

**Commission on Health and Safety and Workers' Compensation**

**MINUTES OF MEETING  
November 15, 2004  
San Francisco State Building  
San Francisco, California**

In Attendance:

Chair, Tom Rankin

Commissioners Allen Davenport, Alfonso Salazar, Kristen Schwenkmeyer, Robert B. Steinberg,  
Darrel "Shorty" Thacker, John C. Wilson

Executive Officer Christine Baker

Not in Attendance

Commissioner Leonard C. McLeod

**Call to Order / Minutes from the November 3, 2004, Meeting**

Chair Tom Rankin called the meeting to order at 10:00 a.m. and asked for a motion on the draft minutes of the November 3, 2004, CHSWC meeting.

*CHSWC Vote*

Commissioner Davenport moved to approve the minutes of the November 3, 2004, meeting, and Commissioner Thacker seconded. The motion passed unanimously.

**Executive Officer Report**

Christine Baker, Executive Officer

Ms. Baker reported on the activities of the Commission over the past several months. Ms. Baker stated that over the past two weeks, CHSWC, the Division of Workers' Compensation (DWC), the American Medical Association (AMA) and the California Medical Association (CMA) conducted a two-day AMA Guidelines course. Under this partnership, the course was given twice, once in northern California and once in southern California. A total of more than 1,000 participants, including DWC judges, raters and staff, attended.

Ms. Baker noted that the 2004 draft Annual Report was sent to the Commissioners with recommendations and new areas of research for their review and approval.

Ms. Baker proposed new areas for research. Certain members of the legislature, specifically Democratic Assembly Member Vargas and Republican Assembly Member Keene, urged CHSWC to evaluate return-to-work (RTW) efforts in California in light of the changes caused by current legislation. Based on this, Ms. Baker is requesting approval for a Request for Proposal (RFP) or a contract amendment, whichever is determined to be the most cost-effective, for the purpose of conducting a study on RTW. The study will lay the groundwork for further discussion of RTW.

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Commissioner Wilson asked if there is money in the budget for this research? Ms. Baker stated that money is in the budget for this research. Chair Rankin agreed that with all the changes in the current legislation, it is necessary to evaluate if these changes are working to get employees back to work.

*CHSWC Vote*

Commissioner Davenport moved to approve authorization for a study of the evaluation of the RTW system. Commissioner Wilson seconded, and the motion passed unanimously.

Ms. Baker stated that Assembly Member Vargas has requested that CHSWC examine the high accident rate of firefighters and police officers, as well as the disability retirement rates.

Chair Rankin responded that this is an opportunity to work on safety issues, as prevention is the best way to cut costs.

Commissioner Davenport noted that these are primarily self-insured public employers.

*CHSWC Vote*

Commissioner Salazar moved to approve authorization for a study of high accident and disability retirement rates for firefighters and police officers. Commissioner Schwenkmeyer seconded, and the motion passed unanimously.

Ms. Baker stated that the 2004 WOSHTEP Report has been finalized and the WOSHTEP Advisory Board has reviewed the report and approved it. The Commissioners reviewed this report several months ago as well.

*CHSWC Vote*

Commissioner Wilson moved to approve release of the 2004 WOSHTEP Report. Commissioner Thacker seconded, and the motion passed unanimously.

Ms. Baker noted that the upcoming year will provide many opportunities for forums and information dissemination, as well as an opportunity to monitor the reforms and identify areas for clean up.

Ms. Baker stated that CHSWC would be moving its offices the last week of November and first few days of December. This move will be cost effective and save on travel time for CHSWC staff.

Chair Rankin replied that the December 10<sup>th</sup> meeting may or may not be held pending further discussion.

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Ms. Baker then requested that the Commission approve the 2004 Annual Report.

Commissioner Wilson commented that he would like to commend the CHSWC staff for an outstanding job on the Annual Report. He suggested that attendance at the recent AMA Guidelines seminars was higher than stated in the Annual Report and that this should be revised.

