

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

**MINUTES OF MEETING  
December 14, 2018  
Elihu M. Harris State Building  
Oakland, California**

In Attendance

2018 Chair Angie Wei

Commissioners Daniel Bagan, Doug Bloch, Christy Bouma, Martin Brady, Mona Garfias, Shelley Kessler, and Sean McNally

Absent

No one.

**At-a-Glance Summary of Decisions Voted on at the CHSWC Meeting**

<b>Approval of Minutes from September 27, 2018</b>	<b>Approved</b>
<b>Election of Sean McNally as 2019 Chair of CHSWC</b>	<b>Approved</b>
<i>No further action items for vote</i>	<b>N/A</b>

**Approval of Minutes from the September 27, 2018, CHSWC Meeting**

Commissioner Wei noted that this meeting had no action items.

Commissioner Wei moved to approve the minutes from the September 27, 2018, meeting. Commissioner Kessler raised the motion, which was then seconded by Commissioner Bagan.

Commissioner Kessler brought up the following from the September 27, 2018, minutes:

- She asked Mr. George Parisotto, the DWC Administrative Director, about reaching out to different groups and specialty associations and about a comment [by Mr. Dworsky] about access to data and the fact that DIR has no mechanism to directly track what happens to an injured worker after a workers' compensation claim case is closed. She asked whether there was an effort to reach out and that she did not hear back.

Chair Wei replied that Mr. Parisotto was scheduled to speak and might offer a response. Chair Wei then called for a vote, and the motion passed unanimously.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

**Election of the Chair for 2019**

Chair Wei explained that CHSWC was a proud labor/management partnership commission that did good work. She said that, as part of that partnership, it passes the baton back and forth in the Chair position. She said the Chair was on the labor side this year, and now it was the turn of the management side. She asked for nominations for the 2019 Chair, and Mr. Martin Brady nominated Mr. Sean McNally. Ms. Christy Bouma seconded the nomination. Chair Wei asked for any discussion. Mr. Bagan expressed his support for Mr. McNally. Mr. Bloch asked how many times Mr. McNally had been Chair, and Mr. McNally said two or three times. Ms. Wei said that the Commission is fortunate to have Mr. McNally serve as Chair. She said that change was happening all around and that it was not bad to have a steady hand with somebody who has a lot of experience and both the intelligence and realism to get things done. She added that both the labor and management sides of the table have a lot of experience.

Chair Wei called for a vote on electing Mr. McNally, and the vote unanimously approved him as the 2019 Chair.

**DWC Update**

George Parisotto, Administrative Director, Division of Workers' Compensation

Mr. Parisotto said that Ray Titano at DWC would speak about Independent Medical Review (IMR) after his presentation.

**1. Fraud**

*Lien Stay Activity*

- 154 criminally charged individuals (and their entities) currently have their liens stayed by operation of law under Labor Code (LC) section 4615.
- 606,245 liens are currently designated in the Electronic Adjudication Medical System (EAMS) as being stayed under LC section 4615.
- Any individual or entity that believes the designation is inappropriate can bring the issue before a workers' compensation (WC) judge for a determination.

*Suspension Activity*

- 341 physicians, practitioners, or providers have been suspended under LC section 139.21(a).

*Lien Consolidations*

- Lien consolidation orders have been issued for 15 providers.

*Lien Dismissal Activity for Failure to File 4903.05 Declaration*

- 288,990 liens have been dismissed for failure to file an LC section 4903.05 Declaration.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

**2. Medical Treatment Utilization Schedule (MTUS)**

- The Division has adopted the Traumatic Brain Injury Guideline in the MTUS in addition to three other foundational chapters:
  - Prevention, General Approach to Initial Assessment and Documentation, and Cornerstones of Disability Prevention and Management.
- The American College of Occupational and Environmental Medicine (ACOEM) will add a Post-Traumatic Stress Disorder section to the Mental Health guidelines at the end of December. DWC will begin the adoption process shortly thereafter.
- DWC has been working with the Reed Group to give providers access to the ACOEM treatment guidelines without having to pay a licensing fee, perhaps beginning early in 2019.

**3. Pharmacy and Therapeutics (P & T) Committee Meeting—Formulary**

- The MTUS Drug Formulary will be updated in January 2019 to reflect the drugs recommended in the adopted Traumatic Brain Injury Guidelines.
- The next P&T Committee meeting is scheduled for January 23, 2019.

**4. Qualified Medical Examiners (QMEs)**

- October 17: Public stakeholder meeting to discuss ideas for the creation of a new Medical/Legal Fee Schedule.
- December 15: Deadline to submit specific proposals; impressive submissions to date.
- January 2019: Smaller stakeholder meetings to resolve differences among the parties.

**5. Utilization Review (UR)**

- December 13: Proposed utilization review (UR) regulations issued by DWC, including:
  - A new physician reporting form that includes a request for authorization (RFA) of medical treatment.
  - Definitions to implement the 30-day UR exemption created by Senate Bill 1160.
  - Procedures to remove the UR exemption of physicians who do not provide treatment under the adopted evidence-based medicine guidelines.
  - UR procedures on medications.
  - Procedures for UR plan approvals.
  - Revised UR investigation procedures and penalties.
  - Public comments accepted until January 15, 2019.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

Commissioner Kessler asked to obtain a copy of the new form. Mr. Parisotto said that it was on the DWC website but offered to forward her a copy.

**6. DWC Goals for 2019**

1. Increase the Use of Medical Treatment Evidence-Based Medicine by Physicians.
  - Work with the Reed Group, publishers of the ACOEM Guidelines, to provide free access to DWC-adopted treatment guidelines and online guideline tools.
  - Regularly update the MTUS and MTUS Drug Formulary to reflect current evidence-based medicine.
  - Provide more physician training on the use of the MTUS (webinars, training videos, in-person seminars).
  - Improve all physician reporting forms (request for authorization, progress report, permanent and stationary form) to ensure that relevant data to evaluate the claim are provided to the parties.
  - Use the Workers' Compensation Information System (WCIS) to measure outcomes and make sure claims administrators provide data in a timely manner; review data to pinpoint where friction in the system occurs and where cases are delayed.
2. Adopt Draft Regulations.
  - SB 1160 regulations for the fast-pass, formulary review, and utilization review organization (URO) plan approvals.
  - Medical-Legal Fee Schedule. (Proposals are now being submitted by stakeholders.)
  - Update Audit Unit regulations.
  - Review of regulations to eliminate duplicative/ineffective procedures.
- Continue Efforts to Eliminate Fraud by Providers and Others.
  - Look at Supplemental Job Displacement Benefit (SJDB) and other programs.
4. Advance the use of technology in workers' compensation from its current state of being a little behind the times.
  - Test and adopt rules for electronic submission of the Doctor's First Report (DFR), enabling understanding of reported claims and validation of the belief that many claims are being treated at urgent care centers and do not enter the system; the information will come from the physician directly to DWC.
  - Test and adopt rules for electronic submission of UR data—an implementation guide is ready and will be posted online on the DWC Forum in the next month so that claims administrators can examine which information is requested and how it will be transmitted. Mr. Parisotto said that DWC is aware that companies have their own systems and wants to ensure that companies understand what is being asked and provide feedback on how to make it as efficient as possible.
  - Upgrade/replace EAMS.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

- Improve WCIS reporting.
  - Analyze how technology can be leveraged to transfer relevant data (i.e., electronic medical records) more efficiently.
5. Review procedures for the Uninsured Employers Benefits Trust Fund (UEBTF) and the Subsequent Injuries Benefits Trust Fund (SIBTF) to ensure the timely payment of benefits to injured workers.
  6. Coordinate efforts with the Employment Development Department (EDD) to ensure that injured workers are given effective vocational training in the SJDB program, and reach out to EDD, Kaiser, and other specialty groups to track injured workers, the jobs that they receive, and the wages paid, after the claim is closed.
  7. Analyze procedures to improve efficiency at the trial court level, including reduction in waiting time for hearings. Mr. Parisotto said that claims remain open in the system far too long and specifically the compensability of a claim should be determined more quickly.

