

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

April 27, 2007

**Elihu M. Harris State Building
Oakland, California**

In Attendance

Chair Kristen Schwenkmeyer

Commissioners Catherine Aguilar, Allen Davenport, Sean McNally, Robert B. Steinberg, Darrel
"Shorty" Thacker and Angie Wei

Executive Officer Christine Baker

Not in Attendance

Commissioner Leonard C. McLeod

Call to Order / Election of 2007 Chair

Christine Baker, Executive Officer, called the meeting to order at 9:05 a.m. She stated that the first order of business would be the election of a Chair.

CHSWC Vote

Commissioner McNally moved to nominate Kristen Schwenkmeyer, and Commissioner Aguilar seconded. The motion passed unanimously.

Recognition of Former Commissioners

Chair Schwenkmeyer presented John Wilson with a plaque in recognition of his years of service on the Commission. John Wilson was appointed by former Governor Pete Wilson on January 4, 1999, and was Chair in 2001, 2005, and 2007. She thanked him for his extensive service to the Commission and to the people of the state of California.

Mr. Wilson stated that it was a pleasure to be on the Commission and work with the other Commissioners and the Commission staff. He also stated that he was proud of the work that CHSWC has done to improve the workers' compensation system and to have provided a scientific basis for some of the legislation that was passed.

Chair Schwenkmeyer also acknowledged former Commissioner Alfonso Salazar and thanked him for his four years of service on the Commission.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

Welcome to New Commissioners

Chair Schwenkmeyer welcomed new Commissioners Catherine Aguilar and Sean McNally.

Since 2005, Catherine Aguilar has served as manager of workers' compensation for San Diego County Schools Joint Powers Authority. From 2001 to 2005, Aguilar was director of workers' compensation for Tristar Risk Management, where she previously served as manager of the San Diego branch. Aguilar was vice president of workers' compensation for Ward North America from 1999 to 2001 and regional manager of workers' compensation for COSTCO Wholesale Warehouses on the East Coast. She is a member of the California Coalition of Workers' Compensation and the Public Agency Risk Management Association.

Sean McNally has served as legal counsel and vice president of human resources for Grimmway Farms since 1997. McNally previously was an attorney for the employment and workers' compensation defense law firm, Hanna Brophy, from 1991 to 1997. He is a member of the State Bar of California and a member of the Self-Insured Security Fund, Board of Trustees.

Minutes of Previous Meeting

Chair Schwenkmeyer requested a vote on the Minutes of the previous meeting.

CHSWC Vote

Commissioner Wei moved to approve the Minutes of the February 23, 2007 meeting, and Commissioner Steinberg seconded. The motion passed unanimously.

Update on CHSWC Apportionment Study
Larry Swezey, Legal Consultant

Ms. Baker stated that CHSWC is conducting an ongoing update of the legal issues about apportionment and had voted to take a look at how the cases are coming in to the district offices. The study of apportionment on a case-by-case basis has been stopped until there are further decisions at the higher courts; however, Larry Swezey is here to provide an update.

Mr. Swezey stated that there is a draft memorandum that he and Judge Lachlan Taylor have prepared. He stated that the law on apportionment changes every day, with most of the cases now in the court of appeal or the Workers' Compensation Appeals Board (WCAB); in addition, several are before the Supreme Court. He continued to define apportionment as the process in which overall permanent disability (PD) that was caused at least in part by an industrial injury is separated into components that are and are not compensable results of the injury.

Mr. Swezey stated that the draft paper is like "a moving target" and attempts to provide available information on the effects of Senate Bill (SB) 899 on the prior law of apportionment. He then proceeded to review the findings from the paper and the conclusions.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

Mr. Swezey stated that his conclusion is that using the AMA *Guides* to determine PD does not affect the basic law of apportionment in the various states. That problem has come up in the old ABA states, and they consider apportionment the same way they always did. He stated that the memo gives guidance to physicians as to how to write reports that will include apportionment. It will be several years before definitive answers are available. It is clear, however, that the legislative intent was: (1) to reduce the cost of compensation; and (2) to replace the existing apportionment rules with apportionment based on causation. The WCAB and the appellate courts will be constrained to bear these objectives in mind in interpreting them. They will probably do it in the light of the history of the statute as well as the prior law which is summarized in the report.

Mr. Swezey also stated that the issue of *Fuentes* is now before the Supreme Court, and that is the reason a lot of the apportionment decisions are being held up. Although judges may decide to apportion an award, they do not know how to calculate the dollar value of the apportioned award until the *Fuentes* issue is resolved by the Supreme Court in the *Welcher/Brodie* case now pending. Meanwhile, claims administrators must advance at least the smallest amount calculated according to the *Fuentes* rule.

Problems that are going to have to be faced in the future are: if the prior rating was based on work limitations, how is it converted to an impairment rating? if the prior PD is re-rated, will the future earning capacity, occupation, age, and earnings at the time of the subsequent injury be decided under the former Section 4750?

Except for a few cases, the WCAB has established a practice of resolving cases interpreting SB 899 in thoroughly reasoned *en banc* decisions. The result is that the appellate courts have the benefit of the WCAB's expertise and knowledge of the workers' compensation law and system before them. There are cases holding that the WCAB's interpretation of a statute that it is charged with enforcing is accorded great respect by the courts and followed if not clearly erroneous.

Questions

Commissioner Steinberg stated that he had some difficulty with some of Mr. Swezey's conclusions, particularly the effect of the Legislature repealing the two Sections 4663 and 4750. He stated that Mr. Swezey seems to conclude, as did the WCAB in *Escobedo*, that what the Legislature had in mind was not only to repeal those sections but to repeal 50 years of apportionment law. Mr. Swezey responded that he thinks that is what they intended. Mr. Steinberg asked whether they actually did that, that is, they left everything up in the air. Mr. Swezey stated that is what they intended, and whether they did it or not is going to depend on what the courts say. Mr. Steinberg stated that that was true but he stated the Mr. Swezey seems to conclude that that is what they intended and will give voice to their intentions but not what they actually did. He asked how Mr. Swezey reconciles these intentions with the positions that the appellate courts have taken for years. Mr. Swezey stated that they did not repeal the section of law that says the law will be liberally interpreted to assure benefits to the injured worker; that is still a good law. Mr. Swezey stated that he is just telling what they intended, not what he believes or even what a lot of legislators thought they were passing. Mr. Steinberg agreed that

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

he did not think a lot of legislators knew what they were passing. Mr. Steinberg stated that he was concerned that Mr. Swezey was taking the position as the Board did in *Escobedo*. He stated he was concerned that the Board in *Escobedo* read Mr. Swezey's first draft on apportionment and said that if it was good enough for Larry Swezey, it was good enough for the Board. Mr. Swezey stated that if that was so, he apologizes. Mr. Steinberg asked if Mr. Swezey understood his concern, and Mr. Swezey stated that he certainly did. He stated that it would be his personal feelings that he hopes the courts do not do that. Mr. Steinberg said that they are going to have to re-litigate the cases. Mr. Swezey stated that they will be re-litigating them long into the future.

