

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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06/10/22

04:59 PM

R1212011

Order Instituting Rulemaking on  
Regulations Relating to Passenger  
Carriers, Ridesharing and New  
Online Enabled Transportation  
Services.

R.12-12-011

**COMMENTS OF VALOR ON THE PROPOSED DECISION ADOPTING UNIFORM  
TAXONOMIES FOR SEXUAL ASSAULT AND SEXUAL HARASSMENT THAT  
TRANSPORTATION NETWORK COMPANIES MUST USE FOR THEIR ANNUAL  
REPORTS, AS WELL AS ADOPTING TRAINING, INVESTIGATING, AND  
REPORTING PROTOCOLS**

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June 8, 2022

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**TABLE OF CONTENT**

	Page
I. INTRODUCTION.....	1
II. THE PROPOSED CPUC UNIFORM TAXONOMIES ARE BOTH OVER AND UNDER-INCLUSIVE; THE RALIANCE TAXONOMY© IS MORE ACCURATE, AND SHOULD BE ADOPTED.....	1
III. THE PROPOSED DECISION DOES NOT REQUIRE TRAINING ON TRAUMA FOR INVESTIGATIVE STAFF, YET TRAINING ON TRAUMA-INFORMED INVESTIGATIONS IS ESSENTIAL.....	3
IV. CONCLUSION.....	8

**TABLE OF AUTHORITIES**

**Statutes**

Cal. Ed. Code, § 67386, subd. (b)(12) ..... 8

**Other Authorities**

Canaff, R., Lonsway, K. and Archambault, J., *Trauma-Informed Interviewing and the Criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value*, online at [https://evawintl.org/wp-content/uploads/2020-02\\_TB-Trauma-Informed-Interviewing-and-the-Criminal-SA-Case-Technique-Meets-Evidentiary-Value.pdf](https://evawintl.org/wp-content/uploads/2020-02_TB-Trauma-Informed-Interviewing-and-the-Criminal-SA-Case-Technique-Meets-Evidentiary-Value.pdf) ..... 4

CPUC Proposed Decision:

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M472/K442/472442955.PDF> ..... 3, 4, 5, 8

HELPING INDUSTRIES TO CLASSIFY REPORTS OF SEXUAL HARRASSMENT, SEXUAL MISCONDUCT, AND SEXUAL ASSAULT”

[https://www.raliance.org/report\\_posts/helping-industries-to-classify-reports-of-sexual-harassment-sexual-misconduct-and-sexual-assault/](https://www.raliance.org/report_posts/helping-industries-to-classify-reports-of-sexual-harassment-sexual-misconduct-and-sexual-assault/) ..... 2

<https://www.reportingoptions.org/about-us> ..... 7

*The Forensic Experiential Trauma Interview (FETI)*, by Russell Strand, online at

<http://www.azcvcs.net/wp-content/uploads/FETI-Public-Description-Jan-2017.pdf> ..... 5, 7

University of California Office of the President, Systemwide Title IX Office, online at

<https://www.ucop.edu/title-ix/resources/svsh-training-and-materials/index.html> ..... 8

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), ValorUS (VALOR) submits the following comments on the Proposed Decision Adopting Uniform Taxonomies for Sexual Assaults and Sexual Harassments that Transportation Network Companies Must Use for Their Annual Reports, As Well As Adopting Training, Investigating, and Reporting Protocols (“Proposed Decision”).

**II. THE PROPOSED CPUC UNIFORM TAXONOMIES ARE BOTH OVER AND UNDER-INCLUSIVE; THE RALIANCE TAXONOMY© IS MORE ACCURATE AND SHOULD BE ADOPTED**

The Commission proposes the adoption of its own “uniform taxonomies” to classify sexual assault and harassment. The RALIANCE Sexual Misconduct and Violence Taxonomy© (hereinafter “RALIANCE Taxonomy©”), on the other hand, was developed by experts in the

fields of sexual assault/harassment and criminal law.<sup>1</sup> It is more accurate than the Commission's proposed taxonomies and should be adopted, for the reasons explained in the Comments on the Proposed Decision submitted by RALIANCE.

