

<p><b>Meeting Date:</b>  <b>February 12, 2020</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b></p> <p><b>PILOT FITNESS COMMITTEE MEETING MINUTES</b></p>	<p><b>Page 1 of 6</b></p>
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**Committee Members Present:**

Knute Michael Miller, Committee Chair and Past Board President  
Joanne Hayes-White, Commissioner  
Captain Einar Nyborg, Commissioner and San Francisco Bar Pilot (SFBP)  
Robert Kosnik, MD  
Brigadier General (Ret.) Chester L. Ward, MD

**Committee Members Absent:**

None

**Staff Present:**

Allen Garfinkle, Executive Director  
Roma Cristia-Plant, Assistant Director  
Dennis Eagan, Board Counsel

**Public Present:**

Commissioner Captain Robert Carr, Ray Paetzold, SFBP General Counsel, Captain Anne McIntyre, SFBP Business Director, Mike Jacob, Pacific Merchant Shipping Association Vice President and General Counsel, Captains Gregory Tylawsky and Casey Crowl, SFBP.

**OPEN MEETING**

**1. Call to order and roll call. (Chair Miller)**

Committee Chair Miller called the meeting to order at 9:37 a.m. Assistant Director Cristia-Plant called the roll and confirmed a quorum.

**2. Approval of the minutes of Committee meetings held on January 27, 2020. (Chair Miller)**

Committee members were presented with the draft minutes from the Committee meetings held on January 27, 2020. There was no discussion.

**MOTION:** Commissioner Hayes-White moved to approve the draft minutes of the meeting held on January 27, 2020. Commissioner Nyborg seconded the motion.

**VOTE:** Yes: Miller, Hayes-White, Kosnik, and Nyborg.  
No: None.  
Abstain: None.

**ACTION:** The motion was approved.

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- 3. Continue the review and discussion of pilot fatigue mitigation recommendations contained in the July 2018 San Francisco Bar Pilot Fatigue Study produced by San Jose State University Research Foundation and the National Aeronautics and Space Administration, the identification of pilot fatigue mitigation policies appropriate for incorporation into regulations, and the requirement for the Port Agent to develop a pilot fatigue risk management system. Possible recommendation to the Board to approve recommendations for pilot fatigue mitigation policies appropriate for incorporation into regulations, the requirement for the Port Agent to develop a fatigue risk management system, and to direct one or more committees and Board staff to commence rulemaking. (Committee Members and Board staff)**

Chair Miller stated that the Committee and the public were presented with Committee's most recent fatigue management policy recommendations, version 4.7 dated February 10, 2020, and redlined to reflect the Committee's review and discussions of the pilot fatigue study commissioned by the Board (Fatigue Study) since the last Committee meeting on this subject. He stated that the recommendations are not regulations, but policy choices that will guide the drafting of fatigue mitigation regulations.

Chair Miller addressed the redline edits contained in policy recommendation #21 on pilot travel in excess of eight hours to attend mandatory training, which recommendation was added to the Fatigue Study recommendations by the Committee, and noted that the Committee's related fatigue mitigation policy recommendation to the Board has been rewritten to focus on travel duration, stops, segments and rest of pilots attending mandatory continuing education training rather than specifying 180 degree horizontal seating. He also noted that it was Board Counsel's recommendation to include this revised fatigue management policy recommendation in the proposed Fatigue Risk Management System (FMRS). Commissioner Nyborg stated that he approved of the current version of all the Committee's fatigue management policy recommendations.

Dr. Kosnik commented about the edits made to recommendation #21 involving pilot travel in excess of eight hours and stated that there have been concerns about the cost of sending pilots to mandatory training in the past. Board Counsel Eagan confirmed that the Committee's fatigue management policy recommendation, as currently drafted, focuses on the fatigue issue rather than the expense of travel, and noted that the travel cost issue can be addressed by the Board in its contract with the SFBP. Mr. Jacob stated that he appreciated the changes to recommendation #21, and that the travel costs could be considered in another forum.

Commissioner Hayes-White expressed a concern about the policy recommendations allowing the Port Agent to make discretionary decisions on a case-by-case basis, and equity issues from a labor perspective. Both Commissioner Nyborg and Port Agent Long confirmed that the

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proposed FRMS will be equitable to all BOPC-licensees, and will allow the Port Agent to make decisions ensuring that pilots are well-rested.

Board Counsel Eagan stated that Commissioner Nyborg discussed with him before the meeting that the redlined policy recommendation #4 currently states Port Agent “shall not assign a pilot to work” more than 18 night-time hours in a 72-hour period, but also gives discretion to the Port Agent should circumstances require him to extend the 18-hour period with reporting to the Board when the consecutive night-time hours work limit is extended. Board Counsel Eagan stated he would rewrite this Committee policy recommendation to clarify that the Port Agent has discretion to extend the aggregate hourly limit.

**MOTION:** Commissioner Nyborg moved that the Committee recommend to the Board to approve the Committee’s pilot fatigue policy recommendations derived from its review of the pilot fatigue mitigation recommendations contained in the July 2018 San Francisco Bar Pilot Fatigue Study produced by San Jose State University Research Foundation and the National Aeronautics and Space Administration, consistent with markup worksheet version 4.7 dated February 10, 2020, as further modified by Board Counsel, including the requirement for the Port Agent to develop a fatigue risk management system, and to direct one or more committees and Board staff to commence rulemaking.. Commissioner Hayes-White seconded the motion.

