

MINUTES FROM CHSWC PUBLIC MEETING

August 4, 2022

Physical Location When Applicable – online during Covid-19

Elihu M. Harris State Building

Oakland, California

NOTE: In accordance with [Section 11133 of the Government Code](#), the physical meeting location was cancelled for August 4, 2022. The meeting was publicly held via online teleconferencing with publicly provided link.

In Attendance (via online video)

2022 Chair: Mitch Steiger

Commissioners: Doug Bloch, Martin Brady, Shelley Kessler, Sean McNally, Nick Roxborough, Meagan Subers, Sidharth Voorakkara.

Absent: None

Chair Mitch Steiger started the virtual CHSWC meeting, went over the agenda for the day and explained meeting rules. Chair Steiger introduced two new CHSWC commissioners: Meagan Subers and Sidharth Voorakkara.

I. Approval of CHSWC Meeting Minutes from the March 18, 2022 CHSWC Meeting and CHSWC Business - Mitch Steiger, Chair

Approval of the minutes was moved by Commissioner Shelly Kessler and seconded by Commissioner Roxborough. All were in favor and none were opposed.

Commissioner Kessler said CHSWC's April 2022 public meeting minutes included a helpful review of the RFP process. Additionally, she wanted a review of how RFPs were awarded; she added that it will be helpful to have a discussion by having Commissioners submit their questions or concerns about the RFP process to Executive Officer Enz. She asked State of California employees who are part of the RFP approval process to avail themselves to answer specific questions. She would like to review how contracts were awarded, complied with, and issues raised and addressed. Moreover, Commissioner Kessler asked why awardees do not take concerns into account when they publish their final statements about what their research has netted. Commissioner Kessler wanted to have a discussion about the RFP process. CHSWC Commissioners decided to discuss the RFP process at the end of the meeting and put it as a placeholder for the next meeting for further discussion.

II. WC Medical Issues and Formulary Update Dr. Ray Meister, Executive Medical Director, DWC

Dr. Meister provided a brief update on the Medical Treatment Utilization Schedule (MTUS), MTUS formulary and drug list, COVID-19 claims, Independent Medical Review (IMR) decisions,

QME data, and DWC's online education access. For the MTUS, the next anticipated update will be a new ACOEM COVID-19 treatment guideline. DWC anticipates this guideline very soon and then they will update the process and anticipate having a new COVID-19 guideline in place in the coming months. Once that guideline is adopted, DWC will also update their MTUS drug list with any new COVID-19 medication recommendations included in that guideline. COVID-19 claims over the last 12 months show the COVID-19 claims for that individual month and of note in January 2022, COVID-19 claims accounted for almost 56% of the total number of workers' compensation claims. The claims fell dramatically to only 2.4% of the claims in March 2022 and there has been a steady increase in the percentage of COVID-19 claims. In June 2022, COVID-19 claims were approximately 14% of all claims.

Commissioner Roxborough asked why the COVID-19 claims data was labelled as projected total claims. Dr. Meister replied that it takes time for the data to be finalized. For example, based on the California Workers' Compensation Institute (CWCI) website, as of July 11, 2022, the number of COVID-19 claims in June, 2022 was 14.1%, and two weeks later on July 25, 2022, COVID-19 claims increased to 16%. Typically, it took a few months for the data to be finalized.

Dr. Meister stated that the other metric was COVID-19 deaths in California and included all deaths in the state of California. While still significant, the COVID-19 death rates have really declined significantly since the first winter of the pandemic. On January 12, 2021, there were 716 deaths recorded, on January 30, 2022 there were 279 deaths recorded, and on July 7, 2022, the number of deaths declined to 21, certainly still too high. The relatively good news was that the number of claims and the number of deaths were significantly lower than the previous spikes.

The trend in the Independent Medical Review (IMR) decisions was that the Independent Medical Review Program (IMRO) at the DWC is a second look at a UR denial or modification. This program started in 2013 and 2014 was the first full year of the program. With the exception of 2017, there was a steady increase in the number of IMR decisions each year through 2018 when there were almost 185,000 decisions. This trend seems to have reversed and over the last three or four years these numbers have been coming down. Looking at the data from the first part of 2022 shows there were approximately 63,000 decisions through June 2022. If those numbers held steady, once again there would be a decrease in the number of IMR decisions in 2022. Commissioner Kessler asked to what Dr. Meister attributed the decrease. Dr. Meister answered that partly it was a learning feedback loop where providers through the UR and the IMR process learn about what their recommendations are and what will be approved as consistent with the guidelines. Another factor that is likely is the formulary and the MTUS drug list, which went into effect in 2018. There was always a large percentage of the IMR decisions that involved medications and those numbers have been declining. Commissioner Roxborough said they had a different trigger date which was noted as "average age from assigned date (in days)" and "average date from complete medical records (in days)" and asked about the intention or what were they trying to show. Dr. Meister answered that if there is a Utilization Review (UR) decision which resulted in a denial of a treatment request or a modification of that treatment request, then the injured worker had 30 days to appeal that decision to IMR. Once they complete the paperwork and submit their request for IMR, that IMR decision gets assigned. Once the process was started, the

medical records associated with that UR decision are requested and then that results in that second date (average age from the assigned date). Once Maximus, the DWC vendor for IMR decisions, received the complete medical records which were needed to review the claim in the case, that was the “average date from assigned date (in days)”. Within 10 to 12 days of getting the medical records, they will issue their decision or what was called a final decision letter or FDL.

Commissioner Roxborough asked what percentage of decisions were upheld by IMR and if they have data on that. Dr. Meister replied that of all IMR decisions, the uphold rate was currently between 93% and 92%, meaning that 7% or 8% of the UR decisions get overturned at IMR. There was a lot of variability, and he did not have the data, but for some of the medication requests the overturn rate was as low as 2%. For mental health treatment, the requests get overturned at a rate close to 20%. There was a lot of variability within the different categories, but the general number is about 8% of the decisions get overturned.

Commissioner Voorakkara said that when he reviewed the IMR decision letters history that went from 3,000 in 2013 to well over 100,000 in 2017, even if there was a slight drop now, it made him curious about the provider staffing to make these decisions. The reason he asked the question was that they shared that Maximus is the vendor overseeing the IMR process, and wanted to know if Maximus has been the DWC vendor from the beginning. He also asked if Maximus had a lifetime contract and wanted to understand how the vendor relationship worked. Dr. Meister said Maximus had been the vendor since the very start of this program and he could not recall the exact date. Early in the program, the IMR system was overwhelmed, and it took much longer than 10 or 12 days from when records were received to when a decision was issued. Those IMR decisions took significantly longer. But those issues were worked through and now the IMR decisions (numbers) are quite steady at what was shown. The IMR contracts are for a long period of time, often three years, although he did not have the exact dates. The contracts are open for anyone interested to bid on. Maximus is not the default provider, but it has been the one able to take on the magnitude of this project and perform the duties to this point.

Commissioner Bloch asked as people start to return to work, were they going to see these workers’ compensation claims increase and how much impact remote work has had on this. He had information that the overall number of workers’ compensation claims had not changed that much if you look at 2019. It seemed to Dr. Meister that the number of workers’ compensation claims, and probably by default the number of UR and IMR decisions from those claims, have remained fairly steady despite the large changes that they have seen in some segments of the workforce with remote work.

Chair Steiger asked how long it took for the complete medical records to reach the Independent Medical (IMR) reviewer. Dr. Meister replied that the “average age from assigned date” is how long it takes once Maximus receives the request to perform the IMR. The time “average age from complete medical records” is a subsegment of when they receive the application. The “average age from complete medical records” is part of “average age from assigned date”.

Dr. Meister said that at the last CHSWC meeting he was also asked about the number of Qualified Medical Evaluators (QMEs) in the DWC program. The number of QMEs for the last three years has been approximately 2,500.

Commissioner Roxborough asked if there were enough QMEs and were they trying to get more QMEs into the system; he asked if they had a breakdown of the types of medical doctors since there was still a shortage of orthopedists and they did not have many oncologists. There was a breakdown in how they were doing in those areas. There were issues about chiro-practitioners, but he was interested in where they should focus on getting more QMEs available for the injured workers and stakeholders. Doctor Meister replied that there were various specialties and subspecialties within the QME program, and there were some subspecialties where they do not have enough QMEs to generate a panel. If someone needs an oncologist, obviously that would be optimal, but all internal medicine doctors are trained in oncology and some may be quite knowledgeable on that topic. For instance, if there is not an oncologist available, certainly an internist would be available who would have knowledge in that area. There were a few internal medicine subspecialties with few QMEs such as hematology, oncology, and nephrology. Orthopedic surgery was an in-demand specialty because many work-related injuries were musculoskeletal injuries. They currently had 505 orthopedists. So although the orthopedist may be busy there were enough of them. Commissioner Roxborough replied his concern was that injured workers were not getting treated, the decisions were not being made, and they were caught up in this system that was supposed to be a benefit delivery system. He asked if there was anything they could do to assist and increase physicians in those areas needed for the workers' compensation system, including increasing their pay or advertise in those areas to increase the QMEs in these subspecialties. He added that if he had cancer and there was an internist handling his case, he would not feel it was appropriate; and needed to do better. He asked if there were any ideas that could be helpful. Doctor Meister said approximately a year ago, they redid the QME fee schedule and it would appear that it had been successful in increasing the payments to the QMEs for their reports and would encourage them to join. They do reach out to physicians and encourage them to join. One problem was when there were few specialists, and those specialists were extremely busy just taking care of patients in their day-to-day practices. There were large healthcare systems such as Kaiser and the University of California systems that for many reasons did not supply many QMEs in the system. In general, there were very few of their physicians who were able to be QMEs; they will continue to work on this. Commissioner Roxborough said CHSWC was there to help if there was any need to study the issue. He had heard from applicant and defense attorneys about shortages in subspecialties.

