

**Minutes of CHSWC Meeting  
Wednesday, May 15, 2024  
Elihu Harris State Building  
1515 Clay Street, Auditorium  
Oakland, CA**

**In Attendance**

Chair Mitch Steiger, Commissioners Martin Brady, Shelley Kessler, Nick Roxborough, and Meagan Subers

**Absent:** Commissioner Sid Voorakkara

**I. Approval of Minutes from the December 8, 2023 CHSWC Meeting  
Mitch Steiger, Chair**

Chair Steiger announced Commissioner Martin Brady's retirement from the Commission on Health and Safety and Workers' Compensation (CHSWC). He took time to honor Commissioner Brady for his service to CHSWC as this was his last meeting as a CHSWC Commissioner. He said he was lucky to work with Commissioner Brady for his 14 years in California working in the labor movement and it had been a wonderful experience. The first time he worked with Commissioner Brady was in 2012 when they negotiated Senate Bill (SB) 863. Chair Steiger said SB 863 made improvements for both injured workers and employers. Since then, he has worked with Commissioner Brady on a variety of issues and in a variety of settings, and never had a bad experience.

Chair Steiger said Commissioner Brady was one of the employer representatives he always sent people to when they wanted to talk to someone who had the workers' best interests at heart and tried to make the system work as well as it could for everyone. And so, it had been an honor to work with Commissioner Brady. He said Commissioner Brady was retiring and had been in his current position for 37 years, 40 is a nice round number he should stay with 40 years.

Commissioner Brady said there were so many talented people at CHSWC, and he appreciated working with his fellow Commissioners. The highlight was how much they have grown and learned collectively, and constructively. He was very grateful, and they were going to continue to do the good work that California needed.

Commissioner Roxborough said Commissioner Brady personified what they wanted to accomplish in California, which was a collaborative effort focusing on the injured worker and looking at a balanced system. Anybody who gave 37 years for public service should be drafted and they should make a motion to keep him here for another three years. He thanked Commissioner Brady for serving California. He said when you had the respect of all sides and all players in a very complex and contested stakeholder environment, which he did and will have, it needed to be acknowledged.

Commissioner Kessler also thanked Commissioner Brady. She said he tried to be principled in situations that were very challenging; that was necessary to be a Commissioner for CHSWC. They do not want injured employees, and they want to find solutions and to be willing to collaborate and think positively about solutions and that was what made this Commission work. She was pleased to have met him when she started and was sure that he was going to have a wonderful time after retiring.

Commissioner Subers said she would agree with Chair Steiger as she was also brand new in 2012 when she first worked with Commissioner Brady. She appreciated the way he engaged with them and with all stakeholders. His expertise was going to be sorely missed. She hoped he enjoyed his retirement.

Chair Steiger asked for approval of the December 8, 2023, CHSWC meeting minutes. Commissioner Kessler raised a few questions about the CHSWC meeting minutes, but she would approve the minutes with the condition to send the Commissioners' questions to Eduardo and set aside for those questions that still needed to be pursued because they were raised in the past and she did not know how many were answered. There was no further discussion on the December 8, 2023, CHSWC Meeting minutes. Commissioner Subers moved the motion and Commissioner Brady seconded it. All were in favor. None opposed. The motion was approved unanimously.

## **II. Stakeholder Presentation**

### **Derek Freligh, former Deputy Sheriff**

Chair Steiger introduced Derek Freligh, an injured worker. He said he had an extremely important story to tell with many details of interest to those who were part of the workers' compensation system.

Mr. Freligh stated it was an honor to address CHSWC. He was a veteran of the United States Marine Corps, and he had been married for 22 years with his wife, who came to this CHSWC meeting to support him. He had five children and he had been a deputy sheriff for the past 17 years. He was injured in the line of duty.

Mr. Freligh said he had no regrets about his career. However, it was unfortunate that sometimes our bodies do not survive the injuries. His career ended earlier than expected as he had to deal with the workers' compensation system, that was supposed to care for him, treat him, and get him back to work. Unfortunately, he woke up each morning with severe pain, putting on knee braces to walk and forcing himself to be active despite his body screaming at him and telling him to rest and sit. His goal was to serve 33 years in the Sheriff's Association and retire at fifty-five.

Mr. Freligh asked how the system failed him; the system that was designed to protect him. He discussed highlights of his care. He said he dislocated his shoulder while fighting a suspect and received conservative care with no Magnetic Resonance Imaging (MRI). He was quickly sent back to work. Then he suffered a significant knee injury while chasing a suspect and again received conservative care. Just two and a half months after going back to work with a knee injury, he was chasing another suspect and unfortunately his left knee was injured, which was a direct result of his first knee injury, causing him to fall in the street and break his right elbow. He braced for the

impact and did not know his arm was broken. He kept chasing the suspect, but quickly found out how his body reacted to injuries. He entered the workers' compensation system with a severely broken arm. He had to deal with his left knee injury and find out what was going to be done. He was able to get a MRI for his left knee, which he discovered had a severe torn meniscus and damage to his bone. He was treated like a number at Webster Orthopedics clinic in Dublin, California where the doctor would come in and did not have his name and he asked him why he came to see him. The doctor did not know why he was there, and he had to remind him. The doctor had to review his previous notes rather than being prepared, knowing what he needed, and having a treatment plan. He received conservative care that sent him to physical therapy while waiting for his bone to heal.

Mr. Freligh said he developed compressed nerves in his right arm while waiting for approvals from the workers' compensation system and dealing with Independent Review Boards (IRBs). IRBs are supposed to call the doctor and ask for their opinion on treatment notes. Based on his experience, none of his doctors in the last three and a half years have spoken to an IRB doctor. IRB sends its approval decisions, based on statistics, by mail. Unfortunately, it was up to the doctor to file an appeal and then it was reviewed again. If the IRB denied the appeal, then you must wait a year to contest the decision and file a change of distance to have it reviewed regardless of what the IRB doctor said. Some IRB doctors and the documents they send out do not even quote the right terminology or refer to the right body part of what the doctor sent. It was not in all cases, but it happened to him a few times and he did not have a way to fight it. There was nothing he could do to fight the IRB because its decision was final.

Mr. Freligh said since he had an attorney, he could not talk to the adjuster (although it was set up for a reason), his attorney could contact the adjuster and his attorney could not get a refund total. He said his doctor's office could not contact the adjuster. It became very difficult to fight the system to receive care from a workers' compensation recommended doctor. There were doctors fighting against the system and there were doctors that were part of that system which did not make sense to him. If these doctors were part of the workers' compensation system and they recommend treatment and you need treatment, why was treatment denied.

Mr. Freligh said that while he was receiving care for his left knee injury, he had surgery on his left knee and surgery on his right arm. After he recovered from his left knee, and as he was being treated for his left knee, he developed a right knee meniscus tear because he was overcompensating for his left knee. He said you do not know how your body works together until an injury. But due to delayed approvals and waiting, IRB's attorney fighting to contact doctors or waiting for answers, your body keeps going and if it does not get timely care additional incidents happen with your body. He developed a right knee meniscus tear that lead to his right knee surgery. He transferred to another orthopedic physician because the physician he needed resigned. He had to advocate for a new physician because nobody was helping him.

Mr. Freligh said he had to schedule a doctor's appointment and wait for the appointment but as a new patient he had to wait for a new patient opening and that delayed him for a month and a half because the new patient opening was a telehealth visit. He needed his MRIs reviewed and he had to have an in-person discussion. Their reply was first there was a Zoom meeting. When he went to

the Zoom meeting, the doctor said he needed an in-person appointment and he waited for another month and a half for it. He went without orthopedic care for his knees for about four to five months before an appointment with a new doctor, because of the system. He did not want to discredit the adjuster, but the adjuster was there to seek care for the employees, so that they returned to work in a timely manner. If that adjuster could not understand what was happening or did not care, they had to wait. In Mr. Frelich's experience the adjuster said he had a point, checked the box for an appointment a month and a half later and the adjuster did not realize that injured employees were going to get worse.

Mr. Frelich said he sank further into depression while dealing with severe daily pain and nerve pain because of his injuries. He started taking strong narcotics to deal with the pain because over the counter medication was not working. He thanked a nurse case manager who strongly recommended seeking psychological therapy due to suicidal thoughts and his injuries affected his marriage. Problems continued with workers' compensation as his doctor or attorney could not contact the adjuster in charge of his case, and this led to significant delays in seeking psychological care and requests from doctors. He saw a psychiatrist and then received psychological therapy, which was extremely helpful to talk to someone and discuss. Mr. Frelich said all of us have significant loved ones, friends, and people we know but when you share this knowledge with them, what do you expect. He asked how you can expect them to ask every day and help you when they have their personal problems and have their life to deal with. If they do not ask, you wonder why they did not ask.

Mr. Frelich said seeking psychological care had helped significantly because that professional was going to be there for him. The psychologist was going to help him and not going to judge him. He had appointments with the psychologist, and he knew they were there for him and only him and he could talk to them about everything. It made the world of difference, and psychological care made a change. Unfortunately, he ran into obstacles with workers' compensation approving future psychiatric care. The approval would be for six sessions and then the sessions would end. The therapist would request additional sessions, but they would get denied. Numerous times the workers' compensation adjuster would not even respond to the approval. He knew they were supposed to respond within five business days, either with an approval or denial and you can appeal the decision. You can then write a change circumstance. You can let the therapist know they can add additional notes. He could not get a response and he went three months without the therapy that he needed, that he was getting, and he was cut off from. When you are cut off and you do not get that therapy anymore, you start diving into a deep, dark tunnel. It came to a point that suicidal thoughts became real. He needed to almost check himself into a mental health system. Justin Litvack, his attorney, at Boxer and Gerson, became an advocate for his health and fought the filing. The only way they contacted the workers' compensation adjuster was when he filed a court appearance with a judge, saying that they need medical care. Only then did they wake up and say they had not responded in three months. They approved of his care because they did not respond. Bad things happen when you do not do your job and talking to Mr. Litvack several times, he said all they were asking them to do was their job. Just do what they were supposed to do so he can do what he needed to do, and he can tell the doctor and get help. He was very fortunate that he had

his wife's support, had children, and being able to talk to Mr. Litvack, who took time out of his day.

Mr. Freligh said eventually he received the care he needed to get back on track. He said from the hearing that they filed, and went before a judge, the county attorney told the judge he did not know what was going on. The workers' compensation adjuster hasn't even got back to him. The judge was so annoyed that he issued a sanction, and ordered medical care, and that was supposed to be progress about getting care. However, that did not happen, that workers' compensation adjuster, he did not want to say they ignored the order, but they did not provide the care. So, they had to send emails, and they had to make phone calls and say care was ordered by a judge and can they please get it. He does not know if this sanction ever happened because that was not in his purview, but he was sure the sanction did not happen the way they were supposed to happen to punish the system. They kept fighting the system to get the care that his doctor recommended, and everybody knew he needed. He had all the doctors on his side advocating for his care. The doctors said it was a legitimate request, and they needed to help him. They were doing their best but unfortunately it was the workers' compensation system and contacting the adjuster, getting timely notes, getting switched from one adjuster to another, and overturning and trying to find out who the new one was. Doctors being ignored on asking for approvals. It led to some severe circumstances and today he was scheduled for an injection in his left knee to help him walk better because his left knee is bone on bone now. It was called the Durolane shot. It was approved in January by the workers' compensation system. He was appreciative of that but unfortunately the adjuster did not tell the doctor where they could get the shot. So, he was waiting for three months fighting, sending faxes, calling the attorney, calling doctors, calling the adjusters and waiting to find out. Only after reaching a new nurse case manager and leaving messages did she contact the adjuster and they worked through the system. The adjuster said there was a mix up. CVS specialty was supposed to do this, and they did not have it. Finally, the shot was delivered yesterday to the doctor three months late.

