

## MINUTES FROM CHSWC PUBLIC MEETING

**Date: Friday, December 8, 2023**

**Time: 10:00 am**

**Place: Video/Audio Conference - online only**

**NOTE: In accordance with [Executive Order N-29-20](#), and [Executive Order N-33-20](#), the physical meeting location was cancelled for December 8, 2023.**

### **In Attendance (via online video)**

Chair: Martin Brady (Acting)

Commissioners: Doug Bloch, Shelley Kessler, Nick Roxborough, Mitch Steiger, Meagan Subers, and Sidharth Voorakkara

**Absent:** Sean McNally

Acting Chair Brady began the meeting by explaining that the absent Chair Sean McNally was pivoting and transitioning off the Commission (CHSWC). Likewise, Acting Chair Brady acknowledged Commissioner Doug Bloch's last meeting on this December 8th date. Acting Chair Brady thanked Commissioner Bloch for his service to a large group of people and for trying to move California forward to a positive place. Acting Chair Brady said that they were all grateful for his service. Acting Chair Brady further explained that he asked Executive Officer Enz to come up with some sort of resolution, either from the Senate or the Assembly, to commemorate and give thanks to the two Commissioners for their service. Acting Chair Brady offered that if it pleases the Commission, they will proceed with those activities.

Acting Chair Brady explained "housekeeping" issues about conducting the meeting virtually, such as keeping microphones on mute, raised hand icons, public comments restricted to three minutes, the recording of the meeting for the purposes of preparing written minutes, and so forth.

Commissioner Mitch Steiger commented that the Commissioners were fantastic additions to the Commission, and that they offered incredible perspectives on these important (workers' compensation and health and safety) issues. Commissioner Steiger clarified that they were still going to be active, and they were not retiring; they were just moving on and that he looked forward to seeing all that they do in their respective roles.

Acting Chair Brady said that he agreed and that he was also grateful for their service. Other Commissioners indicated their agreement with the comments about respect for the departing Commissioners.

### **I. Approval of Minutes from the September 15, 2023 CHSWC Meeting**

Chairperson Brady asked for a motion to approve the September 15, 2023 CHSWC meeting minutes. Commissioner Roxborough moved the motion and Commissioner Kessler seconded the motion; the minutes were approved unanimously.

## **II. Election of Chair**

Acting Chair Brady said that the Chair of CHSWC changes from Labor to Management commissioners. Commissioner Kessler nominated Commissioner Steiger. Commissioner Subers seconded the motion. All approved. None opposed. Commissioner Steiger was elected Chair of the Commission on Health and Safety and Workers' Compensation for 2024.

## **III. Stakeholder Presentation – WCRI – Update**

### **Kathy Fisher and William Monnin- Browder**

Kathy Fisher, Director of External Relations at WCRI shared some of their latest findings. She stated that WCRI is an independent, not-for-profit research organization. Ms. Fisher said that Mr. William Monnin-Browder will discuss WCRI findings from *CompScope™ Medical Benchmarks for California, 24th Edition* and other WCRI studies. She said it was their latest published report. WCRI published two benchmarking reports on California each year: one in the springtime that covered the entire system, indemnity, medical, and several other metrics. In the fall, WCRI published its medically focused benchmarking study which was discussed at this presentation.

Ms. Fisher said the mission of WCRI was: “Be a catalyst for improving Workers’ Compensation systems by providing the public with high-quality, credible information on important public policy issues.” It has diverse membership support, including employers, labor unions, insurance carriers, government agencies, rating bureaus, and healthcare facilities. Thus, there was a whole array of stakeholders in the system. Their studies were rigorously peer-reviewed and focused on the delivery of benefits to the injured worker. She asked when a claim happened how did it move through the system. They do not focus on the safety of the system like many others do, and they do not look at the finance side like rating bureaus. Again, they were focused on the delivery of benefits to injured workers. WCRI does not make recommendations or take positions on policy issues; it serves as a resource for public officials and system stakeholders. It has a content-rich website: [www.wcrinet.org](http://www.wcrinet.org).

Will Monnin-Browder, Policy Analyst for WCRI, said that he was part of said CompScope Benchmark studies team, and he analyzed data from California along with Michigan, Pennsylvania, and New York. Mr. Monnin-Browder provided a summary of the main findings from the 24th edition of the CompScope Medical Benchmarks report for California. California’s medical payments per claim, for claims with more than seven days of lost time, were mostly stable from 2016 to 2021. The last two years (of 2016 to 2021 period) were impacted by the Covid-19 pandemic discussed throughout this presentation. The 2021/2022 timeframe that they used is the naming convention that they used for injury and evaluation years the first year, 2021 refers to the injury year, which they defined as claims arising from October 1st of 2020 through September 30th of 2021. And then that second year, 2022 is the maturity of the claim that indicates experience through March 31<sup>st</sup>, 2022. They looked at claims from injury year 2021 with an average 12 months of experience and other 3-year evaluation combinations are denoted similarly. When they compared California with other WCRI study states, the 16 other states (Arizona, Florida, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin) that are part of this CompScope study, California medical payments per all paid claims were 12 percent lower than the 17-state median. They examined some of the factors that

contributed to that result.

Mr. Monnin-Browder said there were two important points in the data and methods underlying the study. First, WCRI excluded Covid-19 claims from this report. He said many probably know that Covid-19 claims were fundamentally different than non-Covid-19 claims. To make the trends examined over time more meaningful, WCRI excluded them from their analysis, but there were other studies that do examine different aspects of the pandemic and Covid-19 claims specifically. Second, their medical payments per claim measure did not include medical cost containment expenses and medical legal expenses. Those were reported separately as benefit delivery expenses and detailed in the CompScope regular report that Ms. Fisher previously mentioned. So, in this report, they focused on medical services provided to treat injured workers.

Mr. Monnin-Browder said they reviewed the long-term trends in California medical payments per claim, for claims with more than seven days of lost time, at different claim maturities. They provided similar information on claims with an average of 12 months of experience in 12 month increments for 24, 36, 48, 60, and 72 months of experience. The trend since 2016 which was the focus of this study was consistent across maturities that medical payments per claim were mostly stable with little change from 2019 to 2020 and 2021 to 2022. The recent period of stability since 2016 followed decreases from 2010 to 2016 particularly for the more mature claims following the implementation of Senate Bill (SB) 863. For claims of 12 months of experiences, they reviewed factors that contributed to the stability in California medical payments per claim later in the presentation.

Mr. Monnin-Browder said the recent changes in California medical payments per claim were put in context with the other 16 states in the WCRI study and focused in on the period since 2019, the period that reflects experience during the first couple of years of the Covid-19 pandemic. The stability observed in California over the period was different than the changes in several of the other states where medical payments decreased three percent per year or more in 11 of them. Changes over that period reflect in part factors related to the Covid-19 pandemic, including temporary suspensions of non-emergency surgeries and procedures, delayed and avoided medical care out of concern for contracting Covid-19 and other factors related to the pandemic. The pandemic did not affect all states at the same time nor with the same severity. So, the pandemic impact was not uniform across the different states, likely an important factor contributing to the decrease in many of the states since 2019. The stability and medical payments in California were compared with the other study states reflecting a couple of different factors. First, while California did have decreases in utilization of certain services like many other states, the decreases tended to be smaller. There were also some offsetting factors that worked to contribute to the overall stability in California medical payments per claim. While the decreases in some WCRI study states reflected different factors, the decreases were largely driven by decreases in the utilization of certain services during the pandemic such as certain hospital services, surgery, among others.

Mr. Monnin-Browder said there were a few examples where they saw some substantial changes in many states in utilization over that last couple of years of the study period. One area was surgery rates: the surgery rate in California had been decreasing since 2016 for claims at 12, 24 and 36 months of experience, a gradual, continual decrease in the surgery rate in California. There was a decrease in the surgery rate across all the WCRI study states from 2016 to 2021. For many of the WCRI study states, much of the overall decrease in the surgery rate occurred after 2019, during the pandemic. It was likely due to those pandemic factors; California was slightly different because the decrease in

California was gradual and continuous over the entire period, though it did continue during the pandemic. The results for Illinois, Tennessee, North Carolina, though very different states than California, had similar changes as California.

Mr. Monnin-Browder said there were two aspects of medical costs when surgery was involved, what was paid to the provider, and what was paid to the facility, the hospital, or the Ambulatory Surgery Center (ASC). Related to the decrease in surgery rate, in California WCRI also observed decreases in the percentage of claims with ASC and hospital outpatient facility services over the entire period since 2016 in California. They will put the decrease in California into context with the other WCRI study states. However, the decrease was smaller in California than what was seen in some states and was occurring before the beginning of the pandemic, so it was a continuation of longer-term trends.

