

REGULAR MEETING
NYC FIRE PENSION FUND MEETING

June 28, 2023
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3 REGULAR MEETING
4 OF THE BOARD OF TRUSTEES OF THE
5 NEW YORK CITY FIRE PENSION FUND and
6 NEW YORK CITY FIRE LIFE INSURANCE FUND
7
8 Wednesday, June 28, 2023
9 Commencing 10:10 a.m.
10 Via Zoom teleconference
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1 A P P E A R A N C E S :
2 CHAIRPERSON: Lizette Christoff
3 EXECUTIVE DIRECTOR: Patrick Dunn
4 UFA
5 Robert Eustace
6 Edward Brown
7 Eric Bischoff
8 Peter Devita
9 Louis Sforza
10 Christopher Viola;
11 UFOA
12 Jim Brosi
13 Liam Guilfoyle
14 Christopher Jensen
15
16 MAYOR'S OFFICE
17 Damian Laugher
18 DEPT. OF FINANCE
19 Liu, Chenghao (Kevin)
20
21 COMPTROLLER'S OFFICE
22 John Dorsa
23 NYC FIRE PENSION FUND ADMINISTRATION
24 Leroy McGinnis
25 Rosemary DeBellis
26 Robyn Aragues
27 Michael Sohn
28 Lei Tian
29 Simone Saywack
30 Kerry Kelly
31 Nicholas Pisano
32 ACTUARY'S OFFICE
33 Marek Tyszkiewicz
34
35 THE LAW DEPARTMENT
36 Marta Ross
37 Darren Trotter
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1 CHAIRPERSON CHRISTOFF: Good
2 morning. This is the regular meeting of the
3 Board of Trustees of the New York City Fire
4 Pension Fund and the New York City Fire Life
5 Insurance Fund. It is June 28, 2023. The
6 time is 10:10 a.m. We are at One Battery
7 Park Plaza on the 9th Floor conference room.
8 We have some attendees joining us via Webex.
9 Mr. Dunn, can you please start
10 the roll call?
11 MR. DUNN: Certainly. Good
12 morning all.
13 For Mayor Adams?
14 MR. LAUGHLER: Damian Laugher
15 representing Mayor Adams.
16 CHAIRPERSON CHRISTOFF: For
17 Comptroller Lander?
18 MR. DORSA: John Dorsa, designee
19 for Comptroller Brad Lander.
20 CHAIRPERSON CHRISTOFF: And for
21 Commissioner Finance Niblack?
22 MR. LIU: Kevin Liu for Finance
23 Commissioner.
24 CHAIRPERSON CHRISTOFF: And for the
25 UFA, Mr. Andrew Ansbro?

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1 MR. EUSTACE: Bobby Eustace with
2 Andy Ansbro, as proxy.
3 MR. DUNN: And Mr. Eustace?
4 MR. EUSTACE: Present.
5 MR. DUNN: Mr. Edward Brown?
6 MR. BROWN: Here.
7 MR. DUNN: Mr. Eric Bischoff?
8 MR. BISCHOFF: Present.
9 MR. DUNN: Mr. Peter Devita?
10 (No response.)
11 MR. DUNN: And for the UFOA, Mr.
12 Christopher Jensen?
13 MR. JENSEN: Here via Webex.
14 MR. DUNN: Mr. Liam Guilfoyle?
15 MR. GUILFOYLE: Here.
16 MR. DUNN: Mr. James Brosi?
17 MR. BROS: Here.
18 MR. DUNN: And for Fire
19 Commissioner Kavanaugh?
20 CHAIRPERSON CHRISTOFF: Lizette
21 Christoff.
22 MR. DUNN: We have a quorum.
23 CHAIRPERSON CHRISTOFF: Thank you.
24 So the first item on our agenda, the Board
25 has requested to approve the meeting minutes



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1 of the regular meeting held on May 21, 2023.
2 MR. GUILFOYLE: Motion.
3 MR. EUSTACE: Second.
4 CHAIRPERSON CHRISTOFF: Any
5 opposed? Hearing none, the motion carries.
6 Moving on to Section 3, Item (A),
7 the Board has requested to approve the
8 investment authority of the comptroller
9 for the period commencing July 1st, 2023,
10 and ending September 30, 2023.
11 MR. GUILFOYLE: Motion.
12 MR. EUSTACE: Second.
13 CHAIRPERSON CHRISTOFF: Any
14 opposed?
15 (No response.)
16 UNIDENTIFIED SPEAKER: I just want
17 to say thank you for your continued
18 support from the comptroller's office.
19 MR. DORSA: Duly noted.
20 CHAIRPERSON CHRISTOFF: You are
21 welcome. Thank you.
22 Item B, the Board has requested
23 to approve the maximum pension allowance
24 payment to retired members without an
25 option selection. There are nine cases

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1 listed on page 2 of your packet.
2 MR. GUILFOYLE: Motion.
3 MR. EUSTACE: Second.
4 CHAIRPERSON CHRISTOFF: Any
5 opposed?
6 (No response.)
7 CHAIRPERSON CHRISTOFF: Hearing
8 none, the motion carries.
9 Item C, the Board is requested to
10 approve the refund of annuity savings
11 account excess to improved benefits plan
12 members. There are 37 cases listed on
13 pages 3 through 5.
14 MR. GUILFOYLE: Motion.
15 MR. EUSTACE: Second.
16 CHAIRPERSON CHRISTOFF: Any
17 opposed?
18 (No response.)
19 CHAIRPERSON CHRISTOFF: Hearing
20 none, the motion carries.
21 Item D, the Board has requested
22 to approve the transfer of member
23 accumulated deductions to New York City
24 Police Pension Fund. There is one case
25 listed.

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1 MR. GUILFOYLE: Motion.
2 MR. EUSTACE: Second.
3 CHAIRPERSON CHRISTOFF: Any
4 opposed?
5 (No response.)
6 CHAIRPERSON CHRISTOFF: Hearing
7 none, the motion carries.
8 Item E, the Board has requested
9 to approve the refund of contributions of
10 interest paid into the Contingency Reserve
11 Fund for the purchase of Chapter
12 548/Chapter 41 military service credit.
13 There is one case listed on page 8.
14 MR. GUILFOYLE: Motion.
15 MR. EUSTACE: Second.
16 CHAIRPERSON CHRISTOFF: Any
17 opposed?
18 (No response.)
19 CHAIRPERSON CHRISTOFF: Hearing
20 none, the motion carries.
21 Item F, the Board has requested
22 to approve advance payments to retirees
23 entered on the fund's May 2023 payroll.
24 There are 49 cases listed on pages 9
25 through 12.

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1 MR. GUILFOYLE: Motion.
2 MR. EUSTACE: Second.
3 CHAIRPERSON CHRISTOFF: Any
4 opposed?
5 (No response.)
6 CHAIRPERSON CHRISTOFF: Hearing
7 none, the motion carries.
8 Item G, the Board is requested to
9 approve payments due to physicians of the
10 Subchapter 2 Medical board listed on
11 pages 13 through 14.
12 MR. GUILFOYLE: Motion.
13 MR. EUSTACE: Second.
14 CHAIRPERSON CHRISTOFF: Any
15 opposed?
16 (No response.)
17 CHAIRPERSON CHRISTOFF: Hearing
18 none, the motion carries.
19 Item H, the Board is requested to
20 approve payments due to Esquire Deposition
21 Solutions, LLC.
22 MR. GUILFOYLE: Motion.
23 MR. EUSTACE: Second.
24 CHAIRPERSON CHRISTOFF: Any
25 opposed?

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1 (No response.)
2 CHAIRPERSON CHRISTOFF: Hearing
3 none, the motion carries.
4 Item I, the Board is requested to
5 approve the payment due to Brown & Meyers,
6 Incorporated.
7 MR. GUILFOYLE: Motion.
8 MR. EUSTACE: Second.
9 CHAIRPERSON CHRISTOFF: Any
10 opposed?
11 (No response.)
12 CHAIRPERSON CHRISTOFF: Hearing
13 none, the motion carries.
14 Now can we have a motion to exit
15 this meeting and enter the New York City
16 Fire Life Insurance meeting?
17 MR. GUILFOYLE: Motion.
18 MR. EUSTACE: Second.
19 CHAIRPERSON CHRISTOFF: Any
20 opposed?
21 (No response.)
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1 (Whereupon, the Board entered the New
2 York City Fire Life Insurance Fund meeting.)
3 CHAIRPERSON CHRISTOFF: We are now
4 in the New York City Fire Life Insurance
5 Fund meeting. We will start with a roll
6 call.
7 MR. DUNN: Roll call remains the
8 same.
9 CHAIRPERSON CHRISTOFF: Thank you.
10 Item A, the Board is requested to
11 approve an amendment to Rule 35 of the
12 rules and regulations extending the
13 effective period of the Group Life
14 Insurance Plan to June 30, 2004.
15 MR. GUILFOYLE: Motion.
16 MR. EUSTACE: Second.
17 CHAIRPERSON CHRISTOFF: Any
18 opposed?
19 (No response.)
20 CHAIRPERSON CHRISTOFF: Hearing
21 none, the motion carries.
22 Item B, the Board is requested to
23 approve each application for \$8,500 of
24 life insurance benefit from beneficiaries
25 of deceased active members. There are two

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1 cases listed on pages 18 through 19.
2 MR. GUILFOYLE: Motion.
3 MR. EUSTACE: Second.
4 CHAIRPERSON CHRISTOFF: Any
5 opposed?
6 (No response.)
7 CHAIRPERSON CHRISTOFF: Hearing
8 none, the motion carries.
9 Item C, the Board is requested to
10 approve each application for \$7,500 of
11 life insurance benefit from beneficiaries
12 of deceased retired members. There are 48
13 cases listed from pages 28 to 24.
14 MR. GUILFOYLE: Motion.
15 MR. EUSTACE: Second.
16 CHAIRPERSON CHRISTOFF: Any
17 opposed?
18 (No response.)
19 CHAIRPERSON CHRISTOFF: Hearing
20 none, the motion carries.
21 Now we need a motion to exit.
22 MR. DORSA: Commissioner, John
23 Dorsa from the comptroller's office.
24 Before we exit Fire Life, I just
25 want to let the board know that as we do

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1 the asset allocation review for the
2 pension funds, I am also going to ask that
3 the Bureau of Asset Management work with
4 NEPC and the actuary to determine if the
5 previously approved asset allocation for
6 Fire Life remains the appropriate way to
7 move forward, and ask that Vanders
8 (phonetically) give us an update at the
9 next meeting or the meeting thereafter, to
10 just give us an update on the status of
11 the fund as far as investments go and what
12 the options are, but I wanted to just let
13 the Board know that we are going to pursue
14 that and come back to you with more
15 information. Thank you.
16 With that, I will make a motion
17 to exit the Fire Life Insurance Fund and
18 enter into the executive session of the
19 Fire Pension Fund.
20 MR. GUILFOYLE: Second.
21 CHAIRPERSON CHRISTOFF: Any
22 opposed? Hearing none, the motion carries.
23
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1 (Whereupon, the Board entered
2 executive session.)
3 CHAIRPERSON CHRISTOFF: Please stop
4 the recording. Thank you. We are now in
5 the executive session. I will turn it over
6 to Mr. Dunn.
7 MR. DUNN: Thank you very much.
8 First, I would like to bring to the
9 attention, I believe the UFA has an
10 amendment they would like to put forward
11 regarding the approval of the minutes.
12 Mr. Eustace?
13 MR. EUSTACE: Yes. We would like
14 to amend the minutes last month for Case
15 Number 1, James Berry. He was denied. It
16 was noted the issue was laid over to
17 September, so if we could amend the
18 minutes for that case.
19 I would like to make a motion to
20 amend the minutes for Firefighter James
21 Berry, Engine 45, to be laid over till
22 September.
23 MR. GUILFOYLE: Second.
24 CHAIRPERSON CHRISTOFF: Any
25 opposed?

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1 (No response.)
2 CHAIRPERSON CHRISTOFF: Hearing
3 none, the motion carries.
4 MR. DUNN: On the executive
5 director's report, we have quite a few
6 items. I will try to blast through as
7 quickly as possible.
8 We disseminated the fiscal 2024
9 budget including the IT portion which is,
10 you know, basically that's the thing of
11 note. We are requesting \$500,000 at the
12 direction and instruction and
13 recommendation of the Board. We were
14 requested to formalize a master plan for
15 our IT initiatives.
16 Having looked at other funds,
17 costs varied greatly. We have seen from
18 2016 roughly \$300,000 in 2016 dollars up
19 to more recently over \$850,000, so it's a
20 soft number we put in there based upon
21 feedback.
22 We are estimating the \$500,000 to
23 carry out the direction and wishes of the
24 Board, so if the costs go higher or lower,
25 depending on feedback, I will certainly

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1 let the Board know that. That number, I
2 guess, could be viewed somewhat as a
3 placeholder given the information we have
4 at hand.
5 The only other items of note
6 really in the budget are a request for
7 three additional heads. So we can go
8 through, we included some justification
9 for everyone's edification.
10 The real -- one of the primary
11 reasons, of course, is the fund has some
12 needs. Some you have been made aware of
13 and some you have not been, so at the very
14 least this is to inform the Board some of
15 the challenges that we are trying to
16 overcome here so that you are aware of the
17 functioning and the challenges of the
18 pension fund.
19 The thought is we can have this,
20 review the document. Any questions or
21 comments, I request once, again at the
22 direction of the Board, if there is any
23 additional questions, can they please be
24 posed to all? That's a request, that's
25 been a recurring request of this Board,

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1 and I don't want to be caught in the
2 middle of not following out the wishes of
3 the Board.
4 So I would figure after we have a
5 chance to digest this a little bit, we can
6 get questions and then we will schedule --
7 we will see when we choose to vote for
8 adoption, unless, as these two items that
9 I said, unless anybody is inclined wants
10 to make a motion, we can just wrap this up
11 and vote on it today.
12 I see the city's rep Damian seems
13 to think that maybe we shouldn't do that.
14 This is a jump-off point, and I
15 appreciate, you know, your help on this
16 trustee's fund.
17 A couple of other notes. We have
18 a couple of attorneys. We have Phil
19 Seelig that when we are ready to go into
20 the cases we can call him to join the
21 presentation. For the court reporter,
22 that first attorney will be Philip Seelig.
23 He will be representing the Gordon Springs
24 case.
25 Then we have another attorney,

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1 Christina Martinez. She will be
2 presenting on behalf of Firefighter
3 Pastrana from Engine 67.
4 At 12:00 o'clock we have an
5 interview with Dr. De Paula for the 1B
6 Board doctors. He is a psychiatrist that
7 submitted an application many years ago,
8 and obviously I think one of the
9 challenges we have with the rate of pay
10 for the medical offices, we are getting --
11 it's very difficult for us to get feedback
12 on open positions, so we reached out to
13 him, and we will interview him today.
14 You know, there are other people
15 that we might anticipate applying at the
16 end of the month. If we don't have
17 anything by the end of July, I figure in
18 September, September's Board, we should be
19 ready to move one way or another, if
20 that's the Board's wishes.
21 A couple of items of concern for
22 the Board that I think you guys are going
23 to want to hear. We just recently had a
24 bit of a difficulty with FISA-OPA.
25 FISA-OPA, the pension excess

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1 checks that went out that were supposed to
2 go to the trustee, shall we say the
3 custodian in investment, whether was 457,
4 UFOA annuity, or an independent
5 investment, these checks were sent
6 directly to the member and not to the
7 investment account. We estimate
8 approximately 35 different people were
9 affected by this.
10 So we found out late yesterday.
11 We have contacted them all already today.
12 It was all hands on deck. I would like to
13 give thanks to the staff here.
14 And the fund told them do not
15 cash these checks. They are going to send
16 them back to us. We are canceling them.
17 We are going to reissue. FISA-OPA is
18 going to reissue checks on Friday.
19 FISA-OPA, apparently, you know,
20 human error. You are dealing in the real
21 world, as we all are. You know, it's
22 whatever glitch occurred, we are going to
23 work on that, but they were very
24 responsive and remediated it very quickly,
25 so very happy about that.