Mr. Freligh said he had to schedule an appointment with the doctor for an injection. His therapy sessions with his psychiatrist ended approximately four weeks ago. They requested an Request for Approval (RFA) for additional therapy sessions and every week he asked for updates because he was not afraid to admit that he needed therapy. He needed medication because of his severe pain, and he needed to talk to someone who would listen to what was happening rather than share it with his wife. The therapy RFA request has not been approved and it had been four weeks of waiting, asking, and pleading with what can be done. His attorney cannot contact the adjuster. The therapist and the doctor's office called the adjuster and the adjuster's voice mailbox was full. They called the adjuster's manager and left a voicemail without a return call. It was extremely concerning. If he did not have Mr. Litvack, his attorney, in his corner how would he fight the system trying to advocate for his health, trying to advocate for an injured employee, and asking them to fulfill the doctors' requests. It was difficult and it came to the point where he had a conversation with Mr. Litvack last week and said he was done. He was tired of fighting; it was difficult dealing with daily pain and then going through the system not knowing what was going to happen. He was asking for care that was supposed to be given to him because of his injuries in the line of duty, and fighting

for the public, which he was proud of. He was also okay with the injuries that happened. He was asking for treatment.

Mr. Freligh said it was unfortunate that there were some good and some bad. Due to time delays, being unable to contact people and fighting the IRB and not being able to appeal those directly to what they were saying, it has led to a severe number of injuries that he's had to deal with. He has had five surgeries in three years and therapy sessions every two weeks. He must get a testosterone shot every two weeks due to the narcotics that he was on. He was taking narcotics, and he has to make adjustments.

Mr. Freligh said he must have a quality of life to raise his five children with his wife, go out and be a normal father as best he can, because he was not that hero any more in his children's eyes. When he was fighting crime and coming home, his kids would hear his stories and that was amazing. Now, he was trying to get out of bed so he could take them to school. He tried to get out of bed so he could pick them up and go to their games, he was actively fighting through the pain. He knew at three pm he should take his pain medication to get there. Otherwise, he would be hurting. He should take his Lyrica because his nerve issues were going to act up. He should have a schedule for his medication so he can have a normal appearance as he fights through his pain.

Mr. Freligh said he appreciated the opportunity to present at this meeting. He was not trying to be harsh towards the system, but he wanted to make the system better. The court and legal systems were not perfect, but they worked from first-hand knowledge. He was at this CHSWC meeting to advocate and help the system work better to help employees get back to work, employees who want to fight crime, employees who want to go back to work and support their families. Currently, he does not have any health insurance because the workers' compensation system took his Agreed Medical Examiner (AME) report, and they retroactively took all this stuff away. They told him he was out of health insurance because they were taking his time back, so he was paying 5,000 dollars per month for health insurance right now. It happened a few weeks ago without knowing what was going to happen and then suddenly as an employee and without somebody saying and they should not have done this, but they don't tell you. He was grateful for good attorneys to say they were not supposed to do that. He appreciated what the Commissioners were doing, and it was a tough job. It was not easy to make decisions and know what happened. However, he hoped his presentation would bring to light what happens on the front lines. And how it may be broken a little bit and how they could just fix it together.

### **Commissioner Questions and Comments**

Chair Steiger thanked Mr. Freligh for sharing his experience at this CHSWC meeting. He said on behalf of the those working in the workers' compensation system, he wanted to apologize for what had been happening for these last few years. His struggles as they were discussing the other day, would break anyone, and then it was compounded by physical pain and suffering. It was more than anyone should have to do. The Commissioners were very grateful for all his work and equally grateful for what he was currently doing. In many ways what he was doing was similar to when he was working, where he was trying to enforce the law, trying to stop others from breaking the law, and a lot of what he told in his story of people breaking the law. There are laws that say these

adjusters were supposed to do certain things. These insurers and employees are supposed to do certain things and sometimes that does not happen. So, through the struggle that he's been dealing with ever since he was injured it is safe to say that that work has continued. He can explain that to his kids, let them know that he is just as much of a hero as he was before. He is still fighting to make sure that the law was there, and that it was working as intended.

Chair Steiger said it was a really, really powerful story, with details aligned with what they on the labor side and sometimes on the management side, have been raising as the real weaknesses in the system. When you look at the overall numbers, when you review the CHSWC Annual Report, you will see evidence that the system is working, and for many workers it is. If it was a straightforward injury with a straightforward recovery, and there was an adjuster with the capacity to respond to some of these treatment requests, if they do what they're supposed to do, the system can work well, get people back to work quickly and it often does. That was where they needed to focus their energies, and no one should have to go through what he has been going through, but a lot of these details should not happen. When you look at the system on paper, it very much lays out that this is supposed to happen in a certain amount of time. This person is supposed to talk to this person, and clearly it was all falling apart. The system is designed to account for those situations and there were supposed to be penalties for those kinds of violations, but it does not sound like those were happening. He took careful notes as much as he could, and they will be compiling those in a list. They will be adding to the presentation that they got from another law enforcement officer who came to an earlier CHSWC meeting and was going through something similar. They can collect all these together and try to see if they could figure out where the big problems were and where they need to focus their efforts, for when they negotiated during the next round of worker's compensation reforms with employers. If the law is being broken and people are not doing what they're supposed to be doing, there should be some sort of consequence.

Chair Steiger said there should be an immediate way of getting workers the treatment that they needed to get back on track. When it did not happen, the injuries got worse and became permanent. Workers suffer longer than they needed to. They were going to take the specifics of his story and do everything that they could to help fold those into their work at CHSWC. Later, they will discuss how to improve the system and focus their efforts on making it work better for injured workers. He thanked Mr. Freligh for all these details. It did not fall on deaf ears. They were going to fold this into their work and do what they can to help make sure that this happens to as few workers as possible in the future.

Commissioner Brady asked about the date of the original injury. Mr. Freligh replied that his last day at work was May 19, 2020, and he has been dealing with the workers' compensation system since then.

Commissioner Brady said the system was designed to try to help people and he apologized to Mr. Freligh that it did not help him. There were examples of one slip after another. When you look at the total number of injured workers, today the workers' compensation system is probably functioning in a way that they could be proud of. But it does not mean that it was perfect in what was being executed, and there was always room for improvement. He appreciated Mr. Freligh's courage about telling his story and they will review it. Many claim examiners that had worked for

him, most of the time they were the workers' best advocates, with their professional conduct and they worked tirelessly in trying to expedite needed care. That was not Mr. Freligh's experience. They need to redouble their efforts to improve their game and meet those professional expectations to drive change for the injured workers. He thanked him for finding his voice and coming today and being able to lead us and tell his story. So, it was very commendable.

Commissioner Roxborough said he could not thank Mr. Freligh enough for the energy he spent sharing this story. It was a story he had heard before. Commissioner Brady was right, the system was much better than it used to be, but it was a function of something bigger that they needed to study. Commissioner Roxborough asked if he was a state of California employee and Mr. Freligh replied that he was. The state of California's employees and the adjuster came from a pool of state employees. His experience, which was greater than 35 years in the system, was that when he told them his story about his doctor and the adjuster, it sounded like they were overworked. Mr. Freligh answered that one of the adjusters did a great job, but she resigned because she was overworked. She called him to tell him because they had developed a good working relationship about getting his care. She called him to let him know she was resigning because they had her working three different jobs.

Commissioner Roxborough had taken 200 depositions of adjusters, claims managers, and claims experts. He has tried cases, arbitrated cases and many claims adjusters are good people. They want to make a difference. They want to serve. But when you take an adjuster's deposition, they have a heavy caseload. And the guideline is 125 cases for an experienced adjuster and that was a lot of work for one. He said that if the adjusters had 175 or 200 cases, they could not do the job. They were moving paper and Mr. Freligh had a torn meniscus that was never identified. Had that been identified from the very beginning, the concatenation of all the events that followed, might not have occurred to the severity that they did. He asked if he understood Mr. Freligh's powerful story. Mr. Freligh replied that he was right. His right knee meniscus tear was a direct result of untimely care for his left knee. Mr. Freligh's right knee was torn because he had a left hip tear because of his right knee tear. His left shoulder labrum tore as overcompensation for his right arm. He lacked appropriate care for his right arm. Mr. Freligh said Commissioner Roxborough was right and his injuries were all connected and compounded due to untimely and delayed care.

Commissioner Roxborough said problems like Mr. Freligh's also happen in medical care outside of the workers' compensation system. But Mr. Freligh's story showed how a torn meniscus, when it was not treated, resulted in a powerful but very sad story that he had been courageous enough to share with CHSWC. He thanked Mr. Freligh for telling his story. He will discuss with CHSWC Commissioners about whether to study this issue because the doctor does not know your story.

Commissioner Roxborough said that they do not have the time, and sometimes they are not being paid enough, but they are just running this through the system. He said there are a lot of issues, but to study the problem that he has highlighted for them and that he has thrown a big bright light on for them, he said that he cannot thank him enough for coming here. He thanked him and he thanked his wife and family for their support.

Commissioner Subers said that she wanted to personally thank him for coming and telling his story and echo Chair Steiger and his comments. She said she thinks it is important that people like him are willing to share their story because advocates on both sides are always trying to bring these issues forward in different forms, and nobody is a better advocate than the person themselves. She explained that in her day job she works with public safety officers a lot and unfortunately this is a story that is all too familiar to her, particularly given the complex nature of his injuries sustained on the job as a public safety officer. She said his experience highlights for them the need to take a close look at the system when it works appropriately, like Mitch said, for the run-of-the-mill injuries and when it is working the way that it should be. She said that if she sat at a desk all day and hurt herself, that it would be a different injury than those on the front lines. She said they need to think about it differently and the system and how those injuries are treated; she said she wanted to thank him and appreciated his coming to the meeting that day.

Commissioner Kessler also stated that she appreciated Derek being present and to come in front of people and talk about the things that happened to him; she said she wanted to acknowledge his wife, who has been through this (with him) because she said she knows that it is awfully tough to do.

Commissioner Kessler stated that one of the questions that she has is - and that she knows when one is lucky enough to have an attorney, but they also hear from people who do not have an attorney – she said she was wondering what other kind of offering was available. She said it feels like there should be a way as a public sector worker to be able to go up some political food chain to elected officials to say that this is happening to people who are working on their behalf, who live in their community, and they need to step up and help do something about it, rather than just push it away. She said she was wondering if there were any opportunities that Justin Litvak has been able to explore to see if there is additional assistance that he can get at the political level and who could put pressure from high-on to get more responses from the people who can do the job they are supposed to do.

Mr. Litvack said that that would be great. He said that what Commissioner Kessler is asking about is that most of the workers that he works with and his partners and people he has talked to, have no idea what is going on and they do not know what to do. He said that when they go through a simple injury, it works. But when it was something with complicated injuries like his, everybody was lost. They have no idea how things work.

Mr. Freligh said that he has to call Mr. Litvack about 20 things; he emails him. He said thank goodness that Mr. Litvack takes the time to explain things to him so that he understands. He said the worst part is that one worries about what is not going on, that one does not know what is happening, or the time (filing or authorization) standards. He said one is sitting there waiting for a

phone call, waiting for an approval and meanwhile, one is going stir-crazy because as a frontline worker one is used to being on the go. One is used to getting things done, multitasking unbelievably, and now one is just sitting in a kind of limbo and one's mind goes a little crazy, and one's wife and the marriage suffers. He said that one goes through the downs, and one goes through the lows, and one has to fight together to keep it going and keep the family strong.