***Comments by Commissioners***

Commissioner Bagan asked about dental treatment in the MTUS. Mr. Parisotto said that DWC is planning to add dental treatment to the MTUS and that [ACOEM] has treatment guidelines for that. He said that, at present, if the MTUS has no treatment guideline, the next step would be to go through the search sequence by referring to other national guidelines and if necessary continue to identify relevant peer-reviewed studies to determine appropriate treatment.

Referring to AB 553—which would have made automatic the distribution of money from the Return to Work (RTW) fund to anyone who receiving an SJDB, but was vetoed by Governor Brown—Commissioner Bloch asked how to increase use of the RTW fund in order to create access for workers who are eligible, short of new rulemaking. Mr. Parisotto said that DWC is taking a serious look at the SJDB program; it wants to see how people are getting vouchers and under what circumstances. He said that DWC hears a lot of stories, and it is difficult to determine policy based on stories—but it sees evidence of vouchers being used for settlements. In other words, injured workers who are actually not entitled to vouchers receive them so that they can obtain a little more money and become entitled to the RTWS fund. He said that this is something that it wants to prevent. He said that DWC wants to ensure that those who are entitled to the benefit get it, have access to a training program, and then take the next step and obtain the RTW supplement without being taken advantage of or having someone else take a piece of it. Mr. Parisotto said that it probably will enter into some rulemaking on the RTW program—the program currently resides in the Office of the Director (OD), and he wants DWC to take a stronger hand in the program so that it has accurate reports about the voucher and who issued it early on. After DWC receives applications for an RTW supplement, it needs to have a way to validate whether the applicants received the supplement and where it goes to ensure that they receive the entire amount.

Commissioner Bloch asked about UR and IMR not being mentioned as part of the DWC goals for the year. Mr. Parisotto said that fixing the physician reporting form and RFA is essential. He

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

said that, once that is in place, then it can take a look at what is working and not working in UR. He said that if there is a request within the treatment guidelines with relevant information that substantiates the request, there is no reason for UR denial. He said that California does have a system driven by friction—some people believe they can save money either by denying a claim or denying treatment in UR. He said DWC wants to make UR as bulletproof as it can. He said it may sound far-fetched, but good treatment requests result in better UR decisions. He said that it will be looking at UR and UR complaints and that DWC has made great progress with the Audit Unit, changing the complaint system and taking immediate action, instead of waiting to conduct the audit first.

Mr. Parisotto said that, with IMR, DWC needs to look at quality control and ensuring that the relevant medical records are getting to the IMR physicians and that the decisions are sound and based on the records presented. Commissioner Bloch thanked Mr. Parisotto and said that he would have further questions in 2019, and Mr. Parisotto agreed that there should be questions.

Commissioner Kessler asked about physician training. She said that she has heard in the past that sometimes physicians do not fill out the paperwork because they are not getting paid for it. She asked how DWC expects doctors to fill out forms if they are not paid to do so. Mr. Parisotto said that it is a challenge; he said one of the goals for the system is that, when there is work, they [physicians] should be reasonably paid for the work they do. He said primary treating physicians should be at the forefront. He said that DWC had problems with a prior form because it paid only \$12.80, and it is aware that the form needs to be compensated with more money. He said that the form is posted on the DWC Forum online because he wants to receive feedback about whether people like it and believe it is good. He said then DWC is also going to ask physician groups what the appropriate compensation is for the form. He said that RAND looked at the issue and believes payment for filling in the form should be \$20 or so. Commissioner Kessler asked how DWC knows that the physician is filling out the form and not a physician assistant. Mr. Parisotto said that California has very assertive physician associations, which know about how the system functions, and he will reach out to them to help organize training and outreach so that their members will work with the system and follow what DWC is doing.

Commissioner Bouma asked about UR and said that “words matter.” She said that Mr. Parisotto said, “UR is what we have.” She asked whether DWC had any interest in exploring whether UR is still serving its intended purpose. She said that the system had moved aggressively to evidence based medicine and away from the previous structure. She asked if this was just an added point of friction or if it was something that could be examined in the future. Mr. Parisotto said that it was a good year to start taking a hard look at how that process works. He said he knows that claims administrators realize the importance of early intervention in work injuries—in other words, showing that they care. He said they don’t want to use UR as a friction point. He said after they have their board in place and guidelines are available for physicians and UR data are collected, they will see how streamlined and efficient that process is and where the sore points are. He said that he hopes that they can start examining the process and specific instances by midyear. He said it is important because he hears about a lot of problems with UR, but he rarely sees the actual specific cases in which UR has caused difficulties. He said that he is not saying there are no problems—he knows that there are—he knows claims administrators and certain groups take advantage of UR and deny care, and injured workers are “left holding the bag.” He

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

said that after DWC gets the foundation in place, with the guidelines and the forms—he believes it will be evident where the problems are.

Commissioner Bouma said a bill signed in 2018 gives the Commission more access to data sources across self-insured plans and the WCIS. She asked how that bill (and access) might assist those efforts and goals. Mr. Parisotto said that self-insured plans will now have access to WCIS data, which will enable them to take a closer look at how claims are managed. He said that LC section 138.7 is a very strict privacy statute, which allows DWC to share WCIS data only with bona fide statistical researchers and specific agencies named in that statute; he said the Office of Self Insured Plans was added to that statute in 2018. He hopes it will be possible to share data with that office to get more information about how that system works and how it integrates with DWC's system.

Commissioner Bouma said that she wanted to comment on the opioid issue and that, while she appreciates that the formulary has some very restrictive rules relating to the prescribing of opioids, she is not sure that they have solved the issue; e.g., they still have legacy claims. She said injured workers, such as the firefighters she represents, do not have a good path to get back to work or to move away from opioids, to which they have become addicted. She said that she did not know whether anything in the system is getting them back on track, rather than just weening them or cutting them off. She said that is not always an effective strategy. Mr. Parisotto said that more communication is needed between physicians and claims administrators in terms of how to get workers off [the medications]. He said that he received a message from the mother of an injured worker who was very concerned that the system had essentially put her son into a ... catatonic state after a simple back strain. He described the long list of opioids taken by this unfortunate individual. He said that DWC doesn't know what to do about that. He said that DWC did look at the file. The physician prescribes [the drug], it goes to UR, it is denied, and goes to IMR, where it is denied; then the same prescriptions come in through the system. He said that this is something that has to stop. He said that it probably has to work across agencies, with the Medical Board. He said DWC needs to find a solution and a pathway out. He said more importantly the pathway out must include an actual pathway. He said that DWC does not need to just ween and cut people off; rather, it needs to provide a way forward. Commissioner Bouma said that supportive programs and maybe even treatment would be helpful if there is an acknowledgment that this is the status of the injured worker now. How can DWC get them out of this state and back to work and out of addiction? If it is the WC system that lead them down that path, then it is the same system that should help them escape it.

Commissioner Wei asked how it happened that UR and IMR denied both. Mr. Parisotto said that this was another problem that the system has to deal with: effective communication. He said that he hoped the UR rules take a step in that direction. He said that he has heard that UR denies everything, but in some instances a UR denial is not the worst thing, because maybe that injured worker does not need that treatment. He said that after a UR or IMR denial, a serious discussion should take place about the path forward for the injured worker.

Commissioner McNally reiterated Commissioner Wei's question: if UR and IMR deny [the treatment, i.e., the opioids], how do the injured workers still get the medication/prescription? Mr. Parisotto said that DWC is trying to look at that—after IMR denials, it suddenly gets another

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

request for the same amount of the medication. Commissioner McNally asked again what he knows now about what is happening. Mr. Parisotto said that he does not know how it happens. He said that DWC needs to take a deeper look at it.

Commissioner Brady commented that the Schools Insurance Authority has about 3% of the medical treatment go through UR—for surgery and opioids that are not part of evidence-based medicine. He said that it was a significant problem. He said the feds and the Centers for Disease Control and Prevention (CDC) say that 72,000 people died in 2017. He said, in contrast, 58,000 people were killed during the Vietnam War. He said the numbers are staggering, and the feds are more worried, not less. He said that now there is a rise in methamphetamine use as well. He said that the U.S. has 4% of the world's population but consumes 90% of the world's opioids. He said that the U.S. has a problem. He said he thinks it starts with a prescription pad, so anything they could do to put the brakes on that would be helpful.

