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

**MINUTES OF MEETING**
**December 15, 2017**
**Elihu M. Harris State Building**
**Oakland, California**

## In Attendance

2017 Chair Daniel Bagan, Commissioners Christy Bouma, Martin Brady, Mona Garfias, and Shelley Kessler

## Absent

Doug Bloch, Sean McNally, and Angie Wei

## At-a-Glance Summary of Voted Decisions from the CHSWC Meeting

| | |
|---|---|
| Approval of Minutes from Last Meeting | **Approved** |
| Nomination and Election of Angie Wei as 2018 Chair | **Approved** |
| Final Release and Posting of 2017 CHSWC Annual Report pending final edits and updates | **Approved** |
| Final Release and Posting of 2017 WOSHTEP Annual Report pending final edits and updates | **Approved** |
| Update the 2010 Firefighter Musculoskeletal Injuries Study | **Approved** |

## Approval of Minutes from the October 19, 2017, CHSWC Meeting

Chair Bagan:
Correction to the minutes on page 10 in the Summary section, a change from "IMR [Independent Medical Review] was eliminated" to "IMR was implemented."

Commissioner Kessler:
There are still issues about Qualified Medical Evaluators (QMEs) that I would like to understand better. Since they could not have a closed study session among the Commissioners, I wonder whether the staff could help them have an educational forum or help them understand the processes of QMEs? Perhaps a discussion or informational forum—less formal than a CHSWC meeting—to better understand some of the processes?

Chair Bagan:
Could we have a stakeholder meeting?

Director Baker:
DIR is looking at the data, the quality of the reports, the billings, and the aggregation of certain groups. DIR wants to see what the data tells it. I think it is premature until all the data are in.

Commissioner Kessler:
After the presentation of that data, if there are further questions, there should be a study session to understand the different factors.

Director Baker:
In order to have a stakeholder meeting, more data are needed.

*CHSWC Vote:*
Commissioner Brady moved to approve the minutes of the October 19, 2017, meeting, and Commissioner Bouma seconded. The motion passed unanimously.

## Election of Chair for 2018

Chair Bagan asked for nominations for the 2018 Chair. Commissioner Bouma nominated Angie Wei, and Commissioner Kessler seconded. The motion passed unanimously.

## DWC Update

*George Parisotto, AD (Administrative Director), Division of Workers' Compensation (DWC)*

### Provider Suspension Regulations

- Providers who have been convicted of fraudulent activities, abuse of the Medicare or MediCal systems, or have had their license to practice revoked are subject to suspension from the workers' compensation system. Once suspended, they cannot treat injured workers, or act as a QME, UR, or IMR physician.
- The suspension process has been started for 181 total physicians.
- 145 physicians, practitioners, or providers have been suspended under Labor Code (LC) section 139.21(a).
- 36 additional physicians, practitioners, or providers have been sent suspension notices; one of them has a pending appeal. Four providers have requested a hearing.

### Medical Treatment Utilization Schedule (MTUS) Update

- DWC has adopted 14 evidence-based ACOEM treatment guidelines.
- The new treatment guidelines are effective for all medical services rendered on or after December 1, 2017. They are used primarily by treating physicians, Utilization Review (UR) physician reviewers, and IMR physician reviewers. All treatments under the guidelines are presumed correct.

### Formulary

- The DWC MTUS Drug Formulary was approved by Office of Administrative Law (OAL) on December 7, to take effect January 1, 2018.

- The MTUS Drug Formulary has three essential parts:
  - The ACOEM Treatment Guidelines, which are the backbone of the formulary.
  - The MTUS Drug List, which guides prospective UR requirements and identifies special fill and perioperative drugs, which are not exempt but can be dispensed for a limited period if needed.
  - Ancillary formulary rules (compounding, physician-dispensed drugs, generic medications), over which more control and a more efficient system are needed.
- We have had MTUS and formulary webinars with over 1,000 attendees. We hope this leads to better medical outcomes for injured workers.