**VOTE:** Yes: Miller, Hayes-White, Kosnik, and Nyborg.  
No: None.  
Abstain: None.

**ACTION:** The motion was approved.

**4. Review of modifications previously approved by the Board and newly proposed modifications (and accompanying forms) to the Board pilot and trainee fitness regulations in Title 7, California Code of Regulations sections 217-217.45. Possible Committee recommendation to the Board to approve newly proposed draft modifications (and accompanying forms) to Board pilot and trainee fitness regulations in Title 7, California Code of Regulations sections 217-217.45, and to direct one or more committees and Board staff to commence rulemaking. (Committee Members and Board Staff)**

Board Counsel Eagan reviewed edits to the draft amendments to pilot and trainee fitness regulations dated February 12, 2020, and highlighted the edits made since the Committee’s October 2018 regulatory drafting effort as follows:

- Changes made throughout to the terms “evaluation” and “determination,” to convey that evaluation means a process and determination means a conclusion.

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- §202 edits made to add new definition in subsection (p) “Merchant Mariner Medical Manual” since NVIC 04-08 is no longer used due to new medical examination guidelines, and corresponding amendments made to subsection (a) and the 719k form. Also added was a definition for “fitness evaluation” intended to be broad enough to describe the process, along with edits clarifying that a fitness evaluation does not necessarily include a wall-to-wall “medical assessment.”
- §217.5(a)(2) edits made to allow a potential new pilot trainee to arrange for a medical assessment within 20 days of being offered a position in the trainee training program.
- 217.5(c) now clarifies that two physicians are required for a fit for duty determination, but allows for one physician to make a not fit for duty determination.
- §217.10 edits made to recognize the timing of medical assessments, and that a medical assessment may not be required in all instances.
- §217.15 edits made to clarify that an agility test is not required if recently performed.
- §217.15(g)(1) allows a fit for duty determination of less than one year.
- §217.37 new section added to keep track of the status of medical disability leave determinations with the goal of keeping as many pilots working as possible. Commissioner Nyborg questioned the length of the 120-day periodic fitness evaluations, and posed a shorter 90-day period. Dr. Kosnik commented that there is not much difference between 90-120 days, but that it is important for pilots on medical disability leave to have periodic evaluations, which periodic evaluations would also be important to when the physicians make a determination of the onset date of a permanent disability. There was further discussion about a shorter 30-day telephone check-in period. Dr. Kosnik stated that there needs to be a balance between keeping tabs on a pilot on medical disability leave, the potential determination of the onset date of a permanent disability, and the physicians’ and pilot’s time, and that he favored the 120-day periodic medical assessment requirement for those out on medical disability leave.
- §217.45(d)(1) edits were made to change the examining physician qualifications to expand the potential pool of examining physicians. Edits were also made to delete the reference to “contract period,” make reference to a physician being appointed, and that a physician only need to be oriented once to the physical and cognitive demands of a pilot.

There was a discussion that several of the related fitness forms will also need to be updated, and that Board staff created a new form for incident drug testing that will need to be added to the regulations.

The Committee decided that the Chair will report to the Board that the Committee reviewed draft regulatory amendments to the Board’s fitness determination regulations that had been presented to the Board a year and a half ago, that the draft regulatory amendments will need

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to be further refined and in some cases will need to be expanded, and that the Committee will continue its work on amending these regulations and report to the Board at a later date.

Mr. Jacob stated that the pilot and trainee fitness regulations are very progressive, have been successful so far, and that the work of the Committee is fine tuning and not overhauling the regulations.

**5. Report on the pilot and trainee fitness determination process involving the Division of Occupational & Environmental Medicine at the University of California, San Francisco Campus. (Executive Director Garfinkle)**

Executive Director Garfinkle stated that there are no substantive issues with the fitness determination process at the University of California, San Francisco Campus (UCSF), but that he has been unsuccessful with scheduling the annual meeting with the physicians as required by the Board's contract with UCSF due to their busy schedules.

Dr. Kosnik stated that he has assigned a dedicated point of contact for the pilots and trainees to assist with appointment scheduling and follow-up, and that he and the examining physicians are still experiencing difficulties with timely obtaining private physician medical information from pilots and trainees related to new medical conditions.

**6. Public comments on matters not on the agenda.**

Mr. Paetzold commented that when working on regulations, the Board's Rules and Regulations Committee is typically involved in joint meetings with the relevant committee proposing new regulations. However, he stated that that prior Rules and Regulations Committees included members who had expertise drafting regulations, and that he is not certain that there is this expertise among the current members of the Rules and Regulations Committee. Chair Miller stated that he would discuss the issue with the Board President, but leaned towards the Pilot Fitness Committee working on drafting regulations with Board staff since this committee has the subject matter expertise, and that potentially the Rules and Regulations Committee could be charged with processing the regulation package.

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

The Committee agreed to tentatively schedule the next meeting on March 18, 2020, at 1:00 p.m., and that a meeting can be held on that date depending upon Board staff's progress with both the fitness regulations as discussed at today's meeting.

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**8. Adjournment.**

Committee Chair Miller, without objection, adjourned the meeting at 11:45 a.m.

Submitted by:



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Allen Garfinkle  
Executive Director