

Date: March 15, 2017	Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111 PILOT FITNESS COMMITTEE MEETING MINUTES	Page 1 of 6
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Committee Members Present:

Knute Michael Miller, Committee Chairman and Past Board President
 Brigadier General (Ret.) Chester L. Ward, MD
 Robert Kosnik, MD
 Captain Einar Nyborg, San Francisco Bar Pilots (SFBP)

Committee Members Absent:

None.

Staff Present:

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Dennis Eagan, Board Counsel
 Luis Cruz, Staff Services Analyst
 Sigrid Hjelle, Office Technician

Public Present:

Captain Joe Long, Port Agent and SFBP President; Ray Paetzold, SFBP Business Director-General Counsel; Mike Jacob, Pacific Merchant Shipping Association (PMSA) General Counsel; Dr. Alan Hobbs, San Jose State University Research Foundation.

OPEN MEETING

1. Call to order. Roll Call. (Chairman Miller)

Chairman Miller called the meeting to order at 1:14 p.m. Staff Services Analyst Cruz called the roll and confirmed a quorum.

2. Approval of minutes of the Pilot Fitness Committee meetings held on August 25, 2016, and January 12, 2017. (Chairman Miller)

Committee members were presented the minutes from the committee meetings held August 25, 2016, and January 12, 2017. Board Counsel Eagan requested minor edits to the August 25, 2016, minutes. There was no further discussion of either minutes.

MOTION: Dr. Ward moved to approve the minutes of the meeting held on August, 25, 2016, as amended. Chairman Miller seconded the motion.

VOTE: Yes: Miller, Kosnik, and Ward.
 No: None.
 Abstain: Nyborg.

ACTION: The motion was approved.

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MOTION: Dr. Ward moved to approve the minutes of the meeting held on January 12, 2017. Dr. Kosnik seconded the motion.

VOTE: Yes: Miller, Kosnik, Nyborg and Ward.
No: None.
Abstain: None.

ACTION: The motion was approved.

3. Discussion of proposed modifications to improve the Pilot Fitness Regulations to allow (i) a conditional fit for duty of less than one year, (ii) a physician with less than five years' experience in occupational medicine, (iii) initial licensing to rely on recent a medical assessment, and (iv) initial licensing and renewal of an existing license to rely on a recent agility test. Possible recommendation to Board on proposed modifications to the Pilot Fitness Regulations to allow (i) a conditional fit for duty of less than one year, (ii) a physician with less than five years' experience in occupational medicine, (iii) initial licensing to rely on recent a medical assessment, and (iv) initial licensing and renewal of an existing license to rely on a recent agility test. (Board Staff and Chairman Miller)

Executive Director Garfinkle began the discussion by providing a brief summary of development of the Pilot Fitness Regulations, and stated that Board staff encountered and identified unanticipated issues and several areas in which changes should be made to accommodate a more effective implementation of pilot and trainee fitness oversight. He thanked Dr. Kosnik for an excellent job in drafting the study that resulted in the current regulations.

Executive Director Garfinkle stated the first proposed modification to the Pilot Fitness Regulations is the allowance of a conditional fit for duty of less than one year. He stated currently when a pilot or trainee is found fit for duty, the fitness determination is valid for one year, unless the pilot or trainee experiences some intervening medical condition. He stated Board staff has found that on occasion, an examining physician may require additional testing, but that the pilot can be found fit for duty until the results of the additional testing are complete. Executive Director Garfinkle suggested a change to the current Pilot Fitness Regulations to allow for a conditional fit for duty determination, allowing the examining physician a follow up examination or review of a pilot or trainee in a period of less than one year.

Executive Director Garfinkle confirmed the use of a conditional fit for duty scenario for Chairman Miller, and stated that a conditional fit for duty may allow a pilot or trainee who is determined sufficiently fit by the Board's physicians to continue to work or train while the physicians investigate medical conditions, such as sleep apnea tests, that may take some time to schedule and for the results to get back to the Board's physicians for review. Executive Director Garfinkle confirmed for Commissioner Nyborg that a pilot may end up with multiple medical examinations within a year depending upon the medical issues and license timing, but that not all follow up visits necessarily require a full medical examination.

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Dr. Kosnik commented that the main objective is to keep pilots and trainees at work, and that it seems unfair to delay a fit for duty determination while the pilot or trainee is seeing a specialist. Port Agent Long noted that the United States Coast Guard this year issued a letter extending license renewals due to a backlog in medical reviews.

Executive Director Garfinkle stated the second proposed modification to the Pilot Fitness Regulations is to allow the Board's physicians to include examining physicians with less than five years' experience in occupational medicine in order to expand the pool of eligible physicians. He explained the minimum medical experience standard is preventing some occupational medicine physicians currently employed at the University of California San Francisco Occupational Health Services from acting as examining physicians, which in turn has led to physician staffing shortages and concomitant delays in medical assessments.

Dr. Kosnik commented that his preferred Board-eligible physician would be one that has a minimum of five years occupational medicine experience. Dr. Kosnik responded to a concern from Port Agent Long, stating that he would not have a resident physician examine a pilot or trainee alone. He also commented that as the Medical Review Officer, he examines all of the pilots and trainees, not just the ones with awkward or difficult medical issues, and does not expect physician turnover if the physician minimum occupational medical experience standard is lowered. He also commented that while one physician can make a not fit for duty determination, what actually occurs is that there is a discussion among the physicians before such a decision is made.