**SB 1160 provisions go into effect in January 2018.**

- Fast Pass. No prospective UR will be required for services that relate to an accepted body part or condition and are addressed by the MTUS.
- Accreditation of Utilization Review Organizations (UROs) by URAC Regulations are in the process of being drafted to clarify terms and procedures.
- Will include an updated physician reporting form that combines the request for authorization (RFA) form with the progress report.

**IMR**

- Application volume was steady in 2017: 20,000 per month, with 15,000 eligible.
- Decisions are issued on a timely basis; about 30 days from the date medical records are requested and 11 days from the receipt of records.
- Efforts by IMR to allow electronic submission of records, in addition to the Division of Workers' Compensation's (DWC's) efforts to penalize claims administrators, have helped achieve timely results.
- Pharmaceuticals make up 44% of IMR disputes in 2017; about 90% of UR decisions are still upheld.

**IBR (Independent Bill Review)**

- Applications have remained steady since 2014: about 2,000 per year.
- Applies to bills under a DWC fee schedule in which only the amount is disputed.
- In 2017, just below 50% of bills are overturned, mostly for physician services.

**Upcoming Regulations**

- Interpreters

- Home Health Care
- Benefit Notice
- Billing/Electronic Billing
- Review and update Medical Legal and Copy Service fee schedules

**Electronic Reporting**

- Electronic UR Reporting – DWC is now working with several Utilization Review Organizations to determine which data elements can and should be efficiently reported and in what manner.
- Doctor's First Report (DFR) will be submitted electronically directly from the physician. The groundwork for reporting is being determined by DWC and the DIR IT Unit.
- Electronic Adjudication Management System (EAMS) Upgrade should occur in 2018.

Mr. Parisotto thanked the DWC for closing the department during the fires.

***Comments by Commissioners***

Commissioner Bouma:
About the transition to the new schedule: what happens when a treating physician justifies the treatment based on the old treatment schedule that was in effect two weeks ago (as of this CHSWC meeting)?

Mr. Parisotto:
We advised stakeholders that on December 1, 2017, they should look at whether treatment requests align with the new schedule, and, if they do not, whether the documentation justifies going outside the guidelines. They will be looking at all the treatment requests under the new schedule.

Commissioner Bouma:
Is there any focus on claims education? Instead of having a claims administrator decline the request, is there an opportunity to comply with the new schedule?

Mr. Parisotto:
This is an evolving process. Only a physician can say no, and it cannot be denied by the adjuster, but if the physician says no, my hope is that they will look to the treating physician and ask whether he/she made the decision under the old guidelines, and the decision should be under the new guidelines. If it is not supported by the new guidelines, then we look at the search sequence to ensure that the treatment is supported for this injured worker and what is best for the injured worker.

Commissioner Bouma:
The URO companies should be made aware of responding appropriately. Are electronic submissions systemwide, and what is the status?

Mr. Parrisotto:
Any claims administrator (or anyone) can submit the documents electronically to Maximus. Maximus is also developing a pilot of a new portal system; it should make the process a little more seamless.

Commissioner Bouma:
Bill review is overturned 50% of the time. What is the reason for that? IMR has a 90% uphold rate for the treatment, but when it is time for the doctor to get paid, it is overturned half the time.

Mr. Parisotto:
I'm curious about this as well.

Commissioner Brady:
Since the IMR uphold rate is primarily due to pharmaceuticals, is there a teachable moment? When it is not overturned, are they making the changes in their recommendations? Is it being tracked, or is there a select number of physicians who are repeatedly submitting the same recommendations?

Mr. Parisotto:
It is more the latter than the former. I would like to continue the outreach and work with Maximus to offer webinars. If a physician makes a request, and it goes to IMR, this is what we will be looking at. The more we reach out to the treating physicians, and help them along with the process, the more reduced the administrative burden will be for physicians, to make the system as streamlined as possible, and to move to electronic records.

Commissioner Brady:
I also appreciate the extensively comprehensive report.

Commissioner Bouma:
Fire services and Emergency Medical Services (EMS) faced a similar situation in response to dealing with people who access the 911 system frequently and repeatedly. This excess affects the health-care system; similar inquiry is being made into who these people are and how to treat them differently for better health outcomes. There is an opportunity to reach out and have a teachable moment even if it is not solicited by the physician.