Mr. Freligh said that it is just a fact that most of them (injured workers) do not know what is going on. There is no outline to say, hey, this is what is going to happen - an adjuster cannot call you because you have an attorney, and you play a kind of Tic-Tac-Toe. You call the attorney, he calls, you wait for it (a response) to come back, and then it comes back to you. He said that by the time that (interaction) happens, you have been waiting weeks for the system to happen, waiting for an answer. He said that meanwhile, one's daily life goes on with the daily struggle; he said it would be great because it only takes people like the Commissioners in the room who can make that change. He said that when he talks to Mitch Steiger and talks to Mr. Litvack, it is like there is a chance that they can talk to people and to make change. He said that that was the reason he was there in front of them, because that's what it's going to take. He said he had no problem opening up because they are all there for positive change. He said that they all want to make a difference and that he knows that the Commissioners do too, just like he did when he was fighting on the frontlines. He added that when you make that difference, it is worth all those inconveniences. It doesn't matter what happened to you because you made a difference. He said that is what one chooses to do, and it's worth it at any price. He admitted that he regrets the way he is being treated and that he wishes it was different, that he had more care than he had. He wishes people could just give him the care that the doctor's asking for so he can have a better quality of life, that's all; he said he hoped for a better quality of life with the injuries he has to deal with for the rest of his life.

Chair Steiger thanked Derek. He said that they are going to do everything they can to improve the quality of life for all injured workers – hopefully, with Derek included. Chair Steiger said that they will persist and if they are successful, his presentation will definitely be part of that success. He thanked Derek again.

### **Public Comment**

Chair Steiger continued that since the presentation was an agenda item, that we should open up for public comment and ask if anyone had any comments that they would like to give about the stakeholder presentation and indicated a microphone set up for that purpose.

A gentleman thanked the Commissioners for having this discussion and said that he had been wanting to voice his opinion about his experience, which was very similar to the presenter's. He said that he had been dealing with this (medical issue) since May of 2020.

Chair Steiger asked him to introduce himself unless he wished to remain anonymous. He identified himself as Kirk Kaump. Mr. Kaump continued, saying that he had been dealing with his workers' compensation issues for many years; he said his first time was in 2002. He said that more recently he has had experience over the last four years since May of 2020. He said that a lot of things happened to him, and he wanted to tell the story of what happened to him so the Commissioners could get an idea. He said that a lot of things that Derek mentioned also happened to him.

He explained that he started working for a company starting in 1988, and in 2002, he had an injury. He said he filed a claim and was sent to the workers' compensation medical facility that his company used. He said that he did not want to mention names. He said that he saw a doctor for regular treatment for his left elbow. He explained that back in 2002, he had nerve damage in both elbows and carpal tunnel in both wrists, from injuries at the same company. He said that he had an older nerve transposition on his left wrist and the results were not what he was expecting; but he said he did go back to work. He said that years later in 2017 he filed another claim for his left arm and this time it was diagnosed as tendonitis. He said he went through the process of seeing their doctor and then he saw his surgeon who treated him. He added that they started with therapy, did injections, several things; ultimately, this led to surgery. But during this time, he had follow-up pain in the other arm. So, he got treatment for his other arm, and it was tendonitis. He said he gets treatment and then also sees the AME or QME for an evaluation as well. He said that in his case, that was not the only problem - he hadn't healed, he hadn't been back at work, and it was, like, nine months later. He continued that he was in the process of getting another MRI and another EMG to see what's wrong with his arm because it should be fixed. In the meantime, because of the timing, he was scheduled for an evaluation. He said that at that point, he could only lift three pounds - not even three pounds.

Chair Steiger spoke up and apologized for interrupting and stated that public comment is limited to three minutes each for stakeholders and asked if Mr. Kaump could conclude his statement.

Mr. Kaump concluded saying that long story short - 33 years of employment, and two weeks after his second surgery, he gets an e-mail from his attorney...he said there is so much that he can tell them about the (workers' compensation) system and the way it worked for him, the things that happen to him; three minutes? He said he cannot do that. He said if they would like to talk to him, he has some things they need to know.

Chair Steiger reminded Mr. Kaump that he needed to wrap up. Mr. Kaump said that he did not receive any psychiatric treatment that the other speaker received, but that he may have been eligible if he had known about it. He said he lost his insurance two weeks later, and that his wife had not had insurance for three years; after 33 years, that is what he received - an e-mail. He said that his case needs to be heard and he would like to know where that can be done.

Chair Steiger asked if he would mind also telling them what line of work he was in when he got hurt. Mr. Kaump replied that he was a senior engineering technician and worked in research development and did a lot of things. He said the point is that he is a high school graduate, he is 61 years old, and looking for work now because he was terminated for something that has nothing to do with him. He said that everything he was supposed to do, he did, and this is the result. He said people need to know this.

Chair Steiger said that on behalf of the Commission, they are incredibly sorry for what happened to him and that one should never be terminated as the result of a workplace injury. Mr. Kaump said that legally, there is nothing he could do because he exhausted Department of Fair Employment and Housing (DFEH) and that he went through the whole "nine yards." He said that he had some information the Commissioners probably would like to have.

Chair Steiger asked if Mr. Kaump could stay around to the end of the meeting or maybe his attorney could forward his contact information. Mr. Kaump stated that he would leave his information but that he did have to leave after his comments.

Justin Litvack introduced himself as the attorney who represents Derek Freligh who spoke earlier. Mr. Litvack said that one thing Derek didn't say is, even though this is Derek's life experience, that they look for these examples of how stupid the workers' compensation system can be sometimes. He said that Derek's case provided a little comedy relief in his office. He explained that it was not because they were laughing at Derek's situations but because they don't have any other emotion but to laugh – they are just so exhausted by these examples.

Mr. Litvack continued that the insurance carrier authorized Derek to be on psychiatric medication, which was a big win for them because Derek needed it. He said that then they literally denied Derek the psychological help to go along with those medications. He said that they had nothing to do but laugh at this because it is just so preposterous that anyone looking at this would say, "Well, if you're so bad that you need to be on medication, it would go along with it that you should be speaking with somebody." He said that he literally could not get anyone on the phone to even address that situation. He said that when he finally did speak with someone, they stood behind the decision and forced him to go to court where a judge looked at them and laughed. Mr. Litvack said that this was ridiculous, but that they stood behind a legal denial of a psychiatric claim.

Mr. Litvack added that another part that Derek left out was when they proposed an AME to the insurance company, they were laughed at and told that they can't have a psychiatric injury anymore. He said that he reminded them that they were already paying for his medication, literally acknowledging that he has a psychiatric claim. He told them that they were fighting him to go to a panel doctor or to an AME to deal with this, while they were refusing to allow him to speak with somebody. He said that they don't do this often, but he was ready to write a check to Derek to go see the psychologist because it's just crazy. He said that some of these examples that they see, there is a famous one that someone in the office in the audience will remember where they once had a utilization review company authorize someone to have an MRI image and then denied the radiologist to review the image. He said he knows these are isolated examples, but that the sad part is they're common. He said it gets to a point where...he explained that he has represented insurance companies, school insurance authorities, obviously injured workers now for 15 years, and he said that these are not isolated examples; he said that he was personally exhausted by having to apologize for how crappy the system is. He said he did this multiple times a day.

Chair Steiger thanked Mr. Litvack for his perspective and stated that any specific examples like that, isolated or not, are definitely the ones that at least he would like to hear about and they would like to start collecting so that they can take some sort of a serious effort in the future to try to deal with some of these; he said it does seem like there is an endless supply of these examples and that they do get pretty absurd sometimes.

Mr. Litvack concluded by saying if the Commissioners had any questions about Derek's case, he is available to respond - although he cannot give a lot of information (due to attorney/client

privileges). He said that he would leave his contact information. Chair Steiger thanked Mr. Litvack.

Next up was Brendan Moreland. Dr. Moreland explained that he was a physician, practicing in the workers' comp space since the late 1990s. He said that he was a lifelong Californian who went to undergrad at UC Riverside Medical School, UCLA, and did his internship for the County of Los Angeles; he said that he did his residency and fellowship at UCSF (in San Francisco). He said that they all could talk about the various points of friction in the system but what has been difficult for physicians like him is getting medications authorized for injured workers. He said he wanted to explain a little bit about the problem.

Dr. Moreland said that there are about 11 FTEs (full-time staff) between physicians and mid-levels in his practice. He said that they practice pain medicine, and have offices as far north as Redding, out in Manteca, and in the Sacramento area. He explained that they generate about 2000 Requests for Authorization (RFAs) per month for medications. He said he wanted to tell the Commissioners a little bit about what that involves: Someone has to generate the RFA, it has to be served to the claims examiner by the utilization review company that they (Dr. Moreland and his physician practice) have told to serve it to, they have to document proof of service and keep a record of it in their office, they have to have someone open the mail, look at the responses, and determine if it was authorized or not authorized. He continued that they then have to decide whether they are going to appeal the denial; if they appeal the decision on the initial RFA another Utilization Review (UR) Report has to be generated, a proof of service has to be documented in their electronic medical records so that they can respond to that. He said if that is denied, they have to decide whether to apply for Independent Medical Review (IMR), someone has to pay for IMR, they have to generate another report, they have to track the time of the submission which has to be done within 30 days upon receiving the denial from the 2nd UR denial. Dr. Moreland said that he wanted the Commissioners to understand this in the whole spectrum of a medication that he can buy for \$15 - these are all generic medications – and branded medications are less than 1% of their prescriptions. He said that Medi-Cal, Medicare, Blue Cross, Blue shield – he said that they all trusted him to write a prescription for \$15 and authorize the medication. He said that the formulary that was instituted (in California workers' compensation) has not helped them at all. He said it has given people that do UR a reason to say yes-or-no if they want to, but he said that it has not led to medications being authorized without going through a formal UR process.

Dr. Moreland said that he does not understand the business reason for medication that he can buy - and does not have the purchasing power of the State Compensation Insurance Fund, Berkshire. Janex, none of these, but he can buy for \$10 or \$15. He asked how they can justify sending this to a physician for UR and having to generate all these appeals reports, have someone review them, open the mail. He said that they have 4 1/2 FTEs in their office that deal just with authorizations for requests for medication.

Dr. Moreland continued to explain that they have a Medical Provider Network (MPN) system. He said that in all the things that he treats, he is the primary treating physician. He said that they do not treat denied claims; he is the authorized treater, presumably the insurer trusts him to treat the patient since they have authorized him to treat the patient, he is in their (the insurer's) MPN. He

asked whether they really need to send him and the patient through this torturous process for medication that costs \$10 or \$12. He said that it does not make a lot of sense.

Dr. Moreland continued saying that there is a tremendous amount of people getting their medication for work-related injuries through their commercial insurance. He said that he did not think that has ever been studied, but he explained that he gets told daily that the frictional cost of a patient who needs a medication on a daily basis is simply too high for the workers' compensation system. He said that if the patient has a long-term care relationship with their primary care doctor outside the workers' compensation system, often that physician will be prescribing these medications for the patient.

