**MINUTES FROM CHSWC PUBLIC MEETING**

**Date: Thursday, December 3, 2020**
**Time: 10:00 am**
**Place: Video/Audio Conference (online only)**

**NOTE: In accordance with Executive Order N-29-20 and Executive Order N-33-20, the in-person meeting in December was cancelled.**

In Attendance

Chair: Mitch Steiger

Commissioners: Doug Bloch, Christy Bouma, Martin Brady, Mona Garfias, and Shelley Kessler

*Absent*
Sean McNally

## I. Approval of Minutes from the January 31, 2020, CHSWC Meeting

**Mitch Steiger, Chair**

Chair Steiger asked for a motion to approve the minutes; Commissioner Bouma motioned, and Commissioner Garfias seconded the motion. **The minutes were approved unanimously.**

## II. Election of Chairperson for 2021

Chairperson Steiger called for nominations for the new CHSWC chairperson in 2021. Commissioner Kessler named and moved to nominate Commissioner Brady. Commissioner Bouma seconded the motion. **The nomination of Commissioner Brady was approved unanimously.**

## III. DWC Update

**George Parisotto, Administrative Director, DWC**

Mr. Parisotto provided a brief summary of COVID-19 workers' compensation data, as follows:

- Up to December 1, 56,854 COVID-19 cases were reported to Workers' Compensation Information System (WCIS), among them 304 deaths.
- As of the beginning of 2021, COVID-19 claims accounted for 11% of the total WCIS claims, while deaths due to COVID-19 accounted for 42% of the total deaths.
- Overall reported claims in 2020 since the Governor's March 19, 2020, "shelter in place" executive order are 23% lower than in other years. Decline also occurred in other (non-COVID-19) claims.
- The peak months of COVID-19 claim reporting were June and July. A quarter of all COVID-19 cases were reported in July, about 14,700, and one-fifth of the cases were reported in June, about 12,000. Approximately 4,000 cases were reported in September

and October; it is expected that those numbers will rise given the current surge in overall infections.

- COVID-19 claims have a significantly higher denial rate than non-COVID-19 claims. Their (COVID-19) denial rates are 30% versus 10% for other types of (non-COVID-19) claims. (Most of these are due to negative test results after a claim is filed.)
- More than half the COVID-19 cases were for workers between the ages of 25 and 45, while 60% of the deaths were of workers older than 55. Older injured workers have significantly higher death rates than younger injured workers.
- Half the COVID-19 cases were for public safety officers and employees in hospital, ambulatory care, and nursing/residential-care settings, and 10% were associated with food-related employees in industries, such as food and drink serving places, food manufacturing, food and beverage stores, and merchant wholesalers. Couriers and messengers have high COVID-19 exposure; nearly 2,000 COVID-19 cases in the past 11 months are in this occupation category.

Mr. Parisotto next described the impact on DWC and its response to COVID-19. He said that the pandemic has seriously impacted the operation of state agencies, including DWC. He said that DWC has taken the following actions:

- Transitioned the largest division in DIR from an in-person, paper-based work structure/environment to a virtual one with little to no interruption in work or service to the public. This included the development of plans to get equipment and phone/internet service to employees that they need to work remotely. (He thanked the IT department for its assistance.)
- Developed plans for rotational schedules for employees taking into account social distancing protocols to continue processing mail, filings, correspondence, and program protocols. (He said the safety of employees is a priority, and he was satisfied with the results.)
- Transitioned the DWC court system in 24 district offices throughout the state to a virtual platform with minimal delays and interruption in service. The courts continue to hear 80% of hearings or 22,000 hearings a month, which is a model that other divisions and departments have sought to emulate.
- Established a telephonic hearing option that is free for stakeholders to use.
- Developed emergency regulations to address issues related to the Qualified Medical Evaluator (QME) program to facilitate the provision of medical-legal services during the stay-at-home orders so that cases can continue to be processed and to ensure the delivery of benefits to workers.
- Continued with rulemaking actions through the use of virtual public hearings.
- Continued the processing of various Division programs' work with little delay or interruption including QME panel requests, Medical Provider Network (MPN) applications, and IMR and IBR (independent medical and bill) review matters.
- Promptly responded to numerous requests for COVID-related data from internal and external stakeholders for the purpose of evaluating the state of the workers' compensation system and to predict future needs due to the pandemic.

- Completed implementation of the State Auditor's recommendations from the Audit of the Division's QME program, including recruiting and training judges, physicians, and applicant and defense counsel participating in the Quality Review Committee process to evaluate the quality of QME medical-legal reports.
- Offered staff to perform work to support other divisions in crisis.

Mr. Parisotto said that he cannot claim that everything in the transition has been seamless; that DWC, like other state agencies, has had its problems, but overall the Division has been able to transform itself. He thanked the DWC managers and its employees for keeping operations going during this difficult time. He also thanked DIR Director Katie Hagen for providing the support needed to make all of this happen.

Next, he spoke about the following specific program items:

Med-Legal Fee Schedule

The DWC posted the final proposed regulations for a new Medical-Legal Fee Schedule, with a virtual public hearing date set for December 14. The process included solicitation of proposals from stakeholders, meetings with stakeholders, the posting of an interim set of regulations and a final posting on October 28, 2020.

- The new fee schedule implements an effective 25% increase in the base fees for Qualified Medical Evaluators. It ushers in a schedule based on a flat-fee system to minimize frictional costs in the workers' compensation system. Initial cost projections, using data from analysis of past QME reporting trends, show that the schedule has the potential to more than double income for physicians participating in the system.
- For the October 2020 QME examination (taken in the past), the DWC provided an option for the QME examination to be taken at a fixed test site and online over time, to allow flexibility to physicians to take the exam at their convenience and without travel. As a result, 234 physicians took the test, more than in the previous two years, when we offered the exam twice. This option will be maintained for future QME examinations.

Medical Treatment Utilization Schedule (MTUS) Update

- In September 2020, the Division adopted additional treatment guidelines from the American College of Occupational and Environmental Medicine (ACOEM), including:
    1. Occupational Interstitial Lung Disease Guideline
    2. Knee Disorders Guideline
    3. Workplace Mental Health Guideline: Depressive Disorders
    4. Occupational/Work-Related Asthma Guideline
- The MTUS Drug Formulary was updated on November 1 to include the drugs recommended in these guidelines.
- Further, ACOEM's Antiemetics Guideline was adopted on October 26, 2020. Drug formulary will be updated to reflect that adoption.

IMR Update

- IMR procedure is operating without any delay.
- Decisions are issued within 10 days of the receipt of the medical records, far less than the 30-day (statutorily required) deadline.
- Probably will end the year with approximately 135,000 IMR case decisions, which would be a decrease from 164,000 in 2019. While applications are slightly down, from about 17,000 per month to 15,000, 94% of the unique application filings are deemed eligible.
- Pharmaceuticals is still the most-requested treatment review but makes up a smaller proportion of the overall treatment requests. (All the other categories went up slightly to account for pharma's decline.)
- Overturn rates of Utilization Review decisions have remained steady, about 8-9% overall.

EAMS Update

- Plan prior to this year was to move forward and replace the current Electronic Adjudication Management System (EAMS) system.

  However, given the uncertainty over the budget, they have stepped back and are looking at upgrading various components of the system, for example, the use of e-forms, to see what can be done in an efficient, cost-effective manner.

DWC Educational Conference, usually held in Oakland and Los Angeles.

- Likely a virtual conference in March.

**Commissioner Comments**

Commissioner Steiger said that they may want to track the overall decline in claims filed. Mr. Parisotto added that they track the overall statewide COVID-19 numbers and that the claims seem to track the overall numbers of infection rates with a bit of a lag. He said that they expect an uptick from the Thanksgiving surge.

Commissioner Bouma asked about the COVID-19 denial rate, on the basis of negative tests. She said that, anecdotally, she hears about workers having to get tested repeatedly and that, despite the negative test, an antibody test suggests that they may have had it. Mr. Parisotto said that if Ms. Bouma has constituents in this situation they would like to see it. He continued that they are planning to work with their Audit Unit to examine COVID-19 claim files. If there are complaints, they can be submitted to the claim Audit Unit, and they will look into it. He said the Workers' Compensation Information System (WCIS) gives DWC data on denied claims but not the reasons for denial. He said that any information that would help them look at denied claims would be appreciated.

Commissioner Bouma asked for clarification as to whether his report detailed filed or accepted claims, and Mr. Parisotto said it was filed claims; he added that DWC could provide further detail

by occupation at a later time. Commissioner Bouma said that she would be interested in the denial rate of the "outbreak" presumption compared to the non-outbreak presumption. She said that there was a lot of debate about how to provide for a presumption and any data or understanding of the experience of workers from DWC would be helpful.

Commissioner Bouma asked about the regulations for QME in light of the State Audit, including the increase in income from the new QME fee schedule. Mr. Parisotto said that the DWC was recommended to develop a plan to bring more QMEs into the system. He said some large systems do not allow their doctors to be QMEs, and DWC is looking into how to do that. He said that they looked at data on panel QMEs and examined where specialties were necessary or needed to be brought into the system. He said that DWC reached out to large medical groups such as universities in the UC system and Stanford to bring physicians into the QME system. He said that they looked at physicians who had failed the QME examination and whether they could be brought back in, as well as those who passed the test but did not become QMEs. He said that they are looking at their data to see how they can do that. Mr. Parisotto said that DWC is moving forward with the QME fee schedule; it is taking public comment and will have a hearing. DWC made sure that they had procedures for discipline and reappointment in writing and that those procedures were being followed and staff were being trained in those policies. To ensure quality QME reports, they have formed committees consisting of judges, attorneys, and QMEs to review the reports. The recommendations from the committees will be put into a report at the end of the year. DWC will then see how they can improve the system and move forward. Mr. Parisotto said this is a multi-phase process. He said DWC would like to address the actual procedure—how records can get to doctors in the most efficient and effective way. He said they want to avoid duplicate and irrelevant records. He said the issue of records is time consuming and quite costly and that making the system more effective is a goal that they will need to focus on in the next year.

Commissioner Bouma referred to an item in the approved minutes from the last meeting and followed with a question about the electronic Doctor's First Report, which was reported to be going live, and asked for an update and characterization of any positive results. Mr. Parisotto said that they created the system, and it is live and has been tested. He said that DWC has not received many reports. He said that he believes that COVID-19 has interrupted the uptake. He said that DWC has yet to get the word out to physicians and that DWC needs to develop a plan to require submission of the report. He said that that is where there has been a lag and that in the new year DWC needs to bring it up to speed. Ms. Bouma thanked Mr. Parisotto and said that she would ask about it again, as she said she recalled Mr. Parisotto being very excited about how this electronic reporting would bring greater efficiency to the system.

Commissioner Bouma next asked about an update on the UR regulations. Mr. Parisotto said that the regulations are now in place. He said that the last item remaining is the treating physician report. He said that UR has been a challenge from the start. He said UR is a difficult procedure and that they are trying to balance both sides—ensuring that the treatment requests get approved and paid quickly, while not burdening physicians with added administrative tasks. He said that once that form (treating physician report form) is completed, they will put the package out for formal rulemaking. Ms. Bouma thanked Mr. Parisotto for DWC's work during the challenging COVID-19 period.

Commissioner Steiger asked whether the denial rate for COVID-19 claims changed over time. Mr. Parisotto said that he would have to consult with his research team and that they would have to look at the times before and after the presumption. He said that there has been some change but returned to about 30%; he said he would have to look more closely and get back to the Commissioners. Mr. Steiger said that, related to COVID-19 claims, he is hearing anecdotal evidence that workers (with COVID-19) may recover mostly but not completely, with some lingering effects. He said that is relatively new and that he is certain that over the years they will hear about symptoms that may never go away, such as reduced lung function and damage to internal organs, that they will not fully understand for a while. He asked about the experience of claims being closed with Compromise & Releases (C&R) and future medical being waived by injured workers. Mr. Steiger asked whether workers will have access to resources within the workers' compensation or whether they will be on the hook for such costs (after a C&R). Mr. Parisotto said that this was a good question and that typically they see resolution of claims within 8 to 12 months. He said that by the beginning of next year (2021) they should have data on settled and litigated claims, as well as those still under treatment. He agreed that DWC will need to take a serious look at the lingering effects of COVID-19. Mr. Steiger said that perhaps that could be the subject of a future CHSWC study.