Mr. Parisotto:
I will look into it.

Commissioner Kessler:
A finite number of people are in the medical review system. Is there a tracking system for people

who have accessed the training to see who has been updating their skill set about the MTUS and who has participated to understand the new guidelines?

Mr. Parisotto:
There is no easy way to know who has learned the new guidelines; the only way is to do the outreach.

Commissioner Kessler:
How do you track who has completed the training?

Director Baker:
They have webinars, and many people are accessing it. Also, Maximus is following the guidelines, and Maximus will review them for IMR.

Commissioner Kessler:
If a covered incident results in resonant pain to a related body part, is that covered as well?

Mr. Parisotto:
If it is an approved condition covered by the MTUS guidelines, then pain is also covered.

Commissioner Kessler:
If the fee schedule decision is overturned, and the billing is found to be inappropriate, is there an appeal process?

Mr. Parisotto:
One can appeal an IBR decision, and it would go to a judge. As with IMR, there are specialists reviewing the decision, and it can be reversed and turned to IBR. People have a right to appeal it, and, with IBR, it is simplified. If a physician bills on a fee schedule, and a claim administrator decides to downcode it, then the physician can go to IBR and dispute the fee schedule. It is an underutilized program, and I hope it grows.

Commissioner Kessler:
It is important to help injured workers with their situations.

Commissioner Bagan:
I attended the drug formulary webinar, and it was well done. The webinar improved my understanding of how the formulary worked with the MTUS and gave me a better idea of the type of information available. For a $100 license fee, the ACOEM guidelines posted on the website become available.

Mr. Parisotto:
I acknowledge the contributions of Dr. Meister and his legal staff (including Jackie Schauer) to this webinar.

**Public Comments**

None

## Anti-Fraud Report Briefing

*Paige Levy, Chief Judge, DWC*
*Mi Kim, OD (Office of the Director) Legal, Acting Chief, Anti-Fraud Unit*

**Presentation by Judge Levy:**

In 2016, the legislature passed, and the Governor signed AB 1244 and SB 1160.

- These two bills included comprehensive anti-fraud legislation.
- AB 1244 included what is now LC section 139.21. Under that section, the AD has the power to suspend providers from the workers' compensation (WC) system.
  - Currently, after a determination is made that a provider is subject to suspension under LC section 139.21, the AD issues a notice of suspension to the provider.
  - That provider then has a right to appeal that notice and to be heard by a WC judge.
- The Special Adjudication Unit (SAU) handles those appeal hearings.
  - The SAU was created to handle litigation that resulted from the anti-fraud measures under SB 1160 and AB 1244.
  - Its primary work results from the changes in LC section 139.21.
  - To date, judges in that unit have handled approximately 21 suspension and appeal hearings.
  - These cases are assigned by the AD to the individual judges. These judges have volunteered to do this work in the SAU.
  - The judges hear from the moving party, the provider, and the AD, who is represented (at the Workers' Compensation Appeals Board [WCAB] in these hearings) primarily by the Office of the Director Legal Unit.
  - The judge then makes a recommendation to the AD through an opinion. It is then up to the AD to determine whether he wants to follow the judge's decision or decide otherwise. If the AD agrees that the provider should be suspended, the notice is issued, and the provider is ordered suspended from the WC system.
  - These appeal hearings are also governed by new AD regulations, Section 9788.1-9788.4.
  - After the provider is suspended, per 139.21 all judges are informed of the suspension. This information is also posted on the DIR website.
  - The SAU is headed by a new Presiding Judge (PJ), Bill Gunn, who is seated in the Van Nuys office.
  - Judges hear cases in all offices in the state, but mostly in southern California, which is the area of primary concern.
  - The SAU works throughout California.