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1 Eric Schuman -- I don't know. We
2 will have to ask William, but, you know,
3 we are on track remedying that.
4 And another area of concern, for
5 proof of life verifications for people, I
6 believe it is after 75, 75 years old, we
7 use -- the PBI is widely engaged for the
8 proof of life.
9 The bottom line is we have run
10 all of our recipients of pension checks to
11 ensure that there is no fraud being
12 committed; that deceased people aren't
13 getting checks, or whatever.
14 Well, they had a massive data
15 breach through MOVEit, which is one of the
16 subcontractors that they use.
17 The extent of the information
18 released is not exactly known, but I could
19 say, you know, I believe it to be very
20 wide, obviously disturbing.
21 This has affected CalPERS,
22 millions and millions of people, so
23 widely-used company, and this technology
24 is widely used. It's been repaired, it's
25 been remediated. This seems to be,

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1 unfortunately, the world we live in now.
2 So where we are at now, we don't
3 know exactly the extent, like I said, but
4 I would tell you I'm comfortable saying,
5 you know, there's a lot of the data got
6 out there.
7 Right now it appears as a
8 resolution -- we are still in
9 discussion -- they are going to do credit
10 monitoring. They are going to communicate
11 with all the members.
12 So far they have started, it
13 appears to me, with the largest
14 organizations and then they are going
15 down, you know, it appears to be, by size
16 of the different organizations, so very
17 much like our budget; you know, the needs
18 of the largest get attended to first, and
19 then we move on to us.
20 Damian, you are supposed to laugh
21 at that.
22 So as soon as we hear from them,
23 they are going to communicate with the
24 members directly.
25 I do see that PRS, because other

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1 funds in the city also have been affected,
2 they sent out a letter of communication.
3 We certainly could do that; however, if we
4 initiate communication, I honestly don't
5 believe we have the resources to deal with
6 the influx of the calls we are going to
7 get from all the retirees, as well as not
8 only if they are calling us, then we are
9 going to have ownership of a problem
10 that's, you know, really not ours.
11 I mean, it's our members and we
12 are obviously looking to make sure that
13 they are well taken care of, but if we
14 initiate the communication, we may be
15 stepping out of our lane a bit, so we are
16 in communication daily.
17 Michael, our chief of staff,
18 monitoring everything, all the
19 developments, and if it is prudent for us
20 to send out a communication, if we think
21 it will be advantageous, we will do so;
22 however, I just think it might be better,
23 because if they are calling us, they are
24 also going to be calling the unions and
25 everything else, and we don't even have

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1 the in-depth information that they will
2 have and delivering in a form that, you
3 know, they think is most efficient and
4 most prudent.
5 If things change or develop, or
6 if there's difference of opinion as things
7 develop, kindly let me know. We will
8 gladly send out communication directly if
9 that seems to be -- if that becomes the
10 preferred course of action in the future.
11 That being said, that concludes
12 my executive director's report.
13 SPEAKER: Thanks, Pat.
14 MR. DUNN: Thank you.
15 CHAIRPERSON CHRISTOFF: The next
16 thing on our agenda are the attorney
17 presentations, so we will be getting in
18 contact with the attorneys.
19 MR. DUNN: We will be reaching
20 out right now to Philip Seelig, attorney,
21 and he will be joining us to make the
22 presentation. Please give us a minute or
23 two to get him online.
24 (Pause in the proceedings.)
25 MR. DUNN: Good morning,

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1 Mr. Seelig. The Board has been informed
2 that you will be speaking on the case of
3 Firefighter Gordon T. Springs, so with that
4 I wish you a good day.
5 MR. SEELIG: Good morning to you
6 and everyone else there as well as those
7 that are there remotely.
8 I am representing Gordon Springs.
9 This is an unusual case in that it stems
10 from an allegation by the firefighter that
11 he was a victim of two hazing incidents,
12 one that resulted in an emotional reaction
13 and psychological treatment stemming from
14 that, and then following that, there was
15 also a physical injury where as part of
16 the hazing that was going on in the
17 firehouse, as he has depicted it, water
18 was placed on the pole that firefighters
19 slide down, and as a result, he injured
20 his back.
21 The Medical Board had opined that
22 there was perhaps a long-standing
23 psychological condition unrelated to the
24 fire department, but pointed to nothing in
25 the record to justify that conclusion or

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1 observation by the Board of Trustees
2 Medical Board.
3 And so I question as to whether
4 it meets the legal requirements to opine
5 that it was unrelated merely because of
6 speculation that he had a long-standing
7 condition, psychological condition.
8 If he did, they should have at
9 least considered a *Tovin v. Steisel*
10 scenario based on a latent condition, if
11 one was there.
12 In his (indiscernible) records,
13 it said he never had any psychological
14 issues prior to this event.
15 This was, in my view, a very
16 embarrassing thing for the department, and
17 when he injured his back sliding down the
18 pole that had been watered by the other
19 firefighters here as part of the hazing,
20 they attempted to cover up that event by
21 claiming in the CD-72 that was submitted,
22 not by him but by others in the firehouse,
23 that he had tripped over a sewer cover.
24 I understand there was an
25 investigation and some disciplinary action

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1 taken, but to my knowledge, no
2 terminations, which I find somewhat
3 shocking considering that magnitude of the
4 offense here; but, nonetheless, there was
5 attempted coverup, or there was a coverup;
6 not an attempted. They did, in fact,
7 cover it up, but it was later discovered.
8 While the Medical Board may not
9 be intending to cover up, that's exactly
10 what's going on here. There's a covering
11 up of the fact that he was injured two
12 times, one emotionally and one physically,
13 by a group of firefighters that engaged in
14 hazing like some fraternity house in a
15 college, which is outrageous in a
16 government uniformed agency.
17 It's shocking to me, and
18 something that, you know, I would think
19 the department would be embarrassed by if
20 it ever saw the light of day.
21 There was this determination by
22 the Medical Board on the physical injury
23 finding that he had a continued foot drop,
24 but pointing out to Dr. Stieber's notes,
25 and Dr. Stieber is the spinal surgeon that

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1 was treating him and recommending being
2 surgery, and they pointed out to the first
3 part of that statement in the treatment
4 notes where it says "Given that he has now
5 been ongoing for five months without
6 improvement and seemingly progressive
7 worsening, I have given him strong
8 recommendation for surgical intervention
9 in the form of left-sided L4-L5
10 laminectomy and discectomy.
11 It went on and said that "I
12 explained without expedited surgery, he is
13 at risk" -- the word "risk" -- "for
14 permanent neurologic deficit and permanent
15 foot drop," which is not the same as
16 definite.
17 So the firefighter had to
18 consider his advice that he was at risk,
19 but it further on went on to say that his
20 best chance to return as a firefighter was
21 with this, but it said "continued
22 nonoperative treatment and operative
23 treatment options were fully discussed,"
24 so he didn't limit it to surgery; he said
25 also the doctor said he also spoke to him

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1 about nonoperative treatment options.
2 He further went on to say "the
3 risk of the procedure including, but not
4 limited to, bleeding, infection,
5 neurological injury, weakness, numbness
6 and/or pain in complete resolution of
7 neurologic symptoms, disc reherniation,
8 disc degeneration, CSF right
9 (indiscernible) requiring treatment or
10 reoperation, back pain, and need for
11 additional surgery were all fully
12 discussed."
13 So the Medical Board on the first
14 comment, which was that it was strongly
15 recommending for expedited surgery, he
16 also gave him other nonoperative treatment
17 options and also told him there are a lot
18 of risks involved in this type of injury.
19 As anybody who is facing some
20 kind of a spinal surgery might be hesitant
21 to just jump in, it's a recommendation you
22 should do it because it's your best chance
23 but not a definite outcome, and it had
24 already been going on for five months, so
25 what expedited? After five months, that's

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1 not expedited.
2 It's not like he went into the
3 hospital and they said "You better do this
4 right away or you're going to have the
5 foot drop for the rest of your life."
6 That's not what happened here.
7 So I don't think, in my opinion,
8 it's enough for the Medical Board to
9 dismiss the claim of accidental disability
10 because the doctor gave him options and he
11 didn't pick the option which was a
12 surgical option until a later point in
13 time when he relented and said "I don't
14 want to live like this, and I'm going to
15 undergo the surgery," and he did
16 eventually undergo that surgical
17 procedure, but based on the hesitation
18 that I think any one of us facing the same
19 kind of choice would have made. Not
20 everybody would make that choice, but many
21 of us would.
22 I don't think it's enough legally
23 to defeat a claim of accidental
24 disability. I would urge you to consider
25 that that recommendation of the Medical

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1 Board not to find accidental disability
2 because he didn't undergo the surgery as
3 recommended by that one surgeon to do it
4 expeditiously, and that the foot drop was
5 the ultimate outcome of that delay, we
6 don't know that to be true.
7 Even the doctor didn't say that
8 it was definite. It was just a risk; the
9 risk factor just like the risk factors of
10 infection, just like the risk factors of
11 additional pain of reoperations, all the
12 other risk factors, which were also
13 conveyed to him in that same treatment
14 note.
15 So there are numerous risk
16 factors, and it's up to the patient to
17 evaluate and to determine what risk
18 factors are more, concerning and make a
19 decision based on the panoply of risk
20 factors. It wasn't just one factor. It
21 was several risk factors.
22 In regard to the psychological,
23 as I pointed out, and is in our memorandum
24 of law, the Medical Board has an
25 obligation to point to credible medical

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1 evidence to suggest why there is a view
2 that there was a long-standing psychiatric
3 condition, and it seems they failed to
4 point to any; that there is no evidence of
5 that.
6 I read through the medical
7 records of his treating psychiatrist, and
8 I found nothing in the record that
9 suggested that, and the Medical Board
10 failed to point to anything in the record
11 that suggested that.
12 So merely pronouncing it or
13 merely making a conjecture that it might
14 be true I don't think misstates the claim
15 that this was the result of the hazing,
16 and don't know if the Board of Trustees
17 knows what went on there, but I would ask
18 that you review the record.
19 This was a newly-hired
20 firefighter that went into the firehouse
21 for the first time. There were other
22 firefighters that were new. They told him
23 that he should go and lift weights, and
24 when he was on this bench press, the other
25 fire fighters teabagged him.

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1 I am not going to use the more
2 (indiscernible) explanation. If you don't
3 know what that is, please confer with
4 other Board members, but it's not
5 something I would want to openly comment
6 on because it's pretty crude.
7 Some of the Board members may
8 know what that is, but for a firefighter
9 to undergo that and not have an emotional
10 reaction after getting a job, waiting on a
11 list to be hired, and then be treated that
12 way by firefighters in the firehouse, that
13 is childish, is the least offensive way of
14 describing what went on there. It's
15 outrageous.
16 I've never heard of anything like
17 this in any uniform agency. I'm sure
18 there is some hazing going on, but not to
19 the degree that this firefighter
20 experienced.
21 He ended up having a severe back
22 injury because of that hazing.
23 This is something that the
24 department may have disciplined others,
25 but I can't imagine that they are now

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1 going to punish this officer, this
2 firefighter, rather, for being a victim of
3 hazing in the fire department.
4 This is an outrageous conduct on
5 the part of members of the fire
6 department, and I believe it's up to the
7 Board of Trustees to limit this injustice
8 by treating this firefighter as you would
9 want a relative of yours or a friend of
10 yours or some coworker of yours that you
11 learned about being treated this way to be
12 adequately compensated for the horrible
13 treatment that he suffered at the hands of
14 other members of the department.
15 I hope that you don't engage in
16 further insult to the injury that has
17 already been bestowed on this firefighter
18 as a result of his being hired and
19 subjected to this hazing environment.
20 I have no further comments on
21 this. You have my written statement. You
22 have my presentation, but I am here for
23 any specific questions that any of you
24 might have.
25 CHAIRPERSON CHRISTOFF: Are there

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1 any questions from folks in the room? Any
2 questions from those joining us via Webex?
3 It sounds like no. Thank you
4 very much, Mr. Seelig.
5 MR. SEELIG: Thank you all, and I
6 hope you all have a nice barbecue on
7 July 4th and enjoy the holiday. Have a
8 good day everyone.
9 CHAIRPERSON CHRISTOFF: Same to
10 you.
11 MR. DUNN: Now we are contacting
12 Christina Martinez, another attorney. She
13 is going to go on to represent Firefighter
14 Pastrana from Engine 67.
15 CHAIRPERSON CHRISTOFF: If you
16 would like to, you know, introduce yourself
17 and who you represent, and then begin your
18 presentation.
19 MS. MARTINEZ: Sure. Thank you
20 very much. My name is Christina Martinez.
21 Good morning, everybody. Thank
22 you for allowing me to speak to you about
23 Firefighter Obrian Pastrana. I am an
24 attorney. I represent Firefighter
25 Pastrana. He is a 36-year-old FDNY

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1 firefighter. He has been on the job as a
2 firefighter for ten years.
3 Previously he served as an FDNY
4 EMT for six years, so he has dedicated 16
5 years of his life to service of the FDNY.
6 He suffered an unforeseen and
7 life-altering disability which has
8 resulted in him being permanently unfit
9 for duty as a firefighter.
10 On October 20, 2021, due to the
11 public health emergency, the city required
12 all firefighters to receive the COVID-19
13 vaccine. Any city worker who didn't
14 submit proof of vaccination would be
15 excluded from the premises at which they
16 work and terminated.
17 They were required to be
18 vaccinated by October 29 of 2021, and
19 Firefighter Pastrana received the first
20 dose on that day, on the deadline, in
21 order to comply with the vaccine mandate.
22 Soon after, he developed an
23 immediate allergic, severe allergic
24 reaction: Swelling of the lips, hives,
25 other symptoms.