Commissioner Steiger said that he was part of a vaccine advisory committee. He said it has already been recommended that the first batch of COVID-19 vaccines will go to health-care workers in a certain order. He said Phase 1(e) is to determine the order of the other essential workers and who should get the vaccine first and very tough questions like that. He said that at the last meeting of the advisory committee he suggested that they should look at workers' compensation data. He said it is a tough, confusing, and uncomfortable conversation because it is a life-or-death question for some workers and, in the interest of using applicable data, it may make sense to factor in workers' compensation data to see where the experience has been the worst. Mr. Steiger said that these decisions are going to happen very fast in the next month. He said that they want to do the most good, where the goal is to reduce the spread and severity and to keep the economy and broader society functioning as much as possible.

Mr. Steiger said that the vaccine is ready, and these decisions are going to happen very fast in the next month. He said that he suggested that a researcher on the committee contact DWC and Workers' Compensation Insurance Rating Bureau (WCIRB) for data. He said that he advocated also using worker data as among the many angles that can be used to address the issue of prioritization, since that data is now available.

Mr. Parisotto responded that he agreed that they should use data to make informed decisions. Mr. Parisotto acknowledged that there is data across the department at DIR as well as at the Department of Public Health and he said that the people making the hard decisions should be able to use it.

Director Katie Hagen introduced herself and added that DIR has representatives on the Vaccine Task Force that the Administration is leading. She said that she had already shared a lot of

workers' compensation data from DWC with the Department of Public Health. She said the data shows rates by occupation, by region, and so on. She said that she reached out to Dr. Mark Ghaly (secretary of the California Department of Health and Human Services) to make sure that they have the data to work with. She said that she did not want to use only workers' compensation data because there are workers who cannot access it [the workers' compensation system]. She said it may not be representative of where injuries are occurring. She said it is a data set that they need to look at, but there are also a lot of [other] considerations that they need to take into account. Commissioner Steiger agreed and said that the advisory committee has discussed that several sources of data should be looked at.

There were no further questions.

## V. Cal/OSHA Update
**Doug Parker, Chief, Cal/OSHA**

Chief Parker thanked the Commission for the opportunity to speak and stated that it was his first meeting as chief of Cal/OSHA. He said that he appreciated the work of the Commission and expressed the desire of Cal/OSHA to do whatever it could to support the mission of CHSWC, to partner and think collaboratively about how the work of Cal/OSHA could be integrated into the work of CHSWC.

Mr. Parker stated that he would keep his focus on remarks about COVID-19. He stated that he was presenting information that has been presented at recent Cal/OSHA Advisory Board meetings. He said COVID-19 had obviously had an impact on Cal/OSHA's mission and function. He said that Cal/OSHA normally has 10,000-12,000 complaints in a year. He said that since February 2020, they have had well over 14,000 complaints and are on track to have significantly more worker complaints than they normally have. Of the more than 14,000 complaints, 8,000 have been related to COVID-19. He summarized additional data, as follows:

**COVID-19 Complaints, Fatalities, and Illnesses: February–November 2020**

- 8,238 complaints received (of 14,654 total)
- 276 fatalities reported (of 755 total reported)*
- 1,159 serious illnesses reported (of 5,176 serious injuries and illnesses reported)*

* Reported, not necessarily work-related

Chief Parker said that the data give context for the impact of COVID-19 on workers as well as on Cal/OSHA as it responds to the types of incidents it is required to investigate. He added that he believed that the serious illness figure has a significant undercount and that he thought it would be interesting to compare it with DWC workers' compensation reporting in order to understand the level of compliance with injury reporting requirements.

**Top Three Industries**

Chief Parker next presented figures on the top three industries for complaints, fatalities, and accidents. He said it is no surprise that health care and social assistance is at the top of each category in terms of impact, with almost 1,900 complaints, 83 fatalities, and 543 illnesses. The second industry with complaints is retail, followed by manufacturing, with almost 1,000. For fatalities, the top industry is health care, followed by manufacturing and then public administration. For illnesses, the top industry is Health care, followed by public administration and then manufacturing.

**Safety of Cal/OSHA Personnel**

Mr. Parker said that, during the pandemic, Cal/OSHA has had to adjust the way it conducts its activities. For example, it has had to contend with ensuring that the field personnel were adequately protected. In the early days of the pandemic, it conducted training for field staff in both enforcement and consultation and its public safety units to ensure workers had basic protection. They provided personal protective equipment respirators on a voluntary basis to inspectors performing non-COVID-19 inspections to give them peace of mind and extra protection, as to those in the respiratory protection program conducting COVID-19 specific inspections, particularly under the aerosol transmissible diseases standard. Cal/OSHA had an additional level of training for those workers in order to ensure that they were following safety protocols as well as new inspection protocols on maintaining physical distancing, how to surveil the workplace before entering, and how to increase the use of remote inspection activities, such as interviewing workers.

**Inspection Data**

Mr. Parker said that Cal/OSHA's response by letter investigation went up significantly as a result of the high level of complaints. This was designed as a triage method so that Cal/OSHA could get better information on what was going on at the different workplaces that were the subject of a complaint, and then, based on the seriousness of the information that was received, it could then conduct inspections. He presented an overall summary of the results of the strategies:

1,567 on-site inspections conducted (of 4,977)
477 complaint-based inspections (of 1,134)
195 fatality inspections (of 345)
321 illness inspections (of 1,579 accident and illness inspections)
263 referral-based inspections (of 726)
311 other inspections (of 1,214)
6,863 complaints investigated by letter (of 10,533)

**Type of Inspections**

He next presented information on the types of inspections. He said complaints were greatest in retail trade, followed by health care and manufacturing. He said a lot of health-care complaints were subsequently folded into accident and fatality inspections—or they are duplicates coming from multiple complaints from the same facility (therefore, the discrepancy between complaints and inspections). Fatalities are greatest in health care, followed by manufacturing and public

administration.

Mr. Parker said that another recent development has been the development and approval by the Standards Board of an emergency temporary standard (ETS). He provided a summary of the elements of the temporary standard, acknowledging that a discussion of the standard could take up the entire meeting by itself.

The standard was based on a petition filed by WorkSafe and the National Lawyers Guild with the Standards Board in May 2021. The Board was petitioned to direct Cal/OSHA to develop an ETS for COVID-19. It was voted on in September 2020 with a November 2020 deadline to present a proposed standard to the Board so that it could vote on it at its November meeting. He said it was adopted, and Cal/OSHA will continue to engage in significant outreach and guidance to help workers and employers understand it—because it is an infectious disease standard and admittedly complex—incorporating concepts from the California Department of Public Health and Centers for Disease Control and Prevention (CDC) guidance for the workplace and its approach to prevention.

The standard is effective as of November 30, 2020. It builds on the concept of the Injury and Illness Prevention Program (IIPP) and the state COVID-19 prevention guidance that has been developed to date (i.e., a written COVID-19 Prevention Program) He said that the standard is a combination of performance-based mandates and a number of prescriptive mandates that are specific to COVID-19. It requires employers to have a written COVID-19 Prevention Program that they can incorporate into their existing IIPP.

**New Requirements of a COVID-19 Prevention Program**

Mr. Parker said that about 10 key elements need to be in an employer's (new COVID-19 Prevention Program) program and discussed several of them.

The first is related to communication with employees about the importance of reporting symptoms and absenting themselves from work (not reporting to work/calling in sick) when employees feel sick.

A second element is communicating to employees about exposures in the workplace and hazards, making sure employees understand the policies and understand how they can get tested if they wish to get tested.

Third, the standard has a process that requires employers to identify, evaluate, and correct COVID-19 hazards with a number of specifics and conditions, including allowing employees or their representatives to participate in that process. There are prescriptive requirements on physical distancing, face coverings, and additional engineering, administrative, and PPE controls that are generally consistent with previously issued joint guidance from Cal/OSHA and the CDPH.

Fourth, the new standard requires employers to have procedures for responding to and investigating COVID-19 cases in the workplace. This includes tracing exposures, providing testing to exposed workers, excluding those workers from the workplace, and an investigation that includes looking into the potential causes of the exposure and what could be improved in

an employer's prevention plan.

Fifth, there is a training element that largely tracks existing guidance on the key elements of the plan, such as personal hygiene, understanding the disease, its severity, risk factors, and various other aspects of how to comply with the employer's plan.

Sixth, testing, as he previously mentioned.

Seventh, for the period that an employee presents an infection risk, employers are required to maintain records of cases as well as required reporting for Cal/OSHA and local health departments similar to the requirements of Assembly Bill (AB) 685.

Eighth, it requires procedures for outbreaks, which include testing potentially exposed employees as well as additional controls triggered by having three or more workers who are test positive in an exposed workplace, which could just be the area where the particular employees work. More aggressive controls are required if there is an outbreak of 20 or more employees in the exposed workplace.

The standards also include important new requirements for employer-provided housing and transportation to ensure that basic preventive measures are in place for workers who are housed by an employer and transported to and from work by the employer or through arrangements made by the employer.

Mr. Parker said that they have posted FAQs and model employer plans on the Cal/OSHA website, and they are working on additional FAQs, training, a stakeholder meeting, and planning for an advisory committee meeting in the near future to get stakeholder input on the rule—because the rule was developed as an emergency standard, and they acted very quickly without a lot of time or a process for getting stakeholder input. He said it was framed that way in the Standards Boards original order to convene an advisory committee to make further changes based on stakeholder input, changes in circumstances, changes in the virus or changes in our understanding of the virus, etc. He said that that will happen soon (as of the 12/3/2020 meeting) and that they were working with the Standards Board to get a date.

**Communication and Outreach**

Mr. Parker said that they have performed a significant amount of communication and outreach concerning COVID-19. They are excited about a new tool, the Cal/OSHA Training Academy, which will have not only training for COVID-19 prevention but also online tools for training on a range of [health and safety training] needs. He said that they posted COVID-19 training elements for both employers and employees to understand COVID-19 prevention and their obligations. He said Cal/OSHA will be updating that training to be consistent with the new ETS. He said the training has modules that can be used by employers as part of their training requirements. It is not a complete set of requirements, as it does not include site-specific training, but it does provide a fair amount of information that employers can use to develop their required training.

Mr. Parker said that Cal/OSHA has also performed significant communication and outreach

with the guidance, and Cal/OSHA will be engaged similarly on the ETS. These efforts are to ensure that the best information is available to employers as a priority. He said that he hopes that Cal/OSHA will work closely with unions and different employer groups and trade associations as well, in order to help answer their questions and get guidance out to their constituents.

**Consultation Services**

Mr. Parker said that their Consultation Services have been busy doing on-site visits. They are also developing online training. He said that Cal/OSHA has the capacity to conduct training for up to 1,000 unique participants. Cal/OSHA is working with some of the workers' compensation carriers to market the online training option and to get their policyholders to participate in training in a number of specific industries—primarily agriculture and manufacturing but Cal/OSHA is looking to expand that. He said that they are looking to partner with other groups to conduct this training. He said that the training is based on the guidance prior to the ETS so the training is being modified for those changes.