  - The SAU recently brought on additional judges because of the influx of work in this area.
  - The SAU are dealing with tight time frames, as hearings must take place within 30 days after requests are received, and judges must issue their decisions within 10 days after submission of the case.
  - Appeals of a final order of the AD on suspension are made in Superior Court, not to the WCAB.
- After the AD suspends a provider, that provider's liens are subject to consolidation under LC 139.21 in what is called a special lien proceeding.
  - This applies only if the provider was suspended for certain reasons under LC section 139.21.
  - Under this procedure, the Office of the Chief Judge is given the list of liens by the special lien attorney from the Anti-Fraud Unit (AFU), which Mi Kim will discuss in the following section.
  - I then issue an order consolidating these liens. To date, I have issued nine (9) consolidation orders.
  - These consolidations can be quite large; some have ranged up to 7,000 liens in one consolidation.
  - The information and consolidation orders are also listed on the DIR website to assist the parties in finding the information, because there are so many cases involved.
  - Although these cases are heard in various offices, our SAU PJ oversees all this work.
  - The consolidation orders of these liens do not affect the rest of the case being heard, and the underlying case—exclusive of the consolidated lien—remains with the judge and office with jurisdiction.
  - From that point on, the assigned judge will hold a hearing and determine the best way to proceed, given the voluminous nature of a consolidated matter.
  - In this special lien proceeding under LC section 139.21, the lien claimant is required to rebut a presumption that all liens to be adjudicated in the Special Lien Proceeding, and all underlying bills, arise from the conduct that caused the provider to be suspended, and that payment is not due, because the bills and liens arise from that conduct.
  - The lien claimant does not have a right to payment unless the lien claimant rebuts that presumption.
  - After a judge makes that determination, the liens are dismissed if the presumption is not overcome or the liens return to their original adjudication status and are heard on the merits, by either the SAU or the office where the lien originated.
- These are the main and primary functions of the newly created SAU.
  - The unit was created earlier this year to handle this heavy workload, which takes an enormous amount of work by the judges.

  - It also helps take pressure off the offices to consolidate the matters and frees up judges to handle other work.
- To assist this unit with these requirements, certain EAMS upgrades have been necessary.
  - An SAU product page allows the consolidations to take place on a separate page and allows the SAU to do its work without affecting or interfering with the underlying case.
  - These EAMS upgrades allow more functionality in the system and will continue.
- Judges are being trained to spot fraud.
  - Trainings on fraud and new consolidation hearings were held in 2016 and continued to be held this year.
  - Judges have been advised that any suspected fraud is to be reported to the Chief Judge, in line with DWC policy and procedural manual guidelines. Training will be held in February for the SAU and the judges working on suspension appeal hearings and consolidation hearings.
- AB 1422 changes, which take effect January 1, 2018, clean up legislation in the fraud provisions of SB 1160 and AB 1244.
  - AB 1422 will amend LC section 139.21 to better define which liens are subject to the consolidation process after a doctor is suspended.
  - It now specifically defines what it means to be controlled by an individual.
  - Some confusion existed on these issues in the courts as to which provider liens could be consolidated after suspension, and this new bill should assist with that determination and clarification.
- Lastly, they expect regulations in the upcoming year to assist the SAU to do its work.

***Comments by Commissioners***

Commissioner Bouma:
About the interaction between injured workers and doctors: Knowing that they are subject to investigation, how is this working?

Judge Levy:
Generally, injured workers would not know, as the activity happens outside their case. Consolidation happens after the physician is already suspended. Injured workers would not know that the liens are being consolidated.

Commissioner Bouma:
Will injured workers know whether doctors are suspended? Is there any risk of being treated by (suspended) doctors?

Director Baker:
The names of suspended doctors are posted for the benefit of the public, and the attorney is informed.

Commissioner Kessler:
Not everyone has an attorney.

Director Baker:
They should probably internally think about out how to communicate that to injured workers.

Commissioner Brady:
Compliments for the consolidation efforts and the use of technology to improve efficiency and provide the process with more structure! With regard to suspensions, nothing moves faster than the human tongue (word of mouth), and within the medical community, the word will get out quickly and have a larger impact.

Chair Bagan:
I recall the stakeholder meetings on fraud, and I compliment the judge for seeing those efforts come to fruition.

Judge Levy:
A department-wide effort was made by all.