Mr. Monnin-Browder said the trends in the average facility payment per claim was indexed to 2016 levels to show that those payments have increased over the entire period since 2016, which would work to offset some of the decreases in the percentage of claims with those services. The percentage of claims with in-patient care in California also decreased about a percentage point from 3.8 percent in 2016 down to 2.7 percent in 2021. That decrease was largely driven by a decrease in the percentage of claims with in-patient surgery. The percentage of claims with in-patient care for non-surgical episodes also decreased. Again, payments for in-patient episodes increased to 6.7 percent over the entire period.

Mr. Monnin-Browder reviewed the decreases that they saw across WCRI study states in the percentage of claims with facility services both for ASC and hospital combined, hospital outpatient services, as well as hospital inpatient episodes. These are the types of services that may be impacted by suspension of certain non-emergency surgeries. Or they may decrease due to trying to avoid hospital settings particularly during the early part of the pandemic. And on all these measures there were decreases in the percentage of claims with these types of services from 2019 to 2021. Again, California tended to have smaller decreases and those decreases tended to be continuations of longer-term trends that occurred prior to the pandemic. He said one important factor contributing to the stability in total cost per claim in California since 2016, was that non-hospital payments represented about 72 percent of total medical payments per claim in 2021 for claims at 12 months of experience. The trends in non-hospital payments were an important driver of the overall trend. California had among the lowest percentage of claims with hospital outpatient and inpatient services.

Mr. Monnin-Browder said though hospital outpatient payments per claim grew moderately before decreasing four percent in 2021, the percentage of claims with hospital services, both outpatient and inpatient, had been decreasing in California. There were many offsetting factors contributing to stability in California medical payments per claim.

Mr. Monnin-Browder said WCRI looked at one of the important components underlying non-hospital payments per claim, prices paid and the utilization of professional non-hospital services. Since 2016, prices paid for professional services have increased about two percent per year on average, while utilization decreased about two percent per year on average. While they discussed utilization earlier, in terms of the percentage of claims with certain medical services, they were using different measures of utilization from the WCRI utilization index. The WCRI utilization index incorporated volume of services, visits per claim, and services per visit, as well as the resource intensity of providing those services. It was a different measure of utilization, but those stable trends over the entire period

masked larger offsetting changes in 2021 when prices paid for professional services grew about five percent and utilization decreased about six percent. Those larger changes were generally consistent with other states although the increase in prices paid was slightly higher than in many of the WCRI study states.

Mr. Monnin-Browder said prescription payments was one area where California stood out in this CompScope medical study. He noted the rapid decreases in prescription payments per claim ended after 2018; prescription payments per claim in California were the lowest of all WCRI Study states. Prescription payments per claim in California decreased very rapidly from 2013 to 2018, before increasing slightly from 2018 to 2020. They decreased from approximately 1,100 dollars per claim, down to about 250 dollars per claim in recent years. The percentage of claims with a prescription also decreased over that period. The rapid decrease in prescription payments was driven by decreases in both the average payment per prescription as well as the average number of prescriptions per claim over this period. They observed decreases in the average prescription payment per claim with prescriptions in many WCRI study states but the decrease in California was much larger than these other WCRI study states. But one kind of cross cutting factor that may have contributed to the decrease both in California and other states (WCRI study states), was the increased attention to the issue of opioids and the use of opioids and workers' compensation. Also, California had several policy changes, including the introduction of Independent Medical Review (IMR), the introduction of a drug formulary, and changes to the Medicare fee schedule. So, several other additional factors contributed to these decreases in California.

Mr. Monnin-Browder said that California prescription payments per claim with a prescription was among the lowest of the WCRI study states. If they had looked at similar data for 2013, California would have been closer to the higher costs. The percentage of claims with a prescription was typical. Toward the end of the study period, the average prescription payment per claim in prescription was approximately 250 dollars, and he compared it with other study states. The comparison showed California had the lowest prescription payments per claim with prescriptions of all the study states. For 2013, California would have been higher than other WCRI study states. He noted the continued variation in this measure across the study states ranging from around 250 dollars in California to up to nearly 2400 dollars in Louisiana. But the decrease in California was much larger than what they observed everywhere else. One kind of cross cutting factor that may have contributed to the decrease both in California and other states (WCRI study states), was the increased attention to opioids and the use of opioids and workers' compensation. But in addition, there were several policy changes in California, including the introduction of Independent Medical Review (IMR), the introduction of a drug formulary, and changes to the medical fee schedule. Several other additional factors contributed to these decreases in California.

Mr. Monnin-Browder asked how that compared to other WCRI study states. California medical payments, per all paid claims, were 12 percent lower than the 17-state median for 2019 to 2022 claims for the 2019 claims at 36 months of experience, which ranked California close to the middle of the WCRI study states. This was their broadest measure of medical payments, and the result masked several offsetting factors which they will discuss later. Note that the results were similar for 2016 claims at 72 months of experience. One important factor contributing to the results that they saw was that California had a higher percentage of claims with more than seven days of lost time. This was a key cost driver as this subset of claims had more expensive medical payments compared to those claims with less than seven days of lost time or medical only claims. For claims with more than seven

days of lost time, though, the average medical payment per claim in California was lower compared with the other states.

Mr. Monnin-Browder asked why California had lower average medical payments per claim and indicated that there were several factors. These included payments per claim to non-hospital and hospital providers which were lower compared to other WCRI study states. California also had the lowest percentage of claims with both hospital outpatient and hospital inpatient care. One factor that contributed to the lower nonhospital payments per claim was lower prices. This reflected price regulation. Information from another WCRI medical price index study showed that overall prices paid for professional services in California were among the lowest of the WCRI study states at about 15 percent lower than the median state. The lower fee schedule rates were the main driver of the lower prices paid in California.

Mr. Monnin-Browder said there was another WCRI study on workers' compensation medical fee schedules that compares workers' compensation fee schedule rates in each state to Medicare rates in each state. That study found that California workers' compensation fee schedule rates were 34 percent higher than Medicare rates in California. In the middle group of states, workers' compensation fee schedule rates tended to be about 50 to 70 percent higher than Medicare rates. He had mentioned that medical cost containment expenses were not included in their medical payments per claim measure. WCRI combined medical payments per claim and medical cost containment expenses per claim into one measure that they referred to as medical related cost per claim. In California, about 25 percent of medical related costs per claim were for medical cost containment expenses and that was the largest share among the study states. This may reflect several factors, including the longer duration of medical treatment in California and therefore perhaps a longer period of medical cost containment activities. Also, utilization review is required in California but not in some of these other WCRI study states.

### **Questions from the Commissioners**

Commissioner Steiger said the prescription data charts were interesting, and data had to do with the increased focus on opioid prescriptions and limiting those to the most important; he asked if there was a way to break out non-opioid prescriptions. He wanted to examine it because their formulary had many changes, and they were in the dark about how well that was working. He wanted to find out what had been happening with workers' ability to access necessary prescriptions other than opioids. Mr. Monnin-Browder replied that recently WCRI published a study specifically examining the impact of the California drug formulary. He did not recall how that study broke down different prescriptions, but he and Ms. Fisher can send it to the Commissioners because it looked at pre-formulary, post-formulary, and several different measures. Ms. Fisher said they do have another study that has come out periodically. It was a flash report on drug trends that examined payments per claim and the share of prescription drugs by different therapeutic drug groups. They saw opioids become a smaller and smaller share of the overall drug payments. They have information that might help address some of those questions. But the point raised was a good one, and it was something that WCRI should continue to look at. Ms. Fisher added that in that Interstate drug trends report, WCRI did show other classes of pharmaceuticals and a number of those are broken out in the report that WCRI will be publishing in the springtime. That updated report includes California so they will see the other drugs and the percentages being prescribed and Ms. Fisher will send the drug formulary report after this Commission meeting. Commissioner Steiger agreed it would be helpful because he

got questions from labor in other states about California's formulary and if they like it, and if it was working. He did not have much to tell them other than there were complaints about it, so any additional data you could provide would be helpful.

Commissioner Steiger asked for help from Commissioner Brady or others who were there 11 years ago when they negotiated SB 863 and said that what they heard repeatedly was that when you increase benefits as they did with SB 863, claims would increase and that needed to be baked into their assumptions. Since they were raising permanent disability benefits and making other changes to the system, indemnity benefits would increase, workers would be filing more claims and that will have ripple effects across the system. And it looked like exactly the opposite has happened with at least some measures of medical care as outlined in your charts and what may be driving that decrease. Mr. Monnin-Browder said it was important to keep in mind that their CompScope studies and the research design of those studies were on a per claim basis. Some of the issues of claim frequency were beyond the scope of these studies. In their analysis of claims filed, a smaller percentage of claims had facility payments than what they observed in the previous year among the claims filed. The frequency decreases were beyond the scope of this work; but he raised a good question. Acting Chair Brady said that SB 863 had some very effective evidence-based medicine tools incorporated and that has gone a long way toward helping and assisting injured workers focus on medical care. He thought those were the benefits and it resulted in the data presented at this meeting.