**Non-COVID-19 Issue: Silicosis in Stone Fabrication**

Mr. Parker said that he wanted to mention the non-COVID-19 issue of silicosis among stone fabrication workers, which Cal/OSHA announced as an initiative in 2019. He said that there were very troubling reports of deaths of immigrant workers who worked at these stone fabrication plants making kitchen countertops. Particularly memorable were two brothers who worked for the same company in two separate locations. Both returned to Mexico and died there. He said that these deaths were discovered through the great work of California's medical surveillance efforts, driven by Dr. Robert Harrison in particular. It was determined that these workers, both of whom were under 40 years old, had died of complications of advanced silicosis. Soon thereafter, there were reports of similar issues throughout the country of particularly aggressive pulmonary diseases due to this intense exposure to silica in this engineered stone, which can be up to 95% silica based. He said that Cal/OSHA has moved on this issue quickly, and while COVID-19 has impacted [abatement and prevention] efforts, Cal/OSHA has conducted over 100 inspections at these stone fabrication facilities throughout the state. Cal/OSHA did sampling at 65 of those facilities but unfortunately that was cut short by businesses that had shut down temporarily as a result of the pandemic. Cal/OSHA does not yet have the results of all the inspections, but it was a significant effort consisting of a combination of medical surveillance, surveys, and health referrals for workers who exhibited symptoms or put them in a risk category. Mr. Parker said that he went on a consultation at one of the facilities that was not inspection related. He said he believed Cal/OSHA made a significant impact on getting the word out to the industry that resulted in abatements and improvements. He said he looked forward to sharing more information as the inspections are finalized and more information is synthesized from the process.

Mr. Parker concluded and made himself available for questions.

**Commissioner Comments**

Commissioner Bouma asked about the different categories of workers previously described and whether firefighters are considered part of health care or public administration. She also asked

about an anecdotal story she received about an inspection where union representatives were asked to report. Mr. Parker said that the categories are based on the industrial classification codes and that he would have to check. He said that it is likely public administration but not exclusively. He said he could get back to her. Mr. Parker said that several things could trigger an inspection and that Cal/OSHA would ask for the authorized union representative to participate in any inspection if it was a unionized facility. He said that that scenario was not a unique one. An inspector would typically be present if there were a complaint, a fatality, or an illness [or injury].

Commissioner Bloch said that at the risk of repeating what he said at the Cal/OSHA Advisory Committee, he wanted to applaud Mr. Parker and the Department. Mr. Bloch said that his organization, the Teamsters, has 75,000 members working in California's food chain, from picking to packaging to processing to distribution. He said that Teamsters were helped greatly by the original executive order from the Governor, which granted two weeks of paid sick leave to workers in the food chain. Mr. Bloch said that a very bad [COVID-19] outbreak occurred at a Safeway distribution center in April in Tracy, where a member died. He said it was starting to spiral out of control. The distribution center services all of Northern California, northern Nevada, and Hawaii. And the outbreak would have effectively shut down all the distribution to Safeway stores in that area. He reminded everyone that this was back in April, when people were hoarding things. He said that the Administration and Cal/OSHA recognized the importance of keeping this facility open and threw all their resources at it. He said that, in his 25 years of working on these issues, he had never seen Cal/OSHA move quicker. He said that Cal/OSHA was on site the day after they were on the phone with it. He said that, fortunately, Safeway is a cooperative employer with good labor management relations. He said that between everyone, including the Department of Public Health, they could get a handle on that outbreak pretty quickly to keep operations open without further deaths, and people got their Safeway supplies and food [distributed]. Mr. Bloch thanked Mr. Parker for Cal/OSHA's hard work during the pandemic. Mr. Parker thanked Mr. Bloch and said that that is the type of outcome they want to achieve through enforcement and consultation. He said that he gives that region a lot of credit for that work.

Commissioner Bloch added that the Teamsters are now working with LOHP on some COVID-19 training and train-the-trainer activities. He said he did not know whether that was through Worker Occupational Safety and Health Training and Education Program (WOSHTEP), but he wanted to mention that assistance as well.

Commissioner Kessler thanked Mr. Parker for the work Cal/OSHA has been doing with the emergency standard and the work with the Teamsters. She said that she had some concerns, such as news [in December] about some employers not reporting or accurately training employees on the dangers in their workplace. She asked about the training employers are giving and about employees not reporting to work when they are sick or fear COVID-19 infection and their ability to file for workers' compensation or unemployment benefits.

Mr. Parker said that they have been issuing guidance on training for a long while now, and it is on every document that the state has released. He said the reason for launching the training academy was to make training as easy as possible for employers with plug-and-play tools. He said that the problem is that they have to implement the program on a scale that they cannot

possibly police. He said that they have to get the word out to a whole range of employers and make it as clear and easy as they can. He said that they are going to keep doing outreach and that they specifically included in the rule the training requirements so that they would be explicitly able to be enforced.

Mr. Parker said on the issue of not reporting to work when ill, it is important that those processes are in place, and they require that some process is in place in the rule; he said that they do not mandate that employers exclude these workers, but it is important to drive fast testing if the employer believes that an employee is ill or if there is some kind of exposure. He said that when they were forming the rule, they learned about the fear of reporting because then workers would not be able to work and earn to feed their families. He said that people were taking Motrin, so they could pass the symptom test for the temperature screening or hiding symptoms or working while infected with COVID-19. He said this is not surprising for people without a safety net or benefit. He said that is why they included exclusion pay in the ETS.

He said if you have been exposed or tested positive and are required to be away from work, there's a provision in the ETS that preserves your pay and benefits for the short-term period that is being sorted out. He said that they are still in the process of working with Mr. Parisotto in DWC and other folks in DIR to develop some FAQs that more explicitly spell out the relationship between this benefit and workers' compensation and which ones apply where. He said that they have tried to address this tough issue the best they can and with the authority they have. He said that they cannot address everything, but they have addressed what they can to avoid the unfortunate and desperate incentives that people often face.

Commissioner Kessler thanked Mr. Parker. She also asked what happens to the employer if it does not abide by the regulations, such as fines or penalties to incentivize compliance. Mr. Parker said that it would fall under the same structure of issuing citations and penalties as any other Cal/OSHA standard. He said that there were also provisions for Cal/OSHA to issue special orders to take action. He said that there are also requirements for employers to evaluate whether heightened protections should be in place, such as respiratory protection or engineering controls.

Commissioner Brady said that he hears about employer concerns about meeting needs while not hibernating or closing down temporarily—trying to keep the lights on permanently. He said he hoped that there was some kind of recognition and acknowledgment when they can catch people doing things well. He referred to the earlier example of Safeway. He said that he thought it was great for Cal/OSHA to have not just a stick but some sugar cubes as well, so as to affirm employers that are really battling with this, trying to keep the lights on and doing whatever they can to protect their staff. Mr. Brady said that his mother used to say that nothing is impossible for the person who does not have to do it right, and so it is really important to recognize that we are partners and that we have to make sure collectively that we are doing everything we can to set up employees as well as employers for success.

Mr. Parker said he had two points. The first is that they recognize that they have asked a lot of some employers but that many things should already be in place by employers that have implemented the guidance. He said that they recognize that some employers are going to need

some time to come into full compliance. As for looking to catch people doing things well, from an enforcement perspective they are often not looking for that, which he said he believes is unfortunate. He said that if there are employers that want to hold up what they are doing as a model, and Cal/OSHA can assist in that—something like the Safeway example, they would be happy to include it as part of a presentation or meeting.

Commissioner Steiger said that he wanted to comment about the earlier discussion about comparing data with the DWC and COVID-19-related fatalities. He said he thought it was a great idea and that they should do a lot of that [not just] for fatalities but everywhere else where the two divisions share similar data. He said that they should use data to inform where enforcement should be focused, where there are problems and where problems exist where laws and regulations might need to be adjusted to better reflect working conditions. He said the dream was to bring injury prevention and injury treatment after the fact together in some way that helps prevent more injuries and then lighten the workload on both divisions.

Commissioner Steiger asked about COVID-19-related inspections. He said that earlier some inspectors were afraid to go into facilities, out of fear of catching the virus. He wanted to ask whether any of that was still an issue. Mr. Parker said that there was a lack of consistency, so they trained inspectors on protocols and PPE. Then they implemented an existing process for reasonable accommodations to evaluate an inspector's concerns about their own health risks when conducting COVID-19 inspections, and accommodation or reassignment might be needed. He said that they made sure there was a process, and if you were not in the process, you were doing your regular job as expected. He said that relatively few inspectors have gone through the process and been exempted from COVID-19 inspections. He concluded that they should be at a high level of capacity for the inspectors in the field. He explained that he did not have the exact numbers with him at the meeting. He said that it is human nature for those concerns to persist, and Cal/OSHA will keep doing what needs to be done to enable inspectors to do their job safely. Mr. Steiger applauded the efforts to address the hazard for the workforce as much as possible.

There were no further questions.

## VI. Report on Wage-Loss Monitoring for Injured Workers in California's Workers' Compensation System
**Dr. Michael Dworsky, RAND**

Dr. Dworsky presented the final policy report on RAND's Wage-Loss Monitoring project. Since 2017, RAND has been monitoring earnings losses of injured workers in CA:

- Three interim reports documented trends in post-injury earnings for workers injured between 2005-2017 who received indemnity benefits
- Post-injury labor market outcomes worsened in 2007-2008 (following the housing collapse and Great Recession) and have been slow to recover
- See RAND's 3rd interim report (Rennane, Dworsky, & Broten 2020) for details

Key takeaway from the three interim reports was:

- At the beginning of the study period in 2005 and 2006, when California was in a housing boom, workers who had indemnity benefits could expect to earn on average around 85% to 87% of what they would have earned if they had not been injured. (RAND calculated the earnings of workers who receive indemnity or disability benefits after the injury as a percentage of what they would have earned if they had not been injured.)
- Earnings declined significantly in 2007 and the decline accelerated in 2008. 2008 was the end of the housing boom ended and the beginning of the Great Recession.
- The RAND interim monitoring studies found that the labor market had been recovering over this entire period, and there was an upward trajectory in post-injury earnings, but it had been a very slow and incomplete recovery. Workers injured in 2017 were still earning less of their potential earnings than they would have in 2005 and 2006.
- So there were many details and methods in previous RAND reports. RAND published its final interim report earlier this year.
- The goal of this report was to take the data that they had collected to track earnings losses and to ask deeper questions about the patterns that were seen, and in particular, what they meant for the adequacy of benefits especially for workers with permanent disability.

This briefing focused on wage replacement rates and benefit adequacy

- The focus of this presentation was on how permanent disability benefits compare to earnings losses and how has that changed over time with emphasis on changes since 2013 and 2014 when major benefit increases began to be implemented under SB 863.
- Final report of RAND's wage-loss monitoring study had several goals:
  - Update estimates of trends in earnings loss and other labor market outcomes
  - Use data collected to track earnings losses and explain patterns found in interim reports. The research questions addressed in the report were:
    - What do changes in earnings losses mean for benefit adequacy, especially for workers with permanent disability?
    - Why have earnings been so slow to recover after the Great Recession?
    - What explains regional disparities in earnings after cumulative trauma (CT) injuries?
  - Evaluate benefit adequacy, especially for workers with permanent disability benefits compared to earnings losses.
    - Report focuses on this third question, which is how do permanent disability benefits compare to earnings losses? Has that changed over time?
    - Analysis emphasizes how things have changed since 2013 and 2014, when major benefit increases began to be implemented under Senate Bill 863.

Background and policy context

- Labor Market in CA over past decade was defined by aftermath of the Great Recession. The effects of the Great Recession were still staggering every time you look at the data.
  - Unemployment in CA started rising late in 2006 as the housing bubble began to burst. That contributed to the financial crisis, and in late 2007 was the official

recession date.

- Statewide unemployment went from 5 percent and peaked at 12 percent in 2010.
- Recovery from the Great Recession was very slow for the labor market. Unemployment reached pre-recession lows only in 2017. That recovery continued, and unemployment actually fell to about 4% at the end of 2019. Mr. Dworsky thought this drove a lot of the earnings-loss trends that RAND saw over time.