**Presentation by Mi Kim:**

- Before becoming the Acting Chief of the Anti-Fraud Unit, I spent five years defending the reforms that the Commissioners helped implement to dramatically change the WC system. I defended and worked with OD Legal attorneys on the constitutional challenges to SB 863, including the Angelotti case, which resulted in the elimination of a substantial amount of lien fraud and backlog in the system.

- I also represented the Director on behalf of the Uninsured Employers Benefits Trust Fund (UEBTF) and the Subsequent Injuries Benefits Trust Fund (SIBTF) claims at various boards, including lien appearances in Oxnard, Van Nuys, and Los Angeles. I include this background because I have personal experience with the profound changes that the Commissioners have introduced to the system.

- The Commissioners have enabled injured workers to quickly access quality medical care based on the best science-based evidence. They have saved employers and the State of California billions of dollars a year. They have eliminated fraudsters from the system and eliminated their lien abuse. I am honored to work with the Commissioners on this effort.

- The reforms in 2016 that Judge Levy and AD Parisotto described have resulted in lien stays totaling $2 billion–$3 billion, under LC section 4615. When a provider is charged with a fraud-related crime, all the lien claims of that provider and all entities that file liens on behalf of that provider's services, are designated and subject to an automatic stay. They stop being able to collect on those liens.

- About ramping up suspension efforts: 145 suspension orders were issued; another 80 are in the pipeline (according to AD Parisotto). We end the year with more than 200 providers eliminated from the WC system and all their liens consolidated. Over the past three months, our efforts

have resulted in from 40 to 60 provider system suspensions per month. If we proceed at this rate, next year we will have between 400 and 600 provider suspensions. This ramping up has dramatically increased the effectiveness of data analysis, the development of relationships within the larger law enforcement community, fraud network identification, and the use of unique, specialized data. Members of our data analytics team are very talented, and they are looking to ramp it up to the next level, which is to be able to identify fraud patterns and to assist law enforcement in initiating prosecutions.

- Since April 2017, I have worked on 19 lien consolidations for the 21 suspensions mentioned by Judge Levy. I handled the majority of lien consolidations until about one month ago. This is difficult work, it is new, and the judges are devoted. The DWC has devoted substantial resources to ensuring that the processes are transparent and the community is educated. This is where we are going with the lien consolidations. In the next three months, our data analytics and AFU plan to more than double the lien consolidation activity to date. To ramp up these efforts, judges are being trained and offices are being staffed.

- Lien dismissals for convicted fraudsters total $260 million. We anticipate that this amount will rise dramatically as we collaborate more with law enforcement agencies. We encourage the consideration of clauses and plea agreements that call for the voluntary dismissal of the lien claims of such doctors and other medical providers.

- Another reform that is having an outstanding impact is the lien declaration requirement. As a result of that requirement, $2.5 billion in liens has been eliminated from the system. That is dramatic, not just in terms of the direct impact of those savings, but in what that data tells us. We are analyzing the providers who have filed declarations and those who have not and identifying patterns that we can examine to further develop our data analytics and research efforts.

- Judge Levy discussed the hard work of litigation at the boards. I want to discuss appellate litigation and federal court litigation. As a result of provider suspensions, four of the providers filed appeals of their suspensions by a writ to California Superior Court. DIR prevailed on three of them. On the fourth, the provider abandoned the claim. A constitutional challenge is pending in federal district court in Los Angeles from the provider who was just suspended last week (before this December 15 meeting). DIR filed a motion to dismiss and will be arguing that in two weeks. DIR will keep the community updated on the result of that challenge. We are not just aggressively pursuing fraudsters within the system, but actively defending against attacks on the Commission's ability to bring about systemic reform.

- I thank the Commission for everything that it has done to make my work as challenging and impactful as it has been.

***Comments by Commissioners***

Commissioner Bouma:
About the constitutional challenge, was it about due process?