VALOR concurs with the findings proposed by RALIANCE and agrees that the Commission's proposed taxonomies are based on a misunderstanding of the definition of sexual battery in the California Penal Code and is both under and over-inclusive. VALOR also agrees with RALIANCE that the Commission's proposed taxonomies mischaracterize sexual harassment for purposes of a TNC investigation by applying workplace standards which are not relevant in this context, as explained in the Comments on the Proposed Decision submitted by RALIANCE.

VALOR, like RALIANCE, urges the Commission to adopt the RALIANCE Taxonomy© because it is the standard accepted as the only accurate taxonomy for this purpose by the organizations which comprise the movement to address sexual violence and harassment. Defining in detail the behaviors which together constitute sexual assault allows investigative staff who are not criminal law experts to accurately identify behaviors which constitute sexual assault. The use of broad, generalized definitions, on the other hand, leads to mischaracterization of sexual violence and omissions in identifying sexual assault and harassment.

The RALIANCE Taxonomy© is mutually exclusive and collectively exhaustive. It was created by a group of seasoned sexual violence professionals and attorneys at RALIANCE, as well as other experts including the National Sexual Violence Research Center (NSRVC) and an academic research team at the Urban Institute. It accurately characterizes sexual assault

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<sup>1</sup> See RALIANCE Taxonomy: "HELPING INDUSTRIES TO CLASSIFY REPORTS OF SEXUAL HARRASSMENT, SEXUAL MISCONDUCT, AND SEXUAL ASSAULT"  
[https://www.raliance.org/report\\_posts/helping-industries-to-classify-reports-of-sexual-harassment-sexual-misconduct-and-sexual-assault/](https://www.raliance.org/report_posts/helping-industries-to-classify-reports-of-sexual-harassment-sexual-misconduct-and-sexual-assault/)

consistently with California Penal Code definitions, and it accurately defines sexual harassment in the appropriate context of a TNC ride. Both Uber and Lyft use this taxonomy.

The Proposed Decision indicates the Commission believes that Uber and Lyft use two different taxonomies. (Proposed Decision at pp. 3-4.)<sup>2</sup> In fact, both Uber and Lyft use the RALIANCE Taxonomy©. Because it is more accurate and makes it easier for staff who are not experts in the criminal law to use to classify behaviors, VALOR agrees with RALIANCE that the RALIANCE Taxonomy© should be adopted.

### **III. The Proposed Decision Does Not Require Training on Trauma for Investigative Staff, Yet Training on Trauma-Informed Investigations Is Essential**

Training on the nature and neuroscience of trauma and on how to do a trauma-informed sexual assault/harassment investigation is essential for sexual assault investigators two reasons. First, the principle of do no harm applies. Training on how to do a trauma-informed investigation helps avoid re-traumatizing a victim of sexual assault. Second, without such training the accuracy of the facts revealed in an investigation may be impacted. The victim may not disclose facts which he or she perceives would be judged. Alternately, the victim may not remember or may fail to disclose facts which would be accessed or disclosed if a more trauma-informed investigation is done.

The Commission states that investigations by TNCs must adhere at a minimum to specified requirements in the claim investigation process. (Proposed Decision at p. 24.)<sup>3</sup> The Proposed Decision also says that the Commission's own staff may want to do further

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<sup>2</sup> See CPUC Proposed Decision pp. 3-4:

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M472/K442/472442955.PDF>

<sup>3</sup> *Id.* at 24.

investigation of a sexual assault complaint to determine whether a decision not to terminate a TNC driver was well-founded. (Proposed Decision at p. 11.)<sup>4</sup>

The list of specified investigation requirements in the Proposed Decision, however, lacks a requirement that all investigators be trained on how to conduct a trauma-informed investigation. Without such training, staff run the risk of further traumatizing victims of sexual assault and harassment. Also, important information about the incident can be lost or remain hidden when an investigator is not trained to do a trauma-informed victim interview.