Policy Context: Major reforms in workers' compensation enacted in 2012 as Senate Bill (SB) 863

- SB 863 included major reforms in many parts of the workers' compensation system. There were a number of major changes in medical care delivery and different aspects of dispute resolution.
- PD benefits in California are defined as the number of weeks of permanent disability compensation and the benefit rate you get paid per week depends on your pre-injury wage. It is two-thirds of the pre-injury wage subject to a minimum and a maximum. The maximum is relatively low compared to the earnings of most workers in the state.
- SB 863 included three key provisions for increasing compensation for workers with permanent disability (PD):
  - First was a change to the PD rating formula. PD benefits in California were based on a disability rating that reflected an impairment rating assigned by a physician and then the impact of a few modifiers for age, occupation, and future earning capacity (FEC).
    - SB 863 increased Permanent Partial Disability (PPD) ratings by increasing the FEC. Prior to SB 863, there was a variable adjustment called the FEC modifier that depended on which body part was injured. SB 863 effectively eliminated the FEC modifier by setting it to the maximum for all body parts. Therefore, there was no longer a modifier, it was just a step in the process that the rating is multiplied by 1.4, whereas previously that factor varied between 1.1 and 1.4.
  - The second key provision was to raise the maximum weekly benefits from $230 to $290; this was consequential for most workers because prior to SB 863, over 70 percent of workers had earnings above that maximum benefit.
  - The third provision was also very important, and it was that SB 863 created a Return-to-Work Fund (now the Return-to-Work Supplement Program).
    - This was not technically a PD benefit. It was not paid by the claims administrators or the employers directly. This was actually a fund administered by the Department of Industrial Relations (DIR) that made supplemental payments to workers with PD who were likely to suffer disproportionate earnings losses.
    - The RTW Supplemental Program (RTWSP) had a target of collecting and disbursing about $120 million per year; as implemented, there was a flat one-time $5,000 payment to workers who qualified for the RTWSP. It took a few years to implement but the most recent year with available data, fiscal year 2019,

about $107 million of benefits were paid out of the RTWSP. This was another substantial increase of compensation targeted toward workers' with PD.

- Timing of reforms:
  - PD rating changes (elimination of FEC) effective for all injuries in 2013 or later.
  - Weekly benefit rate changes implemented for some severe injuries in 2013 and fully phased in for all PD injuries in 2014 or later.
  - RTWSP was established April 2015 with eligibility for injuries in 2013 or later.
- Benefit adequacy findings reflect early impacts of SB 863 benefit changes, but earnings loss trends were not a report card for SB 863.
  - Earnings losses reflected really complex dynamics in the labor market. They were affected by a number of factors, especially the macro-economy. So it's important not to look at the earnings loss numbers and conclude that SB 863 did not work because the earnings losses did not decrease.

More recent legislation and regulation has continued to change medical delivery, pursue additional cost savings

- Legislation in 2016 took steps to remove fraudulent and unlicensed medical providers from the WC system
  - AB 1244 (suspends providers with convictions or other problems).
  - SB 1160 (prevents abuses of medical care liens).
- Implementation of prescription drug formulary (effective January 1, 2018) also changes the medical care that workers receive.
- Other WC changes addressed narrower issues (e.g., presumptions for public safety workers).
- Caveat: data examined today end prior to COVID pandemic:
  - Claims data extracted in February 2020.
  - Labor market outcomes observed through the end of 2019.

RAND analyzed claims data reported to DIR and earnings data reported to Employment Development Department (EDD)

- RAND used First and Subsequent Reports of Injury (FROI, SROI) from the Workers' Compensation Information System (WCIS).
- RAND linked the workers' compensation claims to data on quarterly wage and salary income collected by the EDD; were able to link these claims data to people's earnings histories from the unemployment insurance system.
- High-quality data provide a complete history of wage/salary earnings in jobs covered by California's unemployment insurance.
- Sample size:
  - 8.7 million injured workers in 2005-2017 in FROI
  - 6.5 million (75%) with usable WCIS data
  - 5.5 million (84%, 63% cumulative) matched to own wage history at EDD
  - 4.7 million (85%, 54% cumulative) injured workers with usable labor market data over the entire period from 2005 to 2017 and were matched to control

workers.

This study employed methods developed in past RAND studies to estimate earnings losses:

- Earnings losses are the difference between what workers actually earned after an injury and what they would have earned or their potential earnings if the injury had not happened:
    - Actual earnings (what a worker earns after injury)
    - Potential earnings (what the worker would have earned in the absence of injury)
    - Dr. Dworsky discussed relative earnings or relative employment which was defined as actual earnings as a fraction of potential earnings.
- Actual earnings can be observed.
  Dr. Dworsky described earnings for injured workers before and after an injury. Data were for all workers with indemnity injuries, and the focus was on the outcomes in the second year after injury. In the first year there was a sharp drop in earnings, which stabilized after a period of time. In the second year and later years, earnings tended to move in parallel between the injured and control workers, but injured workers were earning less.

What happened to the injured workers regarding their potential earnings and their potential employment? Post-injury employment has recovered in recent years; earnings and employment at the at-injury employer have not.

- Potential earnings are not observed and must be estimated using a control group. It is by definition impossible to observe directly what would have happened to injured workers if the injury had not happened, and that was why a control group was used.
- Study reports injured worker earnings as a percentage of control worker earnings (defined as relative earnings) both to the dollar amount of earnings after adjustment for inflation; and to the relative earnings, as well as the relative employment, and the relative at-injury employment, or the probability of being employed at the same business where you were working when you were injured two years after the injury compared to your coworkers who might experience turnover for other reasons.
- The study showed a sharp drop in earnings and some recovery, but incomplete recovery for workers injured in 2016 and 2017 for employment.
- Relative employment rates also dropped sharply. What drove most of the earnings losses was that people lost their jobs and did not find another job. Employment had recovered to a slightly higher level than what was seen prior to the recession, but earnings had not fully recovered. Dr. Dworsky thought part of that picture was that at-injury employment return-to-work sustained in the past two years after the injury increases significantly and really does not show much sign of recovery at all at least through people injured in 2017.

Workers with PD have poor outcomes and were dramatically affected by the Great Recession

- Workers who have permanent disability were judged by an evaluating physician to have some residual impairment after the temporary disability period or after they have

reached maximum medical improvement.

- Impairment is long-term if not for the rest of their working lives. So these injured workers have the most severe earnings losses and the most severe medical conditions in the workers' compensation system, at least among non-fatal injuries.

- To study trends in outcomes, RAND defines workers with PD to include those with paid or settled PD benefits within 3 years of injury date (constant-maturity PD workers)
- This definition precludes studying 2017 PD injuries
- A limitation of this approach is that some workers with occupational diseases or who file claims extremely late may be excluded from this analysis.
- Comparison of earnings losses between all workers with indemnity and those with PD from 2006 to 2016, showed that workers who had all other indemnity benefits can expect to lose about 10% of their earnings.
- If you look at workers who received PD benefits since the Great Recession in 2008, their outcomes declined significantly and they can expect to lose about 30 percent of their earnings and that level stays fairly flat until 2015.
- Some signs of recovery in 2015-2016, but earnings remain far lower than before the recession. These workers have substantial losses, and that is one of the reasons we really care about the adequacy of their benefits and how much their earnings losses are replaced.

RAND estimated after-tax wage replacement rates for workers with PD and compared across injury cohorts

- The key metric that RAND focuses on is what is known as the wage replacement rate.
- Wage replacement rate is the ratio of the benefits you receive to after-tax earnings losses over a specified window of time after the injury
- To look at benefit adequacy, you need two ingredients: data on benefits and data on earnings losses
- To measure benefits, RAND used WCIS data on paid amounts to measure benefits paid either at two years or at five years after injury.
- Earnings losses were calculated over a fixed window of time after an injury; it was over two years after an injury for people who were injured through 2016, it was for five years after injury for workers who were injured through 2014.
- The study compared the paid benefit amount to the after-tax earnings losses.
  Important to calculate after-tax losses because workers' compensation benefits were tax-exempt. Once income and payroll taxes are accounted for, tax rates for many workers are fairly high. After-tax earnings (and earnings losses) were imputed using tax liability estimates from the Current Population Survey (CPS)
- The study calculated wage replacement rates over five years post-injury for workers injured in 2014 and earlier years.
  - Paid and settled benefits observed directly in WCIS; payments reported after five years post-injury were adjusted to match the five-year window by straight-line interpolation based on payment start/end dates.
  - Five-year earnings losses extrapolated from first and second-year losses using

data on year-on-year earnings losses for workers injured in 2005-2008.

- Earnings losses and benefits converted to a present-value basis using an annual discount rate of 2.3 percent. This means that a dollar paid out immediately after injury is more valuable than a dollar paid out five years later.
- In practice, this means rolling up these payments that might come at different times over that five-year window back to the date of injury.
- All dollar amounts adjusted for inflation and reported in 2019 dollars.

PD benefits paid over two years after injury increased after SB 863, but part of increase reflects earlier settlements.

- The data on benefit payments for PD in the WCIS showed injured workers who received PD benefits within three years of the injury date. That was really important for making a valid comparison of workers over time.
- Dr. Dworsky described the data on benefit payments for PD in the WCIS.
- Data showed the dollar amount of benefits that are paid out in nominal terms, not adjusted for inflation, for workers who were injured in 2011 and 2012. Workers injured in 2011 and 2012 comprise the baseline before SB 863 takes effect.
- On average, within two years of the injury, workers who were injured and received PD were getting about $6,500 of PD benefits over the two years after the injury. Prior to SB 863, they were receiving on average about $900 in settlements for PD, so in total they were receiving about $7,400 in benefits in the first two years after injury.
- In 2013, when SB 863 was not yet fully implemented, there was a small increase in total amount of benefits. These were mostly driven by an increase in settlements, not by an increase in paid benefits. Paid benefits actually went down slightly, but the increase in settlements was larger, so the total amount of PD paid out over the first two years went up.
- In 2014 the maximum weekly benefit came into effect, and that was when there was a jump in the amount of PD paid out. Again, there was an increase in the amount of paid benefits by about $500, and we see continued increase in the amount of settlements that were paid.
- In 2015 and 2016, there were no continued increases in paid benefits. There was a slight decrease in paid benefits in 2015 and 2016, and as a result, the amount of PD benefits paid as a total of settlements and benefits was flat or slightly declining from 2014 to 2016.
- Relative to that 2011 and 2012 baseline, by 2016 benefits paid in the first two years went up by about 11 percent, or about $800 on a base of $7,400.
- For five-year benefits, what was happening with PD settlements was that SB 863 coincided with big changes in settlement behavior in the workers' compensation system. To some extent, this change in settlement timing was the continuation of trends that were happening before SB 863 took effect. What that meant was that the two-year wage replacement rates may overstate the increase in benefits because settlements are being accelerated. They were happening earlier in the life of the claim and more workers are

settling overall.

PD benefits paid over five years after injury increased only modestly in the first five years of SB 863 implementation.

- Compared to workers injured in 2011-2012 as a base year, there was about a $1,000 increase on the base of 2011-2012, and a $1,700 increase in 2014.
- What that means is that benefits rose by only about 8% between 2011 and 2014. This is quite a bit smaller than what was anticipated based on prospective analysis of the changes to PD benefits.
- Unfortunately, this is a smaller than expected increase in benefits that coincided with worse than expected labor market outcomes. And that means that wage replacement rates are going to go down.

As of 2014, paid PD benefits did not increase substantially, but other payments added to total benefits.

- In 2014, there was about a $3,000 increase in the total benefit payments when other types of settlements were included, and when you include payments from the return-to-work supplement program. That was quite a bit larger than the increase in PD benefit payments specifically.
- What was surprising or potentially concerning was that an increase in benefit payments was driven by an increase in medical settlements, not by an increase in indemnity benefits or indemnity settlements.
- There was also a modest increase in these unspecified settlements, and it was hard to say what those mean because they were unspecified
- If part of this overall increase is coming from larger settlements for medical care, it's questionable if these medical settlements can fairly be compared to earnings losses because workers, at least in principle, should be setting that aside to pay for future medical.
- When injured workers settle medical benefits, they are giving up their claim for future medical care from the workers' compensation system. So, there are other increases in benefits, but again, the increase in PD is relatively modest when we look at the impact on wage replacement rates.

Five-year wage replacement rates were flat through 2014 injury dates, when SB 863 changes were fully implemented.

- The dollar amount of earnings losses, estimated over five years after injury, was going up.
- The amount of benefits paid increased slightly in 2013 and 2014, but was generally flat compared to the change in earnings loss.
- Wage replacement rates were falling substantially prior to SB 863 enactment. They did not turn around in 2013 or 2014, so wage replacement rates were actually a bit

lower for these workers over the first five years after injury than for workers injured immediately before SB 863.