Ms. Baker agreed to make the appropriate corrections to the Annual Report.

*CHSWC Vote*

Commissioner Wilson moved to approve the 2003-2004 Annual Report for submission to the Governor, the Legislature and the public. Commissioner Thacker seconded, and the motion passed unanimously.

**CHSWC Study by RAND Evaluating Medical Treatment Guidelines Set for Injured Workers in California**

Teryl Nuckols-Scott, M.D, M.S.H.S., RAND

Dr. Nuckols-Scott made a presentation on the CHSWC study by RAND of the medical treatment guidelines. After presenting the background, purpose and approach of the study, Dr. Nuckols-Scott summarized the findings, including the following points. All five guidelines need substantial improvement; however, of these five guidelines, the clinical panel preferred the ACOEM guidelines. RAND's recommendations in the short-term are not to switch guideline sets and to use the ACOEM guidelines plus the American Association of Orthopedic Surgeons (AAOS) guidelines for spinal surgical topics. RAND found no clear research on answers for non-surgical topics. RAND therefore recommends that the state issue regulations to clarify the topics for which the ACOEM guidelines should apply and to facilitate implementation. Dr. Nuckols-Scott also reviewed intermediate- and long-term recommendations based on RAND's findings.

**CHSWC Recommendations to DWC Administrative Director (AD) Regarding Workers' Compensation Medical Treatment Guidelines**

Christine Baker, Executive Officer

Lachlan Taylor, CHSWC Staff Judge

Ms. Baker stated that CHSWC has developed a set of recommendations to the AD based on RAND's study. Ms. Baker noted that there is a need to determine how gaps would be filled in the interim utilization schedule prior to finalization. Ms. Baker then introduced Judge Lachlan Taylor to present these recommendations to the Commissioners.

Judge Taylor presented the CHSWC recommended course of action consisting of four steps:

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1. Present CHSWC/RAND Report to AD

The Commission on Health and Safety and Workers' Compensation submits the CHSWC study by RAND report on medical treatment guidelines for the AD's consideration.

2. Recommend Consideration of RAND Findings in the Adoption of Medical Treatment Utilization Schedule

- CHSWC recommends that the AD consider adopting an interim utilization schedule based on the ACOEM guidelines, replaced with respect to spinal surgery by the AAOS guidelines.
- CHSWC recommends that the AD consider adopting interim guidelines for specified therapies, including podiatry, chiropractic, physical therapy, occupational therapy, acupuncture, and biofeedback, consisting of a prior authorization process in which the indications for treatment and the expected progress shall be documented, and documentation of actual functional progress shall be required at specified intervals as a condition of continued authorization for the specified modalities.
- CHSWC recommends that the AD consider incorporating into the utilization schedule a process to be followed in determining appropriate treatment for conditions that are not addressed by the foregoing components of the schedule, so that at least minimum decision-making criteria will be applicable even to conditions that are not subject to any other components of the schedule.
- CHSWC recommends that, after the adoption of interim guidelines as described above, the AD consider adopting additional guidelines to supplement ACOEM guidelines on an ongoing basis as studies and evaluations of those additional guidelines are completed.

3. Recommend Establishing Ad Hoc Advisory Group

CHSWC recommends that the DWC and CHSWC jointly establish an ad hoc advisory group to receive expert advice and stakeholder input on the many questions that must be addressed in assembling a comprehensive set of guidelines.

4. Recommend Further Studies to be Conducted Jointly by DWC and CHSWC

- Evaluate additional guidelines for inclusion as supplements to the ACOEM guidelines.
- Assess the potential for developing a comprehensive set of guidelines or review criteria to identify overuse and underuse.
- Monitor and evaluate the performance of the medical treatment utilization schedule as valid and comprehensive clinical practice guidelines that address the frequency, duration,

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intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.