Commissioner Bagan congratulated Mr. Parisotto on what DWC has accomplished. He said Southern California has felt the impact of getting a lot of the liens out of the system. He said cases are being adjudicated faster and more efficiently. Commissioner Bagan asked whether Mr. Parisotto could describe a little more about the ways in which DWC plans to “continue to eliminate provider fraud.” He asked whether they have only hit the tip of the iceberg and whether there is a long way to go. Mr. Parisotto said that it could be only the tip of the iceberg, as it seems as if every time one opens the newspaper, another scheme is uncovered, which is head scratching. He said that, whether it is staying the liens or suspending the providers, it is using the data received and the various data sources that they have and doing the analytics to uncover patterns or connections—whether between law firms and physicians, physicians and various groups that provide medications—to find more groups. He said they focused efforts on data analytics and reaching out to various law enforcement groups and district attorneys to see what they need from DWC. He said that he has been told that it is very difficult to prosecute a WC case because the system is so complicated to explain. He said DWC wants to see what it can do to move cases forward.

Commissioner Brady said he wanted to compliment Mr. Parisotto on his list. He said it was robust and diverse. He said that he knew that Mr. Parisotto and his staff worked long hours to try to improve the system, and he expressed his gratitude for their efforts. Mr. Parisotto thanked Mr. Brady and recognized and complimented his staff for being very diligent and committed to making the system better.

***Public Comment***

Gabor Vari, CEO of California Medical Evaluators, a QME for many years, and a treating physician, spoke about the medical-legal fee schedule, saying it continues to be a concern. He referred to Mr. Parisotto's bemoaning of the amount of friction in the system. Mr. Vari said that the QMEs are supposed to be outside a lot of the friction out there. He said because of access issues and too few doctors in the system, QMEs have become a source of friction such that appointments are not readily available, and QME report quality unfortunately continues to be “not up to snuff.” He said the fee schedule is a big ticket item; there has not been a change in the fee schedule for 12 years; physicians faced an effective 29% erosion in their real wages over



**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

those 12 years. He said he cannot think of a group of workers or employers with 12 years of stagnant wages, but that is a reality what QMEs face today. He believes it is the largest source of the exodus of qualified physicians from the system and the reason that injured workers do not have access to timely and high-quality QMEs. Mr. Vari applauded the administration for looking closely at the medical-legal fee schedule, opening it up to stakeholders to solicit or elicit comments. He said he looked forward to continuing dialogue.

There was no further public comment.

**IMR**

Ray Titano, Division of Workers' Compensation

Mr. Titano explained that he is a data analyst in the Medical Unit in the DWC. He said he coordinates the posting of all IMR and IBR decisions issued by Maximus. He said he also writes the IMR annual reports and puts together presentation packets for statistics.

Mr. Titano said he wanted to show the Commissioners where they could go to find information about IMR in a timely fashion. He said that everything he is showing the Commissioners is posted on the DWC website. He indicated that he compiled a list of URLs to make them easier to find.

Mr. Titano said that the last IMR annual report released was for 2017 data. He said it had a lot of information on IMR activity, such as ineligible IMR applications, timeliness, and year-to-year comparisons since the IMR program was put in place in 2013. He said there was more detail as one reads deeper into the report. He said ineligible applications were trending downward, and about 96% are now eligible. Mr. Titano said that in addition to annual reports, it has information on a timelier basis.

Mr. Titano showed a page from the DWC website that is posted once a month for the prior month. He said that the information is posted as a placeholder until the annual report is issued. He said it lists the trends in the case decisions issued each month, timeliness, number of applications received, ineligible applications, and the uphold and overturn rates for different treatment decisions reviewed by IMR reviewers. He said it lists the broadest categories, as well as the pharmaceuticals most often requested through IMR.

Mr. Titano also showed the IMR search tool on the DWC website. He said all the decisions issued through October 2018 are posted. He said de-identified or abridged versions of the final determination letter received by injured workers are posted, so that the public has access to decisions issued during certain time frames, by date of injury, by date of issuance of IMR decisions, by the specialty of the IMR reviewer, and by the categories of treatment request. Using diagnostic testing as an example, he pulled up imaging services in reverse chronological order for all IMR decisions with a review for imaging and radiology services. He said it could be further narrowed down by CAT scans, but because they are all PDFs, they have to be opened individually. He said it was a pretty efficient way to find certain cases based on certain traits, with access to the clinical case summary, the decision rationale, and all the different services and

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

the MTUS guidelines reviewed. Mr. Titano pointed out that one section in each IMR decision summary lists all the services that were part of the UR, including those authorized during the review. He said one could see how the particular denied treatment fits in with the entire treatment request from the treating physician that was being reviewed in UR.

Mr. Titano said that DWC is also working on building a database of the presentations that the Administrative Director and the Executive Medical Director give throughout the year—both about IMR and DWC programs in general. He said it has compiled all presentations made at the DWC Education Conferences in February/March each year and will add more to allow historical data availability.

Following are the links discussed during the presentation.

*IMR Annual Report*

The IMR program has issued four annual IMR reports. These reports describe the progress made to date and provide analyses of the data gathered during the first five years of the program. The most recent report issued is posted on the DWC website.

[https://www.dir.ca.gov/dwc/imr/reports/2018\\_IMR\\_Annual\\_Report.pdf](https://www.dir.ca.gov/dwc/imr/reports/2018_IMR_Annual_Report.pdf)

*IMR Search Tool*

All IMR decisions since the program began on January 1, 2013, are posted on the DWC website after being issued. IMR decisions that were withdrawn or determined to be ineligible are not posted. The DWC IMR search tool allows users to easily research the database of IMR decisions.

<https://www.dir.ca.gov/dwc/imr/IMRDecisionSearch.asp>

*IMR Updates Page*

DWC and MAXIMUS issue monthly communications to keep parties informed of important program changes as well as general information updates related to the IMR program.

[https://www.dir.ca.gov/dwc/IMR/IMR\\_Updates/IMR\\_Updates.htm](https://www.dir.ca.gov/dwc/IMR/IMR_Updates/IMR_Updates.htm)

*IMR Presentations*

All DWC Educational Conference updates on UR and IMR presented since the enactment of SB 863 are posted on the DWC website.

[https://www.dir.ca.gov/dwc/IMR/IMR\\_Presentations.htm](https://www.dir.ca.gov/dwc/IMR/IMR_Presentations.htm)

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

***Comments by Commissioners***

Commissioner Kessler asked whether any of the materials presented were available in other languages. Mr. Titano said that at this time the IMR decisions that DWC receives for posting on the website are only in English. Commissioner Kessler said that if DWC was to look into any translations, educational materials in particular are where she would start, in terms of educational emphasis.

Commissioner Wei asked about the cost of an IMR decision. Mr. Titano said that it was \$395 for a standard IMR and that DWC received about 160,000 eligible applications per year. He said that about 250,000 applications have been filed. Commissioner Wei asked for clarification on how many applications Maximus was paid for. Mr. Titano said that Maximus was paid for the completed determinations, or case decisions, that are issued. Ms. Wei asked whether Maximus was paid for the first-level (eligibility) review, and Mr. Titano said no. He said that the number is about 160,000 cases per year. Ms. Wei then explained that she multiplied 160,000 times \$395 and got \$63.2 million. She said that, compared to the overall system, it is not a huge amount, but it is a sizable amount of money: \$63 million.

Commissioner Bouma asked about the number 250,000. Mr. Titano went to the website to demonstrate. He said Maximus received about 250,000 applications, however, about 20% of them are duplicate applications, so the number is really about 200,000 unique applications. It does not get paid for [duplicates], and, of these 200,000, about 5% are considered ineligible. He said that some applications are withdrawn or terminated while the case is going on. Referring to the chart in the annual report, he said it ends up being 160,000 per year—actually, this year about 170,000. Ms. Bouma said she was concerned about the people who should have had an IMR but did something wrong. Mr. Titano said that the annual report will give information about how the flow goes from applications received to what is considered eligible to what was actually decided. He said that ineligible applications have decreased a lot. He said that there was a category called “conditionally non-certified,” dealing with a problem with UR in general. He said most of them are administrative—not filed in time, or the UR document is not attached to the IMR request.