Public Comment

Mr. Mark Gerlach with the California Applicants Attorneys Association stated that he has problems with defining the legislative intent in the paper. He stated that he did not think that the legislative intent is clear; there is very little history on SB 899, as we all know it was passed in the dead of the night. To say that the Legislature clearly intended something is very difficult. If you look, for example, at the statement, "It's clear, however, that the legislative intent was to reduce the costs to workers' compensation," that may be true, but that was only one part of what the legislative intent was. If you look at 4660, which is the basic change to permanent disability, what they did is they said that PD, of which apportionment is a part, should be changed so that we do not look at the wage loss of injured workers. They also said, looking at 4658, let's increase the disability that we give to the more severely disabled workers, and decrease the disability that we give to the less severely injured workers. So really what the Legislature said was that it wanted to reduce costs but at the same time it wanted to make workers benefits better, particularly for the more severely disabled workers. He stated that when talking about apportionment, we are talking about the more severely disabled workers, workers who have been injured more than once at work.

Mr. Gerlach asked if we are to assume that the Legislature increased benefits for workers who are above 70% and then somehow said let us take that all away with apportionment? He stated that he did not think that that makes sense. He stated that to say in the paper that it is clear that the legislative intent was to simply reduce employers' costs was thought to be very misleading and should not be a position taken by this Commission. Mr. Gerlach stated that that was one of the goals, perhaps, of the Legislature but it was at the same time to look at benefits for injured workers, to tie those benefits to wage loss and to make sure that the most severely disabled workers got adequate benefits under this system. He stated that that has to be part of looking at anything that is done. He stated that as a side note, talking about *Escobedo*, he thinks the biggest problem with *Escobedo* is that the Board did not apply the *Escobedo* rules in *Escobedo*. He stated that some of the *Escobedo* rules are not all that bad if they would apply them. The *Escobedo* laws say that the physician has to explain how the disability, how the impairment, is actually causing disability. He stated that that is frequently not done, and was not done in *Escobedo*, and that it is not done in a lot of other cases.

Mr. Gerlach stated that, finally, one needs to look at the question of how we have changed disability. Disability is now a question of what is the diminished future earning capacity of this worker; it is not necessarily looking strictly at *AMA Guides*. The question of how to apportion,

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

when looking at diminished future earning capacity, is totally unsettled, and looking at how other states do it with the *AMA Guides* is going to be of little help to those in California.

Commissioner Davenport asked if this was an action item and Chair Schwenkmeyer stated that it was not. Executive Officer Baker stated that it was an item for distribution only. She stated that it was a living document and was changing as Mr. Swezey had indicated. The Commission would like to receive feedback from the public. The vote would be to release it for public comment.

Commissioner Davenport stated that he thought he understood the distinction being made about the intention of the Legislature, and having worked for the Legislature for seven years, in his opinion, it is fair to say that when they repealed two sections of the law completely, that they have every intention of repealing every court decision that was based on those sections that otherwise would have been made on those sections in the future. He stated that on the other hand, the idea that they did not do the right thing is not necessarily dispositive of what the Legislature's intention was. He stated that very often the Legislature compromises and does not do the perfect thing. He stated that while there could be differences of opinion that is his opinion.

Roger Dillon of the Senate Labor and Industrial Relations Committee asked about procedure, whether it was the intention of the Commission to hold the paper for a month and then contemplate a final version within 30 or 60 days, or whether there was a plan to make the paper a permanent document. Commissioner McNally stated that he did not think it could become a permanent document yet without the Supreme Court responding to the Welcher arguments and waiting for direction there. He stated that this is evolving and there has to be a way to incorporate what the Supreme Court says in that decision into this document or it will be an irrelevant document.

Commissioner Wei stated that she concurred and CHSWC would vote for release of the paper and for public comment. Before any paper becomes finalized, the document would come back to CHSWC for review and a vote. She stated that there would be a window of time before any final approval.

CHSWC Vote

Commissioner Davenport moved to approve the release of the Draft Paper on Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment for public comment, and Commissioners Thacker and Wei seconded. The motion passed unanimously.

Misrepresentation and Under-classification of Workers' Compensation Premium Split-Class Code Abuse in Workers' Compensation

Frank Neuhauser, Project Director, Survey Research Center, UC Berkeley
Colleen Donovan, Ph.D. student, UC Berkeley

Mr. Neuhauser stated that he appreciated the continued support of the Executive Officer and the Commissioners for the research done at the University and by other groups on the workers'

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

compensation system. He also thanked John Wilson for his support during his years as Commissioner.

Mr. Neuhauser stated that his presentation is about a study done for CHSWC estimating both the amount of fraudulent under-reporting and mis-reporting by employers in California and the impact that under-reporting and mis-reporting has on premiums and competitiveness for honestly reporting employers. He stated that the work is done in conjunction with Colleen Donovan, an Economics student at the University.

Mr. Neuhauser stated that he will speak about the motivation for studying fraud in the workers' compensation system, some incentives for employers to cheat, a new methodology developed that will allow the estimation of the extent of fraud, and then the estimates of the fraud and the impact on honest employers. Mr. Neuhauser stated that all employers are required to either secure workers' compensation insurance or self-insure. He stated that this has been expensive in California in the past decade. In 2002, workers' compensation pure premium rates ranged from \$0.36 to \$42.07 per \$100 of payroll, and these pure premium rates do not reflect any added administrative costs that insurers add on. On average, employers paid premiums that exceeded 6% of payroll in 2003. He stated that this made California the most expensive state in the country, about 50% higher than the next closest state. In the face of these large costs and to some extent based on the ability to manipulate payroll and reporting, the study focuses on the extent to which employers fraudulently misreport to avoid these premiums. A key issue is how much the fraud affects the premiums that honest employers face.

Mr. Neuhauser showed a slide stating that it describes the motivation for the study. The graph showed how the premium rates rise and fall compared to the "exposure rate," i.e. payroll, and how they are negatively correlated. As premium rates increased, exposure rates decreased, and as premium rates decreased, exposure rates increased for payroll for insurance purposes. He stated that this was an indication that employers are responsive in their payroll reporting in terms of the kinds of premiums they face.

