

PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD
TRANSCRIPT OF PROCEEDINGS
TELEPHONIC OPEN MEETING
THURSDAY, JANUARY 25, 2018
CARSON CITY AND LAS VEGAS, NEVADA

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8 The Board: PATRICK CATES, Chairman
DON BAILEY, Co-Chair
9 CHRIS COCHRAN - Member
LINDA FOX - Member
10 GLENN SHIPPEY, Member
ANA ANDREWS - Member
11 JOHN PACKHAM - Member
TOM VERDUCCI - Member
12 LEAH LAMBORN - Member.
CHRISTINE ZACK- Member

13
14 For the Board: DENNIS BELCOURT
Deputy Attorney General

15
16 For Staff: DAMON HAYCOCK
Executive Officer
17 LAURA LANDRY
Executive Assistant

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1 THURSDAY, JANUARY 25, 2018, CARSON CITY, NEVADA

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3 CHAIRMAN CATES: Okay. All right. I will call
4 the order of the Public Employees' Benefits Board Program
5 Meeting.

6 Role call.

7 MR. HAYCOCK: I'll go ahead and do it, Chair
8 Cates. This is Damon Haycock for the record.

9 Ana Andrews?

10 MEMBER ANDREWS: Here.

11 MR. HAYCOCK: Don Bailey?

12 MEMBER BAILEY: Here.

13 MR. HAYCOCK: Chris Cochran?

14 Linda Fox? Linda Fox?

15 MEMBER FOX: Here, I'm present.

16 MR. HAYCOCK: Thank you, I'm sorry.

17 Leah Lamborn?

18 MEMBER LAMBORN: Here.

19 MR. HAYCOCK: Glenn Shippey?

20 MEMBER SHIPPEY: Here.

21 MR. HAYCOCK: Tom Verducci?

22 MEMBER VERDUCCI: Here.

23 MR. HAYCOCK: Christine Zack?

24 Laura, down south, I think you're going to have

1 to un-mute.

2 MS. LANDRY: She's is not here.

3 MR. HAYCOCK: Okay. I think she was parking.

4 John Packham?

5 MEMBER PACKHAM: Here.

6 MR. HAYCOCK: Chris Cochran, did you join us yet?

7 He may also be parking.

8 Chair Cates?

9 CHAIRMAN CATES: Present.

10 MR. HAYCOCK: Mr. Chair, we have a quorum.

11 CHAIRMAN CATES: Okay. Thank you.

12 Moving onto Agenda Item Number Two, public
13 comment. I'll just point out, we have a pretty light agenda.
14 Most everything on here is informational except for the
15 consent agenda. So I'll only be taking public comment at the
16 beginning and the end of the meeting.

17 So is there at this time any public comment up
18 north? Seeing none, we'll go to the south, any public
19 comment in the south?

20 MS. LANDRY: We have none here.

21 CHAIRMAN CATES: Okay. Thank you. Close agenda
22 Item Number Two. Move to Agenda Item Number Three,
23 presentation on ethics in government.

24 MR. HAYCOCK: For the record, Damon Haycock.

1 Mr. Chair, I see Christine Zack has arrived in
2 person in Las Vegas.

3 CHAIRMAN CATES: Thank you.

4 Go ahead.

5 MS. NEVAREZ-GOODSON: Thank you. Good morning
6 Mr. Chair, and, members of the committee.

7 CHAIRMAN CATES: There you go.

8 MS. NEVAREZ-GOODSON: Again, good morning,
9 Mr. Chair, members of the committee. I want to thank you for
10 indulging some time this morning to hear about ethics. The
11 commission certainly appreciates any opportunity to provide
12 outreach to Nevada's public officers and public employees, so
13 I appreciate your time this morning.

14 Glad to hear your agenda is slightly light. I
15 hope not to take too much of your time but please take this
16 as an opportunity to ask questions of me as I present some of
17 these issues to you today.

18 For the record, my name is Yvonne
19 Nevarez-Goodson. I presently serve as the director on the
20 state ethics commission. I've been with the commission now
21 for about eight years. About half my time has been spent as
22 the director and half my time before that was legal counsel.
23 So I'm pretty familiar with where we've been and where we're
24 going at the ethics commission. So I hope I have some

1 answers for you today about some of these issues.

2 Certainly, also I appreciate PEBP's resilience
3 towards ethics issues, and I appreciate Damon for bringing me
4 back forward to provide this presentation. As I said, it's a
5 great opportunity for us.

6 What I would like to do today is give you
7 somewhat of a, you know, 40,000 foot view of ethics rather
8 than get into the full two-hour presentation about every
9 ethics statute that's out there.

10 Because what I would really like to do is kind of
11 confront what the ethics commission has been seeing lately is
12 an un-recognition of when conflicts of interest exist, and
13 what we're also seeing at the commission are issues where
14 people don't understand what we do versus what we don't do
15 because the word ethics can sometimes be a little bit
16 misleading.

17 For that reason, what we don't do is we don't
18 govern what policy decisions are being made by various boards
19 and agencies out there. It's not our position to say what is
20 good policy for the state and what is not. Whereas, certain
21 people might think you've made an unethical decision for one
22 reason or another, that's really not what the commission on
23 ethics responsibility it is.

24 Instead, what the commission is concerned about

1 is specific conduct by individual public officers and public
2 employees who act in their official capacity in conflict with
3 a private interest. And so all of our statutes are geared
4 towards that very concept which is a misuse of one's position
5 to benefit or effect in some way a private interest of
6 theirs.

7 And what I think gets confusing for some public
8 officers are just what are those private interests, at least
9 under the law. A private interest doesn't mean you have a
10 hobby in sewing for example and if you vote on something
11 effecting sewing, you're going to have a conflict.

12 Instead, the law defines our conflicts as two
13 main issues. The most tangible and the most obvious personal
14 interest that can become effected by your public duties has
15 to do with your financial interest, and that's the more
16 tangible sort of obvious interest. We usually know when
17 we're voting on something or acting in our official capacity
18 that has the effect of benefiting or becoming a detriment to
19 our financial interest.

20 One of the issues that the commission has seen
21 over the last few years has gone a bit beyond the more
22 obvious financial interest because of the sophistication and
23 diversification of our business interest out there and
24 understanding, you know, does a share -- one person's share

1 of a company create a potential conflict for us. And the
2 answer is and what I want to kind of emphasize here is that
3 yes, it does create a potential financial interest, but the
4 ethics law may or may not make that a disqualifying conflict
5 of interest, and so that's where we get into -- yeah, that's
6 where we get into, you know, what the ethics law tells you to
7 do about it.

8 You know, so backtracking just one brief minute
9 is the ethics law and the ethics commission isn't telling
10 public officers that they cannot have a conflict of interest.
11 It's inherent in what we do. From the very nature of our
12 representative government, we have legislators all the way
13 down into our local governments that have different
14 professions, different business interests, diverse family
15 backgrounds and things of a nature.

16 Instead, what the ethics law is telling us first
17 and foremost, we want you to recognize when we have those
18 conflicts of interests. And, second, when we do have those
19 conflicts of interest, sometimes they will be disqualifying,
20 and they will require our abstention from acting, and other
21 times they will be enough or sufficient enough to make a
22 disclosure to the public about what those interests might be
23 and may be remote enough or immaterial such that you may go
24 ahead and continue acting.

1 And so with that background, that's the first
2 sort of personal interest, the more tangible one that can
3 become in conflict with our personal interest. I think we
4 all have an example of this power point. I'll just skip down
5 to where --

6 All right. And then the second type of personal
7 interest that becomes at play, at least under the law is this
8 idea or this notion of a commitment in a private capacity to
9 the interest of another person and that's a mouthful in
10 statute. But what it really means and what the legislature
11 has told us is that we have relationships with certain
12 persons that are so close and personal in nature that the law
13 is going to attribute their personal interest to become our
14 personal interest to create the conflict. So it's the
15 relationship itself that is creating the conflict for us.

16 Now, the legislature has defined for us certain
17 relationships that are going to qualify under the law. The
18 more obvious are going to be our spouse, domestic partnership
19 relationships, our family members within the third degree of
20 consanguinity, another great term of art that the legislature
21 has come up with. Our business relationships, they must be
22 substantial and continuing business relationships, persons
23 who reside in our households, our employers and then other
24 substantially similar relationships.

1 And I think what's important about that last
2 category of relationships is that the most questions that
3 come before the commission and come to my office have to do
4 with relationships that fall strictly outside the confines of
5 a spousal relationship or a family member within the third
6 degree and primarily ideas about friendships. Do friendships
7 create conflicts for us? And the sort of, you know, obvious
8 answer is no. I mean if friendships created conflicts,
9 government would come to a screeching halt.

10 But what we will look at is the depth and nature
11 of those relationships. Are those relationships so close and
12 personal, have they lasted over a long period of time that
13 you're deemed to be bias and conflicted? Are they
14 substantially similar to that of a family relationship or
15 something of that nature? We're going to look at those
16 interests. Are they close to a business relationship?

17 In that vein, one of the more interesting line of
18 cases that the commissions have probably over the last five
19 years has to do with public officers, private involvement and
20 nonprofit organizations or other business entities, even in a
21 volunteer capacity. And the commission has said multiple
22 times over and over again that a public officer who serves in
23 his private capacity as a member of the board of directors of
24 a nonprofit organization or other entity has a commitment to

1 that entity.

2 So one person -- a person having a commitment to
3 another person, that person could include a business entity
4 under the terms of the law.

5 And where I think that's really interesting is
6 that we have a lot of persons who are very interested in
7 contributing to their communities through these nonprofit
8 organizations about what happens, whether those nonprofit
9 organizations or other entities come before you in your
10 official capacity, it creates potential for bias,
11 nonobjectivity, and the law imputes that conflict to you
12 because of the relationship itself.

13 And I think that one other example I want to give
14 which is missed on a lot of public officers about business
15 interest is that, again, we go back to the relationship
16 creating the conflict. You may have a business relationship
17 in one venture with Joe Black for example. You may have a
18 plumbing business on the side with Joe Black, and Joe Black
19 might have 18 other business ventures out there unrelated to
20 you and unrelated to your plumbing business.

21 With Joe Black comes before you on one of these
22 other business interests, it's the relationship you have with
23 him because you have a business relationship with him in the
24 plumbing industry that creates the conflict. And you may

1 say, well, I don't have any interest or care about his other
2 businesses, but the law says that interest of the person to
3 whom you have this relationship are imputed to you to create
4 the conflict. In other words, you would be deemed to be
5 bias, unable to be objective and voting on or ruling on a
6 person who is before you with whom you shared these types of
7 relationships.

8 And so I offer that level of detail because those
9 seem to be the things where the pitfalls that public officers
10 find themselves in when they are coming before the commission
11 is failure to recognize when the conflict exists in the first
12 place.

13 With that in mind, every statute or every
14 prohibition within the ethics law, and our goal is to public
15 officers and public employees has to do with that main issue
16 conflict between our public duties, anything we're being
17 asked to do in our public capacity, any decision, any vote
18 any delegation of assignment that we might be asked to do in
19 our official capacity that could potentially be in conflict
20 with our private interest.

21 And so I'll spend a little bit of time, unless
22 anybody has any questions about those private interests that
23 could create conflicts. I would like to spend a little bit
24 of time going through some of these statutes and being

1 available to you with any questions you might have as we go
2 through these list of general prohibitions.

3 The first prohibition, obviously, has to do with
4 improper gifts, and the ethics law is pretty broad on this
5 topic. It doesn't define what a gift is. Instead, it says
6 any public officer, employee is prohibited from accepting any
7 gift that would tend to improperly influence him or her from
8 being objective and carrying out his public duties.

9 And the concern that this provision creates with
10 internal policies and even the Governor's executive order on
11 gifts like that, a lot of internal policies and even the
12 Governor's order will give a monetary value, whereas the law
13 does not give a monetary value what constitutes a gift.

14 Instead, the controlling words in this particular
15 statute are whether or not it's the type of gift that would
16 tend to improperly influence a reasonable person in your
17 situation. The reason that becomes important is because as a
18 commission, when we look at whether or not a gift is
19 inappropriate, we have to look at the business environment,
20 the role of the agency, the role of the public official or
21 public employees' duties to ascertain whether or not
22 acceptance of the gift would be inappropriate.

23 And we often look at those issues very carefully
24 because we are pretty conservative at the commission in terms

1 of even gifts of a nominal value creating potential problems.

2 This agency, as you well know, is responsible for
3 very significant contractual relationships in the private
4 industry. That creates a hugely competitive business
5 environment in this state, and so we're very careful when we
6 look at an agency who has interaction like you do with
7 private vendors in the private sector about potential
8 influence on your employees or on your Board members about
9 impacts on those particular private vendors, and so that's
10 the perfect example of the types of relationships that the
11 commission will look at to ascertain whether there's been the
12 type of gift that would tend to improperly influence.

13 Any questions about gifts?

14 Okay. Moving on, you know, this next provision
15 and statute is sort of what the commission refers to as it's
16 catchall statute regarding ethics and government law. And
17 this particular statute really is a prohibition against the
18 misuse of one's public position. This really talks about,
19 you know, but for your position in government, do you have
20 access to information or relationship or products or anything
21 of that nature that you could use to provide an unwarranted
22 benefit to yourself or to one of these persons to whom we
23 have relationships under the law.

24 And so I usually call this the sort of but for

1 statute. It's really a common sense statute, but it really
2 does capture a lot of conduct whenever individual officers or
3 public employees are misusing their access to information in
4 government to create benefits or privileges for themselves or
5 others.

6 Next, I want to talk a little bit about
7 prohibited contracts with government. There are probably
8 three or four separate statutes in the ethics and government
9 law that talk about prohibited contracts, and this does not
10 have anything to do with whether or not PEBP can have
11 contracts in the private sector. This has to do with whether
12 or not individual public officers and employees may contract
13 with government entities in their private life.

14 So many of you may have private businesses or
15 private ventures outside of your role here with PEBP, and
16 there are limitations on your ability to have contracts with
17 governmental entities.

18 And I think what's interesting about this
19 particular statute, albeit a lot of exceptions to that
20 general prohibition, is that twice now I've gone to the
21 legislature to suggest that we limit the scope of these
22 particular prohibited contracts because from an ethics
23 perspective, what the commission worries about would be a
24 contract over which you would have some influence, right? If

1 you had influence over granting a contract to yourself or
2 your business entity or someone you were related, then we
3 would be concerned about that.

4 But the legislature has twice declined that
5 request and kept the statute rather broad, so it's a
6 prohibition against contracts with any governmental entity
7 which could include the federal government or local
8 government which you presumably have no access or authority
9 in your official position. So I caution you about that
10 simply because it shows somewhat of an intent by the
11 legislature to keep that issue pretty broad.

12 Now, what I will say from an ethics perspective
13 is the legislature has granted the commission a lot of
14 discretion to grant exceptions to that particular prohibition
15 from an ethics perspective. But the concern, again, there is
16 that there's a parallel statute both for state employees and
17 for local government employees and officers about having
18 financial interests in potential government contracts that
19 creates criminal liability.

20 And so while the commission could grant an
21 exception from an ethics law violation, we always caution you
22 to double check with your agency's counsel about whether or
23 not certain contracts are within the scope of authority.

24 Now, other exceptions to that that are going to

1 exist for contracts are going to be things like inherently
2 fair contracts. Contracts that are subject to open
3 competitive bidding for example are going to be an exception
4 to the general prohibition. Likewise, the commission is
5 going to grant exceptions in certain circumstances where,
6 like I said, there's no opportunity for influence or
7 relationships that you have acquired by virtue of your public
8 position to influence those potential contracts.

9 And so while you'll see contractual provisions
10 all throughout the ethics law, that's sort of a general
11 overview of what is prohibited as far as personal contracts
12 with governmental entities.

13 Any questions about contracts?

14 Okay. You know, this next statute isn't
15 something the commission sees terribly often. It, of course,
16 exists in the law because potentially it could occur, and we
17 need to be able to point to the statute that says you shall
18 not do that. But, ultimately, this is a prohibition against
19 public officers or public employees accepting private income
20 or compensation for performing their public duties. It's
21 akin to accepting an honorarium for something you're
22 otherwise doing in your public capacity.

23 But it could be broader than that in the sense of
24 in the private sector. I mean, all of us probably don't even

1 know where that would come from, but the private sector
2 telling us, hey, we want to pay you an extra \$10,000 on top
3 of your salary because we think you're so great at what you
4 do in your public capacity but I suppose if that happened, we
5 would have to, you know, gracefully decline because of the
6 ethics law. So anytime you're being offered extra money for
7 doing what you're already supposed to be doing in your
8 official capacity, there's an ethics provision that prevents
9 that.

10 I would like to take the next two statutes
11 together. The next two statutes, again, talk about improper
12 use of one's public position. These two provisions I liken
13 in most respects to what we understand the private sector is
14 insider trading. We as governmental employees and public
15 officers, we have access often to nonpublic information.
16 Even if that information is temporarily nonpublic by virtue
17 of the work we do and it would be, you know, again common
18 sense. It would be inappropriate for us to misuse that
19 information or suppress that information because we feel like
20 it could have a potential benefit to us or if we are worried
21 about particular detriment to our interest. So, again, it's
22 common sense but same things that apply in the private sector
23 apply to us in the governmental sector, at least with regard
24 to that nonpublic information.

1 I do like to spend a little bit of time on this
2 particular statute because for whatever reason it seems to be
3 the number one statute that continues to be violated in the
4 public employees and public officers in the state and local
5 government. And while I spend a little bit of time on this
6 to Board members, it's not so much an applicable provision to
7 you, it's something that is occurring at staff levels.
8 Sometimes these issues could come up to your attention from
9 that perspective.

10 But this provision has evolved a little bit
11 before the commission because of the nature of the types of
12 issues we're seeing. There's a general prohibition in the
13 ethics law against public employees and public officials
14 using governmental time or resources or property for personal
15 benefit.

16 And I think the most overlooked government
17 resource at any level is our time. Our time as public
18 officials and public employees is owed to the public.
19 Taxpayers are paying our salaries, and it's not our time to,
20 you know, do our on-line shopping or, you know, prepare our
21 research for our school assignment that we might be doing on
22 the side or, you know, prepare our spreadsheets for our
23 private business or whatever it might be.

24 When we get up to the level of our elected

1 officials where we see this statute kind of come into play is
2 when elected officials who are incumbents running for
3 reelection potentially are using government resources or
4 subordinate staff time for example in support of their
5 campaign for reelection. So we see the gamut of these
6 issues.

7 But where I think the commission has seen an
8 evolution in this particular statute has to do with the idea
9 of government e-mail use, use of government letterhead and
10 things of that nature. And so I think it's important to note
11 that it's improper for public employees and public officers
12 to be utilizing their government issued e-mail addresses for
13 personal communications.