- Monitor the effect of the statutory caps on chiropractic, physical therapy, and occupational therapy visits and compare these caps to scientifically based, nationally recognized, peer-reviewed guidelines.
- Monitor and evaluate the implementation of the medical treatment utilization schedule in utilization review (UR) processes and practices, including denials of authorization, grants of deviations from the schedule, grants of exceptions to the caps on chiropractic, physical therapy, and occupational therapy visits, and effects upon case outcomes.
- Evaluate the validity and appropriateness of disability management guidelines addressing disability durations and return to work.

Chair Rankin stated that CHSWC developed an interim process because it does not make sense to leave only the ACOEM guidelines in place. He also stated that pain relief should be a part of the functional progress.

Commissioner Davenport asked Dr. Nuckols-Scott about RAND's inclusion of home health care on the list of additional topics. Dr. Nuckols-Scott replied that this was one of the stakeholder comments. Commissioner Davenport then asked Judge Taylor if CHSWC was looking into this. Judge Taylor replied that it was included in the third level of recommended guidelines.

Ms. Andrea Hoch, the AD of the DWC, stated that she would most likely not meet the December 1, 2004, deadline to adopt medical treatment guidelines. She commented that she strongly felt that she, her staff, the public, and the workers' compensation community should have time to review and digest the research and recommendations. Ms. Hoch stated that she is setting up an advisory group in December to hear public comments. She noted that the ACOEM guidelines are in place as interim guidelines, and she would not sacrifice public comment, which she needs in order to make an informed decision.

Chair Rankin stated that it is unacceptable to deny treatment based on the ACOEM guidelines when the ACOEM guidelines do not address a particular topic. He further commented that if the AD will not be adopting new guidelines by December, then there is a need to inform the workers' compensation community that treatment may not be arbitrarily denied while the ACOEM guidelines are used on an interim basis.

Ms. Hoch agreed. She stated that a similar concern had been voiced by other members of the workers' compensation community. She also stated that a monthly newsletter is produced by ACOEM to explain the guidelines and that utilization review regulations will be adopted by the end of the year.

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**Public Comment**

Elizabeth McNeil from the CMA stated that the CMA is pleased with the results of the RAND Report and that the report provided independent validity to what physicians have been saying about the guidelines. She stated that the CMA opposes the use of McKesson and other proprietary guidelines.

Ms. McNeil further stated that the CMA supports the ACOEM guidelines and urges the Commission to adopt national specialty society guidelines to complement the ACOEM guidelines. Ms. McNeil pointed out that the ACOEM guidelines restrict narcotics in cases of pain management. She also stated that she has concerns that the ACOEM guidelines do not address surgery topics and are not inconsistent with state guidelines. She recommended that the ACOEM guidelines be adjusted to meet state statutes.

Ms. McNeil commented that there are gaps in the guidelines but that the state must leave room for the expert opinion of the treating physician. She stated that treating physicians object to prior authorizations, but the CMA would wait to see how the guidelines are structured to prevent abuse. Ms. McNeil added that for many treatments physicians recommend, there are no guidelines. She stated that the CMA would be submitting suggested language that would allow physicians to proscribe a conscientious course of treatment.

Ms. McNeil noted that the CMA has found gaps in the guidelines where there is no evidence-based literature, even though the statute states that the guidelines must be evidence-based. Ms. McNeil also stated that the CMA feels that decision-making should follow a hierarchy when evidence does not exist.

Ms. McNeil also commented that there is enormous abuse with the utilization review process and the use of the ACOEM guidelines. She stated that the CMA believes that utilization review needs to be guided by training and regulation and that physician reviewers, strong criteria and timelines need to be implemented.

Ms. McNeil concluded by stating that the CMA supports the general course of action and that adoption of the guidelines is on the right track.

Christopher Citko of the Department of Insurance (DOI) stated that the ACOEM guidelines were one of the DOI's recommendations. Mr. Citko urged that the Commission adopt the guidelines as a whole, including recommended and optional treatments.