Lastly, Executive Director Garfinkle stated the last two medical regulation issues are companion issues, and involve allowing an initial pilot license to rely on a recent trainee medical assessment and fitness for duty determination since trainee medical examination dates are tied to the training program entrance date and not to graduation dates. Current regulations require a medical assessment near the time of initial licensing. Similarly, he stated the Committee should consider allowing an initial pilot license and the annual renewal of an existing pilot license to rely on a recent agility test. He stated the sub issue is how proximate should a medical examination be to licensing, and he currently uses a 90-day window, but that no window date is in regulation.

There was a discussion of the timing of a medical examination for state and federal licenses, and that it would be convenient for Board-licensees if these two dates can be coordinated. Mr. Paetzold offered to check the federal medical requirements. Dr. Kosnik commented that Board physicians have made accommodations to align the CG-719K federal medical examinations with state medical examinations. Dr. Kosnik stated that on the surface that a 90-day window between a fit for duty determination and license issuance or renewal appears appropriate, but that he would need to think about the issue further to avoid unintended consequences, especially in those instances in which a medical issue arises between annual examinations.

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Executive Director Garfinkle stated these modification are only a suggestion, and that this issue should be addressed in a joint meeting with the Rules and Regulations Committee.

RECESS: 2:30 p.m.

RETURN TO OPEN SESSION: 2:44 p.m.

4. Update on the status of San Jose State University Research Foundation work on the pilot fatigue study. (Board Staff)

Chairman Miller thanked Dr. Hobbs for attending the committee meeting.

Assistant Director Cristia-Plant stated that the researchers have received a Certificate of Confidentiality from the Office of Clinical Research, National Heart, Lung and Blood Institute, and that Dr. Hobbs provided the Committee with a copy of a letter that states the certificate will be used to protect against the compelled disclosure of confidential study data. Additionally, she stated researchers have planned ride-alongs with pilots in the near future.

Dr. Hobbs commented that it is pleasing to get milestones out of the way. He stated he felt very welcomed and thanked the SFBP for their efforts. He stated the ride-alongs create a first-hand observation and provide a greater insight into the daily job duties of the pilots.

5. Review of the draft Nondisclosure Agreement between the San Jose State University Research Foundation and the San Francisco Bar Pilots. Possible recommendation to the Board to accept the draft Nondisclosure Agreement between the San Jose State University Research Foundation and the San Francisco Bar Pilots. (Board Staff)

Mr. Paetzold stated that he drafted the Nondisclosure Agreement and received input from the researchers before finalizing. He stated he wanted the agreement provisions to provide assurances to the pilots that they are free to provide all relevant and beneficial data to the researchers and assure the pilots that the data is safe and kept confidential. He stated the final draft of the Nondisclosure Agreement was prepared in a joint collaboration between the SFBP and the SJSURF.

Dr. Hobbs stated certain data will be confidential, and noted that the researchers intend to aggregate data to maintain that confidentiality in the final analysis.

Board Counsel Eagan mentioned that the Nondisclosure Agreement was of concern at the previous committee meeting. He read an email exchange between Dr. Hobbs and Assistant Director Cristia-Plant, and noted that Dr. Hobbs confirmed that nothing within the current draft of the Nondisclosure Agreement would inhibit the researchers from conducting the

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study that is required by the Legislature. He stated as long as the university accepts the form of agreement, Board Staff recommend acceptance of the agreement. Chairman Miller concurred with Board Counsel Eagan and stated the Nondisclosure Agreement looks acceptable and does not seem to inhibit the contracted scope of work.

Mr. Jacob questioned the meaning of items (a), (b), and (c) within paragraph 2 of the Nondisclosure Agreement, and asked how the items differed from each other. He also inquired into what data applies to the category of “publicly known.” Mr. Paetzold replied and stated that information identified in 2.a and 2.b refers to data that is already in the public domain as being public information, and gave the example of Section 237(d) data as required in the Board’s regulations. He also stated that the wording used in the section of the agreement is standard for Nondisclosure Agreements. He stated that the purpose of this Nondisclosure Agreement is provide a framework to allow pilots to disclose personal information that is needed by the researchers to ensure the success of the study.

Board Counsel Eagan stated the Board is not accepting this Nondisclosure Agreement as its own policy, but as an agreement between two third parties to deliver a product useable by the Board to meet its legislative mandate. Mr. Jacob commented that the study will provide data that was the subject of prior litigation, and that this data should be presumably be accessible.

MOTION: Dr. Ward moved to recommend to the Board to accept the draft Nondisclosure Agreement between the San Jose State University Research Foundation and the San Francisco Bar Pilots dated February 13, 2017. Dr. Kosnik seconded the motion.

VOTE: Yes: Miller, Kosnik, Nyborg, and Ward.
No: None.
Abstain: None.

ACTION: The motion was approved.

6. Public comment on matters not on the agenda.

There were no comments from the public.

7. Schedule the next Committee meeting, and proposals for items to the next meeting agenda.

The Committee decided to work with Board staff after the March 2017, Board meeting to schedule a joint meeting with the Rules and Regulations Committee.

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8. Adjournment.

There being no further business before the Committee, Chairman Miller called for a motion to adjourn.

MOTION: Commissioner Nyborg moved to adjourn the meeting. Dr. Ward seconded the motion.

VOTE: Yes: Miller, Kosnik, Nyborg and Ward.

No: None.

Abstain: None.

ACTION: The motion was approved and the meeting was adjourned at 3:10 p.m.

Submitted by:



Allen Garfinkle, Executive Director