Mr. Neuhauser shared some anecdotes in recent press reports, stating that there has been some aggressive anti-fraud activity on the part of the Department of Insurance. In one case a company was required to pay \$475,000 in restitution:

"A San Diego Superior Court judge orders the owner of a San Diego-area construction company to pay more than \$475,000 in restitution to the California State Compensation Insurance Fund as part of his sentence for workers' comp insurance premium fraud....State Fund says it discovered the fraud after [the contractor] filed a workers' comp claim related to an employee for which [the contractor] had never reported wages." Source: Providence Publications, August 30, 2006.

In another case, a company was ordered to pay over \$3 million in restitution over a period of three policy years:

"The owners of an Escondido roofing company were ordered yesterday to pay \$3 million in restitution for underpaying workers' compensation premiums from 2001 to 2003." Source: The San Diego Union-Tribune, December 15, 2006.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

In yet another case, over \$31 million was under-reported over five or six policy years:

“The president and vice president of a Chatsworth-based flooring company were arrested Wednesday on charges of bilking the state’s workers’ compensation fund out of nearly \$11 million in premiums...[They] are accused of conspiring to under-report the true amount of the company’s payroll by more than \$31.8 million...between September 2001 and April 2006.” Source: CBS.com, October 18, 2006.

Mr. Neuhauser stated that these were employers who were reporting payroll; they were covered for insurance; it was not the group of employers who avoided insurance altogether or worked in the underground economy. These employers under-reported payroll, and in all likelihood, they were reporting injuries and getting injuries covered, but not paying the full insurance premiums.

Mr. Neuhauser stated that the incentives for employers to cheat were several, including: where premiums are based on employer reported payroll; where premiums vary by “class code”; and where employers usually report payroll for workers in several class codes. The range of payroll can differ by a factor of 100 across various classes. For example, for clerical/professional (8810), pure premium rates are approximately \$0.30 - \$0.75 per \$100 of payroll. In high-risk class codes like roofers, stable, low-wage construction jobs, the premium costs can range from \$20 to \$50 per \$100 of payroll. Employers can also report payroll in more than one class, so a construction company might have payroll that included clerical and professional workers, as well as those in dangerous professions like roofing and skilled construction. Therefore, employers have the opportunity to cheat in two different ways. In the first, they can simply under-report payroll altogether. Employers can simply report a fraction of their payroll, even if they did not misreport it by class, and reduce their premiums. Employers can also report payroll in a high-risk class as occurring in a low-risk class, for example, calling a roofer a receptionist, or the maintenance worker as the hostess. This would dramatically reduce payroll costs by moving from a high-risk, high-cost class to a low-risk class.

Mr. Neuhauser stated that if employers are simply under-reporting, reported payroll will be below actual payroll for all classes of workers. Another result would be more under-reporting in high-cost, high-risk classes of workers, for example, in construction. If employers are mis-reporting, i.e., accurately reporting payroll but not reporting in the correct class, one might find over-reporting of low-cost classes and under-reporting of high-cost classes.

Mr. Neuhauser stated that in reality, probably both types of fraudulent reporting occur in the system. The net effects will somewhat balance the two types of fraudulent reporting within the low-cost classes. He stated that decreased reporting in classes as rates increase across classes may be observed, as the percent of payroll reported in class declines as the costs per \$100 or payroll increases, and he stated that over-reporting in low-premium classes may be observed. Also, he stated that there may be a trend showing that as overall reporting decreases overall rates increase.

Mr. Neuhauser stated that the approach of the estimation of fraud is challenged by the fact that no one knows what the true payroll is or the extent of the underground economy. In addition,

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

no one knows what the payroll for employers actually is. What is known is the payroll for employers that is actually reported to the Workers' Compensation Insurance Rating Bureau (WCIRB), i.e., reported to insurers and then reported to the WCIRB. Mr. Neuhauser stated that an estimate of what the true payroll should be for people who are covered by workers' compensation can be made using the Current Population Survey (CPS). He stated that everyone is familiar with the CPS, since it is where we get the monthly unemployment statistics and much of the information about work and health insurance and many other factors important to policy issues. This is an extensive survey done on a large number of households (about 5-6,000 per month). The data in the CPS is compared with the data in the Rating Bureau for similar occupations (called "class codes" at WCIRB).

Mr. Neuhauser stated that the class codes are matched to occupation and industry information that is available in the CPS. The methodology is described in the paper which will later be distributed. This methodology is open for criticism by anybody who would like to try to improve upon the method. He stated that he does not expect any bias that will influence the results.

The true payroll comes from the CPS as the survey asks questions such as salary and wages (covered by workers' compensation), and self-employed status (not covered by workers' compensation). These data can be compared by class codes. There are differences between what is reported to the rating bureau for payroll and what is actually reported as total payroll. Certain things are excluded from premium calculations in workers compensation; the most important ones are overtime and shift pay differentials (only single time is included because it is a measure of exposure to risk as opposed to actual wages) which together represent about 4.5% of total wages that would not be reported for calculation of premium. Also excluded were self-employed payroll and payroll for public agencies for the purposes of the fraudulent discussion.

Mr. Neuhauser described some important qualities of the CPS. He stated that the CPS is known for being successful at capturing workers in the underground economy. Unlike other sources of wage and salary income, CPS is a fairly accurate representation of wage and salary income for workers that are operating outside of the regular economy, which means that their employers are not only not paying workers' compensation but are also neither paying payroll tax nor reporting unemployment insurance (UI) earnings. Another consideration is that the CPS asks workers whether they are self-employed; the survey carefully probes for the correct answer to this issue. He stated that they do not know whether workers calling themselves self-employed are self-employed according to the definitions uses in workers' compensation. It is a strict definition in workers' compensation. An important way to avoid paying workers' compensation costs is to classify workers as independent contractors to avoid workers' compensation premium and to avoid hiring workers. When workers report their status in the CPS survey, they are probably reporting their understanding of their status with respect to the employer, but the WCIRB may not be reporting what the employer is describing as the working relationship.

Mr. Neuhauser stated that using those two sources estimate how much payroll should be reported in California for employers that should be covered by insurance, and how much is actually reported by insured employers to the for purposes of calculating premium. He stated

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

that from 1997 to 2002, there was a substantial under-reporting of premium by employers. It ranges from about 10% in 1997 when rates were substantially lower to in excess of 20% in 2002 when rates were several times higher than 1997. This amounts to about \$30 billion of under-reported payroll in 1997 to around \$100 billion in payroll in 2002. He stated that 2002 was not the peak of insurance premium, and it would be interesting to see if it continued to rise for 2003-2004. This represents substantial under-reporting.