Dr. Benjamin Yang, a member of the former Independent Medical Council (IMC) and the Council of Colleges of Acupuncture and Oriental Medication (CCAOM) and a specialist in complementary medicine, stated that the ACOEM guidelines are narrow-minded and considered to have little scientific evidence for acupuncture. Dr. Yang further stated that the ACOEM guidelines deny freedom of choice for patients for acupuncture treatments. Dr. Yang requests that CHSWC provide an opportunity for amendments or attachments, particularly to make a recommendation to include acupuncture in the guidelines.

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Chair Rankin pointed out that CHSWC's recommendations to the AD include such language. Chair Rankin asked Dr. Yang if that would work on an interim basis for acupuncture. Dr. Yang responded that the treatment itself should be the guideline.

Dr. Robert Larsen of the California Psychiatric Association and the University of California San Francisco (UCSF) stated that he recommends that CHSWC consider using specialty society guidelines where the ACOEM guidelines are weak. Dr. Larsen stated that the ACOEM guidelines do not cover stress illness. The American Psychiatric Association recommends treatment for recognized clinical syndromes and has developed over a dozen guidelines indicating interventions and medications for psychiatric injuries. He recommended that CHSWC consider guidelines for major forms of mental illness that would cover most industrial psychiatric injuries.

Richard Esquivel from the Foundation for Acupuncture Research (FAR) stated that the Foundation agrees that treatment should be allowed to continue only when the patient shows functional improvement. Mr. Esquivel stated that he is concerned that currently under the ACOEM guidelines, patients are not being given initial treatment. He stated that FAR has developed the most extensive set of evidence-based guidelines for acupuncture. He also commented that there is not enough scientific evidence in the ACOEM guidelines to support use of acupuncture for neck and back injury. He raised the question of what assurances patients would have that they will have access to acupuncture under the current ACOEM guidelines. He commented that insurance carriers are currently denying requests for acupuncture.

Chair Rankin responded that the Commission is recommending that an advisory group be established to adopt guidelines in the areas that need guidelines. He stated that it is his understanding that the AD does not approve that some of the carriers and self-insureds are denying treatment.

Mr. Esquivel asked the question of how a patient first gets to an acupuncturist when every request for acupuncture is being denied categorically.

Chair Rankin stated that CHSWC's recommendation would address this with an advisory group being set up to adopt more specific guidelines where they are needed.

Ted Priebe from the Council of Acupuncture and the Oriental Medical Associations (CAOMA) stated that acupuncture has been utilized in the system for the past 20 years and that it has not been a cost-driver. He also commented that acupuncture currently is underused because access has been denied. Mr. Priebe stated that the CAOMA has submitted guidelines for the use of acupuncture that are evidence-based, nationally recognized, and endorsed by medical specialties. Mr. Priebe and the CAOMA believe that these are the most comprehensive guidelines, and he requested that CHSWC recommend them to the AD for inclusion. He also stated that he would like to work with the AD's advisory group because acupuncturists have not been included in the committees developing the guidelines.

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Naheeda Shefa stated that following a work injury in December 2002, her sister, Razia Shefa, had physical therapy as well as medication that did not work and presented side effects. She then had acupuncture treatment that was successful and allowed her to return to work. After her return, there were lay-offs and her workload increased and she was re-injured. After this re-injury, she was denied acupuncture based on the ACOEM guidelines, and she is now disabled and cannot return to work.

Chair Rankin asked for the name of the insurance carrier. Ms Shefa responded that it is the State Compensation Insurance Fund (SCIF).

Dr. Robert Roth from McKesson requested that CHSWC consider McKesson guidelines in addition to ACOEM guidelines. He noted that the McKesson guidelines were rated superior in technical quality and equivalent to the ACOEM guidelines in surgery according to the RAND report. He further noted that the McKesson guidelines did poorly in the clinical panel where physicians did not like anything perceived as proscriptive. Dr. Roth stated that McKesson's guidelines are evidence-based and if there is no evidence, there is no recommendation for or against the treatment and it must be elevated to second-level review for medical judgment. Dr. Roth stated that he takes issue with CMA's position as he is the principal physician for McKesson and cost is not the driver. McKesson utilizes California physicians and consultants and recommends efficient care and not just low cost. He recommends that CHSWC consider the McKesson guidelines in the areas that the ACOEM guidelines do not cover.