“In a trauma-informed interview, questions are asked in ways that are consistent with how traumatic memories are often encoded, stored, and retrieved. Interviewers also understand, listen for, and gather information about common brain-based impacts of trauma on attention, cognition, and behavior (e.g., narrowed attention, impaired reasoning capacities, freezing, habit behaviors, dissociation, and tonic immobility). These strategies can help interviewers elicit more complete and accurate information from sexual assault victims, which can, in turn, lead to more thorough evidence-based investigations.”<sup>5</sup>

For example, an investigator who understands trauma-informed questioning would never ask a victim, “How did you react?” (See question listed in the Proposed Decision at p. 24.)<sup>6</sup> In the context of relating facts about a sexual assault, such a question may well be perceived as blaming by a victim. For example, if the victim has just said that the perpetrator pinned him or her against a wall, asking the victim “How did you react?” might make him or her feel that they should have fought back or was somehow at fault for not having reacted differently.

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<sup>4</sup> *Id.* at 11.

<sup>5</sup> See Canaff, R., Lonsway, K. and Archambault, J., *Trauma-Informed Interviewing and the Criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value*, OVW Grant No. 2018-TA-AX-K032, Feb. 2020, at p. 6, online at [https://evawintl.org/wp-content/uploads/2020-02\\_TB-Trauma-Informed-Interviewing-and-the-Criminal-SA-Case-Technique-Meets-Evidentiary-Value.pdf](https://evawintl.org/wp-content/uploads/2020-02_TB-Trauma-Informed-Interviewing-and-the-Criminal-SA-Case-Technique-Meets-Evidentiary-Value.pdf)

<sup>6</sup> CPUC Proposed Decision., *supra* note 2, at 24.

An example of a trauma-informed question, if there is a pause in the victim's account of what happened after stating that the perpetrator pinned him or her to a wall, would be, "Can you tell me more about being pinned to the wall?" Or "What are you able to tell me about being pinned to the wall?" These questions will not be perceived as blaming, in contrast to "How did you react?" (See Proposed Decision questions at pp. 25-26<sup>7</sup>; cf. *The Forensic Experiential Trauma Interview (FETI)*, by Russell Strand, online at <<http://www.azcvcs.net/wp-content/uploads/FETI-Public-Description-Jan-2017.pdf>>)<sup>8</sup>

Second, an understanding of the nature and brain science of trauma helps ensure a more accurate investigation. Police investigators who are trained at the academy to ask the standard questions of "who, what when where, why" (the five W's) must re-learn how to do an investigation in order to conduct an appropriate investigation when dealing with trauma victims. The five W's are *least likely* to elicit a complete and accurate response from a trauma victim. As we now understand, this applies equally to interviewing traumatized police officers who are involved in a shooting, to members of the military involved in battle, and to victims of violent crime, including sexual assault. (*The Forensic Experiential Trauma Interview (FETI)*, by Russell Strand, online at <<http://www.azcvcs.net/wp-content/uploads/FETI-Public-Description-Jan-2017.pdf>>)<sup>9</sup>

The federal Department of Justice's Office for Victims of Crime (OVC) defines "trauma-informed" as:

Approaches delivered with an understanding of the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognizes signs of trauma in staff, clients, and others and responds by integrating knowledge about trauma into policies, procedures, practices, and settings. Trauma-informed approaches place priority on restoring the

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<sup>7</sup> CPUC Proposed Decision., *supra* note 2, at 25-26.

