

# MINUTES FROM CHSWC PUBLIC MEETING

December 9, 2021

*Held online*

Physical Location When Applicable -  
Elihu M. Harris State Building  
Oakland, California

**NOTE:** In accordance with [Executive Order N-29-20](#), and [Executive Order N-33-20](#), the physical meeting location was cancelled for Month, Day, Year. The meeting was publicly held via online teleconferencing with publicly provided link.

## **In Attendance (via online video)**

2021 Chair: Martin Brady

Commissioners: Doug Bloch, Christy Bouma, Martin Brady, Shelley Kessler, Sean McNally, Nick Roxborough, and Mitch Steiger

**Absent:** None

**Vacancy:** One

Commission Chair Brady began with housekeeping business for the meeting. He asked for cellphones to be set on silent, he explained the meeting was being recorded for the purpose of preparing a record of the minutes and explained that public comments were limited to three minutes per person per topic.

## **I. Approval of Minutes from the September 30, 2021 CHWC Meeting**

Chair Brady asked for a motion to approve the September 30, 2021 minutes. Commissioner McNally moved the motion, Commissioner Bouma seconded the motion and the motion was approved unanimously. Chair Brady was thanked for his service as Chair for the past year and Chair Brady replied that it is a team sport with everyone stronger as a result of participation.

## **II. Election of 2022 Chair**

Commissioner Bouma motioned to nominate Mitch Steiger for 2022 Chair and Commissioner Kessler seconded the motion. The motion was unanimously approved. Commissioner Steiger thanked the Commissioners for the leadership role of chair.

## **III. WC Medical Issues and Formulary Update Dr. Ray Meister, Executive Medical Director, DWC**

Dr. Meister began with an update of the Medical Treatment Utilization Schedule/American College of Occupational and Environmental Medicine (MTUS/ACOEM) Guidelines, which are incorporated into the MTUS. He said over the year DWC has adopted several updated guidelines and a few new guidelines. He said the following updates were made over the last year:

## MTUS/ACOEM Guidelines

### Updates:

- Low Back Disorders
- Knee Disorders
- Ankle and Foot Disorders
- Depressive Disorders
- Anxiety Disorders
- Occupational/Work-Related Asthma
- Occupational Interstitial Lung Disease
- Antiemetics
- Covid-19

(available to the public at <https://www.mdguidelines.com/> )

### Updates planned in the coming months:

- Shoulder Disorders
- Opioids
- Covid-19

## MTUS Formulary and Drug List

- Quarterly Pharmacy and Therapeutics (P&T) Committee meetings
- Quarterly updates to the MTUS Drug List
  - Most recent drug list update was to add medications addressed in the MTUS/ACOEM Anxiety Disorders guideline.

Dr. Meister said that the Workers Compensation Insurance Rating Bureau (WCIRB) earlier this year released a research brief entitled, “Cost Impact of California’s Drug Formulary, 2-Year Checkup.” He said some of their findings included the following:

- While pharmaceutical costs had been declining sharply prior to the implementation of the formulary (the formulary went into effect in January of 2018), the decline accelerated in 2018 and continued at a somewhat slower rate through 2019 and the pre-COVID-19 period in 2020.
- The share of prescription drugs not subject to prospective utilization review in accordance with the formulary continued to increase in 2019 and early 2020, while that of drugs that are subject to utilization review continued to decline.
- The share of pharmaceutical payments for opioids, compounded medications and brand name drugs that have generic alternatives dropped sharply in 2018, and continued to drop at a similar rate in 2019 and early 2020.
- While the share of pharmaceutical payments for physician-dispensed drugs started to increase slightly toward the end of 2019, on an annual basis, the share of payments for these drugs continued to decline during the two years of the formulary implementation.
- The continued downward trend in pharmaceutical costs through early 2020, as well as the continued decreases in the proportion of drugs subject to utilization review - opioids,

compounded medication, physician-dispensed drugs, and brand-name drugs with generic equivalents - suggests that the formulary is achieving its intended effects.

Dr. Meister stated that while a lot of the WCIRB report focused on costs, in parallel to the costs, he believes this suggests that the medications are being used in accordance with the MTUS/ACOEM treatment guidelines, which DWC believes is a good thing for patient care.

DWC Physician Education ( <https://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm>)

Dr. Meister explained that DWC currently has two free online physician education courses: one on the MTUS and another for Qualified Medical Evaluators (QMEs) for healthcare providers as well as anyone else who is interested.

The DWC launched an UPDATE to the online physician education course, Evaluating California's Injured Workers: Qualified Medical Evaluators (QMEs).

The two-hour course covers:

- How to prepare for a QME evaluation;
- Identify the components of a complete report and potential pitfalls;
- Identify and understand the concept of apportionment, and how it applies in the California workers' compensation system;
- Differentiate between causation of permanent disability and causation of injury, and describe the types of allowable factors in determining causation of permanent disability;
- Describe the legal requirements for substantial medical evidence, and apply these standards to a medical-legal determination on apportionment;
- Recognize the law requires impartiality and prohibits discrimination against injured workers based on protected characteristics including sexual orientation, race, gender, age, national origin, and religion;
- Identify applicable Administrative Rules including how to schedule QME appointments, how to add or close a QME office, and how to place a QME status as unavailable or inactive;
- Discuss the importance of issuing timely reports and the consequences of late reporting.

The course is approved for 2 hours of QME continuing education credit as well as the annual requirement.

The DWC also offers a Continuing Medical Education (CME) course on the MTUS with a 1.5 hour continuing education credit. All providers involved in the care of California's injured workers have no-cost access to the MTUS-ACOEM treatment guidelines. Dr. Meister explained that the course covers:

- Learn how to use the MTUS, the MTUS-ACOEM treatment guidelines and formulary to increase UR approvals.
- Learn how to use evidence-based treatment guidelines and medical recommendations in caring for patients.
- Learn which medications are consistent with the MTUS-ACOEM treatment guidelines and exempt from Prospective Review authorization.

Dr. Meister said both courses are offered free of charge to anyone interested in the topics.

QME Fee Schedule:

- Updated

Electronic Doctor's First Report (DFR):

- Updating systems to be more digital; changes to the current electronic DFR in order to incorporate with medical records

**Commissioner Questions or Comments**

Commissioner Bouma stated that she appreciated DWC's diligence in trying to get physicians in a position to be helpful advocates for injured workers. She stated that understanding the system is clearly an ongoing problem and that the net effect is harm to an injured worker who is not getting the care they need because the players are unable to navigate the system.

Commissioner Bouma said that Dr. Meister made a comment about the formulary and said it is working as anticipated. She asked what that meant for him, whether it was about worker outcomes, the utilization of drugs, or about costs, the utilization patterns, or the disputes DWC is seeing when something is not in the formulary and getting denied, or when inconsistent with the MTUS.

Dr. Meister said that the report he cited focused mostly on cost issues. He said that what he wanted to ensure was that workers do get good care and for the medications to be used appropriately. He said that he really does believe that the guidelines that they have in place and that the formulary is directly tied into those guidelines. He said he thinks that the formulary has been helping in terms of patient care in that most of the medications that are recommended in the guidelines for the acute treatment of work-related injuries and illnesses. He said that the vast majority of the medications are designated as exempt medications, meaning that if those medications are ordered consistent with the guidelines that those medications should go through without prospective review and are to be supplied to the injured workers without delay. He said that the study did show that those exact medications are being used more often than they were in the past. He said that perhaps some of the other medications that were not being used appropriately, such as opioids and other medications that have a higher risk profile - that those medications have been used less since the formulary went into place.

Dr. Meister said that making the kind of safe acute phase medications exempt is also drawing the attention of the providers to those medications. He said that he does believe that the formulary has been put together in a way that emphasizes the safe and appropriate use of medications. He said the formulary is hopefully getting those medications to people without delay, especially very early on when you can affect some positive outcomes and change early on in these cases. He said that prompt availability of medications could make a difference to the injured worker.

Commissioner Bouma asked whether the curriculum he mentioned is online and whether it is accessible to the public or to practitioners in the system. Dr. Meister responded affirmatively and added if someone Googles "DIR physician education," the course page will come up. He said there is a quick registration process that someone has to go through, but the courses are available 24/7, free

of charge to anyone. If the person is a health care provider, they will receive the appropriate CME credits and, if needed, QME credits as well. A claims administrator, an attorney, an injured worker or anyone else who would like to learn about those topics may do so. While the courses are aimed at health care providers, he said anyone who is interested in those topics would learn a lot by going through those courses. He said that they tried to make the course interesting. The QME course has some video vignettes from several of the DWC staff and they tried to make it interactive and interesting.

Commissioner Bouma made a request going forward related to a discussion during the last meeting. She said that they discussed a finding that access is very challenging in the workers' compensation system. In particular, in trying to seek care for mental health injuries, there were distinct reasons for access problems such as a shortage (of providers). She said that they discussed how care is procured initially in an injury like that (mental health) and the transition to care is either clunky or does not happen. She said if Dr. Meister had a comment today, she would be very interested in hearing how to solve that problem for her (union) members who are probably already confronting a tremendous stigma to reach out (for care). She said challenges like these in most cases may turn workers away and then they are left untreated.