Dr. Meister gave details about how many participants were accessing the online education courses. For the MTUS, they had over 1,800 people access that course over the three years. The MTUS and our QME programs provide excellent information. The DWC QME course started about nine months ago, and 309 people took the updated version of that course over the last nine months. They did outreach to their QME participants and realized many of the QMEs were very experienced. Dr. Meister stated that new QMEs, or anyone who felt they needed a refresher course on the unique medical-legal topics which come up in QME reports could take this excellent course. He stated a preview of the course was available at: <https://vimeo.com/695806624>.

Commissioner Questions or Comments

Commissioner Voorakkara asked why QMEs in certain health systems such as Kaiser and the University of California were not as participatory. He asked Dr. Meister if he had any anecdotal information that he could share as to why they may not be as collaborative or if in the partnerships there were links that are not being made. Dr. Meister replied that physicians at Kaiser were very busy. They are primarily providing clinical care and seeing patients day in and day out. Taking two or three hours to do a QME evaluation, in addition to the time it took to review records does not necessarily fit into the model of a busy clinician who has a full panel of patients every day. There were some contractual agreements but physicians working for large healthcare organizations were often obligated to work only for that organization. They do not necessarily have the latitude to “moonlight” on other projects; and the University of California physicians probably have similar constraints. While there are some physicians in the program, many of them are very busy with their clinical practices and their research activities. The significant amount of time that it can take to do a QME evaluation does not fit nicely into their typical model.

Public Questions or Comments

Ms. Edna Tougher said she had a legal copy service. A recent copy service fee schedule did not have a study done and she was previously advised that the study was going to be done. She added how it was that they were unable to conduct an economic analysis after seven years having the minimum wage increase from \$9.00 to \$16.04 in Los Angeles. They were in a difficult place. She said that she contacted George Parisotto, DWC Administrative Director, and he sent her an e-mail telling her an economic analysis was not needed or was not required. She was confused about how an economic analysis was not required when so much time has gone by. The Subsequent Injuries Benefit Trust Fund (SIBTF) was going to conduct a study but she asked who that study was for. She did not know if anyone was able to participate in that study. She was not aware if it was open to the public. She stated that she did not want to be in the same situation as she was last time because the Berkeley Research Group (BRG) had never done studies for copy services or even understood the workers’ compensation industry. She said seven years later they were being paid 10 dollars for a job. She did not know anywhere in the United States where you would get paid 10 dollars to upload records. She added that they were asking them to do so many things for free; one of their biggest competitors and biggest companies, which was Med-Legal went out of business, what made them think that anyone could stay in business based on the current pricing. She would appreciate help because every day there is a different answer as to why a study had not been done. Dr. Meister replied that he did not have the knowledge to reply to her questions or concerns. When the DWC was going to do a study a Request for Proposal (RFP) will be posted. There was a state of California website where all of these RFP's were posted for anyone and everyone to look at on the website. It is called Cal eProcure and you can go to search for any RFPs that the DWC or any other state agency might have available. Ms. Tougher replied that she was hoping to look into it because they kept telling her a study was going to be conducted and it was not done. It had been over seven years so she asked them to look into it. Dr. Meister said he will share her concerns with others here.

Sandy asked if there were any other forthcoming regulation updates. She was specifically reviewing the pharmacy fee schedule or changes to the MTUS from what the Pharmacy and Therapeutics (P&T) committee has recommended in prior meetings, but not this recent one. Dr. Meister said that he cannot give any details regarding the pharmacy fee schedule, but a lot of work was being put into that. There was the ongoing effort to get that updated, so that in the near future it could happen. Regarding the recommendations made by the P&T committee, in order to enact those recommendations, there will have to be significant changes to the MTUS drug list. It will have to provide a lot more detail and very specific information which will make it a more complicated document and so to date they have not been able to do so. The concepts are there and many of these recommendations have dealt with trying to discourage the use of similar medications where one dose of a medication is very inexpensive and a similar yet different dose is very expensive. The P&T committee would like to see the changes made so that it encouraged use of the cheaper dose and made it more difficult to use the more expensive dose. In theory, the concept was easy to follow and straightforward, but making that happen is a much more complicated process. That was being worked on and they did not have any date to give when that might happen.

III. Janitor Time-Motion Project Update **Alan Barr, COEH, UCSF**

Due to technical difficulties, this presentation was deferred and Mr. Killip presented next.

IV. Cal/OSHA Update **Jeff Killip, Chief, Cal/OSHA**

Jeff Killip stated that he had been in his role for about four and a half months and was excited to be in his present role. He apologized to Chairman Steiger and any others who have already seen a few of his slides in other presentations and that he will try to make them as interesting and meaningful as possible.

He stated that this was his first CHSWC meeting and that he wanted to be able to learn as much as he can, and to convey the message that they are all there to support each other's work. He said his mission is finding the best way to do that.

He began his presentation with the words that this is a great collaborative opportunity. He explained that he is from the New York area, with a family, two boys, one recently graduated from Pacific University and the other headed to the University of San Diego. He described himself as an outdoor enthusiast, a Tom Petty music fan, with a professional background in law and public health. He said he worked at the federal, state and local levels with the U.S. Environmental Protection Agency (EPA) DA's office in Colorado and Attorney General's Office in Alaska for many years, and also worked for the Washington State Attorney General's Office for a few years. He said that he went back to school for a Master's in Public Health and then became the Managing Director for the Washington State Association of Local Public Health Officials. He said he gravitated more towards prevention on a population level instead of after-the-fact problems in an adversarial system trying to allocate liability or culpability.

He said that he had spent the last 9 1/2 years before coming to Cal/OSHA up in Washington State with our counterpart up there, Washington DOSH. He spoke highly of his experience in several positions there as the acting Deputy Assistant Director, Senior Manager for Education Outreach, and the Industrial Hygiene Laboratory Manager. He said he was also the Rules Manager and concluded that he had a nice view of the book of business up there. He said that his experience is comparable to what California does but on a much smaller scale.

He said that they faced a lot of similar challenges in Washington, being in the Pacific Coast State Plan state neighborhood along with Oregon – the challenges being wildfire smoke, outdoor heat stress and within the context of agriculture and H-2A (temporary agriculture) workers, construction as well as the pandemic and emergency rulemaking. He said that the issues feel familiar to him in California - but at a scale that is on steroids, being five times the size of Washington state, and being the fifth largest economy in the world. He said the challenges are great but so also are the opportunities. He said the lessons that he learned in Washington, the power of collaboration, are so important that the partnership with external stakeholders, internal and external, is valued because they cannot do all these actions and activities alone and they must leverage the synergy to make $1 + 1 = 3$ opportunities. He said he believed in thinking creatively outside the box, and he gave the examples of promotional videos that they worked on with the Washington Farm Bureau to promote their consultation program in Washington state. He mentioned other collaborative videos with industry that convey the message of prevention to promote understanding of the obligations to protect workers.

Regarding enforcement, he illustrated creative settlements. He said there was a case with the Tacoma Rainiers, the (baseball) farm team for the Mariners, and that presented an opportunity to take lemons and make lemonade. He said they had a fall protection issue and they worked with them and came up with a wonderful campaign that was shown at ball games about fall protection and outdoor heat stress in both English and Spanish. He said they were really excited about the success of that campaign.

In concluding, Mr. Killip said that when he arrived in California and introduced himself to Commissioner Steiger and others, he displayed an image of a colossal sea wave and said he felt like he was being dragged out to one of those monster waves; he was invoked to try and ride it. He said that it is metaphorically true – this (California) is a monster wave. He said that despite this being the case, there are many great people on the job with him and he is thrilled to be on the team. He said that his impressions after four months at Cal/OSHA are that the team and the leadership team are just amazing. He said it is also humbling to be a part of this team and that he has been impressed with the stakeholders and the passion, the insight and the expertise that they have. He continued that he is excited about the opportunities that they have, and that he appreciates everyone who has reached out to him on LinkedIn and that he is doing his best to follow up on those.

He said that their challenges are formidable, but that he is also energized by the opportunities that they have to tackle them together. He said that his vision for Cal/OSHA is the vision of Cal/OSHA that he takes from the team. He said their mission is how best to do the business of protecting the health and safety of the workers in California and to provide assistance to employers through Cal/OSHA's consultation and outreach services to help employers comply with their obligations.

He said that after doing a little research on CHSWC and their mission, (he learned that) the Commission was established to conduct a continuing examination of the workers' compensation system of the state's activities to prevent industrial injuries and occupational diseases. He said that there obviously is a lot of overlap there. He said that to the extent that they can support each other, that is obviously what they want to do. He said CHSWC also administers the Worker Occupational Safety and Health Training and Educational Program, WOSHTEP. He said that he attended a WOSHTEP meeting shortly after being installed and he anticipates that some of those same folks are on today's call as well. He said that this is just another example of these synergistic opportunities for Cal/OSHA.

