

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

April 18th, 2002

**Junipero Serra State Building
Los Angeles, California**

In Attendance

Chairman Tom Rankin
Commissioners Allen Davenport, Jill Dulich, Robert Steinberg,
Darryl "Shorty" Thacker", John Wilson
Christine Baker, Executive Officer

Absent

Commissioners Leonard McLeod, Kristen Schwenkmeyer

Call to Order/Minutes from the February 8, 2002 meeting

Chairman Rankin called the meeting to order at 10 am and asked for a motion on the minutes of the February 8, 2002 CHSWC meeting. Commissioner Steinberg moved to adopt the minutes, Commissioner Wilson seconded and the motion passed unanimously.

CHSWC Staff Report -State of the California Workers' Compensation Insurance Industry

Christine Baker, Executive Officer

Ms. Baker commented that as a result of the last CHSWC meeting where an informational hearing on the insurance industry was held, CHSWC staff drafted a paper identifying some of the issues and possible research topics that could be accomplished by the Commission. Ms. Baker also stated that CHSWC has received feedback from a number of interested parties on the paper and noted that the California Applicant's Attorney's Association response could be appended to the report although it was submitted late.

Peggy Sugarman, Consultant with the California Applicants' Attorney Association (CAAA) apologized for CAAA's late submission, noted that some of CAAA's issues were included in the report and suggested that issues raised by CAAA might help design any further research in the insurance area.

CHSWC Vote

Commissioner Wilson moved to release the report with CAAA's appended comments and to authorize Executive Officer Christine Baker to submit proposals addressing issues raised in the report. Commissioner Thacker seconded and the motion passed unanimously.

Proposal regarding Comprehensive Guide to Workers' Compensation

Julianne Sum, Esq, Labor Occupational Health Program, University of California Berkeley

Ms. Sum asked the Commission to consider her proposal for a new project "Consolidating and Coordinating Information for Injured Workers". This project would build on CHSWC's previous work regarding improvement of information for injured workers and communications among the parties in the worker's compensation system.

The project would include the workers' compensation fact sheets that were completed in 1998 and 2000 in a 'Comprehensive Guide for Time-Loss Injured Employees'. The proposal would incorporate ongoing discussions in the workers' compensation community regarding how to improve and streamline benefit notice and would be undertaken with collaboration of the Labor Occupational Health Program at UC Berkeley.

Ms. Baker commented that in meetings with stakeholders there was consensus on a need for information for workers and employers in one place that is easy to read and accessible. CHSWC staff recommends approval of this proposal.

Commissioner Davenport asked if the workers would now be able to obtain information in one document that will help the injured workers understand the workers' compensation system. Ms. Sum answered in the affirmative.

CHSWC Vote

Commissioner Davenport moved to approve the proposal on 'Consolidating and Coordinating Information for Injured Workers', Commissioners Dulich and Wilson seconded and the motion passed unanimously.

Hispanic Workers in the United States: An Overview of Population Demographics and Fatal Work Injury Characteristics

Scott Richardson, Program Manager, Census of Fatal Occupational Injuries (CFOI),
Bureau of Labor Statistics (BLS), US Department of Labor

Mr. Richardson presented information on the fatal work injury characteristics of Hispanic workers in the United States. The Hispanic population has been growing rapidly in the United States and is projected to be 25% of the population in 2050.

Hispanics have higher rates of injuries than non-Hispanics, apparently because of their disproportionate representation in higher-risk industries and occupations. Transportation incidents were the first major cause of fatal injuries among Hispanics followed by assaults and violent acts. California has the highest rates of fatal injuries of Hispanics born in Mexico, El Salvador and Guatemala.

Commissioner Davenport asked if it was possible to look at injuries in the service industry broken down by occupations. Mr. Richardson replied that the new regulations replacing the SIC

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classification with the North American Industrial Classification System (NAICS) will allow for more information to be available on data within the service industry. The NAICS system will go into effect in 2003. Mr. Richardson also said that the Bureau of Labor Statistics could break out data within an industry if requested.

Commissioner Dulich asked in which industries were assaults and violent acts most prevalent. Mr. Richardson replied that assaults and violent acts were most prevalent in the retail industry.

Commissioner Rankin asked if there was data regarding workers' compensation claims filed in fatality cases. Mr. Rankin suspected that there might be disproportionately fewer workers' compensation claims filed among Hispanic workers and a lot more fatal injuries. Mr. Richardson replied that BLS does not collect this data.