Dr. Meister said that he wished he had a good idea or something reassuring to say but as Commissioner Bouma mentioned, unfortunately it seems that mental health care, in general, is at a premium and very difficult to obtain. He said as an aside that he sometimes is contacted by friends and family members looking for or asking about mental health care, and even for those who have good insurance, it seems to be a challenge. He said that some of these mental health issues, which are unfortunately prevalent for first responders, seem to be getting more recognized and getting more support within those communities and the workers' compensation community. He said that he agrees with Commissioner Bouma that it is a significant issue that needs to be improved.

Commissioner Bouma directed her next comment to the Commission Chair and the Commission and stated she believes that it sounds like it's a system-wide issue not limited to the workers' compensation system, which she said they have heard before. She said the issue relates to the whole subject of access and whether it is equally challenging for other specialties or needs in the system, or is it limited to just mental health. She said she suspects it might be greater, but that maybe as a Commission they can figure out how to dig in and refresh the study or try to identify what the issues are for their respective constituents. She thanked Dr. Meister for his service.

Commissioner Steiger asked about the incorporation of COVID-19 guidelines into the MTUS and made a request for greater access to the MTUS, acknowledging that it is free for registered providers but that it's a little more complicated for civilians like himself, who is not a physician, but who wants to see what is in the MTUS. He said that given all of the different areas of policy that are focused on COVID-19 right now, it would be useful to have a streamlined source of information. Dr. Meister explained that ACOEM and the publisher Reed Group made the decision to make the Covid-19 portion of the MTUS available free to the public. He said that if you Google "md guidelines" or "mdguidelines" you will land on their site and at the top of the page there is a banner call-out to click for the Covid-19 guideline link. He said further that there have been eight or nine updates and another is underway. (<https://www.mdguidelines.com/>)

Commissioner Roxborough asked whether physician education attendance has increased from what

it used to be, and whether QME physicians are coming back into the system, based on a fellow Commissioner pointing out how important they are to a functional workers' compensation system.

Dr. Meister said that he did not have the most up-to-date numbers but that physician education numbers have been increasing. He said the course update came out in the time period leading up to the most recent QME examination. He said that they do have many people who have gone through the updated QME course. Further, since it does provide two free hours of continuing education credit, while many of the QME courses cost money, they are very hopeful. They are also doing outreach to all the communities to encourage them to take this course because of the importance of the content. He said also that because of the new QME course, they have seen a bump in the numbers of participants taking the MTUS course. He said that on the QME course, they ask people who take the course to rate it on a survey with a 5-point scale. He said he thinks they are averaging around four and a half out of five. He said that the folks that helped us put the course together tell us that that those are very good ratings for a course like that. So again, the basic answer is yes, they have been seeing a nice uptick.

Dr. Meister said that as far as adding QME physicians, that they seem to be adding them. He said that he did not have the exact numbers but that he believes that they are averaging about 150 people taking the examination. He said, of course, not everyone passes it - at least on the first time around. He said that it is a challenging exam and one that requires quite a bit of studying up front. He said that with the new fee schedule, the course might be more attractive for physicians to become QMEs. He said that DWC would welcome more QMEs but that the large numbers of physicians who are now associated with large (health care) groups may be a limiting factor. He said that QME examinations are not something that fits into the kind of normal work schedule for a Kaiser or Sutter Health physician.

Commissioner McNally asked a follow up to Dr. Meister's comments that the legislation on the formularies is working as anticipated. Mr. McNally wanted to know what is not working as anticipated. He asked what unintended consequences DWC is seeing or has seen, or what kinds of things DWC is finding that were not contemplated when everyone was putting this program together?

Dr. Meister said the formulary on the patient care side, and on the cost side, has been largely successful. He said one thing that they have looked at within the Pharmacy and Therapeutics Committee is medications. He said that while he does not think it is a result of our formulary, there has always been the issue of Rx dosages and the costs at different dosages. For example, in looking at medications there may be a 5-milligram dose and a 10-milligram dose that is much less expensive, but also 7.5-milligram dose which is very expensive. He said the guidelines and the formulary for the most part do not discuss doses or the cost of the various doses. He said that there has been discussion about whether there is a way to encourage the use of the cheaper five milligram versus the expensive 7.5-milligram tablet. Dr. Meister said that it is probably the number one issue that that the P&T Committee has been looking at but he is not aware of anything specifically negative associated with the formulary. He said that the formulary and the drug list are drawing attention to the medications that are safer to use and that serve the injured workers more quickly.

Commissioner Brady said that he understands that there are still some outstanding issues and that they will work collectively to try to help resolve a lot of them. He said that he does know that there is a tremendous amount of repeat IMR pertaining to pharmacy (denials), and he knows they can do

a better job of trying to reduce those (IMR) reviews. He said that it is almost as if the requests are automatic, and it is a cost drill. He said that they have to educate, and that there are probably a few actors that are producing the many repetitive types of IMRs. Dr. Meister said that there are frequent users of the IMR process. He also said that there is a belief that certain medications should just go through (approval) because the cost of the medication is much less than sending it to UR and then to IMR. He said his concern was that regardless of the medicine or cost, it still should be used appropriately. He said his concern was doing some things just based on a kind of cost effectiveness. He said he agrees that there is quite a bit of money being spent for IMR, and it would be nice if there were a way to save that money and put it toward perhaps a better use.

Commissioner Brady concluded the topic by saying that the Commission is grateful for his assistance in making the system work more efficiently and effectively for everyone in California.

#### **IV. Cal/OSHA Update** **Brandon Hart, Cal/OSHA**

Mr. Hart thanked the Commission for inviting Cal/OSHA to attend the meeting and to provide an update and brief overview of Cal/OSHA's upcoming activities. He said he would share information on planned communications and outreach initiatives, new legislation affecting the division and current notable rulemaking projects related to COVID-19.

#### **Communications and Outreach Initiatives**

- Cal/OSHA will continue to provide outreach and education to high-risk vulnerable employee populations through direct in-person and online training during scheduled virtual events.
- Heat Illness Prevention
  - Heat Illness Prevention Network meeting will be scheduled for our network participants in late April or early May.
  - Heat Illness Outreach Campaign will continue through CY 2022 and include:
    - Targeted radio PSAs in areas largely affected by high-heat events
    - Billboards, wall graphics, lunch truck advertisements, and social media advertisement
- Farmworker caravan events in coordination and collaboration with DIR Communications and the Department's Community Engagement Manager
  - Focus on targeting high-risk vulnerable employee populations and include representatives from several divisions within the department
- Cal/OSHA Recruitment and Hiring efforts
  - Cal/OSHA Virtual Career Fairs – first-ever; over 100 participants interested in becoming a compliance safety and health officer, and continue to receive email inquiries and applications.
  - Targeting colleges and universities, professional societies and other professional organizations
  - Job exam and job bulletin announcements by placing paid advertisements in professional journals, trade magazines, and safety and health related news media
  - Developed webpages, dedicated email account, and have an active recruiting committee that meets monthly and have coordination to review application packages

more quickly.

- Coordination and collaboration with our department communication office on ensuring steady communication and messaging throughout the calendar year on the following items:

**February 2022**

- Beginning of time period when employers must post summary of injuries and illnesses recorded the previous year (February 1 to April 30)

**March 2022 - Ladder Safety Month**

- 2 – Deadline for covered employers to electronically submit 2021 Form 300A information
- 6-12 – Women in Construction Week – grant-funded initiative of support

**April 2022**

- 11 - 15 – National Work Zone Awareness Week
- 28 – Workers Memorial Day

**May 2022**

- 2 - 6 – Construction Safety Week
- TBD – Support the National Safety Stand-Down to Prevent Falls in Construction

**June 2022 -Trench Safety Month**

- 3 -17–Trench Safety Stand-Down
- 14 – National Forklift Safety Day

**August 2022**

- 29 - Sept. 2 - Labor Rights Week and work with the Mexican Consulates to promote safety and health and workers’ rights (as part of alliance agreement renewed in September 2021)

**September 2022**

- 19 - 24 – National Farm Safety and Health Week (farmworker caravan events to target high risk and vulnerable employee populations)

**November 2022**

- Workplace hazard awareness during the retail-shopping season (started in 2021); due to increase in crime and risk to retail workers and establishments exposed to theft and crime.

**Enforcement and Consultation Services Initiatives**

- Heat Illness Prevention
- Wildfire Smoke Protections

**New Legislation Affecting the Division**

A number of bills affecting DOSH were chaptered in this year’s session.



- **AB 73 (Rivas)** Health emergencies: employment safety: agricultural workers: wildfire smoke. (Urgency bill became law on September 27, 2021)

**Highlights of the bill include:**

This bill requires the division to review and update the contents of the protection from wildfire smoke training and thereafter post it on its internet website.