As for his "To Do List" for Cal/OSHA, he said that they have a hiring challenge and that they have many vacancies. He said that they are doing a lot of hiring presently and that it is a large emphasis for agency leadership and their team. He added that they also established some needed manager positions. He said they want to strengthen external partnerships and collaboration and that today's (CHSWC public meeting) is an example of that. He said they also want to improve their processes, efficiencies and automation. He said that they have some pretty exciting projects underway and that they want to utilize technologies.

Commissioner Roxborough complemented Chief Killip's enthusiasm and energy, and asked to interrupt with a question about the vacancies. Chief Killip explained that there were between 250 to 275 vacancies and that Cal/OSHA has posted about 98 positions in the last several months to address those vacancies and are trying to move as fast as they can. He said that he had the visual from a long time ago of Lucy (from the "I Love Lucy" TV show) on the chocolate assembly line. He said that they are moving as quickly as they can, but that there are other players in the whole operation who are outside of their direct control. He said that that presents other challenges that they cannot immediately fix. He said that they are making significant progress and are energized, but it is a big challenge and salaries are one of the reasons for the challenge. He said that they are doing their best to be as competitive as they can and that this is a great team to be on. He said that they are trying to sell the whole value package of joining their team so hopefully that gives a meaningful glimpse of the extent of the challenge.

Commissioner Roxborough asked whether those vacancies are mostly boots-on-the ground-type folks at Cal/OSHA or whether they are management. Chief Killip answered that they are mostly enforcement staff, but that they also need a lot of administrative help because there are many professionals who are in positions such as investigators, managers, supervisors who are doing a lot of the additional administrative work because they do not have the administrative support to do the work. He said that that is obviously less than ideal, but that they are doing their best to get on top of it.

Chief Killip said that one of the great assets they have is Katie Hagen, the DIR Director, and that she comes from an HR (Human Resources) background and so she knows the (HR) world well. He said she is an impressive leader and a great person to work for, concluding that there are competent people to deal with this big challenge and, therefore, he is enthusiastic about the progress that they are making. He said that he wished they could do it faster, but they are going as fast as they can.

Commissioner Roxborough concurred by saying that Katie Hagen is an impressive executive and explained that she had appeared in front of the Commission and had given her assessments and reports. He solicited any suggestions on how to increase Cal/OSHA (staffing), or how to decrease serious injuries to injured workers, or if there is anything else that CHSWC can do, he said that they will welcome the Chief's recommendations.

Chief Killip thanked Commissioner Roxborough and said that the two biggest programs that Cal/OSHA has are their education outreach and consultation programs. He said that the Holy Grail is to maximize the leveraging of their collaborative partnership with the efforts that they are making in those programs.

Commissioner Voorakkara said that the number of 200-plus vacancies is a stunning number and asked how to put that in context in terms of the percentage of Cal/OSHA's total workforce. Chief Killip replied that he believed that they have about 800 authorized positions, if not more. He said that he was a little unclear about the exact numbers. He said that they have 575 on board roughly and they are trying to get up to 800. Commissioner Voorakkara explained that he simply did not know if that was 50% or 40%, and so on. He stated his appreciation for Chief Killip's enthusiasm and energy, and said that is going to be valuable to the entire state.

Chief Killip thanked the Commissioner and continued with the presentation. He mentioned the potential of technologies like virtual reality for training in fall protection or confined space. He mentioned social media marketing, and included using it for addressing their hiring problem to the extent that all the influencers on the call today could share their hiring efforts and job postings. Chief Killip described Organizational Wellness as a big deal and pointed to the pandemic as a challenge for many people fighting burnout and the organization trying to acknowledge it. He confirmed that it was a real condition. He said that they are trying to give people the tools to deal with it, so that they can be as good as they can be together and be as healthy as they can as a team. He said that Organizational Wellness is a big priority for him because he believes they can only be as good as they are healthy and well.

Chief Killip said that related to wellness, Cal/OSHA is fostering diversity, equity and inclusion. He said that they want to leverage pandemic and other Silver Linings, like today's shift to a virtual meeting. He said that they could not do that as easily pre-pandemic, and so there are new tools they have got in their toolbox.

He said that since he has been on the job the last four months, hiring has been the front and center priority. He said Suzanne Reinfranck is the lead on that hiring effort. He said he was very excited about Gene Glendenning's appointment as the new Consultation Program Manager, as well as having created two new positions recently, a Deputy Chief of Consultation Process, Safety Management and Engineering Services Carl Paganelli, and a Deputy Chief for Enforcement, David Wellesley. Chief Killip said that those two people were recently appointed into those newly created positions and it was a very good strategic decision. He said that they were filling other priority positions.

He said that the Standardized Regulatory Impact Assessment (SRIA) process can slow things down and is frustrating for everybody, especially if they are confident that they have a rule that is going

to make a meaningful impact on worker safety and health. He said that one of the reasons for rulemaking delay is the fact that they do not have an economist on their team to evaluate these economic issues and move the rule along more quickly. He said that they were excited that they are going to be hiring for an economist and get that person on their team to speed up the rulemaking processes as quickly as they can to the extent that they have influence over that.

Chief Killip identified Deborah Lee leading up the enforcement team for Cal/OSHA. He said that on-site COVID inspections are trending downward, and he thinks that is consistent with the data already shared this morning.

Regarding Consultation Services, which focuses more on prevention and working with employers, Cal/OSHA has had more than 300 on-site visits with employers in construction, agriculture and other high hazard industries in the last four months. Regarding Education & Outreach, Brandon Hart leads up that team. He said Cal/OSHA has been collaborating with community-based organizations and other worker groups addressing high risk, vulnerable worker situations and making sure that the tools are there for them and that as many protections as possible are in place to prevent any sort of injury or illness. He said that outdoor heat and wildfire smoke are obviously huge priorities, especially right now.

He said that they are excited about two Bilingual Community Engagement Liaisons - B-CELs, as they call them - that they recently hired and who are deployed around the state promoting Cal/OSHA materials and focusing on prevention.

Chief Killip said that they are also excited about rulemaking with Eric Berg as the lead person for those rulemaking projects. The Chief presented a list of rulemaking items:

- COVID-19 ETS – readopted on May 6, effective through Dec 31
- COVID-19 non-emergency regulation - will extend worker protections from COVID-19 through the end of 2024, draft rule submitted to OSHSB
- Indoor Heat - will provide similar protection to indoor workers that outdoor workers currently have plus engineering, administrative, and personal protective heat equipment controls when temperatures are above a specific trigger
- Lead in Construction and General Industry - will substantially reduce the permissible exposure limit, action level, and blood lead levels at which employees are medically removed from hazardous tasks. These changes will keep employees much safer from lead poisoning.
- Aerosol Transmissible Diseases - would update the regulation to codify that COVID-19 is an airborne infectious disease.
- Respiratory Protection for wildland and wildland urban interface firefighting. Firefighters in these environments currently do not have any respiratory protection against extreme exposures to many highly toxic products of combustion. When California completes this rulemaking, it will be the first state in the nation to provide these firefighters the protection they need.

He explained that this is an overview of some of the rulemaking projects, primarily already rulemaking projects that they have going on. The initiative for firefighters and their exposure to the harmful chemicals and substances associated with viral wildfires is important. California will

have a respiratory protection standard for wildland and wildland urban interface firefighting. At present, there is not sufficient protection against these extreme exposures for many highly toxic products of combustion. When they complete this rulemaking, California will be the first state in the country to provide firefighters the protection that they need.

Chief Killip moved to legislation and introduced Sulma Guzman's name as the agency governmental relations legislative expert. She prepared this information:

- DIR manages roughly 130 bills annually
 - ~ 1 in 3 sent to the Governor's desk for signature/veto.
- The # of bills increased due to recent legislative changes that allow more bills to be introduced.
- Governor signed bills that directly impact DIR:
 - 2019/35
 - 2020/24
 - 2021/28

Chief Killip explained that the information above gives an idea of what to expect for this year in 2022, and described three bills of significance from last year in 2021.

- **AB 701** (Gonzalez, Chapter 197, Statutes of 2021):
 - Applies to warehouse distribution centers
 - An employee **shall not be required to meet a quota that prevents compliance with** meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or Cal/OSHA standards.
 - Would also prevent employers from taking adverse employment action against employees who do not meet quotas that were either not disclosed or quotas that do not allow employees to take meal or rest periods or comply with health and safety laws.
 - If a particular employer or worksite is found to have an annual employee injury rate at least 1.5 times higher than the warehousing industry's average annual injury rate, Cal/OSHA or the DWC shall notify the Labor Commissioner, and the Labor Commissioner shall determine whether an investigation is appropriate.
- **SB 321** (Durazo, Chapter 332, Statutes of 2021)
 - Requires Cal/OSHA to convene an **advisory committee** to address ways to protect the health and safety of **privately funded household domestic service workers**.
 - The committee will also develop voluntary guidance to educate household domestic service employees and employers on ways of preventing illness and injuries at work.
 - The bill requires Cal/OSHA to post the committee's report to its website and submit a copy to the Legislature by 1/1/23.
- **SB 606** (Gonzalez, Chapter 336, Statutes of 2021)
 - Expands Cal/OSHA enforcement authority under Labor Code.