Commissioner Bloch said that the victim of these sorts of reasons for the ineligibility is the injured worker. He said, in his opinion, not a single one of them is the fault of the injured worker—especially one who is unrepresented in the system and who is supposed to understand these administrative issues surrounding their IMR application.

Commissioner Wei said that she shared with Commissioner Bouma that when they talked about IMR and created an IMR system, the vision was that over time the requests for IMR would dwindle—they thought maybe even to zero. She reflected that this may have been “stupid.” She said that to remain at a sustained 160,000 or 250,000 every year is not what they had hoped for. She said, after six years, they should see a trend line significantly downward. She said even if the administrative issues were removed for the pool of applications, the substantial friction around IMR remains 160,000 requests per year. She said that was not what was intended, so she said she would like some interventions to bring back that original vision.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

Commissioner McNally said that that was why they wanted the decisions posted online so that people could look at them and educate themselves. Commissioner Wei agreed and concluded that [the posting of decisions online] is not working. Commissioner Wei said that she had looked at some of the decisions, and she is not sure—they are supposed to send a market signal to the world about what could and could not go through IMR. She said when they are so strict about evidence-based [medicine] at this point, it does not seem that they should have this much dispute. She said as a Commission, they need to think about how they deal with this [problem]. She asked whether there were “pro tips”—commenting that Maximus is making a “sh\*t” ton of money and adding that there is no other way to describe it. She said Maximus should be helping with “pro tips.” She said that there is a top ten list she came up with just by looking at the pie chart presented, such as “make sure you sign your claim form,” “make sure you’ve paid attention to your timelines,” and “here’s your drop-dead date.” She said that there are some things they should be able to take care of at the low end of the scale. She said then they need to home in on the medical side and tighten it up. She said that over \$60 million is on the table from which injured workers could benefit, in one form or fashion, and maybe employers could save a little bit as well.

Commissioner Bloch asked what percentage of the overall claims in the WC system the 160,000 applications represent. Mr. Titano apologized and said that he did not know. Commissioner Wei asked Mr. Parisotto whether 10 million requests for authorization were made every year. Mr. Parisotto said that DWC could try to get that number. Commissioner McNally asked what percentage of those 250,000 IMR requests were from represented injured workers. Mr. Titano said of the 160,000 IMR requests it was about 96%-97% IMR requests from represented employees.

Commissioner Bloch asked whether there was a way to estimate what happens to unrepresented workers in the system, who are potentially being denied treatment and could go to IMR but do not understand how to navigate that process. Commissioner Wei said that it was very helpful to have all the IMR data in one place, but it raises a lot of questions and crystalizes where the community is in the system. Mr. Titano said that one of the reasons for creating the search tool was for treating physicians to be able to review past decisions issued, so that they could see the trends and why certain treatments were not authorized. Commissioner Wei agreed and said if the system is based on the expectation and the desire of physicians to read all those reviews, then they have to be paid for that. She said this is just like with the legislature—garbage in, garbage out. She said if they are not compensating people to review those decisions in a way to improve their own requests, then they are going to continue to get garbage out.

Commissioner Kessler said if something has traditionally been denied but may be necessary—if people are tracking only what can get done—they may prescribe something that is not entirely appropriate. She said that workers are told they get a certain type of treatment that may not even be what they need, because the trend indicates only what will be approved.

Commissioner Brady asked whether physicians even know whether the request has been sent up to IMR. Mr. Titano said that they receive a letter, but not before it is sent to IMR. They get a copy of the decision once issued. Commissioner Wei said that physicians know that they could

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

be “IMR’d.” She said that there should be an investment in ensuring that what is put forward will be approved.

Commissioner Brady asked whether any IMR requests are sent that have not received UR. Mr. Titano said no, because one reason for ineligibility is that there is no UR report to review as part of the application.

Commissioner Bagan asked about looking deeper into the data to try to identify physicians with a repeating pattern of prescribing treatments that do not comply with evidence-based medicine and are requested over and over again. He said if they can identify those providers, then they can find out why they are doing this. Mr. Titano said that DWC is starting to do that now, now that its data system is rapidly improving; it is starting to receive decisions directly from Maximus through data transfers. It now gets data from IMRs within a day of being issued. He said the system being built will make it a lot easier to look at specific treating physicians and see patterns. He said that DWC is still compiling the information, but it is not yet at the point where it can look at patterns.

Commissioner Brady said that that was a healthy analytic piece that would help. He said if 10% of the physicians produce 80% of the IMRs repeatedly for the same things, then it is a separate issue [to follow up on].

### **Cal/OSHA Update**

Juliann Sum, Chief, Cal/OSHA

Ms. Sum said that it was near the end of her time with Cal/OSHA and that she had been with Cal/OSHA for five years. She said she had worked for one year as Christine Baker’s policy advisor and then for two decades at UC-Berkeley on CHSWC-sponsored projects. She said that she was coming full circle. She said that she has a great sense of satisfaction, reward, and affection for her job, coworkers, and colleagues. She said that it was an honor to do this work.

Ms. Sum said she wanted to highlight the accomplishments of the past five years and present her ideas on future directions, which would depend on policy decision making for Cal/OSHA by the next administration.

Ms. Sum began her presentation by listing Cal/OSHA’s mission as:

- Worker health and safety
- Passenger safety on elevators, amusement rides, and tramways
- Setting and enforcing standards
- Outreach, education, assistance, and partnerships
- Permits, licenses, certifications, registrations, and approvals

Ms. Sum said that there is enforcement, consultation, research and standards, a legal unit, supporting units, such as a laboratory, units on asbestos, carcinogens, and cranes. She said the pressure in their work comes from the urgent mandates in many of these areas.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

She then listed accomplishments:

- Major policy breakthroughs
- Education and information for the public
- Increased resources
- Stronger organizational systems and internal support
- Emergency response related to wildfires

Ms. Sum broke down the major policy breakthroughs by category: regulations and legislation.

*Regulations*

- Electronic reporting of Form 300A data on occupational injuries and illnesses—emergency regulations in effect 11/1/18; permanent regulations in production and to be publicized soon
- Hotel housekeeping injury prevention—operative 7/1/18
- Civil penalties—operative 9/14/17 and every January thereafter; to follow federal OSHA budget changes
- Respirable crystalline silica—staggered operational dates starting on 10/23/17
- Petroleum refinery safety—operative 10/1/17; California is on the frontier in the whole country, looking at the decision making of employers and prevention of injuries and disasters
- Workplace violence in health care—operative 4/1/17; human beings as the cause of the safety hazard, balancing the provision of care with dangers
- Definition of repeat violation—operative 1/1/17; following federal law
- Heat illness prevention amendments—operative 5/1/15
- Abatement credit not given for serious violations without timely proof of abatement—operative 2/12/15
- Safe patient handling—operative 10/1/14
- Annual fees to support expanded oversight of refinery safety—operative 10/29/13

*Legislation*

- Earlier abatement of serious violations—effective 6/27/17
- Refinery turnaround inspections—effective 1/1/15
- Training of contractors working in refineries—effective 1/1/14

Ms. Sum said that her personal philosophy for Cal/OSHA is that it has an obligation to communicate clearly to the public and to Cal/OSHA staff. She said that when she arrived, things were not clear, things were not written out; she said she had to look at the original statutes and regulations to figure out what everyone was doing, and to explain internally what everyone was doing, as well as to put it on its website. She said a lot of what is on the website is the result of her working on committees and individually with senior managers to figure out what everyone was doing.

Ms. Sum said her efforts to educate and inform the public resulted in the following:

- All programs and services posted online

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

- Search engines to find the right district office to report serious injuries and fatalities
- Cal/OSHA jurisdiction
- Rulemaking steps
- Rulemaking updates

Ms. Sum demonstrated the Cal/OSHA homepage, which describes all the Cal/OSHA branches and units. She said that when she arrived, almost half the units had nothing written about them—such as the Mining and Tunneling unit, the Process Safety Management unit, and the LETF unit. She said she also updated information into categories for workers and for employers. She said it also created the mission statement on the home page.

Ms. Sum then demonstrated the rulemaking webpage, which describes 20 steps. She said that rulemaking has a lot of steps and waiting times. People often ask them what is going on, where are we [in the process], and they can tell them that they are at Step 4 or 2 or 8. She said that at the bottom of the rulemaking page are footnotes to all the Government Code statutes that govern each of the steps.