Dr. Moreland said there was one more issue, keeping in mind that there was limited time at the meeting. He said that there is a tremendous issue with physician burnout treating injured workers in the state (of California). He said in their office up in Redding, they treat patients all the way up from the Oregon border. He said that they have patients routinely coming to his Sonoma County office from four or five hours away. He said it was these kinds of issues that people don't want to deal with. He said if you are a doctor in a rural area, you are already having trouble meeting the medical needs of the patients in your community. If 10% of your business is injured workers, why do it? He said it is simply too frustrating and the physician burnout, the mid-level burnout that they have in their office, for a Physician Assistant (PA), for a Nurse Practitioner is very difficult. Speaking about the people who spoke about their personal experience accessing treatment, he said it was hard on providers too. He said somebody has to sit down with that patient on a four-week basis and say that the MRI is not authorized but we are still going to fight for that. He said people are upset; people are agitated. He said not everybody has the resilience of the two people who spoke today. He said it leads to a lot of physicians that don't want to do this. So, thank you for your time.

Chair Steiger thanked Dr. Moreland and said that these issues are definitely something they have heard about a lot in the past, and maybe they will get a chance to focus on it more in the future.

Megan Ruble, President of the California Applicants Attorneys Association (CAAA). an applicant attorney practicing in the Central Valley, mainly the Modesto area, up to Lodi, down to Visalia and Hanford, stated that she has been in practice for about 10 years. She said that she appreciated the injured workers who came and took time out of their day. She said that their story is a similar story to her clients and the things that she sees every day. She said that this is not how the system is supposed to work. She said that just like Justin Litvack, the other Justin, and Dr. Moreland, they talked to their people about how it sounds crazy making, but it is correct. They have to say that sorry you can't get your medical treatment, sorry you can't get an MRI so that you can go see that surgeon...She said this is what they deal with every single day, like Derek's story, like Kirk's story. She said her clients are frustrated and her staff are frustrated. She said the members of the CAAA are frustrated. She said she tells her clients when they come in to see her that medical treatment is number one, that they have to get medical treatment, that it is really important and the longer you don't have medical treatment, the higher the permanent disability is. She said that she is starting to feel like she is lying to them. She said she is starting to feel like the fact that they are

coming to her for help in getting medical treatment is a lie because they can't get the medical treatment!

Ms. Ruble said that Dr. Moreland's office is one of the great offices that she works with; she said that they will send her messages about getting a UR denial on this treatment they have requested and sometimes that is their only trigger to realize that the process is not working correctly. She said that she can then file a Declaration of Readiness (DOR) or get to the Board (of appeals). She said that every single day there are late utilization reviews, utilization reviews that never come in, treating physicians (requests) that do not get authorized. She said that she goes to court all the time because she has a designated MPN doctor but nobody from the insurance company will respond to her, and 60 days have passed, or 90 days have passed, and she cannot get anything to happen. She says she then has to go to court. She said that this is the story every day, and people's lives fall apart. She said that they talk about homelessness in California, and they put people in a situation in workers' comp to make people become homeless - they lose their housing, they lose their job, and they lose their insurance. She said that as attorneys, most of the time, their hands are tied. She said that she has never seen penalties against the adjusters. She said that she really appreciates both injured workers who came today to share what they have gone through over the past few years. She said that she is certain that Kirk is just as frustrated as the clients I talk to every single day, and she hopes that the Commissioners do take some time to speak with him and hear what he has to say.

Chair Steiger said on the question of its relationship to homelessness, he thinks it is a very real one. He said he has talked to a few injured workers over the years who were in a similar situation years since their injury and it got worse and worse. He said that then one of the last things they said to him was, "You know, I think I'm going to be homeless soon," and then they stopped answering their phone. No one has seen or knows what happened to him, and that is very likely what happened to him.

Ms. Ruble said that she has multiple clients in her files that that has happened to, so it is absolutely real.

Chair Steiger made a last call for public comments on that agenda item and seeing none, thanked everyone who spoke, and especially Derek for coming down and telling his story.

### **III. DIR Anti-Fraud Unit Update**

#### **William Murphy, Assistant Chief Counsel, DIR AFU**

Mr. Murphy explained that he was presenting a slideshow that he regularly gives at major anti-fraud conferences and trainings for law enforcement as he works with them. He said that he adapted this presentation for his appearance at this CHSWC meeting.

Mr. Murphy explained that he was a prosecutor for 22 years, and that for the last 10 years, he focused on insurance fraud. He said he previously prosecuted medical billing fraud cases. He said he has been with the DIR's Anti-Fraud unit for three years.

He highlighted the presentation slide with the fact that he sits on behalf of the Director of the Department of Industrial Relations on the Fraud Assessment Commission (FAC), which allocates

funding to District Attorney's (DA's) offices to fight insurance fraud. He explained that sitting on the FAC was a unique position where he is able to read the grant applications of every DA's office that is fighting insurance fraud. He said that he is in the position to learn about what's going on in the state of California and then use that knowledge and experience to adjust what the Anti-Fraud Unit does in the future. (He said he would speak more about that later.)

Mr. Murphy next presented a slide on what the Anti-Fraud Unit does. He said that the unit was created in about 2016, early 2017, and two (Labor code) code sections give them the jurisdiction to perform their duties. He said that first and foremost, they assist law enforcement with their investigations by analyzing data in the DWC, EAMS, and WCIS systems. Mr. Murphy said that the data points cover a claim all the way through the process, and they can manipulate and provide the data to match it to law enforcement's tips and leads. He said that when law enforcement is successful and they file a case or get an indictment, the AFU stays the liens from that (medical) provider while the criminal case is pending so they can't "cash them out and flee to Mexico." He added that they also cannot use the lien money to pay for their defense attorney. He said that the lien billing is paused until the legal system works things out. Once that case is over, the AFU suspends the provider from the workers' compensation system. The AFU sends the liens to the courts for a consolidation case - essentially, to have them dismissed. He summarized that this was the main activity of the AFU.

Mr. Murphy then presented statistics as of six weeks ago. He said that they suspended over 1300 providers from the system and stayed 866,000 liens. He said those liens total about \$7 billion, and AFU consolidated and dismissed 81,000 liens, totaling \$836 million.

He next presented a graphic showing the number of suspended providers. He pointed out a unique trend for the last 2 1/2 years in which the AFU has done more than it had done in the five prior years.

Mr. Murphy light-heartedly called attention to the fact that this increase in productivity coincided with the time he has been in his job and that some people may be thinking that Bill Murphy is awesome at his job and that Katie Hagen should give him and his whole staff a 10% raise right away. He said that that is one logical interpretation, but it could also be that for the first time after periods of transition, the AFU unit is now fully staffed and has a continuous, smooth-running program. In addition, he said that due to COVID pandemic staffing, there was a backlog in the suspension of providers, and added that the AFU unit is aggressively addressing that (backlog) now.

Mr. Murphy next addressed the question of which providers the AFU has focused on. He said that there are four grounds or reasons to suspend a provider: The first (or A) is for being convicted of fraud, B is for a company that is convicted of fraud. He explained that these two grounds are grouped together because they can be bundled as lien consolidation cases and be dismissed. The other two grounds are subsection B and C of Labor Code 13922, when a (medical) license has been suspended by the licensing agency or when a provider is barred from the Medi-Cal system. He said that those two grounds are not suspensions where the AFU can consolidate liens. Mr. Murphy explained that the AFU focused the last year and-a-half to work on the A and D

suspensions. In the future, there are going to be fewer A and D suspensions because they will have caught up, and there will be more B and C suspensions. But he added there will continue to be new A and D suspensions coming in, they just won't be in a state of backlog.

Mr. Murphy said that once the AFU does an A and D suspension - which they have done a lot of - then their consolidation numbers will go up. He said that over the next year, the four lien totals should increase significantly in the next two years. He added that they must provide notice, suspend the provider, identify the liens, send it to the court, and that there are appeal times, and wait times. He stated that it takes a while, and they have got their work cut out for them and will be increasing the consolidation numbers for the next two years.

He did say that next year will be interesting because there was one adverse court ruling and there could be a billion or two billion dollars dropped from the totals. He said that they will see how that plays out. He therefore advised that the numbers are going to go up and down depending upon what is happening in court, and how many cases they have pending. He did say that the number of suspended providers is going to continue to increase at an average rate of 26 per week or about 600 to 700 per year.

Commissioner Roxborough asked what happens when there is an adverse court ruling and the DIR is wrong by \$1 billion. What remedy is there for the medical provider?

Mr. Murphy explained that this case was a criminal prosecution or a series of criminal prosecutions.

Commissioner Roxborough continued and asked what if in the series of criminal prosecutions, and for whatever reason, DIR is wrong, what remuneration is there for the company? That company that had no access to \$1 billion for years, what happens to them?

Mr. Murphy explained that they can then start collecting on their liens. He had no further information to report in response.

He explained that illegal kickbacks are sent to every part of, or person in, the chain or interaction. He said he uses the below slide about schemes for training law enforcement at the (law enforcement) conventions he attends.

#### Classic Examples of Fraud & Abuse of the System

- Provider bills for 72 hours in a single day
- Billing for services not rendered
- Billing for medically unnecessary services – so that a kickback can be received
- Creating “new” fake compounded medicines so that you can avoid the Official Medical Fee schedule
- Excessive and unnecessary provision of durable medical equipment supplies

Mr. Murphy explained that in the case of a law enforcement officer who is transferred into the workers' comp unit (of the DA's office) and who knows nothing about what's going on, who has never suffered a workers' comp injury, and who does not know what the AFU unit is, this can be

a new world. Mr. Murphy said that he explains to the law enforcement officer that they may receive a tip that maybe a provider is overbilling. AFU then searches the data, and the AFU finds that on Tuesday the provider billed 72 hours, and on Wednesday they billed 96 hours. The detective says, “but there are only 24 hours in a day...” Mr. Murphy explained that then the lights start to go on and the AFU gets more sophisticated in their use of the data and that the law enforcement officer learns that this type of inquiry and investigation is part of what they try and do.

Mr. Murphy continued that the worst cases are where you get a capper who is just signing up endless people who may or may not have ever had a job or been injured, and they run those people through a racket. They go to a specific (predetermined, set-up) lawyer, they go to a specific (set-up) interpreter for every single event, even though they may not speak that language. All their medical records are ordered “going back to a stubbed toe 32 years ago,” and even though the records are in English, they have to be interpreted (translated), and then they are sent to a certain imaging center, they go to a certain pharmacy, and they are given a certain piece of durable medical equipment. And everyone along that whole chain is getting a kickback.

Mr. Murphy said to put it in perspective again, working with law enforcement, there is an active investigation into a 12,000-person kickback scheme involving a capper, and there's been several large ones over the last five years.

Mr. Murphy summarized with a slide the various criminal schemes they are working against; schemes he calls Large Organized Kick-Back Schemes.

- The capper signs up an “injured” person for a lawyer
- The lawyer sends the person to a specific provider
- An interpreter is brought in for every appointment and medical records
- The person is sent to a certain imaging center or pharmacy
- Orders are given so that the person receives certain DME and testing.

Mr. Murphy next explained where he is trying to go in the future with the AFU unit. He said that it is a small unit, created by two code sections, but it's been successful in kicking a lot of criminals out of the workers' comp system and stopping a lot of ill-gotten gains from landing with the criminals. He said that he is trying to create many AFU units or develop AFU-type units for other areas of fraud within the workers' comp system.

The first area of fraud is in the Subsequent Injury Benefits Trust Fund (SIBTF). He said that there is a RAND study that is going to be published sometime in the next couple of months. The dollars in that SIBTF system - the number of claims - are just skyrocketing. He said that unfortunately that study doesn't cover fraud, but he said that he is an old prosecutor, and he believes there is some fraud in there.