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1 This is all detailed in the fire
2 commissioner's application dated March 10,
3 2023.
4 The day after he received the
5 first dose, the FDNY's own doctor,
6 Dr. Barbara Chung, diagnosed him with
7 COVID-19 vaccine side effect. That was
8 October 30th.
9 I believe that you should all
10 have the documents that were submitted by
11 the Subchapter 2 Medical Board. This is
12 included in the list. It's on the very
13 last page, 113, and there's an MD 9
14 summary report there, and it states that
15 he was suffering from a vaccine side
16 effect.
17 Notably, there is a diagnostic
18 code attached to that notation, and it
19 says service connected.
20 According to the CDC, a severe
21 allergic reaction is a contraindication to
22 any future dose of the vaccine.
23 Very significantly, on
24 November 15, 2021, he actually had to be
25 taken to the hospital in an ambulance

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1 while he was on active duty due to a
2 severe allergic reaction which included
3 rash, hives, swelling of the lips. This
4 is the definition of anaphylaxis from the
5 CDC.
6 In the emergency room he was
7 treated with epinephrine, which is a drug
8 commonly used to treat anaphylaxis.
9 Again, in the MD 9 summary
10 reports which you all have, it was given
11 the diagnostic code service connected, and
12 that was from a different from, actually,
13 Dr. Gerard Casey, so this was a vaccine
14 action, service connected.
15 Again, November 21, he was seen
16 in the emergency room, worse symptoms.
17 Despite his ongoing severe
18 allergic reaction, the FDNY not only
19 recommended him to receive a second dose,
20 but they required him to receive a second
21 dose.
22 Based on that, on November 23, he
23 received a second dose.
24 After that, his condition
25 deteriorated. In addition to the swelling

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1 and the hives which worsened, he had
2 shortness of breath, chest pain, decreased
3 oxygen levels. He was put on a full
4 regimen for allergic reactions.
5 This resulted in him seeking
6 treatment from a cardiologist.
7 He had an echo done, which
8 revealed left ventricular ejection
9 fraction at 40 percent, which is actually
10 heart failure, so he was prescribed
11 Entresto, which is a drug that treats
12 heart failure, and also another drug to
13 treat the swelling that is caused by heart
14 failure.
15 On January 25, 2022, he was
16 diagnosed by the fire department with
17 myocarditis and COVID-19 vaccine side
18 effect. That is in the MD 206 reports.
19 That's page 81 of -- if you have the
20 113-page packet from the Subchapter 2
21 Medical Board, that's where that is
22 located.
23 Again, on February 9, 2022, he
24 was again diagnosed myocarditis, COVID-19
25 vaccine side effect.

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1 And then finally on February 20th
2 of this year, he was again diagnosed with
3 myocarditis by the FDNY doctors.
4 All of these records indicate
5 that these diagnoses are service
6 connected, and his treating physicians
7 concur. This is a vaccine side effect.
8 On page 62 of that packet, you
9 will see records from Dutchess Medical
10 Associates. That's his treating
11 cardiologist, Dr. Cotonelli (ph.), and he
12 states "definitely suffers from side
13 effects of the vaccine," so there is no
14 question here.
15 Finally, on February 28, 2023,
16 the FDNY Chief Medical Officer,
17 Dr. HurwitZ, submitted the three
18 physicians' boards unanimous diagnoses and
19 opinions, and he was diagnosed with an
20 allergic reaction to the COVID vaccine,
21 myocarditis and COVID disease, and they
22 opined he was permanently unfit for fire
23 fighting duties.
24 They also noticed he was at an
25 increased risk for sudden incapacitation.

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1 On March 10, the fire
2 commissioner processed the application
3 based on the unanimous opinion of the
4 three physician board.
5 The last thing that occurred in
6 this case was on May 2nd, after review of
7 all the medical records and interview with
8 Firefighter Pastrana, the Subchapter 2
9 Medical Board, which was specializing in
10 cardiology, unanimously determined that
11 Firefighter Pastrana was permanently
12 disabled as a consequence of myocarditis
13 with ongoing symptoms status post COVID
14 vaccine, which precludes him from fire
15 fighting duties.
16 Now, the issue here is that the
17 Subchapter 2 Medical Board recommended
18 that he be granted an ordinary disability
19 retirement, and my purpose for being here
20 is that Firefighter Pastrana is actually
21 requesting that that be upgraded to
22 accidental disability retirement.
23 I don't want to take too much of
24 your time up, but I just want to quickly
25 outline why Firefighter Pastrana clearly

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1 qualifies under the New York City
2 Administrative Code for accidental
3 disability benefits.
4 Under the New York City
5 Administrative Code, he needs to show that
6 he is physically incapacitated for the
7 performance of city service as a natural
8 and proximate result of an accidental
9 injury received in city service.
10 Now, there is no disagreement
11 here. Firefighter Pastrana's disabilities
12 are a natural and proximate cause of
13 receiving the COVID vaccine. His treating
14 physicians, the FDNY doctors that saw him,
15 the FDNY chief medical officer, the BHS 3
16 physician board, and even the pension
17 fund's Subchapter 2 Medical Board, they
18 all agree that his disabilities are a
19 result of the vaccine.
20 What the issue here is whether
21 pursuant to the New York City
22 Administrative Code, he is entitled to
23 accidental disability because his injuries
24 were received in city service.
25 Now, his disabilities were

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1 proximately caused and induced by the
2 actual requirements of his position as a
3 firefighter.
4 From October 20, 2021, through
5 February 12 of 2023, COVID-19 vaccination
6 was a condition of employment, and the
7 city itself called it a term of
8 employment, and multiple courts, from the
9 federal district courts down to the New
10 York State Supreme Court, all viewed this
11 as a condition of employment. So his
12 position as a firefighter required him to
13 receive the COVID-19 vaccination.
14 But even more significantly, it
15 was November 15, 2021, while he was on
16 active duty at the firehouse, that's when
17 he experienced his severe allergic
18 reaction. He had to be taken from the
19 firehouse in an ambulance, and
20 subsequently he was unable to continue his
21 duties as a firefighter. He never
22 returned to the firehouse after that
23 incident on November 15, 2021, and there
24 is no question that that constitutes an
25 accident within the meaning of the New

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1 York City Administrative Code.
2 He was legally obligated. This
3 wasn't a personal choice. This was an
4 occupational requirement imposed upon him
5 in the line-of-duty, and the FDNY doctors
6 directed him to receive a second dose. I
7 mean, he had a severe allergic reaction.
8 The CDC guidelines are clear that
9 he should not have had to receive that
10 second dose, but it was the FDNY doctors
11 who directed him, and the FDNY that
12 required him to receive the second dose.
13 I know that this is not a typical
14 situation that the Board usually sees as
15 far as an accidental disability injury,
16 but to preclude this firefighter from
17 accidental disability benefits, especially
18 where this is his sole legal recourse. He
19 can't sue for a vaccine injury, right?
20 These benefits are the only recourse he
21 has, and to hold that it's not service
22 connected, it's just -- it's not factually
23 based at all.
24 I mean, again, I want to just
25 point to the BHS examination reports as

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1 well as the MD 206 reports.
2 The FDNY, several different
3 doctors, repeatedly used the SC diagnostic
4 code. They characterized his myocarditis
5 and his vaccine injury as service
6 connected.
7 So I know this situation is
8 unique, but it shouldn't be disregarded
9 because it deviates from the typical
10 line-of-duty accident you see.
11 It clearly states within the
12 statute "of a service-connected accident."
13 And then the second prong to that
14 is that these disabilities were caused by
15 an accident, right?
16 "Accident" has a meaning that was
17 given by the courts. There are several
18 landmark Court of Appeals cases. They
19 define an accident as a sudden fortuitous
20 mischance, unexpected, out of the
21 ordinary, and injurious in impact.
22 In 2018, there is a landmark
23 Court of Appeals case The Matter of Kelly
24 versus DiNapoli that says "Injuries caused
25 by events that were not risks inherent in

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1 their ordinary job duties."
2 Now, this severe allergic
3 reaction is clearly an unforeseen
4 consequence of the vaccine. The CDC
5 stated vaccine injuries are rare. His
6 permanent disability is even more rare,
7 and he has a confirmed disability,
8 permanent disability by both the FDNY
9 Medical Committee and the New York City
10 Pension Fund Subchapter 2 Medical Board.
11 We know that this is a direct
12 consequence of the vaccine here. It is
13 undisputedly a direct and natural result
14 of the accident, and fitting in with the
15 Court of Appeals case, it wasn't a risk
16 inherent in his ordinary job duties as a
17 firefighter. It was sudden, it was
18 unexpected, and it didn't result from
19 activities that were undertaken in the
20 ordinary course of his job duties.
21 I just want to point you again to
22 that case, Kelly versus DiNapoli, because
23 the firefighter in that case actually
24 suffered from injuries involving toxic
25 fumes, and I think it's instructive here,

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1 because the court there said that exposure
2 to toxic chemicals were a risk inherent in
3 the ordinary duties of a firefighter, and
4 so it didn't consist of a sudden,
5 unexpected event that were not risks in
6 the petitioner's job as a firefighter
7 because he was required to provide
8 emergency medical services and the court
9 even emphasized that he was trained on how
10 to deal with exposure to toxic fumes.
11 That's the exact opposite of
12 here. This is a severe allergic reaction
13 from the COVID-19 vaccine. It is not a
14 risk inherent in his ordinary fire
15 fighting duties. It was unique and
16 unforeseen, which first of all to be
17 mandated to receive a vaccine, and second
18 of all that he would have a severe
19 allergic reaction.
20 I think we need to take into
21 consideration the global pandemic, the
22 state of emergency that the mayor had
23 declared, the public health emergency that
24 the New York City Commissioner of Health
25 declared.

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1 It becomes evident that this
2 falls squarely within the Court of Appeals
3 definition of an accident. It is totally
4 unprecedented that we would have a
5 pandemic. It's a first time ever vaccine
6 mandate. It highlights how unexpected and
7 extraordinary these circumstances were,
8 and it wasn't anticipated, and it wasn't
9 inherent. It was not an inherent risk in
10 the ordinary job duties of a firefighter.
11 I just want to close by just kind
12 of understanding your concerns. I
13 understand that you may be worried about
14 potential implications of granting
15 accidental disability benefits to a
16 firefighter who was injured by the
17 COVID-19 vaccine. You may be worried
18 about a potential flood of similar
19 applications, but I want to just assure
20 you that this is a unique situation. It
21 shouldn't be regarded as a precedent for
22 future claims, and there are several
23 compelling factors why this case is
24 distinguished and an exceptional
25 circumstance from any other case.

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1 First of all, it's crucial to
2 recognize that the vaccine mandate, which
3 was a catalyst for his vaccine injury, was
4 only in effect for a limited period of
5 time. We are talking October 2021 through
6 February 2023. Firefighters were required
7 to receive the vaccine as a condition of
8 employment. No longer. Vaccination is no
9 longer a condition of employment. It was
10 struck down by the court, and then it was
11 voluntarily lifted by the city, so it was
12 a temporary measure.
13 So the time frame where similar
14 claims could potentially arise is confined
15 to just this specific duration of time.
16 It significantly limits the scope of any
17 potential future applications.
18 Also, vaccine injuries are
19 exceptionally rare, and even more so when
20 you consider the severe, permanent
21 disability that Firefighter Pastrana
22 suffered.
23 The overwhelming majority of
24 individuals are going to have very minor
25 or no adverse effects. This is an

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1 extraordinary circumstance, and he had a
2 severe allergic reaction which resulted in
3 a permanent disability. This is not going
4 to be a common outcome. It's an
5 exceptional case.
6 The last thing I want you to
7 consider is there are stringent
8 requirements under the New York City
9 Administrative Code to show a disability
10 through medical documentation. Any other
11 applicant would have to show direct
12 causation between his injury and the
13 permanent disability that he suffered.
14 Here, he has overwhelming
15 evidence, which is in the record, from his
16 treating physicians, from the chief
17 medical officer, from the BHS three
18 physician board, and the Subchapter 2
19 Medical Board, as well as the physicians
20 that saw him at the FDNY.
21 You are not going to probably
22 ever see anything like that again where
23 all of these doctors are in agreement that
24 this vaccine injury was caused by the
25 vaccine and permanently disabled this

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1 firefighter. I have never seen it.
2 So I think that it shouldn't be
3 viewed as a slippery slope that is going
4 to open the flood gates here. This is a
5 unique and compelling situation, and,
6 honestly, it's an exceptional case.
7 You have a firefighter here, 36
8 years old. He dedicated 16 years of his
9 life to the fire department, and he is no
10 longer fit for duty because of a
11 requirement of the FDNY.
12 I just ask that you -- I
13 respectfully request that you upgrade
14 Firefighter Pastrana to accidental
15 disability retirement. He clearly fits
16 within the requirements of the New York
17 City Administrative Code.
18 Thank you very much for your time
19 and allowing me to present to you. If
20 anybody has any questions, I would be
21 happy to do my best to answer.
22 MR. BROWN: This is Eddie Brown. I
23 have a couple of questions for you. I
24 happen to agree with a lot of the points you
25 made, and one thing that concerns me as a

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1 union official is that our members were
2 living in firehouses where, unlike other
3 jobs -- and we have documented cases where a
4 member of the department tested positive for
5 COVID, and he was taken out of the firehouse
6 but everybody else remained sitting right
7 next to him, he or she.
8 So I understand why those rules
9 were, because we can't all go sick because
10 we're the fire department and we're
11 essential. I get that.
12 But what concerns me is the
13 second shot. We had a lot of young,
14 strong people who took medicals to get on
15 this job who have already gotten COVID-19
16 who were forced to get vaccinated even
17 though -- myself, I have three vaccines,
18 so I am not anti-vaccine in any shape or
19 form, but I think some of us are going to
20 be on the wrong side of history here when
21 I look back at the efficacy of the
22 vaccine.
23 The concern I have is the second
24 shot. If it was any other medication or
25 anything like that in the medical field, I

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1 think you would be told to discontinue the
2 use of this. The second shot really
3 concerns me.
4 The other thing that concerns me
5 is the precedent setting. He can't sue
6 the federal government, but he can get
7 upgraded to three quarters, and I think
8 you make a very fair argument, and it
9 concerns me that we're making decisions on
10 precedents instead of individual cases. I
11 think that's a problem, and I happen to
12 agree with a lot of your points.
13 MS. MARTINEZ: Thank you so much.
14 And yes, you are right. The second dose is
15 very concerning, especially because -- and
16 there is case law about whether the actions
17 of the employer are without scientific
18 foundation.
19 Right here you have something
20 that contravenes the CDC's guidelines.
21 The FDNY erred in recommending and and
22 requiring the second dose here. That's
23 clear. If you look at the CDC's
24 contraindications, he suffered from a
25 severe allergic reaction, Which is the

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1 only contraindication by the CDC,
2 actually, so he should not have been
3 directed by the FDNY to receive the second
4 dose. The fact that he did, it was
5 without scientific foundation.
6 If you look at the court cases,
7 petitioners, applicants for accidental
8 disability benefits, who then challenged the
9 decisions of the Board denying their
10 benefits, that's something that the courts
11 look at and will hold a decision to deny
12 benefits as arbitrary and capricious.
13 So thank you for highlighting that.
14 Thank you for your question.
15 And I agree. I think there is a
16 way here to individually consider this case
17 without worrying about an influx of similar
18 cases, and that would uphold the principles
19 of fairness and justice that, you know, this
20 Board is here to take care of the
21 firefighters that have dedicated their
22 service to this city.
23 So thank you so much, Mr. Brown.
24 Anyone else? No. Okay. Well,
25 thank you, everyone. You all have the

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1 documents from the Subchapter 2 Medical
2 Board. I cited to all of the documents in
3 there indicate that this firefighter has
4 suffered a permanent disability. It's clear
5 that it is from the vaccine, it's service
6 connected, and it qualifies as an accident.
7 Thank you again for your time. I
8 hope you all have a wonderful day.
9 (Technology interruption.)
10 CHAIRPERSON CHRISTOFF: Dr. Kelly,
11 there was a question for you before we lost
12 audio from the room. I don't know if you
13 heard that question or would like to have it
14 repeated.
15 DR. KELLY: I did not hear the
16 question.
17 CHAIRPERSON CHRISTOFF: We will
18 have the question repeated.
19 MR. LAUGHER: This is Number 10,
20 Firefighter Irizarry, who has been found
21 disabled due to right carpal tunnel
22 syndrome secondary to scarring at the
23 injury from a 9/24/20 line-of-duty injury
24 exacerbated by the a second injury on
25 3/12/22.