Dana Frieson, an injured worker, stated that she was employed for 25 years with AC Transit as a bus driver. She stated she was injured in 2000 and received acupuncture treatments that were very helpful. She commented that the acupuncture treatments have been cut off and she is now on medication. She noted that the side effects from the medication make it impossible for her to drive and do her job. She stated that nothing alleviates the pain except acupuncture.

Chair Rankin asked the name of the insurance carrier. Ms. Frieson responded that her employer is self-insured and Gates McDonald is the third-party administrator.

Stuart Katzman, a physical therapist from the California Physical Therapy Association, noted that RAND rated the ACOEM guidelines as valid in only one out of six physical modalities and encouraged greater participation of physical modality providers in the development of guidelines. Mr. Katzman also encouraged more specific criteria for cases not covered by ACOEM or with multiple diagnoses, adding that injured workers usually have several diagnoses. He stated that he is looking to the AD to assure that utilization review regulations are strictly enforced, including the timelines for decision. He also stated that early intervention is important, especially for the outcome of post-operative physical therapy. He then commented that delays in authorization for post-operative treatment could have a very negative effect on recovery from injury.

Chair Rankin asked if the proposed recommendations would work as an interim measure. Mr. Katzman replied in the affirmative.

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Dr. John Holland from ACOEM stated that ACOEM is committed to evidence-based medicine and that evidence-based medicine can result in optimal clinical outcomes and functional recovery, as well as the most cost-effective solutions. He stated that he wrote a letter to the AD on September 28, 2004, commenting that guidelines had not been developed for utilization review but recognizing that a utilization review tool extracted from the guidelines would be consistent with best practices. Dr. Holland stated that ACOEM is in the process of developing such a tool to clarify how the ACOEM guidelines can be implemented. Dr. Holland further stated that the software for this tool would be open architecture, so other guidelines or rules could be integrated.

Dr. Holland quoted from Dr. David Sackett that medical diagnosis should not be a "cookbook" approach, but should inform and not replace physician judgment.

Commissioner Davenport asked Dr. Holland what he thought of the recommendations. Dr. Holland replied that it was not appropriate for him to respond.

Commissioner Steinberg then asked what ACOEM is working on as a utilization review tool. Dr. Holland replied that the tool is in development and is geared toward diagnostic and procedure codes, as well as areas where ACOEM addresses these issues in order to foster communication. The tool, however, will not answer all questions where there is no guidance.

Kent Kerns, an injured worker and driver for the San Francisco Chronicle, stated that he had a back injury in April 2004 and returned to work with light duty. He further stated that when he tried full duty, he had a new injury to his neck and shoulders. Mr. Kerns stated that his insurance company has denied MRIs and acupuncture. He would like treatment so that he can go back to work, but the insurance company has been saying no to just about everything.

Chair Rankin asked the name of the insurance carrier. Mr. Kerns responded that it is Travelers.

Dr. Jeffrey Coe, an orthopedic surgeon representing the California Orthopedic Association (COA) and a member of the clinical panel that RAND selected to review the ACOEM guidelines stated that he found the surgery section inadequate. He urged the CHSWC to consider the AAOS guidelines for the care of spinal disorder, even though these guidelines have not been updated. He stated that the benefit of doubt should be given to the injured worker/patient and the treating physician.

Dr. Coe commented that since the ACOEM guidelines have been adopted, the committee felt that the guidelines do not apply after 45 days, at which point the patient should be referred to a specialist. He also commented that the guidelines do not cover complexities of continuing care. He stated that he supports inclusion of recommendations but urges consideration of North American Spine Society (NASS) guidelines because they include neurology and other specialties beyond orthopedics.