Mr. Neuhauser stated that to put this in perspective, a recent study in New York State estimated under-reporting at about 15% of payroll. That is consistent with estimates in California. Under-reporting of about 20% in California is consistent with other studies, and the degree is very sizable. In addition, the effects are striking in terms of level of premiums. In one chart, for classes of premium in the low range (\$1-\$5 per \$100 of payroll), the reporting process is fairly complete; but in classes with premiums starting at \$7 and continuing to \$20, under-reporting reaches a level of about 70% for these high rate classes. In another chart, most employment is demonstrated to be in the low-risk, low-premium class codes. Around 35%-40% of employment is in the lowest-risk, lowest-premium decile, white collar clerical and professional work. However, a substantial fraction of employment is in class codes that have under-reporting to the extent of 60%-70%. These are classes like low-wage construction workers not in the union sector, stables, roofing, and many other areas where we think the underground economy plays an important role. He stated that they also analyze this using regression, and what they found was substantial confirmation of the impact of the rise of premium costs and employer reporting. Even when looking within a particular class, as premiums rose, the level of under-reporting also rose; this is independent of any definitional problems of putting people in a class. He stated that they find that as the overall levels of premium rates increase, the level of reporting declines substantially.

Mr. Neuhauser stated that it was important to understand the impact on honest employers. He stated insurers probably have a relatively low incentive to accurately monitor or audit aggressively. The reason is that the premium rates reflect full recovery of the costs for insurers; even if there is under-reporting of payroll, insurers are getting premium that cover the costs they experience. He stated that auditing employers aggressively is expensive, and that more aggressive auditing might drive away high premium account business to other insurers. He stated that there is a fairly aggressive auditing program for auditing the policies of insurers in California.

Mr. Neuhauser stated that another primary issue of under-reported or mis-reported payroll by employers is the impact on insured employers if those under- or mis-reporting employers also under-report the injuries. In this case the impact would not affect insured employers' premiums because neither the injuries nor the payroll will get reported. He stated that a key question is whether this is likely to be the case. He stated if employers have payroll and have claims, they are always better off reporting the injuries that occur; it is always cheaper to report injuries and get recoveries through the workers' compensation insurer than to worry about how or whether the reporting of injuries will drive up costs. Therefore, it is not likely that insured employers are going to avoid reporting injuries. In fact, as in an earlier comment, employers may even report injuries of workers whom they have never paid wages to. He stated that therefore, it is advantageous for employers that are under-reporting or mis-reporting to properly report claims.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

He stated that another question would be if these claims end up in the correct class code, even if the employer is mis-reporting payroll. He stated that they expect accurate reporting of the claim class code because this is done through doctors' first reports, while descriptions by the worker of the job, the type of injury, and the class code of the claims are assigned by the insurer. The implication would be that the majority of costly claims are included in the reporting, with the majority of claims accurately reported by class code.

Mr. Neuhauser commented that for honest insurers, the implications are noted in a chart. The researchers charted the actual premium paid at different risk levels and recalculated and charted what the premium paid would be if all payroll were accurately reported, assuming payroll was under-reported but claims were accurately reported. The chart shows that in low-risk classes where there is substantially accurate reporting, the true premium rate is equivalent to the current rate. However, he stated that towards the area of 30% of classes with relatively high premium rates, the current premium ranges in a multiple of two-to-five times the premium rate than what they would be expected to pay under full reporting. An honest employer with fully reported payroll is probably facing premium rates in these high class codes that are several times what they would be in the case of full reporting. He stated that this assumes that employers that under- or mis-report are also reporting their claims.

Mr. Neuhauser further commented that they would like to test whether that is an accurate assumption and how those premium rates would be made under a different system. He stated that in another chart, the adjusted (expected) premium is charted against a national expenditure survey of occupational medical costs for each of the class codes. The average medical costs over a period of two years increase about four times (between the lowest class code and the highest class code), and he noted that medical costs are a major component of workers' compensation costs. He stated that this is a little slower than the increase in the estimate for true premium, which increases about six or seven times between the lowest-risk class codes and the highest-risk class codes, but that the rates are similar. He stated that the medical costs would rise a little less sharply and underestimates the full medical cost because there are only two years of claim costs on injuries, and more serious injuries are more likely in the higher-risk class codes and have larger claim costs that are not fully shown in the chart. He stated that they are missing a larger fraction of claim costs for more serious injuries, but that the lines on the chart are quite similar for adjusted rates, and they are also quite different from current premiums. He stated that this is confirmation that, because of fraudulent under-reporting, employers are facing premiums that are several times higher than they would face under full reporting by all employers.

Mr. Neuhauser stated in summary, between \$30 and \$100 billion of payroll is under-reported over this period for employers that should be insured for workers' compensation insurance. This includes the underground economy and under-reporting by employers that do have insurance. This is about 10%-20% of the wages that we see for this sector of employers, and there is substantially more under-reporting in the high-risk class codes than in the low-risk class codes. He stated that this results in premium rates that are likely to be unfairly high for honest employers; they probably face rates two to five times higher in the high-risk class codes than they would face under full reporting. He stated that this affects the competitiveness of honest employers; not only are they facing higher premium rates, but they are competing with

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

employers in fields where workers' compensation costs are a very important part of competitive contracting. There are only limited incentives for insurers to accurately monitor under-reporting, and under-reporting is probably offset by the higher premium rates that are observed. He stated that the WCIRB audit process is not open to scrutiny by public members.

He stated that they will be circulating papers and would appreciate comments about how to improve analysis of under-reporting and mis-reporting of payroll in California. Some discussions with stakeholders suggest the test audit program of the WCIRB be run by an independent auditor instead of an insurance organization, opening the audits by the rating bureau or the independent auditor to public access, or increasing civil penalties on under-reporting and mis-reporting. Other suggestions for insurers are access to employer records at the Employment Development Department (EDD). Currently an employer under-reporting payroll but paying payroll taxes can do so with some protection because EDD does not release payroll records for tax reporting to the insurer for comparison purposes. He stated that this is a fairly simple process and that it would make it easier for insurers to monitor total payroll. At present, employers only identify payroll, not who is working in different classes. Therefore, it is only after the injury that a worker and a class are identified. For high-risk classes, that might be done up front as it is a small number of workers and an obvious area for a high degree of fraud. He stated that this is not unlike integrating occupational and non-occupational medicine. For group health at an employer, the employee is always identified before a policy starts rather than after appearing at the hospital for treatment; this would therefore be a prospective system.