Acting Chair Brady said that he was curious if pharmaceutical information was broken down by generic versus standard prescription. He asked about data. Mr. Monnin-Browder said that very well might be something that they looked at as part of that drug formulary study, but he did not recall. Ms. Fisher said they addressed it in the recent drug trends report to a certain extent. And oftentimes, they will also look at the source of the prescription drug, whether it was pharmacy dispensed, and if they were newer drugs. So those are the other ways they break out the generic versus the brand name drugs; they addressed this in a previous study, so she could share that with the Commission.

Commissioner Bloch stated that he was interested in the impact on costs from their fee schedules and he noted that California trends were very similar to the trends in Massachusetts where they have claims that were lasting longer than seven days and yet their costs seem to be even lower than California. He asked about what Massachusetts was doing and if there was anything to be learned. Ms. Fisher said in addition to overseeing the California Advisory Committee, she also oversees the Advisory Committee in Massachusetts. In Massachusetts, they have not updated their fee schedule since either 1993 or 1996 but it was the 1990s. It has been a long, long time since they updated their fee schedule. It is one of the unique features of Massachusetts. Their fee schedule and updates were housed with the Health and Human Services Department, not with the Workers' Compensation Commission or the Department of Industrial Accidents (DIA). It was a different entity and so the Workers' Compensation Commission and the DIA in Massachusetts worked with the Health and Human Services Department to update that fee schedule. And there have been fits and starts in doing that. Due to the pandemic, the Health and Human Services Department had other priorities at that time, so that was a major issue for stakeholders in Massachusetts. It has been reported that the fee schedule in Massachusetts is below the Medicare fee schedule in that state. And so that contributes to lower prices in Massachusetts. Commissioner Bloch said they had talked about the availability of doctors in the workers' compensation system and doctors were bound by the fee schedules they had, he asked how that issue in Massachusetts has impacted the availability of treating physicians. Ms. Fisher replied it was being looked at, and there was a recent article in the Boston Globe about primary

care physicians not being available in Massachusetts as well as Orthopedics. The studies WCRI has done that focus on worker outcomes showed that access to care has not been an issue in Massachusetts. That may in part be due to the great number of physicians in Massachusetts. Whatever the fee schedule may or may not be, there are several medical facilities and teaching hospitals. That may not be the case, though in other parts of Massachusetts and more rural areas. That was a question that has come up and they would like to look at it. Thus far from the research that they have, they have not noted any access to care issues, but it was a topic that's been brought up by people in Massachusetts.

Commissioner Kessler asked what contributed to the decrease in the usage of workers' compensation in California and was it specific to California. They have seen across state decreases, particularly in inpatient care. The California Workers' Compensation Institute (CWCI) has done an in-depth analysis on inpatient care in California and looked at some of the types of inpatient care that California has moved away from. They have seen procedures that were once provided in an inpatient setting now being performed in an outpatient setting. There were shifts that have happened as technologies changed and other factors have changed, but the kind of decreases that they have seen in California are not unique necessarily among the WCRI study states. It may be in part at least a change in the way that medical care was being provided. Commissioner Kessler asked if they were able to determine of the claimant population, what percent were union versus nonunion. Mr. Monnin-Browder replied that WCRI had not looked at it, but they kept it in mind as they were looking at these CompScope studies and thinking about unions in different states. But they have never broken out and had separate measures to identify differences between the unionized and nonunion workforce. Commissioner Kessler said as they have discussed in previous meetings, workers in unions have more support to file claims versus non-union workers and they are at more risk of losing their jobs should they make a complaint. She would certainly encourage using union membership as a data point worth considering for their studies because there were differences and that was how they knew the impact on injured workers. Ms. Fisher thanked her for the suggestion, and they were looking for ideas for what they should be studying and were not studying yet.

Commissioner Roxborough asked about the disparity between Northern and Southern California data and would WCRI have a breakdown between the two. There was a difference between Northern and Southern California, so he was interested in that data. There was a presentation by DIR or Division of Workers' Compensation (DWC) about the Continuous Trauma (CT) claims in California. There was an increase in the number of CT cases with seven or more days and that CT would be a dramatic factor to control for since CT claims go on for much more than seven days and have a much higher percentage of litigated cases involving CT claims. Commissioner Roxborough said he agreed with many of the Commissioners' questions and their answers. Mr. Monnin-Browder said they have not specifically studied CT claims in California. Other research organizations and other stakeholders have reviewed it, but it has come up in their discussions with stakeholders about factors that may be contributing to some of the results, more on the indemnity than the medical. It was not something that they had specifically looked at, but he will add this to his list of ideas for future study. Commissioner Roxborough said it was very interesting that 25 percent of medical related fees had to do with Medical Bill Review, which was a very high profit center for many carrier industries. He said in their report clients get charged a lot depending upon the deal. He asked if that was 25 percent for California or was that 25 percent for the states that WCRI studied. Mr. Monnin-Browder said that they took medical payments per claim was 20 to 25 percent for and added Medical Cost Containment (MCC) expenses. At 25 percent, the MCC share of medical related cost was higher in California; it

was also a high percentage in several of the other study states that do not have a fee schedule. They use certain MCC strategies to help contain medical costs in the absence of a fee schedule, but the story is a little bit different for some of the other states. Commissioner Roxborough asked what the dollar amount was of the breakout. Mr. Monnin-Browder replied that a rough estimate was that claims at 36 months of experience were approximately \$4,000 per claim and that was measured specifically in the CompScope, regular study. Commissioner Roxborough asked WCRI to email that data since he wanted to know the dollar amount that was associated with it.

#### **Questions from the Public**

None.

#### **IV. DWC Update**

##### **Dr. Ray Meister, Executive Medical Director, DWC**

Dr. Meister indicated that he would present information on recent educational efforts by the DWC. He said that DWC offers injured worker workshops, which are live online events. He added that on the first Friday of each month there is a presentation in English, and on the third Friday of every month there is a presentation in Spanish. He explained that workers can always talk to one of their Information and Assistance Officers. He said that these workshops are also a nice opportunity for injured workers to learn about the workers' compensation system.

Dr. Meister explained that, as some Commissioners may already know, DWC has for some time offered free online physician education. He said that DWC has two courses: one is about the Medical Treatment Utilization Schedule (MTUS) and the other course is geared to information that is important to Qualified Medical Evaluators or QMEs. These courses were initially envisioned and aimed at healthcare providers, and DWC provides continuing medical education credits. He said that they also realized at some point that there were a lot of other participants in the workers' compensation system and that the information in these two courses was very good for a lot of other folks to know and learn about.

Dr. Meister said that DWC has been working with other organizations to provide additional educational credits. He elaborated that the DWC educational training is now accredited by the (California) State Bar so that attorneys can take the courses and get continuing legal education credits. He explained that the Medical Treatment Utilization Schedule (MTUS) course takes about 1 1/2 hours to complete and the QME course is accredited for two hours. He said that they have also worked with the Society for Human Resource Management so that their members can now get credit for DWC courses to maintain their certifications. He said that DWC has worked with the Insurance Education Association and can provide credits for their two programs: one is for the Certified Professional in Disability Management and the other is the Claims Practitioner in Workers' Compensation. He said that Certified Rehabilitation Counselors can now get credit for taking the DWC courses. He added that all these credits are provided free of charge. He said that DWC was certified to provide credits for the Commission on Rehabilitation Counselor Certification as well as for the Commission for Case Manager Certification; Dr. Meister said that the most recent DWC course credits were towards certification for the Certified Disability Management Specialist title.

Dr. Meister said that another recent educational effort is one that came out of the UC Berkeley

Center for Occupational and Environmental Health, or the COEH. He said that COEH recently put together an extensive training aimed at Qualified Medical Evaluators. He explained that this training includes a four-part series. The series was initially presented in a live online format, although recordings are now being made so these courses will soon be available on demand. He said the first course covers navigating QME requirements. The second course covers evidence-based evaluations. The third course is on mitigating implicit bias and the fourth and upcoming course talks about the complexities involved that can come up in completing medical legal evaluations.

Dr. Meister added that all four of these COEH courses have multiple presenters from a wide range of workers' compensation stakeholders and DWC appreciates and acknowledges the contributions from the presenters in these courses. He did note that the previous courses have a fee associated with them. The next example of an online course will be free of charge and will be an excellent resource as it will review key concepts and terminology, and it will identify statutes and regulations governing medical-legal reporting in California. It will also present a guided, report quality assurance checklist.