- This was a challenging economic context for workers' compensation benefits because prior to SB 863, wage replacement rates dropped by about nine percentage points. Many stakeholders hoped to see at least some recovery of benefit adequacy and at least for workers injured in 2014 over the first five years after injury, it was simply not there.

It was not clear why benefits have not risen more under SB 863, but many factors could be at work.

- A few mechanisms are discussed in the report that explained this gulf between what was expected to happen to benefit adequacy and what appears to have happened. There is no single explanation.
- There were many factors were at play to consider and some of these might require future investigation to definitively address.
  - One issue was the change in settlement time. Claims administrators were settling more prior to SB 863, and that trend continued through 2014, before it leveled off. What that meant was that permanently disabled workers who were injured in 2010 had about a 12% chance of having settled their PD benefits by five years after injury. By 2014, it was 24%, so the number of workers settling in the first five years after injury doubled.
  - It was possible that workers were accepting lower benefits in exchange for getting those benefits sooner. If so, you might expect to see some differences in the wage replacement rate by whether a worker settles or not, but we don't really see that.
- One other factor that may be holding down the growth of total benefits is that there have been improvements in TD duration as we came out of the recession.
- This has contributed to some unanticipated cost reductions in indemnity benefits since SB 863 took effect. So in general, earlier return to work is incredibly important. That was a good thing. Workers were receiving fewer TD benefits because their disabilities were ending sooner. Unfortunately, for workers receiving PD, that did not translate into higher earnings.

Another question is whether the PD ratings changes estimated in SB 863 were actually happening in the field on a large scale. Available data on PD ratings do not paint a clear story about the impact of SB 863 rating changes.

- There was conflicting data about this from claims data, which analyzed estimates from the WCIRB and what we see in the state Disability Evaluation Unit (DEU). They looked at trends over time as SB 863 started. These changes were all effective in 2013.
- PD ratings reported to WCIS have been flat; the average PD rating reported in the claims data went down slightly; it certainly did not increase as expected based on the statute.
- PD ratings from WCIRB (USR 3rd report) also suggested that ratings have not increased (WCIRB, 2018).
- PD ratings at the state DEU (ratings at 36-39 months post-injury) data do show an

increase; however.

- We don't have a good explanation for ratings in the claims data and those in the DEU data do not move together.
- Claims data about apportionment of disability to preexisting conditions may have changed after SB 863, potentially in response to those changes.
- Defense attorneys and their medical experts as well as others might be motivated to be a bit more aggressive in applying apportionment, because benefits increased. And when claims settled, it changed the bargaining position. And it was possible that apportionment had changed. This study did not have this data directly, but that would be a very important area to look at.
- Dr. Dworsky stated there was a need to look more carefully at what can be learned from the data and how to extrapolate that to the broader system.

Other payments to workers with PD have grown, so wage replacement likely higher than reported here.

- There were payments out of other funds that were available to permanently disabled workers. It was already mentioned that the return-to-work supplement fund was included in the benefit adequacy measures.
- There is another fund administered by DIR and known as the Subsequent Injury Benefit Trust Fund (SIBTF), formerly known as the Second Injury Fund. The SIBTF exists to pay benefits to workers who have very severe PD, so you have to have a rating above 70 and meet some additional conditions to qualify for SIBTF.
- If a very high rating is reduced substantially because of apportionment, SIBTF may step in and make payments to kind of top off your PD benefits. There was no access to claims data from the SIBTF in the study, but we know that SIBTF payments have increased dramatically over the last seven years, including since SB 863 took effect.
- The total amount of SIBTF payments reported in the CHSWC Annual Report has gone from about 28 million dollars in 2014 to about 80 million dollars in 2019. So we know that for some group of workers with PD, an extra 50 million dollars was being paid out. Those wage replacement rates look better in practice than what was reported.

Several limitations to the study were noted.

- An important limitation of the study is that the wage replacement rates estimated here are not directly comparable to previous studies on benefit adequacy and fairness in the workers' compensation system.
- Those studies tended to rely on data from the DEU to calculate statutory benefits because we think they are the highest-quality ratings data for studying the rating process in detail
- In the present study, instead of calculating statutory benefits from disability ratings, RAND looked at the amount of benefits actually paid out. This means that benefits owed to the worker in the future are not included, and it is thus important to remember that wage replacement rates are defined over a fixed window of time.

Policy Implications

- Declining return to work at employer-at-injury employer appears to be a continuing drag on earnings of injured workers, especially those with PD. Return to work at the at-injury employer remains much lower than before the recession and really has not recovered very much. That continues to hold back recovery of earnings for injured workers. This is a perennial challenge in the workers' compensation system, but it was one that does warrant continued attention.

- The other key takeaway here is that, at least in terms of benefits paid today for workers who were injured through 2014, benefit increases under SB 863 have not translated to large increases in paid benefits.
- Benefit increases anticipated under SB 863 not fully reflected in paid PD amounts for injury dates examined here, at least through five years post-injury.
- For PD injuries through 2014, wage replacement rates remained flat.

**Commissioner Comments**

Commissioner Bloch stated that unless injured workers return to work in the recession, there was concern about the ability to return to work and the viability of employers in this economy with COVID-19. He asked about the return-to-work supplemental payments and how much was being collected annually and how much is actually being paid to workers from that fund since it does not roll over. Dr. Dworsky replied he did not have the answer. He thought the data was published in the CHSWC annual reports as well as the DIR website, but he was not sure how the assessments compared to the payouts. Dr. Dworsky added he was pleased to see that at least for the fiscal year that ended in 2019, the amount paid out was up to 109 million dollars, which was pretty close to that 120 million dollar target. That was a good sign for increasing take up of the return-to-work supplement, but he did not know how that compared to assessments.

Commissioner Bloch asked if the pandemic was going to impact how much is paid out this fiscal year. Dr. Dworsky replied he would anticipate that. It was a tough question to answer because the claims volume in 2020 is down, but the workers who were going to become eligible for the return-to-work supplement in 2020 would typically be those who were injured in earlier years, and certainly the recession that was seen and the number of business closures has to have a dramatic and negative impact on return to work. What Dr. Dworsky had learned in the evaluation of the Return-to-Work Fund was that there were not very strict limitations on the reason why you do not get a return to work offer. If the employer at injury declares bankruptcy because of the pandemic and that was why you did not have a return to work offer, then those workers would be likely be eligible for the supplement. That would tend to increase payments from the return to work fund, but it is hard to say by how much because the overall claims volume was declining in 2020, which again reflected the size of the workforce. In part, it was not clear that there was a spike in 2020, and there might be fewer workers eligible from people who were injured in 2020 because there were fewer injuries, but it was really hard to say. Mr. Bloch stated that the labor representatives on this Commission have gone on the record repeatedly that we hope that with all the promises made from SB 863 that one of those was this Return-to-Work Fund. He hoped that every single penny collected went to injured workers. He was curious about employers going out of business because of the pandemic or not reopening. He was curious to

see how this money was spent and whether it was an adequate amount.

Commissioner Bouma commented that she reviewed the CHSWC Annual Report and did not see an actual number. Maybe Director Parisotto or someone else can help with that 2019 data on the Return-to-Work Fund. She asked about the potential for changes in apportionment, and how often apportionment was applied to cases. What was Dr. Dworsky's perspective on how that could be assessed or analyzed to uncover that anomaly if it did exist? Dr. Dworsky replied that there were two data sources that directly answered that question: the first would be disability ratings from the DEU and they had anecdotally heard that there had been an increase in apportionment but he did not find any published statistics on that, and he had to see the data before definitely stating that was happening. Some analysis of the DEU ratings would tell us about that, although there were limitations in the completeness of apportionment data in the DEU, it was generally cases with representation. In many instances, apportionment was applied, but the data do not capture how much was apportioned. That means you can get some numbers out of a DEU fairly quickly, but they may be incomplete.

The other option would be in the claim surveys that the WCIRB administers. They may be able to get more detailed information from claims administrators about the number of outcomes that were not the standard reports that they collect. It was a real challenge with disability rating data in California that there was not a comprehensive database to see everybody who has PD. The questions would be: what was their impairment, what were the modifiers, and what was the apportionment. There was some potential that, especially for cases that settle, there may not be clear records of how apportionment was handled: you might need to sort out further by looking at settlement documents that were processed by the Workers' Compensation Appeals Board (WCAB) or pulling a sample of medical reports and evaluations. That would be the gold standard, but where was that data collected in a centralized way that reflected the entire system? The numbers were out there, but getting an answer and especially doing that historically may or may not be feasible.

Commissioner Bouma asked about apportionment and settlements, maybe even doubling from 2011-2012 to 2014. She asked what he attributed to the doubling of those settlements. Dr. Dworsky replied that settlements were increasing prior to SB 863. In theory, settlements should be beneficial for the worker and for the employer or the insurer. However, they had heard anecdotally, that some of this increase or acceleration of settlements reflected claims administrators modernizing their approaches with claims handling being able to settle earlier. Compromise and Release settlements need to be signed off by workers' compensation judges to verify that the settlement is in the interests of the worker. There was no data that could tell how SB 863 may have affected settlement behavior over and above this trend toward earlier and more frequent settlements. If you look at the trends going back to 2009 it just looks like settlements were rising. They kept rising smoothly after 2013. Then they leveled off around 2014 or 2015.

Commissioner Brady said Commissioner Bouma was on to something when she was talking about the speed in which claims were closing, which Dr. Dworsky had recognized. If cases are resolved quicker that should reduce wage loss; RAND's presentation highlighted changes like

the FEC calculation being maximized to 1.4. There were all sorts of other provisions in SB 863 in an effort to eliminate frictional costs. Dr. Dworsky stated that he had skipped over those provisions, but he was glad Commissioner Brady brought those up. Mr. Brady added that he did not want to get bogged down because this was far too litigious and wanted to remove some of those frictional costs and simplify the system. There was more work to do, but he really appreciated looking at the system globally to make sense of it, and he appreciated Dr. Dworsky's effort in trying to do that today, but the speed of the claims and the reduction will have a great impact.

Commissioner Steiger asked about the number from the WCIRB that 53 cents of every dollar in the workers' compensation system goes to neither medical nor indemnity benefits for workers, and it was steadily getting worse over time. Also, steadily decreasing PD benefits and that the goal of SB 863 was the opposite of those two things: that more money goes to medical and indemnity benefits to workers; and that permanent disability for workers who will never fully recover from their injuries get more money. To think about those two trends on a timeline, the system was evolving to where most of the money did not go to workers. What did go to workers, for lack of a better term, was a check to make them go away and close the claim. Hopefully, money was saved for the future medical that was likely going to happen with the injury. He was not sure what to do with all of this other than to keep looking for ways to reduce the frictional costs and keep analyzing data like this to see how we can make more of this money benefit workers who were permanently disabled by their workplace injuries. However, he came from Washington state, where at that time Compromise and Release agreements were not allowed at all. He was stunned when he found out that you could sign away everything and then it was all over. What he kept hearing from workers with really complex claims was that his attorney was telling him he needed to settle because SB 863 gave employers the ability to delay and just deny claims. If the worker wanted to get anything, there was a short timeline to settle. Now that they had a debate about the system-wide veracity of that statement some other time you were running late so we have time to do it now. But that is what he had heard from many people and that sense of the system is definitely out there. And all these things seem to work together, too. Not that we thought we were solving all of the problems with SB 863, but there was still a lot left to do to make sure that more of that employer dollar went to injured workers. It went to injured workers in a way that would help them deal with their injuries for the long term; not just feel a little bit better about this terrible thing that happened to them and then move on with their lives because their lives look different after they were injured. They do not make as much money; they had this injury; and it was not like before. It hurts to think about so many of those people out there looking at the system as something that really victimized them the way that I'm sure they feel like it has. So we still have got a lot of work left to do.

There were no public comments.