Questions from CHSWC Members

Commissioner Aguilar asked in reference to the first chart in the presentation how much of the decrease in reported payroll exposure can be attributed to employers leaving the state because of higher workers' compensation costs. Mr. Neuhauser stated that in an adjusted graph, accounting for business cycles and changes in employers shifting between self-insurance and insurance, the graph changes a little bit but the relationship stays strong even considering businesses leaving the state. He stated that any reduction in business activity does have an effect, but it does not explain the association that is evident between premium rates and reported payroll.

Commissioner Davenport stated that his understanding of the presentation is that economically rational employers know something about what their competitors are doing. For example, if you are in the \$42 rate range and you are doing what your competitors are doing, a lot of the same employers are under-reporting. He stated that it would be difficult to imagine that an employer in those very high-risk class codes can be fully reporting payroll and also be competitive with an employer that is reporting 20% of payroll. He stated that it may be that employers are simply forced to under-report just to stay competitive and that they are being no more or no less fraudulent than their competitors. He stated that there are some employers out there who are essentially required to report fully and those employers are unionized employers that report to the Health and Welfare Trusts. Employers of that nature can simply not avoid the consequences of this. There is the possibility that an employer can self-insure or can insure with a large deductible policy in order not to face the full premium costs. Honest employers are put in a real bind by these very high insurance rates that are not being faced by their competitors.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

Commissioner Davenport asked whether a carve-out was another option for an employer that has to honestly report payroll. Mr. Neuhauser stated that carve-outs are a possibility when employers and insurers pool. They can be experience rated fully and might self-insure in that pool, but to avoid premiums and the impact of under-reporting and mis-reporting by other employers, an employer has to avoid the premium rates. This can only be done by cheating or self-insuring.

Commissioner Wei asked if there were any implications to the insurers for under-reporting, whether it makes an insurance company any less stable. Mr. Neuhauser stated that the implication based on the data is that as long as the premium rates remain artificially high, under-reporting does not pose as big an issue for insurers. They are still recovering their costs. He stated that it probably does make it difficult for insurers to maintain a stable premium rate, as well as stable costs. Insurers could be getting good or bad employers. If they get the good, honest employers, they get more money; if they get the bad employers they could get really hurt, and that is an incentive to audit. Overall, insurers appear to be covering their costs with the premium rates even in the high-risk class codes.

Commissioner Wei stated that at some level, turning a blind eye to the under-reporting does not matter to the insurers because they can make it up on the high end. She stated that she was a little concerned because the insurers are sponsoring a bill this year that would triple the premium costs for employers who refuse to turn over their payroll for auditing. She stated that the way they have spoken about the issue is that they cannot audit because employers will not turn over their records. She commented that what she is hearing from the presentation is from the other end; insurers do not audit because there are no real incentives to audit. Mr. Neuhauser stated that he does not want to overstate the case for the lack of incentives because insurers are both by regulation and by their nature cautious about these things, and they are required to audit. The WCIRB monitors their auditing. He stated that it is not clear that the auditing is very successful. It is a tough balancing act for insurers, as they have to be aggressive enough to satisfy the regulatory agencies without it being too costly to business.

Commissioner Wei stated that in these schemes, for lack of a better term, employers are looking for ways to save costs but they do not come up with these ingenious schemes, but that there is someone else who is teaching them or some third party is advising them on how to basically commit fraud. She asked whether Mr. Neuhauser knew anything about third parties or what role the brokers might have. Mr. Neuhauser stated that he did not know. He stated that there are anecdotes that brokers discuss with employers about how to get a cheaper rate from their insurer if they classify workers more “conservatively.” He also stated that there are certainly examples of this; just this week, a large insurance group in Florida and California was not actually an insurer at all, as they did not have any policies but had \$100 million in policy premiums but did not have an insurance company. He stated that there are schemes, even offshore schemes, but he stated he did not know how widely such schemes are used. Commissioner Wei asked if brokers had a fiduciary duty, and if so, to whom it is. Executive Officer Baker stated that she would provide an answer in follow up for her.

Commissioner Steinberg asked who paid \$42 per \$100. Mr. Neuhauser stated that there were several class codes in that range, such as non-union roofers, low-wage roofers, stables, race

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

tracks, and low-wage high-risk metal construction. He clarified that that figure was the pure premium rate and that employers were probably paying close to \$60 per \$100.

Executive Officer Baker stated that to provide background for the new Commission members, these two studies, the premium fraud and split code classification, are part of a series of five studies that were developed as an agenda by a task force made up of the Fraud Assessment Commission, CHSWC staff and other stakeholders in the system. Five studies were developed as part of this agenda on: split class codes; underpayment/overpayment in the medical system; evaluation of the gray economy; under-reporting of claims; and premium fraud. She stated that these are studies presently under the Commission's auspices.

Questions from the public

Ms. Deborah Nosowsky, DJN Consulting asked about the current and adjusted premiums slides in the presentation. She asked if the wide disparity between current premium and adjusted premium is accurate to today's situation, and whether it was adjusted for any behavioral changes in under-reporting and mis-reporting as a result of a drop in premium of over 65% since 2002. She asked if it is not adjusted, then why call it "current." Mr. Neuhauser stated that the rates were current for the year of the CPS data that they were observing. Ms. Nosowsky stated that her point is that the slide should say "current through 2002" because if it is not adjusted for a change in reporting behavior with the 65% drop in premium, then it does not give a picture of today's behavior. She stated that this does not mean that everyone is not hurt by people who do not pay premium or do not get insurance at all. Mr. Neuhauser stated that this was a good point. He further stated that with a significant decline in premium rates, they would expect an improvement in employer reporting in the past two years. He stated that it is unfortunate that the data they obtain on reported exposure lags by a couple of years. He stated the Census Bureau is releasing data through 2003 later this month.

Mr. Dominick Dugo, Deputy District Attorney in San Diego Insurance Fraud Program, stated that he is pleased that there are reports like this one and the one in New York. He stated that in San Diego, they started the Premium Fraud Task Force in 1996, and that it has been extremely active. Members of the Task Force are the D.A.'s office, the Department of Insurance, the Franchise Tax Board, EDD, the Labor Commissioner's office, the Contractors State Licensing Board, and the Bureau of Automotive Repair. He stated that the trend in a number of cases, as in, for example, two of the cases cited in the presentation were from San Diego, is that employers are actually failing to report injuries to the insurance carrier. He stated that they were not seeing that back in 1996-2000, but it seems to be a more recent trend in the past two years.