Dr. Meister said that the DWC had received suggestions and it had considered coming up with a checklist that QMEs and others might use to review reports to make sure that all the important points are covered. This free course will have an interactive checklist useful for QMEs, but also for any others who want to learn about all the important points that go into producing a high quality QME report. He said that while many people have been involved in creating the courses, he wanted to recognize a few people: Michelle Meyer from the UC Berkeley COEH who has overseen the entire project, Nicole Richardson, one of DWC's attorneys, who has contributed extensively, and Steve Feinberg - who many of the Commissioners may know - a long time workers' compensation physician, who has a put in countless *volunteer* hours to make this happen.

Dr. Meister stated that regarding the MTUS, healthcare providers involved in workers' compensation care in California have free access to the website for MTUS-AECOM Guidelines that are adopted into the California MTUS. He said that in January 2024, the ACOEM website is planning to roll out a new way of interacting with the guidelines. They are calling it the AECOM navigator. He said that, in his opinion, it will be a big improvement and it will make it much easier for healthcare providers to find what they are looking for in the guidelines, to move around the guidelines, to cut and paste material that they might want to use in their reports, to bookmark important pages that they refer to a lot, and hopefully save some time for the busy medical providers out there.

Dr. Meister added that as previously mentioned, providers can get free CME credits when they use the MTUS-ACOEM guidelines. As for recent updates to the California MTUS over the last several months, some updates include shoulder disorders, the hand, wrist and forearm disorders guideline, and a COVID-19 guideline was adopted, as well as the Work Disability Prevention and Management guideline. He said that it was the formulary updates which typically lagged behind the updates in the guidelines. He said that DWC will have an updated MTUS drug list coming out that covers the updates in the medications for shoulder disorders and for COVID-19.

Dr. Meister concluded his presentation on medical educational efforts at the DWC.

Acting Chair Brady thanked Dr. Meister for his presentation and for his service in this educational effort.

## **Commissioner Questions and Comments**

Commissioner Roxborough asked if because of the training that DWC has made available whether there had been an increase in the availability of QMEs and the various under-represented specialist categories which DWC talked to the Commission (CHSWC) about a year or two ago. He said his question was whether more QMEs were entering the system. Dr. Meister said that he did not have all the numbers in front of him but that they had had an issue with some of the sub-specialties, such as oncologists and pulmonologists and thereby not having enough QMEs to be able to generate panels. He said that they have reached out to these various specialties, and they have not had much luck in attracting or increasing their presence in the system. QME test takers in 2018 were 180 participants and in 2023 there were over 500 participants taking the QME exam. He said there seems to be more interest in people becoming QMEs but they still have challenges as far as some of the specialties. Commissioner Roxborough commented that the information provided was encouraging and was going in the right direction.

Commissioner Subers asked about the formulary update. Referring to the forthcoming changes, she asked about the two high-dollar anti-inflammatories that have been discussed in the Pharmacy and Therapeutics (P&T) Committee. Dr. Meister said that the P&T committee has been reviewing certain medications and certain classes of medications where there are sometimes substantial cost differences between what may be very similar products. He said that currently all the recommendations on the drug list in the formulary are strictly based on medical evidence. He said that they have not incorporated any cost issues for these medications at this point. He added that cost is something that is being discussed, but as of right now, they are not considering that. He said that from a workload standpoint, it would be much more complex and would require a lot more work to keep such a drug list updated versus the MTUS drug list as it is today. He said the short answer is that they do not have any changes on the horizon, but it continues to be a topic of discussion.

## **V. Cal/OSHA Update Study**

**Brandon Hart, Program Manager for Communications and Strategic Planning,  
Cal/OSHA**

Brandon Hart introduced himself as Program Manager for Communications and Strategic Planning for Cal/OSHA. He explained that his presentation would include Cal/OSHA updates and the progress that they have made related to expanding language access, recruitment and hiring, consultation services and technical assistance provided to employers, worker outreach, education and training, notable rulemaking that is underway and ongoing, their recent enforcement expansion efforts, and some highlights related to heat illness prevention enforcement activities.

### Language Access

Mr. Hart explained that Cal/OSHA expanded their call center hours to include after-hour services. The hours are now 9:00 AM to 7:00 PM Monday through Friday to allow for workers to connect with Cal/OSHA and get answers to their questions about workplace safety and health. Mr. Hart said that workers can also file a confidential complaint after normal work hours, with privacy and away

from the workplace – he explained - since many of these high-risk, vulnerable workers fear retaliation (from employers). Mr. Hart said that, in addition, Cal/OSHA has been working hard to recruit and hire additional bilingual team members in both enforcement and outreach, and Cal/OSHA has posted specific job bulletins advertising that the positions can only be filled by candidates who are bilingual and who can pass a language proficiency exam certifying their competency. He said that hiring continues to be a top priority in capacity building strategy for Cal/OSHA.

### Recruitment and Hiring

Mr. Hart stated that, as the Commissioners know, the Cal/OSHA vacancy rate has been a historical challenge, especially given the significant wave of departures during the pandemic, coupled with retirements. He explained for context, approximately 54% of DIR's workforce are at or above retirement age, compared to 33% of the state's overall workforce. He said that Cal/OSHA is utilizing a multipronged approach to make headway on hiring that includes expanding Cal/OSHA's internal administration unit that plays an essential role in recruitment and hiring.

Mr. Hart said that DIR's team has streamlined and restructured the review and posting of hiring packages with a team dedicated to Cal/OSHA, developing a statewide recruitment campaign to attract qualified and diverse candidates for vital enforcement inspector positions in addition to outreach at career fairs and conferences, as well as advertisement on job recruitment platforms and in trade publications. He said that Cal/OSHA is restructuring its operations to ensure new positions are efficiently and effectively distributed and in service of their mission, like the creation of a new Central Valley Enforcement Field Office. He said that they are also in the process of staffing their research and standards team, which plays an integral role in the development of regulations such as for indoor heat and workplace violence. Mr. Hart said that they are also focusing on retention, with efforts devoted to staff recognition and professional development, so that they can keep those staff that they hire on their team. Additionally, their automation project will reinforce their retention efforts by helping to streamline their current data collection efforts. He said that so far this year (2023), they had hired 56 team members (on-boarded) with 88 offers accepted. Mr. Hart said as a point of comparison in 2019 and 2020, Cal/OSHA made an average of 47 appointments annually. He said that they continue their recruitment and hiring efforts and expect to significantly increase the number of new hires with a goal of doubling the count over the next several months. This year Cal/OSHA has posted over 180 jobs with multiple positions on Cal careers.

Mr. Hart presented a table with data related to Cal/OSHA's hiring progress in October and through 2023. He said that it indicates new hires done externally and on-boarded, reinstatements, resignations, transfers to other state agencies, and the number of retirements. He said that the table of data includes the number of requests-to-hire packets that have been submitted to DIR's HR and the number of postings on Cal careers and positions-to-fill.

### Consultation and Technical Assistance

Mr. Hart said that Cal/OSHA Consultation Services has engaged with other state agencies, associations, and employers. They work to educate employers on their responsibilities and obligations. Between the period of January 1 and October 31st, 2023, Cal/OSHA Consultation has conducted 684 on-site consultation visits, with 225 of those visits done with employers who only

speaking Spanish. They have conducted 230 construction on-site inspections, 66 involved agriculture. He said that Cal/OSHA Consultation participated in and presented at 100 formal training events with over 23,000 attendees participating. Cal/OSHA Consultation conducted 674 evaluations of the employers' Injuring Illness Prevention Program (IIPP) plans and helped those employers get their programs where they need to be. Cal/OSHA Consultation conducted 674 evaluations of COVID-19 prevention programs and conducted 521 evaluations of heat illness prevention plans. For outreach and education, Cal/OSHA has expanded its bilingual outreach to include six bilingual community engagement liaison positions, strategically placed throughout the state to improve accessibility, efficiency, and community presence. They are in Sacramento, they have a new position in Fresno, in Salinas and in Los Angeles, and they have a current position in Santa Ana that they are filling, as well as a new position in El Centro. He said that they hired their first bilingual community engagement liaison statewide manager in August, and these positions are critical to connecting with community-based organizations, labor advocacy groups, unions, and others in specific geographic areas to bridge the divide between workers and government to deliver much-needed services including training, education and information on workplace rights and job protections.

### Outreach and Education

Mr. Hart said that Cal/OSHA has invested time in their Central Valley Regional relationship building program that includes their enforcement branch. He said their initial kickoff meeting occurred in March 2023 and they held their second meeting in June of 2023, and their third meeting occurred in October of this year. He said that this provides an opportunity to meet with community-based organizations, to listen to their needs, obtain feedback on items that they have implemented, develop new plans based on their takeaways and make adjustments and improvements as appropriate.

Mr. Hart described a photo of Cal/OSHA Chief Jeff Killip, Labor Commissioner Lilia Garcia Brower, Dora Luna from the Labor Commissioner's Office and Lourdes Cruz, their new bilingual Community Engagement Manager and explained that they were together at an intake event that occurred in October in the Central Valley.