14 And most of the time I think this issue can be
15 handled as sort of a disciplinary issue within the ranks of
16 the agency but where we see it come before the commission are
17 in line with things like public records request and when
18 complaints come forward and we receive e-mail documentation
19 or documentation by those public employees that results in
20 for example e-mail communications in support of political
21 campaigns or political issues or private businesses on the
22 side, then we start to see a crossover into ethics violations
23 on issues that otherwise could be handled at an
24 administrative or disciplinary level type agency.

1 So I think it's important to kind of note that
2 we're still seeing these issues occur all the time in state
3 and local government, and we need to be pretty disciplined
4 about our policies and our issues about personal use of
5 government resources.

6 Now, that being said, of course, there's a
7 reasonable exception, not -- we call it nominal use
8 exception. We're not concerned about employees using the
9 internet during their break time because it doesn't otherwise
10 cause any money to the government. We're not worried about
11 use of telephones to pick up and call our spouse to pick us
12 up from work at the end of day or whatever it might be.
13 Those reasonably use exceptions include issues that do not
14 create appearances of impropriety for the organization, have
15 supervisor approval where there's a policy in place of those
16 type of uses, and we don't have concerns about that issue.
17 But, again, it's still the number one statute that the
18 commission sees before us in a complaint context either
19 formal or informally.

20 Any questions about -- yeah, go ahead.

21 CHAIRMAN CATES: Thank you for going over this.
22 This is just a comment to the other Board members. I've been
23 with state for 21 years. I've been an appointed official for
24 almost a decade, so this is pretty well trod ground for me,

1 but I haven't been asking questions, but I encourage all of
2 you to think thoughtfully about this and interrupt and ask if
3 you do have any questions.

4 MS. NEVAREZ-GOODSON: Thank you. I appreciate
5 that. And, again, I welcome those questions if you have
6 them.

7 CHAIRMAN CATES: Thank you.

8 MS. NEVAREZ-GOODSON: Okay. We're almost done
9 with kind of our ten ethical commandments here. The next
10 prohibition, and I like to think a lot of these as pretty
11 common sense so not intended to be condescending in any way,
12 really just trying to be informative about the thou shall
13 not's, you know, within the state, but this one again is sort
14 of obvious, we shall not misuse our positions in government
15 and our influence or our power to improperly influence our
16 subordinates for personal purposes. Now, again, that doesn't
17 mean you can't ask your subordinates to carry out their
18 official work duties. What we're concerned about is use for
19 personal circumstances.

20 And, you know, sometimes the absurd example draws
21 the point, and I would think this example would continue to
22 be absurd and except that this last year, I got a call about
23 this very example, but the obvious is, you know, as public
24 officials, we cannot call on our personal assistants or

1 executive assistants within the government to pick up our
2 dry-cleaning and drop it off at our house every week or pick
3 up our lunch and do those kind of things.

4 Now, in the private sector, personal assistants
5 are, you know, paid to do those sort of things. The
6 taxpayers certainly aren't paying or at least I haven't seen
7 a job description that authorizes a governmental employee to
8 be doing those types of things.

9 And, of course, again, it runs the entire gamut
10 to those examples all the way up to, again, incumbents for
11 reelection misusing staff subordinates and staff time in
12 support of their campaign for reelection. So you can
13 probably appreciate that there are numerous types of issues
14 that could come with regard to this particular statute.

15 Now, what's important to note, and I think what's
16 interesting in terms of how government operates is that we
17 look at this from the perspective of the subordinate. Does
18 the subordinate feel that their job is on the line because
19 their boss has asked them to do something that they don't
20 feel is within the scope of their job duties and is for a
21 personal purpose. A supervisor might look at it as, hey,
22 they are just doing me a favor. I ran out of time to go pick
23 up my kids from school and, you know, I have this important
24 board issue going on, but it's nevertheless, we have to be

1 careful about those things.

2 The other thing we see not as formal complaints
3 but just as good advice going forward have to do with things
4 like the request for the fundraisers of our children's
5 activities, for example. Subordinates often feel
6 uncomfortable declining requests from their superiors to
7 provide, you know, the \$20 for the cookies or whatever it
8 might be and I think while although that's not an egregious
9 example of this particular statute, again, it draws the point
10 of range of the kind of issues we can see in this particular
11 area.

12 One of the other unique things about government I
13 think that triggers this particular statute is the way in
14 which individuals are promoted through the ranks. And
15 today's peers might be tomorrow's supervisor-subordinate
16 relationship. And when your peers, and we have a
17 relationship as peers, we might do favors for one another.
18 We might have a relationship where, you know, we are
19 splitting up, picking up the kids from school during the
20 week. But when one person then becomes the supervisor, that
21 relationship changes, and we have to be considerate of to ask
22 being a supervisor versus from a colleague. And so I just
23 suggest we all be cognizant of those types of issues when
24 we're looking at this particular statute.

1 All right. We have kind of a lot of ancillary
2 provisions out there that are not any less meaningful, they
3 just are not triggered as often as some of these other
4 provisions I've gone over. Again, we have general
5 prohibitions against accepting an honorarium for performing
6 our public duties.

7 In line with what I was talking about with the
8 use of government e-mail, we also have a prohibition against
9 causing a governmental entity to incur an expense or make an
10 expenditure in support of a candidate or a ballot question.
11 Now, this is in no way intended to infringe on any public
12 officer's -- employees right to support the candidate of
13 their choice or any ballot measure or anything of that
14 nature. Your First Amendment Right stand.

15 Where the ethics principles come into play are
16 when you're causing the governmental entity to incur an
17 expense in support of your ballot question or your candidate.
18 So we've seen where e-mail propaganda about supporting a
19 particular candidate doesn't necessarily cause an expense
20 unless they are doing it on government time which then is
21 their time causing expense to the government. So we've seen
22 tricky issues like that come up in the past. So for those of
23 you responsible for setting policy, just keep those
24 provisions in mind.

1 We also have some cooling off provisions that are
2 applicable to public officers and certain public employees in
3 the state. The most relevant for your purposes are going to
4 have to do with opportunities to seek employment in the
5 private sector within the businesses or industries that
6 you're presumed to be regulating in your official capacity as
7 members of the Board or even high level employees within the
8 Board's purview.

9 And from perspective of history, the reason we
10 even have cooling off periods originated from the gaming
11 industry and the public utilities industry where the casinos
12 and the utilities were pulling our government regulators into
13 the private sector and being able to pay them a lot more
14 money and pulling our trained compliance folks into their
15 industries, and we couldn't keep up.

16 And we are also concerned about the possibility
17 that those government regulators were bringing proprietary
18 business information into business competitors because of,
19 like I said, we have a lot of access to nonpublic
20 information. So the legislature stepped in and said, you
21 know, we need to have to akin in the private sector these
22 sort of noncompete clauses, we're going to impose a one-year
23 cooling off period on our government actors going into those
24 business or industries.

1 Now, with that in mind, there are again exception
2 that can be provided. The commission has granted some
3 discretion to grant relief from those strict prohibitions in
4 the right circumstances. I will tell you that it's few and
5 far between that the commission is going to grant an
6 exception because their view is the legislature has spoken on
7 this issue, and we want it to be very clear that there's
8 going to be no effect on the business or industry that you're
9 going into to grant relief on these circumstances.

10 Now, the secondary provision that could be
11 applicable to you folks because of the nature of the
12 contracts that are awarded by this agency is there's a
13 separate provision that talks about if you have been
14 responsible for awarding a contract to a particular entity
15 exceeding \$25,000 within the immediately proceeding 12 months
16 and you've been responsible for influencing that contract in
17 some way, then, again, you would be prohibited for one year
18 from going to work for that very company that that contract
19 was awarded to.

20 That provision is really in place to prohibit
21 that sort of quid pro quo type of relationship where the
22 organization is, you know, recruiting you getting the
23 contract and then recruiting you to come work for their
24 company as a sort of thank you, if you will.

1 And so, again, kind of obvious, that the final
2 cooling off provision that we have that could be applicable
3 to public officers, as well as public employees has to do
4 with the idea of prohibition against representing or
5 cancelling any private person or entity for compensation on
6 any issue that was before your governmental agency during
7 your tenure.

8 Now, I think that's interesting because that's a
9 very broad statute. It's not any issue in which you were
10 directly involved in during your tenure. It's any issue that
11 was before the agency during your tenure.

12 And when we talk about representing our
13 counseling, we're talking about advising private persons
14 lobbying, those types of endeavors and there is, again, a
15 one-year prohibition on that. Now, with that particular
16 statute, the commission has not been granted the discretion
17 to grant relief. So if that statute applies to your
18 circumstances, then you absolutely have the one-year cooling
19 off period, and there's no opportunity for relief from that
20 particular statute.

21 Any questions about cooling off?

22 Disclosure and abstention might be one of the
23 more relevant provisions that you guys have to deal with as
24 members of the Board. Again, when we talked about those

1 conflicts up front, we talked about financial relationships,
2 and we talked about the relationships with individuals or
3 business entities that we might have. And when those issues
4 come before you in your official capacity that have the
5 potential to effect those interests, you have a
6 responsibility to disclose that to your fellow Board members,
7 as well as to the members of the public.

8 Now, I also want to emphasize that this
9 disclosure requirement applies equally to all public
10 employees within your agency except that the disclosure that
11 they are going to be making is to the supervisory head of the
12 organization. So employees within the ranks of PEBP are
13 going to be making disclosure to your director, but your
14 director could very well be making those disclosures to you
15 as a body if he has those conflicts himself. And the reason
16 that that's important is because then that puts some
17 obligation on the Board to determine whether or not certain
18 duties need to be delegated. If there are internal
19 conflicts, you need to be prepared to deal with them in that
20 way.

21 But for your own purposes, disclosure is sort of
22 the obvious route here whenever those conflicts exist. The
23 statutes use the term reasonable. Whenever the issue before
24 you is reasonably effected by these conflicts, you should

1 offer a disclosure. Again, the commission is pretty
2 conservative in its advice about disclosure because what we
3 see is even though under the technical parameters of the law,
4 you may not have a conflict that requires disclosure, often
5 times you can avoid those complaints being filed and avoid
6 those concerns by the public if you disclose the reason why
7 there's not a conflict for you in a particular instance, and
8 so that's not required under the law, but that generally is
9 advice that the commission gives to avoid appearances of
10 impropriety and things of that nature.

11 So if you're well known in the community to have,
12 you know, involvement in an organization that deals with, you
13 know, the Boys and Girls Club, for example, you may not be
14 affiliated with them as a member of the board. You may not
15 provide donations to them. You may just be a supporter of
16 their efforts but if the community knows that and then all of
17 a sudden you're voting on Boys and Girls Club issues before
18 PEBP Board, I don't know if that comes up here, but if that
19 were to happen, then the public might say wait a minute.
20 I've seen public officer X out supporting every Boys and
21 Girls rally. He has a conflict. You don't under the law but
22 it might be beneficial for you to disclose, yes, I'm a
23 supporter of the Boys and Girls Club, but I'm not affiliated
24 with the board of directors. I don't provide donations or

1 whatever those parameters may be.

2 But speaking of that particular issue, the law as
3 it's developed over the years and as it's been interpreted by
4 the commission requires a full disclosure of the conflict of
5 interest. It's insufficient to say, oh, I'm affiliated with
6 the Boys and Girls Club so I'm going to abstain from voting
7 on this. That nature of that disclosure does not inform the
8 public of how you're affiliated with the Boys and Girls Club,
9 what the depth and nature and scope of that involvement is.
10 And so our law as interpreting your disclosure requirements
11 talk about the full nature and extent of your interest and
12 how it would affect your potential vote on the issue.

13 And where we see a lot of public officers make a
14 good faith effort to make those disclosures, we get
15 complaints from -- before us that talk about the lack of
16 sufficiency of the disclosure. And so I just encourage you
17 that when you do have those conflicts, be full and
18 forthcoming about what those issues are.

19 Now, the other ancillary of disclosure and
20 abstention that comes up quite frequently and which I heavily
21 encourage you to consider is that before those issues come up
22 in an official Board meeting, you take your opportunity to
23 present your concerns about conflicts with your legal
24 counsel. And this is the legal counsel who is appointed or

1 elected to serve the body because the legislature has said,
2 you know, I only have a staff of six so I can't be across the
3 whole state at all times to be able to provide feedback and
4 advice about these conflicts. So the legislature has said we
5 need you to rely in good faith upon the legal advice of your
6 legal counsel and if you do that before you act, you're going
7 to be protected from a willful finding of a violation before
8 the ethics law.

9 The ethics law respects and appreciates the
10 feedback that your lawyers are giving you. We have great
11 relationships with the lawyers who are representing our state
12 bodies and local organizations out there. They are often
13 coming to us with questions about potential concerns for
14 conflict so you should be able to rely on their legal advice
15 about what you should be doing with regard to disclosure and
16 abstention.

17 Now, I think most lawyers out there are probably,
18 again, going to encourage disclosures. And the biggest
19 question that comes up is whether or not that conflict rises
20 to the level to require your abstention from a particular
21 matter. And we have a real interesting issue in Nevada that
22 talks about on one hand, you know, the legislature, and the
23 public policy says you're appointed and elected to these
24 positions to be our representative voice in government to

1 make those hard decisions and to actually act in your
2 official capacity. And only in those clear cases should you
3 be abstaining because if you abstain, you're taking away that
4 voice in government, and you're letting a decision of the
5 whole become a decision of the few.

6 Nevertheless, when those conflicts are clear and
7 material, and you could not be deemed to be independent in
8 your judgment, you must abstain from voting on those
9 particular issues that come before you. Now, again, I want
10 to emphasize it's really with regard to a conflict on the
11 issue that is before you. And so you have to be able to tie
12 it to is it just a conflict that you have in the world or is
13 it a conflict on the particular agenda item you're being
14 asked to vote upon. And when that is a material conflict,
15 then you are required to abstain.

16 Now, commission can provide advice and jump in
17 and assist you with whether or not we believe it's material
18 enough to require or warrant abstention in any particular
19 issue when it's a close call, when we have a question about,
20 you know, the level or the nature of that materiality, and
21 those are the types of issues that tend to come before the
22 commission for its decision is when we haven't decided to it
23 definitively on a particular issue in the past or your unique
24 circumstance presents sort of a nuance for the commission in

1 terms of our ability to weigh in on that particular issue.

2 And so the one sort of exception to abstention
3 that I also want to reference is this idea that there's a
4 presumption in the law that when you're being asked to vote
5 on something that does effect you in your private capacity
6 but it doesn't effect you any more or less than anyone else
7 effected by the group, then you can go ahead and vote on it.

8 And perhaps a good example here might be, you
9 know, whether there was an increase in the lead to benefits
10 for public employees. And for those of you who serve as
11 public employees, those rates could potentially effect you as
12 well. They wouldn't effect you any more or less than any
13 other state employee and, therefore, you're not deemed under
14 the law to have that type of conflict so you can go ahead ask
15 voted.

16 Technically, it does affect your financial
17 interest, right? If your rates go up or go down or whatever
18 it might be, so technically that's a conflict. It's just not
19 a disqualifying conflict in an instance like that. I think
20 we see a lot of those questions come up where people say, you
21 know, wait a minute. Yes, it affects me but not any more or
22 any less than the whole group that it's going to apply to,
23 and so you can go ahead and vote in those circumstances but,
24 again, we ask that you disclose that, and you explain to the

1 public why it is you're permitted to go ahead and vote on
2 that particular issue.

3 So that's kind of a real big overview of
4 disclosure and abstention, but I find this is where we get a
5 lot of questions from public officers. So I'm happy to take
6 any questions about disclosure and abstention if you have
7 them.

8 MEMBER COCHRAN: Ms. Nevarez-Goodson?

9 MS. NEVAREZ-GOODSON: Yes.

10 MEMBER COCHRAN: This is Chris Cochran. I'm in
11 Las Vegas, and I don't know if for the record, I know you all
12 took role. I think my phone had softened and I didn't hear
13 you call my name but I was on the phone when you -- I mean, I
14 was listening by phone, but I do have a question on this.

15 So let's say you got a family member whose son,
16 daughter, not necessarily a spouse because that would be a
17 direct relationship I would think for disclosure, and it
18 should be, but if you have a family member who works for an
19 organization that may be tangentially effected by an action,
20 would -- you, obviously, should disclose that. Would you
21 recuse yourself from voting on that or abstain from voting on
22 that particular issue?

23 MS. NEVAREZ-GOODSON: Thank you for the question.
24 I think the answer to that particular question is, well, any

1 lawyer would say --

2 MEMBER COCHRAN: It depends.

3 MS. NEVAREZ-GOODSON: Right. But what I wanted
4 to say first of all was that a son or a daughter or any
5 family member, again, within that third degree of
6 consanguinity is going to create a direct conflict like a
7 spouse would. And so what I think maybe I didn't point out
8 is what is interesting about the law is that when we talk
9 about our own personal interest, the law talks about our
10 financial interest. But when it talks about the interest of
11 the persons to whom we're related, it doesn't depend on
12 whether those interests of those persons are financial. It's
13 broader than that. It says the interest of a person to whom
14 we are related. It does not say the financial interest.

15 The example you present, the financial interests
16 are present because it's the interest of your son's employer
17 potentially that could be effected by a potential decision
18 you make. Now, when you raise that question about whether it
19 could tangentially effect your son's employment, that's where
20 we would get into the meat, how exactly would your decision
21 on a particular issue effect your son's employer, and is that
22 material, and then that would be the determining factor of
23 whether or not you would abstain.

24 I would say you absolutely disclose that but,

1 again, we do have precedent that talks about any decision
2 that you are in an official position to be able to make that
3 could potentially effect the interest of your son's employer
4 would, in fact, create a material conflict in most
5 circumstances. Now, if there was some nuance that said this
6 is so remote or so minuscule that my son's employer would
7 even be effected by this vote, then there might be room to
8 say that that's not a material conflict.

9 MEMBER COCHRAN: Okay.

10 MS. NEVAREZ-GOODSON: Does that help at all?

11 MEMBER COCHRAN: Thank you. Yeah, I just recall
12 we've had issues in the past and, you know, questions about
13 whether or not that rose to the level of abstaining from a
14 vote, and I just wanted to, you know, get further explanation
15 on that.

16 MS. NEVAREZ-GOODSON: Sure, and I am aware of
17 commission precedent on that particular issue where we have
18 said, of course, that a direct effect on your son's
19 employer's interest would create a conflict. So, again,
20 unless there was some, you know, nuance there that made that
21 too remote or immaterial about the issue that was before you,
22 I would probably suggest that abstention would be appropriate
23 there.