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1 The Medical Board notes that his
2 injury really is axial degeneration of the
3 medial nerve proximal to the carpal
4 tunnel, not necessarily carpal tunnel per
5 se, that carpal tunnel is a degenerative
6 issue.
7 My question to you, Dr. Kelly, is
8 are you able to separate those two from
9 the degeneration to the traumatic?
10 DR. KELLY: I think in reviewing
11 the history, his initial injury that
12 occurred in September of '20 where he
13 ended up with a laceration and was seen in
14 the ER, I think in the process of suturing
15 him, they did not pay attention to the
16 median nerve and the involvement of the
17 median nerve.
18 If you look again at what he
19 describes, he had the start of numbness
20 and tingling after that episode.
21 Then he had a more recent injury
22 in March of 2022. At that time the EMG
23 showed nerve damage, again above the
24 carpal tunnel area, and then he then
25 underwent carpal tunnel surgery in the

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1 hopes that this would improve the problem,
2 and clearly it did not.
3 I believe it did not because
4 there was already significant nerve damage
5 done with the prior injury that had never
6 been initially recognized and had
7 continued onward during that ensuing time.
8 MR. LAUGHER: Thank you.
9 Given that more information we
10 have from Dr. Kelly and her noting of the
11 damage to the medial nerve, we invite a
12 motion.
13 MR. GUILFOYLE: Motion to retire
14 Firefighter Irizzary.
15 MR. EUSTACE: Second.
16 CHAIRPERSON CHRISTOFF: Any
17 opposed?
18 (No response.)
19 CHAIRPERSON CHRISTOFF: Hearing
20 none, the motion carries.
21 (Court reporter interjection.)
22 MR. JENSEN: From the process of
23 prior meetings, after Christina Martinez
24 left, we had no audio, so as you ran down
25 the accidents and then identified the

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1 second calls, nobody on Webex knows about
2 that.
3 CHAIRPERSON CHRISTOFF: We did not
4 realize. The audio had been working before,
5 and we did not realize it had cut out after
6 Ms. Martinez until we asked Dr. Kelly a
7 question and didn't get a response.
8 MR. DORSA: I will make a
9 suggestion. Since all those in the room,
10 the majority of the board, took an action,
11 perhaps just reading the numbers in for
12 the record rather than the names, and we
13 can note that it was provided when the
14 audio was down, and then we can rebegin
15 the meeting going forward.
16 So if you just read the numbers
17 from the accident book for the members we
18 just retired, and then we can handle
19 the second calls.
20 CHAIRPERSON CHRISTOFF: Absolutely.
21 I will do that. Just to recap, the second
22 calls, which are the ones we are going
23 through now, are 10, 12, 13, 23, 24, and 27,
24 so those are the second calls we are going
25 through now.

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1 The numbers that were already
2 reviewed, and for the accident cases
3 approved by the Board members here in the
4 room, were cases number 1 through 9, 11,
5 14 through 22, 25 and 26, 28 through 34,
6 35 through 41, 42, 43, 44 and 45.
7 MR. EUSTACE: Motion.
8 MR. BISCHOFF: Second.
9 CHAIRPERSON CHRISTOFF: Okay. So
10 we will know that for the record.
11 Now that we have gone back to
12 that, I think now we are proceeding to
13 Case Number 12, Firefighter Anthony Lilli.
14 MR. LAUGHER: This is Damian
15 Laughner from the Mayor's Office. This is
16 Number 12, Firefighter Lilli, who has been
17 found disabled for his left knee. His
18 line-of-duty describes exiting the engine,
19 stepping down onto the street, unforeseen
20 and unexpectedly placed his foot in a
21 pothole. There is a further line-of-duty
22 which goes into greater detail noting that
23 he was unable to stop his momentum. He
24 maintained grip of the handle, managed to
25 avoid the hole, stepped on the edge of the

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1 hole, rolled, and his left knee buckled
2 cracking on the cracked asphalt.
3 We are just looking for more
4 information given this accident and this
5 pothole in front of his quarters, how he
6 didn't know it was there.
7 MR. BISCHOFF: I will speak on
8 behalf of Firefighter Lilli.
9 In this particular accident, yes,
10 it is true that the pothole was located in
11 close proximity to the firehouse, but
12 there is several factors that should be
13 expanded on to understand the nature of
14 why this accident had occurred.
15 First off, in looking at the
16 picture of this, what I would call, divot,
17 rather than a pothole, it is not a pothole
18 in the sense where it is a hole in the
19 ground. This is a depressed piece of
20 pavement that dramatically slopes, but
21 because there is no hole, it could be
22 tougher to see than a typical pothole.
23 This divot is located on Foster
24 Avenue where the firefighter's engine
25 company -- where he is assigned to. If

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1 you are familiar with Foster Avenue, it is
2 a very highly trafficked street where you
3 have one lane of traffic in each
4 direction.
5 Because there is heavy traffic --
6 and there is commercial traffic on this
7 street, which one could reasonably
8 ascertain that would create such divots
9 that are very commonplace in the City of
10 New York.
11 Now, during this particular
12 incident, this firefighter had the
13 responsibility of placing the Neiderman
14 onto the fire truck before it backed into
15 quarters.
16 Backing a rig into quarters on a
17 tight street such as Foster Avenue, which
18 only has two lanes of traffic, one in each
19 traffic that is heavily trafficked by both
20 commercial and residential vehicles, is
21 not as easy as it may seem.
22 The fire team is responsible for
23 placing the Nederman onto the fire engine,
24 all while safely backing this apparatus
25 into quarters.

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1 At this particular moment of the
2 incident, the firefighter had come off the
3 apparatus with an expectation of placing
4 the Nederman onto the rig.
5 It inadvertently had twisted his
6 ankle, lowered his ankle into the divot,
7 the pothole, and I will happy to show
8 pictures of this picture pothole, to
9 whoever would be interested in seeing
10 it -- Bobby, pass that -- thus creating
11 this unforeseen accident, rolling his
12 ankle and damaging his left knee, and
13 hence creating the disability that had
14 been subsequent to the fall.
15 MR. LAUGHER: Given the images I
16 see of the divot and the pothole on the
17 street, we invite a motion.
18 MR. BISCHOFF: I would like to
19 make a motion to retire Firefighter
20 Anthony Lilli for accidental permanent
21 disability due to an injury sustained to
22 his left knee on September 12, 2021.
23 MR. GUILFOYLE: Second.
24 CHAIRPERSON CHRISTOFF: Any
25 opposed?

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1 (No response.)
2 CHAIRPERSON CHRISTOFF: Hearing
3 none, the motion carries.
4 Case Number 13, Firefighter
5 Thomas Marketos.
6 MR. LAUGHER: This is Number 13,
7 Firefighter Marketos. The member is found
8 disabled for cervical spine.
9 After fainting and collapsing in
10 the firehouse kitchen floor, he was taken
11 to Bellevue Hospital for EKG and brain
12 scans; found evidence of seizure. The
13 Medical Board concludes the member
14 sustained likely from micturition syncope
15 episode, which seems to be fainting after
16 urinating in the middle of the night
17 affecting older men.
18 I had asked Dr. Kelly the
19 question if she could give a better
20 indication or better description of what
21 whatever psychosis is.
22 DR. KELLY: So micturition syncope
23 is not unusual in men. It occurs when
24 people have been asleep. They stand up
25 suddenly to go to the bathroom, and as they

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1 are standing, often with a full bladder,
2 what happens is they would get increased
3 vagal tone, and that vagal tone causes a
4 drop in blood pressure, a drop in heart
5 rate, and as a result, people can pass out.
6 We have seen this in the
7 firehouse before, the members. Most of
8 them have not sustained such a significant
9 injury, but it is not unheard of because
10 people are asleep, and they wake suddenly,
11 and as they then stand to urinate, they
12 will have this micturition syncope that
13 occurs.
14 It can occur at any age group,
15 not just older folks, and it can occur
16 typically in the 40 to 60 year old range.
17 Again, we have seen this before.
18 In this case, his fall was rather
19 devastating.
20 MR. DORSA: Dr. Kelly, is it my
21 understanding that the routine advice that
22 firefighters are given by the department
23 and by the physicians is to stay hydrated
24 when fighting fires because of the weight
25 of the equipment, the heat that is kept

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1 within the suit with the flak jacket and
2 everything else? Could you reason that
3 the reason that you see it maybe more in a
4 population in the fire department is
5 because members are routinely told to be
6 well hydrated?
7 I know that there is charts all
8 over Randalls Island about hydration when
9 people are training. Is it, you know,
10 safe to say that we might have a higher
11 increase in that because -- not to say our
12 members are well hydrated, but if you
13 understand my rationale here, my
14 understanding is if members are well
15 hydrated, they go back to the firehouse,
16 go to sleep, have a full bladder, get up,
17 and that could be a contributing factor;
18 just the amount of water that is consumed
19 by our members?
20 I am just trying to understand if
21 that has something to do with it.
22 DR. KELLY: It absolutely can. The
23 other thing is that many of our members,
24 because they are well conditioned, have a
25 slower heart rate to begin with, and they

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1 often don't have the highest blood pressure
2 too. Hopefully we make sure their blood
3 pressures are okay, so therefore their vagal
4 tone may be a little increased, and
5 therefore their heart rate may drop even
6 lower.
7 If your heart rate is in the 50s
8 or 60s, now it drops lower, that can be an
9 issue too.
10 But certainly issues of hydration
11 can occur. If you are dehydrated it can
12 happen, and if you are hydrated with a
13 full bladder, that can add to that too.
14 MR. LAUGHER: Thank you, Doctor.
15 From our perspective, we still don't see an
16 injury that suggests an accident. Anyone
17 would like to know why?
18 MR. BISCHOFF: I would like to
19 speak on this case for Thomas Marketos.
20 So we need to look a little bit
21 more broadly at what had occurred here.
22 This, that he likely had this fainting
23 episode, is really quite narrow in the scope
24 of what had occurred or what reasonably may
25 have occurred in this situation, so let's go

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1 piece by piece.
2 This gentleman works in Ladder 20.
3 Ladder 20 is in the Lower East Side of
4 Manhattan. It's the same neighborhood where
5 there was an extraordinary gas explosion
6 that completely leveled two buildings not
7 too much earlier than this particular
8 accident had occurred.
9 This gentleman, this was not his
10 first run of the evening. He had a run
11 around midnight prior to this accident where
12 he was assigned to mitigate a gas leak in a
13 building, okay?
14 When this incident had occurred, he
15 had struck with such violent force onto the
16 kitchen that he doesn't remember. He
17 doesn't remember if he passed out, he
18 doesn't remember much other than he was
19 quite dizzy.
20 Who is to say that the operation of
21 the prior run did not have causation for
22 this?
23 I'll further add, what some of the
24 folks in this room may not understand in
25 terms of this firehouse communal living, is

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1 that the 12 firehouse watchman is saddled
2 with the responsibility of thoroughly
3 cleaning the firehouse, and particularly the
4 kitchen.
5 Now, in the kitchen in particular,
6 you have to clean under the stove, you have
7 to clean up the oven, clean the countertops,
8 and you got to mop the floor because there
9 is grease inherently from whether
10 firefighters are walking in and out of that
11 kitchen, or whether the cooking had created
12 grease for the communal eating, and that is
13 done by the 12 firehouse watchman.
14 This accident had occurred after
15 the run, which was around midnight, after
16 they got back, after the kitchen was
17 thoroughly cleaned, and that also can create
18 another very reasonable possibility of how
19 this gentleman fell; had had an extremely,
20 extraordinary traumatic head injury, of
21 which I do have photographs of this
22 gentleman, that I would like to share with
23 the Board, whoever would like to see.
24 If you look through the pictures,
25 this gentleman had fell so violently that he

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1 chipped his front teeth into his lower lip.
2 Those teeth are still embedded in his lower
3 lip.
4 The last thing I will add to this
5 is while this may be somewhat of a common
6 situation for men as they get older, this
7 gentleman had never prior to this incident
8 suffered from this -- and forgive me if I
9 say it wrong -- fainting, or the medical
10 term, (pronouncing). He never suffered from
11 it before, and, by the way, never suffered
12 from it since.
13 This has never occurred one time in
14 this gentleman, so to just blanketly assume
15 he just got up and fainted because he had to
16 hold his urine, considering all the other
17 factors that could have contributed
18 accidentally to this, I think is quite
19 narrow in scope, and therefore I firmly
20 believe and agree with the 1B Medical Board
21 that this rises to the standard of
22 accidental permanent disability.
23 MR. DORSA: Given that this is the
24 first time we are seeing this case on the
25 calendar, and there seems to be more that

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1 might not be in the record, because I firmly
2 believe a member fills out a CV 72 not
3 expecting that that is the document that
4 their retirement hinges on, I think it would
5 be appropriate to take a month, if that's
6 acceptable to our colleagues in labor, to
7 speak to the member and see if there is
8 additional information that the member might
9 be able to supply regarding the events of
10 that day that may be helpful in bringing
11 about a decision.
12 Because I recognize that it's a
13 unique situation in the sense that, you
14 know, oftentimes we see a member operating
15 out of a box or instances like that.
16 Eric, as you pointed out, this is
17 very unique, so I think that maybe it makes
18 sense to go back to the member, see if there
19 is -- recognizing that the member may not be
20 able to supply much information because of
21 the traumatic nature of the injury, but
22 perhaps somebody that was in the firehouse
23 may be able to lend some additional
24 narrative.
25 MR. BISCHOFF: John, I appreciate

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1 and respect your request. If we must, we
2 will accommodate that request, but I just
3 remind you of all of -- based on all the
4 other mitigating factors, based on the fact
5 that this individual has absolutely no
6 history of this syndrome before or since,
7 based on the common practice citywide of
8 cleaning the firehouse kitchen with thorough
9 mopping and, additionally, the location that
10 this gentleman worked, the nature of his
11 previous run, shutting off a gas line, I
12 really believe that there is more than
13 enough reasonable outside circumstances to
14 comply with the recommendation of the 1B
15 Subchapter Medical Board.
16 MR. DORSA: To be clear from the
17 comptroller's office perspective, we are
18 always happy to come into these with an open
19 mind, and we are happy to hear any
20 additional information that the member or
21 our colleagues in the UFA can introduce.
22 So we definitely have an open mind,
23 and I don't want to make -- I don't want it
24 to be interpreted as not being comfortable.
25 We just want to be fully understanding what

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1 happened that day.
2 MR. BISCHOFF: We will then table
3 this case for one month in an attempt to
4 gather some clarifying information to
5 supplement my argument.
6 CHAIRPERSON CHRISTOFF: Thank you.
7 So the next case is Number 23, Captain
8 Daniel Sterling.
9 MR. LAUGHER: We had second
10 called Captain Sterling's case. He was
11 found disabled for his right shoulder.
12 While descending a ladder, the ladder
13 suddenly shifted on the movement of the
14 debris on the floor, and he lost his
15 footing.
16 We are unsure as to what
17 happened, but Liam Guilfoyle had
18 graciously provided us with a lot of
19 information.
20 After providing that information,
21 we invite a motion.
22 MR. GUILFOYLE: Motion to retire
23 Captain Sterling for injuries sustained on
24 June 11, 2020, to his right shoulder.
25 MR. EUSTACE: Second.