Mr. Hart said that, in addition, they have updated, translated, made available, posted, and pushed out multiple worker safety resources for agricultural workers to inform them of their rights to a safe workplace, along with other workplace safety and health resources. He said that all those new, revised and updated multilingual educational resources are found on the Cal/OSHA publications web page. He said that the new updated COVID-19 interactive training can be found at their Cal/OSHA Training Academy. Lastly, he said that they are excited to share that as a result of their discussions with community-based organizations, they are developing a short 3-minute video on how to file a complaint with Cal/OSHA. He said that they just finished the draft script and have shared it with selected stakeholders to review and provide feedback before it heads to their video production.

### Rulemaking

Mr. Hart said that for the silica standard, the Standards Board granted petition 597 on July 20th, 2023 and requested that Cal/OSHA develop an emergency regulation to address the silicosis crisis in the artificial stone countertop industry. Cal/OSHA held an advisory meeting on August 9th and

later posted a draft version of the proposed regulation, taking into account stakeholder and public input; a vote on the emergency regulation is expected to occur on December 14th, and if the board does adopt a regulation, they expect it to go into effect on December 29th.

For indoor heat illness prevention, the proposed regulation was noticed on March 31st, 2023, and a public hearing was held on May 18<sup>th</sup> with the 1st 15-day notice, then on August 4<sup>th</sup>, and then again on August 22<sup>nd</sup>. He said that this occurred in November 2023 and then a vote by the Standards Board on the proposed rule is expected in the first quarter of 2024.

For lead in construction and general industry, the proposed regulation was noticed on March 3rd of 2023 and the public hearing was held on April 20th, 2023. A vote by the Standards Board on the proposal is expected in the first quarter of 2024.

For workplace violence in General Industry, Labor Code Section 6401.9 requires Cal/OSHA to submit to the Standards Board a proposed workplace violence prevention regulation by December 31st, 2025, that includes the requirements of the Labor Code, and any additional requirements Cal/OSHA deems necessary and appropriate to protect the health and safety of workers.

### Enforcement

Mr. Hart explained that the map he was presenting was to give an idea of three different sections throughout the state: the Northern California section, the Central California section which is part of an expansion project, and the Southern California section. He said that this last August they announced that the division (Cal/OSHA) would be increasing their enforcement presence in the Central Valley, Inland Empire, and the Central Coast.

He said that this expanded footprint will enable Cal/OSHA inspectors to respond more efficiently to workplace safety and health complaints. In these communities, they are currently setting up temporary offices and they are in the process of establishing a permanent office that will include a regional office in Fresno, a High Hazard office in Fresno, a district office in Santa Barbara, and a district office in Riverside. He said that hiring is already underway to staff these offices and they anticipate filling a total number of approximately 30 new positions in these new offices, with over half of them being in Fresno and a mix of these positions being safety and health inspectors and support staff.

### Heat Illness Prevention

For heat illness prevention enforcement activities, Cal/OSHA has established a heat illness special emphasis program that focuses on industries most affected by high heat. Those industries consist of agriculture, construction, and landscaping, and they are the industries Cal/OSHA generally focuses on when they are conducting proactive high heat inspections throughout the state. Mr. Hart explained that whenever Cal/OSHA inspects an employer who has employees that work indoors, inspectors are required to conduct a thorough evaluation of the employer's written program to determine if that heat illness prevention program is being effectively implemented.

He said that as they close out this heat season and calendar year, Cal/OSHA opened 2721 inspections and evaluated the employer's heat illness prevention program, and it has issued 1036 violations of

the heat illness prevention standard totaling over \$1.1 million. Mr. Hart further explained that inspectors have up to six months to complete their inspections, so the number of citations and monetary penalties will continue to rise over the next few months. He said that this year Cal/OSHA opened 257 proactive high heat inspections, which are the most inspections in the last five years, as they increase their response to the impact of extreme heat on outdoor workers,

### **Commissioner Questions and Comments**

Commissioner Roxborough said he was concerned about the Central Valley and asked about what type of employer heat illness training and prevention was being done on the employer side, so that the employers in the Central Valley can be more compliant. He said he understands how important it is to protect the workers, that it is critical, but he said that he hears from employers that they are getting busted on “gotcha” stuff. He said that employers are just trying to figure out what is the latest and greatest that Cal/OSHA is doing so that they can comply. He said that the goal is compliance, and while he is sure that although not all employers are that interested, that his clients seem to be interested.

Mr. Hart said that enforcement is a deterrent for the bad actors, but prevention is key. Outreach, education, training - for both workers and employers are an ambitious objective of Cal/OSHA. He said that that is why they have their Consultation Services branch. He said that they have their 99-calorie campaign that they have established. They have outreach materials and educational resources. They also hold - on the employer side - outreach webinars and they connect to upwards of nearly 1000 employers at a time. He said that not all of those employers show up and listen to what Cal/OSHA has to say, but they have a heat illness prevention network and they also hold an annual meeting that they kick off in April each year where they invite both labor and management businesses to share updates and important information as to what they should be aware of to prevent accidents and protect themselves.

Mr. Hart said that they oftentimes encourage employers that are engaged in activities where they have outdoor workers to participate in their consultation services directly where they can receive free technical assistance that is confidential. He said that they want to drive employers into consultation services and invite them to participate in those services as much as possible.

He said that they have publication materials and resources specific to employers, so that they understand what their obligations are to comply with the regulations and prevent an illness from occurring in the first place. He concluded that there are a lot of things that they do to ensure that both employers and workers understand what they can do to comply with the laws and protect themselves.

Commissioner Kessler said that she was glad that they are moving forward with the hiring. She said that she was excited to see that there were penalties that were put against employers who were in violation of over \$1,000,000. She said that she always has questions about employers going to the Cal/OSHA Appeals Board and who try to reverse and eliminate any penalty they would have to pay. She asked what percentile of those penalties get paid. Mr. Hart replied that he did not have those numbers with him, but that they can look into them, and circle back or perhaps share them on an agenda item in the future for the Commissioners.

Commissioner Kessler stated that when discussing deterrents and wanting employers to do the right thing and preventing people from getting injured - that's really what the end game should be. She said that knowing whether employers do in fact pony up would be helpful to know because they (observers, stakeholders) need to know whether the (enforcement) program actually works when employers are penalized for doing something wrong. She added that she would appreciate that and asked if in the future he could bring at least some information back to the Commissioners so they can know if the penalties situation is working.

Commissioner Subers commented that in the last couple of updates they have gotten from Chief Killip, he had just briefly touched on the wildland respiratory protection updates or field testing that have been going on for wildland firefighters. She said she did not want to put him on the spot, but if he had an update on how those went – she said she thought the field testing happened in August or September– she would love to hear about it, or if not, maybe they can add it to the next meeting. Mr. Hart said that he did not have an update on the progress on that subject, but that they can add that to an agenda item for the next meeting.

Commissioner Steiger said that he had two quick questions. The first was while it is great to hear about all the hiring and the 88 new positions, he said he was wondering if Mr. Hart knew where that leaves the vacancy rate for Cal/OSHA. He said that since he did not give any advance notice of his question, he was wondering if in future updates Mr. Hart wouldn't mind adding that number to the report. He said that it would be good to know more about what the 88 new hires were compared and what it looked like before and what it looks like now. It would be great to know what percentage of those positions are open and how all of that is going. Mr. Hart said that he did have that information at his fingertips. He said that through October 31st, 2023, for enforcement specifically, their vacancy rate is 35%. He said that is a combination of both management supervisors or senior professional staff members, like their senior safety engineers, and their journeyman level positions, which are the field inspectors such as safety engineers and industrial hygienists.

Mr. Hart said that it is important to note as well that they did receive some positions last July 2022, which increased their vacancy numbers, obviously, because when one receives more positions, one's vacancy numbers go up. He said that hopefully through the presentation, the Commissioners can see how hard they are working in Cal/OSHA and in the department to ensure that they are driving folks to the vacant positions, interviewing them quickly and getting them through that process as quickly as possible to on-board them, train them and get them in the jobs - because they desperately need their assistance.

Commissioner Steiger said that Mr. Hart had mentioned that there were 88 offers and 56 hired. He said that he knew that historically there has at times in the past been an issue with the amount of time between when an applicant starts the process and when the offer is extended. Is there an update - and this is also something I should have given you advance notice of - on how long that process is taking, because he said he knows that has been one of the challenges and one of the drivers of the vacancy rate; that people would start the process, they go through the application and then three months later they get the job offer and the response was, "Well, I couldn't wait three months and had to take a job somewhere else." Commissioner Steiger asked if that issue has been addressed in any kind of a significant way.