### **Commissioner Questions and Comments**

Commissioner Kessler asked how much they paid RAND to do the study. Mr. Murphy replied that the study was managed by the attorneys in the Office of the Director, Legal Unit. He said their Anti-Fraud Legal unit is a little subunit off to the side, so he could not answer that question.

Chair Steiger commented the process to file a claim and recover payments from the UEBTF can take up to a year for injured workers, and while it is important to combat fraud, if more checks and balances are created to prevent fraud at the cost of providing benefits to injured workers, he would like to express his concern that the goal of helping injured workers should not be lost in the process. Mr. Murphy responded that he agreed with Chair Steiger and that he feels for the people who came here today to speak about their experience and who did not get the healthcare they were entitled to. He said that he did not want to obstruct that in any way, and only wanted to protect the system so it can continue to exist and hopefully be better.

Commissioner Brady said that he wanted to thank Mr. Murphy for highlighting these other areas because these subgroups are all upside down financially; the dollars that are in the system are going here because there are no controls for excess costs. Commissioner Brady said that by shining a light on this, Mr. Murphy is doing a lot to advertise the need to be able to move in this direction constructively, because at the end of the day, dollars that are being manipulated in these other pockets are not available for increased benefits for injured workers. Commissioner Brady added that it is a completely inefficient system and so by tightening this up, he thinks there is some potential, but it needs to be done intelligently. He said it needs to be done expeditiously and they need to be able to simplify systems so that it doesn't turn into the La Brea Tar pits where the claim just stops. Commissioner Brady said that he appreciated Mr. Murphy shining a light on this because there is not enough attention paid to this particular area.

Mr. Murphy said that he appreciated the comments. He said that he feels for the workers who are denied stuff and that he also feels for that doctor and the steps and regulations he must go through. He said that it is a problem with the system; he admitted that as a manager of this unit in the State of California that he too had to go through a lot of steps all the time, so he was not for more regulation - maybe just smart regulation. He said about his slides and his mini-AFU plans, he was just doing baby steps. He agreed that he was trying to shine a light and that his slide on the SIBTF is abruptly short because they cannot access the right data they need to determine if there was fraud. He added that he does know that there are providers who have been suspended from the workers' comp system who are now focusing on SIBTF work - because of the way that data is reported, it reports the medical facility they worked at but not the provider who is doing the treatment.

Mr. Murphy said that is why they are going to try and get a regulation or a change in how the data is collected so we can at least check and say, "Hey, you've been suspended from the system, you shouldn't be doing SIBTF."

Mr. Murphy said that Vocational Return to Work Counseling sounds like a great system - people are down, let's get them back up and get them the help they need. But there's a lot of schools out there that are just bogus. He said that they have identified 10 schools with about \$100 million in bills that have been criminally convicted in the last five years. He said that they are helping law enforcement investigate other corrupt schools. They are trying to improve their regulations a little bit. As an example, the DIR maintains a list of licensed schools or authorized Vocational Return to Work Counseling schools. However, there are no regulations for removing that school from the

list after they've been convicted and kicked out of the workers' comp system. He said that they are looking for simple, straight-forward changes like that.

Mr. Murphy continued with another one that is uniquely frustrating to him. UEBTF fraud or what he also calls Professional Employer Organization (PEO) and staffing company fraud. The attorneys in the Office of the Director, Legal Unit down the hall from him defend these claims against the state and they're always complaining about this PEO or that company. He explained that he did an informal survey. He just emailed the attorneys that if they have a case with a PEO company that is either uninsured, underinsured or using a fake certificate of insurance, to please let him know. He said that he was besieged with emails from OD Legal attorneys across the state and he obtained a list of 34 companies. He said that the AFU started to do some data analysis and it turned out that over 60,000 workers have been injured while working for these companies that were too cheap to buy insurance. He said that 2100 of the injured workers became claims in the UEBTF system. He said that he cannot say how much those claims are worth because they did not audit that deeply. He said that he did speak to the three senior attorneys in OD legal and asked on average, what are these claims resolving for? He said that is where he got the \$50,000 number (in the presentation slide). Some settlements are higher, some are much lower, but if that's even close, that's over \$100 million, again, because the companies are too cheap to buy workers' comp insurance or using fake certificates of insurance.

Chair Steiger asked if Mr. Murphy had any ideas for ways to crack down on this. Is it a PEO specific thing? Does it need a regulation or statutory change to focus on them, or is it the about the fake certificates of insurance? How do you have a fake certificate of insurance that passes any sort of muster? Where do we need to be looking more closely? Mr. Murphy replied that there is a professional employer organization called Cal Sierra, who can brief you extensively on that, but that industry is largely unregulated. He said that there is a lot of what he calls "hot potato" going on: "He's your employee. No, he's your employee." Back and forth like that.

Mr. Murphy said that they (Cal Serra) presented him with examples of the fake certificates of insurance and outright lies about the number of employees they have. Mr. Murphy said that you just can't assume people are always being truthful with these business dealings.

Commissioner Brady added that he knows there is extensive manipulation in terms of class code verification and under-reporting of payroll by employers - which is another tragedy because it just increases cost for everybody else. He said the system costs go up exponentially because of those two factors as well. He said that he knows that Mr. Murphy knows this as well, and that they will run out of time and run out of slides, and that it just reiterates the things that they all have to balance and counter. There seems to be manipulation by all parties, and they are trying to minimize that behavior. He said he commends Mr. Murphy's and the AFU's efforts for trying to help reform the system because a great deal of attention needs to be focused and moved in this direction.

Mr. Murphy responded that he appreciated those words. He said that he was on his last slide. He said he wanted to make a point that in his prosecution career one sees endless violence and gore and destruction. But with every case, he also found someone doing something good, heroic, and strong. He said that while they are saying bad stuff about fraud, they are fighting it. They are

fighting it to help the system. He said that nine times out of 10, all the people seen in the system are great and what they are doing is important and they are there to support, not hurt.

Commissioner Kessler said that she was a little confused. She indicated that there are penalties. If there are penalties that are assessed against these fraudulent folks, where does that money go? Mr. Murphy replied that when there is a successful criminal prosecution, they will ask for restitution that will be returned to the insurance companies. The AFU does not penalize or fine people for fraud. He said that they just stay the liens and consolidate them after the criminal court system does its job.

Chair Steiger asked for confirmation that there are no penalties for engaging in this kind of fraud and you “just” have to pay the money back.

Commissioner Roxborough offered that, no, they go to jail. That's the penalty.

Commissioner Brady said that it was sort of like the Long Beach Hospital with spinal surgery and they had a machine manufacturer produce spinal implants.

Mr. Murphy said that maybe he didn't understand the question correctly, but it's a great example of how they work hand in hand with law enforcement. They are doing criminal prosecution; they are sentencing people to jail or prison; they are collecting restitution; courts are issuing fines. AFU is acting separately to protect the Division of Workers' Compensation, to stay the liens, to clean up the system, to kick them out of the system.

Commissioner Kessler said she appreciated the whistleblowing aspect of what AFU does to make sure that these people get held accountable. She added that that's why she was chasing the money so if the fraudsters do get penalized or whatever, besides going to jail, if there are financial penalties that get paid then they can hire more people to do the work that needs to be done.

Mr. Murphy said that when he sits on the Fraud Assessment Commission, he reads all the DA grant applications. They list out the number of convictions, felony misdemeanors, the amount of restitution they've collected, the amount that has been ordered and it totals up to millions of dollars. He did admit that he has never added up every county's number.

Commissioner Kessler said that what they have learned over time is that when people get caught for doing stuff that injures workers, there are financial penalties; but then there is an adjudication that happens when there is an appeal, and sometimes those penalties are greatly reduced. She asks if it serves as a deterrent if they have to pay a penalty or get busted or if they just morph into, as Mr. Murphy explained, another environment where they can continue their ways. Mr. Murphy responded that there is a lot of morphing, and they have to be diligent and that's why he is expanding the reach of the AFU a little bit or going into other areas. He said that they do have posted on the Internet their list of suspended providers and criminally charged providers. He said he was pretty sure all the providers out there don't want to be on that list. That may deter a little bit, and it certainly tells the insurance companies that they don't have to pay those people.

Mr. Murphy said that he should clarify what a provider is: it could be a doctor, it could be an X-ray company, a Cat Scan company, a pharmacist provider, a prescription drugs provider, a durable

medical equipment provider - so don't think just doctor, they are looking at every type of provider in the system.

There were no further questions.

#### **IV. Young Worker Partnership and YWLA Update** **Hestia Rojas, LOHP, UC Berkeley**

Hestia Rojas, Education Specialist with the Labor Occupational Health Program (LOHP) at the University of California, Berkeley provided an update on the Young Worker Leadership Academy (YWLA) that happened in February and Young Worker Partnership updates.

She stated that at the YWLA there were 32 students from across California that came to the University of California, Berkeley for three days. The students learned about health and safety and workers' compensation, and they designed community projects that they took back to their respective communities.

Ms. Rojas then discussed Safe Jobs for Youth Month in May and said that LOHP had a social media campaign around it as well as an Instagram for young workers to follow. On these social media, LOHP has been posting information for young workers about historical leaders, and added weekly information about work permits and rights on the jobs. It was a great resource for youth and LOHP also has an extremely creative graphics designer.

LOHP also has a young workers factsheet that they were promoting titled "Are you a working teen?" factsheet. Additional resources were also available.

Ms. Rojas said that as part of Safe Jobs for Youth Month they have a poster contest, and they present the winners in May. This year's winning poster designed by young workers will be sent to every high school in California. They had over 60 submissions this year and selected the ten best. Then they had young workers vote on the ten best posters. The first, second, and third prize winning posters were displayed in high schools across California and on the Youngworkers.org website so anyone can access that information. The first prize winner was Christine Choi from the California School of Art and Design.

Ms. Rojas said Assembly Bill (AB) 800 passed last year and she gave details about it at their Young Worker Partnership meeting. Ms. Rojas said beginning in August 2024, high school students would learn about labor laws with a specific focus on young workers that included health and safety. A resource related to AB 800 is being developed and finalized. It will be sent in August for schools to distribute to every high school student. If they scan that QR code on the resource, they can access additional information about their rights or access to workplace resources and support. Also, the week of April 28<sup>th</sup> will be designated Workplace Readiness week so school districts in California will be required to facilitate programming around that. If it was extracurricular activities or tabling, just additional activities. A list of shared information included classification of the employees as independent contractors and employment insurance, paid sick leave, prohibition of retaliation and were among the covered topics.

Ms. Rojas said there were questions about programs training teachers across the state of California. This year LOHP provided their resource kit for Safe Jobs for Youth Month to develop the resource around AB 800 to disseminate that information. It was a fact sheet for those working with young workers and they can find out more about AB 800. Many still have questions about the requirements and exactly what schools will have to do to implement the bill. On the back of the factsheet, LOHP has a list of resources and activities that can be used to integrate this information into their curriculum or into the active extracurricular activities. They have a podcast and fact sheet that they can access. There are games available with directions on their Youngworkers.org website including Jeopardy and Bingo. This factsheet is available on the Youngworkers.org website.

Commissioner Kessler said she publishes a labor newsletter and she asked for copies of fliers from LOHP because even though the labor newsletter is for adults, it is sent to elected officials, and many, many people who receive this newsletter have working children. She would like to get copies of the fliers and write an article about the presentation because this was important since many children were in the workforce.