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1 CHAIRPERSON CHRISTOFF: Any
2 opposed?
3 (No response.)
4 CHAIRPERSON CHRISTOFF: Hearing
5 none, the motion carries.
6 Case Number 24, Firefighter Alex
7 Sweet.
8 MR. LAUGHER: We had second
9 called Firefighter Sweet's case.
10 Assumingly, it might be there is
11 a typo in the line-of-duty. We read it as
12 "at the scene acting as the driver for a
13 scuba operation." We had been informed
14 from Bobby Eustace that it should say "he
15 was acting as the diver for the scuba
16 operation." As such, the line-of-duty
17 makes sense now, and we invite a motion.
18 MR. EUSTACE: Motion to retire
19 Firefighter Sweet for his right shoulder
20 at (inaudible).
21 MR. GUILFOYLE: Second.
22 CHAIRPERSON CHRISTOFF: Any
23 opposed?
24 (No response.)
25 CHAIRPERSON CHRISTOFF: Hearing

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1 none, the motion carries.
2 The last second call case is
3 Number 27, Firefighter John McGlone.
4 MR. LAUGHER: We second called
5 this, again, only for a typo. We would like
6 to correct on the record the line-of-duty is
7 actually 3/26/22, and the line-of-duty
8 mentioned in the Medical Board report, which
9 I believe is 3/22/22 is wrong, so we need to
10 correct it to say 3/26/22.
11 MR. BISCHOFF: The UFA is going
12 to make a motion to retire firefighter
13 John McGlone for injuries sustained on
14 March 26, 2022.
15 CHAIRPERSON CHRISTOFF: Any
16 opposed?
17 (No response.)
18 CHAIRPERSON CHRISTOFF: Hearing
19 none, the motion carries.
20 Now we are moving on to the
21 denial cases. Case Number 1, Firefighter
22 Christopher Colasuono.
23 MR. BISCHOFF: Case Number 1,
24 Firefighter Colasuono, we are going to
25 note.

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1 CHAIRPERSON CHRISTOFF: Thank you.
2 Case Number 2, Firefighter Peter Gospodinov.
3 MR. BISCHOFF: Firefighter
4 Gospodinov, we are going to request a
5 three-month layover until September.
6 CHAIRPERSON CHRISTOFF: Three
7 months until September.
8 Case Number 3, Firefighter Sean
9 McCracken.
10 MR. BISCHOFF: We are going to
11 note Firefighter McCracken's case.
12 CHAIRPERSON CHRISTOFF: Thank you.
13 Case Number 4, Firefighter Aris
14 Sirigos?
15 MR. BISCHOFF: Case Number 4,
16 Firefighter Sirigos will be remanded with
17 the new information than they have now.
18 CHAIRPERSON CHRISTOFF: Case Number
19 5, Lieutenant Scott Atlas?
20 SPEAKER: Note the case.
21 CHAIRPERSON CHRISTOFF: Case Number
22 6, Firefighter James Brown?
23 MR. BISCHOFF: Firefighter James
24 Brown, Case 6, we are going to note.
25 CHAIRPERSON CHRISTOFF: Case 7,

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1 Firefighter Richard Bruen?
2 MR. BISCHOFF: We are going to
3 lay over one month until July Firefighter
4 Bruen.
5 CHAIRPERSON CHRISTOFF: One month
6 to July.
7 Case Number 8, Lieutenant William
8 Gaffney?
9 MR. JENSEN: Lay over until July,
10 one month, please.
11 CHAIRPERSON CHRISTOFF: Case Number
12 9, Firefighter Edward Ganassa?
13 MR. BISCHOFF: Firefighter Ganassa,
14 we are going to remand with new information
15 in the handouts.
16 CHAIRPERSON CHRISTOFF: Case Number
17 10, Firefighter Joseph Gerace?
18 MR. BISCHOFF: Case Number 10,
19 Firefighter Gerace, we are going to note.
20 CHAIRPERSON CHRISTOFF: Case Number
21 11, Lieutenant Peter Konopka?
22 MR. JENSEN: This is Chris Jensen
23 requesting a remand.
24 CHAIRPERSON CHRISTOFF: Case Number
25 12, Firefighter Joseph Lamaze?

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1 MR. BISCHOFF: Case Number 12, we
2 are going to remand the case. Firefighter
3 Lamaze has been recently diagnosed with
4 prostate cancer. New information is
5 included.
6 CHAIRPERSON CHRISTOFF: Thank you.
7 Case Number 13, Firefighter Bruce
8 VanNosdall?
9 MR. BISCHOFF: Case Number 13,
10 Firefighter Bruce VanNosdall, we are going
11 to note.
12 CHAIRPERSON CHRISTOFF: Case Number
13 14, Firefighter William Korinek?
14 MR. BISCHOFF: Firefighter Korinek,
15 Case 14, we are going to note.
16 CHAIRPERSON CHRISTOFF: Case Number
17 15, Lieutenant Michael Ciampo?
18 MR. JENSEN: We request a layover
19 to September as he had been diagnosed with
20 additional illness.
21 CHAIRPERSON CHRISTOFF: Case Number
22 16, Firefighter Anthony D'Amico?
23 MR. GUILFOYLE: For case 16,
24 Firefighter Anthony D'Amico, we are going
25 to remand with new information in the

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1 handout.
2 CHAIRPERSON CHRISTOFF: For case
3 17, Captain Paul Holly?
4 MR. GUILFOYLE: We are going to
5 note the case of Captain Holly.
6 CHAIRPERSON CHRISTOFF: Case Number
7 18, Firefighter David Kusinitz?
8 MR. BISCHOFF: Case Number 18,
9 Firefighter Kusinitz, we are going to note.
10 CHAIRPERSON CHRISTOFF: Case Number
11 19, Lieutenant John Leanza?
12 MR. JENSEN: We are going to
13 remand with additional information.
14 CHAIRPERSON CHRISTOFF: Case Number
15 20, Lieutenant John Scotto?
16 MR. JENSEN: Also remand with the
17 additional information.
18 CHAIRPERSON CHRISTOFF: Case Number
19 21, Firefighter Steven Devaney?
20 MR. BISCHOFF: Can we second call
21 Case 21, please?
22 CHAIRPERSON CHRISTOFF: We will
23 skip over that and return to it later.
24 Case Number 22, Supervising Fire
25 Marshal James Devery?

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1 MR. JENSEN: We request an
2 additional one-month layover because I'm
3 working with his widow to gather
4 additional information.
5 CHAIRPERSON CHRISTOFF: Case Number
6 23, Firefighter Ronald Kirchner?
7 MR. BISCHOFF: Case Number 23, we
8 are going to request a remand with new
9 information that is -- no. Let's correct
10 the record. Eric Bischoff, we are going to
11 request a one-month layover until July on
12 Case 23.
13 CHAIRPERSON CHRISTOFF: Thank you.
14 Case Number 24, Firefighter Mark Ryan?
15 MR. BISCHOFF: Firefighter Mark
16 Ryan, we are requesting a three-month
17 layover until September.
18 CHAIRPERSON CHRISTOFF: That is the
19 end of the denials. Do we want to go back
20 to Case Number 21 now, or do we want to do
21 the ordinary first? We will do ordinary
22 first.
23 For the ordinary cases, starting
24 with Number One, Firefighter Angel Arroyo?
25 MR. BISCHOFF: Firefighter Angel

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1 Arroyo, we are going to request a
2 three-month layover until September, please.
3 CHAIRPERSON CHRISTOFF: Case Number
4 2, Lieutenant Christian Corbin?
5 MR. JENSEN: Lay over until July,
6 please.
7 CHAIRPERSON CHRISTOFF: Case Number
8 3, Lieutenant Christopher Corsi?
9 MR. JENSEN: Lay over until July,
10 please.
11 CHAIRPERSON CHRISTOFF: Case
12 Number 4, Firefighter Michael Eberhardt?
13 MR. BISCHOFF: For case Number 4 on
14 the ordinary, Firefighter Eberhardt, we are
15 going to remand with new information in the
16 handout.
17 CHAIRPERSON CHRISTOFF: Case Number
18 5, Firefighter Anthony Gazzara?
19 MR. BISCHOFF: For Case Number 5,
20 Firefighter Gazzara, we are again requesting
21 a remand based on new information in the
22 handout.
23 CHAIRPERSON CHRISTOFF: Case Number
24 6, Firefighter Robert Kiernan?
25 MR. BISCHOFF: We are going to have

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1 a discussion on Case Number 6 on Firefighter
2 Kiernan.
3 MR. SFORZA: This is Lou Sforza
4 speaking for the UFA. I just want to give
5 a little background on Firefighter Robert
6 Kiernan's case.
7 You know, Firefighter Kiernan had
8 injured himself on 6/8 of 2021 in the line
9 of duty, and shortly after was given an
10 MRI and was diagnosed with a horizontal
11 oblique tear of the medial meniscus.
12 On 7/26 of 2021, the member was
13 evaluated by Dr. Nicholas, who concluded
14 with the MRI report and recommended a
15 surgical procedure that was done on 8/4 of
16 2021.
17 Dr. Nicholas performed that
18 surgical procedure, and after the surgery
19 and after going through the healing
20 process, the member was experiencing left
21 knee pain.
22 Then Dr. Nicholas had recommended
23 a physical and (indiscernible) injection.
24 Then the doctor goes on to say no
25 significant improvement. He also mentions

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1 in his history portion of his report that
2 he had a previous arthroscopy for a medial
3 meniscus tear back in 2014.
4 It states the member was able to
5 return to full duty after that procedure.
6 At that time the MRI was
7 performed, it did not speak of any
8 arthritis.
9 Now, after doing full duty, he
10 reinjured the same knee, and as a result
11 of his new MRI and surgery, I should point
12 out that the member never went back to
13 full duty after the last accident.
14 Now, the member had three MRIs
15 relating to his injury, one in 2014, and
16 two in 2021, which showed mild
17 intrasubstance degenerative changes within
18 the anterior cruciate ligament without a
19 tear.
20 To summarize this case, you have
21 a 55 year old who had two surgeries on his
22 knee over an 11-year period and now is
23 being retired for ordinary disability
24 based on degenerative joint disease,
25 according to the 1B Board.

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1 Generally, the 1B Board likes to
2 refer back to old MRIs. In this case they
3 referred back to the old MRIs, but the old
4 MRI in 2014 didn't speak of any arthritic
5 changes.
6 The MRIs in 2021, the two of
7 them, spoke of mild arthritic changes.
8 Well, those mild arthritic
9 changes would be consistent with that
10 ten-year period from his previous injury,
11 so that's quite common that you could
12 expect to see some sort of arthritis.
13 The 1B Board evidently neglected
14 the fact that he had two injuries, and the
15 last injury was a severe enough injury
16 that exacerbated or aggravated that
17 underlying condition, if you want to say
18 that's an underlying condition.
19 The fact that he had two tears
20 and he was treated for those tears, which
21 would indicate that this was as a result
22 of a previous trauma of some sort.
23 I mean, this certainly would fall
24 under *Tovin v. Steisel*.
25 Besides, I really don't

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1 understand how they would arrive at their
2 decision, because they are quick to always
3 say the member's previous MRI indicated
4 that he had arthritis. Well, the previous
5 MRI doesn't show arthritis.
6 It's a foregone conclusion, in my
7 opinion, that the injury that he is
8 presently retired for, and the little
9 arthritis that he may have in that joint,
10 certainly could be attributed to the
11 accident that took place in 2014, because
12 that would be consistent with the
13 advancement of the arthritis.
14 It's our position that this
15 member should have his case elevated from
16 half pay to three quarters.
17 MR. LAUGHER: As was noted, the
18 member was able to continually work full
19 duty for over ten years, and the Medical
20 Board noted that there was no evidence of a
21 recrudescence or exacerbation of an old
22 injury, so to invoke *Tovin v. Steisel*, they
23 looked, they saw, they saw nothing.
24 The only findings that are
25 progressions of what the doctor calls

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1 primary osteoarthritis, Medical concludes
2 by noting there is no new objective
3 medical documentation indicating the
4 incident dated 6/8/21 is a proximal cause
5 of the member's left knee disability.
6 MR. BISCHOFF: You know, in the
7 medical record, there are copious amounts of
8 information, medical information, from the
9 treating physicians indicating to the
10 contrary.
11 Steven Nicholas was the doctor
12 who conducted Firefighter Kiernan's
13 surgery; all surgeries, as a matter of
14 fact, the original surgery which I believe
15 may have been in 2012 and the subsequent
16 surgery in 2021.
17 In his own words, and I will read
18 his own document of which he signed
19 postsurgical, and I won't belabor this, it
20 says, "Mr. Kiernan is under my care for
21 his left knee. He sustained an injury at
22 work 6/8/21 and had left knee arthroscopic
23 medical meniscopy (phonetically) on
24 8/4/21, significant pain, limited range of
25 motion, and weakness (indiscernible) at

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1 the series of hydraulic [sic] acid
2 injections which he had on 3/21/22.
3 He is currently unfit for his job
4 as a firefighter and unable to work, so
5 this, along with other notes from the
6 treating physician, clearly indicate that
7 the reason he can't go to work is directly
8 related to the final accident, but we
9 should also ask ourselves if in the
10 performance of duty, a firefighter gets
11 injured in this manner, requires a
12 surgery -- he didn't just bump his knee.
13 He had to get surgery on his knee ten
14 years ago.
15 Yes, he came back and that's
16 wonderful.
17 He also had a couple of bad bouts
18 in between on the same body part which he
19 had accidents, but he fought his way to
20 come back, was able to perform the basic
21 tenets of fire fighting.
22 He then suffered this final
23 injury, which he never returned to full
24 duty from, and required a second surgery
25 by the same surgeon who conducted the

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1 surgery over ten years ago and was not
2 able to come to work.
3 I just -- I'm missing something
4 here. How does that then not clearly fall
5 under the statute for permanent accidental
6 disability? I don't understand that.
7 I will further expand by saying
8 that he has no bilateral degeneration. He
9 is right-hand dominant. He has no
10 degeneration whatsoever that is in any
11 kind of record in his medical record.
12 You can clearly tie the dots. I
13 don't think there is any question from the
14 first injury in 2012 directly related to
15 the surgical intervention; a couple more
16 tap-outs in between.
17 This guy was a committed
18 firefighter. He's got 24 years on the
19 job. This was his fourth run. It wasn't
20 his first.
21 The last accident happened at a
22 1075 box with an active fire. This was
23 not somebody who says, "Well, my knee is
24 hurting. I'm waiting for (indiscernible)
25 to get out of here."