Mr. Hart replied that, as a hiring manager, he is exposed to it himself, so he was happy to say that

the process has improved quite dramatically. He said that as he mentioned in the presentation, DIR HR has staffed up, has a dedicated resource of team members concentrating on Cal/OSHA, has recently added a new position to Cal/OSHA's administrative services team, and now they have more folks processing applications, reviewing the managers' recruitment, and hiring packages. He said that it is speeding up quite a bit and they are not seeing as much of a lag as they did early on in this process because they need to put people in place to execute the workload. He said that as a manager, he is happy to see this, and that he knows the Director is happy to see it as well as the Chief and they are seeing the results of that. Mr. Hart said that the Director has made a very ambitious goal for Cal/OSHA. They need to double their hiring, so they are meeting internally among the leadership team and developing a plan that will try to meet those goals that have been set out for them. He concluded that he is happy to say that they are seeing improvement and hopes for continued progress.

Acting Chair Brady said that they have talked in years past about having some sort of acknowledgement that employers are doing the right thing - believe it or not - that most employers want to keep employees healthy. He said that when they find people that do an exceptional job, he thinks there could be a positive message to employers and to the community, so that they don't look at Cal/OSHA as a "gotcha" type of organization, because there could be prickles and there could be resistance when none was intended. He said it would be advantageous to think along those lines where maybe it is by industry, maybe creating role models within industries. He said they could tell the community that Cal/OSHA is not just about penalties and fines but is also about affirming positive work.

Mr. Hart said that he was glad that he mentioned that. He said that one of their goals is to highlight the Cal/OSHA Consultation Services and promote the activities that they're engaged with. He said that it was unfortunate that as an agency they are looked at as the "gotcha" agency. He added that they do have materials and educational resources - and a video that's really outdated on the benefits of working with consultation. He said that he has spoken to Chief Jeff Killip about this and one of their goals in 2024 is to update that video, which includes testimonies from employers who have worked with Cal/OSHA Consultation Services and that can describe the benefits of working with that branch. He said that they want to improve some of their educational resources that specifically target employers as a way to recruit them into Cal/OSHA Consultation Services so that there is that upstream prevention that they have heard Jeff (Killip) talk about so many times in order to promote that side of their house within the division, and in order to ensure there is a more fair and balanced approach for employers and workers on the labor side.

Acting Chair Brady said that is important and commented that nothing is for free, referring to all those jobs and positions and new offices. He said that a few years ago, the assessment from the employer standpoint was at \$800 million across the state, and today that it was \$1.7 billion. He said that two years from now - he said he did not know what the master plan was - but if that figure continues to rise at the rate that it has, there could be cracks. He said that he was concerned about the escalation (of the assessment), but that he also recognized the things that they need to do as a state to better drive a positive safety culture in employers, across the state.

Acting Chair Brady said that he appreciated Cal/OSHA's targeting of different parts of California, not just through complaints but also through frequency of claims, where they can track by region and put the "medicine" (enforcement) where the claims are. He said that he thought that was a wise

strategy.

Commissioner Bloch said that his comment was more of a request for Executive Officer Eduardo Enz, but given the Commissions' long-term focus on staffing, as a follow to Commissioner Steiger's comments, he said he thought it would be interesting to compare the vacancy rate with the Wage and Hour division within the Labor Agency (LWDA), which is tasked with enforcement as well. He said that he made this request knowing that he was a lame duck, and will not be around to hear it, but he said he thought it would be useful, particularly for the folks on the labor side as this was a long-standing issue. Acting Chief Brady asked if Executive Officer Eduardo Enz was OK with that and he said that was something they can do and get back to the Commission and to Mr. Bloch, even if he will not be on the Commission anymore.

## **VI. Janitor Time-Motion Project Update**

**Dr. Carisa Harris and Kevin Ru, COEH, UCSF**

Dr. Harris explained that the project had a survey component, a focus group component, and a time motion study component. She explained that she was going to give an update on the time motion study component and then, per the Commission's request at the last meeting that she attended, she was going to have one of her students who has been working with her give an update on the comparison between union and non-union workers.

Dr. Harris reminded the Commissioners that for the time motion portion of the study, they have been collecting a lot of video and direct measurements in the field. She said that she was happy to say that were just about 50% (completed). She said that they have completed an event convention center; they have the majority of people for the mall, with a few more to get. They will then be focusing their attention on airport and office buildings. Dr. Harris said that they have a group of students who are helping to analyze each video using Multi-Video Task Analysis (MVTA). They are looking at cumulative time on task by space, so that they can see the laborious process of identifying exactly what they (janitors) are doing and where they (janitors) are doing it. She added that the researchers also look at moments when they (janitors) are using their hands doing certain tasks to understand the risk associated with those activities.

Dr. Harris presented a slide and explained that it was to give a sample of the different categories of **space** (Bathroom General, Hallway/Walkway, Common Space, Outdoor, Cafeteria/Lounge/Kitchen, Office/Cubicle, Supply Closet, Janitorial Storage, Trash area/Recycling area, Meeting Room, Elevator, Escalator, Breaktime), **task** (Washing Windows, Washing/Cleaning Mirrors, Wet Mopping, Dry Mopping, Sweeping, Litter Pick Up, Disinfecting/Scrubbing, Dusting, Wiping, Trashing, Resupply, Transport, Walking, Standing, Furniture Moving, PPE, Vacuum Cleaning, Cleaning toilet, Cleaning sink, Breaktime) and **tool** (Brooms/Dust Pan, Rag/Paper Towel/Sponge, Trash Barrels, Trash, Picker Upper/Tongs, Duster, Duster Mop, Spray Bottle, Spray bottle trigger, Wet Mop + Mop Bucket, Supplies, Toilet brush, Bucket, Vacuum Cleaner, Cart, Vacuum + Cart, \*\*Walkie Talkie, Hands, No exertion, Breaktime). Each of these categories are meaningful in the sense of evaluating how much time they (janitors) are getting in comparison to ISSA production rates, as well as calculating risks associated with each task. Dr. Harris presented a graphic and explained the kind of summaries that they can get from these analyses where they can identify exactly what percentage of time janitors are spending in different locations, as well as performing different

tasks. She said that they can look at cumulative time by task to see exactly what the janitors are doing. They also can look at the interaction of the task by location. She said that they need this information so that they can compare the time dedicated to cleaning different spaces while doing different tasks to the time indicated by the ISSA production rates. She explained that they have matched each job and venue to different areas of the ISSA production rate tables, and they have been able to identify what the allocated time would be using these ISSA production rates. She said that they can then compare the time to the amount of time that they are measuring using the detailed video approach.

Dr. Harris said that each of these tasks are also being evaluated using validated risk assessment tools. They are using the ACGIH TLV for hand activity. The Ohio Bureau of Workers' Compensation tool on push/pull, and the revised NIOSH lift equation for lifting. Dr. Harris added that they are working with their colleagues in Washington state who have put together a workload calculator. They have only put this together for office venues, so they're excited to work together to add these different venues and add additional data. They have already been out at different trade conferences, talking to people about the janitors' workload calculator and teaching them how to use it in a way that improves the balance of work for janitors.

Dr. Harris said that she wanted to introduce her student presenter, Kevin Ru, a second-year MPH student, an EPI bio stat student. She added that he was a stellar, rising star in their program. She said he was a CEO, a NIOSH ERC trainee and a COEH work study student. So welcome, Kevin.

Mr. Ru thanked Dr. Harris for the introduction and the Commission for the opportunity to present his analysis looking at the associations between physical workload and adverse health, mental and physical outcomes among union and non-union workers. Mr. Ru reminded the Commissioners that as they were focusing on the survey component, there was a cross-sectional survey that was sent out in both Spanish and English to approximately 40,000 janitors, in union and nonunion organizations via email and or text. In assessing a janitor's workload exposure, they looked at 16 common tasks such as vacuuming and dusting, and for each of these 16 tasks, they asked an individual (janitor) how intense they would rate their task, how long they would perform each task, as well as frequency.

As an example, Mr. Ru presented a snapshot of what the responses may have looked like. He presented a slide with the first three columns corresponding to intensity, frequency, and duration. Intensity was measured on a one to 10 scale - a rate of perceived exertion scale - with one representing a very light activity and 10 representing maximum effort. He said that frequency was on a scale of one to five, with one being less than once per month, five being every day. Duration was measured on a one to four scale, one being never and four being more than four times per day. He said that by taking these three measures, they then calculated and classified the exposures between these three different kinds of assessment.

Mr. Ru explained that starting with "peak intensity," denoted in the red in his slide, they looked at intensity across all 16 tasks per individual and looked at the task with the highest intensity recorded and considered that the measure of peak intensity. "Typical intensity" (in blue) considers frequency in addition to intensity, so this is the intensity of the task that was performed most frequently by each individual worker. And lastly, the green denotation is workload index; this was an arbitrary unit that considers intensity, frequency and now duration of all tasks. Mr. Ru explained that it is calculated by simply multiplying intensity, frequency and duration and then summed up across all 16 tasks to create a workload index.