Ms. Kim:
That is correct. Providers generally argue that the application of LC section 139.21 about suspension proceedings against them violates due process and is an unlawful practice of *ex post facto* prohibition in the constitution. They have also come up with other "creative" constitutional challenges, such as violation of the contracts clause, in which they argue that their suspensions interfere with their interests in pending contracts. Much of the fraud occurs outside the Medical Provider Networks (MPNs) and outside the system that exists to ensure prompt delivery of care to injured workers (according to Judge Levy). When we give notice to the community ("word of mouth" spreads, as mentioned by Commissioner Brady), and I subsequently go to the WCAB, I see an impact. Providers leave after they see DIR lawyers at the board. The lien activity of providers who are outside the established MPN system has been dramatically affected. DIR lawyers do expect considerable work in the future because the providers are becoming increasingly sophisticated. As DIR has changed the financial incentives for the providers, they try to figure out other ways to get around the rules and profit from the system as well as injured workers. We will vigilantly follow where providers are going to determine the next source of fraud.

Commissioner Brady:
Thank you for the hard work and for the review of how far anti-fraud has come. I work with school districts, and when the system collectively saves dollars, those dollars go back into the general fund and the schools. They want those dollars to be spent in the classrooms and not on fraudulent medical costs. Fraud is not a one-time occurrence. Rather, it is systemic abuse, and the ability to communicate and coordinate interdepartmentally is very impressive. The result has been an improvement on the actuarial outcomes of all programs. This is proof that you are moving in the right direction.

Commissioner Kessler:
No one on the Commission wants fraud in the system, and we are concerned about abuses. We are also concerned that workers have access to the doctors they need. How are the 400-600 doctors who have been removed from the system going to be replaced?

Director Baker:
Bad doctors are not a good thing; these removed doctors are outside any workers' compensation agreement for treatment; some of them are on Medicare fraud lists and came into the workers' compensation system.

Commissioner Kessler:
I did not want to keep the fraudulent doctors, but what I am concerned about is having enough doctors who are good and who are in the system to provide the services that are needed by injured workers. What opportunities are there for recruiting new and good doctors to come into the system?

Director Baker:
If more doctors are needed, they can be hired and come into the workers' compensation system.

***Public Comments***

None.

## Update on Carve-Outs in the California Workers' Compensation System

*Irina Nemirovsky, CHSWC*

- Carve-outs:
  - A carve-out is an alternative system for delivering benefits to injured workers and resolving problems and disputes.
  - A carve-out is a labor-management negotiated agreement that can cover all aspects of workers' compensation medical and benefit delivery.
  - Carve-outs are negotiated separately and apart from collective bargaining agreements within non-construction industries.
  - Workers' compensation law allows unions and unionized employers to create carve-outs.

Key legislation:

  - 1993–Senate Bill (SB) 983 (New LC section 3201.5). Permits employers and employees in the construction and related industries to engage in collective bargaining for alternative workers' compensation procedures.
  - 2003–SB 228 (LC section 3201.7): Provides for carve-outs in any unionized industry.
  - 2004–SB 899 (Amended LC sections 3201.5 and 3201.7). Provides that parties may negotiate any aspect of delivery of medical benefits and disability compensation for occupational injuries to employees that are eligible for group health and non-occupational disability benefits through their employer. Commissioner Garfias was instrumental in this effort.
  - 2012–SB 863 (Amended LC section 3201.7). Permits the State of California to enter into carve-outs.
- To be eligible, a union must:
  - Be a bona fide labor organization, and
  - Be recognized or certified as the exclusive bargaining representative of the employees.
- To be eligible, an employer must:
  - In construction, have an annual workers' compensation premium of at least $250,000 or be part of a "safety group" of employers with an annual workers' compensation premium of at least $2 million.
  - In all other industries, have an annual workers' compensation premium of at least $50,000 and at least 50 employees or be part of a "safety group" of employers with an annual workers' compensation premium of at least $500,000.
- Participation in carve-outs has increased steadily:
  - From 242 employers in 1995 to 1,552 in 2015
  - From 3,450 employees (full-time equivalent) in 1995 to 79,400 in 2016
  - From $157.6 million in payroll in 1995 to $3.2 billion in 2016

Carve-Outs by Program Type:

- In the construction industry, most carve-outs are between private employers and unions
- In non-construction industry, most carve-outs are between public employers and unions.