<sup>8</sup> See *The Forensic Experiential Trauma Interview (FETI)*, by Russell Strand, online at <<http://www.azcvcs.net/wp-content/uploads/FETI-Public-Description-Jan-2017.pdf>>

<sup>9</sup> *Id.*



survivor's feelings of safety, choice, and control. Programs, services, agencies, and communities can be trauma-informed. (Online at <<https://www.ovc.gov/model-standards/glossary.html>>.)<sup>10</sup>

As noted by the U.S. Department of Justice's Office for Victims of Crime, trauma-informed approaches place priority on restoring the survivor's feelings of safety, choice and control. Contacting survivors takes their choice and control away and can be detrimental to their healing process. (See online <<https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/6/ovcttac-model-standards-508.pdf>>.)<sup>11</sup> Before any such contact is made by a TNC investigator or Commission staff, standardized and appropriate training by experts on trauma-informed interviewing and on the brain science of trauma is essential.

Formal FETI training is a five-day course for law enforcement personnel, or a 34-hour online class. (See <<https://www.certifiedfeti.com>>.)<sup>12</sup> It starts with detailed training about the neuroscience of trauma and progresses through actual practice doing trauma-informed interviews. Investigators must understand the kinds of questions which can elicit memories and the kinds of questions which can destroy incipient (inchoate) memory. Investigators also learn which questions are most likely to result in accurate responses and memories, and which kinds of questions are likely to suppress or destroy them.

One noteworthy feature of trauma-informed interviewing is asking open-ended (not specific) questions. For example, investigators are trained to ask, "What are you able to tell me about your experience?" and to let the survivor explain what happened in their own time and without regard to chronology. Victims rarely remember traumatic experiences in chronological

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<sup>10</sup> See U.S. Department of Justice's Office for Victims of Crime <https://www.ovc.gov/model-standards/glossary.html>

<sup>11</sup> See U.S. Department of Justice's Office for Victims of Crime <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/6/ovcttac-model-standards-508.pdf>

<sup>12</sup> See <https://www.certifiedfeti.com>

order and forcing such a framework is likely to result in details of the traumatic event being lost, forgotten or unarticulated.

Similarly, when a victim pauses in a narrative, investigators are trained to ask, “Are you able to tell me more about ...?” or, “Help me understand more about...” (See Markel, *The Forensic Experiential Trauma Interview Questions*)<sup>13</sup> These questions are more likely to elicit memories of the trauma because they do not limit the survivor’s account to a rubric in which it may not fit, or which may not be comfortable for the victim.

Traumatic memories are often embedded in sensory memories or reactions at the time of the trauma. Investigators are trained to ask, “What are you able to remember about... (the senses, e.g., hearing, sight, taste, smell, and touch.) (*Ibid.*) Such questions can trigger memories of the incident which can lead to more accurate reporting of the facts.

As law enforcement agencies and the military have discovered in recent years, training on trauma-informed interviewing and understanding the neuroscience of traumatic memory is essential to an accurate investigation process when a traumatic event has occurred. This means someone who is properly trained can perform a competent and accurate investigation involving traumatic injury, whether physical or emotional. (See the *You Have Options* training for law enforcement agencies, described online at

< <https://www.reportingoptions.org/about-us/>>.)<sup>14</sup>

Merely reading the appendices which we attach to this brief about the neuroscience and interviewing process is not sufficient. Thorough training on the brain science, conducted by

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<sup>13</sup> See *The Forensic Experiential Trauma Interview Questions*, by David W. Markel and Markel Consulting, LLC

<sup>14</sup> See *You Have Options* training for law enforcement agencies, described online at <https://www.reportingoptions.org/about-us/>

experts, coupled with training on interviewing techniques and actual practice of those techniques by trained observers is crucial. Thus, the state of California requires “a comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence and stalking cases.” (Cal. Ed. Code, § 67386, subd. (b)(12)<sup>15</sup> Accordingly, California institutions of higher education provide training on trauma-informed interviewing techniques for Title IX investigators. (See, e.g., University of California Office of the President, Systemwide Title IX Office, online at <<https://www.ucop.edu/title-ix/resources/svsh-training-and-materials/index.html>>.)<sup>16</sup>

The Proposed Decision states that “the Commission may want its own staff to conduct its own investigation into a sexual assault incident to understand the circumstances that led to the decision not to deactivate a TNC driver.” (Proposed Decision at p. 11.)<sup>17</sup> Before such any such investigation should be permitted, Commission staff conducting investigations of sexual assault/harassment must have training about conducting a trauma-informed investigation. The risk of failing to so is the potential re-traumatization of the victim as well as the loss of accurate information about the incident itself.