Ms. Sum continued on the theme of efforts to educate and inform the public:

- Workers' rights
- Protecting temporary employees
- Respirable crystalline silica
- Tree work safety
- Wildfire safety and health
- Cannabis industry safety and health

Ms. Sum concentrated on the Tree Work Safety webpage. She said tree work is 56 times more deadly than work in all industries combined. She said it is nine times more deadly than roofing. She said it is not just falls; it is electrocution, lacerations from chainsaws, being pulled toward the chipper and sometimes being decapitated, being suffocated by palm tree skirts, even deaths from anaphylactic shock from bee stings, and deaths from heat illness. She said that there were so many dangers from working with beautiful, natural trees. She said that she gets notices from staff whenever a fatality is reported at a district office, and she said a tree work fatality occurs almost every week. She said it is very upsetting to Cal/OSHA that there are so many injuries. Accordingly, they developed a tree safety video with support from the DIR Communications Office. It also has illustrations of the proper safety equipment used for tree work.

Ms. Sum said that because of the wildfires, it developed pages and links to regulations protecting workers exposed to smoke (both outdoors and indoors), protecting worker safety and health during cleanup and rebuilding. She said that she ensured the information was technically and legally accurate.

Ms. Sum identified areas where she worked to increase resources:

- Obtained approval for new positions every year from 2014 to 2018 (through budget change proposals)

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

- Increased staffing by more than 15 percent
- New positions in different Cal/OSHA programs:
  - Enforcement Branch
  - Research and Standards
  - Legal Unit
  - Elevator Unit
  - Amusement Ride and Tramway Unit
  - Asbestos and Carcinogen Unit

Ms. Sum said that when she arrived many units in Cal/OSHA were unsupervised, and a lot of expertise was missing. She said she built stronger organizational systems and internal support:

- Communications program—managed by Brandon Hart (including outreach, publications, staff training, recruiting, and heat illness prevention program)
- Managerial support for the Legal Unit and Bureau of Investigations (when she arrived, she had 20 attorneys reporting to her and over time identified two managers to oversee them)
- Toxicology expertise secured
- Internal procedures and accurate email lists
- Staffing for public records requests
- Professional development and language learning support
- Post-traumatic stress awareness training (she said she learned that damage was done to staff from dealing with gruesome situations, between the employer, coworker, and family)

Ms. Sum explained Cal/OSHA's emergency response related to wildfires:

- Training, website educational information, advisory notices
- Compliance assistance in the field
- Support for the Governor's Office of Emergency Services (OES)
- Enforcement

Ms. Sum next discussed the future of Cal/OSHA and major efforts in progress:

- Pending regulations
- Tree work safety
- Educational materials
- Staff



**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

Pending Regulations:

- Elevator safety
- Indoor heat illness prevention
- Workplace violence prevention in general industry
- Lead in construction and general industry (Standardized Regulatory Impact Assessment)
- Marijuana (cannabis) safety and health (anti-smoking regulation to include second-hand marijuana smoke)
- Anti-neoplastic drugs
- Naturally occurring asbestos (in advisory committee stage)

See complete list at <https://www.dir.ca.gov/dosh/documents/rulemaking-updates.pdf>

Tree Work Safety:

- Proactive outreach campaign
- Proposed legislation to authorize the Contractors State License Board (CSLB) to discipline contractors that violate Cal/OSHA tree work safety standards
- CSLB trade exam to include questions about Cal/OSHA tree work safety standards

Educational materials:

- Continue to produce and update publications and webpages (including strengthened writing skills of staff through a college-level English instructor at DIR; interest in the linguistics and psychology of communication)
- Translate materials into Spanish and other languages spoken by California workers and employers
- Continue to publicize significant enforcement actions

Staff:

- Recruit (recruiting committee, job fairs, universities, professional associations, continue to fill vacancies to meet mandates)
- Support (committee to recognize and celebrate staff and accomplishments, and planning a train-the-trainer program to train field managers at all levels on how to recognize and support staff with guidelines; to follow rules, staff need support, motivation, and inspiration)

Ms. Sum next demonstrated a recruiting flier available on the Cal/OSHA website. She said that it had developed a lot of materials for recruiting, such as brochures and banners. She said the exam for the Associate Safety Engineer position is continuously open.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

*Comments by Commissioners*

Commissioner Bloch thanked Ms. Sum for her efforts, including the indoor heat illness issue, the languages, and the protection for cannabis workers. He pointed out the fortified enforcement efforts as significant, such as civil penalties and changing the definition of repeat violations. He asked Ms. Sum about her thoughts on making the “stick” that Cal/OSHA wields bigger. He continued by mentioning the case of an employer who is the poster child for what is working and what is not working in the system. He said it involves a large food processor employer and one of the plants’ employees who is represented by the Teamsters. He said that when they look up Cal/OSHA violations, they tend to see more violations at plants where workers have union protection because they are not afraid to file complaints and not afraid to be retaliated against and lose their jobs.

Commissioner Bloch said that in the case of the plant where they represent the workers, there is a safety committee, and although food processing is pretty dangerous work, they do not have problems there. He said it was located at a plant where the workers were organizing with the Teamsters—entirely immigrant workers, the vast majority hired between two staffing agencies, even though the so-called temps had been working as temps there for ten years or longer. He said that in the case of this employer on the subject of repeat violations, before the organizing campaign, there was a chlorine spill, people were hospitalized, and Commissioner Bouma’s members at the Tracy Fire Department responded to the emergency. He said that in the course of their organizing, there was a similar accident. He said the workers were told to put on the little cotton face masks that are worn at hospitals and to go back into the plant.

Commissioner Bloch said that when the workers called the first responders, they showed up and shut down the plant. He said a pregnant woman was vomiting when she came out and was taken to the hospital. He said when Ms. Sum’s inspectors came to the plant, they were able to interview workers offsite, where they had some anonymity and were able to speak freely with the Cal/OSHA inspectors without fear that their employer was watching them and retaliating.

Commissioner Bloch said that Cal/OSHA found 16 violations, including two serious violations. Cal/OSHA fined the employer over \$50,000. He said the employer appealed, dragged their feet, and before their organizing campaign was over, the exact same kind of accident happened again. He said that again, dozens of people were taken to the hospital. He said that they had pictures of workers in flooded areas who had constructed rafts out of pallets and boxes and were rowing themselves around, and that they commemorate the loss of life in the Triangle Shirtwaist Factory fire, in which the exits were locked, and workers could not get out. In the case of this employer [in Tracy], exits were blocked by pallets of vegetables. Commissioner Bloch said Cal/OSHA’s inability to wield a significant stick against the employer so that they did not have the repeat violations is what frustrates him. He said his question is, how can Cal/OSHA wield a bigger stick to protect workers, particularly in the case of repeat violators?

Ms. Sum said that Commissioner Bloch presents an unhappy situation that the state is riddled with. She said employers vary a lot—some want to do the right thing, and others less so. She said that there is a cultural difference in different work settings. Cal/OSHA is working on multiple fronts—it is incremental. She said there is no magic bullet. For enforcement, there is a lot of

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

behind-the-scenes work. It is training staff to recognize hazards, to understand the legal authorization and legal constraints, and to write citations that can be substantiated. She said the more consistent they are, the more employers are aware of it. She said that it works with DIR on news releases about significant citations, so that the word gets out. She said that she talks with employers, and she knows from one of her family members that employers actually think Cal/OSHA is a lot bigger than it really is. She said that it is actually a pretty tiny division. She said employers, especially in construction, think Cal/OSHA is everywhere. She said there is always room to do better, through the quality of inspections, the pervasiveness of their outreach, and equipping workers with information about their rights. She said there are myriad ways to improve but no magic bullet that will materialize within a year.

Commissioner Bloch presented a scenario in which Ms. Sum was sitting before the Governor-elect, the Speaker of the Assembly, and the Pro Tem, and she was asked for her wish list: more money, more staff, stronger penalties? Ms. Sum said her practical wish list was in the slide presentation. She said her ideal wish list would include full protection from retaliation and everything translated into all languages—spoken and written. She said, practically, her presentation represents what they can do incrementally.