Dr. Nuckols-Scott stated that the RAND study only looked at comprehensive guideline sets so a spine-only guideline was not evaluated. Dr. Nuckols-Scott stated that RAND had heard that the NASS guidelines were good for this topic.

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Dr. Eric Grigsby, a pain management specialist, stated that he helped develop the American Society for Anesthesiologists guidelines for chronic pain management. He stated that since January 2004, there has been a big problem with treatment based on use of the ACOEM guidelines. The guidelines are being used as a ceiling to limit or deny treatment. He said it seemed as if there were almost a sense of retribution toward injured workers and that it was an unhealthy and cynical situation to limit or deny treatment.

Dr. Grigsby also stated that the ACOEM guidelines were developed for sub acute and acute cases, even though no chronic pain patients are in that situation, but not for cases beyond three months after the time of injury. He said that long-term care with potent medicines like morphine is agreed to be inappropriate for acute and sub acute care. He added, however, that use of potent medicines like morphine is supported in selected long-term cases. Dr. Grigsby also stated that psychiatric cases with significant complications of depression and suicidal ideation are being denied psychiatric evaluations because the ACOEM guidelines do not address psychiatric evaluation for the treatment of back pain.

William Fehrenbach from Medtronic, Inc., showed two devices, a pain pacemaker or morphine pump and a neurostimulator, which are used to treat pain by interrupting pain signals and to implanting medication at 1/300<sup>th</sup> the level of the drug that is given orally. Mr. Fehrenbach stated that the proposed guidelines process is promising, but that law requires that the doctor making the denial be in the appropriate specialty, even though that is not happening. Mr. Fehrenbach stated that these devices are being denied today under the ACOEM guidelines. He urged CHSWC to recommend a standard set of body part-specific guidelines.

Mieng Lien, an injured worker who works for Safeway, stated that when she was first injured in 2000, she had acupuncture treatments that were helpful, so that she was able to work on modified duty for 90 days post injury. She stated that following modified duty, she could not return to work, but eventually, she was able to return to work only after acupuncture treatments. She stated she has had a recent re-injury and has been denied acupuncture.

Chair Rankin stated that he is not asking who the insurance carrier is because he is aware that Safeway is self-insured.

Shasta Tayan, an acupuncturist, stated that when she injured her elbow, she used only acupuncture and had a full recovery. Ms. Tayan also gave an example of a patient who is a police officer who, with acupuncture, was able to reduce medications and increase running. She stated that since the law has passed, another client of hers has been denied acupuncture treatment. She urged CHSWC to include acupuncture guidelines. She stated that the acupuncture guidelines that have been submitted would give workers a chance to get well.

Richard Bookwalter, with the Occupational Therapy Association of California, stated that 80 percent of hand therapists treating hand cases are occupational therapists. Mr. Bookwalter stated that the ACOEM guidelines are inadequate in the area of occupational therapy but that interim guidelines could assist occupational therapy clients. He added that some sort of instruction to carriers is important and specialists in the medical fields that the ACOEM guidelines do not

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cover should be included. Mr. Bookwalter stated that he supports CHSWC's recommendation to develop additional guidelines and to examine the effects of statutory caps. He noted that workers need more occupational therapy treatments than the 24-visit cap.

Dr. Eduardo Lin, with the CSPMR, stated that he is not an acupuncturist but he recommends patients for acupuncture treatment. Dr. Lin also stated that acupuncture is the single most studied modality and that the World Health Organization (WHO) and the National Institute of Health (NIH) have made specific acupuncture recommendations. He urged CHSWC to look at the WHO guidelines and to adopt acupuncture guidelines.

Dr. Don Schinske, with the Western Occupational and Environmental Medical Association, which is the state chapter of ACOEM, the California Academy of Family Physicians, and Osteopathic Physicians and Surgeons of California, stated that he supports and endorses the broad outline of the CHSWC recommendations. Dr. Schinske stated that many osteopathic physicians use a technique of manipulative therapy that they would like recognized in the guidelines. He stated that he supports the recommendation of the CMA to convene an advisory group to address the gaps in the guidelines and urged the AD to consider the Official Disability Guidelines (ODG) evaluated by RAND.