Ms. Rojas said she can get a copy to Commissioner Kessler through Mr. Nemirovsky. They had factsheets available on their website. Commissioner Kessler clarified that the University of California, Berkeley Labor Center has a Legislative Update factsheet which is not done by LOHP. They are still finalizing this resource that will be available later this summer, so she did not have the final version that will be disseminated.

Ms. Rojas provided an update on the YWLA Community Projects. As she mentioned at the YWLA, their young workers designed community projects and it was arranged in the last couple of years because of presentations to elected representatives. They have created film contests to encourage students to make films around the topic of worker health and safety. It was a great way to spread the information and continue their learning and engagement with the community beyond the YWLA.

Ms. Rojas presented a summary of YWLA Community projects for 2024. Berkeley High School participated and the group that came were on the soccer team and so the goal of their project was to engage with these soccer players, and they had a soccer festival where they were planning to present. The Berkeley High School team will have a table at the festival to talk about workers' health and safety. The team will have a spinning wheel where young people can come and spin the wheel. If they answer questions correctly then they will win small prizes that are focused on young workers' health and safety. Berkeley High school was currently working on the project.

Ms. Rojas said they had a group from North Monterey County High School participate and they were from Castroville, a community of agricultural workers. Their project was focused on creating a pamphlet and a podcast about a young worker who did not know their rights. Additionally, the YouthBuild Charter School Team located in El Monte also participated, and it was their second time participating in YWLA. It was a school that serves young people who have been expelled from traditional paths/schools. They organized an outreach event and designed and printed T-shirts and pins. And then they also distributed a "Are you a working teen?" factsheet and gave away pins with slogans to all the youth who came by their table.

Ms. Rojas said that another group of students from YO Watts in Watts, Los Angeles participated for the first time in the YWLA. YO Watts is an organization that provides educational and employment opportunities for youth 14 to 24 years old, and they worked on a video highlighting young worker safety rights. There was a script for the video and these projects were being finalized.

Ms. Rojas said another team participating was Golden Valley, which is in Merced and these students are engaged in workplace training as doctors. For their community project, these students were designing a presentation for their school on a lot of the information that we covered during the YWLA.

And then we have the Garment Worker Resource Center in Los Angeles, and they essentially took all the information that we presented during our Youth Worker Leadership Academy and presented it in a two-hour training for another 12 young workers who are also part of the training center.

Ms. Rojas said YWLA happens every year. So, they were hoping it would be bigger in upcoming years.

### **Commissioner Questions and Comments**

Chair Steiger did not have any questions but thanked LOHP for their work on AB 800 and turning it into a reality. He said it was a really important step that kids are educated in other areas and financial literacy in the education system has not been included until that bill passed. CHSWC appreciated all the work they had done to make sure the young workers knew about their rights, about the wages they were owed, what to do if they were victims of wage theft or misclassification. He said it was a very important part of making sure that these children have what they needed to succeed in the future, and that they were getting everything they were owed. Ms. Rojas replied that she agreed with Chair Steiger and LOHP was also excited about its passage.

Commissioner Kessler said the Governor of California was considering cutting millions of dollars from the labor education opportunities. She asked if it was possible to display these posters and this information in the Rotunda of the State of California capitol for people to see the work that gets done regardless of your political persuasion. It was a good thing to be done for youth that are in the workplace and said that there were many presentations in the Rotunda. She added why not do something that was positive, that can be done to really show the work and why it was necessary to support justice. Ms. Rojas replied that it was a great idea. Any way that they can advocate for this work, they should. Getting more and continued funding would be helpful if there was a way to expand it. The goal was to expand the funding, so that they would be able to reach more students. They first reached their 32 adult advisors. However, it would be great to reach more students. Students who have never taken a flight before, this was their first flight. They came to the University of California, Berkeley, and it was a significant experience in their lives, and it made an impact.

Ms. Rojas gave an update about the conferences they attended through the Young Worker Partnership. She said her colleague, Yasin Khan, attended Labor Notes, and she facilitated a session with younger groups from Strippers United and Starbucks workers to share their health and safety campaigns and how to use hazard mapping and brainstorm effective solutions regarding

workplace health and safety. Ms. Rojas also attended the Catalina Workability Conference for those who work with students with Individualized Education Programs (IEPs). It was hosted at Catalina this year; it was exciting to be a VIP. They facilitated this training for “Youth at Work Talking Safety” which is the full curriculum designed to support teachers. They were teaching young people about young workers’ health and safety. Then they had updates to get information about AB 800 and SB 532.

Ms. Rojas said Yasin Khan also attended the Arkansas Law Review Symposium, which was a great opportunity for her to connect with people working on young worker issues outside of the state of California. It was interesting because they were able to compare what was happening in California to other states that have fewer protections when it came to worker health and safety. Ms. Khan also presented at the Symposium.

**V. Potential Changes to Frequency of CHSWC Meetings, Topics Covered in Meetings, and Goals of Commission  
CHSWC Commissioners**

Chair Steiger said the work of CHSWC has been very valuable and important and the Commissioners appreciated listening to the different stakeholders in the system, learning more about the different aspects of the workers’ compensation system. However, there seemed to be a mismatch between the severity and the urgency of the problems in the workers’ compensation system and the CHSWC meetings. At the CHSWC meetings they hear very helpful and informative presentations, but they spend more time hearing presentations asking questions about them and learning about these than they do focusing on solving immediate and urgent problems in the workers’ compensation system that are hurting many people. Currently, there are thousands of workers across California looking for someone to do something about their situation and what the workers’ compensation system has put them through. He wanted to have a discussion today about a few things. One is that CHSWC typically has four meetings a year. Commissioner Subers did the due diligence of reviewing the Statute and according to it CHSWC was supposed to meet every other month. The Commissioner discussed that maybe this is something that they should do and were we to have meetings every other month, it might open more opportunities for them to do things beyond spending most of their time receiving presentations from CAL/OSHA, DIR or LOHP or any of those other great organizations to do important work. If they were to have more meetings as directed in Statute, it would give them additional opportunity to spend more time on identifying the problems, and coming up with solutions whether those were new legislation, new regulatory proposals, new changes to the way that state agencies do things to try to make things better for injured workers.

Chair Steiger said in his years of working on many different issues of concern in the labor movement, it does seem like workers’ compensation is one that stands out where there is a lot of common ground between labor and management and many areas of agreement. There were significant problems that they need to do more to address, but hearing very informative, helpful presentations is probably not the best path to solving those problems. They would like to explore ways of doing that. The stakeholder presentations were a good step forward, whether from an injured worker or an employer or whoever the employer side would like to bring. He said they

would love to hear those concerns as well. He added that they need to do more to identify the problems and propose solutions to them. Getting back to the frequency of the meetings, even coming from Sacramento, which is not as far as Southern California, it takes the entire day to attend the meeting, and it was tough to do those four times a year. He was sure it was the same for everyone at CHSWC. He stated that he wanted to discuss the possibility of having meetings virtually or maybe a few in person and a few virtually. However, from four to six in-person meetings a year would be tough although potentially achievable, but it would be better to have at least some or most of them virtually.

Chair Steiger said some meetings could look like the ones they have always had with the presentations and then alternate them so the next one could be a legislative information hearing where they discussed the exodus of providers from the system and the administrative hurdles that they must deal with that make it tough for them to keep good providers in the workers' compensation system. Chair Steiger added that they could have a meeting that looks like the one they've always done, and then one that was a two-hour info hearing from providers and come up with a list of problems and then see what they can do to get potential solutions placed with DWC or a legislator if a statutory change is needed. That was the perspective from labor. But he added that he thought they would feel better about the time that they had committed to CHSWC if there were more concrete examples of reforms that they had come up with and made a serious effort in trying to get them put into place. It was hard to look all these injured suffering workers in the eye and say they were doing everything that they possibly could to help make things better for them. But then they turn around and spend most of their time hearing presentations and learning a lot, but not taking that next step of turning it into action that they can look at those injured workers and say they were doing everything that they can to make this better for them. He wanted to hear everyone's thoughts on more frequent meetings and then change the structure of those meetings into something that's more focused on identifying solutions and finding ways to put those in place.

Commissioner Subers said that Chair Steiger pointed out that she was the one that saw that the Commission should be meeting more frequently, and she stated that for the record, she was not in favor of having meetings just to have meetings. But being more flexible about the frequency of meetings, especially if there are pressing issues, was important and should not be limited to meeting four times a year. The past couple of years has been tough to get four meetings a year. She said he was a new member on the Commission and there have only been a handful of meetings but observing the way they work, it seemed timely to discuss ways to adjust the agenda, make more room for stakeholder conversations like today. They were hoping to hear from stakeholders throughout the system. It was important to hear from injured workers, but it was important to hear from providers, from doctors, from attorneys, from both sides: the employers, and the insurance industry. It was important that they make space to have time for them to share their issues with the system.

Commissioner Subers said she was also looking at CHSWC's mission statement and that this conversation could re-center them around this idea that this is a body that was supposed to be recommending administrative or legislative modifications to improve the system. CHSWC has very good information in its reports and if they must make time for that, it would be very helpful

to have qualitative discussion amongst themselves on issues and potential solutions and then put that forward. The Legislature relies on CHSWC for studies, which is one of the key components of what they were supposed to be doing. It was difficult to have deep discussions before a study is submitted such as what should be in that study, what should the RFP look like, what were they hoping the outcomes would be. Those discussions were difficult when they met infrequently. But those studies have consequences, and when studies are presented that everybody on this Commission has disagreed with, that they think that maybe the approach in the study was not done in the way that they had hoped it had been, and they did not talk to any injured worker. This should have been something that was done all along. They were brainstorming how he might discuss this issue at this meeting, and it was a healthy dialogue to have to move forward.

Commissioner Roxborough said this was exciting because everybody on this Commission wants to achieve results and is committed to making this system even better. It has improved in the last 10 years, SB 863 being a classic example. That was one big step, but what has happened since then? He was in favor of more meetings, but to Commissioner Suber's point, they should be meetings with purpose and outcomes. He asked about the plan of action. After hearing Mr. Freligh, the injured worker speak, he would like to have a study about reasonable ways to deliver benefits in the workers' compensation system. He was in favor of having every other meeting by Zoom, but there was a legislative restriction that they would need the Governor's office or another party to make an exception because they were supposed to have in-person meetings now. But he was in favor of having half of them by Zoom, which would make it easier for them to get a quorum. He would be in favor of a different location, maybe go to Sacramento one time where legislative members come to speak. He must fly so he does not care if he flies to Sacramento or San Francisco or Oakland and then he can stay and go to the Giants game every now and then.

Commissioner Roxborough said it is important to agendize issues that could be actionable. CHSWC conducts studies, and he has been critical along with his fellow colleagues on the methodology that was taken, which was a different issue. However, they need the studies to be done correctly and with a broader scope. Some of the studies do not need two years to have an outcome that some of us intuitively can probably guess what the outcome is. It was not earth-shattering, so he appreciated Chair Steiger bringing this up. He wants to stay longer on the Commission to be able to assist and collectively come up with things and ways to make the system better. He said they have to be careful of the Brown act that they do not have too many Commissioners talking about something at the same time. But they could have an Executive Committee, he does not have to be on it, with representatives from all sides to figure out how to make our next meeting more meaningful.