24 MEMBER COCHRAN: Thank you.

1 CHAIRMAN CATES: So I have a question about
2 disclosure. If I understood what you said earlier, we vote
3 as a matter of routine on rate setting for the plans,
4 approving benefits, you know, we approve enhancements to the
5 benefits that often Board members or state employees benefit
6 from that and retirees. Are you suggesting we disclose that
7 every time we vote because it just seems like it's kind of a
8 give-in if we're appointed to be representatives on here that
9 anything that -- I don't know, it just seems maybe a little
10 overly cautious. It seems like it would be disclosing it
11 constantly --

12 MS. NEVAREZ-GOODSON: Right.

13 CHAIRMAN CATES: -- because that's bread and
14 butter of what we do.

15 MS. NEVAREZ-GOODSON: Well, I think that there's,
16 you know, a sense of reasonableness in the law.

17 CHAIRMAN CATES: Okay.

18 MS. NEVAREZ-GOODSON: But I would say the law is
19 created everywhere with inherent conflict. All members of
20 professional licensing boards, some of them are required to
21 be members of that profession to serve on the board so that
22 has its on inherent conflict, and we always say there is
23 still a responsibility to disclose, to make sure the public
24 understands that you're potentially benefitting from the very

1 vote you're making in your official capacity.

2 So I think there could be internal protocols put
3 in place at the beginning of any meeting where you're having
4 rate setting. You could have like a group disclosure, and
5 counsel could help you navigate something like that that says
6 the following individuals will benefit from this particular
7 rate or be effected by this particular rate setting but we'll
8 go ahead and vote because it effects everybody the same.

9 I think there are protocols that can be put in
10 place, but I think under technically under the merits of the
11 law, it would be required. And if it's not done, you could
12 potentially be facing a complaint from the member of the
13 public which, you know, in all circumstances, we may not
14 accept a complaint like that but if we did, we're putting you
15 into a position where we're having to navigate going through
16 the complaint process.

17 CHAIRMAN CATES: Okay.

18 MS. NEVAREZ-GOODSON: I like to avoid that if we
19 could.

20 CHAIRMAN CATES: Me too. Thank you.

21 MS. NEVAREZ-GOODSON: You bet.

22 Any other questions about disclosure and
23 abstention?

24 MEMBER ZACK: I have one. It's Christine Zack

1 for the record.

2 So one of the things that I think is confusing
3 and exceedingly complicated for us is that some of the
4 parties that we contract with, and I actually would expect
5 most of them maybe have a, you know, a parent company that
6 has thousands of other subsidiaries, and so where do you draw
7 the line?

8 If you take Dr. Cochran's example and we are
9 voting on a contract with, I'll take something that happened
10 at the last meeting, Hometown Health but his son works for
11 Renown Hospital, I assume those are completely separate
12 entities. I mean, how far do you extrapolate? Because it
13 seems like, especially given your answer to our Chair's
14 question that it just -- there's -- there's no end in sight
15 to the ethical quandaries.

16 CHAIRMAN CATES: Hence the commission.

17 MS. NEVAREZ-GOODSON: Yeah, exactly, Mr. Chair.

18 I think you draw a very good question and one
19 that comes our way on a pretty regular basis which is, you
20 know, where do we draw the line? And the problem is and
21 where we get caught in the mix is that it's impossible for us
22 to ascertain, you know, for every public officer out there
23 where those conflicts exist. You guys are the ones who are
24 working within the scope of these industries and these areas.

1 And so I think what the legislature has said to
2 us and what we're asked to interpret and enforce is it's
3 about transparency to the public. And so is there an issue
4 where a parent company, you get to vote on an issue that
5 effects a parent company that has the potential to directly
6 affect your husband's or your son's employment interests,
7 right? And so, again, it becomes the materiality. It's not
8 so much as it's a parent company versus a subsidiary which
9 could be relevant. It's what the effect on your person's
10 employment interest and that's where we get into materiality.

11 We want to know how is your decision as a public
12 official going to potentially effect those private interests,
13 is it material or isn't it? And, unfortunately, there's just
14 no black and white answer to that particular question. It
15 really talks about --

16 MEMBER ZACK: And so I guess you took the example
17 of corporate parent, and not that I've ever seen an
18 organizational chart for Renown or Hometown Health, I assume
19 there's a parent and there to affiliate companies, but I
20 don't even know if that's true. So I guess it's to me
21 different when it's a parent than it's the umbrella over two
22 different divisions, but what if it was one division that
23 does benefits versus another division that does operations?
24 I mean, they are typically different operational lines with

1 different leadership.

2 MS. NEVAREZ-GOODSON: Well, and, again, I would
3 say that it would depend on what the issue was before you.
4 So if you're voting on an issue that effects the company as a
5 whole, it's going to bring millions of dollars into the
6 company that is going to save both lines. It's not just
7 whether or not you're providing a contract to one portion or
8 one side of the corporate entity that does benefit versus the
9 other side that does insurance or whatever else might be.

10 So really, you know, when we look a little more
11 broadly at some of those issues but the facts draw the point.
12 The fact being, you know, where we are able to make our
13 decision, the facts really have to come into play as to how
14 does this contract that you're being asked to vote on effect
15 the interest of the person to whom you're related.

16 You can get more and more remote, that could be
17 one factor that would maybe potentially get you outside of
18 the scope of abstention which is to say, okay, we might be
19 awarding a contract to Renown Health here, and my son works
20 for a corporation that contracts with Renown and but if
21 there's no tie to the benefits that you're providing to
22 Renown to this contract with another organization, then that
23 tie is getting looser and looser and looser to create a
24 material impact on the interest of your son's employer,

1 right? And so we have to look at all of those factors when
2 we make that decision and, unfortunately, I can't give you a,
3 you know, a yes or a no. We just have to look at what is
4 material to the interest of the employer based on what you're
5 able to do in your official capacity.

6 One of the issues that the commission has looked
7 at is sort of this duty to know, right? Sometimes we get
8 responses back from public officers in which they will say,
9 well, we voted on this particular issue, but it was
10 unreasonable for us to know how this would trickle down the
11 line, you know, tenfold to potentially effect someone to whom
12 we're related, and I think the answer is that's fair.

13 Now, we do impose a reasonable duty to inquire.
14 I think it would be unreasonable for a public officer, for
15 example, to say I didn't realize my husband earned money from
16 that particular venture. But if it was, you know, ten, you
17 know, layers removed or something like that and there was
18 some tangential effect on something like that, we might say,
19 okay, that's reasonable. That wouldn't be something
20 presumably that would effect your independence in voting if
21 you didn't even know about it or shouldn't have necessarily
22 known about it.

23 We do caution though that if when you're
24 reviewing these agenda items and materials that are coming

1 before you, if you do see anything that you have those
2 protocols in place to understand who are the owners? Who are
3 the interested people in these issues that are coming before
4 me? Is there a potential for it to cross into my own
5 personal business or my personal interest in some way?

6 MEMBER ZACK: Thank you.

7 MS. NEVAREZ-GOODSON: Any questions?

8 Okay. Well, I wanted to wrap up a little bit.
9 I'm going to skip through some of these slides that we just
10 talked about, but I wanted to wrap up by saying we did have
11 an interesting 2017 session in which we were able to evolve
12 quite a bit at the commission in terms of how we approach
13 both our advisory cases and our complaint cases and I think
14 for the better.

15 It used to be, you know, that we had this idea of
16 penalties for violations of the ethics law up to 5,000 for a
17 first willful, up to 10,000 for a second willful and up to
18 25,000 for a third willful.

19 What the commission argued before the legislature
20 and the legislature agreed was really two different issues.
21 The first of which is that we need to be able to have an
22 arsenal of penalties outside of monetary sanctions that are
23 related to the severity of the conduct. And so perhaps we
24 are seeing nominal issues that are amounting to monetary

1 penalties whereas mitigating those harms to the public might
2 be a better approach. Maybe that there's a public reprimand
3 or public admonishment or requiring the public officer to
4 disclose at a later time to mitigate those harms and do those
5 type of things.

6 We've also been given the authority at the review
7 panel stage of our proceedings to enter into public deferral
8 agreement which means we're going to impose various terms and
9 conditions on a public officer's conduct to avoid a potential
10 finding of a violation.

11 Now, again, I want to emphasize these are going
12 to be for those minor cases that come before the commission
13 that don't involve willful or bad faith or reckless, you
14 know, behavior by a public official or public employee.

15 On the flip side of that particular issue where
16 we do have admitted or understood conduct, we are probably
17 going to go forward with willful findings and still impose
18 those monetary violations in those instances, but we have
19 streamlined our process significantly. We -- you know,
20 probably five years ago, we were deemed to have suffered from
21 backlogs and all of these kinds of things. But our processes
22 have been streamlined sufficient enough that if you do wish
23 to come before the commission for a first party request for
24 advice, we are going to get that advice to you within 45 days

1 and sooner if it's an emergency or good faith reason to get
2 that advice. And, secondly, we're going to be able to
3 resolve these complaints that come forward in a much more
4 streamlined fashion. So I encourage you to utilize both of
5 those resources.

6 The other resource that came to the commission's
7 attention, you know, one that we have brought forward a few
8 times to the legislature has had to do with this idea of
9 anonymous complaints. And the legislature is uncomfortable
10 with authorizing anonymous complaints simply from the fact
11 that there is a lot of political nonsense that sometimes goes
12 on and a lot of mudslinging, and we have to be pretty
13 sensitive to those issues and fair out those complaints that
14 don't have value.

15 But what we have seen is that the majority of
16 people who would have information about public officials or
17 public employees violating the law are those people who work
18 with those individuals, and those are the individuals who are
19 the most reluctant to bring those issues far.

20 The general public typically does not have that
21 level of information about what is going on within our
22 agencies, and so the legislature offered a compromise and
23 they have authorized public employees and public officers who
24 wish to file a complaint against someone within their own

1 agency. They may not file it anonymously with the
2 commission, but they can request that their name remain
3 confidential from the public purview and from the purview of
4 the subject, and so I wanted to offer that as a new process
5 going forward if we see those ethical harms going on in our
6 various agencies.

7 And so with that, Mr. Chair, I appreciate your
8 indulgence and if there are any questions, I'm happy to
9 answer them. I've also provided my contact information to
10 you. You're always welcome to contact my office if there are
11 questions. We cooperate greatly I like to think with your
12 counsel on these issues but certainly if it's in an area of
13 sensitivity that you want to discuss with me, I'm happy to do
14 that as well. I appreciate it.

15 CHAIRMAN CATES: All right. Thank you so much
16 for your time and the information you've given us.

17 Does anybody have any other questions?

18 Go ahead.

19 MEMBER PACKHAM: Hi, John Packham for the record.
20 I'm a newbie so I get to ask newbie questions.

21 Do state employees or agencies ever sign like
22 conflict of interest disclosure forms or anything? I serve
23 on a couple of nonprofits on an annual basis, and I don't
24 know if that's typical.

1 MS. NEVAREZ-GOODSON: That's a great question.
2 Thank you, Mr. Packham.

3 What I failed to talk about was our obligation to
4 file acknowledgment forms before the Nevada Commission on
5 Ethics. So for those of you who serve on the Board, you're
6 deemed to be public officers who are required to file your
7 acknowledgement of statutory ethical standards with the
8 ethics commission. That's the only form that's required at
9 this point in time with the ethics commission.

10 Prior to 2017, we had a form that was required to
11 be filed which was a representation form which meant within
12 your private capacity you were representing a private client
13 and then that issue came before you, you obviously had to
14 file that written disclosure. But what we learned is we were
15 getting maybe ten of those a year, and we had no ability to
16 ascertain who was or wasn't complying. And so instead, we
17 transitioned that requirement under the law to simply be that
18 if you have that type of relationship in your private sector,
19 you just have to disclose that when the conflict comes up for
20 in your official capacity.

21 Now, separate and apart from the ethics
22 commission and what you may be thinking of are your financial
23 disclosure requirements before the secretary of state and in
24 2011, we transitioned that function from the ethics

1 commission to the secretary of state where -- in which they
2 require disclosure of your certain financial interest to be
3 on file every year, and that's a different function from
4 disclosing, number one, that you've acknowledged that you
5 understand and appreciate that you're subject to the ethics
6 and government law.

7 And so if you have any questions or Damon has any
8 questions about your compliance duty to file the
9 acknowledgement form, we can assist you with that.

10 It's one filing for each term in office. If
11 you're reappointed to serve on this Board, you must again
12 file the form within 30 days of any reappointment. I think
13 all of you serve a definite term. If any of you serve an
14 indefinite term, you're required to file on or before
15 January 15th of each even numbered year. So that's the
16 acknowledgment form requirement. But, no, direct answer to
17 your question is there's no form that needs to be filed about
18 those organizations to which you're affiliated.

19 But what we have seen become a big help to the
20 attorneys that are representing the boards to assist you in
21 represent recognizing conflict, sometimes agencies will have
22 internal protocols where counsel will want a list of
23 organizations that you're involved in so they can help
24 navigate when potential conflicts come up on agenda items.

1 CHAIRMAN CATES: Any other questions?

2 MEMBER ZACK: This is Christine Zack.

3 We're having a conversation down here that we're
4 not sure we ever received those packets. Maybe we're just
5 forgetting. Dr. Cochran thinks maybe his first term on the
6 Board he got one, but we -- maybe we're just not recalling
7 but it doesn't seem very familiar to us.

8 MR. HAYCOCK: So for the record, Damon Haycock.

9 One of the notes I took is to ensure that you
10 guys have everything after this meeting is over in case
11 anything got missed.

12 MS. NEVAREZ-GOODSON: And, you know, I'll put
13 your mind at ease, if I could. Back in August of last year,
14 we saw a lot of noncompliance with the acknowledgement form.
15 The commission has given me discretion to provide sort of a
16 30-day cure period for those people who have failed to file
17 timely because part of what the commission's mission with
18 that type of outreach for that purpose to inform you guys of
19 those requirements. So I'm happy to work with Damon on
20 issues. We can certainly look at our internal files to see
21 who filed.

22 Again, from my understanding, and I've recently
23 been in touch with the Governor's office about this issue,
24 upon your initial appointment, you will receive a packet with

1 a copy of that form. However, I don't know that you will
2 receive a packet upon a reappointment. And so if you're
3 serving a definite term in office, you are only required to
4 file that form once within 30 days of the appointment. If
5 you're reappointed within 30 days of that reappointment and
6 for those members who serve an indefinite term on the Board,
7 then you file it once upon appointment and then on or before
8 January 15th of each even numbered year.

9 So those of you who haven't gotten those forms on
10 file, we'll get you squared away here in the next week or so.

11 MEMBER ZACK: Thank you.

12 MS. NEVAREZ-GOODSON: All right. Well, thank you
13 again. I appreciate your time, and, please, don't hesitate
14 to keep my contact information. I look forward to working
15 with all of you.

16 CHAIRMAN CATES: Thank you very much.

17 Okay. We'll close Agenda Item Three.

18 Do we need a break?

19 Okay. Going to Agenda Item Four, presentation on
20 the open meeting law.

21 We'll give Dennis a minute to get set up here.

22 MR. BELCOURT: I'm ready to proceed.

23 CHAIRMAN CATES: Ready, okay. Go ahead, sir.

24 MR. BELCOURT: Chair, Members of the PEBP Board,

1 Deputy Attorney General Dennis Belcourt.

2 Last time I think this topic was presented was
3 presented by another member of our office. I'm happy to do
4 this because every time I do it, I get a chance to review
5 everything I should be doing on a daily basis, of course, but
6 this gives me a good chance to do a thorough review of the
7 open meeting law.

8 CHAIRMAN CATES: We'll learn together.

9 MR. BELCOURT: So I start with the penalties
10 because those kind of excite -- get the energy flowing a
11 little bit. What is going to happen if you violate the open
12 meeting law, and there's all kinds of things that could
13 happen, not all of which are a direct impact on a Board
14 member, but they do effect Board business, and often actually
15 the most common issue is avoiding action by the Board which
16 I've seen it happen.

17 Early on in my tenure with the Attorney's
18 General's Office, I was involved with the tax commission.
19 They had a case that went on and on and on forever as an open
20 meeting law case and actually just got resolved. The
21 underlying issue that was -- the tax commission was
22 determining -- they were determined to have violated the open
23 meeting law by going into closed session on a tax matter that
24 at the time of the law, our office had -- had advice against

1 going into closed meeting.

2 The whole thing, it's just, finally, the
3 underlying issue got resolved 15 years later after it
4 started. So it's -- things can go on forever. The open
5 meeting law only took five years to get involved. It went up
6 to the Supreme Court and so it took a little bit longer than
7 your average. So voiding -- this was a voiding issue. The
8 decision got voided and it ended up being a significant tax
9 issue, you know, a tax refund issue. The U.S. Supreme Court
10 just denied SERT on the underlying issue so that's --
11 interesting issues can be included in the open meeting law
12 perspective.

13 Fines, I haven't seen a fine of an official. I
14 think it would probably be fairly egregious for a fine to be
15 issued or levied. There's a criminal prosecution, attorneys
16 fees and all of that.

17 Most common, as I said, voiding and do-over. We
18 did have a do-over by the Board. As I mentioned, violation
19 -- action violation of the law, void, you know, they become
20 un-void if no action is taken in court to void them. So, you
21 know, it's -- if there was an open meeting law violation six
22 years ago, it's of no significance from the -- but
23 nevertheless, you know, having to do a void and action could
24 be very significant.

1 You know, our office has enforcement powers. I
2 do not get involved in the enforcement powers. One complaint
3 that -- there was one complaint that I had to address and it
4 ended up being, you know, found not valid, but my involvement
5 is sometimes defending the decision, you know, or the action
6 of the agency that comes up, but there is a part of our
7 office that would be involved in enforcing it.

8 So the -- and when something comes up as there
9 can be corrective action taken in conjunction with our
10 officer, there can be discussion if there's a complaint that,
11 you know, has potential merit, and you do see agencies go
12 back and redo fairly often just to make sure they are on
13 solid ground. You know, there is enough options for people
14 to go to court to try to void it, our office to go to court
15 to try to void an action and so it could end up in court that
16 way.

17 Turning away from the sour -- the dour part of
18 the sanctions that we may face, this background, open meeting
19 law is statutory. It has some First Amendment issue, free
20 expression issues wrapped up in it because when you, you
21 know, creating a forum for public comment, for example, what
22 can you do to restrict that forum but generally speaking,
23 statutory -- it is statutory. And Chapter 241 is the main
24 area that you can find exceptions around the law to open

1 meeting law and other parts of the NRS.