Gilbert Stein, CAAA President-Elect, asked if there were any breakdown in the data between English-speaking Hispanics and non-English speaking. Mr. Richardson commented that BLS does not collect information relating to language facility within the fatal injury program.

Commissioner Steinberg commented that BLS' statistics relating to country of origin could give an indication as to the language spoken by Hispanics. Mr. Richardson pointed out that some generalizations could be drawn from the country of origin data with regard to language spoken, but it would be difficult to assume this since BLS does not even know the residency status of the people. He commented that a Hispanic family, for example could have had their child in Mexico and then return to the United States.

Commissioner Steinberg asked if there were anything in the presentation of the Hispanic fatality statistics to suggest that the Hispanic population described is primarily an immigrant population? Mr. Richardson replied that this could not really be determined from the data but noted that 40% of the annual immigration of 270,000 is from Mexico and most of this immigration goes to California and Texas.

Commissioner Wilson asked how Hispanics born in the United States are reflected in the BLS data. Mr. Richardson replied that the BLS looks at the actual workers that were born in the United States and includes them in their fatality-injured worker pool. In looking at the fatality-injured worker pool, about 60% were foreign born and 40% were born in the United States.

Injury and Illness in California Agriculture

James Meyers, Agricultural Health Specialist, Center for Environmental and Occupational Health (COEH), UC Berkeley

Mr. Meyers presented information on the California fatal and nonfatal occupational injuries and illness in agriculture. The agricultural industry in California is one of the high risk industries because of the relatively high and persistent injury rates.

The major cause of fatalities was motor vehicle accidents and the major causes of non fatal injuries in this industry were 'struck-by' incidents followed by overexertion. Mr. Meyers commented that priorities for the Farm Safety Program at the University of California for fatality

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prevention includes use of seatbelts and certification of tractor operators. Prevention for non-fatalities includes targeting overexertion leading to musculoskeletal disorders, being struck by objects such as containers, animals and machinery and prevention of falls. According to Mr. Meyers, another important priority of the Safety program is training and orientation for workers new to agricultural workplaces, since agricultural workplaces are filled with machinery and hazards that new workers do not readily recognize.

Chairman Rankin asked if Mr. Meyers was familiar with the bill by the California Rural Legal Assistance and the Farm Workers union that would limit the hand weeding which has been a substitute for the short-handle hoe. Mr. Meyers replied that he was aware of the bill, but not its details. He further emphasized that there should be more developmental agricultural engineering research to look specifically at tools since a lot of the tools available now all have their problems. There is currently no USDA funding for this kind of research, including the adoption of existing tools to these problematic tasks.

Commissioner Davenport asked if overexertion in agriculture has to do with the length of the workday in this industry. Mr. Meyers replied that overexertion mostly has to do with the physical intensity of the work.

Commissioner Steinberg asked if there were still a lot of fatalities occurring as a result of tractor operations. Mr. Meyers responded that a study in California showed that most of the motor vehicle fatalities are associated with run-over (i.e. an operator getting off the tractor while it's still running), and therefore training of operators is a good step to preventing fatalities related to some of the motor vehicle accidents.

Chairman Rankin asked how many workers in the agricultural industry are using drive-less tractors. Mr. Meyers replied that he did not know the exact number, but a minority of workers use them.

Final Presentation and Report: Five States Study of Earnings Losses and Adequacy of Permanent Disability Benefits

Leslie Boden, PhD, Boston University

Robert T. Reville, Ph.D., RAND

The study entitled "Earnings Losses and Compensation for Permanent Disability in California and Four Other States" is part of an ongoing evaluation of workers' compensation permanent partial disability system in California that the Commission began in 1996. The study examines the losses experienced by workers with permanent disability and return to work rates in New Mexico, Washington, Wisconsin, Oregon and California and compares the adequacy of compensation received from the states' workers' compensation systems. Mr. Boden presented the findings of the study and an analysis of the impact of new workers' compensation legislation AB749 on adequacy of compensation.

The study found that California's Permanent Partial Disability System when compared to the other states mentioned above had the highest losses and lowest return to work rates; that despite

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increases in benefits under AB 749, the study projects that California's replacement rate is lower than three of four comparison states studied; after AB 749 California has regained the ground lost to inflation (prior to AB749 benefits were not indexed to the state average weekly wage in California as in other states), but does not really gain relative to other states.

Dr. Boden concluded that California is heading in the right direction through its AB749 mandate which directs the DWC to implement a return to work program focused on subsidies to employers for modified work or ergonomic changes. He also noted that California could consider moving to a two-tier benefit system that pays higher benefits for people who haven't been offered jobs at all or suitable jobs with the pre-injury employer.