Commissioner Wei asked Mr. Dugo why he thinks the failure to report injuries is happening. Mr. Dugo stated that it was to avoid being prosecuted for other premium fraud. Commissioner Wei asked if this was because word was out that San Diego was prosecuting fraud in San Diego. Mr. Dugo stated that that was the case. She asked if they were seeing under-reporting of premium as part of their anti-fraud activities. He responded that they were. She asked if he had any recommendation to curtail or catch it any earlier. He stated that with aggressive prosecution, the approach in San Diego to different tax agencies works. If someone is committing fraud with

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

tax evasion, for example payroll tax evasion, and if someone is not afraid to cheat the government, they of course are going to cheat on the insurance company. Mr. Dugo stated that you have to assume that all or most tax evasion cases are also premium fraud. He further commented that an aggressive prosecution has an effect.

Commissioner Wei asked which comes first, prosecution on tax evasion or workers' compensation fraud. He stated that they do them both. By having the agencies working together, they look at the total picture. Oftentimes, in under-reporting of payroll, the employer commits tax evasion by paying some employees in cash and at the same time not reporting payroll to the carrier. Commissioner Wei asked if the tax evasion part automatically triggers an audit of all their other employer obligations of payment. He stated that the beauty of working with all the agencies is that all those obligatory reporting documents are available, and it becomes a matter of comparing the documents and making the appropriate charges. He stated that it is not uncommon to have tax evasion, premium fraud, maybe income tax evasion and other charges.

Mr. Neuhauser stated that it was not accidental that there were many citations of San Diego cases. He stated that San Diego had been very successful.

Split Class Code Abuse in Workers' Compensation

Frank Neuhauser, Project Director, Survey Research Center, UC Berkeley

Colleen Donovan, Ph.D. student, UC Berkeley

Mr. Neuhauser stated that split classifications was a specific area studied. In the late 1980's, partly as a result of Cal Fed and labor's efforts and also motivated by rapidly rising premiums, there was a concern that unionized construction employers were disproportionately disadvantaged through workers' compensation because they typically paid high wages on which the premiums are based and consequently higher total premiums than employers with non-union workers the construction industry paying lower wages and also lower premiums. Also, unions felt that they have extensive training, even after the Apprenticeship training, which includes formal training in safety, and are probably substantially safer than their non-union counterparts, yet, Mr. Neuhauser stated, non-union counterparts were paying substantially lower premiums because they were paying workers less than union workers. For example, a low-wage worker working 1500 hours in the construction industry at \$10 would cost \$1500; the same worker working 1500 hours at a union employer would cost the employer \$3,000. In addition, Mr. Neuhauser stated, experience modification protects only the very largest employers from the two different wages; it does not help some employers, including small employers and those who are not experience rated and even the large employers who are partially experience rated.

Mr. Neuhauser stated that in the late 1980s and 1990s, WCIRB developed about 21 classes of construction workers that are split into high-wage workers and low-wage workers. The high-wage workers are typically union workers, whereas the low-wage class code is almost entirely made up of non-union workers. As a result, the premium rates for the two wage classes differ significantly. The premium for the low-wage workers are about twice to three times that paid for the high-wage workers with the same risk. Mr. Neuhauser stated that there is concern that

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

employers who are acting fraudulently, about 20%, will mis-report low-wage workers as high-wage workers so they slip into a lower premium level and force up the premium rates for high-wage workers. This gives the fraudulent employer a significant but fraudulent advantage over honest employers by artificially increasing premium rates for all high-wage employers. Mr. Neuhauser stated that the impact on honest, high-wage employers is increasing premium rates because the same wages represent more hours at risk, and the problem gets worse if low-wage employers have riskier work or less well-trained employees.

Project Update: Workplace Safety for Public Safety Employees in California
Seth Seabury, Associate Economist, RAND

Seth Seabury presented an update on workplace safety and injury prevention activities for public safety employees. He stated that the presentation provides only preliminary information and not finalized work. He stated that there is public concern over the risks faced by public safety workers associated with high costs of disability compensation for these workers. Public safety is a dangerous occupation, and workers are much more likely to be hurt or killed on average than those in other occupations. In California, injury and disability compensation represents a substantial fraction of the labor costs of these workers, and this raises questions of whether the high rates of injury are using up resources that could otherwise be used to promote public safety to the extent that these injuries and illnesses could be prevented. Mr. Seabury stated that reducing the number of injuries could potentially benefit workers by and could potentially benefit employers by reducing injury and disability-related costs.

Mr. Seabury stated that a key challenge with this is how the number of injuries can be reduced without compromising public safety. The intrinsic danger involved suggests a need for specialized safety interventions. More information is needed to determine which specialized safety interventions would be effective, including: what the causes of injuries, fatalities, and disabilities are; are the same factors causing injuries, fatalities and disabilities; what is causing injuries in each specific job; and what kinds of policy or department-level interventions are both feasible and effective. He stated that the study will attempt to answer some of these important questions, including: what kinds of injuries afflict public safety employers in different occupations; how these differ from injuries suffered by other workers, public and private, including what causes public safety injuries; and what strategies would be effective in reducing injury and disability rates. Mr. Seabury stated that the study represents a jointly sponsored research effort. RAND has received equal funding from CHSWC and the National Institute for Occupational Safety and Health (NIOSH). NIOSH is interested in these issues and has supported several RAND research studies that have looked at issues in public safety. Mr. Seabury stated that study results will be published in a single report for both organizations.

Mr. Seabury stated that he would first discuss characterizing the types and causes of injury and what causes them, soliciting input from the public safety community, a summary of findings, and next steps. Mr. Seabury stated that the first step is characterizing what is known about public safety employee casualties and what causes them. This will allow the study to focus on the most common and most costly injuries, as well as to evaluate the common risk factors and will help to identify department-level interventions that are most likely to be effective.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

Mr. Seabury stated that one of the steps taken in the study to date was a review of existing studies on occupational safety issues for police, fire, and emergency medical technicians (EMTs), using data from several sources, including observational studies using workers' compensation data, industry and trade reports using surveillance data, survey data, and targeted interventions. Another step taken was to synthesize these studies into a review of what is known about casualties for emergency responders and how to prevent them. He then stated that existing research on this issue is limited. National surveillance data are limited in scope and reporting is generally inconsistent; given the lack of national data, most studies examine small convenience samples. Another limitation is that the majority of research addresses fatalities so that non-fatal injuries receive much less attention and chronic illnesses receive almost no attention. He also stated that the vast majority of research is on the fire service with very little known about law enforcement or EMT. EMT is often hard to define as a category; often fire fighters are doing EMT work when not fighting fires.