2 But it also is subject to judicial
3 interpretation. Like any statute, the Court interprets it.
4 And our office tries to provide our best advice on it, and we
5 put out an open meeting law manual. I put the link on the --
6 on power point. You can read opinions of our office too up
7 on that link. And, of course, I'm here to advise and help us
8 through issues and hopefully I'm always right but I can't
9 guarantee that, I try.

10 So the thrust of the -- of course, the thrust of
11 the open meeting law is open government. You know,
12 transparency have -- give people, the general public
13 knowledge of what's going on in the government, and the hope
14 is that through transparency things will be conducted fairly
15 and better, and good decisions will be made, and the law is
16 interpreted with that spirit in mind, of course.

17 I added a slide. I don't know why I didn't have
18 this in the slide that went out, the power point that went
19 out, but this is kind of I think the crux of the law and that
20 is all meetings of public bodies must be open and in public,
21 and then exceptions are limited strictly to the terms of the
22 exception so that, you know, we have open meetings and things
23 are done transparently. And to the extent the legislature
24 has said you don't have to do that in open, it's pretty much

1 limited to what the legislature says. You don't have, you
2 know, a broadening of that exception to the law.

3 So that's 241.020 is actually probably the most
4 important section to read from a Board member perspective in
5 the statute, and this is just part of that, of course, but
6 it's got a lot of stuff going on in there. Important to --
7 we look at PEBP, you know, being governed by the open meeting
8 law. I mean, the first thing you look at with any committee,
9 et cetera is is it a public body and, of course, PEBP is a
10 public body on many levels. It's publicly funded. It's
11 created by statute and government. The Governor has
12 appointed people. There are other committees out there that
13 might meet one or -- one -- check one box, but PEBP checks
14 pretty much all of the boxes that you need to check. There's
15 no doubt about that.

16 And, of course, Nevada -- Nevada's open meeting
17 law really only covers -- obviously, covers meetings. I
18 mean, individual action by the executive officer is not in
19 the public, you know, open meeting law, of course, but
20 it's -- it's a quorum. Nevada is a quorum state, meaning,
21 you know, the actual laws under the open meeting law are
22 triggered by there being a quorum, and also the quorum is to
23 deliberate toward a decision or to take action. So those are
24 in the definitions which are 241.015, I'll get there next.

1 But, anyway, it is -- these are kind of the gist of what
2 brings it to apply to PEBP.

3 Now, PEBP can also create subcommittees and
4 advisory committees. Those too are going to be governed by
5 the open meeting law simply because they are created by PEBP
6 as a board. If -- if for example executive officer creates a
7 committee of his staff to do things, well, that's not -- you
8 know, I mean, if he does it on his own initiative, that's not
9 a subcommittee and it wouldn't be governed by the open
10 meeting law. But if the Board does anything, including, you
11 know, recruitment -- I mean, I don't know, a few years back
12 we had recruitment of our executive officer, you know, of
13 that position. And the question was, well, we want to create
14 a subcommittee to do that. And if you do that, well, the
15 subcommittee has to, you know, abide by all of the open
16 meeting law rules. The decision ended up being not to go
17 that route. And so it's -- an individual is given the
18 assignment of kind of thumbing through the resumes, and it
19 came back to the Board, of course, for the ultimate decisions
20 on that issue, but you didn't have a subcommittee.

21 Some key definitions, deliberate is really an
22 important one. Actually, it's only been in statute, the
23 definition of deliberate has only been in statute for a few
24 years, I think 2015 -- 2013. Before that, I mean, it had --

1 this very definition had been used by the Courts back in 2003
2 and it was copied from a California case which so the Nevada
3 Court -- the Nevada Supreme Court does look to other
4 jurisdictions to fill in the gaps when it doesn't have prior
5 decisions on an issue.

6 But, I mean, to examine reflect, it's fairly
7 broad. And so, you know, sometimes I scratch my head about
8 exactly what does this mean in particular context, and we
9 don't always have the perfect answer. But, I mean, just, you
10 know, if you're -- if you're at the SALGBA meeting, are you
11 deliberating? Well, you're just hearing information from
12 people around, you know, the country. You know, you're not
13 deliberating but even though you're collecting information or
14 receiving information, so I don't think we ever have for a
15 quorum at the meetings anyway. But if that were to happen,
16 we would look at it and say you're probably not deliberating
17 towards a decision at that SALGBA meeting unless you have
18 some sidebar discussions or you engage in that overtly. But
19 that means maybe you need to take me to the next SALGBA
20 meeting so I'll make sure you're doing it right.

21 Very important definition, meeting, and this is
22 important because it's not -- not all intuitive what is a
23 meeting. I mean, clearly a meeting is you gather together
24 to, including through electronic communications to have

1 discussions to deliberate toward a decision or to take
2 action, and you have a quorum present, that's the easy one.
3 Well, there's the other one, which the legislature added and
4 I think there was already judicial matters that address this
5 issue and it's what about people who are -- what if you take
6 action and you don't have everybody altogether at once but
7 you nevertheless have everybody involved in the decision
8 through serial meetings and that's -- the legislature added a
9 provision on that and prohibiting the -- I mean, the Courts I
10 think already recognized that in it was an open meeting law
11 violation, but the legislature put it in statute expressly.

12 So if you have multiple meetings and actually you
13 have a specific intent requirement so, you know, the lawyers
14 among us know specific intent means you had in mind this
15 particular result. If you have multiple meetings of
16 sub-quora, that's not a word probably, but it is now, then
17 you -- then you would -- and you're doing that in order to
18 get a decision without having an open meeting, that's still
19 -- technically, it's a meeting and, you know, you really
20 can't agendize. I suppose you could have multiple quora,
21 multiple meetings of sub-quora that are agendized and noticed
22 that are not in violation of the law, I suppose you could do
23 that but that's not, you know, where this issue comes up.

24 Texting is a violation of the open meeting law.

1 I mean, suppose -- and this issue, you know, let's suppose
2 you have members who are texting each other and instead of
3 discussing on the record for everybody to hear, I mean, they
4 are doing it in an open meeting but they are not doing it in
5 an open way. So -- and so that's -- you know, this is an
6 issue I kind of throw out, and my advice is to discourage
7 texting and to do more business. I mean, that's -- and not
8 just because of the open meeting law but because of Public
9 Records Act.

10 Because -- and there is a Nevada Supreme Court
11 case proceeding through the Courts right as we -- I mean,
12 it's awaiting decision in Lyon County in which the Courts are
13 looking at whether individual devices -- texting on your
14 individual devices creates a public record that you will be
15 responsible of, you know, turning over if there's a public
16 records request. But, I mean, that's about -- really,
17 actually, that's about just their personal -- personally
18 owned device, conducting government business on your own
19 personally owned device.

20 You know, I imagine not too many Board members
21 have, you know, agency issued devices. But in that case, you
22 know, you may be looking at that issue, and that may come up
23 in, you know, a merger of an open meeting law issue and a
24 Public Records Act at the same time, but I think it's a good

1 idea to avoid texting about Board business among the Board
2 members.

3 So there are exceptions to the public open
4 meeting law applicable to pretty much all boards. One is, I
5 mean, we call them non-meetings, and that's maybe another
6 front to the English language but it's -- you know, it's
7 easier to say that, I don't know, we got used to saying it
8 for whatever reason.

9 Social functions, you can't -- you can get
10 together socially for lunch. You know, when a meeting is
11 underway, you go out to lunch and you can have -- you can
12 have social function involving a quorum and as long as you
13 don't deliberate. Of course, you can't act, that's obvious.
14 You can only, you know, be in social, you know, go to lunch
15 together. You're not violating the open meeting law.

16 Attorney, non-meeting, about litigation over
17 which the public body has -- has, you know, supervisory
18 authority or control, that doesn't need to be -- you know,
19 that's not a meeting under the open meeting law even though
20 you have a quorum. And in that one, in that context you can
21 deliberate. So you can -- you can head towards that, down
22 the road to a decision, but you cannot act. You cannot take
23 action. So and, you know, those -- the legislature -- I
24 mean, that wasn't in -- I think it was about 15 or 16 years

1 ago that was added. It wasn't in the original open meeting
2 law as acceptable.

3 So in their limited scope non-meetings do not
4 comply. You don't have to tape record the non-meeting, you
5 know, your lunch conversations, and I'll get into the tape
6 recording issue later on, but so you don't have to comply
7 with any aspect of it. It doesn't have to be agendized at
8 all. Our advice is if you're going to break from a regular
9 meeting to go into a non-meeting that you put on the agenda
10 that a non-meeting may be held.

11 Terms of exceptions to the open meeting law
12 narrowly construed, we look at spirit of the law. The spirit
13 of the law is not to meet in private, not to in private. The
14 exceptions are narrowly construed to meet that spirit.

15 Closed meetings, there is some statutes in open
16 meeting law about closed meeting such as you can agendize a
17 meeting to consider the character of a person or alleged
18 misconduct, et cetera of a person. I mean, you don't have to
19 agendize it as a closed meeting but if you're going to go
20 into closed meeting, you have to indicate that the meeting on
21 your agenda that the meeting may be closed to go and discuss
22 this matter. And under 241.033, the person about whom you
23 would be talking could waive that. So you could end up in an
24 open meet being after all even if you thought about going

1 into a closed meeting.

2 So I want to mention, PEBP has its own provisions
3 in 287 about closing meetings and an example would be, you
4 know, employee issues, personnel issues. It's one -- I think
5 there's four different criteria. One is duplicative legal
6 advice and then there's one about investments which doesn't
7 come up, and then there's one about a closed meeting to
8 develop an RFP, and I haven't -- that hasn't been exercised
9 since I've been helping the Board.

10 Publishing, this is probably the most frequent
11 topic is agendas and clear and complete, are they clear and
12 complete and, again, part of 241.020, you know, there's a lot
13 to it, you know, what you have to put on the agenda, and I
14 think we have a pretty good templet that we're working with,
15 you know, always prepared to accept recommendations, but
16 maybe one out of an agenda item for disclosure, conflict of
17 interest or just -- I mean, I don't know if that -- if you
18 want to do that, but we'll discuss how to get that issue
19 addressed.

20 It's really an art, the agenda, in my opinion. I
21 mean, there's certain guidelines are pretty clear, but what
22 is a clear and complete agenda? You know, we go back and
23 forth frequently on that issue, and the Sandoval case
24 addressed that in the context of a nonaction item but, you

1 know, it's supposed to give the public notice of what's
2 important. Well, what they care about, so how do you know
3 what they care about? And sometimes, you know, obviously, if
4 something has come up a lot, if there's a lot of expression
5 of public interest that's come up before, then, you know,
6 it's something that you need to be more -- perhaps more
7 complete and more, you know, inclusive with information on
8 the agenda.

9 Yeah, the Sandoval case involved UNLV or going, I
10 think it was UNLV, no, Board of Regents going over some
11 issues that they agendized something fairly -- you know, it
12 looked fairly nocuous and then went into heavy detail on
13 stuff that was a real public interest that, you know, it
14 really wasn't flagged by the agenda item.

15 You know, one -- I ran across this a few years
16 ago that kind of struck me as interesting, you know, the --
17 well, first what Sandoval said was greater degree of
18 specificity if the public -- if there's significant public
19 interest, just as I said.

20 Agenda item discussion, direction to staff and
21 possible approval of limited guarantee pertaining to
22 settlement and restructuring agreement. I mean, that's
23 gotten me falling asleep already reading that but then when
24 you realize that, that was about the Reno Aces Stadium and

1 that was very much interesting. The public was very much
2 interested what kind -- this was back in the great recession,
3 of course, are we going to continue -- are we going to give a
4 break to the stadium, and so there was press interest, public
5 interest. That agenda item didn't tell people what they
6 really needed to know to know, well, I needed to show up on
7 this month.

8 So it's -- you know, it's really -- it's an art,
9 but it's kind of common sense. I mean, and one thing, of
10 course, you don't do is try to avoid -- you know, if you
11 think something is interesting to the public and, you know,
12 you're concerned the interest might create heat, you don't
13 try to avoid the heat. You have to face it.

14 Now, this is a topic that comes up with a lot of
15 public bodies and that is agendizing bill reviews. Every
16 session you have bills of interest for your agency and you
17 don't have to -- this case said you don't have to put those
18 bills on your agenda. You can -- the Supreme Court found it
19 was okay to say, you know, on your agenda, we're going to
20 publish the list of bills we want to talk about on a -- on
21 the web the night before or a couple of days before or
22 whatever because we don't know at the moment the agenda goes
23 out that those bills are what we need -- we're going to be
24 talking about. So you have some flexibility the Supreme

1 Court has said in terms of agendizing, you know, where it's
2 warranted.

3 So there is a specific rule that was added, I
4 think it was added in 2015, that if you take administrative
5 action regarding a person that you would have to put that on
6 your -- put the person's name on your agenda and that would,
7 you know, it's not -- it hasn't been litigated yet in this
8 particular provision but clearly intended to apply to, you
9 know, appointee or where there's an appointment at issue or
10 there's a contract award at issue.

11 And in my rule of thumb, which is the second
12 bullet point on this, if you're going to have a person or an
13 entity, for that matter an entity being a person too, named
14 in the motion that you should put it on the agenda. That's
15 kind of my rule of thumb thinking on that one. Again, that's
16 my thinking. It hasn't been decided in court or that's a
17 requirement.

18 Of course, we all know that if you're going to
19 take action, you're going to have to put for possible action,
20 the legislature, it used to be people italicized and
21 underlined and did all kinds of stuff on their agenda to flag
22 that, but what the legislature said is we really want you to
23 put is for possible action, and we're not having any
24 problems. That's kind of a pretty good bright line rule. If

1 you're going to vote on it, put for possible action on it.

2 So one aspect of the open meeting law, we're
3 getting away from the agenda issues is notice issues to
4 particular persons. As I mentioned earlier, you know, if
5 you're going to -- if there's going to be consideration of
6 character for example or alleged misconduct, you have to --
7 you can close that meeting and -- but also you have to give
8 notice to the person about whom that comment may be or
9 discussion may be or consideration may be, and that notice
10 is, you know, five business days or 21 or if it's personal
11 service or 21 days, business days if by certified mail. And,
12 of course, it's important that you have that on your agenda
13 too that you're going to consider -- potentially consider
14 personal factors such as character and competence.

15 So the others are administrative action against a
16 person, and I put some language of our open meeting law
17 manual in here, and administrative action against a person is
18 a personal action, not kind of a generic action that might
19 effect a person and that still doesn't give me full
20 satisfaction as to what constitutes administrative action.
21 When in doubt, you give notice I think.

22 So the next issue about making materials --
23 meeting materials available comes up from time to time. As
24 you know, every meeting we have to have meeting materials,

1 you know, at the table top at each location for people to
2 look at. If people request meeting materials, we have to
3 make them available to them. It doesn't mean it gets sent
4 out by mail free copies, you know, pay the postage and all of
5 that. It has to be available to them. It's been interpreted
6 that way for quite some time. Even, you know, I guess
7 legislature has looked at that issue and they haven't seen
8 fit to require that the agency pay for the mailing because
9 some agencies, they generate such a volume of information
10 that it would be very costly, I guess that's the
11 determination that they make.

12 From an open meeting law perspective, you know,
13 having the meeting materials available to the people who
14 request them or has a consequence if it doesn't get followed
15 and that is -- there's an illustration from the Nevada
16 Wildlife Commission matter that came up a few years ago and
17 where our office --

18 What happened is the supporting materials were
19 sent out. The agenda, by the way -- I mean, the agenda needs
20 to be sent out at no charge if somebody requests. The
21 supporting materials don't, but if they are made available --
22 the agenda supporting materials were made available on the
23 website of the commission and, unfortunately, they did not --
24 double sided pages, but only one side was of each page, and I

1 don't know if the Chair remembers this, okay, so it can have
2 consequences.

3 CHAIRMAN CATES: Do-over.

4 MR. BELCOURT: Yeah, a do-over. It was totally
5 inadvertent, not willful or, you know, do-over was a good
6 precaution -- precautionary measure in that instance.

7 I think I already covered this a bit, so, yeah,
8 the materials -- meeting supporting materials need to be made
9 at the same time they are available to the members. So if
10 the members are getting the supporting materials at the
11 meeting, then they need to be made available to the public at
12 that point in time. If they're getting them before the
13 meeting, then they need to be made available to the
14 requestors at the same time they are made available to the
15 members.

16 So recording meeting minutes, just, the minutes
17 are action minutes. They don't record every single
18 discussion verbatim certainly. If a member of the public
19 asks that the -- their remarks be included, you don't need to
20 have a verbatim recount of those remarks, but you do need to
21 get the substance of those remarks in the minutes. And so,
22 obviously, this comes to you when you approve minutes and you
23 can say, well, did we cover everything. Make sure -- I mean,
24 make sure we meet those requirements and we should be good.

1 Another requirement is to approve the minutes. I
2 think it's within 45 days or by the next meeting, whichever
3 is -- no, it's later actually, yeah. So if you have a
4 meeting like 15 days apart, then you have a bit of a time
5 crunch unless you're going to have a meeting within the next
6 30 days.

7 CHAIRMAN CATES: So I have a question.

8 MR. BELCOURT: Sure.

9 CHAIRMAN CATES: About minutes. So I understand
10 correctly, the minimum amount of minutes required is like
11 action minutes --

12 MR. BELCOURT: Yeah.

13 CHAIRMAN CATES: -- that capture a lot of
14 information, just the act of the motion and action taken?

15 MR. BELCOURT: Uh-huh.

16 CHAIRMAN CATES: Because it always struck me when
17 I was at wildlife, very long multi day meetings make PEBP
18 meetings not so bad in comparison, and we had very detailed
19 minutes because that's what our constituents wanted, but
20 there was just constant friction about that because of the
21 amount of time that they take. And because a lot of public
22 bodies are producing videos and video archives of their
23 meetings, I think there's a lot less need to do detailed
24 minutes of meetings and you can rely on action minutes and

1 the videos as a record.

2 MR. BELCOURT: That's true. There is -- I mean,
3 241.035 has very limited requirements in terms of detail.
4 You know, recording a member's vote, that kind of thing and
5 who is present, and a lot of agencies do put out more
6 detailed -- I mean, we have a -- if we have a transcript that
7 goes on line, people can certainly read that.

8 CHAIRMAN CATES: Right.

9 MR. BELCOURT: I mean, the difference, minutes
10 have a longevity that everything else doesn't, I mean,
11 permanently retained by the state. I mean, they go to
12 archives after five years I believe.

13 CHAIRMAN CATES: Right.

14 MR. BELCOURT: So there is that aspect of minutes
15 and it's different from everything else but, yeah, the
16 details are requirements are there. It's optional. It's up
17 to the agency, whoever wants to keep the record.