DOSH had already updated the Worker Safety and Health in Wildfire Region webpage to include training materials for workers in both English and Spanish. These include videos, updated fact sheets and the employee-training component found in Appendix B of section 5141.1.

- **AB 263 (Arambula)** Private detention facilities. This bill adds Section 7321 to the Government Code, relating to private detention facilities; it was signed into law as an urgency statute and became effective on September 24, 2021.

**Highlights of the bill include:**

Existing law requires the operator of a private detention facility, as defined, to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility’s contract for operations, as specified.

This bill requires a private detention facility operator to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations. The bill would state that its provisions are declaratory of existing law.

DOSH has already communicated with enforcement personnel how to process the accidents reported and the complaints received from these facilities.

- **AB 654 (Reyes)** COVID-19: exposure: notification. This bill amends Section 6325 of, and amends and repeals Section 6409.6 of, the Labor Code, relating to occupational safety; it was signed into law as an urgency statute and became effective on October 5, 2021.

Summary:

- (1) Existing law, the California Occupational Safety and Health Act of 1973, authorizes the Division of Occupational Safety and Health to prohibit the performance of an operation or process, or entry into that place of employment when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with COVID-19, so as to constitute an imminent hazard to employees. Existing law requires that the prohibition be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. Existing law requires that these provisions not prevent the entry or use, with the division’s knowledge and permission, for the sole purpose of eliminating the dangerous conditions.

This bill adds the delivery of renewable natural gas to the list of utilities that the division’s prohibitions are not allowed to materially interrupt.

(2) Under existing law, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer is required to take specified actions within one business day of the notice of potential exposure, including providing written notice to all employees on the premises at the same worksite that they may have been exposed to COVID-19. Existing law requires, if an employer or the employer's representative is notified of enough COVID-19 cases to meet the definition of an outbreak, the employer, with the exception of a health facility, to notify the local public health agency within 48 hours, as provided.

DOSH has proposed revisions to the ETS that will harmonize the text to be consistent with this legislation and OSHSB will vote on December 16, 2021.

- **AB 701 (Gonzalez)** Warehouse distribution centers

This bill amends Section 138.7 of, and adds Part 8.6 (commencing with Section 2100) to Division 2 of, the Labor Code, relating to employment.

**Highlights of the bill include:**

This bill requires the Labor Commissioner to enforce these provisions by engaging in coordinated and strategic enforcement efforts with the Department of Industrial Relations, including the Division of Occupational Safety and Health and the Division of Workers' Compensation. The bill would authorize the commissioner to have access to data from the department including employer-reported injury data and enforcement actions in warehouses, the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other information relevant to the commissioner's authority, and would make other conforming changes. The bill also would require the commissioner to report to the Legislature by January 1, 2023, the number of claims filed with the commissioner, data on warehouse production quotas in warehouses in which annual employee injury rates are above the industry average, and the number of investigations undertaken and enforcement actions initiated, per employer, as specified.

This bill requires the Division of Occupational Safety and Health or the Division of Workers' Compensation to notify the commissioner, who is required to determine whether an investigation of violations pursuant to these provisions is appropriate, if a particular worksite or employer is found to have an annual employee injury rate of at least 1.5 times higher than the warehousing industry's average annual injury rate. The bill would authorize the commissioner to adopt regulations relating to the procedures for an employee to make a complaint alleging a violation of this part.

Since the bill was signed DOSH has been meeting with the Labor Commissioner's Office to determine how best to provide them with appropriate data and has also planned training events for both the Labor Commissioner's Office and Labor Enforcement Field Office personnel on the requirements of this legislation.

- **SB 321 (Durazo)** Employment safety standards: advisory committee: household domestic services.

This bill adds Section 6305.1 to the Labor Code, relating to employment.

**Highlights of the bill:**

This bill would require the chief or a representative of the chief to convene an advisory committee, comprised of no fewer than 13 and no more than 18 individuals, including representatives from specified groups, to make recommendations, in consultation with other specified divisions and entities, to the department or Legislature to protect the health and safety of household domestic service employees, and develop voluntary industry-specific occupational health and safety guidance for the purpose of educating household domestic service employees and employers, as specified. The bill would also require the Division of Occupational Safety and Health to post the report to its internet website and submit a copy to the Legislature, no later than January 1, 2023.

DOSH is working internally to review what is needed in preparation for what is needed for implementation of this legislation.

- **SB 606 (Gonzalez)** Workplace safety: violations of statutes: enterprise-wide violations: egregious violations.

This bill amends Sections 6317, 6323, 6324, 6429, and 6602 of, and adds Sections 6317.8 and 6317.9 to, the Labor Code, relating to occupational safety.

**Highlights of the bill:**

- (1) Existing law gives the Division of Occupational Safety and Health, within the Department of Industrial Relations, the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws requiring that employment and places of employment be safe, and requiring the protection of the life, safety, and health of every employee in that employment or place of employment. Existing law requires the division to issue a citation for a violation of provisions relating to the spraying of asbestos, or any standard, rule, order, or regulation established pursuant to specified provisions of the California Occupational Safety and Health Act of 1973 if, upon inspection or investigation, the division believes that an employer has committed a violation. Existing law imposes penalties of certain maximum amounts depending on whether the violation is serious, uncorrected, or willful or repeated. Existing law authorizes the division to seek an injunction restraining certain uses or operations of employment that constitute a serious menace to the lives or safety of persons, as specified. Existing law establishes requirements for a prima facie showing by the division to warrant, in the discretion of the court, the granting of a temporary restraining order.

This bill creates a rebuttable presumption that a violation committed by an employer that has multiple worksites is enterprise-wide if the employer has a written policy or procedure that violates these provisions, except as specified, or the division has evidence of a pattern or practice of the same violation committed by that employer involving more than one of the employer's worksites. The bill would authorize the division to issue an enterprise-wide citation requiring enterprise-wide abatement if the employer fails to rebut such a presumption. The bill would impose specified requirements for a stay of abatement pending appeal of an enterprise-wide citation. The bill would subject an enterprise-wide

- violation to the same penalty provision as willful or repeated violations.
- (2) This bill requires the division to issue a citation for an egregious violation, as defined, for each willful and egregious violation determined by the division, as provided. The bill, except as specified, would require each instance of an employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties. The bill exempts certain state agencies from the rebuttable presumption, enterprise-wide citation, and egregious violation citation provisions.
  - (3) The bill authorizes the division, in the investigation of the policies and practices of an employer or a related employer entity, to issue a subpoena if the employer or the related employer entity fails to promptly provide the requested information, and to enforce the subpoena if the employer or the related employer entity fails to provide the requested information within a reasonable period of time.
  - (4) The bill would authorize the division to seek an injunction restraining certain uses or operations of employment if it has grounds to issue a citation, as specified. The bill would expand grounds for granting a temporary restraining order to include grounds to issue a citation, as prescribed.1:14:17

DOSH is working internally, scheduling training for field staff so that the requirements of the regulation can be enforced when they take effect January 1, 2022.

### **Current Notable Rulemaking Projects related to COVID-19**

**COVID-19 Prevention ETS.** Cal/OSHA is proposing COVID-19 Emergency Temporary Standards (ETS) for 2<sup>nd</sup> Re-Adoption to the Occupational Safety and Health Standards Board on 12/16/21. This would extend the current ETS from 1/14/2022 through 4/14/2022 and are limited to new recommendations from the California Department of Public Health since the first re-adoption of the emergency regulations.

DOSH is updating the FAQs, reviewing the COVID-19 prevention program to make ensure it is updated and consistent with any regulatory requirements and obligations for January 14, and DOSH will prepare an executive summary that they plan to issue if the Standards Board adopts the regulation on December 16.

**COVID-19 Permanent Regulation.** On September 23, 2021, Cal/OSHA held an advisory committee meeting to discuss a draft for a permanent COVID-19 prevention regulation. Cal/OSHA has reviewed advisory committee input written comments to formulate changes to the draft. The advisory committee discussion draft, supporting documentation, and meeting information is available at website: <https://www.dir.ca.gov/dosh/doshreg/covid-19-emergency-standards/>

### **Commissioner Questions or Comments**

Commissioner Bloch thanked Mr. Hart for the report and particularly on plans to enforce AB 701. Mr. Bloch said that they have seen a huge explosion in the growth of online shopping and that has been both a blessing and a curse for workers. He said from his union experience, UPS members for Teamsters are working harder than ever; but so are Amazon workers and nonunion warehouses. He

said that the (worker) injury rates are also sky high, so he will be looking forward to hearing more about this in the future.

Commissioner Kessler said that after hearing about the calendar of different Cal/OSHA events that are coming up, she looked on the Cal/OSHA website to see if she could find them. She asked if Cal/OSHA could post that on the website so that they could find those different events.

Mr. Hart said that they had met with the Communications team to plan and organize all of the campaign strategies for messaging and are still fleshing those out. He said he wanted to provide a highlight of what they are supporting with federal OSHA as far as some of their outreach and messaging events throughout the calendar year.