Looking at their outcomes to evaluate physical health outcomes, they measure severe pain prevalence using a 10-point numeric scale across four body regions. Across all four regions, individuals with an average of five or more were considered to have severe pain. For the mental health outcomes, they looked at prevalence of anxiety and depression, which was determined using the PHQ-9 nine question scale and the GAD-7 seven-question scale, respectively. For individuals with a total score of 10 or more, they indicated the presence of anxiety or depression for that respective scale; and for the purposes of their analysis, they consider this a joint outcome. Therefore, individuals could have either anxiety or depression or both.

Mr. Ru said that for their statistical analysis, they looked at their associations and they performed a logistic regression adjusted for sex and age. Mr. Ru said that to examine the associations between physical workload and these adverse health outcomes, other factors such as education level, smoking and other comorbidities were determined to not be confounders for purposes of their analysis.

Mr. Ru explained the distribution of union and non-union workers in the study's population, with predominantly union workers - about 2/3 of the study population being union and 1/3 being non-union workers. The distribution of selected characteristics was broken down between union and non-union workers. He said the main takeaways are that the study population is predominantly female, but there are similar (consistent) distributions among union versus nonunion workers when looking at the age category. It is a slightly older population, with more individuals greater than 50 seen in the union population. In the group for ethnicity, the study population across the board is predominantly Hispanic, and there are very similar total years worked as a janitor across mean (average), so both cohorts whether union or non-union are pretty similar to each other in the study population.

Looking at their results, Mr. Ru referred to his presentation. He said Table Two presents the physical health outcome, which was prevalence of severe pain adjusting for age and sex. He said that they performed a logistic regression, which produces an odds ratio; an odds ratio quantifies the strength of the association between exposure and outcomes. In this case, if there is physical workload and pain, there is severe pain prevalence; so, any number above one means that there are increased odds of the outcome compared to the reference group.

Mr. Ru said that across all three exposure measures, peak intensity, typical intensity, and workload index, the reference group is going to be the lowest group for each of those cases. Starting with peak intensity for union workers on the left an odds ratio of 5.24 means that there are nearly 5 1/2-fold odds of severe pain prevalence among union workers in this (high) peak intensity group compared to union workers with low peak intensity or non-union workers. He said that on the right of Table Two, there is instead approximately 3 1/2-fold odds among non-union workers in this (high) peak intensity group - which is less than what we see in the union group. He said that this is an interesting point that he would circle back to at the end. He then moved on to typical intensity. He said that as was presented in prior updates, they can easily see an association between physical workload with severe pain prevalence when comparing within each group for medium versus high in both union and non-union groups. He said that if they compare the medium typical intensity groups between union and non-union, they can see that unions have about three-fold odds of severe pain prevalence whereas non-union workers have almost six-fold - almost double the odds of severe pain prevalence; a similar increase can be seen in the high typical intensity group between union versus non-union. He said, lastly, moving on to workload index they can see larger differences across union and non-union

groups, with union workers and the medium workload group having only almost two-fold odds, 1.67, compared to nearly nine-fold odds in non-union workers. He said that in the high workload group, one can see four-fold odds in union workers compared to almost 13-fold odds in non-union. He said that with both typical intensity and workload index, the associations between union and non-union are kind of the opposite of what they saw with peak intensity - where with peak intensity, they saw that union workers had higher odds for severe pain prevalence. This was the opposite in typical workload intensity. Mr. Ru said that this highlights that frequency and duration matters - because peak intensity is only looking at the task with the highest intensity across all these 16 tasks and just looking at the task with the highest intensity - whereas typical intensity incorporates the frequency of that task, and workload index incorporates all three with the inclusion of duration.

Mr. Ru said that the next table in his presentation looks at mental health outcomes of anxiety and depression, and with peak intensity and typical intensity, they can see higher odds of anxiety and depression in union workers, which was kind of the opposite of the associations seen with the physical health outcome. He said that when they incorporate duration with the workload index, they can see that there are much more similar odds between both groups. For example, with high workload index in union and non-union workers, both have similar two-fold odds of depression or anxiety, compared to the low (odds) of the workload reference group (which was not shown in his presentation table).

Mr. Ru concluded that the results show that both union and non-union workers have increased odds of adverse health outcomes. They found negative health outcomes in janitors in 2022. For union versus non-union associations on severe pain prevalence, non-union janitors were found to have increased odds compared to union janitors, while for depression and anxiety there was a high prevalence of these conditions for all janitors, although union janitors were associated with marginally increased odds compared to non-union workers.

Mr. Ru said that he is confident that many of the Commissioners are familiar with union studies. He said that (union) status has shown to result in differences in health outcomes across many different occupations and throughout different industries, but limited studies have been conducted on association among janitors. He said that this study has shown that these associations are worth further exploration and understanding to help address and reduce occupational health disparities among janitors in California.

Mr. Ru concluded his remarks and acknowledged and thanked the Commission for supporting this project, the SEIU, the Maintenance Cooperation Trust Fund (MCTF) as well as the UC Ergonomics Research Lab which is supported by a NIOSH training grant.

Acting Chair Brady thanked Dr. Harris and Mr. Ru for their presentation.

### **Commissioner Questions and Comments**

Commissioner Steiger commended the presenters' work and the research and said that it was fascinating material. He said that he thought it was exactly the kind of issue that they should be researching and learning about at CHSWC. He said that they now need to figure out where to go from here. He said that it was obviously not a big surprise that the more overworked one is, the more

that negative health outcomes spike. He mused, “So what do we do?” He said that that is the next step, but that it was very good and very helpful to have such a science-based confirmation of the argument that we now know is the case. He added that they will have to figure out how they go about helping those workers, but that it is good to know that science backs up what pretty much every worker could tell you, but it is great to have that. He thanked the presenters for doing all that work.

Acting Chair Brady asked if there was any baseline physicality on the participants, as in a sort of a pre-check so that the more deconditioned someone is, obviously, the more they would have some of the physicality - maybe even some of the anxiety types already present, and asked if there was a pre-health screening.

Dr. Harris said that there was no screening, as it was a cross-sectional study with associations. She said that they did not necessarily evaluate prior history of anxiety and depression, which maybe would have been very helpful, although a lot of these workers have worked as janitors for a very long time. She said that she believes it would have been challenging to get a baseline, even retrospectively.

Acting Chair Brady thanked the presenters again and offered a special shout-out to Mr. Ru for being “a rising star.”

## **VII. Executive Officer Report** **Eduardo Enz, CHSWC**

Executive Officer Eduardo Enz briefed the Commissioners on Commission staff activities. He acknowledged the speakers for their excellent presentations. On behalf of CHSWC staff, he recognized Commissioners Sean McNally and Doug Bloch for their many years of principled and dedicated service at the Commission. Both made significant contributions to both CHSWC and the entire state of California and will be sorely missed.

Mr. Enz said since the Commission met in September 2023, CHSWC Staff were busy fulfilling Commission requests and closely monitoring and working on several projects and studies.

California Governor Newsom recently signed Senate Bill (SB) 623 for workers’ compensation: post-traumatic stress disorder (PTSD). (ca.gov) which requires that CHSWC complete two related reports on PTSD. The first report will analyze injury claims, from January 1, 2020, to December 31, 2023, filed for PTSD by public safety dispatchers and telecommunicators and emergency response communication employees; it is due to the Legislature on January 1, 2025. The second report will analyze the effectiveness of the PTSD presumption and will review data from PTSD injury claims from 1/1/20- 12/31/25 and is due to the legislature by 1/1/27. CHSWC staff will be drafting RFPs for these studies and upon approval by DIR Contracts the RFPs will be forwarded to the CHSWC Commissioners and posted on the Cal eProcure website for 30 days for feedback and comments. Any feedback will then be incorporated into the RFPs and the revised version of the RFPs will come back to CHSWC for final approval before being put out to bid.

The redo of the CHSWC study “Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles” is also in process.

CHSWC finalized a draft Request for Information (RFI) that includes an extended timeline to facilitate equal access, ensure worker participation, and adhere to scientific standards and communicating findings. Mr. Enz advised that the draft RFI for the Fire Mechanics Cancer study has been reviewed and approved by DIR Contracts and was posted yesterday, December 7th on Cal eProcure for feedback and comment. He has forwarded the draft RFP to all CHSWC Commissioners on December 6 for their review and feedback and per DIR Contracts, feedback and comments are due by Tuesday, January 10th.

The CHSWC study “Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors” by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, San Francisco, and Davis campuses, is still in process. As stated at the last meeting, due to unforeseen issues with attaining access to venues required to conduct the research, this project has experienced significant delays, and they anticipate a final report and project completion by June 30, 2024.

Mr. Enz advised the Commissioners that CHSWC Staff had completed the draft 2023 CHSWC Annual report as well as the WOSHTEP Advisory Board Annual report for review and public comment. He thanked CHSWC staff for the outstanding work done each year in putting together these annual reports.