Commissioner Bouma commented on updating regulations and expressed an interest in navigating how employers in the public sector report injuries. She said, for example, in the County of Los Angeles, it is sometimes difficult to differentiate the injury rate in the Fire Department versus the county administrative office. She said she would appreciate whatever could be done—by minimizing the impact on employers—to maximize the value of that data.

Ms. Sum said that the data is now gathered by federal OSHA. She asked if the interest was to work with federal OSHA on what to draw from the data. Commissioner Bouma said that if there are federal restrictions on obtaining the needed data, she wondered whether there was a better path, in deference to her colleagues on the employer side of the Commission—without too much impact on employers. Commissioner Bouma said that perhaps there is some additional data that needs to be submitted to the State. She said the feds are already, in every area of federal government, scrapping the requirements placed on them. Ms. Sum suggested that they look first at what the State Occupational Injuries and Illnesses (SOII) survey and the Census of Fatal Occupational Injuries (CFOI) program can currently do, based on the Bureau of Labor Statistics (BLS) data. Staff would be looking at death records and identifying the numbers and statistics. SOII and CFOII data are on the DIR website, categorized by industry and year.

Commissioner McNally expressed his thanks to Ms. Sum and explained that they had worked together on many things for a long time. He said he always found Ms. Sum to be smart, conscientious, and very effective. He said that everything that she has touched is better when she is involved. He wished Ms. Sum the best.

Commissioner Brady echoed Commission McNally's sentiment and said that Ms. Sum was a fantastic example of public service and complimented her work ethic.

Commissioner Kessler said she appreciated Ms. Sum for her work, time, and effort at protecting workers. Commissioner Kessler said she did want to echo some of the frustrations raised by

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

Commissioner Bloch. She said that her constituents had experienced employers retaliating against workers, especially in unrepresented environments. She said that going forward, two things are needed: first, the system needs to figure out a better way to protect the rights of people to report injuries, and, second, the penalties levied on some employers is the cost of doing business, so they need to ensure that those employers remediate and stop the violating practice. She asked that Ms. Sum think of ways to make the penalties make a difference and change behavior—whether financial or putting an employer out of business.

Ms. Sum said that from what she had seen in terms of appeals, large employers try to remove serious and willful citations because they stay on the record for the public, payers, and shareholders to see. She said it remained for Cal/OSHA training and staff to recognize and be willing to cite for serious and willful [citations]. She said willful [citations] are much more legally complicated, but that they want to use it whenever possible because it has more leverage than a penalty. She said that having a penalty system have an impact is difficult. One would have to look at the finances of each company, and for some it could be a million or billions of dollars. She said she did not think it would be as cost effective as looking at the classification [of the penalty] and publicize it through a news release—and it is already on the federal OSHA website. She said on the worker advocate side, one could use the classification history for that leverage. Commissioner Kessler said that what [the San Mateo County Central Labor Council] learned from one experience was that it was useful to have someone in the field who was trained to recognize what a serious [violation] was and hold the employer accountable. She said the other side of the experience was to follow up after the fact to ensure that the remediations occurred. She posed the question, as Commissioner Bloch referenced, as to how many times an employer can violate and continue doing the practice without being put out of business. Other kinds of penalties are needed to ensure those kinds of incidents do not happen, especially for immigrants and those who are unrepresented—such as farm workers, food processors, janitors.

Ms. Sum said, for example, working with the CSLB on unlicensing presents a model and may be food for thought. Commissioner McNally said he had a lot of experience with the unrepresented workforce in food processing in the past and the oil industry now, and he believed that employers in general will be a lot more responsive to their customers than they are to OSHA. He said OSHA is the cost of doing business, with no disrespect intended; he said one is going to fight the penalties at the Appeals Board, and one is generally going to get the fines reduced significantly. He said if one goes to the Costcos or the Safeways or the Whole Foods, and one says to look at the suppliers and do some audits or there will be pressure upstream, one will find it will change the culture more quickly. Commissioner Kessler said that the labor community is familiar with boycotts, but they take a long time, and it is hard to tell, but hitting the pockets can make a big difference. She said such actions can be costly and mentioned the Marriot strike.

Commissioner Bloch said in the case of the food processor, the labor organizer went to one of the customers and complained about the [safety] issues that triggered an audit by the customer, who then cancelled a contract and took the business somewhere else. He said in this case the worker was fired. Commissioner Bloch said that a year and a half after the fact, the worker was finally offered reinstatement to his job with some back pay. He said the problem is that it took a year and a half. He said in workplaces as described, where there are undocumented workers and

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

people hired as temps, it just exacerbates the problem. He said it put a stain on entire industries where there are employers trying to do the right thing.

Commissioner Wei thanked Ms. Sum for her public service, stating that Cal/OSHA needed a steady hand, and that is what Ms. Sum provided.

**LETF Update**

Dominic Forrest, Chief, Labor Enforcement Task Force (LETF)

Mr. Forrest provided an overview and update on the Labor Enforcement Task Force. He stated that its mission is to combat the underground economy.

The underground economy affects all Californians:

- California’s underground economy is estimated at \$60 billion to \$140 billion annually. An estimated \$8.5 billion in corporate, personal, and sales and use taxes go uncollected every year.
- Compliant businesses that pay their fair share of taxes and WC premiums cannot compete with those who “cut corners” and gain an unfair advantage.
- Informal sector workers may be denied their due pay and benefits, exposed to unsafe working conditions, are often not covered by WC insurance, and it becomes a significant issue when these workers are injured.
  - Taxpayers are burdened with the increased cost of social insurance, again an issue that affects everyone.

A multi-agency task force, started in 2012, LETF combats the underground economy through:

- Coordinating across multiple agencies
- Conducting targeted joint enforcement—meaning multiple agencies work together to share information and resources
- Ensuring employees are paid properly and have safe work conditions
- Working with employers to level the playing field for compliant businesses
- Providing honest, law-abiding businesses with the opportunity for healthy competition
- Using joint enforcement to minimize the burden on compliant businesses and business interruption through joint inspection, with no random inspections
- Employing a sophisticated targeting protocol that focuses on employers violating the law
  - Reviewing the Employment Development Department (EDD) database as well as the Workers’ Compensation Insurance Rating Bureau (WCIRB) database to see whether employers are adequately insured and looking at licensing and registration
  - Being both proactive and reactive to complaints from the community, employers, and unions
  - Conducting onsite surveillance involving teams working together. This surveillance gives LETF a good idea of what is going on, so that it can focus on the most egregious violators.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

LETF taskforce partner agencies:

- LETF partners with different agencies depending on the industries it is looking at. For instance, if they were looking at the automotive industry it partners with the Bureau of Automotive Repair (BAR).
  - Department of Industrial Relations
    - Division of Occupational Safety & Health (Cal/OSHA)
    - Labor Commissioner's Office (DLSE)
- Employment Development Department (EDD)
- Contractors State License Board (CSLB)—focus on construction
- California Department of Insurance (CDI)
- California Department of Tax and Fee Administration (CDTFA)
- Local district attorneys
- Alcoholic Beverage Control (ABC)

Joint Enforcement Combined Agency Authority:

- Mr. Forrest commented on the effectiveness of the joint enforcement approach. For instance, it has four partners (DLSE, CSLB, Cal/OSHA, EDD)
  - DLSE looked at wage and hour issues; Cal/OSHA looked at health and safety; EDD assessed payroll tax issues; and the CSLB can look at contractor licensing. So LETF tried to maximize effectiveness by having all four partners working together. When an employer was out of compliance in one area, there was a high probability it was also out of compliance in other areas, so it was good to have all these agencies working together.
- Various industries were inspected. In 2017, 34% of inspections were in construction. Restaurant (20% of inspections) and automotive (16% of inspections) industries made up a large portion of LETF's inspections; it looked at several factors when it decided which industries to inspect: LETF looked at high-hazard and low-wage industries in which underground activity is prevalent and took seasonality into consideration. Thus in the summer, LETF focuses on agriculture, construction, and car wash, and the staff at Cal/OSHA looks at heat illness prevention measures when temperatures rise in the summer.