**V. Overview of Retaining Employment and Talent after Injury/Illness Network (RETAIN)**

**Dr. Robert Blink, California RETAIN Medical Lead**
**Eric Glunt, California RETAIN Program Director**

Mr. Glunt and Dr. Blink introduced themselves and Mr. Glunt described RETAIN.

About California RETAIN

- The RETAIN is a program focused on an important dimension of disability employment: Stay-at-Work/Return-to-Work (SAW/RTW) strategies.
- Funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) in partnership with the Employment and Training Administration (ETA) and Social Security Administration. American Institute on Research (AIR) and Mathematica Research are also involved.
- Eight states were awarded pilot funds in late 2018 for a Phase I demonstration public workforce system for workers with either (or both) non-occupational and occupational injuries to stay at work and return to work. Currently developing a proposal to fund a larger 42-month Phase 2 project. Up to five states will be awarded up to $20.6 million each for Phase 2. EDD is the only entity in California that is eligible to apply for RETAIN funds.

Mr. Glunt said that this work offers another perspective or lens on the issues that RAND was talking about in its presentation on wage loss. He said that RETAIN is about trying to prevent long-term poverty due to injury and illness, both work related and non-occupational.

**Primary Goals of RETAIN**

The primary goals of the RETAIN Demonstration Research Projects are:

- To increase employment retention and labor force participation by individuals who acquire, and/or are at risk of developing disabilities that inhibit their ability to work.
- To reduce long-term work absences among project participants as well as the extended need for government benefits programs.
- To conduct rigorous control group evaluation research to determine the efficacy of the approaches used in the project.

Mr. Glunt said that this project has been a long time coming. They have been working with CHSWC staff over the past year and a half, and like everyone else, all the projects in the eight states were heavily impacted by COVID-19 and other factors that make the project challenging.

**Upfront Asks:**

- Invite CHSWC to be a core partner in California RETAIN Phase 2 to develop and evaluate new approaches for stay-at-work and return-to-work, employer education and health-care provider education.
- Ask CHSWC to endorse and/or partner with California RETAIN for a control group study that would allow a better comparison of enhanced RETAIN services against the existing system.
- Ask CHSWC to endorse and/or partner with California RETAIN in a third-level study to change health-care provider incentives as a way to promote better stay-at-work and return-to-work practices. This study can be tailored to SB 537 efforts, and it advances an ACOEM insurance coding initiative.

**Ask 1: Partner with California RETAIN**

Mr. Glunt said they would like to invite CHSWC to be a core partner in California RETAIN Phase 2 to develop and evaluate new approaches for stay-at-work and return-to-work, employer education, and health-care provider education.

- Create new partnerships between the Workers' Compensation System, TD Programs and the Public Workforce Development System, i.e., the 45-odd workforce areas.
  - In the pilot, the San Diego Workforce Partnership and the Sacramento ETA have been the core workforce partners.
- Seek new approaches with employer education that focus on a wider array of stay-at-work and return-to-work topics.
- Seek new approaches for health-care provider education that emphasize the linkages and supports of the public workforce development system.

**California RETAIN: Current Partners**

- Concentra Health Care (47 locations in Phase 2), Sacramento and San Diego areas
- Sacramento Occupational Medicine Clinic, Sacramento area
- Local Workforce Development Areas
  - San Diego Workforce Partnership and Sacramento Employment and Training Agency
  - Additional Workforce Areas are being invited in the Inland Empire, East Bay and Northern San Joaquin Valley (Phase 2)
- Interwork Institute at San Diego State University
- California Employment Development Department (Lead Applicant)
- California Employers Association

**Service Delivery Approaches—Resource Navigators**

Mr. Glunt said that they were asked to look at Washington State and its COHEE model and to identify elements in the COHEE to apply to the California state systems. He said resource navigators are a key component:

- Resource Navigators (staff) are based through the Public Workforce System and co-located (where feasible) in health-care systems.
- Staff people who help an injured or ill worker understand what to expect from the health-care system and other parties involved in their recovery process.
- Staff people who help develop and implement a plan to support the employee in staying at work or returning to work including workplace accommodations, temporary or permanent job modifications, and more.
- They facilitate early communication between a participant's doctor and employer.
- Assist navigating the maze of medical treatment, recuperation, and return-to-work processes.

**Service Delivery Approaches**

Stay-at-Work Services:

- Services intended to keep an employee attached to her/his current job with accommodations and adjustments as needed—often a "very light touch" with information and guidance as requested.

Return-to-Work Services:

- Services intended to help employees who are not likely to return to their existing job due to their injury or illness

- Connection to Title 1 Services and Title 4 Services
- Counseling on effective use of Supplemental Job Displacement Benefit (SJDB) Vouchers in workers' compensation

Employer Outreach and Education:

- Employer seminars that involve a more holistic approach that combine the stay-at-work and return-to-work issues and concerns for workers' compensation and TD due to injury and illness

Health Provider Education:

- Education resources intended to help doctors and other health-care providers to better understand the impact of their medical decisions on employment as well as services offered through the public workforce development system

**Participant Inclusion Criteria:**

To meet enrollment criteria participants must:

- Have a substantive injury or illness that has the potential to lead to a significant separation in labor force participation.
- Entered into medical services within 12 weeks of enrollment into the RETAIN Project. The date of onset of primary injury/illness should be the date on which the worsening occurred, rather than the date on which the pre-existing condition began.
- Eligible for Public Workforce Services.

**Core Evaluation Design—Clinic Clusters**

Clinics are randomly assigned as either Intensive Services or Basic Services. Mr. Glunt said that Concentra is currently offering 47 clinics in the target area, and they are hoping to increase those to 100 clinic clusters.

- Intensive Services Clinics: Offer for full engagement by resource navigators including active referral into Workforce Innovation and Opportunity Act (WIOA) Title I Services as needed. Resource Navigators provide active feedback and case management services as needed with health-care providers. Resource Navigators help communication between employer and employee.
- Basic Services Clinics: Participants are given access to information about programs and services that they may access. Emphasis is on participant self-service and self-direction.

**Ask 2: Control Group Study**

Mr. Glunt said that they are asking CHSWC to endorse and/or partner with California RETAIN for a control group study that would allow a better comparison of enhanced RETAIN services in Core Clinics against the existing system.

- Use workers' compensation data to identify (retrospectively) individuals in the treatment and comparison groups, but also people who are not in the RETAIN project. (This would be a collaboration between EDD and workers' compensation to find ways to match base wage data in the control group. Control of the evaluation part of the project is through Mathematica Policy Research, contracted by the Social Security Administration. San Diego State's work in California is more at the intervention level.)
- Identifying individuals in the workers' compensation data who visited participating clinics with specific diagnosis codes.
- Need to include a way to match base wage data in the control group since continued

employment is a core outcome measure.

**Ask 3: Changing Doctor Incentives Study**

Mr. Glunt said that they are asking CHSWC to endorse and/or partner with California RETAIN in a third-level study to change health-care provider incentives as a way to promote better stay-at-work and return-to-work practices.

- One way to change doctor behaviors is to change payment incentives.
- This study can be tailored to SB 537 efforts aimed at comparing potential payment alternatives for providers to the official medical fee schedule, including, but not limited to, capitation, bundled payments, quality incentives, and value-based payment systems as well as testing an alternative payment pilot program.

Dr. Blink said that before he continued with the presentation, he wanted to explain that he has previous experience on the Cal/OSHA Standards Board and has been very active with both Western Occupational Environmental Medicine Association (WOEMA) and AECOM on some of these issues. He said he wanted to put in a plug for an AECOM paper published in 2006 on preventing needless work disability by helping people stay employed. He said this RETAIN project continues along these lines, essentially to identify barriers to keeping people at work despite various impairments and preventing long-term wage loss, as previously presented by the RAND study.

He said that, in terms of doctor incentives, he is a strong believer in the idea that you get what you pay for. He said that changing behavior is very important to minimize needless disability. He said that, having practiced as an occupational medicine frontline physician for many years, there are a large number of people who go on to disability, which could have been prevented. He said disability could have been prevented not just by medical interventions but by better accommodation in the workplace, by changing perceptions of the work and the workers as to their abilities, as well as by changing provider behavior to focus on function, rather than other aspects. He said that RETAIN is in the middle of these issues. Dr. Blink said that there is also SB 537, which mandates in January 2021 and continuing to December 2022 that CHSWC and the DWC are required, among other things, to evaluate alternative methods of paying providers in addition to the medical fee schedule.

Dr. Blink said that, in addition to capitation and bundled payments, quality incentives are now being offered by providers, compensation for things that matter and value-based payments. He said that testing an alternate payment program would be included in that study.

Dr. Blink said that he has been part of the ACOEM Coding Project, which has been around for 6-8 years. He said that a group of his colleagues has undertaken to put together an alternate model. He said the essential issue is that in workers' compensation, certainly in California but almost entirely nationwide, payment to providers is based on the AMA's Current Procedural Terminology (CPT) coding system.

He said CPT codes have their own problems. He said that, relevant to workers' compensation, is that it was designed for a different purpose. It has no relevance whatsoever for evaluating function, it has no payments or incentives for understanding what a medical patient does for a living or what function might be. He said that you literally get paid for looking at the tonsil of

somebody who has low back pain. He said that those kinds of mismatches are certainly not helpful for trying to prevent needless disability. He said that they put many years of work into this issue, and they have a website that shows some of the principles involved.

Dr. Blink said that the coding scheme has been essentially redeveloped with a goal and an outcome presenting alternate methods of payment for evaluation and management (E&M) codes. He said that E&M codes are what is paid for an office visit or an E&M component of other services where the provider is evaluating what is going on with the patient and then making decisions as to what needs to be done with the medical case. He said that what they have done is to remove elements that are not helpful for the immediate purposes of the system but may be helpful to group health and really have nothing to do with workers' compensation or function. He said that they emphasize things for which there was previously no compensation at all, such as, do you know what the person does for a living? How does the medical condition result in impairments, if any? How do the impairments match with the essential job functions and optional job functions of the individual? Dr. Blink said that these were very important questions in workers' compensation and even in the larger "House of Medicine" for just making decisions as to what patients can do in their lives and in their work. He said there was no compensation yet and no incentive for providers to make those decisions.

Dr. Blink said that they retooled many of those algorithms for various conditions: one for the low back, one for respiratory problems, etc. He said that there was a fair [considerable] list of these conditions, and they are more or less ready to go to the next step, which would meet the needs of the mandate for SB 537 as well as for the RETAIN project. He said that they are hoping that if they are successful getting a bid for Phase 2 of RETAIN—which they are currently preparing as a proposal—that there would be funding available to develop this to the point that it could go forward.

Dr. Blink said that, first, they would have side-by-side coding, specific to the needs of RETAIN and SB 537. He said it was close but not perfectly aligned. Second, there would be side-by-side coding for services. The coders understand the previous CPT-based MTUS and Medical Fee Services (MFS) coding requirements and then simultaneously code for those same visits using the ACOEM criteria, and then study the difference. If you highlight those using a sentinel function spotlight on the new way of evaluating services rendered, does it change behavior? Does it show any improvement in outcome, or any improvements in how the physicians actually perform their duties with respect to function?

He said it would require training billing people to do the side-by-side coding, and people ready to evaluate what the differences are and do ongoing continuous quality improvement. He said there would need to be prototype software to have the coding go forward and so that it does not exist in a vacuum. He said in Phase 2 of RETAIN they would have thousands of cases added to the system. He said that they would be pleased to work with CHSWC and DWC on this project. They will have further discussions with DWC directly. He said he hoped that they could simply work together to find a path forward.

Mr. Glunt said that the core partners such as the workforce system and EDD are already actively supporting the project. He said that these were just the highlights but that they would like to have CHSWC as partners to develop a Memorandum of Understanding (MOU) and proceed with the

project.