He said if she thinks that would be helpful to the public, it is a good idea to post what the planned events are for the calendar year. He said that they could work with the Department's IT team to do that.

Commissioner Brady asked Mr. Hart how many other states have COVID-19 covered in their workers' compensation system in the country. Mr. Hart said that he did not have those details in front of him but that he could certainly try to look into that, work with our DWC and provide a response after the meeting.

Commissioner Brady thanked Mr. Hart for the detail and the diversity of subject matter covered and shared with the Commission. He said he wanted to encourage further updates from him and his staff. He said he appreciated all the work that goes on throughout the state and said it is understood how challenging a time it is to hire and recruit new people, and so wished Cal/OSHA luck.

## **V. Janitor Time-Motion Project Update Carisa Harris-Adamson, COEH, UCSF**

Ms. Harris-Adamson said that the title of the project is "Cleaning and Disinfection during the COVID-19 Pandemic: Determining safe and effective workloads for California Janitors."

She said she wanted to share where they are on this project and what they have ahead of them. She explained that they are the researchers who are primarily involved with the project and are a part of the Center of Occupational Environmental Health (CEOH) in Northern California. She said that she is the Principal Investigator (PI) of the project and that she is working with colleagues Laura Stock, Director of Labor Occupational Health (LOHP) program as well as Fadi Fathallah, the Director of the Agricultural Safety and Health Program.

She said that there are three parts to the study: a survey, focus groups, and a time-motion study. The survey assesses the impact of COVID-19. They ask about exposure levels in the workplace, and they assess the mental and physical health of the janitors. She said that the focus group is going to be led by Laura Stock. She and her team will be performing focus groups to look at changes in work since COVID-19, changes in productivity requirements and how the productivity requirements are being handled, and any challenges with managing work, shifts, etc. The third component of the study is a time motion study where they take objective measurements using various pieces of equipment to

look at the biomechanical exposures that are present, and then interpret those exposures with various risk assessment tools. One of the core aspects of this study is to compare what they are seeing and measuring in the workplace to the ISSE production rates to see whether they are still pertinent, and whether they can be followed given the new responsibilities of janitors - given the COVID-19 cleaning protocols.

Ms. Harris-Adamson said that the survey questions are directed to answer the following:

1. Determine the knowledge of worksite CDC Cleaning & Disinfection Recommendations among janitors.
2. Determine the types of COVID-19 prevention measures implemented at janitorial workplaces including engineering, administrative, behavioral controls
3. Describe the relationship between janitor workload, work climate, prevention measures, organizational policies and health (mental and physical) while working during the COVID-19 pandemic.

She said an easier way to look at these constructs is through a directed acyclic graph. She described a schematic of a graph with a box labeled covariates, where they look at things like gender, age, time, years worked as a janitor, etc. She said another box to the right labeled COVID-19 contains what will be measured, followed by stacked boxes with labels for the impact of COVID-19, and how COVID-19 will impact conditions like workload, work climate, prevention measures and organizational policies. A final box at the right contains outcome measures, namely mental and physical health. She said that they would be looking at the relationship between conditions like workload, work climate, prevention measures and organizational policies and impacts on health.

### **Survey and Survey Recruitment**

She said that the survey has gone through the IRB (human research subjects standards) process, that they have a survey that has been piloted with a group of janitors, and that they have a recruitment flyer that will be sent out by internet links and will be posted on their website. She said it will be emailed out, and then they will print some and put some out at select locations. She displayed a mock-up of the flyer on the screen.

She said the survey is in English as well as Spanish, and is accessible by taking a picture of the QR code printed on the flyer and then that will direct them on to the survey. She said that they are recruiting for the survey in two ways. The first is with the help of the SEIU/USWW (Janitors) Group. They will be sending the link of the survey and the request to respond to the survey to about 40,000 members in December and January. There will be about four text messages in total and they are expecting a 5% response rate and hoping for a much higher response rate. She explained that she has done a couple of similar surveys with grocery workers and construction workers, and typically, the response rate for these emailed surveys is a little bit lower. She said that they still think there's value in taking this approach of masked text messaging the opportunity out because they do want to hear from as many janitors as possible because they would like to make sure that they all have an opportunity to share their perspectives. She did say that there is potential for selection bias in the results given the lower sponsor rate, so they will also be administering the survey on a one-on-one basis to whatever venues they go to for the time-motion study. She said that in the time motion study, they prioritized malls, airports, biotechnology and office buildings. She said that they will be

collecting detailed information on a total of 64 individuals, but since there are obviously, many more janitors at each of those sites the goal is to send extra project staff to collect this survey data one-on-one using iPads in the field. She said that hopefully they would get closer to an 80% response rate for about 120 to 200 people. She said that would allow them to compare some of the demographics and characteristics of this higher response group to the lower response rate group, and ascertain whether there is any significant selection bias.

### **Focus Groups and Focus Group Methods**

The purpose is to capture workers' experiences working during the pandemic and following new cleaning protocols.

- Have time, training, and support needed to accomplish tasks
- The impact of the new protocols on the physical and mental health of janitors
- Staffing or scheduling impact
- COVID-19 prevention measures
- Challenges workers have faced in implementing protocols or prevention strategies (including interactions with building occupants or others)

For the focus groups, the goal is to capture the workers experience working during the pandemic. Following these new cleaning protocols, they are going to ask questions that build upon issues that they asked about in the survey. Specifically, she said that they will be looking at whether or not janitors feel that they have the time, training and support needed to accomplish these tasks; whether the impact of new protocols have any sort of impact on physical and mental health of janitors; whether or not there have been any staffing or scheduling impacts; detailed aspects of the COVID-19 prevention measures; and what challenges workers face in implementing protocols or prevention strategies.

Ms. Harris-Adamson said that there would be three to four focus groups with workers from each venue, with four to five individual interviews with workers to elicit stories that are more personal. All the groups will be facilitated in Spanish bilingual facilitators and conducted remotely to account for any sort of distancing restrictions depending on the status of the pandemic and the omicron variant. Worker key informants will be identified via the focus groups or through referrals, and so those key informants will be selected for one-on-one interviews.

### **Time Motion Study**

Ms. Harris-Adamson said that for the time motion study, they will look at time on task, and then they measure biomechanical exposures, the magnitude, the frequency and duration of those exposures, as well as the overall physical activity. She said that they then analyze the measures to take a very objective, data driven approach to understanding not only the magnitudes of the exposures, but the risk associated with those exposures. Ms. Harris-Adamson said that she wanted to note that they are looking at this subject by venue and by task, location and tools used. She said that they would be organizing the data in a way that might allow them to collaborate with colleagues in Washington, D.C. She said that they have learned that SHARP has some work on janitors and office workers just before the pandemic. She said that while it was a small number, about eight people, it does provide

a good framework for looking at janitors' work, and it could be interesting to compare post-pandemic to pre-pandemic for that specific group.

### **Time Motion Study - Research Questions**

1. What are the tasks, durations, and rates per venue, location, and area?
2. What are the durations, frequency and magnitudes of biomechanical exposures and risk for MSDs?
3. What is the physiological workload and risk for cardiovascular strain?
4. How does the actual work rate compare to the ISSE production rates and COVID-19 production rates?

She said they will be able to answer what are the tasks, durations and rates per venue, location and area, what kind of tasks are done, how long are they done for each person at each shift, and the rate of work. They will also look at the duration, frequency and magnitudes of the biomechanical exposures - things like lifts, hand exertions, etc. and then based on that, what are the risks for musculoskeletal disorders. She said that they would be looking at the physiological workload by putting heart rate monitors on participants to see if they are at risk for cardiovascular strain. Ms. Harris-Adamson explained that they have done this with hotel room cleaners and that it does require leaving a heart rate monitor on the person for the entire shift and even preferably for an entire day, and that they go home with it for continued monitoring. She said that it is really telling to measure whether there is fatigue reached towards the end of the day. They plan to look at how the actual work rate compares to the ISSE production rates and the COVID-19 production rates; and whether there is any difference in production rates across those different sources (of control).

### **Methods of Measurement**

Ms. Harris-Adamson said that they will take videos and perform a frame-by-frame analysis – and that is where the specific time-motion component is examined. They import the video and samples of the video into a software program. The videos are collected at 30 frames per second and they categorize each frame based on different biomechanical exposures that they are interested in. Examples of output are the percent of time the person is in shoulder flexion or exceeding a certain amount of shoulder flexion that they know might increase risk, or the percent of time the person is bent forward in a stooped posture. It will also produce a very precise measure of how much time on each task. Time on task comes from the frame-by-frame analysis and allows an understanding of exactly how much time is spent in different locations performing different tasks at different venues.

