition of this case in any court.

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