18 CHAIRMAN CATES: Thank you.

19 MR. BELCOURT: So, and the audio recordings and
20 transcriptions, that requirement is, I believe, requested by
21 our office initially because, you know, when there's a
22 complaint, an audio recording or transcription is -- is a
23 good thing to have to verify how the meeting was conducted.

24 And so I guess one thing that I was looking

1 through some opinions and it seemed that there was a
2 recurring message in a lot of the opinions and that is to
3 remind boards to make sure people identify themselves when
4 they speak because when the Attorney General's Office is
5 reviewing, you know, the audio recording, the trans -- I know
6 the court reporter is going to get it but the audio
7 recordings, it's sometimes hard to know who is speaking and
8 recreate the meeting that way.

9 So public comment, another area that's of
10 interest to a lot of boards, you know, there's -- as we know,
11 we have to have -- you know, the general process to follow,
12 you have two different choices. The general process is to
13 have one open public commenting at the beginning and one
14 towards the end. At the beginning, it has to be before the
15 first action item. You can have other items before it, but
16 they can only be informational. But towards the end, it
17 doesn't have to be at the very end. And then there's the
18 other option, not too many bodies follow, and that's do one
19 every action item and then have one other for general comment
20 non-related to an action.

21 One thing to note is, I put court in here, that's
22 a mistake. The Board may discuss public comment it receives
23 and so if you do receive public comment, you are able to
24 respond to it and comment on it. You just have to avoid

1 deliberation or action unless you've got -- unless it's an
2 action item or it's an agenda item that you can discuss, so
3 there's room for that. And with everything, there's always
4 in the spirit of the law, you don't take that opportunity
5 that somebody brings to you to discuss the heck out of a
6 matter that they bring that's not agendized. So you do -- I
7 wouldn't go too far in discussions probably. Stay within the
8 spirit of the law because, you know, public comment, they are
9 not required to have anything agendized what they want to
10 talk about but you the Board is.

11 You can limit, you know, time, place and matter
12 and restrictions in your agenda as to public comments. So
13 you can limit areas relevant to the Board, but you can't pick
14 and choose who -- you know, say you spent five minutes on the
15 pros and we're gonna only spend two and a half minutes on the
16 cons, you can't differentiate based on content. So that's a
17 survey, kind of a quick survey on the public open meeting
18 law.

19 And if anybody has any questions, I would be
20 happy to answer them now or you can e-mail me or you know how
21 to get a hold of me.

22 CHAIRMAN CATES: Thank you.

23 Any of the Board members have any questions?

24 Go ahead, Damon.

1 MR. HAYCOCK: For the record, Damon Haycock.
2 Thank you, Mr. Belcourt.

3 One question about the disclosures for conduct
4 and professional competence on individuals, if the Board or
5 staff have concerns about Company ABC and wish to talk about
6 that issue publicly, is that something that needs to be
7 noticed on that five working days personal delivery or 21
8 working days by certified mail or is that only specifically
9 to individual people?

10 MR. BELCOURT: You know, I think it speaks to
11 character and competence and things like that. You know, a
12 person generally -- when you define person in the law,
13 there's a general rule that includes entities, corporations
14 and so if -- but then you look at are you talking about
15 misconduct, professional competence, character or are you
16 talking about compliance with the contract? So I think if
17 you're just talking about compliance with the contract, it
18 probably doesn't rise to character, alleged misconduct and
19 professional competence. So, you know, it may be it depends
20 on what you want to talk about.

21 CHAIRMAN CATES: Any other questions from the
22 members? Okay. I think that's it. I think we're good.
23 Thank you.

24 Okay. Let's close Agenda Item Number Four and

1 move to Agenda Item Number Five, consent agenda. We have on
2 the consent agenda the action minutes, acceptance of the PEBP
3 chief financial officer quarterly report, acceptance of the
4 annual appeals and complaints summary, acceptance of the
5 Willis Towers Watson's OneExchange Operations Report.

6 Do any of the members have a desire to pull any
7 of these items for discussion?

8 MEMBER ANDREWS: Mr. Chair, Ana Andrews, yes.

9 CHAIRMAN CATES: Okay.

10 MEMBER ANDREWS: I would like to pull 5.2.2. I
11 just have a question for Damon on that.

12 CHAIRMAN CATES: Okay. Why don't you go ahead
13 and ask your question.

14 MEMBER ANDREWS: Damon, in reading the report, I
15 see -- your executive summary on the utilization report, I
16 see a trend for everybody that you are talking about, all of
17 the populations you're talking about, that the emergency room
18 visits went up and the urgent care visits went down and that,
19 you know, emergency room visits are more expensive than
20 urgent care, and I was thinking, well, maybe it could be
21 because it happened on a weekend, but do you have --

22 CHAIRMAN CATES: Ana, what page are you on?

23 MEMBER ANDREWS: I'm on page two.

24 CHAIRMAN CATES: Okay. Okay. Thank you, got it.

1 MEMBER ANDREWS: I just would like to know
2 because for all of the populations, when you look at the --
3 so on page two, on the overall, it says emergency room visits
4 went up, urgent care went down. Then on page four, it's
5 talking about the state retirees population and also about
6 the non-state retirees, and that just struck me as why would
7 we have the same in all of the populations, more ER, less
8 urgent care.

9 MR. HAYCOCK: So for the record, this is Damon
10 Haycock. Thank you, Ms. Andrews.

11 I'll talk a little bit about it, but I want to
12 make sure everybody understands that the types of utilization
13 reports that we receive, you'll often see urgent care go up
14 and urgent care go down. You'll see emergency rooms go up
15 and emergency rooms go down.

16 I had to respond to a legislative request last
17 year about how well the Consumer Driven Health Plan had
18 actually prevented folks from seeking the care that they
19 needed and did we end up having a run on the bank on ER
20 visits. And when we looked at it from a long term basis, at
21 the time a five or six-year basis, it just didn't support
22 that statement, and I was able to testify with or to the
23 legislature with that point.

24 If we look at this on a year over year basis,

1 it's difficult to see a pattern because you'll see certain
2 groups hit certain situations at certain times, and I'm not
3 trying to pass the buck on this specific question. If you
4 look at the other utilization reports in previous quarters,
5 you'll see that wasn't the case. So this right here is
6 strictly talking about the first three months of the plan
7 year, and I would hate for any inferences to be made for the
8 entire year based off of this data, but let's not forget,
9 we've had a pretty nasty year as far as people getting sick
10 and folks heading to the emergency room.

11 But I can also on the flip side say we've had
12 increases on our telemedicine usage as well. So it's really
13 nuanced to try to understand what exactly is occurring, but
14 we get a report on ER usage every month. And I'll tell you
15 from my analysis of that report, the same scenario seem to
16 still occur. You still have folks seeking care at the
17 emergency room that are not receiving emergency type
18 services.

19 And unlike Medicare, we at PEBP and through your
20 guidance at the Board, we don't turn back and say to those
21 members, well, this wasn't an emergent condition so we're
22 going to charge you for it. So inevitably, they pay up until
23 their deductible and coinsurance amounts until they hit their
24 out of pocket max and PEBP pays the rest. I think it's one

1 of those, I don't want to call it a fluke because I hate to
2 say that about statistics, but it's something we're watching,
3 and we want to make sure that we're not driving folks towards
4 ER's. Let's not forget, those especially in the Las Vegas
5 area that they keep popping up at every corner.

6 So, again, they are quite, I don't want to say
7 profit minded, because that would be unfair, because people
8 do need these services, but they are utilized very easily,
9 and we are going to combat that, Ms. Andrews, with, again,
10 with more pushes towards using our telemedicine, as well as
11 some of the things we're going to be implementing next year
12 with that transparency vendor Healthcare Bluebook to help
13 show where people can go to save money.

14 MEMBER COCHRAN: Mr. Chair?

15 CHAIRMAN CATES: Go ahead.

16 MEMBER COCHRAN: This is Chris Cochran for the
17 record in Las Vegas.

18 And I think Damon touched on something,
19 Mr. Haycock touched on something that is worth watching. I
20 don't know if this is an issue up in the north, but we do see
21 a number of hospitals developing the standalone emergency
22 departments with the same costs that if they were an attached
23 emergency department so they were able to bill the same
24 amount. I too, like Ms. Andrews, saw that, a 12 percent

1 increase in emergency room visits is something that merits
2 watching because the cost of emergency room coverage is
3 fairly significant, particularly compared to urgent care.

4 And I don't know what is going to happen in the
5 future but, you know, I do worry a little bit that we're
6 going to see more of these standalone emergency departments
7 pop up, and that they are going to be effecting the number of
8 patients going to urgent cares that they will go to these
9 standalone emergency rooms, and I don't know what can be done
10 in the future about perhaps negotiating different rates for
11 these standalones, particularly for nonemergent care, but it
12 does seem to be an attraction.

13 We also have billboards up here in the south. I
14 mean, you know, down here that indicate wait times for
15 emergency rooms. You know, you'll be seen in eight minutes
16 and that's fairly common down here which is kind of saying if
17 you're sick, come to our ER. That may be something
18 specifically targeted toward the visitor population down here
19 because you do see them quite often in the vicinity of the
20 airport, but it is something that the public also sees.

21 So I do think it merits some attention because I
22 think we're going to see -- and public -- primary care is
23 difficult to access anyway. Having these standalones and use
24 of ER's is something that I think we need to be watching.

1 And, Mr. Haycock, I agree, you know, it just may
2 be, you know, a blip but, you know, if we do see this
3 continue to trend, I would think that this is something we
4 have to watch. I don't know if these -- these visits, we may
5 see a bigger spike in the next quarter based on the number of
6 influenza outbreaks that we've had in the State of Nevada.
7 So, you know, we might see that go up even more dramatically,
8 but I also had highlighted that in my review. I was going to
9 bring that up, so I'm just wanting to make that comment.

10 CHAIRMAN CATES: Thank you for that.

11 Any other comments from Board members?

12 MEMBER VERDUCCI: Yeah, Mr. Chair, Tom Verducci
13 for the record.

14 CHAIRMAN CATES: Go ahead, Tom.

15 MEMBER VERDUCCI: In Section 5.1, Item Number 11,
16 under the vote, the word opposed is misspelled. It's very
17 minor but I think that should just be corrected for the
18 record.

19 MR. HAYCOCK: For the record, this is Damon
20 Haycock. Thank you, Mr. Verducci.

21 You brought that up to our attention, if you
22 remember. Last week we sent out a revised copy and uploaded
23 to the website. So I apologize if you don't have the most
24 current version of the minutes, but we did change the typo.

1 Thank you.

2 MEMBER VERDUCCI: Great, okay. Thanks very much.

3 CHAIRMAN CATES: Thank you.

4 Any other questions or comments on anything on
5 Agenda Item Number Five?

6 Hearing none, I'll call for a motion to approve
7 the agenda item.

8 MEMBER BAILEY: Mr. Chair?

9 CHAIRMAN CATES: Go ahead.

10 MEMBER BAILEY: Don Bailey. I move to approve
11 the consent agenda 5.1, 5.2, 5.3 and 5.4.

12 MEMBER ANDREWS: I second it. Ana Andrews for
13 the record.

14 CHAIRMAN CATES: Okay, very good. Thank you.

15 So we have a motion and a second. Any discussion
16 on the motion?

17 MEMBER COCHRAN: This is Chris Cochran again.

18 CHAIRMAN CATES: Go ahead.

19 MEMBER COCHRAN: I should have brought this up
20 because I also did have this tagged. On the Towers Watson's
21 report.

22 CHAIRMAN CATES: Okay.

23 MEMBER COCHRAN: On, I'm trying to see what page,
24 I think it's 11 of 13, when it talks about the abandoned call

1 rates, we see a huge jump in abandoned calls for the month of
2 December. We start seeing it in November, and I know that's
3 open enrollment period and that might have something to do
4 with it, but I'm just wondering, do abandoned calls calculate
5 into the wait time for calls to be heard because it could be
6 that abandoned calls have been on hold for significantly
7 longer but if they are abandoned and not calculated in the
8 overall wait time for a call to be heard, it might actually
9 drive that time up.

10 MR. GARCIA: Hi, this is Chris Garcia with Willis
11 Towers Watson's OneExchange.

12 And you're absolutely correct, the wait times for
13 people that abandon their calls do get taken into account for
14 the overall average wait time that we experience during the
15 reported period of time.

16 I actually have some additional stats and they
17 are not included in the report, but when we look at the
18 abandoned calls that occurred in December, the person that --
19 the people that were actually abandoning their calls, they
20 were only waiting on an average of about six and a half
21 minutes before they dropped their call. So when you compare
22 that to the actual wait time of about five minutes for that
23 month -- for that month, the people that were abandoning
24 their calls waited only an additional extra minute before

1 their call was abandoned.

2 MEMBER COCHRAN: So it is in the standard
3 deviation?

4 MR. GARCIA: It is.

5 MEMBER COCHRAN: Thank you.

6 MR. GARCIA: You're welcome.

7 CHAIRMAN CATES: Thank you.

8 Any other discussion on the motion?

9 MEMBER COCHRAN: No, I have no other comments.
10 Thank you.

11 CHAIRMAN CATES: Okay. I just want to make sure.

12 All right. If there's no other additional
13 comments, I'll call for a vote on the motion. All those in
14 favor of the motion indicate by saying aye. Any opposed?

15 (The vote was unanimously in favor of the
16 motion.)

17 CHAIRMAN CATES: Motion carries.

18 Okay. Close Agenda Item Number Five and move to
19 Agenda Item Number Six. We'll take a break. We'll take a
20 five-minute break. We'll reconvene at five after 11:00.

21 (Whereupon, a brief recess was taken.)

22 CHAIRMAN CATES: Okay. We'll call the meeting
23 back to order.

24 Agenda Number Six, presentation on self-funded

1 claims, trends and experience and projections for the
2 composite rate trend for plan year 2019.

3 Stephe.

4 MR. CAULK: Thank you. My name is Stephen Caulk.

5 CHAIRMAN CATES: Oh, the button.

6 MR. CAULK: Thank you. My name is Stephen Caulk
7 for the record.

8 Today I want to walk you through presentation on
9 trend, as Chairman Cates said. We'll start with a brief
10 introduction of what is trend and talk through exactly what
11 we mean when we are discussing trends. We'll walk through
12 PEBP's historical experience and then put it in context of
13 what we see from a national perspective and then finish up
14 what we recommend for the policy year 2019 productions.

15 As we start to define trend, I just want to
16 really clarify what we mean. When you look at the rate
17 action that we'll be proposing in March, that really has two
18 different components. There's going to be the experience
19 true up or experience trend that we'll talk about and then
20 the pricing trend. For this meeting, we'll try to break
21 those two pieces and define those separately because those
22 combined will equal your rate action. How we're going to
23 project claims forward and also the component that's related
24 to your experience.

1 So when we first define what is trend, it is
2 really the percentage increase in a per capita claim cost.
3 For our purposes, we measure it on an incurred basis. A lot
4 of the reporting you'll see throughout the deck is on a paid
5 basis, so there can be some slight discrepancies or
6 differences there which is really related to matching the
7 services back to their incurral dates.

8 When we look at what is really inflating trend,
9 we'll have a little more about this later, but price
10 inflation has been driving trend on a national basis. Recent
11 studies that actually came out this week with the real
12 detailed pictures of the price components and utilization and
13 mix of services are really the three pieces we tend to break
14 out that increase in cost.

15 Inflation or utilization and mix nationwide has
16 been relatively flat, but they have been tracking the
17 increases in prices have been the main driver force of
18 healthcare cost nationwide. A lot of that tends to be
19 attributed to some of the delivery system consolidation. So
20 in a bit, I'll walk you through some headlines. You may have
21 seen them from CVS and Etna. A lot of the hospitals are
22 consolidating, and that tends to give them a little more
23 pricing power, and so there seems to be a correlation in
24 terms of price increases and that component of the delivery

1 system.

2 The other thing we'll talk a little bit about is
3 some of the personalized medicine therapies that are coming
4 out. You may have seen some recent articles. There's a
5 prominent one in Time regarding some of the new treatments
6 for some various specific cancers, where they are basically
7 training your body to combat and fight off cancer. So it's a
8 real breakthrough in terms of the personalized medicine that
9 they are coming up.

10 While these treatments are very exciting just
11 from the ability to have better and more effective cures for
12 these diseases, they come with very high price tags. So the
13 new Car T Cell Therapy that was approved recently by the FDA
14 by Novarus comes with a 425,000 dollar price tag. There's
15 some other genetic therapies for blindness that are recently
16 being approved, and those look like closer to 850,000 per
17 therapy, so looking at a large impact on the tail of the
18 pricing, but that will certainly impact your overall cost.

19 When we look at some of the actions that almost
20 every Board meeting I think there's some new cost saving
21 measures that the PEBP is coming up with, and these are
22 really focused in my mind or a lot of the times you see some
23 of the direction to better lower cost provider systems, and
24 those are really combatting that price inflation that we're

1 seeing nationwide, right. They are trying to get your
2 numbers, that slight care more cost effective. So for
3 instance, Healthcare Bluebook, we feel very strongly or feel
4 that that's going to be a deflator to trend because if you
5 can get your members the select lower cost care, that's going
6 to help your overall trend going forward.

7 On the next page, we're going to give a quick
8 visual just in terms of how trend inner relates between the
9 pricing and the experience portion. So when we looked at it
10 presently, that first blue box is the period through
11 December. So that's your claim experience piece of the pie.
12 The trend we're talking about in terms of pricing trend is
13 going to be that arrow on top that's going to take your
14 experience and push it forward.

15 Now, when we come back in March, we will have a
16 fuller view of your experience and so that will be part of
17 your experience true up, and that combined with what we're
18 going to propose for a pricing trend will result in your rate
19 action. And so today we're going to concentrate more on the
20 pricing trend but first I wanted to give you -- we'll talk
21 through a little historical action on how those two pieces
22 intertwine.

23 The third piece that also is included in pricing
24 trend kind of as a separate component would be the plan

1 design changes. So as you make plan designs, year over year
2 that's going to effect what we would project in terms of our
3 pricing trend. Historically, there was a change in policy
4 year '15. So you'll see that this change going from the base
5 plan to the enhanced plan will have a small impact on the
6 trend amounts we'll see on the next page.

7 So this is really a bit of a complex chart, but I
8 wanted to walk you through it so you could get a feel on how
9 you move from year to year, and I'm going to start in fiscal
10 year '14. On the very top line, we're going to look at the
11 actual claims trend year over year. So in fiscal year '14,
12 your per employee per month cost, and we do know PEPM is
13 \$572. The budgeted rate at that time was \$685 so that's in
14 that second row. So that produced a surplus in fiscal year
15 '13 of \$115 per employee per month or a variance budget of
16 16 percent.