Commissioner Brady said he was on his way out, but he concurred with some of the comments that have been made. Also, despite the testimony this morning from our guests, he would recognize that the system today, although not perfect, is better than it ever has been, and it was helping more injured workers, and it delivers more medical care than it ever has. They must stop and take note of those accomplishments. And it does not mean that it was perfect. Obviously, they have work to do to improve things, but as long as it does not complicate the system, as long as they come up

with administrative remedies, they come up with ways of simplifying, they were all better off. They were better served if that is a goal of theirs collectively.

Commissioner Kessler said she did not mind an alternating Zoom versus an in-person meeting if they can get that approved and that it would be good to participate geographically in a different way. Actionable items were important provided they were realistic. She was not in Sacramento and did not have all the details to complete tasks but it would seem that if they wanted to find solutions, because there was a lot of experience at CHSWC, they could make proposals and push them through the system rather than hoping that somebody will take notice and do something.

Commissioner Kessler said she needed answers to questions about information in the minutes. Questions asked by others also needed answers. They ask questions and should not get the run around. Answers should go to all Commissioners if somebody raises an issue in a public CHSWC Commission meeting, they should. If it was a quarterly or at least a regularly scheduled meeting, they would be fine to have the Commission here with whomever attended and get feedback from the public about how CHSWC was doing and how it was functioning. Was CHSWC achieving its goals and the reasons for its creation?

Commissioner Kessler said the issue with the Request for Proposals (RFPs) is complicated because of the timing of methodology and process to research and get answers on a specific issue or situation. She has raised issues about an RFP many times and since CHSWC was going to pay for the RFP it should reflect the reason for its creation. CHSWC must have input from other departments before the RFP comes back to it.

Commissioner Kessler said if they wanted to rotate the location of the CHSWC meetings she would approve the change in venue if financial assistance were provided because she was on a fixed income. She could not make multiple trips to Los Angeles every other month, so they need to think about what it means to be able to be effective in the way that they meet and where they meet. If they wanted participation in testimonials from employers, doctors, whoever, an in-person meeting is more effective, especially if they can go to a meeting to discuss their situation, what they are going through, which is much more effective than doing it on a Zoom conference call.

Chair Steiger said that at CHSWC they spent a great deal of time focusing on workers' compensation and dealing with their struggles, much more than the worker safety and health system. There was a reason for that. They had issue-specific, and regulations-specific advisory committees so there are more forums for the worker safety and health system than there are for workers' compensation. They should also do everything to bring down that wall that tends to exist between health and safety and workers' compensation. They have separate agencies that do them, bills that deal with one tend to not deal with the other, but it should be seen as two sides of the same coin. And the better they were at preventing injuries in the first place, it was one of the many ways that they needed to address workers' compensation to make it work better. If they can keep an injury out of the system entirely, that should be the priority and the best outcome. Where do they go from here? The priority was to have additional details about having remote meetings. If remote meetings were not possible, what could they change to be able to have more remote meetings, because of the struggles in coordinating in-person meetings. It was almost impossible

as is and adding two more meetings will only make it worse. So, they will need to find a solution at a future meeting. The alternate meeting would then be issue specific. They focus on providers so that they can give providers the time that they need to get to the CHSWC meeting. Depending on the topic that may dictate whether to have one meeting in Southern California. He said every workers' compensation meeting he has attended mentioned two systems: Northern California, and Southern California. Maybe if the meeting was on provider fraud, or a topic relevant to Southern California where most of the experts or stakeholders were, then that would be the meeting location.

Chair Steiger said it was true that the Bagley-Keene restrictions made these conversations more difficult. If they were able to refocus CHSWC on proposing legislation, taking positions and trying to make them happen, the Bagley-Keene restrictions will be more relevant because those are discussions that the public should have access to, and they should be able to weigh in on. It will make more sense, but they will schedule the next meeting through e-mail and then have a further discussion. It was very encouraging to hear all the support for this idea from Commissioners.

Commissioner Kessler discussed two items: one she had mentioned to Executive Officer Enz was that it was difficult if they overbook the agenda, especially if they want to ask questions of whatever presentation is being made. If they were going to have more meetings, then after the presentation they should have had enough time to ask the presenter questions. When the Commissioners gets the agenda, she wanted to submit questions so that when the person comes and speaks on their topic, they can be prepared to address any questions. For the presentation about first responders to Post Traumatic Stress Disorder (PTSD), it would have been helpful for Commissioners to be able to provide their questions in advance so that they could have been integrated into the presentation, so presenters were aware of the Commissioners' concerns when they address CHSWC.

Commissioner Roxborough said submitting questions in writing in advance made for a more productive meeting. They asked presenters questions and they do not have the answers to them. Sometimes it was unfair to ask the questions but if they asked the presenters a week in advance, they would have an idea of what CHSWC was interested in and they would provide CHSWC information because there were two sides to the presentations. The first is giving Commissioners information and the second was answering questions that Commissioners feel are important to their thought process and development. Commissioner Roxborough said he loved the idea of being able to submit at least some questions in writing in advance, so they would have to get the information at least a week, two weeks before the meeting. It gave them about a week to process whatever they may be interested in, submit some questions, and then just circulate them.

### **Public Comment**

Diane Worley, Executive Director of the California Applicants' Attorneys Association (CAAA), and a former workers' compensation attorney said she practiced law for many years before joining CAAA in 2012. She has represented employers, injured workers, and labor unions. She has practiced civil and workers' compensation law. As a stakeholder and attendee at these meetings for the last 15 years, she appreciated this discussion. She said that the public attendance included several staff members and press. Besides her and Megan Ruble, she did not know if anyone else

was part of the public at this CHSWC meeting. Ms. Worley said the CHSWC meetings, per statute, needed to be accessible to the public. Since COVID-19, she had been attending CHSWC meetings at the Oakland auditorium, and this was her second meeting, and it had low public attendance.

Ms. Worley said online meetings showed the number of attendees. She did not know who the attendees were, but at times, there were over 100 attendees at the peak of the meeting. The attendance declined sometimes during the meeting. She advocated for CHSWC meetings every other month and said she had meetings and calls, and they were usually at five, six, or seven at night, and she did not like having meetings for the sake of just talking to each other. She said CHSWC was charged with doing very important work. She and Commissioner Brady may differ in how the system was working but the stories they heard at this meeting, there were thousands of those stories of human suffering, financial, mental and physical. So, something was not working. She also suggested that the meeting agenda could be more thoughtful if the meetings were more frequent. For example, having a stakeholder presentation with public comment, following it with an anti-fraud study that was not about the predominant fraud in the system, which is wage theft and employee misclassification, was not appropriate. The presentation was focused on doctors' fraud and the workers' fraud, which was a sliver of the fraud in the system. So, if there was a way to kind of curate the agenda, so after a stakeholder presentation with your workers, focus on ways to help improve the system for them. If the employers want to have a study about data and its cost, then you deal with that on a different day versus diluting it in a way for those who are familiar with workers' compensation. The last thing you will remember is this anti-fraud presentation.

Ms. Worley discussed the studies. She read the studies and was being forced to accept some studies. She said Rand did not do a good job. She added that with all the money that was spent on these studies they rarely have interim updates. It was publicly providing a framework for those studies. What to review comes up during public comment session, but then it was too late. Recently she had to reach out to Katrina Hagen, Director at the Department of Industrial Relations, about the Subsequent Injuries Benefit Trust (SIBTF) study by Rand that was supposed to be published next month. There were many stakeholders on both sides and doctors interested in the fund and she blatantly said to me, we're not talking to anybody. Rand was not talking to anybody, and the study will be presented at a meeting. She said her comments mirrored a lot of what the Commissioners were wanting to improve and some of the meetings need to be remote.

Chair Steiger said it was a really good idea and that it would make a lot of sense to align the stakeholder presentation with the focus of the meeting. They were interested in hearing more from DWC about all the different violations that they heard about at this meeting that should not happen. He asked what actions were being taken to minimize those and enforce them. However, it would make for a much more productive meeting to focus on one topic and have a more focused meeting. He said they had to come up with appropriate solutions rather than jumping from one aspect of the system to the other.

Commissioner Roxborough said that at the Airport Commission, they meet twice a month and get management reports every Commission hearing from the CEO. Commissioner Roxborough responded to Ms. Worley's comment that she did not know anything about this SIBTF study coming out. He added that he had no idea where this study was and what would be very helpful is

if they report to Executive Officer Enz its status and findings. Before CHSWC spends money and gets unsatisfactory results, the Commissioners do have some input about their work and where they would like them to go. But a fait accompli of getting a study of a hundred or two hundred pages and stopping after page seven saying this is not a study and this is not what they were hoping for. In fairness, the researchers do not know what the Commissioners input is because they do not ask them. However, if CHSWC was going to pay for the research they should get an update every two months on the studies being done and what the approximate timeline of the input. Then they come up with a meaningful document for the legislature to rely upon. Some of the studies they provided the legislature were not the quality they would have liked to submit.

Commissioner Kessler said another issue was who owned the study. Commissioner Roxborough replied that that was a different issue, and it was a fair point about who owned the studies. More importantly, regardless of who owns the study, CHSWC owned the content of whether they were going to be satisfied with the outcomes and the content of the study. They were supposed to give CHSWC an objective finding, but they need to have some input and some ideas of what to expect.

Commissioner Kessler said the reason for this was because a study was published and the Commissioners' request for a change was refused. The introduction of the study with the concerns that were raised and their response to CHSWC was that they owned the study. That was the problem. If we want that study that the Legislature has asked for to reflect CHSWC's concerns that CHSWC has paid for, then CHSWC should be able to have an impact on the way it was presented. Whether we agree with the content or whether they listen to us for the guidance in the report that they don't always use or implement the suggestions that are made by the TAG. A previous Commissioner told her of her experience with that. So, it was Yin and Yang and was both parts of the same thing of how we conduct or suggest a study gets done and as a result, what impact it has as its provided to legislators or the party that requested the study. I had that argument every day.

Chair Steiger asked if there were any further thoughts on that topic and there were none.

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

Mr. Enz thanked the Commissioners for the clarifying discussion on CHSWC meetings and appreciated the feedback to make the meetings function in a much more complete manner.

Mr. Enz indicated that he wanted to first address Commissioner Martin Brady's departure. Mr. Enz said that Commissioner Brady has been a fixture for a long time and has been an amazing participant and leader and has led by example. He shared that it has been a terrific experience getting to know Commissioner Brady and that they will miss him. Mr. Enz said that he speaks on behalf of the entire Commission staff who know and appreciate him by saying that they wish the best for him.

Mr. Enz continued with his Executive Officer Report by explaining that he wanted to describe what they have been doing for the last two months, starting with an update on CHSWC studies.

Mr. Enz said that he knew that there were questions about the SIBTF study, and that Commissioner Subers had mentioned her interest. Mr. Enz said the SIBTF study is a DIR study, but that CHSWC did have a presentation on the study in the past, and he understands that it will be completed by the end of June (2024). He said that he knows that there was an extension as it was originally due to be completed in May but was extended for another month. Mr. Enz said that if the Commissioners would like a presentation from RAND on that study, he could certainly request that; if not, then they could talk about a presentation for a future meeting.