CHSWC staff participated in the following activity since our last meeting. Staff attended the California Partnership for Young Worker Health and Safety held on October 5th, 2023. The meeting focused on Young Worker project updates, including a review of young worker outreach efforts, current issues in Child Labor Laws, promoting Safe Jobs for Youth month in May, and updates on working with small businesses and on the recent passage of Assembly Bill 800, an initiative that equipped high school students with the knowledge to safeguard their workplace rights and defend against potential abuses. There was also a spotlight presentation on the Los Angeles Black Worker Center, a partner organization that works to increase access to quality jobs, reduce employment discrimination, and improve industries that employ Black workers through action and unionization.

Additionally, the 2024 Young Worker Leadership Academy (YWLA) will be held in person between February 15 to 17 at University of California, Berkeley. The Academy provides a leadership development opportunity for teams of high school students, with their adult sponsors, from different communities statewide to focus on young workers’ health and safety. Youth work in teams during and after the YWLA to create a community project to promote safe jobs for youth in May 2024. Youth join a statewide youth network on young worker rights, health, and safety.

CHSWC was also planning to hold the next WOSHTEP Advisory Board meeting as well as the SASH Advisory Committee meeting in the first quarter of 2024. The WOSHTEP Advisory Board meeting has been scheduled for January 24th and they anticipate holding the SASH Advisory Committee meeting sometime in March. These advisory meetings provide an opportunity to share program updates with board members as well as elicit their guidance on new directions for each program.

## **Action Items**

There are two action items for your consideration today.

1) Does the Commission wish to approve for posting for 30 days for feedback and comment, the DRAFT 2023 CHSWC Annual Report and CHSWC Commissioner Comments on the RAND Report on First Responder PTSD? Commissioner Subers made the motion to approve. Commissioner Roxborough seconded the motion. All approved. None opposed.

2) Does the Commission wish to approve for posting for 30 days for feedback and comment, the DRAFT 2023 WOSHTEP Advisory Board Annual Report? Commissioner Bloch made the motion to approve. Commissioner Kessler seconded the motion. All approved. None opposed.

## **VII. Other Business / Proposals/Public Questions and Comments**

Acting Chair Brady thanked Commissioner Bloch for his many years of service. He appreciated his insight and knowledge and his willingness to share with all the Commissioners. He wished him well on behalf of the entire Commission and he was going to continue to do great things.

Commissioner Subers said she appreciated the update on the status of the two studies that were required under Senate Bill 623. She said there were some delays that were out of their control. She asked about the new Request for Proposal (RFP) for the study: “Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles”. She asked about the timelines under SB 623, and one of them was accelerated. Commissioner Subers said that they needed to meet these deadlines given by the Legislature. She asked whether the next RFPs will be processed faster or will they wait for months for those processes that were important for many stakeholders. Mr. Enz replied his intention was to move quickly. Previously, there were difficulties moving forward because it was a new process. However, it should be faster. At the same time, given the timeline, there were several months for review followed by additional months for processing a contract. It was a long process, regardless, to go through an RFP, so an option would be to go through an inter-agency agreement to speed things up. Another option, at least for that first study, would be to see where they were in the next couple of months and then move forward with addressing or communicating to the State of California Legislature that it may take a few more months than they had anticipated; that was their only concern at this point. Given the process, they may not be able to meet that January 1st, 2025, deadline.

Commissioner Subers said she would like to discuss options. That was because the study had a faster timeline and did not ask for a detailed analysis. It was asking for specific claims data, which should be easy to access in theory. Mr. Enz agreed. Commissioner Subers said it was asking for frequency of claims, acceptance and denial, and the numbers are the numbers. So, she did understand that on the second study with the two- or three-year timeline, it asked for more analysis. She said it was important to meet these timelines and how the Commission can be helpful, just let them know. They were going for expedited reports. Commissioner Kessler responded to Commissioner Subers because her concern about the RFP process was it had not allowed for input from the Commission, so the study reflected the concerns that were raised by a legislator. Health and safety organizations like the Labor Occupational Health Program at UC Berkeley or Worksafe

cannot move quickly because of the internal machinations they have to go through and they there were two institutions that took a long time, and they want those researchers to be able to do the studies and analysis because their initiative is about delving into injuries or what caused injuries or dealt with the impact for workers. It was a tough balancing act to figure out both what could be efficient and expeditious, but at the same time get the depth and the understanding that the studies really should be providing to those on the Commission, especially since a great deal of money was spent in trying to get studies done appropriately and accurately. So she was concerned because of past challenges, especially for the “Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles” study, which did not go well, was not well done and there needed to be a conversation about how to do these RFI or RFP’s to capture the information and allow an institution with the skill-set to be able to do the analysis that they were looking for. She was not being critical of what Commissioner Subers raised. Commissioner Kessler said other things that have happened over the years that she was concerned about. She appreciated the Commissioners voting to allow her comments to be added to the PTSD study because there were significant problems since CHSWC paid a quarter of a million dollars to the Rand Corporation and they interviewed only 13 workers. So CHSWC must be thoughtful in the future. Commissioner Kessler added she will miss Commissioner Bloch.

Commissioner Steiger said he wanted to discuss the issue of the stakeholder presentation. The WCRI presentation was fantastic, and he had nothing but respect for WCRI. They were on the advisory committee and have always found their research to be very helpful and very well done. The intent, at least as he saw it, of the stakeholder presentation, was to go in a slightly different direction and hear from injured workers. At these meetings we have heard from very qualified experts, giving very helpful data on the overall state of different parts of the workers’ compensation system and even heard from researchers who talked to injured workers or workers facing hazards. It was in line with what CHSWC was there to do. But he wanted to add one more detailed step and the goal of CHSWC was to look at worker safety and health and help to prevent injuries. On the other side they were looking at the workers’ compensation system, to see how it dealt with injured workers. The fundamental goal was to reduce worker suffering related to unsafe workplaces and sometimes injuries and illnesses that happen at work. What was easy to get lost in all this data were human beings who were suffering horribly and that often they were suffering more than they would if they could improve the system, both in terms of preventing injuries and dealing with them after they happen. He thought it was an important part of making good decisions about how to ultimately reform the system to get more detail about what workers were going through, how badly they were injured and why, where the system failing them, where the exact points were where these greatest problems are coming up, and what could they do.

Commissioner Steiger said Commissioner McNally had mentioned that he would also like to hear from employers and there were employers who were struggling with the system and CHSWC accepted that amendment to the motion. They would alternate between an injured worker at one meeting and then at the next one there would be an employer to give their perspective on the system where workers were often struggling due to a weakness in the system or what the employer was doing. It was not always the employer. Sometimes it was an insurance company. Sometimes it was a third-party administrator (TPA). He wanted to hear about all of it. It would make sense in the future to focus as much as they could on going back to that. He knew Bagley-Keene made it somewhat difficult for them to coordinate things like this. Commissioner Steiger said he could recruit an injured worker for the first hearing of next year and hopefully get that on the agenda

because he thought it will be help them develop a more complete view of the system to hear from those individual workers and admittedly it was anecdotal but it was important to have that human face and experience there to present the other side of the data so it is not just the data they were looking at. They were looking at what was happening to workers to get a sense of it, but also to give them the motivation that they need to stay focused on reforming the system because hopefully that was the goal whether it was a significant reform or several small ones that they were going to make this work better for workers. They thought it was important to hear from those individual workers to learn more about how the system was not helping them the way that it should, how flaws in the system could be increasing their suffering. Having that individual work perspective would be helpful. Commissioner Steiger said he was happy to recruit that person for the next meeting if that was acceptable to the rest of the Commission.

Commissioner Brady said they might be able to do a tandem and have one injured worker and one employer at the same meeting. Commissioner Kessler added not to overbook the agenda to give adequate time to present their positions. Chair Brady said there was room for exploring all of this, and it was a good idea. Commissioner Steiger wanted the injured worker and employer at separate meetings. At one meeting have an injured worker and then at the next meeting a representative from the employer side of the Commission. From the perspective of a worker, even if it was not their employer, the worker may feel more comfortable knowing that it was not going to be a debate or cross-examination even if they could take steps to prevent that. Workers were more likely to be honest about their feelings about the system and how it may fail them. They could ask them questions and learn from them. And then at the next meeting, CHSWC could give the floor to the employer. But he was worried about having the two of them at the same time giving the same presentation. He was happy to debate that. Commissioner Subers agreed. Acting Chair Brady wanted to make the necessary changes as suggested. Mr. Enz asked Commissioner Steiger if he had someone in mind for this first meeting.

**Adjournment**

The meeting was adjourned at 1:07 pm.

**Approved:**

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Mitch Steiger, Chair

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Date

Respectfully submitted:

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Eduardo Enz, Executive Officer, CHSWC

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Date