Ms. Harris-Adamson said that they would complement this measurement data with some other wearable devices. She displayed an image of a lumbar motion monitor and explained that they have access to a newer monitor that will provide a probability measure of low back disorders; she said that this monitor has been well validated over the years. Ms. Harris-Adamson said that Dr. Fati Fattallah had large role in developing that tool with Dr. Bill Morris, so Dr. Fattallah will be assisting with that portion. She said that they also use an Xsens system - an inertial motion capture system. She said that there are 17 of these small IMUs on someone, and they have a wireless version so there are no longer wires connecting them. The goal of these device measurements is to be able to quantify activities like



acceleration, velocity and joint position of key joints and tying that to potential risk of injury. She said that one important measure for janitors is the amount of time in a stooped posture and the amount of time in shoulder flexion or elevation. Ms. Harris-Adamson displayed an image of a medical grade heart rate monitor that it will allow them to measure the percent heart rate reserve over the course of the shift. She explained that they are specifically examining inadequate recovery throughout the course of the shift. Heart rate measured both at rest and throughout the entire shift will be paired with an activity. She displayed an image of an active pallets and inertial measuring unit that is positioned on the thigh. The heart rate monitor together with the active pal gives a measure of the physical activity. She said the purpose of this measurement is to make sure that the increase in heart rate is not due to an increase in physical activity but rather the body's response to inadequate recovery.

### **Study Progress**

- IRB for Survey & Time Motion Study
- Survey has been created and piloted
- Union Member Survey Launch December 10th
- Worker Meetings to discuss Time Motion Study
- Equipment has been ordered/prepped & tested
- Meetings with SHARP to consider collaboration on app

She said the survey is developed and it is about 15 to 17 minutes long. The survey has been piloted and they have received IRB approval for the survey and the time motion study. They are working with the Union to launch the survey. She said that were planning a launch for the 10<sup>th</sup> of December but is now more likely the following week for the first text message to go out. They have had worker meetings with some groups to discuss the time motion study component. She said that they started with office workers, but because of the Delta and now the Omicron variant, workers are not yet back.

Ms. Harris-Adamson said that they spoke to groups at CalPERS and the CalPERS janitors said they do not have the volume of people that they normally have, so the goal is to measure work when people are back. She said that there are cleaning protocols are in place, so they are going to start with other venues that are more at normal capacity, or what they think normal capacity will be in this new world, meaning at the malls and the airports.

Ms. Harris-Adamson said that there was some new equipment that had to be ordered, prepped and tested and that is completed. They have had some meetings with the Washington, D.C. folks at SHARP to consider collaboration for comparing offices pre- and post-COVID. She said that SHARP is working on an app that could be useful for helping to guide employers on what an appropriate and safe productivity rate is, based on a detailed biomechanical analysis and risk assessment. She said that they are watching the development of the app for potential use.

### **Commissioner Questions or Comments**

Commissioner Kessler asked about getting access to workers and mentioned airports and security access to these workers with approval. Ms. Harris-Abramson said that she would direct that question to Andrew Gross Gaitan, who identified himself as Vice President of the United Service Workers West. Mr. Gross Gaitan said that they are working with the building owners, and in the case of a public facility like the airport, the airport administration to arrange a briefing on what the project is

and to get agreements up front on access and coordination of access. He said that he would anticipate for SFO this is probably going to have to be done with the janitors who are in the public access areas and not behind the gates. He said in their first meeting at CalPERS, they let researchers in the door and invited us in. CalPERS set up the facilitation meeting with their property management and the janitorial contractor, which is one of their signatories. He said that they are targeting buildings where we believe there is a relationship with the owners and property management, and where they represent the workers in order to facilitate the access.

Commissioner Bloch said that he was very excited to hear about the study and complimented USWW for continually coming back to our Commission and taking advantage of the resources that they offer, particularly in instances where there is joint labor-management cooperation. He said he was pleased by this. He said he was intrigued by the technology described in the presentation, from the wearables to the app. He said that in his job they spend a lot of time looking at different forms of technology that are being used to make people's jobs safer, increase efficiency and productivity, or in some cases to surveil workers and in other instances, even discipline. He said that he knew that Commissioner Steiger was very familiar with these technologies as well.

Commissioner Bloch asked Ms. Harris-Adamson whether she thought the wearable and other technology would be available and useful in other industries outside of janitorial occupations. Ms. Harris-Adamson said that this technology is how they prefer to measure exposure because it reduces bias in our measurements. She said that this kind of equipment is quite expensive, but it is excellent. As an example, the inertial measurement units (IMU) motion capture system that has 17 IMUs takes maybe 10-15 minutes to set up and all of a sudden you have continuous data sampled at 60 Hertz, meaning sixty data points a second. She said that they have a great understanding of the percent time people are doing things like stooping or in a certain shoulder posture. She said that is a lot different from what they used to do, which was sample video - trying to make sure they were at just the perfect angle to the work, which is challenging when they have a very dynamic job, and then trying to take those measurements from different frames. She said that, yes, the opportunity for wearables is exciting. She said that there are many people, including UCs, who are working on determining the minimal set of wearables - to have better dosimeters - for these biomechanical exposures. However, some of them have put on the brakes because it is critical that regulation precedes any sort of major rollout of these wearables, because they have already seen them being used in a way that is not in the best interest of workers. She said that she is very interested in that topic and know many people who are. They are trying to make sure that: 1.) the many companies on the market who are making some very big claims without a lot of research can be held to a standard set by or validated by critical research still to be done on these wearables so that people have confidence in what they're looking at, and 2.) the sooner there are regulations that protect workers and the application of these wearables, the better.

Commissioner Bloch thanks Ms. Harris-Adamson for the answer and said that it reaffirms for him the idea that technology on its face is neither good, nor bad. He said it depends on the motives and the applications. He said he looked forward to hearing more about the study and discussing the issues around wearables and technology in the workplace.

Commissioner Kessler asked for a follow up question and said that she used to work on the line at General Motors in Fremont many years ago and when NUMMI came in and then Tesla, they did time motion studies and increased the pace so fast that people were getting injured at four or five times

the rate that they had been previously. She asked whether when discussing the research in these work environments, if there was any structure or any policy or anything in place which says the results of this study should not be used against the workers.

Commissioner Kessler said that since Ms. Harris-Adamson noted that this is a concern, she wondered if there was anything in the documentation that protects this information from being used in a different way than the study intends. Ms. Harris-Adamson said that they do not have any language like that. She said that all of the devices that they are using are actually quite expensive. Even the heart rate monitors are a few \$1000. The other pieces of equipment are in the \$20,000 to \$30,000 range, so she does not think the specific equipment that they are using would be at great risk for them to be implemented on a grand scale after the fact. She said their approach is different from a standard time-motion study in that they are not just doing a time motion study to look at time on task. We are pairing that with biomechanical risk assessment as well as a physiological risk assessment. She said that the combination of the risk assessment tools with a time-motion study would help protect against that. She said her colleagues tell her up in Washington, D.C., when they found that some of the production rates were off the ISEE productivity rates were off – some were high, and some were low. She said the goal of the measurements should be to just make sure that people have enough time based on what they are doing and there will be some adjustments made but very done very carefully and intentionally because there will be those biomechanical risk assessments.

Mr. Gross Gaitan said that he very much understands the concern; he said it is a little anxiety provoking for their members as well. He said the dramatic difference between a Taylorism approach with an assembly line and one of cleaning. He said that every single space (janitor) workers clean is different. He said that even compared to hotel housekeeping, in hotel housekeeping the rooms have the same general set up, the same general volume of furniture, and the same general tasks. But cleaning an office or the sort of semi-industrial spaces and public spaces their members clean has been the big “bugaboo” of employers for years and years and years. They feared that the Union would somehow figure out how to put a production cap on production rates based on safety. He said that due to the fact is there are so many variables about how someone is assigned to clean - are they using a hand push vacuum or a backpack vacuum, much does the vacuum way, does it have a cord, does it not have a cord, are they dealing with carpet or are they dealing with low density, low depth, weatherproof carpet, are they dealing with marble, are they dealing with chrome; he said that there is an absurd number of variables as well as the variables in the cleaning specs themselves - are you supposed to trash and dust every night, every other night, alternating Tuesdays? He said that he did not believe that the study could be used in an effective way for employers to use these findings to just speed up the work. He said that he was hopeful that for the first time it will be confirmed what many suspect which is that repetitive motion, injuries of bending and twisting, the propensity for slip and fall, and the variety of injuries that that happen in this industry. He said that he also expected that the results of the study might conclude that there could be preventive measures taken to try to avoid the injuries being studied. He said that could include pacing of the work, but this will be the very first sort of scientific look at what are the physical dangers of this type of work to begin with.

Chair Brady thanks Ms. Harris-Adamson for the presentation. He said that he knew that there are many challenges. He said he knew that there are employers who have introduced stretching programs, for example. He said employers are very interested in trying to look at preventative types of programs, and education of employees as well, because many employees are deconditioned, are hypertensive, with issues, etc., so there's a lot of challenges and the healthier the employees, the better off, and

hopefully the lower the injury rates are.