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1 He fell. He had an accident. It
2 was his fourth run. It was his second
3 surgery, and he couldn't come back to
4 work.
5 MR. SFORZA: I just wanted to
6 point out this member had injuries to his
7 knee, according to the record, on five
8 different occasions, and probably the
9 question that I want to ask Dr. Kelly is,
10 you know, whether or not those injuries
11 over that span of time would have
12 contributed to what they say is
13 degenerative arthritic problems with his
14 knee.
15 As I said earlier, early pictures
16 of what took place didn't indicate any
17 severe arthritis. The arthritis appears
18 to have set in, you know, 10, 12 years
19 after his original injury.
20 Now, would I be correct in
21 stating that the condition of the
22 arthritis was as a result of these
23 previous injuries over his career? Maybe
24 Dr. Kelly could answer that for me.
25 DR. KELLY: Looking at this case,

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1 his history of prior injuries would play a
2 role in the development of arthritis.
3 When people undergo
4 meniscectomies, there is a very real
5 chance that down the line they will
6 develop arthritis because you have changed
7 the architecture in the knee itself, so
8 that's one of the concerns that's always
9 raised when you do a meniscectomy or any
10 surgery when you are changing, again, what
11 is in the joint, and down the line you can
12 develop arthritis.
13 In addition, he sustained
14 prior -- I'm sorry -- he sustained traumas
15 after that surgery leading to his final
16 injury that was found to be disabling.
17 MR. BISCHOFF: Dr. Kelly, this is
18 Eric Bischoff. I have a follow-up question
19 for you, Doctor.
20 Dr. Kelly, I am curious, in your
21 opinion, particularly in a case like this
22 where you have no bilateral degeneration,
23 and you have an individual that had
24 required two surgical interventions, each
25 one directly after a job-related accident,

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1 would that be a medical indication that
2 the arthritis on the nondominant knee
3 would be sustained by acute trauma, and
4 that being there is no bilateral
5 circumstances, would that indicate that
6 the trauma would be the causation of any
7 degeneration as a result of those two
8 surgeries?
9 DR. KELLY: I think if arthritis is
10 found equally in both joints, it makes sense
11 that it's related to life wear and tear.
12 If it's much more predominant in
13 the joint that has had the multiple
14 traumas, it is much more likely related to
15 the trauma.
16 MR. DORSA: So what I'm going to
17 suggest is -- Eric, I think you make a
18 very compelling case. I think Dr. Kelly
19 added a lot from the medical side. I am
20 going to ask for 30 days or a table for
21 one month so that I can look back through
22 the testimony that was given today and the
23 record, but I think you made some very
24 strong points. I don't know if my
25 colleagues on the city side are prepared

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1 to take action today, but in order to make
2 sure I give this a thorough look-through,
3 I think we owe it to the member to take
4 the 30 days to just make sure we can go
5 through it and take the appropriate action
6 at the end.
7 MR. SFORZA: I just want to ask
8 the city representatives other than John
9 Dorsa as to what their objections would be
10 in this case based on presentations that
11 have been made by myself, Eric, and
12 Dr. Kelly? What are the objections? So
13 if we delay the case over, we might be
14 able to address the objection.
15 MR. LAUGHER: Obviously we have
16 seen this case a lot. It has come back
17 time and time again. The problem we still
18 have is that it is clearly stated by this
19 medical board that there is -- there is no
20 evidence of recrudescence or exacerbation
21 of an old injury, and that's what we still
22 have.
23 MR. BISCHOFF: Mr. Dorsa, I
24 appreciate your thoroughly deep dive even
25 further, and I certainly won't be redundant

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1 other than to state the painfully obvious.
2 We have a member with no
3 bilateral degeneration who sustained an
4 injury a decade ago that required surgical
5 intervention. He comes back to work, has
6 an injury ten years later, requires
7 additional surgical intervention as a
8 direct result of that latest injury.
9 The debate here is troubling,
10 because this is a message to New York City
11 firefighters that if you go and perform
12 your duties to service and protect the
13 citizens of New York, and if you get hurt,
14 you better think about coming back to
15 work, because if you come back to work and
16 then you get hurt again, and the evidence
17 overwhelming shows no bilateral, no
18 indications whatsoever, that you should be
19 denied the three-quarter accident
20 disability from your second surgery; that
21 is a harsh message to send to the people
22 we represent.
23 MR. BISCHOFF: For the record, we
24 will reluctantly table this case pending
25 further review from all parties, and we

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1 would enjoy an opportunity at the next
2 meeting to rediscuss the facts of this
3 case.
4 CHAIRPERSON CHRISTOFF: There we
5 go. So case Number 6 will be tabled for one
6 month.
7 Moving on to Case Number 7,
8 Firefighter Alexander Leoutsakos.
9 MR. EUSTACE: We are going to lay
10 over until September.
11 CHAIRPERSON CHRISTOFF: Case Number
12 8, Firefighter Denis McEneaney?
13 MR. BISCHOFF: We are going to ask
14 for a three-month layover for Firefighter
15 McEneaney.
16 CHAIRPERSON CHRISTOFF: Case Number
17 9, Deputy Chief Stephen Moro?
18 MR. BROSI: I would like to make
19 a motion to upgrade DC Stephen Moro.
20 MR. EUSTACE: Second.
21 MR. LAUGHER: Mayor's office,
22 motion to oppose.
23 MR. LIU: Second.
24 CHAIRPERSON CHRISTOFF: Do we need
25 time to discuss, or are we moving to roll

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1 call vote?
2 MR. BROSI: Motion to discuss.
3 MR. BISCHOFF: Do we got to go
4 back to the motion to oppose and all that?
5 CHAIRPERSON CHRISTOFF: No.
6 Discuss. Please discuss.
7 MR. BROSI: DC Moro is a 40-year
8 veteran of the FDNY who has experienced
9 multiple injuries to his right knee that
10 resulted in over 600 days of both medical
11 leave and light duty.
12 In 2009 DC Moro had a severe
13 injury to his right knee resulting in
14 surgery and extensive recovery.
15 It is my belief that these
16 injuries, these series of injuries, had
17 compromised his knee in each event despite
18 returning to full duty.
19 In February of '22 while
20 operating on a fire ground, DC Moro was
21 evading an advancing hose line and stepped
22 into a hole with an uneven surface
23 injuring his knee beyond repair.
24 We believe it is this acute
25 traumatic injury that was the accidental

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1 cause of his disability.
2 I further believe that the 1B
3 Board assessment of his condition as
4 degenerative due to arthritic condition is
5 inaccurate.
6 It fails to take into
7 consideration the series of injuries and
8 the length of time the member worked
9 following those injuries.
10 Despite the arthritic condition,
11 DC Moro was full duty at the time of the
12 accident and fully capable of performing
13 his duty.
14 I believe it was that injury --
15 it was this injury that ended his career
16 despite the arthritic condition. For that
17 reason, I believe DC Moro should be
18 granted an ADR.
19 I believe as stated in the
20 previous case, the issue we are running
21 into is people who have traumatic injuries
22 that require surgical intervention and
23 continue to work on them, putting
24 excessive strains on their body and
25 excessive weight due to the equipment, and

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1 operating in unorthodox manners, will
2 automatically develop arthritic
3 conditions.
4 To say that this injury wasn't
5 acute would make it difficult to believe
6 that this person was walking the earth and
7 serving the New York City Fire Department
8 on a daily basis, and now required knee
9 replacement in order for them to regain
10 stability.
11 So the issue we are going to run
12 into in the future is how do we address
13 people, as Eric stated, who have these
14 injuries ten years earlier? Do we
15 recommend they make no effort to return
16 because at that time there is no arthritic
17 condition? Do we recommend that they have
18 no effort to work for the city any longer
19 and take their time and experience to
20 better further the department?
21 It seems counterintuitive, and we
22 are getting to the point where that may be
23 the only recommendation because I am not
24 sure how anyone putting themselves through
25 these conditions could prevent an

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1 arthritic condition.
2 I am not sure how anyone proves
3 themselves to be fully capable of doing
4 their job other than being assessed by the
5 medical office and being full duty or
6 being put through the rigors of fire
7 fighting.
8 At that point we know they are
9 capable of doing their job despite having
10 underlying conditions, and without this
11 accidental act, I guess that that person
12 continues to work. Experiencing 600 days
13 of leaves over the course of a 40-year
14 career on one specific injury is quite
15 extensive. That developing into an
16 arthritic condition seems almost
17 automatic.
18 We will ask Dr. Kelly if she has
19 any further insight into whether there is
20 some other way this could occur, or would
21 this be consistent with somebody who had
22 prior injuries to the degree which
23 required surgical intervention.
24 DR. KELLY: I think this case has a
25 similar feeling of the prior case relating

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1 to recurrent trauma affecting the joint over
2 time with a final injury that becomes career
3 ending.
4 MR. LAUGHER: I would just note
5 that the Medical Board has noted that his
6 knee disability is related to the chronic
7 degenerative joint disease and not to an
8 acute injury or an exacerbation of a
9 previous injury.
10 It notes, the MRI and the X-rays,
11 that no findings of an acute injury are
12 present, and that in the '09 surgery,
13 Dr. Kelly found his ACL intact.
14 MR. SFORZA: I would just like to
15 say that you had ordered the doctor's
16 report where they indicated he was being
17 retired for a non-line-of-duty disability,
18 and Jim Brosi had said -- he outlined the
19 injury he had.
20 We realize what the doctor said.
21 You are quoting what the doctor said.
22 We have over here the ability to
23 make decisions aside from what the doctor
24 said. It's our job here to decide
25 causation, and we believe that causation

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1 was proven by the presentation that was
2 made, so if we strictly go by what the
3 doctors say, then there is no sense of us
4 even meeting in this room.
5 You know, occasionally we can
6 vote, you know, if we see an injustice
7 being done, and certainly, you know,
8 documentation that indicates that this is
9 a line-of-duty injury.
10 Because he had many years in the
11 job, had a number of injuries over his
12 career, we are kind of pushing that aside
13 and saying "as part of the job."
14 I mean, you know, this is just a
15 disservice that is taking place, and this
16 is sending a terrible message back to our
17 members because, you know, I have to go
18 back and tell my members that, "Hey,
19 listen, the only way you're going to get a
20 disability here is you got to stay out of
21 work as long as you can."
22 Like in Kiernan's case, he was
23 out for 60 days. Well, that wasn't long
24 enough for him to be out. Maybe if he was
25 out six months, we would look at the case

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1 differently.
2 I always tell people, and I
3 always say, "Listen, I am going to try to
4 get back to full duty because I'm not
5 ready to retire," but what takes place is
6 people are getting penalized because of
7 their dedication. That's all I say.
8 MR. BROSI: The upshot is what
9 shows up on an MRI, what shows up on an
10 X-ray, doesn't always definitively prove
11 an acute injury. Oftentimes these members
12 are meeting in an emergency room or taking
13 a field visit and they are being assessed
14 by a doctor shortly after the incident who
15 is making that determination.
16 If not, and that person was
17 somehow working with the knee that needed
18 a knee replacement at the same time also
19 stating that he was operating at a fire
20 and then was now no longer capable of
21 coming to work.
22 I'm not sure that these tests
23 will always measure that. I'm not so sure
24 that when people develop such a level of
25 arthritic condition that the acuteness in

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1 the MRI or in the X-ray are as definitive
2 as they would be in a new injury, and that
3 is the risk primarily for chief officers
4 or very senior firefighters or officers,
5 is the longer you stay here, the longer
6 you put yourself under the duress of 100
7 pieces of equipment, the longer you keep
8 dropping that weight off 3 feet out of the
9 side of a rig repeatedly, 6,000 times a
10 year, for the average length of the
11 apparatus today, you will continue to have
12 these conditions.
13 Depending on when those MRIs are
14 performed, performing on when those X-rays
15 are performed, also is, I will say, a
16 shaded view of what has really occurred.
17 So oftentimes we rely on BHS to
18 make those assessments because they have
19 both the experience and the immediacy of
20 the assessment following the injury.
21 MR. DUNN: If there is no other
22 discussion?
23 MR. BROSI: I would like to call
24 for a vote. I would take to make a motion
25 to retire DC Moro for an accidental

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1 disability for an injury to his right knee
2 which occurred on 2/11/2022.
3 MR. EUSTACE: Second.
4 MR. LAUGHER: Motion to oppose,
5 Mayor's Office.
6 MR. LIU: Second.
7 CHAIRPERSON CHRISTOFF: We are
8 moving to a roll call vote.
9 MR. DUNN: Roll call vote on the
10 case as described by James Brosi and the
11 motion.
12 For Mayor Adams?
13 MR. LAUGHER: No.
14 MR. DUNN: Comptroller Lander?
15 MR. DORSA: John Dorsa. No.
16 MR. DUNN: For Commissioner of
17 Finance Niblack?
18 MR. LIU: Kevin Liu. No.
19 MR. DUNN: Mr. Eustace for Mr.
20 Ansbro?
21 MR. EUSTACE: Yes.
22 MR. DUNN: Mr. Eustace?
23 MR. EUSTACE: Yes.
24 MR. DUNN: Mr. Edward Brown?
25 MR. BROWN: Yes.

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1 MR. DUNN: Eric Bischoff?
2 MR. BISCHOFF: Yes.
3 MR. DUNN: Mr. Peter Devita?
4 MR. DEVITA: Yes.
5 Mr. DUNN: For the UFOA,
6 Mr. Christopher Jensen?
7 MR. JENSEN: Yes.
8 MR. DUNN: Mr. Liam Guilfoyle?
9 MR. GUILFOYLE: Yes.
10 MR. DUNN: Mr. James Brosi?
11 MR. BROSI: Yes.
12 MR. DUNN: Assistant Commissioner
13 Christoff?
14 CHAIRPERSON CHRISTOFF: No.
15 MR. DUNN: The motion does not
16 carry. The member will be retired for
17 service -- sorry. My mic was dead. He
18 will be retired under the auspices of the
19 Schoeck decision, and we have his service
20 retirement paper on file.
21 CHAIRPERSON CHRISTOFF: Continuing
22 on with Case Number 10, Firefighter OBrian
23 Pastrana, this is one of the ones we heard
24 from the attorneys on at the beginning.
25 MR. SFORZA: I would like to

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1 speak on Firefighter Pastrana's case. I
2 thought his attorney made an excellent
3 presentation, but there's just a few
4 things I'd like to add.
5 One of the conditions of
6 employment to be a New York City
7 firefighter is you have to follow orders.
8 If you don't follow orders, then you are
9 subjected to departmental charges.
10 Well, in this case, this member
11 followed the orders of his superiors, his
12 superiors being actually officers, but,
13 more importantly, the fire department and
14 the City of New York.
15 They required him to take a
16 vaccine, and if he didn't take the
17 vaccine, the penalty was you're fired, so
18 actually the firefighter had no other
19 choice. He either has a job or he has to
20 take the vaccine.
21 Well, he opted to take the
22 vaccine.
23 You know, there is an expression
24 they use out there, "My body, my choice."
25 But when it comes to a firefighter, it was

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1 his body, but it wasn't his choice.
2 You know, we are held at a
3 different level over here.
4 I mean, this is definitely a case
5 where a member contracted a medical
6 condition as a result of following an
7 order, and he ended up with myocarditis.
8 You know, just about every doctor
9 in the record indicated that he was being
10 retired as a result of COVID-related
11 disease as a result of the vaccine.
12 There should be no question about
13 him receiving a disability. You know,
14 therefore, we intend to make a motion to
15 increase his pension from half pay to
16 three quarters. One of our members will
17 be making that presentation. I would like
18 to hear anybody's objection to this if
19 they have any objection.
20 MR. BROWN: I would like to also
21 add that we brought up before, and I will
22 bring it up again, listen. We know that
23 none of us knew what the medical community
24 or firefighters -- I am not going to blame
25 the FDNY for this -- it went from the