- **Creates a rebuttable presumption** that a noncompliant written policy or procedure or a noncompliant pattern or practice DOSH identifies during the inspection at one of that employer’s worksites **exists enterprise-wide** at all of the employer’s worksites.
- Authorizes Cal/OSHA to issue an **enterprise-wide citation** requiring enterprise-wide abatement.
- Requires Cal/OSHA to cite an employer who willfully commits an **“egregious”** violation, as defined. The civil penalties for an egregious violation would be enhanced.

Chief Killip said that the Commissioners may be more familiar with these bills than he is at this point. Per SB 321, Cal/OSHA has convened an advisory committee to address ways to protect the health and safety of privately-funded household domestic service workers. He said that they have had four meetings so far, and the committee is to develop voluntary guidance to educate household domestic service employees and employers on ways to prevent the illness and injuries in that type of work. He said the legislation also requires Cal/OSHA to post the committee's report on their website and send a copy to the legislature by the first of next year. He said that that work is moving forward. SB 606 expands Cal/OSHA’s authority as described above.

Chief Killip concluded by saying that they are much better together collaborating and reinforcing common ground and that he is excited about the possibilities of enhancing the work that they have already done with CHSWC and in making it even more meaningful and impactful. He thanked the Commission for giving him a chance to introduce himself and to describe what he brings to the table and the invitation to work with everybody. He offered to answer any questions the Commission might have.

Commissioner Questions or Comments

Commissioner Bloch explained that he was with the Teamsters Union. He said he was also excited by Chief Killip’s enthusiasm and energy, and the particular focus on prevention and hiring. Commissioner Bloch said that, for the benefit of some of the other Commissioners who may not know, Cal/OSHA is not the only labor agency in the state that is trying to hire people on the enforcement side. He said that they all know that their labor laws are only as good as the enforcement. He said that he appreciated Chief Killip’s efforts to do that.

He said that he is also glad that Chief Killip mentioned some of the bills. He said that SB 606 is about increasing the penalties for egregious violations, and he shared anecdotally that there are about 500 workers at a place called Amy’s Kitchen in Santa Rosa, which he is sure Chief Killip is familiar with. Commissioner Bloch said that they have been working with one of their teamster locals up there because they represent tens of thousands of food processing workers in the state. Amy’s Kitchen just got hit with 13 citations from Cal/OSHA inspectors, three of which were serious violations. He said that unfortunately, all of that totaled up to about \$25,000 in penalties, and sadly, they have seen this before. He said that the labor agencies have a carrot and stick approach, and unfortunately – and he stated that this was his opinion, in the case of Cal/OSHA, the stick is not as large as it needs to be.

Commissioner Bloch said that he would like feedback and thoughts on this issue, especially based on his experience with other states. He said secondly, he wanted to hear more about AB 701. He said the Teamsters were sponsors of that bill. He said he was just wondering if he could talk about what Cal/OSHA is seeing, whether workers are using this, how the enforcement is going or what is the idea on a plan around enforcing that.

Chief Killip said that it was nice to meet the Commissioner virtually and that he looked forward to meeting him soon in person. On the first question about the need for the stick and the carrot, he agreed that they need both, and that it depends on the situation. He said that he is a former prosecutor and was the Deputy District Attorney in Colorado and he believes he knows the power of enforcement and most of his legal career was enforcement. He said he knows how a big stick can be very effective, but at the same time having experience in public health, he also knows that kind of the full court press approach. He said that a great example is just reducing the rate of smoking. In the United States, it was not just a stick and it was not just a carrot, it was the whole shebang. He said that was a major win in public health in our country. He said that we need a sufficient stick, we absolutely do, and he thinks that there are situations where they should be aggressive about seeking criminal prosecution if the situation really meets it. At the same time, if they can persuade employers to do the right thing up front, and avoid the whole (full court press) thing and convince them of what is in it for them and everybody around them, if they do the right thing - and focus on workplace safety and health and not shortcutting at the expense of worker safety and health – that is a better situation. He said that they need both (carrot and stick) and both (methods) need to be as good as they can be.

He said that on AB 701 he is going to have to phone a friend on that one and to come back to give a better answer or read on the enforcement stance on that. He said that he does not feel comfortable commenting on that right now just because he does not feel that he knows enough about it.

Commissioner Bloch thanked Chief Killip, made some Warriors basketball comments and thanked him for sharing some personal information on his slides and making the personal connection. Chief Killip said that one of the things that he is trying to do too is to humanize their team because they are humans too. And they all have families, and they have all other stuff going on outside of work, similar challenges, just like everyone else and they are all trying to do the right thing. He said that there are so many incredibly impressive people in the Division who are passionate about worker safety and health and it is as it was up in Washington, like he earlier said, except on steroids. He said he feeds off of that kind of energy.

Commissioner Kessler said that she also appreciates that the Chief comes with enthusiasm and said that hopefully not too many people rain on his parade. She continued that, of course we were in a drought, so that is not likely for a while. She said that she is interested in view of hiring to have some sort of an apprenticeship program internally - especially for women and people of color - to come up into the food chain. She said that she cannot help but notice that the majority of people thus far hired have already been in the mix. She said she understands that because of their expertise it makes sense to bring them into leadership positions. She said, however, California is a very diverse state and they really have to have Cal/OSHA represent the wide variety of people, backgrounds and cultures that we have. She said that she has struggled a lot on this Commission

to make sure that postings on the websites are done in Spanish, but that is not the only other language that people use in a variety of (economic business) sectors. She said she would really appreciate if he looked into seeing if they can do some of the “stuff” (hiring) through an IT apprenticeship program.

She said she wanted to second what Commissioner Bloch said, she understands that for years whenever employers receive penalties they go to the Cal/OSHA appeals board, they get the penalties reduced, and the penalties become the cost of doing business. She said that they just weave that into their general operating budget.

She said that she understands the carrot and stick, but that she wished that there would be a good enough stick so that people would be hesitant to go that route of, consciously and without regard, putting people into danger. She said that she believes that it is good to promote good employers, and people who have done the right thing. She said that they want to highlight and make known those who have done something positive; she said that they do not see those examples since much of the news is filled with negative stories in general. She said we could have some good news for a change about something that was done right and is something that they want to promote. She said it is not always picked up by the news sources, but maybe if he has a good PR team he can get some of those things publicized.

Chief Killip said that he liked that idea and thanked the Commissioner.

Chair Steiger said he wanted to build on what was said earlier about AB 701 and having more conversations in the future about what to do with that (how to apply the law). Chair Steiger commented to Commissioner Kessler’s point about having a bigger stick, in some cases, he said he believed SB 606 is a good one (stick) on that front, particularly the section about egregious violations. He said that they were one of the sponsors of that bill, and what they and the authors were trying to do there was target some of those worst case scenarios, as a subset of willful violations which are extraordinarily difficult to make stick. He said what they were trying to do was, while the willful penalties can be substantial, in those cases where there was some additional factor like workers actually got hurt or workers actually died, that there is a much bigger stick in those cases.

He continued that what they have learned the hard way with a lot of legislation over the years, is that it can look great on paper, but then it kind of disappears into the reality of not enough staffing for everything that gets appealed, of not enough attorneys to help make the appeals happen. He said that they want to continue to explore ways in the future of making sure that the (stick) option is being used in those really extreme cases where an employer does not make the honest mistake, but rather was willful, the employer knew this (condition/equipment/situation) was bad, they knew people were getting hurt, and they did nothing. He said that they want to send a strong message in those cases. He said that they want to send a message to anyone else who may be off in that direction that that sort of thing is not going to be OK. He said that they looked forward to those conversations in the future as well.

Commissioner Roxborough said he wanted to follow up on all the Commissioner's comments and then particularly on Commissioner Kessler’s comment on diversity and the promotion of that issue.

He said that he knows at the airport that they have interns, since he is also an Airport Commissioner at Los Angeles Airport (LAX). He added jokingly if anyone gets stuck on the runway to not text him since he cannot do anything about it. He continued that they have a big intern program and they get young kids out of high school looking at opportunities. He said their Commissioners have met with these kids - smart kids, diverse kids who really want to have a future. He commented that to talk to them about all of the reasons why they should look to join Chief Killip's organization is an excellent idea. Commissioner Roxborough said that being with some of these young kids, who are the future of Los Angeles, and with Cal/OSHA are the future of California. He said this is a wonderful idea to incorporate them into service and with his enthusiasm, he could see him being a heck of a spokesperson. He added that being a lawyer and then changing careers and going into this (health and safety), that he knows about this issue (of opportunity) as well as anybody here.

Commissioner Roxborough continued that he loves the idea, and that he does want to see more diversity. He said California is a very diverse state and some of them talk about that issue a lot. He said that he was appointed as an employer representative but he very often talks about the rights of injured workers because this is a benefit delivery system. He said it was supposed to be a no-fault system but we know it is a very contentious system right now. He shared that he knows of employers who are getting away with stuff they should not get away with it, and he sees employers being dinged for stuff like, really de minimis violations. He said that when he hears that they have a (staff) shortage and learns about what they are dinging people (employers) for; he said it is a matter of working smart.

He said the last thing he would ask of the Chair and of the Executive Officer of CHSWC, is if they could have an update from Chief Killip at the next hearing of the Commission on how much progress is being made in terms of hiring more folks and again, if there's anything the Commission can do to help the process because under the Chief's leadership they can all see great things going on. He said that he needs the horses. Another basketball analogy with Bill Russell was made.