## **VI. AB 1400 Fire Mechanics Cancer Study Project Update** **Michael Wilson, Cal/OSHA**

Mr. Wilson stated that at the last CHSWC meeting the Commission voted unanimously to reject the final report submitted by the consulting firm ToxStrategies under a \$250,000 contract. The study assessed cancer risks among fire department vehicle and aircraft mechanics who kept California's fire equipment operating in repair shops as well as during deployments to California's largest wildland urban interface fires.

- The rejection of that report was based on concerns from Commissioners on the quality of the work, as well as a comprehensive analysis by Cal/OSHA and concerns raised by American Federation of State, County & Municipal Employees (AFSCME) members and its leadership.
- CHSWC Commissioners requested that Cal/OSHA work with CHSWC staff and AFSCME for a revised RFP for AB 1400 study and the health and safety needs of these workers with a set of draft principles.

Mr. Wilson stated that he was not proposing policy changes but had a discussion draft of what he was trying to achieve. He was establishing principles in the following steps:

- The first step was a literature review of what was known among mechanics both in this field, and more generally around hazardous exposures.
- Next was a qualitative exposure assessment where the researcher was scanning through observations and assessment of safety data sheets and looking at the risks and hazards in the mechanics work environment in the repair shops and during fire deployments. Based on that scan, there was a quantitative exposure assessment.
- Next, a quantitative exposure assessment looked at hazards of greatest concern (well recognized carcinogens).
  - For example, high exposure to smoke, lead, asbestos identified in the qualitative exposure assessment and from this combination of the literature review, the qualitative work and the quantitative measurements, the researcher was able to develop a really comprehensive, accurate characterization of the health risks for these workers.
- Recommendations to reduce or to eliminate risks applying the hierarchy of controls, and for the researcher to publish findings in the peer reviewed literature.

Mr. Wilson discussed each organizing principle for the AB 1400 fire mechanics study.

- The first organizing principle was to facilitate equal access. Any Request for Proposal (RFP) provided equal access to public entities such as the University of California (UC) and the California State University (CSU) systems and other public agencies.
  - UC and CSU institutional processes cannot turn around an application within 30 or 60 days and probably need a 90 day application period.
  - Appropriate extensions and proactive notifications to UC and CSU centers about the RFP.
  - Notifications sent to Not-for-Profit entities and public agencies with expertise in exposure assessment, specifically toxicology, such as the California Office

of Environment Health Hazard Assessment (OEHHA).

- The second principle was ensuring worker participation. Successful applicants should demonstrate willingness and ability to work collaboratively with AFSCME, the International Association of Machinists (IAM) and other labor organizations and incorporate the experiences of fire mechanics in California into the study. That would get balanced information and research that was grounded in actual working conditions.
- The third principle was adhering to scientific standards through a comprehensive literature review and conducting a qualitative exposure assessment that estimated exposure potential through looking at the chemical hazards in the shop, observing the work processes, comparing it with the literature review, and ranking those hazards. Then a quantitative exposure assessment for the most serious hazards including carcinogens that were called out in this legislation. The second aspect of adhering to scientific principles that builds on that previous information, was characterizing the health risks in the shop by developing a basic exposure survey of fire response hazards and then apply the hierarchy of controls for recommendations to eliminate or substantially reduce health risks both in the repair shops and during long term deployments.
- The fourth and final principle was effectively communicating findings, drafting a report, preparing presentations, presenting findings, and then publishing those findings and recommendations in a peer reviewed journal. Publishing findings and going through the peer review process was a motivating factor and improved the quality of the work. The quality assurance methods that were applied in doing the research when subjecting it to peer review improved the quality of the work from the beginning to the drafting of a final report.
  - He emphasized prioritizing Open Access journals to make sure that the information published and funded through a public agency was available to anybody who wanted to access it without a fee wall.

Mr. Wilson stated that the draft document he presented was for discussion purposes only and he asked for edits, changes, additions or questions.

### **Commissioner Questions or Comments**

Commissioner Bouma thanked Mr. Wilson for his presentation and work and said the Commissioners unanimously agreed that the ToxStrategies study was inadequate. The challenges faced with more recent studies come back to this issue about how these studies were scoped. Requests came from various sources, whether legislatively directed, or letters from elected officials to the Commission or other reasons. Everyone who was asking for the study had a motive including Capitol Connection where they would like to see CHSWC study issues related to firefighters in the field of health and safety. It was of tremendous value to have an objective reviewer or objective standards like what was described by Mr. Wilson about data they can rely on and researchers with the skill set to participate in an RFP process. She did not have the skill set to review every RFP that was developed for the CHSWC. She added they were doing a service, or disservice to their mission if they did not have a process for how to achieve what had been undertaken for this study, and they were frustrated with the researcher in this case, and in other cases. The frustration was with how the project was presented to the researcher. She heard this from RAND that they were directed to look at was within the resources they were

granted to do so. So she would appreciate Mr. Wilson's recommendations to this Commission or his Agency's recommendations to this Commission, so they could be better advocates for robust data that all parties felt they could rely on, trust and embrace. Numerous times CHSWC produced data that drove policy. If the data were unreliable, the policy was bad, and that harmed everybody including employers and workers.

Commissioner Kessler stated that she agreed with Commissioner Bouma. She raised the same issues about the *First Responder Mental Health* study which she believed had many flaws even with the responses sent to CHSWC. However, Dr. Wilson had helped to formulate a way to approach any CHSWC study to help guide the way research was conducted. She did not know about every request and each specific research topic and she did not see the RFP, but at least some of the things that came from the ToxStrategies study were done poorly. Before something was published, there should be enough time to understand the report and there were time constraints in these CHSWC meetings. However, if there were concerns before a study was published, it was really important to be able to raise concerns and correct them as well as not to publish something that will lead to bad policy or bad legislation. Her fear was that that had happened not only with ToxStrategies. She was concerned about this in the last meeting, and has similar and strong concerns about the *First Responder Mental Health* study. She wanted to take what Mr. Wilson had proposed about understanding a framework of how to acknowledge an issue and then go to studies to help get the best result for the investment of time and money of the Commission.

Commissioner Bloch echoed the comments of his fellow Commissioners. He stated he was the most senior labor representative at CHSWC after Commissioner Bouma, and he was originally appointed by Governor Brown, and Chair Brady and Commissioner McNally were part of the Commission when he joined. At that time, they did not go through a competitive bidding process for studies; it was up to the Executive Officer to choose. He remembered working with some of the Commissioners and Angie Wei, currently in the Governor's office, who was the Chair of the Commission at that time to bring more transparency to this process and to go through a request for proposals (RFP) for studies. That work was important. During the time that he had been on this Commission, he could remember two studies that were rejected. Progress has been made, but there was more work to be done. He was not in a position to, and he did not have the time to evaluate RFPs. He depended on CHSWC staff. He offered his support to CHSWC staff and appreciated their work. He believed they had made progress and most studies had been approved by both sides (employer and labor) on this Commission, but there was additional work to do.

Commissioner Roxborough stated he was the Commission's newest member and honored to be part of it. He agreed with Commissioner Bouma on the process. He had experience conducting studies. Before CHSWC received a study, there should be due diligence by CHSWC that the process was correct. CHSWC completed the ToxStrategies study, received the results, and then found that the process was flawed. It was "garbage in, garbage out", so unfortunately everybody wasted valuable time before getting the actual study. When he worked with statisticians, they made sure of the process and that there was a random sample. The firefighter study drew certain conclusions but then there were limitations. He worked with experts in the field of statistics. It was scientific, so they were within four percent of the final outcome when millions of voters casted ballots. For CHSWC studies, they can devise a random sample so that the number of people selected was based upon a scientific random sample with fewer people but was representative of the population. Then they studied those results, and came to meaningful conclusions to base opinions and make recommendations to the

legislature. Like his fellow Commissioners, he was concerned about “garbage in, garbage out”, which apparently did not happen often. His two suggestions were to look at the process first and then consider random samples so not to interview that many people, but the ones interviewed stood for a process and were representative and then the recommendations to the legislature had some basis.

Commissioner McNally stated he did not disagree with anything he had heard at this meeting. He wanted to add historical context. He joined CHSWC in approximately 2002 and one of his first concerns was the studies were only conducted by RAND and UC Berkeley. At that time, he voiced his concerns that they needed to find more organizations that could provide these services because he felt that they were captive to a handful of organizations for their work product. CHSWC went to quite a bit of trouble; interviewed a few different organizations; and it was not simple. Things could have changed in the last several years, but not many organizations could make a compelling case for as good work as those who were used. That was a long time ago, but he wanted to add historical context that this issue had been around. He was fine with revisiting it.

Chair Brady stated that historical work that had been done had been well utilized and from his historical and current experience the workers’ compensation insurance marketplace had over time developed a sense of stability in California. The general liability, property, and cyber exposures insurance markets were major cost drivers and of concern for public and private employers in California. To reflect on the work that was done there had to be some recognition for it because the programs that were in place were actually providing a buoy and a real life line for California employers so it was stable. He was grateful for the collaboration between labor and employers. It set the standard for what can be done together moving forward, and was unique in terms of what this Commission represented both with labor and management coming together constructively and making a difference for so many.