LETF has an effective targeted enforcement approach:

- LETF data shows the percentage of businesses that are found out of compliance by at least one LETF partner each year since LETF's inception in 2012. At the end of 2017, 93% of employers that LETF inspected were out of compliance. It may not reflect the trend in the overall business industry, but it represents the trend in the underground economy because LETF does not bother compliant companies. It uses its resources effectively to focus on the worst violators.

Advantage of joint enforcement:

- Mr. Forrest stated that the general view is if a business cuts corners in one area, it is likely to be out of compliance in another area, but that is hard to prove if only one department conducts the inspection. However, having joint inspection teams enables LETF to look into it further. This collaborative approach has yielded impressive results

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

that lend weight to this theory: 44% of the businesses inspected jointly were found out of compliance in all areas.

WC enforcement in 2017:

- Employers' failure to carry a WC insurance policy is a common violation in the underground economy. A key step in LETF's targeted enforcement protocol includes digital surveillance. To determine whether an employer is adequately insured, inspectors consulted the WCIRB database. LETF prioritizes employers who did not have WC coverage and employers with other wage or health and safety issues.
- The results from last year show the number of WC coverage violations that DLSE issued. There were related penalties across various industries LETF inspected in 2017. Broken down by industry, DLSE issued 85 stop orders to automotive businesses and 68 stop orders to restaurants for WC coverage violations. In addition, DLSE assessed over \$826,000 in penalties to restaurant businesses and over \$944,000 in penalties to manufacturing businesses but fewer stop orders in manufacturing.

LETF education and outreach

- Developed partnerships to extend reach and impact
- Designed effective educational materials to inform workers of their rights and help employers understand their responsibilities
- Actively informed workers and employers through training, seminars, and outreach events
- Designed booklets for workers and translated materials into languages such as Spanish, Korean, Chinese, and Vietnamese, commonly spoken by workers and employers in California
- Designed employer fact sheets to help employers in specific industries remain in compliance with various labor laws, including health and safety and wage and hour requirements, WC, and licensing and registration. The fact sheets include information on how to contact Cal/OSHA.
- LETF continually updates details on the minimum wage increases that go into effect each year, which are also on its website. There are versions in color online, versions formatted for access on mobile devices, and a printable version.

On the LETF website ([www.dir.ca.gov/letf/](http://www.dir.ca.gov/letf/)), in English and Spanish, the public can:

- Report underground economy activity
- Download all outreach materials
- Sign up for email subscription services to obtain updates

Ongoing efforts:

- Raising awareness about the harmful effects of the underground economy
- Increasing engagement with community partners
- Refining data matching and targeting techniques with statewide staff
- Fostering interagency collaboration

Contact LETF: Hotline: 855-297-5322; email: [LETF@dir.ca](mailto:LETF@dir.ca)

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

***Comments by Commissioners***

Commissioner Bouma asked about a chart in his presentation on WC enforcement for car wash and manufacturing industries and the number of violations and penalties and the dynamic in those two industries. Mr. Forrest replied that the chart illustrates the number of stop orders, so that when the inspectors from DLSE found that the employer did not have a WC policy, it issued a stop order. The stop order stated that the employer has to stop work until it can provide proof of its WC policy. The dollar amount of the penalty was based on a formula based on how many employees were there and the period for which the employer was not insured. For example, in manufacturing, many employers did not have a WC policy for several years and had several employees; thus they had a high penalty assessment.

Commissioner Kessler appreciated Mr. Forrest's presentation because it gave her a snapshot of what he does. She asked Mr. Forrest about the number of staff he had for statewide surveillance. Mr. Forrest replied that there are 10 LETF teams statewide, but LETF operates without budgeted positions. However, each team consists of staff from the Labor Commissioner's Office, Cal/OSHA, EDD, and the CSLB. Each team has staff members from the partner agencies. LETF collaborates with other partners as needed. The staff work collaboratively on targeting, surveillance, and inspections.

Commissioner Kessler asked whether inspections are generated by complaints received by Mr. Forrest's office and whether he determines which team is sent. Mr. Forrest stated that LETF is both proactive and reactive. It has an enforcement calendar and meets with the managers in advance. For example, it has dates and target industries planned for the first half of 2019. It conducts monthly inspections and evaluates incoming complaints. Other inspections are based on data matching, in which inspectors work in advance, screening databases and checking information; so it is a combination of complaints and other work. Commissioner Kessler stated that the enforcement targets several industries, but she was surprised that the oversight was so low for the agriculture and recycling industries because they have learned over time and in news reports that many violations take place in agriculture from agricultural reports—whether it was many workers in the field being sprayed with pesticides or having heat-related problems. She was surprised that these industries did not receive more emphasis. She referenced agriculture, recycling and garment industries in particular because they are three smaller areas with less representation and a lack of emphasis. Mr. Forrest replied that because the CSLB is a major partner, it performed a lot of the oversight of construction. So in some of those industries, it depends on its partners, such as Cal/OSHA, EDD, and the Labor Commissioner's Office. They try to find industries that various partners cover, and that is what they came up with. Also, because agriculture is somewhat seasonal and in winter there is less agricultural activity, whereas other industries are year round, they do more in the restaurant and automotive industries. Recycling is an interesting industry that they have looked at in the past few years. Commissioner Kessler stated that recycling and garments are both year-round industries.

Commissioner Kessler said that of the 603 businesses jointly inspected by DLSE, EDD, and Cal/OSHA, LETF joint inspection results showed that 95% of those businesses had Cal/OSHA violations. She asked about the status of those penalties and LETF-issued violations. Mr. Forrest replied that it was hard to get a sense of that because Cal/OSHA issues its assessments and



**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

penalties via the Labor Commissioner's Office and then it goes through the process with each of those divisions. In the LETF annual legislative report, which is due in March 2019, it will have the total amount of penalties assessed by Cal/OSHA and by the Labor Commissioner's Office. He can send that information to Commissioner Kessler. Commissioner Kessler added that it can assess penalties but this does not have an impact because the workers continue to be injured.

Commissioner Kessler asked about WC enforcement in 2017 and why the agriculture and recycling industries did not have DLSE penalties, but the automotive industry did. Mr. Forrest stated that it had more inspections in the automotive industry than in the recycling industry, and that is why it was not presented in the meeting. Commissioner Kessler stated that in the future it will be interesting to have those included in the presentation at the meeting.

Commissioner Kessler liked having instructions in different languages. She stated that she had asked about materials being translated into different languages because many workers do not speak English as their first language. She asked whether immigrant rights were included in that program with human rights as part of health and safety issues. Mr. Forrest replied that the LETF Worker Booklet ([https://www.dir.ca.gov/letf/What\\_are\\_your\\_rights\\_as\\_a\\_worker.pdf](https://www.dir.ca.gov/letf/What_are_your_rights_as_a_worker.pdf)) includes a statement that all workers in California have rights, regardless of their immigration status and that when the inspectors conducted inspections and started talking to the workers, they were protected by law.

Commissioner Kessler asked about developing incentives for good behavior. As a representative, she usually wanted public penalties and used bad actors to show what not to do. However, she has been advised to incentivize good actors and show what the good employers could do to mitigate problems, and it lowered their WC costs. A bullet could be included in the booklet to encourage employers to do the "right thing," as it benefited them because the workers were not being injured but it also lowers their licensing or WC fees. Any of these things lead employers to believe that they would also benefit from these actions. Mr. Forrest thanked her for her suggestions.

Commissioner Bloch stated that he saw a retired Teamsters' member who worked for United Parcel Service (UPS) and was collecting his Teamsters' pension; his child was the first one to go to college and he was proud of him. This worker worked hard when he was at UPS, and he was taken care of while he was there and retired with a pension. He was able to buy a home and obtain health-care for his family. That compact between employer and employee had been breaking down for decades with some exceptions, such as UPS, and that was why the work Mr. Forrest was doing was so important.

Commissioner Bloch added that he represented most of the people who did the very dirty and dangerous work of sorting and recycling by hand. In most of the nine counties in the Bay Area, trucks driven by Teamsters dumped recycling material in a pile in the middle of the room, and the workers sorted through it. Workers at unrepresented workplaces were hired as temporary undocumented immigrants. During Ms. Sum's presentation at this CHSWC meeting, he said he gave an example of a food-processing employer who had issues with WC, DLSE, and Cal/OSHA. In these industries, the ability of different agencies to work together to find patterns about an employer violating multiple state laws and to be able to deal with retaliation jointly was

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

going to be more critical as that compact [between worker and employer] continued to deteriorate.