Chair Steiger said that he seconded Commissioner Roxborough's point about incorporating an update on hiring and how that is going or anything that CHSWC can do to help.

V. Executive Officer Report

Eduardo Enz, CHSWC

Eduardo Enz welcomed the two new Commissioners Sidharth Voorakkara and Meagan Subers. Executive Officer Enz gave a briefing on CHSWC studies and projects. Since we last met in March, staff has been busy fulfilling Commission requests and closely monitoring and working on a number of projects and studies.

CHSWC Studies Update

A legislative requirement based on SB 1159, Labor Code section 77.8 required the Commission to conduct a study on *COVID-19 in the California Workers' Compensation System* and submit both a preliminary draft report and a final report to the Legislature and the Governor. CHSWC submitted the final draft report on April 28th to the appropriate legislative office and to the

Governor's office as required by Labor Code 77.8. Commission approval for final release and posting of this report is an action item today.

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 University of California (UC) Berkeley, San Francisco and Davis campuses, is in process. We anticipate a draft report of preliminary findings by September 30, 2022 and a finalized report by November 30, 2022.

The redo of the CHSWC study "*Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles*" is also in process. We are putting together a Request For Proposal (RFP) that reflects the RFP elements adopted at the December meeting. These elements include facilitating equal access, ensuring worker participation, adhering to scientific standards and communicating findings. Executive Officer Enz anticipates that this RFP will be completed and ready for Commissioner review prior to our next meeting. It is now being sent to Cal/OSHA for its members to review and give feedback.

CHSWC Projects and Activities Update

Executive Officer Enz stated that the 2021 CHSWC Annual report was released and posted on the CHSWC website and was also submitted to the Governor and to the Legislature. Staff is currently working to prepare the draft 2022 CHSWC Annual report in time for the December meeting.

CHSWC staff participated in the following activities since our last meeting. Staff attended the California Partnership for Young Worker Health and Safety that was held on March 22. The meeting focused on Young Worker project updates, coordinating young worker outreach efforts on a national scale and promoting Safe Jobs for Youth month in May.

Staff also planned and attended the SASH Advisory Committee meeting on April 8 on Zoom that featured a presentation by Cal/OSHA Chief Jeff Killip on Goals for Cal/OSHA, a review of School Action for Safety and Health (SASH) activities since the last meeting and obtaining input from committee members on directions for 2022 and beyond. Staff also planned and attended the WOSHTEP Advisory Board meeting on April 14 on Zoom that also featured a presentation by Cal/OSHA Chief Jeff Killip that focused on future directions and opportunities for partnerships for WOSHTEP. This meeting also included an overview of program accomplishments in the past year, a report on the WOSH Specialist Class evaluation, a review of key special projects, such as Wildfire Smoke, the YWLA and agricultural employers and supervisors training as well a discussion of future goals and objectives.

Action Items

There is one action item for your consideration today.

- 1) Did the Commission wish to post for final release and posting, the DRAFT report titled "COVID-19 in the California Workers' Compensation System: A Study of COVID-19 Claims and Presumptions under Senate Bill 1159" and the DRAFT research brief titled "COVID-19's Impacts on California's Workers' Compensation System: Evaluating the Effects of Senate Bill 1159" by Michael Dworsky and Denise Quigley at RAND?

Mr. Enz said that that concludes his report and thanked the Commissioners.

Chair Steiger asked, apart from the approval of the Minutes and that has to do with the SB 1159 study, does the Commission wish to post for final release and posting the Draft report titled “COVID-19 in the California Workers’ Compensation System: A Study of COVID-19 Claims and Presumptions under Senate Bill 1159” and the DRAFT research brief titled “COVID-19’s Impacts on California’s Workers’ Compensation System: Evaluating the Effects of Senate Bill 1159” by Michael Dworsky and Denise Quigley at RAND?

He said that it looks like they have a few questions from Commissioners, so it makes sense to take those now before they have the discussion on the SB 1159 report.

Commissioner Subers asked about the update on the study on the assessment of risk of carcinogens for the mechanics of firefighting vehicles. She said she wanted to confirm that they will see a draft of the new RFP before the next meeting. Mr. Enz confirmed and explained that they have had some delays but will have it ready for the Commissioners prior to the next meeting.

Commissioner Kessler stated that her union, the Machinists Union represents a lot of the mechanics and not just the mechanics, the American Federation of State, County and Municipal Employees (AFSME) union does as well.

Commissioner Kessler said that they have been working on this issue for quite some time and they did not get to see the past RFP in detail, which led to the whole conversation and discussion, for those of you who read the Minutes, about how RFP's work. She stated that she really wants to affirm that they have a chance to see the RFP before it goes out because they want to make sure - or at least she will speak for herself - she wants to make sure that it has the elements in it that they were so concerned about last time, that workers are (contacted and) spoken to. She further stated that if there is an organization that wins the proposal but that organization does not know how to reach people, that they on the labor representative side - as Commissioner Steiger said, he represents millions of people while she only represents thousands of people - can together make sure that the organization makes people available to actually speak to the (health) issues to which they are exposed and have had terrible cancer results from the carcinogens in their workplaces.

Commissioner Kessler moved next to the SB 1159 report, the evaluation for the COVID issue. She said that as Commissioners who have been here previously, and the two new Commissioners may not know this, but every time CHSWC gives RAND a quarter of a million dollars or more to do studies statewide, the problem she has - is last time for this study they talked to nine workers, for the previous study they talked to 13 workers, and the statewide study for a quarter of a million dollars doesn't make sense to her.

Commissioner Kessler stated that she would really hope that they institutionalized for any RFP that goes out the level of engagement with people who are directly impacted - and that's not to take away from the people who are the skilled researchers, the financial people, any of those other issues – not to reduce engagement with those other communities but to enhance and improve our relationship with the people who are directly impacted by some of these studies, regardless of what

the study is. She said they really need to get a better, more diverse understanding of the people who are impacted.

Commissioner Kessler explained, for example, on this “lovely” (CHSWC Annual Report) report which she showed tabbed with post-its, a CHSWC report is talking about the PTSD among firefighters and peace officers but the researchers did not even talk to more than 13 people who were directly impacted. She said she is concerned about posting studies. She continued that they have to determine who owns the study. She said that if CHSWC pays for the study and the researchers post it on their website and it doesn't include the problems that CHSWC raised, for example, the problems explained by the firefighter who testified at the CHSWC hearing who said people don't go to work calm, and they don't trust the system, there's retaliation in the work site - there's a lot of other issues. She said that when Rand posted the report that they said, “Oh, we found no discernible problems between the PTSD for first responders, particular to police officers and firefighters,” when it was clearly stated that there are problems with the whole culture of firefighters and police officers who are, excuse me, heroes and don't necessarily trust the work comp system. She said that that was not reflected in the conclusions that the researchers themselves posted on their website. She said that that was a problem.

Commissioner Kessler said that when they talk about who gets to post what studies, her suggestion is that they maintain the study postings within the CHSWC environment. She said they also need to have a determination about who owns the study and whether or not they have full rights to make assumptions that may have not been agreed with or agreed to, by the Commission that put out the RFP to which they got the nod (the “O.K.” or approval).

Commissioner Kessler said that she obviously has strong feelings about these issues, but she thinks it is part and parcel of the conversation that we need to have not only about the RFP (process), but how we do the (web) posting, and who has ownership of these things.

Commissioner Kessler said that is why she is reticent to post the COVID report, because there are some challenges about how this research got done, who were the impacted people, how many people were spoken with, why people do not go to the work comp system for statistical validation.

Commissioner Kessler said that these are her comments and she thanked everyone for their patience, especially Commissioner Brady, because he has heard this all before.

Chair Steiger thanked Commissioner Kessler and said he wanted to emphasize the point about outreach to workers, but he was not sure where in the RFP process this makes sense. He said they should take a closer look at what gets put out there as an RFP and what sort of requirements they need in terms of outreach to workers. He asked whether there was some way to institutionalize a sort of a progress report or some sort of check-in on how the research is going. He said if the Commissioners would like to talk to 250 workers and then if the researchers only talked to 13 and that is all they could find, maybe they could have a conversation about that, if it's appropriate at the right time (i.e. before it is too late). He said it would be good to make sure that before they get too far down the \$250,000 expenditure line that they make sure all the good intentions at the beginning are translated into reality.

Chair Steiger said they have to account for the fact that maybe the lofty goals cannot always be met, but are they getting close enough to keep going or do they need to figure out some other way of getting more workers. He wanted a way to know if they need to adjust the study, do they need to do something else before they get to the end (of the study) and figure out that they spent a whole lot of money but the researchers did not talk to the number of workers that would have been appropriate. He asked whether there is any way to check-in in the middle of that process and institutionalize that check-in.

Commissioner Bloch said that at least on the labor side of the table, and now as the most senior member of this Commission (on the labor side), he does remember when he came on to the Commission that it was the Executive Officer's prerogative to choose whoever they wanted to do these studies. The Commission was not involved in any way, shape or manner with it. The Executive Officer chose the researchers and then we heard the reports. He said that they did raise concerns about that process which led them to the way it works right now. He explained that he mentioned that to say, and Commissioner Brady knows this too, that this has been an ongoing issue at the Commission. Commissioner Bloch said that the (process of) selection of who does the studies is probably worth scheduling as an agenda item if there is enough interest on both sides of the table.