Mark Gerlach, with the California Applicants Attorneys Association (CAAA), strongly urged CHSWC to adopt specialty guidelines that would not be a problem for reviewers. Mr. Gerlach stated that the best of the guidelines are not complete. Mr. Gerlach noted that stakeholders from group health have said that adopting multiple guidelines is not a problem. He stated that specialty guidelines need to be adopted to supplement the ACOEM guidelines. Mr. Gerlach supported the need to recognize pain in making treatment decisions and strongly supported Chair Rankin's emphasis on looking at pain-specific language. Mr. Gerlach stated that the Health and Safety Code requires that pain be addressed and treated as does the Physicians' Code of Conduct. Mr. Gerlach noted that people who are in pain are not getting appropriate treatment even though pain is considered a fifth vital sign.

Mr. Gerlach specifically objected to one of CHSWC's recommendations found on page 5, in the last paragraph. His concern is that the recommendation indicating hierarchy of decision-making sounds like it is setting a presumption of correctness.

Carl Brakensick, with the California Society for Industrial Medicine and Surgery (CSIMS) and CSPMR supports the recommendation from the CMA that every guideline be evidence-based. Mr. Brakensick urged CHSWC to recommend only the parts of the ACOEM guidelines that are evidence-based, as the statute requires. He urged RAND to determine which parts of the ACOEM guidelines are scientific-based and which are consensus-based in order to be in compliance with the statute.

Chair Rankin asked Dr. Nuckols-Scott to respond and to differentiate the parts of the ACOEM guidelines that are scientific and those that are not.

Dr. Nuckols-Scott responded that it is true that all guidelines bring in lower-quality evidence where scientific evidence is not available. She stated that the panelists made a subjective

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judgment that the ACOEM guidelines were not completely evidence-based, but they were valid. She also commented that expert opinion is a form of evidence even though it is on the lowest level of the hierarchy of decision making.

Kristine Shultz with the California Chiropractic Association stated that she was pleased that RAND identified important issues. She urged the Commission to include practicing doctors of chiropractic in the ad hoc committees, especially because the medical community does not always understand chiropractic practice.

Paul Reller, with the Acupuncture and Integrated Medicine Society, applauded the intentions of the ACOEM guidelines, but stated that it was not intended as a legal guide. He noted that the ACOEM guidelines point to a multi-disciplinary approach with early physical interventions. Complementary medicine also takes a multi-disciplinary approach. Mr. Reller stated that although he is a licensed acupuncturist, he uses multiple holistic interventions besides needle acupuncture, as do a growing number of licensed acupuncturists. He stated that he is doing what the ACOEM guidelines recommend by encouraging patients' return to work, body mechanics, stretch and exercise and a minimal use of expensive pain medications. Mr. Reller stated that almost all acupuncture treatment has been denied by insurance carriers since the ACOEM guidelines have been adopted. He urged CHSWC and the AD to look at available evidence and to make a fair and impartial decision on the treatment guidelines in regard to traditional Chinese medicine.

Debra Harris, an injured worker, described herself as a victim of SB 228 and 899. She stated that she was injured in 1996 and had spinal fusion in 1997, with severe pain from head to tail bone. Ms. Harris commented that acupuncture had been helpful for her injury but that treatments have now been denied. She stated that she is a facilitator of a chronic pain group and asked the Commission to consider adopting acupuncture guidelines.

Chair Rankin asked for the name of the insurance carrier. Ms. Harris responded that it was RSKCo.

Steve Cattolica from CSIMS, CSPMR, and U.S. Healthworks, urged CHSWC to provide a transcript of the Commission meeting to the AD and public.

Ms. Baker stated that minutes of the meeting would be posted to CHSWC's website after approval by the Commission.