17 Now, when we talked about moving our experience
18 from fiscal year '14 forward, we would have produced in that
19 middle box or we would have proposed the pricing trend of six
20 percent but because the experience was very favorable from
21 the prior period, the experience trend true up was a minus
22 25 percent. Now, that doesn't exactly match the minus 16
23 because at the time we did not have the full fiscal year '14
24 experience. We would have been offset by about six months,

1 but it would have reflected a period setback that was
2 favorable to prior projections.

3 As I mentioned on the prior slide, there was a
4 plan design enhancement in fiscal year '15 so that resulted
5 in unexpected two percent in addition to trend. So the net
6 rate action for fiscal year '15 would have been a decrease in
7 rates of minus 15 percent, that's reflective in the 685
8 moving to the 575.

9 Now, if you look at the top line, your experience
10 trend actually went up 11 percent, so your claims on a per
11 employee per month basis went from 572 to \$636, and so the
12 net result of those two actions was actually a deficit for
13 fiscal year 2015 when we're just looking at claims, the
14 projected claims and projected experience in the budget.
15 That was 11 percent short fault the budget.

16 So then we roll through that same analysis to go
17 to fiscal year '16. So in '16, if you focus in on that
18 pricing trend, again, we would have expected claims to move
19 up six percent year over year. This time because we were
20 short the budget in '15, the experience true up was five
21 percent, and so the rate action was actually 11 percent from
22 '16 over '15.

23 The net of that was when you look at the full
24 fiscal year '16 financial results, we're much closer to

1 budget within 15 percent or 98 percent for loss produced
2 surplus of \$11 per employee per month. The same procedure
3 went into fiscal year '17.

4 So when we illustrate in the next few slides the
5 pricing trend, we're going to be looking at that line that's
6 bolded, the pricing trend of 6.6 and four percent, along with
7 any plan design enhancements. The experience trend on the
8 top line is what we'll be comparing it to, and that's the
9 metrics in terms of the next few comparisons we're going to
10 look at.

11 So here's the combined, so as I mentioned, the
12 six and two percent combined to make an eight percent
13 combined pricing trend. We actually trended or PEBP trended
14 a little bit higher in '15 and then more dramatically for
15 '16, and '17 experienced negative trends over the last two
16 years against expected trends in the four to six range. So
17 very favorable results over the last two years in terms of
18 overall negative trends. On a group of this size, it's a
19 very fabulous result and very reflective of I would say
20 aggressive plan management.

21 We then split that out into medical. Medical is
22 going to be the bulk of your trend, just as the highest claim
23 cost, and so this is going to drive in the results on the
24 combined pages. Although, pharmacy has had much higher

1 trends recently in terms of some of the specialty drug costs.
2 But even pharmacy, you can see policy year '16 was negative,
3 and then '17 still a moderate four percent versus our
4 expectations which were in the seven and eight percent range.

5 For dental in policy year '15, as you recall, we
6 did include a significant enhancement to the out of pocket
7 max. So that produced a one time trend increase up into the
8 double digits so we expected a trend of 13 percent. The
9 actual trend was 14.6 percent which was driven or split out
10 into the actives of some Medicare exchanges of 16 percent
11 roughly. And policy year '16 and '17, that normalized and
12 that was more consistent with an overall dental trend in the
13 two to three percent range. The actual trend was less than
14 one percent for PEBP in both years at .4 percent and one
15 percent.

16 I'm now going to shift a little bit and put this
17 in context what we see in the national basis. The first
18 slide compares PEBP's trend versus some of the prominent
19 sources of the reported employer trends. So we have the Aon
20 trend from our internal client reporting database. Towers
21 Watson's and Mercer are both published trends, as well as
22 Kaiser and PricewaterhouseCoopers. Across the market, they
23 are pretty consistent year over year. If you look through
24 the last three years, they are all ranging between the three

1 and five percent range depending on the source.

2 From a three-year CAGR, and CAGR represents a
3 compound annual growth rate, so it's a way to average it.
4 It's not a point of straight average because it reflects
5 compounding but a good reference point for long time view how
6 healthcare has trended.

7 The bottom line, you can see PEBP's trend over
8 the last three years while '15 was much higher at the
9 10.9 percent, the two years of negative trend are certainly
10 far exceeding performance in the marketplace which are in
11 that three to five percent range.

12 Another source that we reference would be the S
13 and P Healthcare Index. We can drill into a national and
14 Nevada State specific trend. The trends in the blue box
15 represent the national S and P Healthcare Index in Nevada
16 specifically so for policy year '17, the national index was
17 at 3.4 percent. For Nevada, it was slightly less at three
18 percent and, again, PEBP was at negative for 2017.

19 2016, the national index was a bit higher, but
20 you can see Nevada was a bit lower and tended to be a little
21 bit lower than the national index over the last three years.
22 So that would have been a tail -- a little bit of an overall
23 experience but certainly the negative is far exceeding
24 improvement.

1 When we look at the future, so that's a good
2 history of the past and where we're at, but as we try to do
3 the projection forward, we also want to be cognizant of the
4 marketplace activity and what's happening in terms of driving
5 our cost.

6 As I mentioned before, the healthcare system is
7 nationally doing a lot of consolidation, and I know there's
8 going to be very local factors here in terms of how that
9 progresses, and I know PEBP has taken a very aggressive cost
10 management approach which actually should be a deflator in
11 terms of overall projections, and we'll certainly include
12 that in our overall perspective.

13 In terms of some of the headlines you may have
14 seen recently, a lot of that does relate back to that
15 provider consolidation. The two biggest mergers, the Anthem
16 Humana or Anthem-Cigna and Anthem Humana, both were dissolved
17 so those did not go through, but we recently had the
18 announcement of the Caremark and CVS and Etna merger in terms
19 of acquiring and trading a really different model in terms of
20 what we expect in the delivery of care.

21 The other point I just make on this slide is
22 looking back in 2013 really set off the stage with the ball
23 rolling in terms of the high cost drugs, but I actually want
24 to back up just for a comment. Back in 2011, Gilead made a

1 purchase of a little pharmaceutical company called Pharmasset
2 and Pharmasset at the time had a drug, a new innovative drug
3 to treat hepatitis C. Gilead purchased Pharmasset for
4 11 billion dollars in 2011. Pharmasset had anticipated
5 releasing this Hep C drug at a cost of \$36,000 a treatment
6 pattern which was in and of itself quite high.

7 Fast forward to 2013, I think you know a lot of
8 the story, Solvadi hits the market at a price sometimes over
9 \$100,000, hitting the six figure range. So Gilead quickly
10 recouped the cost of their investment. The revenue over
11 three years for Solvadi has exceeded 44 billion dollars, so
12 they certainly made a good ROI of that purchase.

13 Now, if we look at what is happening in 2017, I
14 made the reference to the Car T Cell therapies. Gilead
15 recently made another announcement of purchasing Kite
16 Pharmaceuticals for 12 billion dollars. Kite Pharmaceuticals
17 is known for not having a lot of revenue but being a big
18 player, having drugs in this Car T Cell space that are very
19 promising, and so our expectations are with this acquisition,
20 there's a lot of activity in terms of these drugs being
21 released and certainly watching that closely as they do
22 represent breakthroughs in terms of treatment patterns.

23 And the other point I would make is that
24 healthcare trend is also very correlated to general economic

1 factors. So the great recession in 2008 and '09
2 was attributed to a lot of decrease and deceleration of
3 healthcare trends. In term of the modeling, some of the
4 models can predict up to 85 percent of that. Healthcare
5 spent based on general economic factors, if you're looking in
6 terms of the general inflationary expectations, the fed is
7 slated or expected to raise rates a few times this year.
8 There's expectation that we may start to see a little more
9 inflation in the economy which would certainly have some
10 ripple down effect into the healthcare trend rates.

11 Medical care is highly labor intensive so if
12 wages start to accelerate and other items, then we would
13 expect some of those costs will flow through in terms of your
14 healthcare trends.

15 So where does this all leave us? When we look
16 into policy year '19, our expectations internally our
17 recommendations are trend in the five to seven range for
18 clients. When we survey insurance carriers, they are a touch
19 higher, but they tend to be a little more conservative in
20 related to underwriting results in the cycle. Other surveys
21 are very consistent in that four and a half to seven percent
22 range for 2019.

23 We would tend to be a little more aggressive in
24 terms of what we're going to use in our pricing projections

1 as we refine our estimates based on the negative trends for
2 the few years and a lot of the aggressive plan and cost
3 management we see coming on. We see some savings there so we
4 expect some pricing trend to be on the lower end range, five
5 to seven, and actually widen that to be three to seven
6 percent. Dental would be very moderate. We would expect in
7 the one to two and a half percent range.

8 And as I mentioned to start off, this is not
9 going to be your rate action. This is going to be coupled
10 with your experience true up, so your -- the base action we
11 come to in March will also include the updated experience and
12 using that to calculate the final rate action.

13 That's the end of my prepared remarks. I would
14 be happy to take questions.

15 CHAIRMAN CATES: Thank you. Very interesting.

16 Do we have questions from the members? Go ahead.

17 MEMBER SHIPPEY: Good morning. For the record
18 Glenn Shippey.

19 I just want to look forward a little bit to
20 pricing for next fiscal year and the meeting we're going to
21 have coming up in March and this -- this risk pool is going
22 to include membership that's coming over from the current
23 Hometown Health HMO contract, correct? And have you had an
24 opportunity to look at that experience and whether any

1 adjustment -- you did give -- you're recommending a wide
2 range for consideration here for trend, but what kind of
3 adjustments would you anticipate would need to be made to
4 include that experience from the current Hometown Health
5 fully insured plan into the self-funded pool?

6 MR. CAULK: Good question, thank you.

7 Yes, we do have the experience from that risk
8 pool. So the adjustments that we're considering would
9 include things like pharmacy pricing. So we are currently
10 refining our estimates using more analysis in terms of the
11 pharmacy utilization, comparing that to the ESI contract.

12 We're also looking at facts like there will be
13 disruption in terms of the hospital systems that are being
14 offered between the two plans. We're also including some
15 estimates in terms of trying to compare some of the
16 utilization patterns in terms of steerage so I believe
17 Mr. Haycock will be talking about things like the infusion
18 therapy and some of the implant management tools he'll be
19 having for that as well.

20 So all of these things we'll be trying to look at
21 that basic experience that we're gathering from their plan
22 and trying to make appropriate adjustments to bring them into
23 the other risk pool. Does that help?

24 MR. SHIPPEY: Yes, thank you.

1 CHAIRMAN CATES: Other questions from members?

2 It looks like we're good. Thank you.

3 MR. CAULK: All right. Thank you.

4 CHAIRMAN CATES: Okay. We'll close Agenda Item
5 Six. We'll move to Agenda Item Number Seven, presentation on
6 plan year 2019, exclusive provider organization plan, master
7 plan document format and functionality.

8 MR. HAYCOCK: Thank you, Mr. Chairman. For the
9 record, Damon Haycock.

10 I'm going to provide this report in lieu of Nancy
11 Spinelli, our quality control officer. She is feeling worse
12 than I am, and so she's at home today.

13 What we wanted to accomplish is twofold with this
14 report. First, we wanted to continue to highlight that we
15 are creating an additional plan next year that PEBP will be
16 managing, and we wanted to continue the pressure and public
17 display of the distinct actions that we are taking to keep it
18 in the forefront of everybody's minds as we move forward to,
19 as Mr. Shippey mentioned at the last agenda item, that we're
20 going to be absorbing new risk, and we're going to have to
21 manage this population effectively and appropriately
22 utilizing high quality, low cost providers where applicable.

23 So what we wanted to kind of show you is a little
24 bit of a teaser on what we're looking at doing on these

1 master plan documents. For years, PEBP has used the same
2 format, a lot of tables, a lot of text, some of it has been
3 duplicative. One of the things that I wanted to do when I
4 first arrived at PEBP a couple of years ago was do an
5 overhaul of all of our communications and we started, and I
6 think we were very successful in things like our website with
7 some of our notices we've updated and rejuvenated the
8 newsletters.

9 But what we haven't had an opportunity to do is
10 because it's very time and resource intensive is to go
11 through and basically reformat that contract of insurance,
12 that master plan document that we provide on behalf of the
13 Board for all of the benefits that are given to our
14 membership. And so we're looking at this as a golden
15 opportunity to create a new function and a new format.

16 We are partnered with our two contract vendors
17 today, Aon for the legal side of this document and then
18 HealthSCOPE for the benefit description, and we're melding
19 those together to create a comprehensive document that folks
20 will be able to hopefully read in plain language and
21 understand their benefits a little easier as they make their
22 transition from the Hometown Health Plan HMO to this
23 exclusive provider organization which we're going to come up
24 with another marketing name for it, EPO, CDHP, HMO. I mean,

1 for those people that aren't in the industry, they are kind
2 of synonymous.

3 But we're going to create something that's a
4 little bit easier to understand and hopefully folks will be
5 interested in enrolling in this plan. We feel it is going to
6 meet the needs of the membership very close to what is being
7 offered today with the Northern HMO plan, and that some of
8 the exceptions to that plan will be a lot of things that have
9 created that wonderful trend that you just got to see from
10 Aon in the last agenda item. So we want to ensure that we
11 can curb some of those costs that were presented to the Board
12 at the last Board meeting and the concerns that, you know,
13 providers may start increasing rates and how is PEBP going to
14 be able to respond.

15 So we have a plethora of things that we plan on
16 implementing to ensure that we continue to provide high
17 quality healthcare to those members at affordable prices.
18 And so if you look at attached pieces to this report, you'll
19 see that we tried to soften up the approach. I'm not going
20 to guarantee this is what this is going to look like. That's
21 why you see the letters draft all over this thing.

22 But come March, we're going to present to you, as
23 we do every year, the master plan documents for all of our
24 program and so as well as the, I believe, the summary plan of

1 benefits, as well, that shorter version that shows exactly
2 what specific things, like deductibles and co-insurance and
3 co-payments and benefit limits are. And traditionally we
4 bring those to you guys in March, and you vote on them so
5 that way we can have them posted by April. The goal is to
6 have them posted by April 1st so that way folks have 30 days
7 to review them before they have an opportunity to pick the
8 plan that they want to open enrollment on May 1st.

9 So we're excited to bring to you a master plan
10 document that we believe encompasses the intent of what you
11 all voted for and what you wanted PEBP to develop moving
12 forward. We are on track. We are on pace to have this
13 created. We are going through final revisions on a lot of
14 these documents right now, and we hope to have those posted
15 for, obviously, that March, I think it's the 22nd or 23rd
16 Board meeting so you guys can get a real good look at it.

17 But, basically, like I said, this is the format.
18 It's a little bit softer, a little bit cleaner. It's not as
19 table centric. Although, there is a table on here, but
20 you'll see here under that schedule of benefits format that
21 we do, we do stick to some of the tables. It's pretty
22 standard. But, again, we wanted to make sure this is easy to
23 understand, easy to read and defensible by -- by our
24 attorney, by our Deputy Attorney General and the Attorney

1 General's Office and to ensure that we can direct folks to
2 the healthcare that they need, and so I just want to give you
3 guys just a quick overview and see if you had any questions
4 or comments on the process today.

5 CHAIRMAN CATES: Thank you, Damon.
6 Questions from the members? Go ahead.

7 MEMBER SHIPPEY: For the record, again, Glenn
8 Shippey. Thanks, Damon.

9 I have more of a comment than a question. You
10 mentioned the importance of individuals who are currently on
11 Hometown transitioning to the EPO and understanding how
12 similar or different this would be for them, but I also think
13 it's very important to make it very clear of just how this
14 EPO option is going to be different from the PPO option and
15 that we make that information as easy for individuals to
16 digest so they can weigh those two options here in the north
17 and just as what exactly is in terms of network access and
18 cost share structure, people are looking at when weighing the
19 two, and that's my only comment. Thank you.

20 MR. HAYCOCK: For the record, Damon Haycock.
21 Add a quick response to Mr. Shippey's comment.

22 That is exactly what our intent is as we have done in the
23 past with the HMO's and the PPO plan and we've shown side by
24 side comparisons. A lot of members, our own staff use it

1 when we explain differences, and we're going to make it as
2 simple as possible for folks to see what is different between
3 the two types of plans and what they can expect with links
4 and directions to go deep or dive into things like provider
5 networks.

6 We're also going the extra mile on this specific
7 EPO plan, knowing that it was going to remove Banner
8 Churchill Hospital as one of the providers in the network. I
9 am personally going out in mid April to Fallon, Nevada to
10 host a town hall to talk to our membership out there, to
11 answer their questions and make sure they understand how they
12 are going to be able to access the critical care that they
13 are going to need. We have done many different
14 communications already through newsletters, information I
15 think that we've sent out through RPEN, through our partners,
16 as well as open enrollment guides that we're updating.

17 We're going to make this as simple and as easy to
18 understand and follow as possible so this doesn't sneak up on
19 anybody. For those that want to not worry about it and feel
20 they are okay with just moving from the HMO plan directly
21 into the EPO plan next July, we're not going to make them
22 positively enroll so they can literally do nothing and
23 everything that exists today will rollover for them into this
24 new plan. So we want to make it simple. We want to make it

1 effective and communicate it thoroughly and appropriately and
2 we're up to the task.

3 So thank you, Mr. Shippey.

4 CHAIRMAN CATES: Thank you.

5 Other questions or comments? Nothing, okay.

6 All right. We'll close Agenda Item Number Seven
7 and move to Agenda Item Number Eight, presentation on PEBP's
8 2017 member satisfaction survey.

9 MR. HAYCOCK: Thank you, Mr. Chairman. Damon
10 Haycock, again, for the record.

11 This member satisfaction survey is kind of
12 twofold for PEBP. One, we need to do these anyway. We need
13 to understand what our membership wants and how they -- how
14 they rate us, how they determine their satisfaction levels,
15 but we also need it to hit an accreditation requirement
16 through the Utilization Review Accreditation Commission or
17 URAC where you all approved at the July Board meeting that we
18 participate in and attempt to receive accreditation through
19 that entity.

20 One of the things that we wanted to do that we've
21 learned from previous surveys is we wanted to keep it simple.
22 We only ask six questions with four multiple choice styles
23 and two free form. One of the surveys as I released last
24 year when we thought we were going to cut benefits is a would

1 you rather type of survey, and I got a lot of negative
2 responses not only from members but also our legislature and
3 some of our advocates on the fact that I did not include the
4 world of possibilities such as other or none of the above or
5 I don't like any of this type of responses.

6 And so what we wanted to make sure is that in
7 this survey we gave people the opportunity to tell us exactly
8 how they feel and we receive comments everywhere from you
9 guys are the greatest to you're on the ninth level of hell
10 type of responses and everything in-between. So we really
11 respect and appreciate that valid and important input and
12 we've read every one of those comments and we've been able to
13 look at ways to improve.