Commissioner Bloch said that Commissioner McNally can also provide history here, and CHSWC can go as far as what other public agencies do when they issue RFPs and have a whole competitive bidding process. He said that those Commissions decide on who gets the bid, which takes up a lot of time on the staff side and on the Commission side as well.

Commissioner Bloch said that he is not necessarily advocating for that, but he does think if there is a consensus around having this as a discussion item that they should do it because as he said, this has been an issue for as long as he has been on the Commission since he was appointed by the last Governor.

Chair Steiger said that he did not know if he would need any kind of an official motion but he definitely agrees that they should agendaize this as a specific agenda item for the next meeting. He said he was seeing many nods, so asked Executive Officer Enz if he wouldn't mind making a note of that as something to put on the next agenda.

Executive Officer Enz replied in the affirmative and thanked the Chair.

Commissioner Roxborough stated that he thought they should make a motion to have that item on the agenda because there seems to be a lot of concern about that. He used the analogy of the instance of any lawyers or business folks doing a bid and saying it is going to cost \$100,000 to do a project and all of a sudden there's a change in materials and they cannot get 250 people and only get 13. He said ethically he has to call up the client and say, 'Hey, do you still want me to do this, I do not have enough facts to do the project,' and Commissioner Roxborough said that he did not see that happening. He said that he perceived Carte Blanche being given (to the vendor). He said CHSWC has an extraordinary reputation and an important role to play in California and that when a study that the Commissioners approve and put their stamp of approval on, that it represents exactly what they intended to do. He said that it is not the fault of any of the vendors they hire if

they cannot get 250 people and they can only get 13. He said it is what it is, but then, before the money is all spent there should be a contractual duty, that if there are material changes in what you intended to do that they should make CHSWC aware of it. It saves them time, saves CHSWC money and as one of the Commissioners noted, they can then modify what it is they want to do, or they can seek another vendor or whatever.

Commissioner Roxborough said in terms of Commissioner Kessler's statement about, in her example, RAND posting and describing what they did, that this highlights for all of them how extraordinarily important it is for CHSWC to make sure that whatever conclusions are reached are based upon a true study.

Commissioner Roxborough said that he was unaware that vendors are posting their results and findings, sort of as a marketing tool. He said that he would be concerned that vendors who CHSWC hires utilize this as a marketing tool to publish studies that perhaps we had concerns with but those concerns were not shared with the public. He said that is an excellent point and he wanted to thank Commissioner Kessler for bringing it up, or at least to his attention. Maybe everybody else was aware of that, but he would like that on the agenda. He said he thinks it is time that CHSWC gets into the 21st century and that they exercise some process, some procedurals and take the pressure off of Eduardo (Enz) also. He said they should provide Executive Officer Enz with assistance, help and guidance also.

Commissioner Roxborough said he would be interested in any thoughts from Commissioner McNally since he has institutional historical perspectives. Commissioner McNally asked to speak and said that he had been around a long time. He said that in 20 years, probably more, but when he first got to the Commission, one of his very first priorities was this issue. He said that he got right in the middle of it with the last Director of the Department of Industrial Relations, who was at the time the Executive Officer of the Commission and got himself personally involved in the vetting process and the whole thing. He said he felt like there were only two vendors that were getting all the work at the time, RAND and UC-Berkeley, and Frank Neuhauser's name, was everywhere. He said it was no reflection on Frank's work, but it felt like in a state of this size, CHSWC should have the ability to get more people to conduct these studies. CHSWC was paying good money for the studies. He said that he was shocked to find out that really very few people were willing to go through what they had to go through to qualify for the work that we were asking them to do. He said he is not saying that it's the same today, but he is just saying it has been going on for a long, long time and he appreciates what Commissioner Roxborough said. Commissioner McNally said he thinks that regardless of whether they can expand the pool of people that they use or not, he thinks they should do a more rigorous and more comprehensive job of putting benchmarks in place so that if they can't get to 250 people, and they're only at 13; he said that they are not finding out at the draft report level but they are finding out at a *much* earlier stage in the process so that they can say, "OK time out, you know we're going to table this for now or we're going to change the criteria." He said they have to have some input before it is a draft report and the time and the money has been expended. If it has been posted on their (the vendor's) website, it does not help anybody when that kind of thing goes on. Commissioner McNally said that this

was a little bit of historical context from him and that he thinks this is a very important conversation.

Commissioner Kessler said that she did a little research to find out why other organizations are not applying, especially the academic organizations. She said that she learned that the timeframe that people have to submit a proposal in response to an RFP is so truncated that state institutions and UC's, or whatever, don't have the time necessary to go through the process that their institutions demand in order for them to get all of the eyes dotted and the T's crossed.

Commissioner Kessler said she learned this especially with the fire mechanic (study). She said that she reached out to some of the organizations that were interested in the study – she went to LOHP at UC Berkeley and asked why they cannot do this study since their whole orientation unlike RAND, which has a myriad of other research, is an organization specifically focused on worker health and safety and would be likely people to apply. She said the response was that they do not have enough time to vet this with the powers that be in order to get it approved within the timeframe that the RFPs traditionally have been put out.

Commissioner Kessler said that possibly what they could consider is when they look at the RFPs they also look at the timeline that an applying organization is given in order to do the processes that they need to do to get it approved within their respective organizations. She said that she has spoken about this issue to some people offline, and it seems to be a viable option for them to consider as they move forward and look at the various processes for RFPs for the Commission. She said she just wanted to weigh in and let Commissioners know that she actually got an answer from a couple of people on that issue.

Commissioner Kessler addressed Commissioner McNally and said that she did not see that Commissioner Brady was there anymore – that perhaps he got tired of hearing about it – but to Commissioner McNally, that he has seen this struggle and they all want to do a good job. They all want people not to get injured and find out what the problems are so that when policies are developed they are developed on real information that is factual and takes into consideration all the different impacts that those policies may have.

Commissioner Kessler concluded by thanking the Commissioners for their input, she really appreciates it, and she thanked everyone for their patience.

Commissioner Roxborough said a closing thought is in order to make it meaningful and to agendize it, it would be helpful to have the vendors be invited to also express their opinions in terms of the RFP. If there's anything they should be made aware of in terms of the difficulties, such as whether it is too burdensome of a process sometimes, whether there are unreasonable requests, and so on. What are their thoughts, because they are the folks who ultimately CHSWC has a relationship with. They want to maintain a good working relationship and do not want to be dictatorial. He said it would be helpful to have them also participate, to be invited to participate and to share their thoughts about the concerns that the CHSWC has expressed today, and apparently going back for 20 years.

Chair Steiger agreed and said he thinks that that it is a great idea and that it sounds like it is already on the Executive Officer's To-Do List. He said maybe they could go ahead, and he believed that Commissioner Roxborough made a motion in order to make it official. He restated the motion to make sure he has it correctly, that it would be that for the next meeting they agendaize the discussion around the RFP process; they also invite everyone who has bid on one of these studies in recent years. He said he assumed that it is not too many different entities, but the point of the discussion is that rather than just going straight to "random" UC-Berkeley, if there is anyone else that has expressed interest or that they have heard of, or has started down the road of applying for a study, they may even be the most important ones to hear from, who have started it (the process) and then decided they cannot do this because - too expensive, not enough time, whatever the issue is. He said bringing in all of those groups and inviting them to the discussion may also be helpful so that is the motion that they agendaize it, they invite all of those groups.

Commissioner Kessler offered an amendment to the motion that the Commissioners and any members of the public submit their concerns in advance in order to be given a heads up so they do not have to say, "Oh, I don't know, I'll get back to you for those things," that those issues be hopefully vetted if possible so that Executive Officer Enz can address and answer what he can at the next meeting. Commissioner Roxborough agreed with the amended motion and Commissioner McNally seconded the motion. The motion passed unanimously.

Chair Steiger apologized for the interruption and asked if the Executive Officer would not mind repeating what the second action item was. Executive Officer Enz stated that he wanted to let the Commissioners know that Martin Brady communicated that he had to catch a plane, so that is why he had to leave.

Executive Officer Enz said that the second action item was whether the Commission wishes to post for final release and posting the draft report titled, "COVID-19 in the California Workers Comp System, a Study of COVID-19 Claims and Presumptions under Senate Bill 1159," and the draft research brief, "COVID-19 Impacts on California Workers' Compensation System Evaluating the Effects of Senate Bill 1159," by Michael Dorsey and Denise Quigley at RAND.

Commissioner Kessler said that she guesses it goes to the whole issue of whether this is proprietary information that is owned by the people who do the study. She said because, given the motion to approve, her vote would be no, because she does not think that it fulfilled the terms and obligations that we would hold important to understand the impact, but that she also understands she will likely be outvoted. She said that it is her hope that they can have, as part of their RFP discussion about who owns the study, because she does not think the study captured as much as it could, though there are aspects of it that are really good. She said that she just thinks it falls short, if she could say it that way.

Chair Steiger asked if there is a motion to approve the posting of those two items. He said that he believed as Chair that he is not allowed to make a motion. He asked again if anyone was interested in making a motion to approve and post those studies. After some silence, Commissioner Bloch asked Commissioner Kessler why she feels that the study is not ready for prime time.