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1 governor's office, it went national. No
2 one knew who was going to be on the right
3 side of history on this fiasco, right?
4 But we do know that once the
5 member had a reaction to the first shot,
6 there should have never been a second
7 shot. I mean, to me, I don't think we
8 need to be a doctor to understand that.
9 The fact that this firefighter
10 was going to be terminated if he didn't do
11 that -- I mean, if he wasn't a
12 firefighter, if he was a construction
13 worker, he would have never had the
14 vaccine at all, never mind a second one.
15 Like I said, my fear is this
16 board is going to act politically here and
17 try not to say -- well, it's pretty clear
18 what happened here. It's pretty crystal
19 clear.
20 MR. BISCHOFF: I have one final
21 comment, if I may. You know, in this
22 case -- I have sat on this board now for a
23 number of years -- I have never one time
24 even close to come seeing the amount of
25 medical evidence for any individual who may

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1 or may not claim that they had a side effect
2 from this particular vaccination.
3 The medical evidence is
4 extraordinary. It's overwhelming, that
5 the disability is directly caused by the
6 vaccine which was a result of this
7 individual's condition of employment.
8 I don't think the evidence could
9 be any more clear that the permanency of
10 his disability would rise to the standard
11 of accidental disability retirement.
12 MR. DUNN: Before the vote, the
13 UFA is asking if any entity, individual,
14 would like to comment prior to their vote
15 on the record?
16 MR. BROWN: I would like to hear
17 something from the city side on this
18 opinion. You know, we get your opinion
19 all the time. I'd like to hear somebody
20 say something instead of just voting no.
21 I would like to get an opinion out of
22 somebody here.
23 MR. LAUGHER: I did listen very
24 carefully to Ms. Martinez's presentation.
25 She is correct in saying this is rare and

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1 unique, but there is one thing she avoided,
2 and that is there was not one, but two
3 medical boards, two days apart, one on
4 May 2nd, one on May 4th. They contradict
5 each other.
6 The May 2nd Medical Board says he
7 is permanently disabled -- this is ODR --
8 for consequence of myocarditis.
9 The May 4th Medical Board says
10 there is insufficient objective medical
11 evidence for permanent disability related
12 to his allergic reaction to COVID vaccine
13 and COVID disease. The member has normal
14 pulmonary functions and imaging studies
15 for his lungs.
16 MR. SFORZA: He went to two
17 different boards, one on the 4th and one
18 on the 2nd; two different boards of
19 doctors.
20 One board of doctors was
21 evaluating him to see whether or not the
22 COVID had anything to do with his lungs
23 and whether he was disabled as a result of
24 his lungs.
25 That board found him not disabled

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1 for his lungs, and they stated it. They
2 denied him the disability because it
3 wasn't a lung issue.
4 The other board recommended the
5 ordinary disability, but they related the
6 disability, and they stated something
7 along the lines of, you know, vaccine
8 disease, COVID and so forth, but there are
9 two different -- I don't think she
10 contradicted herself. It's just that
11 there are two different boards making two
12 different decisions.
13 MR. EUSTACE: I just want to put
14 on the record, we have upgraded a case in
15 the past from COVID-related illness, and
16 it was highly contested, so we tend to see
17 where this is going, but, once again, the
18 issue is because it's the word COVID is
19 involved here, and we are just -- it's all
20 pretty much semantics between here.
21 But he went to work, as Eddie
22 Brown said earlier, and if you are not
23 sick, it's line-of-duty related. If you
24 pass away, it's going to be a line-of-duty
25 related, but if you are permanently

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1 disabled, you are just out of luck.
2 We even had meetings about this,
3 and we have been told in good faith it
4 will be taken care of, and we're here
5 again and it has not been taken care of.
6 We didn't fight one fire or do
7 CPR via Zoom. We just came to work and
8 did what we are supposed to do. That's
9 what this guy did. He came to work and
10 did what he's supposed to do. He wanted
11 to support his family, so he took the
12 shot.
13 He got sick, and they told him to
14 take the next one.
15 It was a line-of-duty injury, and
16 at work. If he died, he would be taking
17 care of his family. But he didn't die.
18 Now he is just permanently disabled, and
19 here we are not doing the right thing.
20 That's all I have to say.
21 MR. BROSI: I would like to say a
22 few comments as well. One of the points
23 the lawyer brought up, when she said that
24 events that are not risks inherent to do
25 your job.

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1 Like the New York City Fire
2 Department, they did have a series of
3 vaccines that were required in order to go
4 to public school in New York City, but
5 other than that, this vaccine was not a
6 requirement. As a matter of fact, it
7 wasn't even immediacy. They put the
8 squeeze on the teachers long before they
9 ever got to the Fire Department.
10 As a matter of fact, they even
11 gave the Corrections more time because
12 they had staffing issues. I don't know if
13 they were worse than ours.
14 At the time, the CDC did say that
15 people would have side effects. The
16 vaccine wasn't even inherently tested
17 probably. It wasn't necessarily even
18 needed by us considering we had worked
19 through the entire pandemic with limited
20 protection and limited PPE.
21 Even when we were getting sick,
22 they were deemed line-of-duty injuries,
23 but by the same token we might have all
24 had the Black Plague. People wouldn't
25 even see us for medical visits. They

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1 would tell us to stay home. We would talk
2 to them on the phone. They would tell us
3 to stay home. We talked to them on the
4 phone because they didn't want us to come
5 near for fear we would infect them.
6 Now this individual gets his
7 shot, has a known side effect, is actually
8 seen by a medical officer and diagnosed
9 and counted as service connected.
10 There are protocols in the
11 medical field at that time despite not
12 knowing detailed evidence about the
13 vaccine. That specific protocol isn't to
14 take an additional vaccine.
15 That person was ordered, and I
16 say "ordered" for this specific reason:
17 In the absence of following that order,
18 you were terminated. You lost your
19 gainful employment.
20 So at this point this person is
21 already medically compromised, seen by
22 somebody in BHS, and the people that know
23 better, the people that have the medical
24 efficacy to do better, in order to follow
25 a policy and fail to look into the

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1 details, further exasperated this person's
2 condition.
3 Yes, as Bobby stated, because the
4 word COVID is in there, there is this
5 giant fear that we will open a Pandora's
6 box, that everybody will be looking for a
7 COVID disability.
8 I believe exactly what the lawyer
9 stated is we are well beyond that window.
10 There are very few cases because this is a
11 very rare outcome to have side effects
12 that lead to a level of disability this
13 person is experiencing.
14 The fact that the city could be
15 so boldened to either terminate or force
16 people to retire in every agency in the
17 city, make this individual take it, have a
18 side effect, get documented, placed on
19 service-connected medical leave, and then
20 ask him to take it again and then hide
21 behind "We don't know if it's accidental
22 in nature."
23 Well, it certainly wasn't
24 inherent in the risks. I don't think
25 anybody came on the fire department not

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1 knowing they might get burnt, they might
2 get killed, or they might get broken, or
3 they might get cancer. They didn't think
4 they would be forced into a vaccine, and
5 given to them after the height of the
6 pandemic, usually after they had a natural
7 immunity.
8 If the city doesn't take
9 responsibility for forcing us for that
10 action, who does?
11 And had this young individual,
12 who did not necessarily even reply to the
13 vaccine because he did not fall in the
14 high risk categories that did, not been
15 forced to do this, then would this person
16 still not be an employee?
17 And if not, whose responsibility
18 is it? Who should compensate this
19 individual? It was a condition of
20 employment, regardless of what the city
21 wants to tell you. If it wasn't, somebody
22 needs to explain to me how he terminated
23 or forced these other people onto leave
24 without pay or into retirement or just
25 separated from service.

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1 Who takes that responsibility?
2 Who gave that order?
3 It started at the Mayor's Office,
4 so you can't say you are not involved. It
5 passed through two mayors, so you can't
6 say it's not involved. It was continued
7 by the commissioner who also said at the
8 time we have more than enough time.
9 I will get to you, Dorsa. I
10 don't know who the comptroller was at this
11 time.
12 But at the end of the day from
13 the top down, from the mayor to the
14 commissioner to the doctors at BHS, this
15 was the protocol, this was the policy, and
16 this was the order.
17 And despite him having one shot,
18 even if you said we had no way of knowing
19 he would have a side effect because it was
20 rare, and we took that into consideration
21 against the greater good, you could say
22 that; not twice.
23 Second shot, you have liability.
24 Second shot, you are outside of medical
25 protocol. The second shot, you took a

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1 compromised individual who has already
2 shown side effects, which has been
3 diagnosed by a doctor, and you made him go
4 twice, and you threatened his employment
5 in the process.
6 If you don't see that as
7 accidental, if you don't see that as line
8 of duty -- realistically, I'm not even
9 sure what accidental is anymore. I don't
10 know how you connect these two dots.
11 Without this mandate, without
12 this order, these two never interconnect,
13 and this is certainly not inherent to your
14 job.
15 CHAIRPERSON CHRISTOFF: I have a
16 question. Did the member file for a
17 reasonable accommodation to not get the
18 second shot after --
19 MR. SFORZA: I spoke with the
20 individual. You know, he is just so
21 beside himself based on the fact that he
22 is being forced out of the job, I
23 suggested that, you know, if we were
24 unable to make a decision today, that
25 delayed the case, so he indicated to me he

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1 wanted the case to be acted upon.
2 You know, he is talking about
3 possibly going and taking an Article 72 --
4 Article 78. Excuse me. Taking an Article
5 78.
6 What we are doing here is
7 compounding the problem. Not only are we
8 short-changing him by voting no here, but
9 we are forcing him to go to court and hope
10 that he gets some judge that is going to
11 be sympathetic and vote to overturn this.
12 So now he is paying -- on top of
13 getting halfway, he is probably going to
14 pay 15 to \$20,000 to go to court to try to
15 make something right.
16 MR. BROWN: If I could answer
17 that, Louie. We've had this in the past
18 with different cases, so the nightmare
19 scenario is this: I have had allergic
20 reactions where my lip blew up through a
21 medication, and I went to the doctor, and
22 they are like "Do not take that again
23 immediately," right?
24 So this guy had that reaction,
25 and he went again, but the problem is, and

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1 we've seen it before -- history repeats
2 itself -- this guy theoretically could go
3 through an Article 78. He could win in a
4 court of law, and then he could come back
5 before the same board, and the city side
6 is most likely to say "We are going to
7 ignore the judge's order because it
8 doesn't look good at City Hall." Let's
9 face facts. It doesn't look good in
10 Albany. It doesn't look good.
11 Nobody in their right mind is
12 going to tell you to take a second shot
13 after his reaction to the first shot, so
14 let's not fool ourselves.
15 A judge can turn around after a
16 78 and say "I rule on the side of the
17 firefighter. Send it back to the 12-man
18 Board," and we have had this already. I
19 have had this fight already about a
20 merry-go-round where we have been called
21 in contempt of court by one judge three
22 times, and we ignored those pleas. We
23 ignored them.
24 Like Louie, we have a job to do
25 here, and when we don't do it, especially

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1 when it goes to a court order and we
2 ignore it, then it becomes absurd.
3 MR. GUILFOYLE: The UFOA had more
4 than one member who had reactions to the
5 first vaccination, and the only difference
6 between these members and the member who
7 was forced to get his second vaccination
8 is that they could afford the leave
9 without pay, for whatever reason.
10 We had one member who was found
11 to have been paralyzed from the
12 vaccination, was forced to go through a
13 litany of tests to prove that his
14 paralyzation wasn't due to some other
15 factor until the doctors actually proved
16 by ruling out every possible option that
17 really the only conclusion they could come
18 to is this man was paralyzed by the
19 vaccine. It is the only thing that saved
20 him from having to choose between his job,
21 feeding his family, and because of the
22 (indiscernible) process, he had a stay of
23 execution on whether or not he was going
24 to be fired. Thankfully, reason
25 prevailed.

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1 Unfortunately, in this case,
2 reason did not prevail.
3 Even the New York State Supreme
4 Court finally came to the conclusion that
5 New York City was to rehire and give back
6 pay to government employees who were
7 refusing to take this vaccine. It appears
8 that they realized that there was more
9 than one reason not to take it, and
10 complications from it, and its efficacy I
11 think has proven itself to be less than
12 efficacious.
13 This Board has a responsibility to
14 take care of the members on the job. Most of
15 the people stayed home. They put plastic on
16 their windows and didn't let their kids out
17 on the street. We still have people wearing
18 masks walking down the street.
19 It seems counter to everything we
20 have ever done in the fire department that we
21 are not going to take care of somebody who
22 has been disabled by a vaccine that was
23 ordered by not one but two mayors, and has
24 since been basically overturned.
25 I don't understand how we can't

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1 assist this member who is, beyond a shadow of
2 a doubt, disabled by something he was forced
3 to do by this department.
4 MR. BISCHOFF: I have a question for
5 the Board in general. Would anyone on this
6 Board be aware of the percentage of the
7 reasonable accommodation requests medically
8 that were accommodated by the New York City
9 Fire Department?
10 (No response.)
11 MR. BISCHOFF: Okay. Thank you.
12 MR. EUSTACE: I would like to make a
13 motion to upgrade Firefighter Pastrana for
14 accidental disability for 11/23/21.
15 MR. BISCHOFF: I second that
16 motion.
17 MR. LAUGHER: Motion to oppose.
18 MR. LIU: Second.
19 CHAIRPERSON CHRISTOFF: Moving to a
20 roll call vote. Mr. Dunn?
21 MR. DUNN: On Firefighter
22 Pastrana, Mayor Adam's office?
23 MR. LAUGHER: No.
24 MR. DUNN: Comptroller Lander's
25 office?

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1 MR. DORSA: John Dorsa for
2 Comptroller. We will be voting no, but I
3 just want to say that I think that there
4 was a very compelling case made by my
5 colleagues on the Board regarding the
6 member's situation, and certainly
7 compassion for the situation that the
8 member finds themselves in, but I don't feel
9 that there was enough of an argument to
10 support that this is an ADR, so we will be
11 voting no. Thank you.
12 MR. DUNN: Commissioner Niblack,
13 Finance?
14 MR. LIU: Kevin Liu. No.
15 MR. DUNN: For the UFA, Mr.
16 Eustace for Mr. Ansbro?
17 MR. EUSTACE: Yes.
18 MR. DUNN: Mr. Eustace?
19 MR. EUSTACE: Yes.
20 MR. DUNN: Mr. Brown?
21 MR. BROWN: Yes.
22 MR. DUNN: Mr. Bischoff?
23 MR. BISCHOFF: Yes.
24 MR. DUNN: Mr. Devita?
25 MR. DEVITA: Yes.

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1 Mr. DUNN: For the UFOA,
2 Mr. Christopher Jensen?
3 MR. JENSEN: Yes.
4 MR. DUNN: Mr. Guilfoyle?
5 MR. GUILFOYLE: Yes.
6 MR. DUNN: Mr. Brosi?
7 MR. BROSI: Yes.
8 MR. DUNN: And Assistant
9 Commissioner Christoff?
10 CHAIRPERSON CHRISTOFF: Deputy
11 Commissioner Christoff. No.
12 MR. DUNN: Motion does not carry.
13 The member will be retired under the
14 Schoeck decision. We do have his -- he
15 will be retired under the Schoeck
16 decision. We will contact him.
17 Thank you for conducting the
18 business at hand.
19 CHAIRPERSON CHRISTOFF: We will
20 take a ten-minute break.
21 (A recess was taken.)
22 CHAIRPERSON CHRISTOFF: I think we
23 are ready to get started again. It is
24 1:00 o'clock, and we are resuming.
25 We were on the ordinary cases.