Mr. Enz continued with the study mandated by SB 623. SB 623 requires that CHSWC complete two related reports on PTSD. He advised that the first report required by SB 623 will be delayed due to the current budget shortfall. He said that they have submitted a Budget Change Proposal (BCP) requesting allocation of funds to contract out for both reports - which is still pending. He said that they will submit a Request for Proposal once the BCP is approved. He said that the BCP is with the Department of Finance and at this stage, the BCP is a part of the larger legislative package and that they are waiting to hear about that. He said that as soon as that gets started, they can submit the RFI. He explained that that is another thing that they need to sort out - whether they need to submit an RFI or Request for Information - which is a new procedure - before the RFP; and added that (the RFI) would delay the study even further. Mr. Enz indicated that this (the RFI) is something that he would like to consult with the Commissioners about. He concluded that his best estimate at this point is that this BCP/RFI/RFP process will likely delay the first report by anywhere from 6- to 12-months, depending on how long it takes for DIR Contracts and then DGS to process and approve it after submission. He explained that to avoid additional delays, and to ensure that the second report is completed in a timely manner, they plan to contract with the same vendor for both studies so that they make sure that the second study is done on time.

Mr. Enz continued with an update on the redo of the CHSWC study “Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles” and indicated that it is also in process. He said that the draft RFI was posted on the Cal eProcure site for public review (and also to the Commissioners) and feedback was finalized on March 11th, and, per DIR Contracts, no feedback or comments were received, even though they extended it for an extra month in the hope of obtaining feedback. He said that the draft Request for Proposal (RFP) for this study - which includes an extended timeline to facilitate equal access, ensure worker participation, and adhere to scientific standards and communicating findings - was prepared and submitted to DIR Contracts for review and approval. He advised that the draft RFP for the Fire Mechanics Cancer study was in the final stage of review and approval by DIR Contracts, and they anticipated that it would be posted in June on Cal eProcure. He said that the RFP will be posted for 90 days to allow for potential vendors to provide feedback.

Mr. Enz also indicated that the study on “Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors” (known also as the “Janitorial Workload Study”) by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, San Francisco, and Davis campuses, was still in process. He explained that, as he stated at the last CHSWC meeting, due to unforeseen issues with attaining access to venues required to conduct the research, this project has experienced

delays, and they now anticipate a final report and project completion by December 31, 2024 (whereas they originally had anticipated a date of June 30, 2024).

Mr. Enz reported that CHSWC staff had worked intensively to prepare the final draft of the 2023 CHSWC Annual Report and the 2023 WOSHTEP Advisory Board Annual Report, and that both reports were action items for the day's meeting. He advised that these reports were posted for 30 days for feedback and comment back in January and that CHSWC did not receive public comments on either report.

Mr. Enz reported that CHSWC staff participated in the following activities since the last meeting: Staff planned and attended (along with some Commissioners) the WOSHTEP Advisory Board meeting on April 14th on Zoom featuring presentations by Cal/OSHA staff that focused on California health and safety data trends and new standards and regulations impacting the WOSHTEP program. He said that this meeting also included an overview of program accomplishments over the past year, as well as a discussion of emerging issues, audiences, approaches and future goals and objectives.

Mr. Enz added that CHSWC staff planned and attended the School Action for Safety and Health (SASH) Advisory Committee meeting on May 14th on Zoom that featured a presentation reviewing and highlighting SASH activities since the last meeting and that obtained input from committee members on new directions for 2024 and beyond.

### **Action Items**

Mr. Enz explained that there were two action items for the Commissioners' consideration.

- 1) Does the Commission wish to approve for final release and posting, the DRAFT 2023 CHSWC Annual Report?
- 2) Does the Commission wish to approve for final release and posting, the DRAFT 2023 WOSHTEP Advisory Board Annual Report?

Commissioner Kessler said that she was not ready to vote on it. She said that she received the report a week ago, that she was trying to look at it and that it was just so thick to be able to go through. She said if the rest of the Commission wants to pass it, that she was just going to abstain because she has not had a chance to really look at it closely. She said that that was her concern.

Chair Steiger asked for any other comments on the report. He then said that he wanted to mention that this was another subject that might be worth adding to their kind of broad CHSWC reform discussion in that he has found great value in the report when he's looking for a specific statistic or number, and the fact that it's available online, he can enter "control-F" and usually find what he is looking for. He said that the information was not always there, but that it often was. He said that he thinks that there is definitely a reason for a lot of, if not most, of that data. He also said that Commissioner Kessler is correct in that it is very difficult to just sit and go through the whole thing, in contrast with the Rating Bureau's State of the System Report. He said that that report is kind of a PowerPoint that you can go through; that it is like 50 slides, and it was more readable. Chair Steiger said that to the extent that readability is a goal, there's probably some room for

improvement there; and that it might be something that they should discuss a little bit more in the future along the lines of is there anything in there that maybe isn't as important.

Chair Steiger continued asking which pieces of the report take the greatest amount of staff time, and whether there are any that stand out or whether “these five things” take half the time and then they look at, OK, well, maybe they don't need to worry about those. He asked whether there are entire sections that maybe aren't as valuable and said maybe that was something to put in the back of their minds as they look through the report and review it, and whether there is anything that seems maybe is not worth all the time and effort that is put in there. He said that maybe they could cut it down to 2/3 of what it is, and maybe make some other changes that are a little bit more feasible to folks. He said that although he would say that the report is very important, and that he is pretty sure that it is in the statute as something that (is required), the statute is pretty vague. He said that there does need to be some sort of a report from CHSWC on the state of the system, and so it is a great thing and it needs to continue, but what it actually looks like, he said he thinks they should be open to making changes - potentially drastic ones if necessary - so that it is something that is a little bit more digestible for those who are taking a look at it. Chair Steiger asked if a motion was needed to approve the report.

Mr. Enz clarified that the motion had been made regarding whether the Commission wished to approve the draft 2023 CHSWC Annual Report.

Commissioner Subers moved to approve the report and Commissioner Brady seconded the motion. All were in favor with one abstention by Commissioner Kessler.

Mr. Enz asked if there was a motion for the Commission to approve the final release and posting of the draft 2023 WOSHTEP Advisory Board Annual Report. Commissioner Subers made the motion and Commissioner Brady seconded it. The motion was passed unanimously.

Mr. Enz reported that that concluded his report to the Commission.

Commissioner Subers thanked Mr. Enz for the update on the SIBTF study and appreciated the clarification that it was a DIR study. She commented that if they do ask for a presentation from RAND that the Commissioners can read it (the report) when it is posted. She said that it might be premature to request a presentation before they can see what it says. Continuing, she said that regarding SB 623 reports she saw the budget change proposal the previous day and knows that it is moving through.

Commissioner Subers said that she wanted to flag for awareness her concern about the report being delayed up to a year. She said that the first study - for whoever on staff is putting together an outline on the RFP process - that first study is intended to be a straight up claims data poll. Those workers, those emergency dispatchers, those 911 dispatchers do not have a presumption. For the study, the statute requests that CHSWC look at the number of claims that were submitted by 911 dispatchers for PTSD and if those claims were approved or denied. She said that she understands the data processing in our state (of California) can be complicated, but she said that it is something that is not supposed to require a lot of analyzing. She said it is just supposed to be claims data; she said that the second study is much different and has a longer timeline. She said that in that study

they are asking about the effectiveness of the presumption that applies to workers. She said she just wanted to state for the record what she thinks was the intent of the legislation and the studies.

Commissioner Steiger added that – like him, for those who have ever tried to get a presumption bill through the legislature can attest that – it is extraordinarily difficult because the first response is always, “Well, where's your data that this is a problem?” He said that those bills tend to run into a pretty immovable brick wall without some sort of clear data. He said that where there is a real problem, as he said he thinks the evidence seems to suggest here, those workers would be greatly served by having that data available as soon as possible. Commissioner Steiger asked that whatever they can do to make that data collection happen quickly, he thinks those workers would greatly appreciate it.

Commissioner Roxborough asked whether Commissioner Steiger wished his comment to be agendized. Commissioner Steiger answered affirmatively.

Commissioner Roxborough stated that the Commission should look into and ask for a study based upon what they are hearing today from one of the two stakeholders about whether carriers and 3rd party administrators are having challenges and what their caseloads are on average. He said that they know the guideline is 125 from what the WCIRB or DOI recommends, but the stories that they are hearing suggest that the caseloads are too high.

Commissioner Roxborough said that from a purely data standpoint - it's no judgment - just the question whether people are complying with 125 litigated cases. He said that he understands there may be realities that you can't get doctors and that he has never understood when carriers put doctors in an MPN and then still run the MPN through utilization review. He said for him, if he had a team of experts, he wouldn't hire them if he did not think they were good. He said if one qualifies to be in a medical provider network, why are they still running it through utilization review? He said if they approve of something, why then run it through to see if it should be upheld and then deny it? He said it never made logical sense to him. He said if one has a problem with anybody on their medical provider one can do something. He said in full disclosure that his firm represents people who are kicked off (MPNs), and sometimes they are being kicked off because they are approving things for injured workers. He said that that is not the goal. He asked whether it was the unstated goal and said not often. He said the system has gotten so much better but there are still these inconsistencies, so he would love to see a study done on that (claims) information to help possibly put into context why the adjuster has not returned the phone call when people call. He said that phone calls are not being returned; you can't even get people on the phone anymore. He said this is not only about the workers' comp system, but they are still a benefit delivery system, so he would love to have this request agendized. He added that he would love to have a Public Records Act (PRA) request put out on this.

Commissioner Brady commented that there are organizations in the state that don't have an MPN and that his organization was one of them. He explained that there are all varieties “of fruits” out there in California, a big state. He said that he wanted to underscore the need to study caseloads for examiners. He said that they have a lot of great examiners out there, that their skill sets are amazing, and that they are very professional, and very diligent - and yet repeatedly they are “tied

up and beaten” whenever possible by all parties because there is not a lot of understanding or empathy for that role. He said that claims examiners are the key to really getting injured workers back to work. He said that they are amazing at what they do. He said that he speaks to the character of that role and of the staff and people that he has known over many years. He said that he does know that the secret to success is not to overburden good people and to make sure that they set them up for success. He said that he would not tolerate, for example, 120 as a caseload in their office! He added that he was much more comfortable with around 60 to 80, so that he has people who willingly return phone calls and reread medical reports and do all the things that make all the difference in the world. He said that he thinks if more TPAs, more carriers, and more employers studied that themselves they would find that their programs are economically cheaper to run. He said that the injured worker is serviced that much more effectively, and it is win-win. He said this could be very fruitful in terms of the conversation, keeping in mind there are all kinds of different claims. He said therefore it has to be properly sorted, but he thought it was an effective way to really drive an outcome that would be positive for all parties.

Commissioner Brady said, lastly, that he wanted to thank Eduardo and his staff for years of service and during some very trying times and conditions and that they come to these meetings and yet they do not necessarily see all the things that go on day-to-day. He said that he knew that there was a lot of dedication and professionalism and is grateful for the support over many years to the state. He thanked Mr. Enz and his fellow Commissioners.

Chair Steiger said he wanted to echo the comments that were just made and that it is something that he hears a lot from injured workers that their experience in the system can completely change dramatically when they go from one claim administrator to another. He said that it is like the entire system is completely different to them. He said that this is absolutely something that they need to look into and whatever they can do to make sure that those people (claims adjusters) have the time that they need to do the job that they are tasked to do; he said he thinks the study would translate into very measurable and very tangible benefits for those injured workers down the line. He thanked Commissioner Roxborough for raising the issue.

Chair Steiger asked if there were any other comments or issues to raise, and seeing none asked if there was a motion to close (adjourn).

There was a motion which was seconded and that was then unanimously confirmed to adjourn.

**Adjournment**

The meeting was adjourned at 12:47 pm.

**Approved:**

---

Meagan Subers, Acting Chair

---

Date

Respectfully submitted:

---

David Botelho, Acting Executive Officer, CHSWC      Date