**ACOEM Coding Project**

1. Link to the ACOEM CODING Project
   - ACOEM
   - Coding scheme already developed. Test portions relevant to RETAIN.
   - Codes reward SAW/RTW Services more than current system
2. Side-by-side coding using CPT and ACOEM criteria
   - CPT criteria use a Medical Model: Symptoms—Diagnosis/Treat
   - ACOEM criteria use a Function-Orientation Model: Function—Assess/Promote
   - Require training billing/AP clerks on new system
   - Development of prototype software to aid coding

Mr. Glunt concluded that they had a deadline in early January for the submission of a proposal, and it would be helpful to have an MOU of some sort to be able to include as part of the submission.

**Commissioner Comments**

Commissioner Kessler said that she had read through the proposal and had some deep concerns about the presentation and the proposal that was sent to the Commissioners several times, and maybe there could be some clarification. She said that she did not see any mention of any employee groups as part of the partnership to understand the impact on workers and worker retention at the jobs where they have been injured or even people who are injured to be able to go to work. There is no mention whatsoever of employee health and safety organizations, employee representative organizations, unions, legal beagles or anything like that. She said that it was really important to have in the conversation the people who represent the individuals who may know how to navigate the system. She said navigation by individual people is sometimes not well treated in the system, which is enforcing certain paths. Ms. Kessler said that she was hoping that the proposal also talks about employee education, not just employer education, about how to use these programs.

Mr. Glunt replied that they would welcome employee representation but that the whole emphasis of the employee has been via the return-to-work coordinator, and understanding particular employee situations, and getting the information shared. Ms. Kessler said that that emphasis would need to be amended in the proposal presented to the Commission. She said that CHSWC has both employer and employee representatives and that the wonderful thing about the Commission is that the Commissioners work together to try to understand and navigate the systems that people are exposed to in their work environments. She concluded that the fact that this element is missing from the proposal is of deep concern. She said that if they move forward on this proposal, there must be amendments and additions by doing outreach to organizations such as the California Labor Federation or whatever to engage and involve to help develop a program

Dr. Blink replied that they have not made a proposal. This is a description of a project, and they are asking to work toward developing a relationship. He said the pilot project that they have been

in so far has just been an effort to show that connections can be made. Dr. Blink noted that Mr. Glunt said that the focus has been on individual employees and individual injured workers to make sure they understand what their issues are and help them access the system.

Dr. Blink said that Ms. Kessler was absolutely correct that having organized employee representation is critical to making this work, and they would welcome having that relationship and any assistance they can get with that. He said that that would be part of the Phase 2 proposal, but that proposal does not exist yet; they are working on it now.

Commissioner Kessler countered that they have proposed that CHSWC partner with them, and that is the proposal aspect that she is speaking to. Mr. Glunt said that they are proposing that they develop an MOU so that they collected all the components to include. He said it is actually an invitation to get the correct elements included. Mr. Glunt said he concludes that this aspect is what would have to be part of any partnership understanding. Ms. Kessler thanked Mr. Glunt. He said that he regards that as being the first concrete input that they have received and that needs to be a central point of this MOU that they are hoping to develop, that there will be representation from all the key stakeholders. He said that the ACOEM paper a long time ago lists eight different players in the workers' compensation and general disability problem, and that is certainly a key element.

Commissioner Bloch thanked the RETAIN people for the presentation. He said that he spoke in the past about one of the stakeholder groups that he feels they do not hear enough from in the public meetings. He said he may not have a question, but he wants to go on the record that he is very curious about the potential third study that was addressed and how to incentivize doctors to come into the system. He said that if he were a doctor, he cannot imagine why—unless he cared about injured workers—he would want to come into this [occupational health and workers' compensation] system. He said that he would love to hear representation from that group [doctors] to see if there would be some value in this study.

Mr. Glunt said that as a former president of the WOEMA, he attends an hour long meeting with WOEMA colleagues, and he is in contact with occupational physicians more or less constantly, wearing other hats as well as specialties. He said the reason he became involved with these issues many years ago was the constant unhappiness in the medical field among people who do care about injured workers and the mismatch between the incentives and the things that actually matter in helping injured workers and decreasing unnecessary work disability. He said that in the real world, retooling workers' compensation systems and other incentives does not have to be just about money. He said it is important and deserving of study. He said SB 537 is a very interesting piece of legislation; it does not say that one must adopt whatever is studied, but it does say that a study must be done. He said that is what they are proposing through the third study on the examination of the ACOEM coding guidelines. That is one way of accomplishing that need. But it is just one of the three suggestions. The first is simply to enter into a partnership to explore whatever comes next, which of necessity is somewhat vague. The second is to get more access to further the goals of the RETAIN study, which itself is an amazing development in the federal government. He said one might say that it is the single-largest development in worker safety that has taken place since the advent of OSHA and the National Institute for Occupational Safety and Health (NIOSH) back in the 1970s. The federal government has devoted more than $100 million in federal grants to the RETAIN program, so they are proud to be part of that and hope that they

can actually move the needle on trying to improve employer behavior, worker understanding, and physician behavior to try and get better outcomes to prevent the very unfortunate findings that you are seeing in the RAND study, which people in the field who are taking care of injured workers are confronted with every day.

Commissioner Steiger agreed that they have heard about all the hoops that we make physicians jump through in the workers' compensation system. He did not know from the presentation whether this proposal would reduce those or improve them in a way that would make doctors more likely to stay or give them an incentive to come into the system if they were not in it already. More detailed thoughts on how this proposal would affect that issue might be helpful the next time that CHSWC checked in on this.

Commissioner Steiger asked about how this program facilitated communication between a doctor and an employer, and he wanted to know what that looked like exactly; how was worker privacy protected with a third party talking to both a worker's doctor and his employer. Specifically, if that dealt with the problem where the MTUS was not properly cited, and then that could be used as justification for denying the treatment request, even though the treatment request was very much valid, but it was not cited properly or there was an issue with that. That was why they were interested if a treatment request was denied, that there was communication between all involved parties to make sure that it was not just being denied because of some small technical issue with the MTUS, and hopefully that was part of what this communication was trying to deal with. They wanted to check in and see what that looked like and how worker privacy is protected. Dr. Blink replied that the communication between employee and employer or patient and employer is number one and confidentiality, of course, comes before everything else, so we do not do anything without the consent of the patient/participant. But any time that we would have communications outside the existing relationship between the patient and his or her doctor they would get explicit permission before doing anything, and the only place that occurred, and, of course, this was a pilot, but it was when there was some perception of misunderstanding on the part of the patient that their workplace said the patient could do job X, if only the patient could avoid doing task one, two, or three. Somehow, that was not being communicated. So, this is in a quality occupational medicine practice, and again, this is not your family doctor's office generally and not your routine community orthopedics office. This was somebody who dealt with work injuries on a regular basis all day long. Those who had been doing this for a while had relationships with the employees, with their labor representation and with their workplace where one can try to make sure that the communication was maintained. The employee does not want to be missing maintaining his or her occupation. The doctor wanted the patient to get back to work because many studies showed that it was good for the patient. The employer does not want to lose a valued employee. That was the optimal situation, but making sure that that communication happened and that patient confidentiality was protected, and nobody was forcing them to do something that they were not capable of doing. The employer understood what any limitations were, so that they did not ask patients to do something they should not be doing, but also that they do not prevent them from doing an activity that they could do. Most of these cases were not about two or three years (after an injury) with PD situations where everybody had a lawyer, and it turned into a very bureaucratic process. Dr. Blink was

talking mostly about the first 12 weeks after an injury because that was where the most good was, by preventing a chronic disability and from helping employers to understand that it was in their interest to do what helped their employees. It was also in employees' interest to make sure that they stayed as active as medically possible and helped the doctor understand that they were helping the whole system by paying attention, and you do not learn that in medical school.

Commissioner Steiger stated that it could be helpful to have more specifics on a case study with names redacted and all details taken out, but exactly what was done in terms of facilitating communication between a doctor and employer, what type of information was exchanged, and what was the result. More details would be helpful.

Dr. Blink gave an example of what happened in occupational medicine. He said somebody who had a medical condition and you determined that there were certain impairments and restrictions that were needed. A job description and if the job duties were compatible with what the restrictions required would be helpful. Sometimes you could not tell. So, then you ask the employee [the patient] if it was okay to call their workplace. If they called the workplace and found that this could be accommodated, then it could be in writing; that was with every single visit, but sometimes a phone call was required, again with everybody's participation. Similarly, sometimes patients state that they were told not to lift more than 20 pounds, but were asked to lift 50-pound sacks. What was there to do? Sometimes, clarification was needed, so it was very simple: they were required to make a determination as to what restrictions were necessary. The restrictions were activity restrictions, not work restrictions. The same restrictions apply regardless of what you are doing, and it was important for all the players to understand that as well.

There were no questions from the Commissioners or members of the public.

## VII. WOSHTEP Program Update
**Robin Dewey, UC Berkeley-LOHP**

Robin Dewey provided an update on the Worker Occupational Safety and Health Training and Education Program.

- Ms. Dewey stated that the WOSHTEP is a 20-year-old statewide program administered by CHSWC through three resource centers: University of California, Berkeley (UCB), University of California, Los Angeles (UCLA), and University of California, Davis (UCD).
- Goal: to reduce injuries and illnesses and workers' comp costs through training programs.
- Target audiences: high-hazard industries and occupations with special needs. The program is funded by a tax on workers' compensation insurers.
- Since the program began, it has provided training to more than 28,000 workers and over 2,500 employers. The program has several components, a bigger one of which is the Worker Occupational Safety and Health Specialist Leadership Training Program; until the pandemic, these three-day or 24-hour courses were held in person, and obviously, that has changed.

**WOSH Specialist Classes**

- Everybody who goes through the course is involved in the Worker Occupational Safety and Health Specialist Leadership Training Program. It has six core modules and a series of supplemental modules that were selected based on who was attending the class. In 2020, a new module on sexual harassment was introduced, and they are in the process of developing another one on stress.
- The purpose of these classes is to teach worker leaders to become Occupational Safety and Health specialists who can work with management and their coworkers to identify and solve health and safety problems. Sometimes, these classes are open enrollment classes that participants from a variety of workplaces attend, and, sometimes, the classes targeted a specific audience, such as union-only classes.
- Total number of WOSH specialist classes in 2020: number of classes: 10; number of specialists: 199

LOHP also teaches others to teach the class to their constituents or employees. For example, the Labor Occupational Safety and Health (LOSH) program:

- Training of Trainers (TOTs), Refreshers, Awareness Classes, and Presentations
- Totals in 2020: 1 Refresher (10 Specialists) 3 TOT (30 trainers) 16 Awareness Classes (1406 workers)
- Patient safety and health program at UCLA has taught the class to community health promoters through their LA Trade Tech program. Trainers were then able to teach awareness classes to groups of workers as well as supervisors in the prison industry to teach the WOSH specialist class to inmate workers in those classes.
- They had to change the in-person classes to remote classes (due to the COVID-19 pandemic), held via Zoom. As a consequence, there were a number of changes, for example, they could not have people sit at a computer for an eight-hour session, so they reduced the length of time to four three-hour sessions over two weeks with homework required.
- Content is not lost at all, and they were trying to make it as interactive as possible with many small group discussions and breakout rooms as well as games and other activities.
- In 2020, they taught 10 classes, all of which were remote, reaching 199 specialists.
- From the time the program began until December 2020, they provided training to 5,100 worker leaders who were now WOSH specialists. The program conducts a survey a few weeks after the class ended to find out whether they were able to take actions back to their workplace and found that they were.
- LOHP resource centers provide ongoing support and technical assistance to the specialists through a number of different methods, including email notices and newsletters, and then refresher classes.
- Another key element in the WOSHTEP program is providing Awareness classes:
  - Since 2004 when they started teaching this program, they have reached well over 23,000 workers through the Awareness classes.
  - Typically, 15 to 20 Awareness classes are held per year. In 2020, they held 16 Awareness classes, reaching 1,400 workers. In addition, on occasion, they teach TOT classes: three were held in 2020 and one refresher class for 10 specialists.

- LOHP also does presentations and webinars; in 2020 it had 10.
  - LOHP does not tend to track how many people attend them because that was harder to do, but they know they reached a lot of people.