#### **IV. CONCLUSION**

The Proposed Decision should be modified in several respects. First, the Commission’s proposed taxonomies should be replaced with the RALIANCE Taxonomy©, for the reasons stated herein and in the Comments to the Proposed Decision filed by RALIANCE. The RALIANCE Taxonomy© was developed by experts in the sexual violence movement and criminal law of sexual assault, is uniformly used by the sexual assault movement, and is easier

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<sup>15</sup> Cal. Ed. Code, § 67386, subd. (b)(12)

<sup>16</sup> See e.g., University of California Office of the President, Systemwide Title IX Office, online at <<https://www.ucop.edu/title-ix/resources/svsh-training-and-materials/index.html>>

<sup>17</sup> See CPUC Proposed Decision at 11.

for non-experts to use because it carefully and completely defines the behaviors that constitute sexual assault/sexual harassment.

Second, as explained in the RALIANCE Comments, the Commission's proposed taxonomies on sexual harassment are erroneous in adopting workplace sexual harassment standards which are not appropriate in the TNC context. The RALIANCE Taxonomy© more accurately defines sexual harassment and should be adopted because it is the accepted standard developed by and uniformly used in the movement by sexual assault organizations.

Finally, the proposed investigative framework omits any requirement for trauma-informed training of investigators, which is essential to performing an accurate investigation and which is crucial to avoid the risk of re-traumatizing victims. The state of California recognizes the crucial nature of training on trauma to the accuracy of sexual assault investigations by requiring it of all sexual assault investigators at institutions of higher education in California. VALOR submits that such training is equally needed in the context of interviewing victims of sexual assault in the TNC context.

VALOR respectfully requests that the Commission modify its Proposed Decision accordingly.

Respectfully submitted,

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[Appendix]

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## **SETTING FORTH PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Findings of Fact**

1. TNCs are required to include sexual assault and sexual harassment claims as part of the information provided in their Annual Reports to the Commission.
2. Taxonomy is a standardized set of terminologies, definitions, language, and references.
3. Uber and Lyft have been using a consistent taxonomy, the RALIANCE Taxonomy©, for sexual assault and sexual harassment, but not all TNCs have been using this taxonomy, which was developed by experts in the field of sexual assault and is uniformly used by the sexual assault movement.
4. Some TNCs have not been reporting sexual assault and sexual harassment claims consistently in their Annual Reports.

### **Conclusions of Law**

1. It is reasonable to conclude that TNCs should be using the same taxonomy for sexual assault and sexual harassment in reporting such claims in their Annual Reports, and that the industry standard which should be used for that purpose is the RALIANCE Taxonomy©.
2. It is reasonable to conclude that TNCs should be using the same baseline standards for training TNC drivers about what constitutes sexual assault and sexual harassment.
3. It is reasonable to conclude that TNCs should be using the same baseline standards for investigating sexual assault and sexual harassment claims made against TNC drivers.
4. It is reasonable to conclude that TNCs should be using the same baseline standards for reporting sexual assault and sexual harassment claims in their Annual Reports.
5. It is reasonable to conclude that the claims investigation process should follow a standard protocol which should be designed by experts in the field of sexual assault and include a standard interviewing method which follows a trauma-informed approach to forensic interviewing, to avoid re-traumatization of victims and ensure accuracy of facts gathered.
6. It is reasonable to conclude that training for sexual assault investigators investigating reports by TNCs should be standardized and include training on the brain science on trauma as well as trauma-informed interviewing techniques.