Chair Rankin responded to Mr. Gerlach's comment regarding CHSWC's recommendation indicating that a hierarchy of decision-making sounds like it is setting a presumption of correctness. Chair Rankin stated that it is CHSWC's intent to make sure that the treating physician backs up the treatment decision with evidence.

Judge Taylor stated that if there were no higher-quality evidence, they would rely on the physician's expert opinion.

Judge Taylor noted that podiatry would be added to the list of additional recommended therapies in CHSWC's proposed recommendations to the AD.

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Commissioner Steinberg asked what would be done about the presumption language.

Judge Taylor stated that there would be a mandated hierarchy of evidence to apply where there are no evidence-based guidelines.

Commissioner Steinberg asked where these issues would be resolved.

Judge Taylor responded they would be resolved in the dispute resolution process within the Workers' Compensation Appeals Board (WCAB).

Commissioner Steinberg asked if there is a recommendation that CHSWC could make.

Judge Taylor stated that CHSWC could study processes and identify what is not working.

*CHSWC Vote*

Commissioner Wilson moved to approve CHSWC recommendations to the DWC AD regarding workers' compensation medical treatment guidelines. Commissioner Thacker seconded, and the motion passed unanimously.

Chair Rankin stated that the Commission is not in a position to recommend additional guidelines at this time but wants to expedite the process for eliminating inappropriate denials.

Commissioner Davenport stated that some of the comments from injured workers' testimony indicate that workers' compensation insurance carriers and third-party administrators (TPAs) could be in violation of the law. Commissioner Davenport asked if there were anything that could be done about this.

Judge Taylor commented that the Commission could collect data to evaluate the practices of companies.

Chair Rankin stated that it would be helpful if there were documentation from workers' compensation insurance carriers to claims adjusters denying benefits. He noted that one would need substantial evidence to prove a violation of the law.

Judge Taylor responded that CHSWC could continue gathering this information.

Chair Rankin stated that there could be the possibility of legislative hearings on misuse of the ACOEM guidelines by insurance carriers who are denying claims.

Commissioner Wilson commented that the AD appears to be well aware of the problem and would have enforcement under her jurisdiction, probably through the Office of Benefit Assistance and Enforcement (OBAE) Unit.

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Commissioner Davenport asked if the AD would get a complete record of the comments made at this Commission meeting.

Ms. Baker responded that there would be a complete record.

*CHSWC Vote*

Commissioner Davenport moved to approve the report by RAND of the CHSWC study entitled Workers' Compensation Medical Treatment Guidelines to the DWC Administrative Director. Commissioner Thacker seconded, and the motion passed unanimously.

**Nomination of the 2005 Chair of the Commission**

Ms. Baker stated that the 2005 Chair would be from the employer side, as the position of Chair alternates annually between employer and labor representatives.

*CHSWC Vote*

Commissioner Salazar nominated John Wilson to be the 2005 Chair. He stated that Commissioner Wilson has had many years of experience and is committed to moving the Commission forward. Commissioner Thacker seconded, and the motion passed unanimously.

**Other Business**

Chair Rankin asked Ms. Baker to prepare an outline of a study that might be done regarding insurance brokers and fees, particularly in light of the recent scandal in the news. Chair Rankin noted that since premiums have jumped, insurance brokers are taking excessive commissions. He stated that insurance brokers are being investigated in New York. Ms. Baker responded that she would do so.

Ms. Baker also noted that CHSWC might need to augment a medical protocols study with additional funds. She then asked the Commission to authorize expenditure of additional funds for a study of medical protocols.

*CHSWC Vote*

Commissioner Davenport moved to approve additional funds for a study of medical protocols. Commissioner Schwenkmeyer seconded, and the motion passed unanimously.

**Adjournment**

The meeting was adjourned at 12:40 pm. The next CHSWC meeting is scheduled for December 10, 2004, in Oakland.

Approved:

Respectfully submitted,

\_\_\_\_\_  
Tom Rankin, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christine Baker, Executive Officer

\_\_\_\_\_  
Date