Commissioner Kessler said that they (RAND) are only relying on workers' compensation data. She said that if she understood it correctly, and maybe she misread it, she thinks that there are other data points that probably could have been captured but were not. She said that she is not feeling secure in knowing that the best job was done. She said that maybe also because she has a little burr under her saddle about RAND's previous studies and the fact that they keep getting more studies for more money and, you know, it is taxpayer funds and it makes her a little nervous.

Commissioner Kessler continued that it is not that all of the work that they do is bad; she said she is not saying that at all. She said that she is just saying that she is unsure because she thinks it probably did not reach the necessary depth and also another issue, which is not about this particular study, but going forward, is we know there's a spike in COVID-19 and that these issues are going to morph. She said it is just her personal opinion to answer Commissioner Bloch. She said if other people want to vote it up, go for it. She just thinks that it is part of an overall problem she sees with the organization that has been doing these studies that are not as complete or in depth as she thinks they should be for that amount of taxpayer money. She said that is just her personal view.

Commissioner Bloch said what he was hearing Commissioner Kessler say is that the issues are primarily not with the study itself, that she has some minor issues with the study itself around the data points, but that she has these larger issues. One of these larger issues is one which they are hoping to address based on our previous discussion around bidding. Commissioner Bloch asked if that was correct and Commissioner Kessler confirmed.

Commissioner Bloch said he was comfortable based on that moving forward with this (motion), but that he would like to hear from the other Commissioners. Commissioner Subers said as the new kid on the block, she was really just trying to gather as much information here as possible. She said to Commissioner Kessler that she completely understands and probably agrees with most of the points that she raised on the process side. Commissioner Subers said that as she was reading through the study over the last few days, she thought one of the highest hills they have to climb in the legislature and with the administration when they are trying to work on issues related to workers' compensation, but more specifically presumptions, is that they are often asked or confronted with this concern that there is a lack of data, a lack of data collection, a lack of data to support the claims. Whenever they are trying to put forward something to protect workers from the worker perspective, she said she knows that her employer partners often agree on the things they are trying to do. She said she thinks that there are some beneficial things in this study and some really good highlights about the protections that the presumption has given to workers in the system. She said frankly just the numbers about the workers who submitted claims and how the denial rates dropped when the presumption went into place were helpful. She said she feels like there are some good data sets in the study and while totally agreeing and acknowledging the concern about the process, she thinks it is worthwhile to post it. She said that she knew the Governor's office has the draft. She said she thinks the legislature has the draft already. She said folks have started to mention to her certain points that they are obtaining from the report. She said she feels like it is going to become public one way or another, whether or not it is official. To that end, she said she would make the motion to approve and post the report.

Commissioner Voorakkara said that following Commissioner Subers and her statement about being the new kid on the block, he had more of a process question. He said holding aside the concerns and questions that all Commissioners had, he said he really appreciated reviewing the minutes and the level of conversation around the report itself. He said since the Governor and the legislature already have the report, he said that this is just another place for CHSWC to post the report on our website. He said there is both the process of the RFPs, and then there are the questions, not exactly deficiencies, in the study. He said that like the questions that were raised in the study, this is just a process vote for CHSWC to put it on the website. He asked Mr. Enz to help him understand the specific action item and then since he has the floor, he is really curious and interested in how the game keeps changing with this pandemic and what is the impact of long COVID. He said that he kept having his own red flags about the period before the presumption and the denials that occurred. He wanted to know how many of those may have actually been workforce- or worker-related, workplace-related, COVID contractions, and how those individuals who may experience long COVID who may not feel willing to come forward with another complaint in the future. He said he thinks there are so many things with long COVID that he is really concerned about and that is something for longer conversations, but he wanted to share that thought.

Commissioner Voorakkara said he would like to ask the question of Mr. Enz on the process. Mr. Enz explained that typically action items are for, for example, studies. He said that they post them initially for public comment for 30 days and once they have gotten feedback from the public, at the following meeting they typically will then ask Commissioners for permission to release the final version of the study and post it on their website. He said that that is typically the process. He said in this particular case, this study was a legislative mandate under SB 1159 to submit the study to the Governor and the legislature. He said it is a little bit different from the type of study that they typically will take on. He said that in a sense it is almost a *fait accompli*. They (the Governor and legislature) all have it, and he is not sure what the purpose of not approving it would be. He said it is already on RAND's website. He said we can address all those issues at the next meeting, in terms of whether they want that process to continue or if they want it to change. He said they would need to have some kind of legal language to make sure they could do something like that to stop the vendor from posting. He said that is something they can look at if they do not like the study. He said in this particular case, it seems like it would be the logical step to approve and post the study.

Commissioner Roxborough said the issue is on page 11 of the minutes. He said RAND talked about that there were 250,000 COVID-19 claims to date, and RAND relied on George Parisotto's testimony or presentation to CHSWC. On page 10, RAND said their qualitative analysis relied primarily on only 32 key informant interviews – who had COVID. He said for the new kids on the block, and he is not an old kid, being around for about a year or so, he said that was troubling. Commissioner Roxborough said that they can post it, but when one pays an organization like RAND a whole bunch of money, six figures, and there are a quarter million COVID claims, and their qualitative analysis relies primarily on 32 key informant interviews, they can post it, but there should be an asterisk or a caveat. He said because, as he understands it and he defers again to the more experienced Commissioners, the legislature looks to CHSWC to give it recommendations,

so when they post it he does not see the value in what they posted. He said he finds their conclusions interesting, he finds them anecdotal and he finds them logical. He said that they do not need to hire somebody to do a study for that. He said that is his issue with this. He questioned whether by posting it if the Commissioners are agreeing that this is really a good study that the legislature can rely upon? He said he did not think that is the case at all. He said posting it is one thing, but he thinks they are having a very robust, healthy transparent discussion about the content of the methodology itself, not the drafting, that is where he is coming from.

Chair Steiger said that it was a good point. He said that he had a whole lot to say about SB 1159 specifically, and the weaknesses of that legislation. He said he thinks some of the struggles of the study come from the weaknesses of that legislation, and primarily with the outbreak presumption, less the frontline presumption, which seemed straightforward. He said that the outbreak presumption, the definition of outbreak does not make any sense, and requiring a PCR test is problematic. He said those can be difficult for people to get. He said that just putting the workers' compensation claims administrators on the honor system and hoping that they volunteer this information to claimants in order for it to mean the presumption applies is questionable. He said there is an attempt to fix some of those issues with AB 1751 this year but that that effort faces an uncertain future. He said that whether or not this presumption is even going to keep going past December, it faces a very uncertain future. And so when he read the study, he said he was very excited to look at the study to see that there must be some information in here about whether or not workers are actually able to take advantage of the presumption and what is happening. He said the study just kind of says, "Oh, we didn't get into that." Understandably, it is a very difficult thing to get into. He said that they have heard of one group of workers that were able to take advantage of the outbreak presumption. He said other than that, as far as they know, it has benefited no one. He said that is a question they were really hoping to have answered in the study. The study does not get into that. He said that maybe it's an impossible thing to study; but it gets back to the earlier discussion about if we had had a discussion earlier on with the bidders or the approved contractor about you know here is a question we would really like to have answered by this study. Can it be done or not? Maybe they could have emphasized issues, you know, here are some things we think are important to consider, but that did not happen. Therefore, it is good that we are having this discussion next time about how we institutionalize those questions. He said that as far as the study and whether they should post it, yeah, it is already out there. He said that he has referenced it all the time for a variety of reasons, one of which is that when SB 1159 took effect, it was not like denials went from 100% to 0%. They went from, you know, 55% to 45% or, you know, they went down. He said it definitely helped, but up in Sacramento they hear this opinion that once you approve a disputable presumption every claim is approved and there is nothing that can be done about it. He said that they think the study very effectively points out that it is very much rebuttable, that employers rebut it all of the time, and that it does not mean that all claims get approved. He said in that respect, it has been helpful. Many of the numbers that are collected in the study are helpful. He said that there is a lot of information that has really helped them make the case that they need to continue the rebuttable presumption and still allow due process for the employer to contest claims when they think that makes sense. He said that there are things in the report that are helpful and there are things in there that are, you know, deficient. He said that he did not know how much of that is something that could have been fixed or, maybe if they had had an opportunity

to really emphasize that to the contractor, that it could have been fixed. He said that given that it is already out there in various ways, he thinks, to the Executive Officer's point about this is just one more place. It is kind of a stamp of approval, and if we do have serious concerns about it - to the point where we do not want to put that stamp of approval on it, then if that is the will of the Commission, then there is a point to be made there that maybe they should make.

Chair Steiger said that where they were now there was a motion to approve and post the studies and the research brief. He said he would just ask if there is a second (motion). Commissioner Bloch seconded. Chair Steiger called for a voice vote in favor of the motion. No one opposed. Commissioner Kessler abstained. Commissioner Subers' motion carried.

Chair Steiger said that that concluded the action items and the Executive Officer's report. He thanked those people for the items, the direction and the dialogue.

VI. Other Business / Proposals/Public Questions and Comments

Chair Steiger said that next were the other business proposals, public questions and comments.

Chair Steiger asked Commissioners if they wanted to raise anything in this portion of the agenda. Commissioner Kessler asked to pose a process question. She said that Commissioner Roxborough raised this thing about having some notation when stuff is posted. She said on the PTSD report, she wrote up three pages of concerns, none of which are reflected in the posting that RAND made after they presented to the Commission. Her question for process purposes was when they agree to post something, are they allowed - can they ask - that concerns be noted as well as the results of the study. She said she did not know what that answer is. She said she was just asking process wise how that happened, if and how that could happen.