Chair Brady stated that he was grateful to all including Mr. Wilson and he had reminded them of their graduate research classes that included a review of literature, qualitative and quantitative analysis. They were looking at options and making good choices about those options for all to ponder. Research was imperfect, but it allowed them to ask better questions, and they were armed with those questions in order to make sure that future RFPs can also be of a higher quality. The purpose of going through these motions was to learn and make changes going forward. That was how progress was made, so he was grateful for his time in reviewing the report.

Mr. Wilson appreciated Chair Brady’s comments. He understood Commissioner Roxborough’s point about the appropriate study design being applied to the problem. The second point was that random sampling was a study design question. In some cases a random sample approach was appropriate and in some cases it was not the right approach or tool. Cal/OSHA shared Commissioner Roxborough’s view of understanding the approach before offering awards so that the proper research tool was being used. Commissioner McNally’s point about the limited pool of applicants was a great point. He had a similar concern and was hoping that they will be able to identify others through UCLA or through Cal-State Northridge or others with the requisite expertise. He appreciated the comments by Commissioners Bouma and Commissioner Kessler and said it was slightly difficult for Cal/OSHA Research and Standards because of its workload to weigh in a substantive way with CHSWC but that Cal/OSHA decided it was really important to do this work since it was upstream prevention. In many cases Cal/OSHA does reactive work such as trying to respond to violations by employers. And so Research and Standards within Cal/OSHA was committed to continuing this work with the

Commission to the extent that it served their mission and objectives, and helped to facilitate an effective and useful study design. As Commissioner Bouma said, study design affected public policy and could have large implications going forward.

### **Public Comments or Questions**

Luis Del Cid, President, American Federation of State County Municipal Employees (AFSCME) Local 119, stated that it was personal as a current cancer survivor cancer, he felt it was his responsibility to be the voice for those that were not fortunate enough to be there. He thanked Executive Officer Enz and Mr. Wilson for their work and effort. It made him happy to see that they were moving in the right direction. He was in full support of Mr. Wilson's approach. He believed it was needed in order to have a fruitful study. It was gratifying to see that even though the first study was not what he would have wanted to see as far as its quality, it made him happy to see that at least moving forward it was going to help with other studies. Not only was it going to give the ability to have a second opportunity to do a study that will do justice to what was being studied, but also other studies CHSWC looked at. He concurred with what was said which was that these studies and the outcome of these studies affect legislation and that the legislation affects employers and employees. He thanked everyone for their support.

Ms. Alia Griffing, Political and Legislative Director, California – AFSCME, thanked the Commission for recommending and approving a new the AB 1400 study at the last meeting and also for providing her the opportunity to work with Cal/OSHA in identifying critical elements for the new RFP and not repeat what happened with ToxStrategies. She highlighted a few points about RFP guidance and added sometimes “you have to go slow to go fast”. Allowing the longer 90 day RFP response time for academic centers and public agencies to apply made sense. It was one of the mistakes from last time. With the centers and public agencies able to respond, there will be improved quality and expertise to draw from. Secondly, she welcomed the opportunity to continue to work with researchers. As you heard at the last meeting, fire mechanics were disappointed about the lack of thoroughness of engagement from the contractor. They were looking forward to re-engaging in this work to better understand and ultimately better protect these workers. She was glad to see the opportunity extended to other unions who represented fire mechanics. AFSCME represented fire mechanics in a few jurisdictions, including L.A. County, but definitely not across the entire state, so she was happy to have other unions join this effort. Lastly, she wanted to point out that it was unfortunate that adherence to scientific standards needed to be explicitly required, but this was another lesson learned from the earlier attempt, so she appreciated this inclusion. All in all, she was excited to move forward and appreciated the Commission’s effort to ensure that the study was done thoroughly and correctly. She also appreciated Mr. Wilson’s thoroughness in examining this study and his dedication to getting it right. As Mr. Del Cid mentioned, she thought it was the right approach and could be used for future studies.

Commissioner Kessler added that her union, the International Association of Machinists (IAM), repaired fire equipment. IAM was never contacted in spite of being available to ToxStrategies. She added that Mr. Wilson's approach will make a difference in the way studies were executed. She was glad that AFSCME and IAM were able to be a part of this going forward.

## **VII. Executive Officer Report**



## **Eduardo Enz, CHSWC**

Executive Officer congratulated Commissioner Steiger for being elected Chair of CHSWC and thanked Chair Brady for his leadership. Executive Officer Enz briefed the Commissioners on CHSWC activities since the last meeting on September 30th. Commission staff was busy fulfilling all requests and monitoring all the studies and projects.

Executive Officer Enz stated that in September, 2019, Assemblymember 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. He said that RAND had completed the draft report, “Posttraumatic Stress in California’s Workers’ Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers” and it was posted for 30 days for feedback and comment. They received no additional feedback or public comments on this report. Executive Officer Enz stated that this report fulfills the legislative request from Assemblymember Tom Daly and that he would be submitting it to his office pursuant to the request.

Executive Officer Enz stated that a legislative requirement based on SB 1159, Labor Code section 77.8 required the Commission to conduct a study and submit a preliminary draft report to the Legislature and the Governor. He said that he had been advised by RAND that a preliminary do not cite version of the draft report in PDF will be made available by the December 31<sup>st</sup> deadline. He said he would submit this information to the appropriate legislative office and to the Governor’s office as required and the final draft report would be presented at the next Commission meeting.

Executive Officer Enz stated that the CHSWC study “Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors” by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, San Francisco and Davis campuses, is underway. He said that he anticipated a draft report of preliminary findings by September 30, 2022 and a finalized report by November 30, 2022.

CHSWC staff has worked to prepare the draft 2021 CHSWC Annual Report and the draft 2021 WOSHTEP Advisory Board Annual Report and these reports were action items. CHSWC staff do outstanding work every year to put these reports together.

Since the September meeting staff actively participated in the California Partnership for Young Worker Health and Safety Meeting on October 6<sup>th</sup>.

- The meeting featured Young Worker project updates, plans for the 2022 Young Worker Leadership Academy, the youngworkers.org website and social media outreach, online work permit training, resource sharing and plans for future initiatives.
  - The 2022 Hybrid Young Worker Leadership Academy (YWLA) will be held via Zoom on February 25 and March 18, and in person on March 5 at UC Berkeley for Northern California teams and on March 12 at UCLA for Southern California teams. The Academy provided a leadership development opportunity for teams of high school students,

## **Action Items**

Executive Officer Enz stated there were two action items today for consideration:

- 1) Did the Commission, wish to approve for posting for 30 days for feedback and comment the draft 2021 CHSWC Annual Report. Commissioner Kessler moved the motion and Commissioner Steiger seconded. None were opposed. The motion passed unanimously.
- 2) Did the Commission wish to approve for posting for 30 days for feedback and comment the draft 2021 WOSHTEP Advisory Board Annual Report. The motion was moved and seconded by Commissioner Kessler and Commissioner Bloch seconded. None opposed. The motion passed unanimously.

Chair Brady congratulated Executive Officer Enz and his staff for working diligently throughout the year for these comprehensive documents comprehensive.

Commissioner Bouma stated that parts of *The First Responder Mental Health* study had valuable information that would be instructive for the public and for policymakers. CHSWC has developed a significant record of the study's shortcomings which tied to the conversation about scoping and research. She appreciated comments from Commissioners about having a variety of opportunities to participate in bidding on this study, and having some process principles for how to develop scoping of the studies on the front end before they published information that they were scrambling to react to. She asked how to handle or discuss the issue before the Commission or in the interim period before next year. She wanted to know the identifiable next steps and consider requesting a new study, if there was no remedy for the deficiencies in the mental health study. Maybe there was an opportunity to refresh that study with a new scope. Secondly, on the AB 1400 study she did not want to miss an opportunity. Ms. Griffing said you "gotta go slow to go fast" but she did not want to go too slow. She asked if there was some action to take in the short term to make sure that Dr. Wilson's work was applied and the RFP was issued so that this study could move forward sooner rather than later.

Chair Brady stated that CHSWC was committed to improving standards and quality of care and that included the RFP. In every good research report one conclusion was that further research was needed. He wanted to give CHSWC staff time to digest their feedback and comments. He wanted to thank them in advance of some of the work that may be coming in the New Year.

Commissioner Kessler asked about the next steps in the Fire Mechanics study. She deferred to Mr. Wilson about those next steps. Chair Brady replied that Commission staff had heard this discussion, taken notes and had the direction and the initiative to come back with guidance for moving forward that incorporated this feedback. Executive Officer Enz said CHSWC staff would work with Mr. Wilson and that would be the most feasible next steps to move forward putting together the scope of work as well as the RFP.