Mr. Seabury stated that there are about a million fire fighters (including paid and volunteer), 600,000 law enforcement officers, and 500,000 are estimated to be involved in emergency medical services. EMT duty is very difficult to determine. About 26,000 departments provide fire service, and 18,000 departments provide law enforcement services. It is not known how many departments and private companies are providing emergency medical services, so it is difficult to consider it a national department and obtain data.

Mr. Seabury stated that injuries and fatalities represent two quite different problems for the fire service. The data available are on paid fire service workers. Injuries are dominated by strains and sprains, constituting approximately 40 to 50% of injuries and approximately 60% of workers' compensation costs. Some of these injuries more typically occur in the firehouse or transitioning to going to a fire. In contrast, fatalities were dominated exclusively by two causes, heart attacks and strokes, which were approximately 50% of fatalities; and vehicle accidents, which were approximately 25% of fatalities. Mr. Seabury stated that there may be some overlap between fitness programs that can potentially reduce back injuries and fitness programs that can reduce cardiovascular problems. However, in general, two different types of interventions would be needed for these two categories. Mr. Seabury stated that known fatality risk factors are key. Past research shows a correlation between cardiovascular risk factors and fire service fatalities, with key factors being obesity, high cholesterol, hypertension, and other major factors such as being 45 years old and older and being current smokers. He stated that there are also fire service-specific factors that may also contribute to cardiovascular risk, including the transition from resting to high levels of exertion, overheating, and smoke inhalation and inhalation of other toxics. These factors increase the risks of heart attack, stroke, and cancer.

Mr. Seabury stated that if personal risk factors are known, it is possible to try to reduce injuries and fatalities. Looking at the fire service, there are three categories of known injury risk factors: (1) personal risk factors, which are characteristics of the individual, such as age, physical fitness, and psychological profiles, (2) workplace risk factors, which are aspects of the job and the nature of work, including job tasks and training, which is important but very risky, as a number of injuries occur during training; and (3) environmental risk factors, or incident-level factors, including large incidents greater than five alarms, and tall structure or greater than three stories.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

He said that all these factors needed to be considered when designing an intervention to improve safety and health.

Mr. Seabury discussed how the information obtained can be used to reduce injuries. Statistics indicate how many and what kind of injuries there are; however, they do not reveal the best ways to go about reducing injuries and what kinds of policies to implement without interrupting the basic ability of employees to do their jobs. Therefore, it is important to look to qualitative research, or input from the public safety community about injuries and illnesses and about interventions that might be effective, including the key opportunities and impediments to improving safety.

Mr. Seabury stated that in-depth discussions were held with members of 8 California agencies covering fire/emergency medicine services, law enforcement and corrections. The discussions targeted department leadership, safety officers, and risk managers. A standard discussion protocol was used to impose some structure; in-person meetings were held at the department level for 1.5 to 2 hours; and contributions were all not-for-attribution. Mr. Seabury stated that they were pleased with the kind of participation in the discussions; participants were highly engaged, thoughtful, and candid.

Mr. Seabury stated that discussion protocols touched on four key topics relevant to workplace safety and health: the operational environment and work activities to understand what each department and its members were doing; safety and health risks in the work environment and the causes; what is being done about safety and health promotion initiatives; and insight about compensation mechanisms. Determining how fire safety officers spend their time would inform the type of interventions. He stated that they were also interested in hearing about possible interventions, including when they would take place and in what timeframe. He stated that it is important to identify time allocation for different officers and different jobs. This differs significantly by occupation, and it is difficult to generalize about time allocation, particularly for fire and police. For fire, incident response is about 30% of how officers spend their time; down time is about 30%; about 20% is maintenance, administration, and housekeeping; 10% is training; 5% is inspections; and 5% is outreach and education. For police, activity in the car is 65% of the time, with out of car being 25%, time in the station about 8-10% and training about 1%. In general, fire service often identified maintenance and recreational activities as a key area for injuries and illness, while police and corrections universally identified assaults and foot pursuits.

Mr. Seabury stated that the discussion revealed a wide range of safety and health risks including: the most mentioned were slips, trips and falls; vehicle crashes; assaults and foot pursuits in police and corrections; and training and exercising; maintenance and recreation activities in the fire station. Some general contributing factors identified include: work environment factors, such as factors specific to the actual emergency and repeated rapid transition from sedentary to active; department culture, including aggressiveness and tolerance for unsafe behavior; insufficient fitness levels; equipment weight and comfort related to equipment carried; and inexperience.

Mr. Seabury stated that views on safety interventions and health promotion seemed mixed. There was no real consensus what can and should be done, and there were differences in views between fire and police. For example, fire receives more guidance from national organizations, and

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

reducing injuries was not necessarily seen as a priority for departments, but as secondary to the primary mission of protecting the public. Mr. Seabury stated that approaches to fitness varied and included: fitness was universally cited as a key component to safety and health; all departments have fitness tests for entrance, but continuing fitness requirements are uncommon and worker resistance to fitness testing exists; and access to fitness resources varies considerably, as fire fighters have equipment in the stations and time to exercise, and police rely more on individual initiative during off hours to find time to exercise.

Mr. Seabury stated that interventions in several areas emerged as having the potential to be targets to improve safety. Four main interventions included: monitoring and analyzing data; training; command guidance; and equipment improvements. Mr. Seabury also stated that current data monitoring is generally viewed as inadequate and that immediate and formal information-sharing between different departments is reported inconsistently. Barriers to sharing information include the pressure to not report unsafe events because of fear of dismissal or litigation concerns must be overcome; sharing information would help departments help themselves to identify trends and improve safety through low-cost interventions. Cross-department information sharing would also help make changes in operational policies and motivate the adoption of new protective equipment.

Mr. Seabury stated that it was universally accepted that proper training is a powerful tool in promoting safety. Training would include: quality driving training, which is critical to both police and fire; “verbal judo” to avoid physical confrontations and ground (“street”) fighting, which was particularly emphasized by police; and increased training which may help combat inexperience caused by improved fire prevention, important in the fire service; and budget constraints.

Mr. Seabury stated that other factors emerged as potential targets for intervention, including: clear command guidance, which requires clear leadership to convey the expectations for safety; equipment improvements, including tasers to reduce physical confrontations, redesign the steps onto an apparatus; and lighter-weight nylon equipment belts and lighter accessories for such items as flashlights, radios, and weapons.