In response to questions from Commissioners Dr. Reville clarified that even after taking account of the differences in injury severity among the states, California has higher wage losses because of its low return to work rate.

Chairman Rankin asked if the provisions concerning return to work of the AB749 legislation are put into effect, would injured workers' wages increase. Dr. Boden replied that if the return to work program works, it will get people back to work and in turn reduce their wage losses and give them better replacement rates at no additional premium cost to employers.

Drs. Reville and Boden noted that the results presented were based on pre-tax calculations. Adjustments for differences in payments of state taxes may be found in the report.

Workers' Compensation Court Management and Judicial Function Study

Nicolas M. Pace, RAND

At the urging of the Division of Workers' Compensation and others in the workers' compensation community, the CHSWC voted to engage in a major study and evaluation of the DWC judicial function. The RAND Institute for Civil Justice was chosen to perform this research by a competitive proposal and bidding process and began the project in October 2000. The goal of this study was to evaluate how well the judicial process of the California Workers' Compensation Appeals Board (WCAB) fulfills its constitutional duty to accomplish substantial justice in all cases in an expeditious, inexpensive, and fair manner.

Mr. Pace first expressed appreciation to CHSWC for selecting RAND for the project and thanked the workers' compensation community for taking the time to provide comments and suggestions on the study.

Mr. Pace reported that the study found

- Delays are still prevalent in the system marked by the WCAB's inability to provide parties in the system with a conference or trial within the statutory time frame;
- The most important cause of delay lies in the shortage of clerks and the hiring of additional clerks does not seem to be possible with the current State funding mechanisms;

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Other causes of delay include

- Judges' serving multiple function at trials,
- Judges' desire to avoid trial leading to under-scheduling of their calendars as well as being overly permissive in granting trial continuances, and
- Some judges' poor time management skills.

Non-uniformity in the system arises from unclearly articulated criteria to be used by judges prior to trial for continuances and off- calendar events and settlement approval process.

Recommendations for DWC from the study include

- Increasing the actual levels of clerks and retaining qualified people on board,
- Improving judicial training through a focus on efficient case management, and
- Encouraging judges to refuse to grant continuances at trials absent extraordinary circumstances.

Mr. Pace pointed out that although the current DWC's electronic transactional database is antiquated, the study does not recommend replacing it at the present time since this would divert resources away from critical staffing shortages.

Mr. Reville, co-principal investigator on the project, pointed out that the final report of the study is estimated to be available in 3 months.

Commissioner Rankin asked if DWC would be able to deal with the needed clerical staffing issues in the May budget revision. DWC Administrative Director Richard Gannon replied that it appears that DWC is likely to obtain funding for judge teams but would unlikely to be able to deal with all of the clerical shortage issues.

Commissioner Wilson noted that, aside from not recommending judge teams, the RAND report also did not recommend adding a court administrator. The addition of the court administrator was included in the recent workers' compensation legislation AB 749.

Chairman Rankin noted the urgency of passing along RAND's recommendations on the Judicial Study so that they could be considered in the upcoming budget process.

CHSWC Vote

Commissioner Wilson moved to pass along the present RAND report to the executive and legislative branches so that RAND's recommendations could be considered and perhaps implemented in the upcoming budget process. Commissioner Davenport seconded and the motion passed unanimously.

Suzanne Marria, DIR Assistant Director, invited representatives from CHSWC to meet with her to discuss how some of RAND's recommendations might be translated into recommendations to the Department of Finance for further discussions.

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Industrial Medical Council Disciplinary Procedures

Anne Searcy, Associate Medical Director, IMC
David Kizer, Counsel, IMC

In response to a question from Commissioner Allen Davenport, CHSWC completed preliminary staff work regarding disciplinary procedures of the Industrial Medical Council. At the last Commission meeting, CHSWC staff also recommended that the IMC be invited to make a presentation on its disciplinary procedures at the next Commission meeting in April 2002.

Ms. Searcy gave a brief overview of the role of the Industrial Medical Council and its disciplinary program. She indicated that the disciplinary program instituted disciplinary procedures based on complaints from many different sources such as injured workers, insurers, employers, attorney, the licensing board and also on cases that the IMC finds themselves. The IMC publicizes disciplinary actions on their web page, in their quarterly newsletter and, their monthly meetings. Ms. Searcy also noted that at CHSWC's urging the IMC has also started to annotate the list of Qualified Medical Examiners (QMEs) given to unrepresented workers by adding a footnote indicating whether or not the particular QME is on probationary status.