### **Public Comments or Questions**

Mr Adam Wood, Member Executive Board of International Association of Fire Fighters IAFF Local 798, stated he had been a San Francisco firefighter for 26 years. He had several concerns about *The First Responder Mental Health* study including its small sample size of the number of firefighter interviews, the firefighter cohort as well as the conclusions drawn about the incidence of mental distress and PTSD were not greater than those in other professions. He felt that the small sample size did not capture the reality about his co-workers over the past five or six years and the dramatic

increases over the last couple of years of PTSD and other behavioral health issues and their impact on them on the job; it had been addressed by other commissioners so he would not dwell on it.

Mr. Woods highlighted a couple of issues from his experience. One was the distinction the study made between firefighters, Emergency Medical Technicians (EMTs) and paramedics as a separate group of workers with different results of the incidence of mental distress for those two professions. Part of this was driven by the definition of firefighters in SB 542, but the reality of that population was that it was a single population in his department; he did not believe they were different from other major urban departments. Cross-trained firefighter paramedics moved back and forth between the fire engine and the ambulance, sometimes multiple times in a single week, and carried with them all their experiences on the ambulance and the fire engine. They experienced mental distress from both. For many departments, EMTs and paramedics were entry level jobs into the fire service. Many spend years as EMTs and paramedics and brought those experiences into the fire service. When there was a different result between firefighters, EMTs, and paramedics for incidence of mental distress, those numbers should be combined since they were the same people. Finally, the report mentioned the potential cost of the presumption for municipal employers for PTSD. There was already a cost for untreated PTSD in every one of these departments in terms of retention, people having to leave their jobs, days missed through disciplinary suspensions, for long term periods in residential rehabilitation programs for substance abuse for people who are treating themselves in the absence of a viable form of treatment for their mental health and behavioral health issues. All these cities are paying right now, but it may not be itemized as such. He was hoping that the well-defined cost of the presumption might provide an economic incentive for these departments to increase treatment. Mr. Woods hoped that the defined costs of a presumption would create an incentive for employers to treat mental health, PTSD, and behavioral issues. They could increase peer support and out of network plans that were shown to be very effective.

Commissioner Kessler stated she was deeply concerned about the way these studies were handled. She is married to a former firefighter, and as head of the Labor Council represented not just 110 units but five different local unions for firefighters and EMTs. She had personal experience with issues discussed in the report. And while RAND has a strong standing in the research community, she was concerned that this particular study lacked the depth of analysis it claimed. She had many concerns even with the responses that RAND initially provided to her. As a result, she opposed the final approval. There must be a process to capture the issues accurately; the report had positive items but it was not the entire report. They had to respond to Assemblymember Daly but they needed to inform him that the report was not completely adequate. The issues she was concerned about were: the incompleteness of data for some public agencies posed a barrier to policy analysis research about how well workers' compensation was serving first responders; beyond the public agencies, what did RAND do to access incomplete data? She asked how RAND could claim that it was an in-depth study when even in their first bullet point in the key findings, they admitted a lack of data. Yet RAND made a statement that firefighters and police officers do not appear to have worse mental health problems. It was not only contradictory, but an inherently false assertion, and did not have comprehensive data to verify and validate that statement. Secondly, using referrals by mental health providers limited access and did not include those who sought other avenues of treatment, whether due to denial or lack of faith in the system. Only employee surveys were used. The employees claimed that their department and RAND were conducting this study. Commissioner Kessler asked if an employee suffering from PTSD would want his/her department to use them as an example, especially if they sought treatment on their own. When employees included their department in the

survey, they had to trust their managers or assume that the department was sympathetic to their situation. A union or association and their representatives had a much better ability to reach beyond the work environment and management arenas. Additionally, there was perception that due to the lack of confidentiality, workers experiencing trauma did not trust the system and if they did not trust the system, they were not going to use it. There were issues and facts beyond the data, especially when there were only been 11 to 13 workers and there were real problems.

Commissioner Steiger discussed the Fire Mechanics RFP and echoed the comments of the previous two speakers. He stated they should consider institutionalizing not only reviewing RFPs, but also periodically monitoring and may need a future discussion. It had happened twice where a proposed study or nearly completed studies had deficiencies. Concerns were identified, and time was mostly spent trying to get this public agency to move faster, or this legislative process to move faster and research to come in faster. It pained him to say that they should add steps to any process, but it did seem that in the long run it should be considered while keeping in mind their charge as an institution and their limitations. They were not experts, statisticians, and researchers. However, he agreed with reviewing these RFPs or a study as worker advocates. The criteria were: where did you talk to workers, and how many workers; was there geographic diversity, and enough workers; those concerns needed to be a part of this process. In addition to the specific concerns that have come up, both with the First Responder Mental Health and ToxStrategies studies there is no need for years and years of expertise in statistics to really be able to identify, and ideally do something about it. Often the same body doing the study could continue with more direction or in more extreme cases go in a different direction in regards to who did the study. CHSWC rejected one study and had concerns about another, even though it was adding steps to a process governed by a body that only met four times a year. CHSWC should think about it so it does not run this risk of spending six months or longer on a study and rejecting it and starting over to say nothing of the resources and time lost in trying to take care of these workers. CHSWC should think about having a broader conversation. Chair Brady replied it was duly noted by Executive Officer Enz and Commission staff and so it was an appropriate comment.

Commissioner Bloch shared his experience in the Teamsters Union. He represented first responders and the police officers in San Bruno after the PG&E gas line explosion. Teamsters in fire impacted areas have been on the front lines, helping people and giving away t-shirts from their union halls to members who lost everything. There was trauma in this work and because he had a firefighter in his family who was out on disability it was difficult for him. Based on his anecdotal experience and what he heard from talking to workers and family members, he questioned the conclusions of this study. He would go back to the drawing board and spend more time and talk to some more workers and tell them what they found.

## **VIII. Other Business**

Chair Brady said that they had a robust conversation. There was some agreement and he appreciated everybody trying to improve the system and process. It was not easy, but through experience there was improvement. Future work would incorporate many of these comments.

Commissioner Kessler stated the RAND study was really bad. If CHSWC was not going to meet again until February then she asked Executive Officer Enz to add documentation that the study was not appropriate or adequate given its scope. Since CHSWC was meeting quarterly, consider

scheduling another meeting that dealt with how to conduct studies and issue RFPs to address concerns. Going forward, there was a better way of how to conduct studies. This was a significant issue that needed specific action. She asked Commissioner Steiger since he was the new Chair if he could consider having a meeting specifically to review studies that CHSWC was asked to conduct. It was important for the Commission and what it did.

Commissioner Roxborough added that some Commissions had Executive Committees if it did not violate the Brown Act. Since CHSWC met only four times a year, there was an urgency to fulfill its mission and of value to the legislature. He supported Commissioner Kessler's idea about having a discussion and meeting on that subject so he could learn more and be of more use. The February meeting could be more meaningful and he was in favor of it if it did not violate the Brown Act.

Commissioner Steiger supported Commissioner Kessler in having another meeting specific to reviewing studies. He asked if they would discuss approval of posting of the final draft of the *First Responder Mental Health* report and research brief since it had been posted. He asked about procedures and if they needed to vote on that approval and did the vote occur. Executive Officer Enz answered that typically the legislative requests came to the Commission; and this request was made over two years ago. RAND had presented and Commissioners had sent their questions and received responses from RAND. The public also had an opportunity to respond. At some point CHSWC had to fulfill the request and submit the report to Assemblymember Daly. If it was postponed it was of no use.

Chair Brady added they could encapsulate this subject matter request from the Legislature into a forward thinking activity and include it in future guidance. That would be a streamlined way but they also had to note the issues that were raised so Assemblymember Daly was aware of them.

Commissioner Kessler stated that RAND had posted the study on its website. Before policy and legislation is backed by this particular study, elected officials should be informed there were some positive things about this study, but there were also concerns.

Commissioner Bouma asked if an option was to provide a cover letter from CHSWC to Assemblymember Daly. There would be codification in the letter that would include a discussion from this meeting and would reflect a unanimous perspective from the Commissioners. It could focus on process that all of us uniformly agree to. She presumed that Assemblymember Daly had not heard this discussion, and there was a way that he could be made aware of the concerns. Chair Brady asked Executive Officer Enz to move forward. Commissioner McNally added that he agreed and wanted to add a cover letter or an addendum to summarize the criticism and invite him to have further dialogue with the Commission if he wanted to find out in detail about Commissioner criticisms. He agreed with the Executive Officer that they should comply with the request, and send it in due time with full transparency and also send the robust and comprehensive criticism of this report. Executive Officer Enz and Dr. Wilson would assist with drafting the cover letter.

### **Adjournment**

Commissioner Bloch thanked Chair Brady for his calm and thoughtful leadership and he was looking forward to meeting in person next year. The meeting was adjourned at 11:49 am.

**Approved:**

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Martin Brady, 2021 Chair

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Date

Respectfully submitted:

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Eduardo Enz, Executive Officer, CHSWC

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Date