**Small Business IIPP Training**

- Partners: DIR, CHSWC, State Compensation Insurance Fund, California Occupational Safety and Health (Cal/OSHA) Consultation, CDPH, Small Business CA, CA Small Business Association
- Focus: (1) General industry, (2) Farm labor contractors and small farms, (3) Staffing agencies
- 2020: 10 classes (441 owners, managers)
  - These were four-hour classes focused on how to create an effective health and safety program in your workplace.
  - A key element that we promote very strongly is the importance of involving workers in those programs if you want to be successful in both identifying problems and solutions. In 2020, we conducted 10 classes, all online, reaching 441 owners and managers.
  - Conducting IIPP classes online attracted a bigger turnout, therefore somewhat larger outreach.
  - The next element was a very strong advisory committee for this program. Some members of the Advisory Committee attended this meeting.

**Young Worker Leadership Academies History and Overview**

Yasin Khan and Veronica Ponce de Leon discussed the Young Worker Leadership Academy (YWLA). The YWLA was an amazing program in its seventeenth year that LOHP holds in partnership with LOSH at UCLA. Ponce de Leon was at LOSH, and CHSWC sponsored the YWLA Academy. YWLA is a statewide leadership training program for high school students.

The YWLA is:

- A three-day leadership training program for teens on workplace safety, rights, and responsibilities
- YWLA introduces participants to service strategies (policy, education, media).
- YWLA is a forum for youth to plan service learning projects for their schools and communities to promote positive, safe employment for young workers.
- In a typical year before the COVID-19 pandemic, students applied in teams of four with an adult advisor to go to UCB for three days of learning about occupational safety and health workers' rights and how to make changes during this pandemic.
- In a year without the COVID-19 pandemic, high school students come together from all over California to UCB to learn about occupational safety and health, workers' rights, and how to make change in their home communities. While they are at the YWLA for three days, they start to plan out a project to do when they return to their home community to share some of what they learned.
- Ms. Ponce de Leon mentioned moving on to YWLA for 2021. We moved it to a virtual platform so things looked different, but the mission of building youth leaders and

advocates for safe workplaces is more important than ever with the pandemic.

- The Virtual Academy is scheduled to take place from March 4 to 6, 2021, and flyers in both English and Spanish will be used for outreach purposes.
- The goal is to make this an interactive Academy, where students can get to know one another and learn about workplace health and safety issues. It is also a time to learn about how to make positive changes in their communities through the projects that they were asked to do after the three-day YWLA.
- Some examples of how to make this as interactive as possible were:
    - Sending baskets to all the students with T-shirts, activities, factsheets, and different things that they can bring as they go through the days of YWLA, in addition to an escape room, and then a quiz. One of the activities that they created for virtual YWLA was a virtual escape room. In an in-person escape room, you are usually locked in a room with your friends, you have to look around for hidden clues, and each clue points to a riddle that you have to solve in order to escape the room.
    - So they created a virtual version of that; the way it worked was that the students see a picture of a young worker inside a grocery store, and they can click around on the different items and find a clue, a little riddle, and then an answer.
    - The way this activity is structured is that they can click around, and teams can answer all these questions. There was time at the end to make sure that they had debriefed, and they can confirm that they had learned all the lessons that they had hoped to from the activity.
    - The other tool that they used to make this as interactive as possible was a game-based platform called Kahoot. Students could log in on their computers or their phones. Ms. Khan stated that they could get instant feedback to see how students were doing and check in if something was unclear. The end of the game was fun, and you could see who won, which it added to the competitive nature.
- They tried their best to make this as fun as possible for students because they could not travel to Berkeley, a trip that they really looked forward to.
- Ms. Khan sent the link to a video of the first-time students from Southern California. It was the first time they had been on a plane, been away from their families, or been on a college campus. So, it is an incredible program. Hopefully, after this meeting everyone can check out that video because it was great to hear from the students themselves about how much this program means to them.

**WOSHTEP: Looking Forward**

- Heather Riden stated that they were continually working across all the resource centers to incorporate information on new laws and regulations.
    - Workers' rights/employer responsibilities to conduct training, adjust training to a new format, and reach out to workers and employers.
    - First, we heard from Chief Parker about the new emergency standard. All of us are absorbing that and getting ready to answer questions and promote information about it to both workers and employers. Similarly, our IIPP training incorporates the new rule of employee access and ensures that workers know about their right

to access that information.

- Consider changing the work landscape due to COVID-19
  - What changes will be lasting?
  - What impact does COVID-19 have on our definitions of hazardous industries and vulnerable workers?
  - This meeting showed that all of us are adapting, and we do not necessarily know which changes will remain. They had side conversations about how some of the definitions of hazardous industries or vulnerable workers may change or the ways in which certain workers are becoming more vulnerable. Something that hopefully has a short timeline but is dramatically impacting many hundreds of thousands of workers. They wondered about what a new normal would look like. Are there new industries that need to be focused on?
  - At UCD they serve the Central Valley and largely the agricultural industry, so there are real challenges in getting people to in-person training, whether about IIPP or heat illness or another topic that they covered, because of the great distance. There were so many competing priorities, and so they found a real benefit from doing training online. It resulted in increased participation and engagement. It was positive.
  - Thought about the ways in which the online training can be interactive and engaging and ensure people are really participating.
  - Philosophically, they believe in the value and importance of in-person and interactive and participatory trainings. At UCD the team is starting to brainstorm:
    - What does the training program look like after they go back to in-person in a classroom setting?
    - Does some training, by its nature, need to be in person?
    - Are there different ways to hold a hybrid program in order to take advantage of the increased geographic reach?
- Online training offers better opportunities for accessing groups of people who had been less involved in it historically, so they wanted to take advantage of that.
- All the trainers were eager to get back to in-person training and talking to participants in person. Another thing that they realized was that, like the participants, they had varying levels of digital literacy, as well as different training abilities and capacity, and they appreciated the diverse skill sets across the resource centers and the trainers.
- Many participants like having the freedom of remote access and will continue to think about the post-COVID-19 future and how we can learn from this year's experience to continue to reach more vulnerable workers in high-hazard industries.

**Commissioner Comments**

Commissioner Kessler stated that this was a fabulous program, and it had international standing because we were in a global pandemic, so having the global reach is really important. She had two questions: the first one was about access, especially for people in areas where they do not have computers, and what was the workaround for that? And the

second question, regarding training in different languages, were they getting assistance from employers? Also, did they have enough translators on staff so that the farming communities had the needed translators?

Ms. Riden responded that she appreciated the recognition of the program. She was not fluent in Spanish, but all their trainers at UCD were fluent, and, so, she believed 50% of the training was conducted in Spanish and 50% in English. There was other language capacity at the other centers as well. So, when possible they were conducting the training in the language of the participants. Often, that meant that they might have one training on a given topic in Spanish on one day and in English a different day for different audiences. There were times when, for example, they conducted training for the Hmong farmers in the Central Valley, and in those cases the partners provided an interpreter for that purpose. They did their best to be creative, but there is still room for growth, making sure that the information is accessible to people who speak many languages in California. To answer Commissioner Kessler's first question on internet access and device access, and whether a barrier existed, in general, they had only seen an increase in the ability of people to participate. So, while that was still a problem, they were reaching more people; and that would be a comprehensive statewide effort. That was probably happening by getting more devices and internet access to rural communities.

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

Mr. Enz stated staff had been busy fulfilling Commission requests and monitoring and working on projects and studies.

**CHSWC Studies Update**

- The study on the exposure to and incidence of occupational cancer among mechanics and cleaners of firefighting vehicles was in process and on schedule for completion by March 15, 2021.
- CHSWC study "Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles" is in process and on schedule to be completed by the March 15, 2021, due date. This study was legislatively mandated by AB 1400 authored by Assembly member Sydney Kamlager and was being conducted by ToxStrategies. The study used a mixed-method approach with both quantitative and qualitative elements and was due to the legislature, the Standards Board, and the LA Board of Supervisors by March 15, 2021.
- Assemblyman Tom Daly requested that CHSWC undertake a study evaluating the cost impact of SB 542 and assessing the occurrence of mental health conditions or illnesses that affect active firefighters and peace officers and whether claims of mental health conditions or illnesses filed by active firefighters and peace officers are accepted or denied. SB 542 added occupational post-traumatic stress as an "injury" for workers' compensation purposes and created the rebuttable presumption for specified injuries suffered by firefighters and law enforcement personnel between January 1, 2020, and

January 1, 2025. CHSWC contracted with RAND to conduct this study using a mixed-method approach with both quantitative and qualitative elements. We anticipate the final report to be completed by the summer of 2021.

- SB 1159 Presumptions for Public Safety Workers and Outbreaks in the Workplace. On September 17, 2020, Governor Newsom signed into law SB 1159, which took effect immediately as an urgency statute. SB 1159 was authored by Senator Jerry Hill, chairperson of the Senate Committee on Labor, Public Employment, and Retirement. SB 1159 codified the Governor's previous executive order assigning COVID-19 a presumption and created two new presumptions dependent on testing positive, as defined, for COVID-19. The first one was for public safety workers as well as health-care providers. The second one was for all other workers, during an "outbreak," as defined. They cover all new claims from July 6, 2020, to January 1, 2023, for both public and private sector employees.
- SB 1159 also requires CHSWC to conduct a study of the impacts of COVID-19 claims on the workers' comp system, including an assessment of differences in the impacts across different occupational groups and of the presumption statutes. We are currently in the process of finalizing a Request for Proposal for the study required by SB 1159. A preliminary report from CHSWC is due to the Legislature and the Governor by December 31, 2021, with a final report due by April 30, 2022.

**CHSWC Projects and Activities Update**

- CHSWC staff worked hard under difficult circumstances to prepare the draft 2020 CHSWC Annual Report and the WOSHTEP Advisory Board Annual Report, and both reports are action items today. Staff has been primarily working from home since March and have done an extraordinary job of transitioning and adapting to the challenging circumstances this entails. I want to commend them for their diligence and commitment in preparing these reports as well as their work on other projects and activities. The WOSHTEP program update was just provided by representatives from the three centers that make this program thrive: the Labor Occupational Health Program at UC Berkeley, the LOSH program at UCLA, and the Western Center for Agricultural Health and Safety (WCAHS) at UC Davis. They were a special group of truly dedicated educators that strove to fulfill WOSHTEP's goal of reducing worker injuries and illnesses as well as workers' compensation costs through training programs.
- The School Action for Safety and Health (SASH) Advisory Committee met virtually on September 9. The meeting featured an overview of SASH program goals and a review of activities in 2019-2020. There was also a review of the SASH Needs Assessment conducted in July and August to determine what school staff needed regarding safety and health for safe return to in-person schooling, remote teaching, and regarding stress and resilience. Following the needs assessment discussion, there was an update on health and safety standards related to COVID-19 and schools, a discussion on concerns about ventilation issues related to COVID-19 and wildfires and a discussion on potential future activities and setting priorities for the SASH

program.

- Mr. Enz also mentioned that the SASH program is developing additional materials and resources in light of the COVID-19 pandemic. These include: an online version of the SASH IIPP course, factsheets on COVID-19, and tips for addressing work-related stressors faced by school employees. In addition, the SASH IIPP training curriculum will be updated to incorporate information about any schools related health and safety issues and recommended solutions including Cal/OSHA's guidance of employee protections related to COVID-19.

**Action Items: two action items were presented for consideration:**

1. Does the Commission wish to approve for posting for 30 days for feedback and comment, the DRAFT 2020 CHSWC Annual Report? **This action item was approved unanimously.**
2. Does the Commission wish to approve for posting for 30 days for feedback and comment, the DRAFT 2020 WOSHTEP Annual Report? **This action item was approved unanimously.**

**Commissioner Comments**

Commissioner Kessler asked the date of the next meeting, and Mr. Enz said he would provide potential dates. He replied that the next meeting will be in late February or early March because there was a very important report on AB 1400 Fire Mechanics study.

**Public Comment**

None

**Other Business**
None

**Adjournment**
The meeting was adjourned at 1:36 p.m.

**Approved:**

Mitch Steiger, Chair _____ Date _____

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC _____ Date _____