Chair Steiger said it was a great question. He said it also occurred to him that one way they could do this, is post the studies with some sort of Commissioner response. He said he was thinking they could add that to the discussion that they have next time. He said that as far as he was aware, it is not something that they have done, but others who have been here longer than him may know more. He did say that maybe there is a place for that, and maybe they institutionalize that they can agree on some sort of statement to go along with the posting of the study for the future. He asked if Executive Officer Enz may have more information. Mr. Enz said that they have not done that typically, but there is no reason given that they are taking a look at the whole process that they cannot do that, going forward. He said that they can certainly (do that) and there is no reason why the Commission - and might even actually be useful for folks to - have the perspective of the Commission reflected after every study as a process question as opposed to just doing it occasionally when they disagree. CHSWC could actually say that this is a study we looked at and these are the strengths and these are the weaknesses and from our perspective, this is what we think of the study. He said that he thought that might be useful for folks who are taking a look at the studies.

Commissioner Steiger said that it really does seem like it would make a lot of sense that by posting it, they are kind of being put in a thumbs-up or thumbs-down position. He said that their take on it

is usually more complicated than that, as evidenced by this SB 1159 report. He said that it may be something that would make sense.

Chair Steiger said he wanted to raise an issue, and started with a little bit of background. He said in the years that he had covered workers' compensation for the California Labor Federation, he had heard from a variety of workers on a lot of these issues, and probably other labor advocates are in the same situation, where a rank and file member and injured worker finds their way to them and goes through the details of their experience in the workers' compensation system along with all the struggles that they have faced and it is really heartbreaking. He said that in learning all the details, there are some similarities between all of the individuals that have contacted them and there are some differences. He said they usually revolve around treatment delays, employers that suddenly start fighting them on every piece of the claim, even employer-selected provider-approved requests get fought all the time. He said that it very typically sends workers down a pretty dark road where their condition gets worse. He said chronic pain starts to become an issue, their personal lives start to fall apart, their relationships fall apart, sometimes it ends in losing cars, becoming homeless, losing jobs. He said in the end, many of these workers just kind of disappear. He said when he tried to check back in with them, phones get disconnected and he has no idea what happened to them. He said that he would bet they are probably not in a good place now and it really conflicts with the perspective that we get through things like being Commissioners of CHSWC, where we hear a lot of incredibly helpful and incredibly important information that analyzes the system as a whole and looks at, you know, the number of QMEs we have and the number of claims, the number of denials and things like that that we absolutely need to keep in mind to make sure that the system is working well.

Chair Steiger said that it is a fundamentally different way of looking at the system than from hearing from those individual workers. He said he knows that when he has those conversations with individuals, it really does change the way he looks at the system and it is, he would argue, at least as accurate a way of assessing the effectiveness of the workers' compensation system than a lot of those details lost in the numbers, in the research, the data, the giant PDFs, and all of those things that again are really important. He said he thinks they also need to have a more holistic view of the system. He said they should be hearing more from those workers to really get that human element added to their perspective. He said that he would like to propose to Commissioners that they add an ongoing agenda item – and they can discuss the specifics later like the amount of time - something like 5 to 10 minutes per meeting - where they hear from an individual who is struggling in the system.

Chair Steiger said that he thinks they have enough relationships with applicants' attorneys and other labor advocates who spend enough time talking to these individuals that it would not be hard to find one (injured worker) every quarter who would be willing to come and give some details on what they are going through in the system. He said he thought it would be really helpful for them to not just learn about specifics like how the QME process really failed this worker or how this worker's employer really fought them in a lot of ways that they shouldn't have done and how they should enforce this, but also just to really help remind them all what is at stake here and what happens when they fail to really fix the system- that there are very real, very severe consequences

to workers; that they (the Commissioners) need to keep in the back of their heads as they are making all of the decisions about what do they study, what do they focus on, where should they really try to fix the system. He said that in hearing from those individual workers, he thinks it would be incredibly helpful to gain a more full view of the system as a whole. He said he just wanted to throw that out there for discussion.

Commissioner McNally said that he thought it was a great idea, but he would not limit it just to injured workers. He said he would include stakeholders, maybe not all stakeholders, but injured employees and also employers, especially employers who have insurance carriers. He said many times these claims are not handled in a way that they feel satisfied at all. The carriers have a different agenda than the employers do, and so they all have their own prisms based upon their experience and what they have been exposed to in the system. He said he very much resonated with what Chair Steiger said about them sitting around and looking at studies and looking at the big picture. He said that he will go out and hear that what they have done did not work, and hear that some of the reforms they have helped create and he goes out to talk to employers who have horrible stories to tell. He said that he would like to hear from both sides if both sides are inclined to come and share their time and their thoughts with them.

Commissioner Bloch said that he agreed. He said he felt like they do not have enough worker voices at these meetings and they talk about what happens to workers. He said he also agreed with Commissioner McNally that they do not have enough employer voices here. He said that has frustrated him over the years as they have talked about trying to get more doctors into the workers' comp system - that especially when they moved these meeting to Teams (online) meetings that they have less voices of doctors to be able to understand the obstacles or the challenges of being in this system. He said he thought it a good idea and worth exploring whether they want to open this up to give some different stakeholders time to come and share on a limited basis. He said it would be good to think about whose voice is important. He said that, as a labor guy, he is right there with Chair Steiger about starting with the workers.

Chair Steiger said it is a really good point and it's something that they talk about a lot - why there are a lot of doctors out there who do not want to take workers' compensation claims; and the more you learn about what the system looks like from the physician perspective, the easier it is to understand why someone wouldn't want to deal with all of this. He said that that has very real effects for workers and for the system as a whole. He said he has no idea what this looks like. He asked whether they want to be respectful of everyone's time and not have four different 10-minute presentations added to every single agenda, maybe one 5-to-10-minute stakeholder perspective per meeting would make sense. He said he knows that with the Bagley-Keene restrictions, it will definitely limit their ability to coordinate on who that person is going to be. He said they would have to figure out how they deal with that. He said one way or another, he thinks some version of this would definitely make sense.

Commissioner Roxborough said this is sort of a reality check for them. They do a little bit of academic work here and they read a lot of briefs, but then they are talking about bringing voices to the hearing. He said it is worth a try. He said the three biggest stakeholders are obviously injured workers, first, the employers who employ them, second, and the physicians who they rely on to

get them through the system as quickly and efficiently as possible. He said that hopefully the physicians have the goal of finding out what is wrong with the injured worker, how they get them back to work, how they take care of them. He said those to him are the three and while nobody has unlimited time, he thinks it would be helpful to hear from those three stakeholders, see how it goes and maybe just organically see what they are getting out of it. He said he loved the idea.

Chair Steiger asked if Commissioners were willing, since they are in the middle of a publicly noticed meeting and they can all discuss it, whether it would be alright if the first one of these (stakeholders) could be put on the agenda for the next one (meeting) - an injured worker. He said that he can raise his hand and volunteer to find that person for the next agenda and they can just add them somewhere in there, wherever it makes sense, to give a quick presentation on what they faced in the system and then they can discuss it.

Chair Steiger said at the next meeting, while they are all present and publicly noticed, they can talk about who would be the best to have on the following agenda after that. He asked if that made sense, and said he will do that and find someone for the next meeting. Chair Steiger asked if there were other items in this part of the agenda before they go to public comment and hearing none went to public comment.

Public Questions or Comments

Bruce Wick, Director of Risk Management at the Housing Contractors of California said that it is a good idea what Chair Steiger suggested. He said he remembered in the lead-up to SB 863 that there were some public meetings that were really eye-opening because people can talk about the system but the person facing the system that is trying to get help, their testimony was really powerful. He said he thinks that it is a good idea and he appreciates that. He said that this is all information.

Mr. Wick said if they had known better, they might have said in March of 2020, “Wow, can we have employed somebody all along on something so dramatic and so pervasive as COVID-19? Somebody to help inform us, as this thing goes.” He said it ebbs, flows, and changes, but let us have some data right now. He said nobody is relying on any data because it is so disjointed, even though there is a lot of data out there. He thanked the Commission and encouraged what they are doing. He said it is a great discussion. He said that hopefully they can be ready if and/or when they get another COVID-type situation that they can be informed along the way.

Chair Steiger thanked Mr. Wick.

Commissioner Roxborough said he had a note that Assemblyman Freddie Rodriguez had requested CHSWC to undertake a study on the cost shifting in the staffing industry, and notes Assembly Bill 2614. He said that he knows that it was not on the agenda and he is not up to speed on the legislative issues. He said he did not know if it was still an Assembly Bill, whether they are going to be looking at it later, or whether there will be an RFP out for that.

As a point of clarification, Mr. Enz stated that it was his understanding that the bill has not passed, so he thinks they still need to wait for that process to play out, and then see if the governor signs it. At that point, they can start the process.

Chair Steiger asked for a motion to adjourn. Commissioner McNally motioned, and Commissioners Bloch and Kessler seconded at the same time. The motion to adjourn passed unanimously.

Other Business

None

Adjournment

The meeting was adjourned at 12:53 p.m.

Approved:

Mitch Steiger, 2022 Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date