Carve-Outs by Program and Union Type:

- There are nearly 20 different types of unions that are part of carve-out programs. There are 27 or three-quarters of non-construction programs where the union type is public safety (firefighter and police).

- Optional components of a carve-out are:
  - Alternative dispute-resolution process.
  - Agreed list of medical providers, qualified medical evaluators, and agreed medical evaluators.
  - Joint labor-management safety committee.
  - Safe and early return-to-work programs offering a light-duty modified job or alternative job.
  - Retraining programs that include an agreed list of providers.
- Two non-optional key components of a carve-out are:
  - Compensation within the carve-out cannot be diminished and has to be the same as in the state workers' compensation system.
  - Injured workers have the right to appeal after arbitration to the Reconsideration Unit of the WCAB and ultimately, if needed, to the State Court of Appeals.
- Potential advantages for the injured worker to be in a carve-out include:
  - Avoidance of unnecessary misunderstandings, disputes, and litigation
  - Prompt, appropriate medical care
  - Safe, prompt return to work and sustained employment
  - Support programs to prevent workplace injuries and illnesses
  - Reduction in delays encountered in the state system
  - Increased satisfaction with delivery of workers' comp benefits
  - Improved job satisfaction and overall morale
- Potential advantages for the employers include:
  - Reduction in workers' compensation costs from improved medical care; reduction in unnecessary disputes, litigation, and delays; and enhanced prevention of injuries
  - Improved productivity and morale among all employees.
- Carve-outs offer an opportunity to negotiate integration between occupational and non-occupational medical treatment through:

  - Agreed list of medical providers where the same provider can be chosen for the workers' compensation and group health treatment.
  - Negotiation of a dispute resolution process that is consistent with group health
- Advantages of integration of medical care include:
  - Improved quality and coordination of care
  - Elimination of duplication between group health and workers' compensation in, e.g., diagnostic tests
  - Same medical provider for occupational and non-occupational treatment
  - Improved access to care because no disputes arise over coverage
  - Fewer disputes (and delays) over treatment
  - Reduction in administrative costs of two systems
- Cornerstone of the carve-outs is the alternative dispute resolution (ADR) process. The ADR process in a carve-out generally has three stages:
  - Ombudsman: In the initial stage, the ombudsman, a neutral third party, can provide information to injured workers and attempt to avert or resolve disputes.
  - Mediation: If dispute resolution is not successful in the first stage, the process may move to a second stage, mediation, in which a mediator, a neutral third party, assists in resolving the conflict.
  - Arbitration: If dispute resolution is not successful in the second stage, the dispute may move to a third stage, arbitration. In this stage, both sides have an opportunity to present witnesses and evidence and to engage in cross-examination.
- If neither party is satisfied with the decision reached through arbitration, the employer or the employee may appeal to the WCAB Reconsideration Unit and, ultimately, to the State Court of Appeals.
- Examples of typical timelines for each stage of the ADR process are as follows:
  - Ombudsmen: 5 to 10 working days to resolve a dispute.
  - Mediation: 10 to 15 working days to resolve a dispute.
  - Arbitration: 10 to 30 days to issue a decision.
- The key participants in a carve-out ADR process are:
  - Ombudsmen. Key responsibilities include:
    - To act as a neutral party to provide information and resolve disputes.
    - To maintain confidentiality.
    - To strive for objectivity and impartiality in order to consider the concerns of all parties known to be involved with the issue.
    - To develop a range of options to resolve problems and facilitate discussion

- Mediators. Key responsibilities include:
  - To engage the parties in further informal discussions if they cannot reach agreement after working with the ombudsman.
  - To facilitate self-determination.
    - The mediation process relies upon the ability of the parties to reach a voluntary, un-coerced agreement.
  - To maintain confidentiality.
- Arbitrators. Key responsibilities include:
  - To be knowledgeable in the workers' compensation dispute process.
  - To appoint an authorized health-care professional to assist in the resolution of any medical treatment issue.
  - To render a decision (award) within a specified number of days after the completion of the proceedings.