14 First, let's talk a little bit about the process
15 because we want to validate how the survey was performed. We
16 pulled a list of participant e-mails and sent them an e-mail
17 with a link to the survey. We provided all of the system
18 administrators at all of the different agencies of the state
19 a similar e-mail to send to their agencies' employees, again,
20 with a link to the survey.

21 We provided all account representatives to those
22 folks that represent each of our pay centers the same e-mail
23 as above, and we provided a link to the survey to our
24 partners, our advocates from the Retired Public Employees of

1 Nevada and the American Federation of state, county and
2 municipal employees, that's RPEN, AFSCME respectively for
3 distribution to the membership.

4 We had things opened for a little over a month,
5 about a month and a half. We also sent out multiple
6 reminders through e-mails during the response period to take
7 the survey and provide us with critical feedback. I have
8 folks that I know in the state who begged me to stop bugging
9 them about this survey as we were going through this process
10 but, you know, what one of the things we were successful in
11 receiving is close to about 10,000 responses which is good.

12 So on page two, you'll see a little bit of the
13 results that we had 9,618 responses to the 43,000 or so
14 primary participants we sent this to. That response rate is
15 about 22 percent. Every time I do a survey, I try to go back
16 and research what's an appropriate response rate. And if you
17 can find a solid answer somewhere, I would love that input
18 because it's anywhere from five percent to 75 percent, and
19 that's such a huge -- a huge spectrum. I can't tell you if
20 22 percent is good. I can tell you at least 10,000 people
21 have responded. And what's important is how the types of
22 folks responded, were they indicative of our current
23 population and membership.

24 And so today or at least in November when it

1 was -- when the survey was released, there was approximately
2 60 percent employees and 40 percent retirees that make up the
3 sum total of all of our programs, that includes our Consumer
4 Driven Health Plan, HMO's, as well as Medicare Exchange.

5 The survey responses came in at 57 percent
6 employees and 43 percent retirees respectively, so we feel
7 like we got a significant response rate from the different
8 types of folks that participate in our plan, and we want to
9 ensure that by design the survey didn't alienate or carve out
10 any group specifically, and it doesn't appear that it has.

11 Now, there's about a little over half of those
12 folks have not interacted with PEBP over the previous three
13 months because we want to understand the impact of any recent
14 situations or policies or procedures that we have provided.
15 However, only 37 percent have responded with one to three
16 interactions. So there's a large group of folks at PEBP, the
17 membership don't necessarily reach out to us, and we're
18 hoping that that is because we're providing enough
19 communication and transparency that they don't need to seek
20 our assistance.

21 Now, we asked a series of customer satisfaction
22 questions, and you'll see on the attachment, it's question
23 number three of the survey and of the responses, you know, we
24 were rated between 6.88 and 8.01 on a scale of one, which is

1 completely unsatisfied, to ten, extremely satisfied.

2 Now, some members selected not applicable because
3 they felt that whatever question that this is -- this is our
4 analysis that we believe they felt that the questions did not
5 pertain to them and so those responses were removed only to
6 show the positive and negative results.

7 And so the highest rating, the extremely
8 satisfied, had the most responses, and some positive results
9 are illustrated in this report anywhere between 50 and
10 70 percent scored between the highest three levels, eight to
11 ten.

12 I would tell you this, I bite my nails when I
13 send these out, not knowing exactly what we're going to get.
14 I'm hoping that we have made an impact on our membership, our
15 communication tactics and our planning and processes as well
16 as our rejuvenation of in-person assistance and our
17 partnership with our advocates for both retirees and
18 employees. We hope this is all things leading towards that
19 better consumer experience, that better member experience.

20 And we think that because of this positive
21 feedback, it turned out better than I anticipated, that it
22 indeed is a result of some of the things that we have
23 implemented here through your guidance as Board members.

24 We were surprised to learn that although

1 different types of communication that members preferred. So
2 we were ready to release a social media campaign. We were
3 ready to go out and start sending stuff out on Facebook and
4 Twitter and join that process, and we just wanted to ensure
5 that there was a desire for it before we created the time and
6 effort and cost to do that. And, interestingly enough, only
7 three percent of the respondents included a desire for this
8 service.

9 So to be honest with you guys, we haven't -- we
10 haven't moved forward in making this a priority and what's
11 really interesting is that our current standard communication
12 channels, e-mail, print and website are still the top choices
13 by far of all of the types of communication our members want
14 to receive. So that tells me that we're concentrating on the
15 types of communication that our members want, and that we are
16 getting good feedback from it.

17 So one of the lessons that we did learn is that,
18 again, our lowest score, 6.88 out of ten was in training and
19 education, and we wanted to increase that process moving
20 forward. We are doing things like lunch and learns. I think
21 my communications team is going out I think as early as
22 tomorrow to University of Nevada, Reno. Please, don't quote
23 me if I get that wrong, but I know it's coming up soon, to do
24 a lunch and learn to try to explain the differences between

1 some of these plans. And that as I mentioned earlier, I'll
2 be heading out to Fallon. So we're going to make sure we are
3 out in the community more able to provide additional
4 information where needed.

5 We're also in the final stages of selecting an
6 appropriate webinar solution. This way we'll be able to do
7 things like open enrollment meetings where we're able to
8 stream those out to the rurals so folks can see those either
9 from their homes or from specific locations, where you don't
10 necessarily have to drive and send staff out there to have
11 two or three people show up and participate.

12 So as -- as of the perfectionist in me as issues
13 in the score below ten on anything, that, obviously, shows
14 that we need to have improvement. We are up to that task.
15 We are definitely looking for innovative ways to improve how
16 we communicate because we want to provide high quality
17 benefits at affordable prices to our membership. We are
18 dedicated to improving these scores. This does check the box
19 for our accreditation, and we plan on redoing this survey
20 every year, generally around the end of the year time frame
21 so that way you all get an idea as to how well we are being
22 appreciated or not and the satisfaction of the membership
23 that you guys are appointed to provide benefits to.

24 And with that, I'll take any questions.

1 CHAIRMAN CATES: Thank you, Damon.
2 Any questions or comments from the Board?

3 MEMBER PACKHAM: Question.

4 CHAIRMAN CATES: Go ahead.

5 MEMBER PACKHAM: I was curious, I saw that
6 literally thousands of people gave you open ended responses,
7 and I just was wondering if they maybe touched on issues that
8 anticipated the survey and maybe an additional question or
9 two in the future.

10 MR. HAYCOCK: For the record, Damon Haycock, and
11 those are excellent questions, Mr. Packham.

12 It's interesting, we got a plethora of answers.
13 Some of those were, you know, well, why are we doing things
14 as PERS which that isn't us, of course. And some of those
15 are we want better benefits and, darn it, we all want better
16 benefits, and so I completely recognize that.

17 But, yes, we have categorized those to the best
18 of our ability. We didn't want to cherry pick certain ones
19 to make this sound better or worse than what it was as to why
20 it isn't included in this report. However, we read each and
21 every one of those and we will be -- we will be looking at
22 innovative ways to make things better for our membership. So
23 we may ask more questions in the future, but we have sent out
24 massive surveys before, and the amount of people that start

1 them and the amount of people that end them drop off so
2 dramatically that we're trying to keep it as simple as
3 possible so that way we can at least get folks to complete
4 the entirety of the survey.

5 MEMBER COCHRAN: Mr. Chair.

6 CHAIRMAN CATES: Go ahead.

7 MEMBER ZACK: Christine Zack for the record.

8 In terms of training and education, and maybe I'm
9 missing it someplace on the PEBP website, but it seems to me
10 that breaking things down to the most basic level would be
11 helpful for people. What is an EPO? And you go over what is
12 in the CDHP and what it covers but really, what is it
13 designed to do. And I haven't seen that on the website, and
14 I think that would be helpful for people or some sort of
15 chart that compares the different options. And what is an
16 HMO?

17 MR. HAYCOCK: For the record, Damon Haycock.
18 Good questions, Ms. Zack.

19 That's one of the things our communications team
20 is talking to UNR soon about is the difference of types of
21 plans and what really defines them in the most simplest
22 terms. We have all of our terms defined in multiple areas on
23 our website but as health insurance websites go, and I'm not
24 trying to cop out here, there's so much information out

1 there, you have to dig to find it sometimes, and we need to
2 get better at making it very simple and transparent.

3 The design of our website was created based off
4 of Google analytics where people were going to most. And so
5 the two big buttons you see when you first log in which is
6 explore your benefits and find a provider, the word that
7 people were looking at before and to this day, I get reports
8 every month to show that it is still the most utilized
9 location of our website. Although, there's something to be
10 said with two big buttons at the front, and maybe that's
11 where everyone is going because they don't scroll down, but
12 all good points.

13 We're looking at increasing those training
14 opportunities. What is an EPO? What is an HMO? What are
15 the differences? We had plan comparison tools out there.
16 They have been on our web's new page. They have been out
17 there under explore your benefits. We have e-mailed them out
18 to folks. So we believe that we're -- we're heading in the
19 right direction, but there's always room to improve, and I
20 appreciate the comments.

21 MEMBER ZACK: Christine Zack again.

22 This is a follow-up. I understand you're meeting
23 with UNR, but I'm talking about a non-academic approach. The
24 CDA, the Consumer Driven Health Plan is designed to make you

1 a partner in your healthcare decisions to help us control
2 costs, and so we can offer better and more benefits. And
3 some of the examples are the emergency room visit is more
4 expensive than urgent care versus going to your primary care
5 physician and really providing that information to people
6 that's mutually beneficial.

7 MR. HAYCOCK: For the record, Damon Haycock.
8 Thank you for the comment.

9 Yes, we can create something to similar to a
10 healthcare 101 or healthcare ABC or 123 to help try to make
11 the process a little bit simpler. Often, we're --
12 unfortunately, we're stuck trying to give a lot of
13 information on a one to one basis which is why we received so
14 many calls in our call center. We took 44,000 calls last
15 year. Although, I think a lot of them may have been password
16 resets and issues with our other partners, but all well said
17 and it's something we can put together.

18 I tried doing this a couple of years ago. I
19 never really released it because I was still learning the
20 living loses of PEBP but I think now with the implementation
21 of a new plan, it's ripe and it's a good time to really break
22 down to the most simplest terms what is healthcare and what
23 are the different types of plans and why would you or should
24 you consider one versus the other.

1 MEMBER ZACK: Thank you.

2 MEMBER COCHRAN: So, Mr. Chair, this is Chris
3 Cochran. Just a couple of questions and comments, perhaps
4 suggestions.

5 I know that I was part of the surveys that we had
6 done in the 2012 and '13 I think when we looked at some of
7 these things, and overall the comments about PEBP at that
8 time were, if I recall, fairly negative, but it was certainly
9 much more detailed in terms of it was more related to
10 benefits that were received.

11 This seems to be more of an operation side of
12 PEBP communications with -- with members as opposed to
13 specifically delving into the benefits. So my guess is in
14 those comments you received, there's probably a significant
15 number of responses where people actually get into some of
16 the weeds as far as what they think about the healthcare
17 plan, and there are ways of reviewing those comments to try
18 to put those -- merge similar comments together where you can
19 present an overall perspective qualitative type of analysis
20 to -- to try to group as many of those together as possible
21 and perhaps even come up with questions for future surveys.

22 I mean, I think overall this indicates for the
23 folks who responded to the survey that they have an overall
24 positive perspective of PEBP within their interaction with

1 the organization. You know, they might be -- it might be
2 completely different when it comes time -- when their
3 perspective on what are your benefits like.

4 And so, I mean, I would read these with -- from
5 the viewpoint that you guys are doing a good job. I think
6 you've done an excellent job, frankly, PEBP. You know, maybe
7 I should say we but I think mostly it's staff have done an
8 excellent job of outreach to the community and trying to keep
9 them informed and making your access better. I think that's
10 a very positive thing and, you know, I commend you for doing
11 that.

12 It would be interesting to see if we can look at
13 these, you know, from a qualitative perspective, look at some
14 of the driving issues that may be out there that continue to
15 come from -- from these surveys so that we can -- for all
16 those people who made those comments, we can say this is
17 what -- from what your comments were, these are things we
18 want to work on. So I'll just throw that out there.

19 MR. HAYCOCK: Yeah, for the record, Damon
20 Haycock. Thank you, Dr. Cochran.

21 That is exactly what we have attempted to do in
22 trying to parcel out and categorize a lot of the comments
23 that we did receive, different than the survey we released
24 last year. This, as you mentioned, the focus was more on an

1 overarching overall customer satisfaction versus a benefit
2 discussion, and we try to do benefits discussion surveys when
3 we can and when they make sense prior to presenting you all
4 recommendations for benefits, right.

5 For me to have done a survey on benefits after
6 you guys just approved them may have been a little bit too
7 little too late if we came back and said, hey, by the way, I
8 have an overwhelming need for X and but you guys didn't
9 approve anything that was remotely close to it two months
10 earlier, and so I think the timing may have been at a
11 disadvantage on the benefits discussion.

12 But we've asked a lot of questions about benefits
13 over the years and depending on who you ask, they want
14 different benefits for all of the right reasons and it's
15 something that we want to process moving forward. This
16 specific one was, just to get an idea, are we actually
17 communicating and working with and helping our membership on
18 a regular basis and where can we improve our communication
19 and overall customer satisfaction? So I don't know if I
20 should have stated that a little bit more clearly at the
21 beginning, but this was less of a benefit survey and more of
22 a, just a true customer satisfaction organization survey.

23 MEMBER COCHRAN: All right. Thank you. Chris
24 Cochran for the record again.

1 And I agree, and I just think that the
2 information now that we have that we can use feedback from
3 the community when we're doing these surveys is to -- I mean,
4 we should use them. You know, that's what I would say is if
5 there's -- if there are areas where we are identifying trends
6 and what the members are saying on these surveys, that we --
7 we have that information when we do our plan designs, you
8 know, in the future. So it's just a good thing to be -- to
9 be considerate of.

10 The open ended questions, obviously, you're going
11 to get everything. People who have had a negative experience
12 are going to be negative, you know. You're going to get more
13 of those typically and that kind of a response than you
14 would, you know, the positive things.

15 But I think -- like I said, I think overall I
16 think that the organization has moved, you know, with this
17 communications, improving communications. That will overall
18 I think also effect their perception of the quality of the
19 benefits if they feel that they have good communications with
20 your organization as well. So -- so I think you're moving in
21 the right direction. I just would encourage you to take a
22 look at those responses and see if there are trends out there
23 that we need to address as an organization.

24 CHAIRMAN CATES: Okay. Thank you.

1 Any other questions or comments on this item?

2 Seeing none, we'll close Agenda Item Number Eight
3 and move to Agenda Item Number Nine, discussion on specialty
4 drug reference based pricing for services provided in a
5 medical setting to Consumer Driven Health Plan and Exclusive
6 Provider Organization members in plan year 2019.

7 MR. HAYCOCK: Thank you, Mr. Chairman. For the
8 record, Damon Haycock.

9 We have brought to you guys last year a
10 successful program for reference based pricing or what we
11 hope to be a successful program for reference based pricing,
12 our hip and knee replacement surgeries. We have had some
13 limited success early and a lot of folks getting them done
14 through PEBP. I think we had something like five or six
15 since the beginning of the year. So five or six really isn't
16 a good sample size to determine a whole lot of success at
17 this point, but we have successfully steered folks to high
18 quality, low cost hips and knee replacement sites of care.
19 So we do know that the program is succeeding in that aspect
20 and that's depending on where they would have gone to begin
21 with, they should be saving money as well as PEBP.

22 One of the things that we wanted to look at is
23 the specialty drug infusions. Now, we won a award last year,
24 we're very proud of, on how we were able to utilize internal

1 processes and partner with both our Pharmacy Benefits Manager
2 Express Scripts and our third party administrator for medical
3 and dental claims, HealthSCOPE benefits in creating a
4 mechanism for our membership to receive high quality, low
5 cost infusions by either purchasing those ingredients, those
6 actual drugs through the specialty pharmacy credo which is
7 part of the Express Scripts contract or to negotiate
8 something similar through HealthSCOPE so that way we didn't
9 have to pay those exorbitant amounts. I think we ended up
10 saving something like \$800,000 last year. I'm averaging it.

11 However, there's a couple of things that we
12 learned through this process and there's a couple of things
13 that we didn't implement. One is that we didn't really
14 address the oncology side. Those folks that have cancer are
15 going through one of the most difficult and disturbing times
16 in their life, trying to really make it one day to the next,
17 and we were concerned about doing a lot of site of care
18 changes to what they were doing.

19 A lot of them have specific oncologists that
20 don't have contracts with other locations, and we wanted to
21 make sure that we didn't disrupt their care and their ability
22 to receive the critical infusions that they needed to go
23 through chemotherapy or any other type of cancer treatment,
24 so we carved out oncology.

1 And then second, we did something internally to
2 ensure that we didn't disrupt a lot of the services to the
3 non-oncology patients, the members. We did something called
4 a pay and educate process where when an individual went to a
5 provider at the beginning of the year and it turned out it
6 wasn't the right provider or they were charging too much,
7 they would send us a bill. We would pay the bill. We would
8 educate the provider. We would educate the member saying we
9 need to come up with a better solution, and then we either
10 found a way for that provider to purchase the drugs through
11 specialty pharmacy or we negotiate a lower cost or ultimately
12 we ended up moving members at their own approval. We never
13 forced anybody to go from one site of care to another.

14 Well, the problem with pay and educate is that if
15 you're clever, you can get about four or five infusions done
16 and then do your first bill. And so we ended up receiving
17 these issues where we had to talk about paying and educating
18 a provider where they kind of collected a bunch of infusion
19 services and then sent in and got paid that exorbitant
20 amount, and then we ended up making those changes.

21 And so we figured that this, what I'm going to
22 talk to you about today isn't what -- I'm not looking for an
23 approval because I want to bring this to you in March as part
24 of a master plan document and language update, that's where I

1 really would like to have some approval, but I want to tee
2 this up today because it is very important.

3 And so let me give you a more recent example
4 here, and I'm not going to talk about the provider today, and
5 I'm not gonna talk to the member for HIPAA reasons, but I do
6 want to illustrate something that PEBP had to deal with over
7 the last, you know, 60 days.

8 So we received a bill for an infusion service on
9 one of our members that for a date in May 2017, and they got
10 a single infusion of a specific drug that I locate here, and
11 I kind of -- I kind of describe here what the difference is
12 in pricing. So you can see what the massive changes are
13 between what they consider the average wholesale price and
14 for those of you that go out and buy things like cars or
15 clothing, there's something called a manufacturer suggested
16 retail price, so it's kind of similar but generally you
17 usually don't pay that, right?