Mr. Kizer made several points about the disciplinary program of the IMC carried out by the Complaint Tracking Unit. Mr. Kizer explained that the Complaint Tracking Unit of the IMC has a small staff composed of an attorney, a part-time physician, an advisor, an investigator, a retired annuitant and two assistants. The Unit intervenes on injured workers' issues in two ways. First, the Unit attempts to informally resolve the issues by speaking with both parties, and writing education letters advising the QME what they need to do to take corrective behavior. On the serious cases, the Unit will open a formal confidential investigation, interview witnesses and begin gathering evidence and present the case to the executive medical director and to the IMC disciplinary committee for review which is separate from the actions of the licensing board.

Mr. Kizer noted that since the investigators of the Unit don't have peace officer status, the Unit cannot obtain information on criminal or licensing board investigations prior to a formal action being filed.

Mr. Kizer reviewed the current efforts of the Unit. Such efforts include ongoing attempts to improve communication with the licensing boards and the district attorneys, and opening lines of communication with the Department of Insurance regarding complaints on insurance fraud. In conclusion, Mr. Kizer noted that additional personnel would increase the ability of the Unit to do a more effective job.

Commissioner Davenport asked Mr. Kizer if the case of a specific SEIU member had been resolved. Mr. Kizer replied that the case to which Commissioner Davenport was referring had been resolved from the perspective of the Industrial Medical Council. The case was thoroughly investigated and researched and the person was advised of the IMC's action on this case.

Commissioner Davenport asked if there is a system by which the Industrial Medical Council is notified in a prompt and timely manner when a doctor is convicted of a crime. Mr. Kizer clarified that IMC's Unit received its information on convictions from the agencies that the Unit makes contact with entities such as the District Attorney's Office and the Medical Board. Also,

as part of becoming a QME, the doctor has to agree to notify the IMC when their license status has changed, if they are placed on probation, or convicted of a felony.

In response to Commissioner Davenport's question, Mr. Kizer noted that the IMC does not provide information on civil judgments like the Medical Board. The Medical Board has information on malpractice awards of \$30,000 or more. Commissioner Davenport suggested that a link should be created between the IMC website and the Medical Board's website since the IMC website does not provide information about civil judgments.

Commissioner Davenport requested that CHSWC hold the QME disciplinary matter open for further investigation or public testimony at least until the next CHSWC meeting in Northern California.

Update on the Implementation of AB749 Strategies to Improve Quality of Medical Care in Workers' Compensation

Richard Gannon, Administrative Director, Division of Workers' Compensation
Kathy Dervin, Coordinator of the HCO Program in DWC

Mr. Gannon updated the CHSWC on plans for the implementation of AB749.

DWC is working together with CHSWC on the "California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work" to be held in January 2003. Mr. Gannon mentioned that the colloquium would assist the DWC in its medical treatment study mandated by AB 749. Mr. Gannon also commented that the Division of Workers' Compensation held a meeting on April 17th to understand Oregon's return to work program since this program has been cited as a basis for the return to work program mandated by AB749 in California.

After briefing CHSWC on other updates regarding AB749 implementation, Mr. Gannon introduced Kathy Dervin, Health Care Organization Coordinator at the Division of Workers' Compensation.

Ms. Dervin briefed CHSWC on DWC's functions and projects in the area of medical care delivery. She commented that as part of the medical care system improvement work, DWC undertook five review areas with funding from the Robert Wood Johnson's Foundation focused on quality of care in workers' compensation. The projects included a review of the published literature regarding quality and quality improvement in general health care and in workers' compensation, focus groups regarding quality of care in workers' compensation and a two-day workshop on improving the quality of care in the workers' compensation system.

Recommendations from those studies include

- Ensure access to care for all injured workers,
- Look at creating incentives and removing barriers to quality of care, and
- Devise an infrastructure for quality improvement such as convening of a workers' compensation quality council.

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Adjournment

Commissioner Dulich moved to adjourn the meeting, Commissioner Wilson seconded and the meeting was adjourned at 2:06pm.

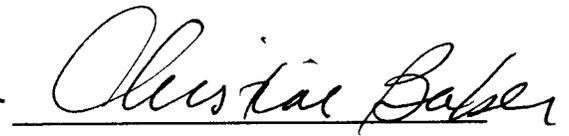
Approved:

Respectfully submitted,



Tom Rankin, Chair

Date



Christine Baker, Executive Officer