Commissioner Bloch raised the issue of temporary agencies and referenced the new employment relationships that allow employers to avoid responsibility or liability for workplace violations through the use of independent contractors. The California Supreme Court handed down an independent ruling against a package delivery company (Dynamex) that was hiring people as independent contractors for deliveries. The ruling established a much stronger test to determine whether someone was an independent contractor or employee. An independent contractor has no protections when they are injured or victims of wage theft. Commissioner Bloch, speaking for the Teamsters, said it was his intention to capitalize on that decision, while he believed that test applies only to wage and hour violations. However, it should be a uniform test for all these different agencies. He would like to hear Mr. Forrest's thoughts about that particular employment type. He also wanted Mr. Forrest's opinion on the ability to be classified as an independent contractor and whether he thought that was an issue. Mr. Forrest stated that it was an issue, and he did not have anything specific to say, but he had been talking to many partners about that California Supreme Court decision, and it has been getting many incoming questions. The DIR under the Labor Commissioner's Office was currently reviewing that decision. Commissioner Bloch said he raised this issue because it intersected with Mr. Forrest's mission, and employers who were trying to "do the right thing" were undercut by the underground economy. These employment categories allowed some companies not only to take advantage of workers but to avoid payroll taxes. These companies in the underground economy did not have the same cost of doing business as legitimate employers, which affects not only workers and the economy but also the health of the State of California and its finances.

**CHSWC Report**

Eduardo Enz, Executive Officer, CHSWC

Mr. Enz thanked the speakers for their presentations at this meeting as well as the CHSWC Commissioners for the opportunity to brief them on Commission staff activities. He thanked Commissioner Wei for her service as the 2018 Chair and congratulated Commissioner McNally for his election as the 2019 Chair of CHSWC. Since the previous meeting on September 27, 2018, staff had fulfilled Commission requests and monitored and worked on a variety of projects and studies.

**CHSWC Studies Update**

The RAND update on the Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters study is progressing quickly, and he expected a draft report to be completed by early next year and then to be presented at the first Commission meeting in 2019, which has not yet been scheduled. This report will include a specific analysis of the return to work rates for firefighters who had experienced a musculoskeletal injury, compared to injured workers in other professions.

**CHSWC Projects Update**

CHSWC staff have worked diligently to prepare the draft 2018 CHSWC and WOSHTEP Annual Reports, and both reports are action items at this meeting.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

The California Occupational Research Agenda (CORA) survey was approved as a project in October 2017 and was developed and recently sent to stakeholders throughout California. The survey will help gather information from stakeholders, primarily employers, worker representatives, insurers, and researchers about broad research topic priorities, barriers to collecting or sharing information, and identifying effective prevention measures. Survey results will be summarized, and a roundtable of key stakeholders will be convened to review survey results and data summary and provide input on key themes that should be included in CORA. A final report will then be presented to the Commission by LOHP, detailing selected research priorities and suggesting next steps.

On November 27, 2018, CHSWC, along with its three partner resource centers at UC Berkeley, UCLA, and UC Davis, held a WOSHTEP Advisory Board meeting in Oakland. The meeting was designed to provide an overview and updates to Board members and elicited guidance on new directions for WOSHTEP. The meeting focused on a number of current issues and initiatives, including the California Supreme Court decision on Dynamex mentioned by Commissioner Bloch and its impact on WOSHTEP, the challenges and possible solutions related to temporary worker training, developing worker safety and health leaders through community partnerships (e.g., *promotoras* and community educators), and strengthening the program's outreach and education efforts.

**Action Items**

There were two action items for consideration.

1. Does the Commission wish to approve for final release and posting, pending final edits and updates, the Draft 2018 CHSWC Annual Report? Motion by Sean McNally, Second Bouma? Chair Wei stated this was an action item, so she took comments from Commissioners and the public:
  - Commissioner Bloch asked about the process: if the Commissioners approved the CHSWC Annual Report pending edits, would the report be sent back for final approval, or were they giving a “blank check” to the Commission to make edits and then publish it after their edits were completed? Mr. Enz replied that the edits were primarily made to incorporate outstanding data into the Annual Report. Mr. Enz said he could send the CHSWC Annual Report to them before posting it on the website. Commissioner Kessler added that she also wanted to have enough time to finish reading the CHSWC Annual Report and to edit it.
  - Chair Wei stated that the Annual Report was a data report, which created baseline data, and hopefully it was not a controversial document. However, if the Commissioners were willing to take an affirmative vote on the draft and asked for the draft to be circulated to the Commissioners before final adoption, then any Commissioners can ask for it to be put on the agenda again for final approval. Commissioner Kessler added that if it were circulated, she would want the Annual Report back on the agenda only if there were problems. Commissioner Wei added that the CHSWC Annual Report would be an agenda item at the next meeting only if the Commissioners found it necessary to hold further discussion and a vote. Mr. Enz agreed. Commissioner Wei added that there was a motion and a second on this item and asked whether there was further discussion.

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

- Commissioner Wei asked for any public comment on the 2018 CHSWC Annual Report.
  - Diane Worley, Policy Director for the California Applicant Attorneys Association, stated she could not comment on something she had not seen. She stated she had emailed Mr. Enz before the meeting and asked for a copy of the draft since it was listed on the agenda as an action item. He responded that the draft would be circulated after edits based on newly incorporated data. She believed that anything that was an action item should be posted.
- Commissioner Wei asked whether it had been posted for public comment. Mr. Enz replied that it had not been posted for public comment. Commissioner Wei asked the Commissioners for their opinions and added that it was problematic to have an action item when it was not publicly posted, especially since it was up for public comment. She said the rules were that if the Commission was voting on an item, it would take public comments. However, she added that the Annual Report is based on baseline data and nothing controversial. As a body, if they were going to take a vote and invite public comment, the public should have the opportunity to review it before posting by rule and by practice. Chair Wei asked the Commissioners what to do. Commissioner Bagan stated that maybe they should just post the Annual Report. Chair Wei replied that if the Commissioners found it acceptable, they could just post it for the staff and for the Commissioners to review the public comments on the posting. Then they will follow the same rule after it is recirculated and reposted publicly as a report, and if anyone wanted to hold a discussion and vote on it, the report would be an agenda item at the Commission meeting upon the invocation of any Commissioner. Chair Wei asked Chair McNally whether that was acceptable to him, and he said yes. Chair Wei rescinded the prior motion to approve this draft and said that, instead, it would be posted for public comment and receive a final vote later. All the Commissioners agreed. The CHSWC Annual Report draft could be posted now to solicit comments from the public comment and the Commissioners and then be voted on at the first meeting in 2019.
- Mr. Enz stated the report was usually posted for 30 days. Chair Wei replied that the report should be posted, and they can hold a final vote at the next CHSWC meeting. The motion to approve the posting of the final CHSWC annual report was rescinded, and then she took public comments. She appreciated public comments and said the actions of the Commission reflected the feedback from public comments as appropriate.

*CHSWC Vote*

Does the Commission wish to approve for posting for 30 days for feedback and comment, the DRAFT 2018 CHSWC Annual Report? Commissioner McNally raised the motion. Commissioner Bagan seconded. All approved.

Does the Commission wish to approve for final release and posting, pending final edits and updates, the DRAFT 2018 WOSHTEP Annual Report? Commissioner Kessler asked whether

**MINUTES OF CHSWC MEETING**  
**December 14, 2018, Oakland, California**

this report had been posted. Mr. Enz replied that it had not been posted. Commissioner Bouma raised the motion to do so. Commissioner Bagan seconded the motion. All approved.

Commissioner Kessler stated that the WOSHTEP report was about all the issues that they care about and thanked those who worked on it. Chair Wei said she would like to build on Commissioner Kessler's comments and, as she read the report, she was happily reminded of the resources for worker organizations and employers. She encouraged people to look at the report.

**Other Business**

None.

**Adjournment**

The meeting was adjourned at 11:47 a.m.


**Approved:**

  
Sean McNally, 2019 Chair

  
Date

Respectfully submitted:

  
Eduardo Enz, Executive Officer, CHSWC

  
Date