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1 The next case is Case Number 11,
2 Firefighter Scott Pfister.
3 MR. BISCHOFF: Case Number 11,
4 Firefighter Pfister, we are going to remand
5 with new information in the handouts.
6 CHAIRPERSON CHRISTOFF: Just to
7 clarify, I think there is a letter --
8 MR. BISCHOFF: Forgive me. I
9 misspoke. We are going to table this one
10 month.
11 CHAIRPERSON CHRISTOFF: Okay,
12 tabled one month.
13 Case Number 12, Firefighter
14 Christian Rhodes?
15 MR. BISCHOFF: This case will be
16 remanded.
17 CHAIRPERSON CHRISTOFF: Case Number
18 13, Firefighter Richard Robinson?
19 MR. BISCHOFF: Firefighter
20 Robinson, we are requesting a three-month
21 layover until September.
22 CHAIRPERSON CHRISTOFF: The next
23 case is Number 14, Firefighter Gordon
24 Springs. This is the other one we had an
25 attorney presentation on.

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1 MR. BISCHOFF: Firefighter Springs,
2 there was a presentation made by his
3 attorney. Based on that recitation and the
4 information presented, we are going to make
5 a motion to upgrade Firefighter Springs to
6 an accidental 3/4 disability for an injury
7 sustained to his back on September 24, 2019.
8 MR. EUSTACE: Second.
9 MR. LAUGHER: Motion to oppose,
10 Mayor's Office.
11 MR. LIU: Second.
12 CHAIRPERSON CHRISTOFF: Anything we
13 would like to discuss or move to a roll call
14 vote?
15 Roll call vote. Mr. Dunn?
16 MR. DUNN: On the motion, for the
17 Mayor's Office?
18 MR. LAUGHER: No. Damian
19 Laughner, no.
20 MR. DUNN: Comptroller?
21 MR. DORSA: John Dorsa, no.
22 MR. DUNN: Finance.
23 MR. LIU: Kevin Liu, no.
24 MR. DUNN: For the UFA.
25 Mr. Eustace for Mr. Ansbro?

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1 MR. EUSTACE: Yes.
2 MR. DUNN: Mr. Eustace?
3 MR. EUSTACE: Yes.
4 MR. DUNN: Mr. Edward Brown?
5 MR. BROWN: Yes.
6 MR. DUNN: Mr. Eric Bischoff?
7 MR. BISCHOFF: Yes.
8 MR. DUNN: Mr. Peter Devita?
9 (No audible response.)
10 MR. DUNN: For the UFOA. Mr.
11 Christopher Jensen?
12 MR. JENSEN: Yes.
13 MR. DUNN: Mr. William Guilfoyle?
14 MR. GUILFOYLE: Yes.
15 MR. DUNN: Mr. James Brosi?
16 MR. BROSI: Yes.
17 MR. DUNN: Deputy Commissioner
18 Christoff?
19 CHAIRPERSON CHRISTOFF: No.
20 MR. DUNN: Motion does not carry.
21 Firefighter Springs will be retired under
22 the Schoeck decision.
23 CHAIRPERSON CHRISTOFF: Thank you.
24 The next case is Number 15, Lieutenant
25 Anthony Sutura.

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1 MR. JENSEN: One month layover to
2 July.
3 CHAIRPERSON CHRISTOFF: So there is
4 a one-month layover to July.
5 Case Number 16, Lieutenant
6 Wilfredo Vargas?
7 MR. JENSEN: We would like to note
8 his disability case, and he has a service
9 paper submitted. He will retire for
10 service.
11 CHAIRPERSON CHRISTOFF: Noted.
12 Case Number 17, Firefighter Paul Xikes?
13 MR. BISCHOFF: Firefighter Xikes,
14 we are going to request a three-month
15 layover.
16 MR. DUNN: I believe that
17 concludes --
18 CHAIRPERSON CHRISTOFF: No. There
19 are two more. First there is a court
20 ordered case for Firefighter Joseph
21 Battista.
22 MR. BISCHOFF: We are going to
23 remand Firefighter Battista's case back to
24 1B based on the order of the court.
25 MR. BROWN: I would like to say a

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1 few words about Firefighter Battista. I
2 read the report, and one of the things that
3 the doctors had said, that they would have
4 liked to have heard from his family members
5 or friends.
6 I worked in -- I know Joe
7 Battista from my neighborhood in Morris
8 Park in the Bronx for many years. He was
9 a regular guy. He was a nice man.
10 Everyone liked his company. He was a
11 gentleman.
12 After 911, he did seem to change.
13 Things were going on in his life.
14 He moved down to Florida. He
15 contacted me when I was the Bronx trustee.
16 He was having troubles down there.
17 I sent him a letter saying --
18 basically a letter of recommendation. He
19 was looking for a job. He wasn't doing
20 well mentally.
21 He did show signs of
22 post-traumatic stress from the World Trade
23 Center, and he just started acting
24 differently, so I just want to add that
25 for the record.

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1 CHAIRPERSON CHRISTOFF: Thank you.
2 So the last one is actually going back to
3 Denial Case Number 21 for Firefighter Steven
4 Devaney.
5 MR. EUSTACE: A few months ago we
6 had this case. There's a lawyer -- he had
7 a lawyer, made a presentation. We spoke
8 at length about this. We sent records
9 about it. That was all on the record.
10 And we feel that -- we said, you
11 know, at length about what this case is
12 about, and we feel we are going to make a
13 motion to upgrade Firefighter Devaney for
14 an accidental disability or PTSD due to
15 World Trade Center.
16 MR. SFORZA: I just want to add a
17 couple of things. As Bob said, we had a
18 long, lengthy discussion on this, and his
19 lawyer did make an excellent presentation,
20 and we all commented on it. I think that
21 the record will indicate that he was
22 worthy of an upgrade.
23 I know Bob made the motion to
24 upgrade his case. I feel that death
25 certainly can be attributed to his

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1 activities as a firefighter, so we just
2 ask you to take that into consideration.
3 MR. EUSTACE: Motion to upgrade
4 Firefighter Devaney for World Trade
5 Center.
6 MR. GUILFOYLE: Second, Liam
7 Guilfoyle.
8 MR. LAUGHER: Motion to oppose,
9 Mayor's Office.
10 MR. LIU: Second.
11 MR. DORSA: I request a roll call
12 vote.
13 CHAIRPERSON CHRISTOFF: So we have
14 a question for the Law Department. Marta,
15 Darren, either one of you? Are you there?
16 MR. TROTTER: I am here.
17 CHAIRPERSON CHRISTOFF: So we have
18 a question for you. It is on the Denial
19 Case Number 21, Firefighter Steven Devaney.
20 We just had some motions in the room to
21 upgrade this and motions to oppose, but we
22 just wanted clarification on whether this
23 could be upgraded given the fact that it is
24 a denial. The member is deceased, so we
25 think perhaps yes, but we wanted to get

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1 clarification.
2 MR. TROTTER: One more time. It is
3 a denial of --
4 CHAIRPERSON CHRISTOFF: It is a
5 denial of a World Trade Center line-of-duty
6 death benefit for pension.
7 MR. DUNN: Case 21 on the
8 denials. For the attorney, the motion is
9 in order. Just confirming.
10 MR. BISCHOFF: We are going to
11 reset the motion and change the motion to
12 note the case.
13 MR. DUNN: Marta, we are talking
14 about Case 21.
15 MS. ROSS: What is the name of
16 the case? Sorry.
17 Okay. We have changed here in
18 the room, and we are just noting the case.
19 CHAIRPERSON CHRISTOFF: So that is
20 the end of the cases. The next thing on our
21 agenda is an interview for a physician's
22 candidate. I think we need a few minutes to
23 get them on the line. So that's all we have
24 left, the doctor.
25 In ten minutes we are going to

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1 have the doctor join us for his interview,
2 so it is 1:11 now. Around 1:20 we will
3 reconvene.
4 (A recess was taken.)
5 CHAIRPERSON CHRISTOFF: Dr.
6 De Paula, can you hear us?
7 DR. De PAULA: Yes, I can hear
8 you.
9 CHAIRPERSON CHRISTOFF: Okay,
10 excellent. Welcome. Perhaps we could start
11 with you introducing yourself and telling
12 the Board -- you know, giving us some
13 background on your experience.
14 DR. De PAULA: What would you
15 like to know?
16 CHAIRPERSON CHRISTOFF: We actually
17 can't hear you very well. Hold on. We are
18 going to try and adjust the volume.
19 (Pause in the proceedings.)
20 CHAIRPERSON CHRISTOFF: Could you
21 start by telling us about yourself and your
22 experience?
23 DR. De PAULA: Essentially, I
24 have been a psychiatrist for many, many
25 years. I am semiretired now. I started

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1 my residency in general psychiatry back in
2 the 70s. I had a fellowship in child
3 adolescence psychiatry from Mount Sinai,
4 and then I started my private practice.
5 I was part of, you know, New York
6 Presbyterian in those days, and then I
7 ended up also working as a consultant at
8 Sloan-Kettering Memorial Hospital, and we
9 initiated the subspecialty of
10 psyche-oncology and published papers about
11 it, which was in those days the
12 appreciation of the emotional component
13 for patients suffering from cancer, for
14 malignancies, and also how much it would
15 affect their families.
16 Since then, I worked as a
17 consultant for a number of mental health
18 organizations. I worked with adolescents,
19 with adults, with geriatric patients. I
20 was a consultant at nursing homes,
21 essentially evaluating them, the patient
22 there, for not only their cognitive
23 component, but also the kind of emotional
24 (indiscernible) they were going through,
25 and, of course, treating them accordingly.

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1 That's pretty much it. Right now
2 I'm semiretired. I have a small practice,
3 and I still like to maintain my, you know,
4 cognitive abilities to help people.
5 That's pretty much what I do these days.
6 That's a little summary, but
7 that's what it is.
8 DR. KELLY: Hi. I am Dr. Kerry
9 Kelly, one of the Board consultants, and I
10 work for the fire department for many years,
11 including now for the World Trade Center.
12 Hi welcome.
13 I have a few questions. I
14 noticed you do pediatric psychiatry. What
15 would you say your balance of psychiatry
16 over your career has been, pediatric
17 versus adult; what percentage?
18 DR. De PAULA: Well, I mean, up
19 to this point I still see adolescents in
20 my private practice. I don't really see
21 children that many, that much, basically
22 because children are supposed to require
23 much more presential, you know, component,
24 and it takes much more time.
25 I have -- most of my practice is

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1 virtual these days.
2 As you know, after the pandemic,
3 everybody really sort of shortened their
4 office space because it became too much,
5 and even recently I was working virtually,
6 and a few occasions that I had to go to
7 Saratoga, doing depositions and in court.
8 And then really sort of sorting out, you
9 know, patients who are still suffering
10 from mental illness. It's part of the
11 Kendra law, which, of course, some of the
12 patients were reluctant to be submitted to
13 treatment; for a court order to maintain
14 them out of the hospitals.
15 When you ask me about pediatric,
16 at this point I see very few of them.
17 It's really something that's a
18 case-by-case situation.
19 DR. KELLY: Another issue, of
20 course, is we still see a lot of World Trade
21 Center-related mental health outcomes of
22 PTSD and other problems related both to work
23 and also people's exposure at the World
24 Trade Center. I wonder if you had expertise
25 or experience in dealing with this group of

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1 people?
2 DR. De PAULA: Well, I have quite
3 a bit of experience in post-traumatic
4 stress disorder because I see -- and I
5 still see some patients for that.
6 As a matter of fact, when I was
7 working at a clinic in Staten Island, I
8 saw a number of police officers who were
9 part of the, you know, status post
10 September 11th, and, you know, I was able
11 to, you know, follow them and, you know,
12 provide service to them and deal with, you
13 know, the painful symptomology of
14 traumatic stress disorder.
15 I hope I answered the question.
16 CHAIRPERSON CHRISTOFF: Are there
17 any other questions? Are there any
18 questions from folks in the room?
19 MR. DUNN: Good afternoon,
20 Doctor. I am Patrick Dunn, the executive
21 director here at the Pension Fund. I
22 appreciate you submitting your application
23 and commend you for a wonderful career of
24 service, and everybody else, by virtue of
25 being a doctor.

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1 I just want to make sure,
2 generally speaking, we may visit, meet the
3 doctors, once a week in person. You don't
4 have any problem coming down to One
5 Battery Park Plaza if that becomes
6 necessary?
7 DR. De PAULA: Once a week would
8 be fine. I mean, that's not an issue.
9 Like I said, I am semiretired,
10 therefore I have the time to do that, and
11 have actually been to the address of the
12 (inaudible) department downtown.
13 And I spoke to -- had a brief
14 interview with Ms. John, I think her name
15 is, so it's not a problem.
16 MR. DUNN: I didn't anticipate it
17 would be, but just making sure.
18 Just a little on the background,
19 and again I appreciate you applying, would
20 you be able to tell the Board, perhaps, is
21 there anything in particular that, let's
22 say, make working for the Fire Department
23 Subchapter 2 Medical Board, in essence the
24 Fire Department's first cousin, shall we
25 say -- is there anything that drew you to

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1 a position here with the Fund in
2 particular?
3 DR. De PAULA: From what I
4 understand, you know, the job implies, you
5 know, reviewing and interviewing, you
6 know, patients who have been put on
7 disability, or have placed themselves on
8 disability because of their traumatic
9 experiences or anything involved.
10 Like I said, you know, I have
11 done similar jobs, but not necessarily
12 connected to the police department, but I
13 saw a number of police officers who went
14 through similar situations, September
15 11th.
16 Of course, I was never in those
17 days -- this is back a couple of years
18 ago -- I was never requested to witness or
19 testify on anything with regard to that,
20 and I was basically providing them with
21 therapy and medication, so that's pretty
22 much it.
23 MR. DUNN: Once again, I would
24 just like to thank you for showing
25 interest and walking alongside with the

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1 other doctors on the Board, and, I don't
2 know -- I want to make sure, are there any
3 other questions from the trustees or
4 anybody here?
5 (No response.)
6 At this point in time I would
7 like to say the Board is going to, you
8 know, have some discussions. We will be
9 in contact with you and let you know the
10 determination of the Board.
11 I know that they have expressed
12 to me, as I am very impressed with your
13 resume, and a lifetime of taking care of
14 other people, so I thank you for your work
15 first and foremost as a doctor helping
16 other people, and we will be in touch and
17 look forward to seeing you very soon,
18 Doctor, thank you.
19 DR. De PAULA: Thank you very
20 much. You will be in touch then. Bye.
21 MR. DUNN: Have a nice day.
22 CHAIRPERSON CHRISTOFF: That was
23 the last item on our agenda. If there is
24 nothing else, I invite a motion to adjourn.
25 MR. EUSTACE: Motion to adjourn.

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1 MR. GUILFOYLE: Second.
2 CHAIRPERSON CHRISTOFF: Any
3 opposed? Hearing none, the motion carries.
4 We are adjourned. Thank you all.
5 (Time noted: 1:29 p.m.)
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CERTIFICATION

1
2 I, HELENE GRUBER, a New York State
3 certified shorthand reporter, hereby certify
4 that the foregoing transcript is a
5 complete, true and accurate transcript in the
6 matter of held on June 28, 2023.
7 I further certify that this
8 proceeding was reported by me and that the
9 foregoing transcript was prepared under my
10 direction.
11
12
13
14 Date: July 8, 2023
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23 HELENE GRUBER
24
25