18 And then what is allowed by Medicare and Medicare
19 is one of the largest purchasers of healthcare in the nation
20 and so what does that mean? That means that they get the
21 best purchasing power and the best pricing. And then what
22 was actually billed to PEBP and then, of course, we end up
23 getting network discounts. And, again, for confidentiality
24 reasons, I cannot discuss today publicly what those discounts

1 are, but I can give you some generalities which I talked to
2 my network about so they understand what we're presenting
3 here today.

4 So one of the things I want to draw your
5 attention to and, you know, I bolded it just in case people
6 couldn't find it quickly is that what we were billed and
7 what -- what the cost of that drug should have been, if you
8 were just to use the average wholesale price or Medicare,
9 it's somewhere between 400 and 500 percent higher. What does
10 that reality look like? Well, had we paid bill charges, we
11 would have paid about a half a million dollars more than we
12 should have for one drug, one infusion on one day.

13 Now, we have contract discounts and so generally
14 that would be reduced and, yes, it was. However, in the end,
15 we anticipated paying about two to three times what the
16 average wholesale price or Medicare was for one of these
17 infusions.

18 Now, let's move backwards and talk a little bit
19 about our Express Scripts contract. We get discounts off of
20 average wholesale price, and so what that means is that we
21 ended up paying two to three times the average wholesale
22 price, but we have contracts today that are supposed to help
23 us pay less than average wholesale price.

24 And so how do we combat this issue? What's the

1 real problem here? Well, the problem here is that we don't
2 get to decide what providers charge for services on the
3 medical side. They sign contracts with our networks and our
4 networks do their best to try to negotiate the most
5 appropriate deal for their entire book of business which PEBP
6 is part of. However, in the end sometimes, and I'll speak
7 for my own personal situation, I don't want to spend half a
8 million dollars more or \$200,000 more for something I should
9 be spending hundreds of thousands of dollars less for. I
10 don't think the member wants to. I don't think the Nevada
11 taxpayers want to. And I don't believe that the Board, and
12 you can correct me, and I don't believe that the program
13 wants to support overpaying for drugs just because they
14 happened to be purchased away from our standard contracts.

15 So what am I proposing? What am I hoping that we
16 can either talk a little bit about or even if we don't talk
17 about today, it's on your radar for March, is that we want to
18 be able to pre-certify these types of services. So when
19 someone says I need to get an infusion of X, then it
20 automatically triggers a precertification through our
21 utilization management lender where there's a notice that
22 goes to them and they need to determine medical necessity,
23 right. That's what utilization management vendors do for
24 medical necessity but just like hips and knees, they would

1 also include site of care. So we would dictate or we would
2 state the specific or exclusive providers that we are going
3 to reference price our reimbursements from.

4 And so you'll see as attached to this report,
5 I'll give you an idea of how we have done those hip and knee
6 surgeries and the list that we have hasn't been updated I
7 believe since October, but it did grow initially from when we
8 first provided it and we worked with our networks to increase
9 those opportunities but I'll be honest, we're not getting a
10 whole lot of pushback from the providers or the membership
11 when we implemented this service, but we are saving the
12 member and the taxpayer and the program money.

13 And so in the end, we're trying to be, as Stephen
14 said from Aon during trend presentation, aggressive in plan
15 management, but we also want to ensure that our members
16 receive the care that they need and the care that is
17 prescribed to them by the doctors that they put all of their
18 trust in when they have these debilitating and difficult
19 situations and conditions.

20 So this process and the hip and knee process are
21 two cost saving measures. Those cost deflators, as Stephen
22 from Aon has said earlier, that we wish to implement not only
23 for the Consumer Driven Health Plan next year but also for
24 the exclusive provider organization or EPO plan, as well. If

1 we can help steer folks to high quality, low cost providers,
2 we can lower the cost to our entire program which then lowers
3 the cost for rates that must be supplied or must be funded by
4 Nevada taxpayers, by the state and by the member themselves.

5 And so at this time, you know, I think I've gone
6 over enough of the basics of this idea, but I wanted to
7 illustrate just how bad these types of things are and it's --
8 interestingly, I was able to pull this directly off of
9 claims. So this isn't me coming up with some fictitious
10 numbers. These were exact numbers that we were billed. So,
11 again, I can't talk about the specific provider or the member
12 or the contract discounts, but I think you get a good picture
13 of what we're facing.

14 And I am willing to take any questions.

15 CHAIRMAN CATES: Thank you, Damon.

16 Any questions from the members?

17 MEMBER VERDUCCI: Yes, Tom Verducci here.

18 CHAIRMAN CATES: Okay.

19 MEMBER VERDUCCI: I have a question for Damon.
20 Yes, in terms of lowering cost for prescription drugs, you
21 know, I wanted to follow up on a conversation that you and I
22 had about E Strip and maybe a future campaign where you would
23 be able to fund a 90-day prescription refill but be able to
24 do that as far as paying back over the 90-day period interest

1 free. Is that something that we'll be looking at later this
2 year?

3 MR. HAYCOCK: So for the record, Damon Haycock.
4 Thank you, Mr. Verducci.

5 We actually currently have a 90-day mail order
6 program through Express Scripts, and we are working with
7 their account team right now to come up with a robust, like
8 info graphic style of communication that helps folks
9 understand that they have access to this program and that
10 even if they are on high cost drugs that they don't want to
11 spend three months worth of budgeting for that that will be
12 split up each month on a month to month basis so they can
13 afford it.

14 So, yes, to answer your question a little longer,
15 we are going to try to increase the utilization of that mail
16 order because it does save money, and I know I'm allowed to
17 break my own HIPAA. When I log into my own Express Scripts
18 account, I keep getting the notice that says, hey, Damon, why
19 are you spending too much money? Why aren't you going
20 through mail order? So, you know, those of us that use the
21 services a lot will see that, but we want to reinforce it,
22 Mr. Verducci, with some additional information to really
23 spell out how folks can save money because initially it's
24 going to save the member before it saves the client.

1 MEMBER VERDUCCI: Thank you very much. And
2 pardon my cough. I'm suffering from a really nasty cold.
3 So, but thank you. I appreciate that.

4 CHAIRMAN CATES: Thanks, Tom.

5 Any other questions or comments from the members?

6 Okay. Seeing none, we'll close Agenda Item
7 Number Nine and move to Agenda Item Number Ten, executive
8 officer report.

9 MR. HAYCOCK: Thank you, Mr. Chairman. Damon
10 Haycock for the record.

11 We have a couple of things that are pretty
12 reoccurring on these reports that I'll go over briefly. I
13 know it's a little after noon, and I don't want to keep
14 everybody too much longer. One thing that we are very proud
15 and excited here at PEBP about is how well we've been
16 maneuvering through the URAC accreditation process. Back in
17 July, you guys approved it and once you -- once we submitted
18 the desktop review in November, we were able to get that
19 completed in the first week of January.

20 Now, the contract states that we needed to submit
21 our desktop review in March, so we are well ahead of the game
22 and we are cruising right along, and we ended up getting
23 100 percent on that review. We're very excited. They are
24 very good to work with. We have constant communication with

1 them, and we have done an immense amount of work.

2 I can't take the credit for this process. Our
3 quality control team with Nancy Spinelli, as our quality
4 control officer, and, of course, our go-to liaison here
5 managing all this, Nick Proper, they are really doing an
6 amazing job to get us through this accreditation, and we
7 already have a site visit for March 8th. And once we finish
8 that site visit, we are very confident that we will become
9 accredited through URAC in record time.

10 And what's really important and why we wanted to
11 do this process isn't just so we can get a gold star, but the
12 fact is that we will be the first and only government health
13 plan that will be accredited through URAC or any other of the
14 national accreditation entities in the nation, and so we're
15 really trendsetting here or I guess it's trailblazing this
16 process.

17 And what does this mean for PEBP? Well, certain
18 things, like the customer satisfaction survey and annual
19 policy review and dedication to quality and quantity
20 improvement strategies is something that every organization,
21 whether they are in healthcare or other, should participate
22 in to continue to give back to the people that they serve.
23 And so this is just one of those official transparent ways of
24 showcasing how we're going to continue to improve quality and

1 to continue to meet those strategic planning objectives that
2 you all approved late last year.

3 On the preventive drug benefits, one of the
4 things that you guys didn't ask about in the utilization
5 report but one of the things that we are seeing an increase
6 in utilization of pharmacy drugs and most importantly those
7 preventive drugs are starting to drive a lot of that increase
8 utilization because folks aren't putting that off because
9 they don't have to pay the deductible up front. They are
10 going right to co-insurance.

11 This is good from a medical management
12 perspective because we have people on maintenance drugs or
13 preventive drugs that haven't been taking them and that are
14 now way more compliant, and so we have updated some of those
15 numbers here. For the second quarter, there is 36,000 claims
16 and another 1.4 million dollars worth of services, and they
17 only paid about 295,000 of it. So PEBP did front the bulk of
18 that, about 80 percent of those costs.

19 As far as our book of business is concerned for
20 our Pharmacy Benefits Manager, we were far more adherence
21 across several therapies, especially asthma. We have got it
22 beat by almost 30 percent on compliance rate for folks with
23 asthma or COPD compared against Express Scripts book of
24 business, and that we have some osteopetrosis increases and

1 anti-coagulate. So this program we knew was going to cost
2 some money, but we felt that it was important when we
3 recommended it. We believed that you guys made the right
4 decision as a Board to implement it because we want folks to
5 get those preventative care costs out of the way to avoid
6 those high cost episodes of care where they have to go to the
7 emergency room because they failed to take their medication.

8 Then the enhanced HSA/HRA funding, you guys
9 talked about this at the last Board meeting for the first
10 quarter and the second quarter. We've had a decent uptake in
11 how many folks that have actually received this already.
12 It's up to 190 from I think 300 and change. That was from
13 the first quarter. We anticipate this number to continue to
14 grow as those folks have their annual visits set up on a
15 certain cycle and so people don't go into the doctor until
16 January or March or even June, they will still be able to
17 collect that funding based on the completion of those
18 activities so those four basic activities.

19 And as requested by the Board, we did a big
20 highlight to it in our January newsletter explaining, again,
21 how to obtain this funding and to receive those preventative
22 benefits that, of course, PEBP pays for at 100 percent.

23 The customer service second quarter update, I'm
24 not going to bore you with all of the statistics, but what

1 you can see here is that we are still well under industry
2 standards. Our abandonment rate is 1.23 percent which I
3 usually want to keep things at about two percent or less.
4 We're answering roughly about 140 calls a day. Our voicemail
5 calls have gone down. Our average call duration is roughly
6 the same as it was this time last year.

7 One thing I do want to draw your attention to is
8 take a look at the total of e-mails. They have gone up
9 dramatically from this time last year. It has become one of
10 the mediums that our membership likes to use, and we have
11 dedicated resources that do nothing but answer e-mails all
12 day. And I've seen some of these e-mails because we have
13 received some good and bad feedback from our membership that
14 says, you know, thank PEBP for this or please tell the Board
15 this, but the level of professionalism that is going out I
16 think is second to none, and we are providing excellent
17 written communication to our members.

18 So with that, I will end my report and answer any
19 questions, Mr. Chair.

20 CHAIRMAN CATES: Okay. Thank you, Damon.

21 Any questions? Go ahead.

22 MEMBER PACKHAM: John Packham for the record.

23 Again, kind of a newbie type of question so bear
24 with me.

1 I'm just wondering if there has been in the past
2 or plans in the future to devote more attention or effort to
3 some of those preventative services utilization, like you're
4 doing with preventive drug? And I just say that because by
5 any measure, those utilizations are really low. Even if we
6 shot for a national average or something which it seems like,
7 you know, there would be short term cost but potential long
8 term savings.

9 MR. HAYCOCK: So for the record, Damon Haycock.
10 Excellent question, Mr. Packham.

11 Some of the things that the Board has approved to
12 try to steer folks using preventative services is attaching
13 some preventive services to the health savings account and
14 health reimbursement arrangement, try to incentivize with the
15 carrot, right, also consistent communication. The thing is
16 is it's real difficult, and I'm going to speak personally
17 here, because I have two children, 25 and 20, and I can't get
18 them to go to the doctor unless they are dying, right, and so
19 there's a certain group of folks that it's going to be
20 difficult to get them to want to utilize preventive services.
21 In fact, if I didn't have my kids on my plan, I don't think
22 they would go to the dentist because they would have to pay
23 the \$100 to get their teeth cleaned.

24 So there's some plan design opportunities that

1 are there. There are more incentives that we can place as a
2 Board. You guys have the luxury and the capability of
3 attaching whatever you want generally to enhance HSA and HRA
4 funding so if you want folks to do more, but the problem you
5 run into is the discrimination aspect that says if you're
6 over 40, I want you to do this and that's how you get money.
7 But if you're under 40, you don't have to but you still get
8 money, and so it's real difficult to do an incentivized
9 process.

10 The Board approved a few years ago, like four or
11 five years ago I think now, the implementation of a wellness
12 program. It wasn't received well by our legislature, but it
13 was designed to do stuff like biometrics screening and year
14 over year accomplishments. I think the system was a little
15 difficult to navigate for folks, and they didn't like the
16 health resource questionnaire. But, again, there's all kinds
17 of opportunities.

18 I just returned from the regional conference this
19 week on Tuesday that SALGBA, State And Local Government
20 Benefits Association, and they had a big thing on wellness
21 again, and so there's opportunity out there. They were
22 actually -- there was a city. I'm trying to remember the
23 actual city that was presenting, but they actually paid for a
24 weight loss challenge, and they do things like, you know, if

1 you pay 30 bucks in, the plan will pay 30 bucks in and at the
2 end of the year or at the end of the time frame, they split
3 the pot amongst all of the winners, and they actually raised
4 like \$40,000 and they got a little bit of flack for having to
5 give money out but it turned out with all of the winners, no
6 one got more than \$125.

7 But there's ways to incentivize behavior and
8 there's also ways to do it by trying to steer them by
9 negative behavior. Like, I'll pick on tobacco use. There's
10 tobacco surcharges that exist in plans across the nation and
11 at the federal level. PEBP doesn't have a lot of those,
12 where you can pay up to 50 percent more premiums if you are a
13 tobacco user. Now, I'm not advocating here so please don't
14 send me hate mail that says Damon hates tobacco users. I
15 already know my phone is going to blow up, but's there's
16 options and opportunities.

17 And the type of plans that we run give us a leg
18 up because we're not a risk so we don't fall under the
19 department of labor. We're not regulated by for the most
20 part by the division of insurance. So you have a lot of
21 freedom with a self-insured plan to do things, as long as you
22 don't break IRS law or federal law or state law. So if you
23 want us to look at more ways to try to improve preventive
24 services, we can, but it's either going to be the carrot or

1 the stick. And once we get an idea of what the collective
2 Board wants, we can provide recommendation with the Board.

3 CHAIRMAN CATES: Okay. Thank you.

4 Any other questions or comments from the members?
5 Okay. Seeing none, we'll close Agenda Item Number Ten and
6 move to Agenda Item Number 11, public comment.

7 Do we have any public comment in Carson City?

8 MS. MALONEY: Good morning. Priscilla Maloney
9 with the AFSCME retirees. Actually, I hadn't anything
10 planned to say until we got to the last agenda item, you
11 know, that Damon was just speaking to.

12 A couple of ideas on the carrot, I remember in
13 the 2013 legislature, there was a great deal of concern. The
14 Consumer Driven Health Care Plan had been put in place in
15 2011, and there was a big discussion of the utilization rates
16 dropping, and I would at least pause it to the Board that at
17 least possibly part of that was the pricing was different for
18 people. They were trying to get used to a new way of paying
19 for their healthcare. Whereas, before they had a more simple
20 plan design at least and, you know, the co-pays and the out
21 of pockets were all new to people.

22 And so there was no question at least in my mind
23 listening to that testimony back in 2013 that utilization
24 rates were effected by the newness of the plan and getting

1 used to that. So a couple of ideas on the carrots, on the
2 carrots because I know the legislature had concerns about the
3 wellness program, and I remember the gist of the concern was
4 that the utilization rate was around in the 30s. It was like
5 34, 36 percent of folks utilizing the wellness program.

6 So a couple of ideas, I don't know if the state
7 does wellness days anymore. They used to have a program
8 where they did paid time off. You would get administrative
9 leave and do some of these things, so that's one thought to
10 maybe consider as you get ready to roll out the master plan.

11 And then the second piece was your communications
12 presentation which was very actually helpful because we're
13 having the same discussion at AFSCME, how do we reach people?
14 What is a preferred method to educate and do outreach and
15 maybe do a separate little, not to give you guys more work,
16 but this year a separate push just on carrot based ideas
17 around wellness, and I do also hate tobacco use.

18 My personal assessment is that a lot of our
19 healthcare negatives in this state that are reported in
20 different context but especially in the legislature are
21 driven by our higher than the national average use of tobacco
22 products so there's a real connection there. So just two
23 ideas, do they still do well, what were they called, health
24 or welfare or something, health days and maybe a little

1 communications push about did you know, you know, kind of
2 carrot based ideas, and that's it, other than to congratulate
3 you on the trending issues. I know PEBP has been working
4 very hard to keep those costs down. It's really showing in
5 the numbers so thank you.

6 CHAIRMAN CATES: Thank you.

7 Any other public comment in Carson City?

8 Seeing none, any public comment down in Las
9 Vegas? No, okay.

10 We're closing agenda Item Number 11 and moving to
11 Agenda Item Number 12. This meeting is adjourned.

1 STATE OF NEVADA,)
) ss.
2 CARSON CITY.)
3

4 I, KATHY JACKSON, Official Court Reporter for the
5 State of Nevada, Public Employees' Benefits Program Board, do
6 hereby certify:

7 That on Thursday, the 25th day of January, 2018, I was
8 present at the Public Employees' Benefits Program, Carson
9 City, Nevada, for the purpose of reporting in verbatim
10 stenotype notes the within-entitled public meeting;

11 That the foregoing transcript, consisting of pages 1
12 through 140, is a full, true and correct transcription of my
13 stenotype notes of said public meeting.

14
15 Dated at Carson City, Nevada, this 7th day
16 of February, 2018.
17
18
19

20 KATHY JACKSON, CCR
21 Nevada CCR #402
22
23
24

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6 STATE OF NEVADA
7 PUBLIC EMPLOYEES' BENEFITS PROGRAM

8 AFFIRMATION

9 Pursuant to NRS 239B.030

10 The undersigned does hereby affirm that the following
11 document DOES NOT contain the social security number of any
12 person:

- 13 1) Public Employees' Benefits Program Board
14 Regular Meeting, 1/25/18
15
16
17

18 KATHY JACKSON

19 DATE
20
21
22
23
24