- The Appeals Process in a Carve-Out:
  - If neither party is satisfied with the decision of an arbitrator, then the worker or the employer may appeal to the Reconsideration Unit of the WCAB to review the decision.
    - The Reconsideration Unit is not allowed to reweigh the evidence. It can only consider whether the arbitrator made a mistake in the decision-making process.
  - If neither party is satisfied with the decision of the WCAB, then the worker or the employer may appeal to the State Court of Appeals.
- More information on carve-outs is on the following web pages:
  - http://www.dir.ca.gov/dwc/carveout.html
  - http://www.dir.ca.gov/CHSWC/carve-out1.pdf

***Comments by Commissioners***

Commissioner Garfias:
Carve-outs are more popular now.

***Public Comments***

None.

## Executive Officer Report

*Eduardo Enz, CHSWC*

- Since the October 19 meeting, staff have taken steps to implement Commission decisions, fulfill requests. and complete additional tasks, such as preparing the 2017 CHSWC and Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Annual Reports.

- The draft QME update report was posted on the CHSWC website for feedback and comment for 30 days, and comments received were also posted. The project to develop the California Occupational Research Agenda is underway and the proposal to develop a model training curriculum for occupational safety and health training for child-care workers and employers is being finalized.
- Potential QME Process Next Steps: Based on stakeholder feedback, possible next steps for additional research on the QME process may include detailing the role of aggregators and looking at how claims move through the system.
- First Responder Post-Traumatic Stress Disorder (PTSD): At the Commissioners' request, DIR is conducting a more in-depth review of the issue of PTSD and emergency response personnel. In particular, DIR is conducting a literature review to better understand gender differences in PTSD incidence rates and the incidence of underreporting in PTSD cases. DIR is also reviewing the resources available on preventing PTSD and helping those who suffer from it recover, their use, and determining whether the effectiveness of these resources has been evaluated. We look forward to the completion of this in-depth review by the time of our next commission meeting in February or March 2018.
- Three action items are presented for consideration:
  1. Does the Commission wish to approve for final release and posting, pending final edits and updates, the Draft 2017 CHSWC Annual Report?
     a. Commissioner Bouma moved the motion, and Commissioner Bagan seconded it. The motion passed unanimously.
  2. Does the Commission wish to approve for final release and posting, pending final edits and updates, the Draft 2017 WOSHTEP Annual Report?
     a. Commissioner Kessler moved the motion, and Commissioner Brady seconded it. The motion passed unanimously.
  3. We received a request from a commissioner to update the study "The Frequency, Severity and Economic Consequences of Musculoskeletal Injuries to Firefighters in California," adopted in 2010, to reflect current data, including a specific analysis of the return-to-work rates for firefighters who experience a musculoskeletal injury, compared to injured workers in other job classifications. Does the Commission wish to approve an update of the 2010 Firefighter Musculoskeletal Injuries study?

     Commissioner Bouma moved the motion, and Commissioner Bagan seconded it. The motion passed unanimously.

***Comments by Commissioners***

Commissioner Kessler:
At the last meeting, I asked for the discernible job descriptions associated with the category codes related to the post-traumatic stress injuries studied in order to look at whether other possible categories should be included when reviewing these post-traumatic stress issues. Other job categories fall into (under) firefighter, such as the nurses, the dispatchers, the security personnel, and there might be other people who would be covered. Could we get an enumeration of those job

classifications?

Mr. Enz: Yes.

**Public Comment**

None.

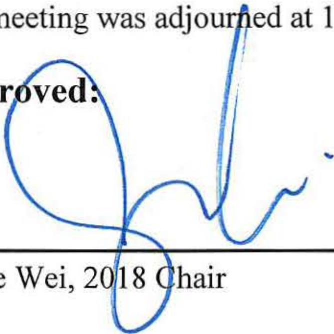
## Other Business

None.

## Adjournment

The meeting was adjourned at 11:21 a.m.

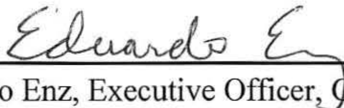
**Approved:**



Angie Wei, 2018 Chair

04.05.18
Date

Respectfully submitted:



Eduardo Enz, Executive Officer, CHSWC

4/5/18
Date