Mr. Seabury stated that he is optimistic that there are opportunities to improve the safety and health of public safety workers which include: recognizing that many injuries appear to be caused by modifiable health risks; several possible starting points for interventions, including training, operating procedures, and technology and equipment. In addition, there is a strong case for the need to collect and disseminate more information and more information sharing. He also stated that department-level interventions need the support of all parties. There is a need to focus on feasible interventions of modifiable factors, but also to recognize that this is not an obvious priority for many departments, particularly because they are already facing limited resources. Finally, some valid interventions will probably face opposition because workers are concerned about job security and departments are concerned about costs. To implement effective interventions, all concerns will need to be addressed.

Mr. Seabury stated that data analysis is ongoing with key questions including: how the longer-term health of safety workers compares to others; how the rates of chronic disease and disability

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

correspond to the high injury rates and which types of injuries lead to disability; and whether different interventions are necessary to reduce disabilities and prevent injuries.

Mr. Seabury stated that the study will have important implications for policy, at the national level and for California including: it will help inform the design of policies that will improve safety; explain the role of workplace factors and modifiable health risks in driving injury and disability rates; and motivate new and innovative efforts to improve safety that have the best chance to succeed.

Questions

Commissioner Aguilar asked which agencies RAND has talked to. Mr. Seabury responded that they talked with Corrections, LA County Fire, Oakland Fire and Police, Santa Monica Fire and Police, as well as agencies in Sacramento. Commissioner Aguilar stated that she thought it would be a good idea if they talked to San Diego. Mr. Seabury responded that they would be happy to do so.

Commissioner Aguilar asked whether injuries and illnesses occurred during physical fitness training. Mr. Seabury responded that most of the fitness training activities fell into recreational activities. He stated that often, fitness programs in the workplace are not a job requirement but they are encouraged. There are some incentive structures so that individual initiative and incentive structures would still be important.

Commissioner Aguilar stated that there are presumptions in the law regarding certain illnesses, such as heart attacks. She stated that she does not oppose the presumptions but she thinks that there are factors that are not work-related that might have caused some of the illnesses that fire fighters and police had and ended up being compensable because of the presumptions. Mr. Seabury responded that this is entirely likely. Mr. Seabury responded that typically heart disease is not considered a job-related injury; however, in the fire service, heart disease is presumed to be job-related, and the employer has to prove that it is not job-related. Commissioner Aguilar stated that her point is not that there should not be presumptions but that it does not allow for any opportunity to provide research data that heart attacks were not work-related because they were presumed to be compensable.

Commissioner Aguilar stated that in San Diego Police Department, an announcement was made that one of the reasons they were able to have 9% raise was because police agreed not to file workers' compensation claims for any physical fitness activities. She stated that police and fire fighters are expected to stay in shape. Mr. Seabury responded that this has been an issue for a long time, and that there was an article in the LA Times around 1999 or 2000 about officers filing claims for injuries happening during physical fitness activities during their leisure time under Labor Code Section 4850, but he has never heard of anyone voluntarily agreeing not to report injuries. Commissioner Aguilar recommended that RAND talk to San Diego, and Mr. Seabury responded that they would.

Commissioner Wei asked if RAND contacted unions when they did the focus groups. Mr. Seabury responded that early on in the project, they outlined the project and solicited input from

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

labor representatives and employer representatives. There were no labor representatives in the focus groups. They spoke to safety officers and the actual workers. Commissioner Wei stated that it might be helpful to go to the unions and present the information so far to get feedback. She stated that she would be happy to facilitate that. Mr. Seabury responded that he would like to do that.

Proposals for the Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

Linda Delp, Labor Occupational Safety and Health Program (LOSH), University of California, Los Angeles

Robin Dewey, Labor Occupational Health Program (LOHP), University of California, Berkeley

Linda Delp said that she would continue the theme of preventing work-related injuries and illnesses by discussing the Worker Occupational Safety and Health Training and Education Program (WOSHTEP), implemented by LOHP and LOSH. The two goals of the program are to reduce injuries and illnesses of workers and lower workers' compensation costs for employers through health and safety prevention. She stated that the legislative mandate for WOSHTEP includes promoting worker participation through injury and illness prevention programs, joint labor-management health and safety committees, and training other workers. WOSHTEP was mandated to address: high-hazard industries; industries with high rates of injuries, illness and compensation costs; and underserved workers or those with limited English and limited literacy; and young workers.

Ms. Delp stated that the WOSHTEP components are: a labor-management Advisory Board; Worker Occupational Safety and Health (WOSH) Specialist Training; Small Business Resources; Young Worker Health and Safety Programs; and Resource Centers in Northern and Southern California. WOSHTEP programs reach workers in a variety of industries and occupations, including janitorial/maintenance, small manufacturers, construction, health care, corrections and rehabilitation, food service/restaurants, laundry, agriculture, transportation, schools, refineries, warehouse, garment recycling, and meat packing.

Ms. Delp stated that the two models for the WOSH Specialist courses are: industry-specific, such as the Department of Corrections and Rehabilitation, janitorial contractors, and small manufacturers; and open enrollment with partners, such as insurance carriers, community colleges, and community and labor organizations. WOSH Specialist accomplishments include: strengthening health and safety committees; assisting in developing Injury & Illness Prevention Programs (IIPPs); and acting as a health and safety resource to co-workers.

Ms. Delp stated that the WOSHTEP Small Business Resources component has implemented a restaurant safety training project. The objectives of this project are to train owners and managers so that they can train their workers to identify hazards in their own workplace and develop solutions to those hazards. Partners for this project include: the State Compensation Insurance Fund (SCIF), which plans to host workshops statewide in all the District Offices; Cal/OSHA

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

Consultation; and the California Restaurant Association (CRA). Training is conducted by LOHP in Northern California and by LOSH in Southern California. Materials are available in English and Spanish.

Ms. Delp stated that the goals of the Young Worker Health and Safety component of WOSHTEP are to: educate youth about workplace rights and responsibilities and safety in the workplace; develop leadership skills among high school youth; develop and implement service-learning projects in schools and communities to promote workplace safety during and beyond Safe Jobs for Youth Month in May each year; and transform learning into action. Each year, one Young Worker Leadership Academy is held in Northern California and one in Southern California. Teams of youth represent schools and community organizations statewide. Youth who have attended the Academies in previous years return to act as youth mentors to new Academy participants. The youth mentors are forming their own network to share resources and health and safety activities.

Ms. Delp stated that Resource Centers are housed at LOHP and LOSH and can provide printed and online materials on occupational health and safety to people who go through the WOSH Specialist course and to others who ask about resources on health and safety. An Online Multilingual Health and Safety Resource Guide is available, as well as technical and research assistance and referrals to state and local health and safety agencies.

Ms. Delp stated that evaluation of WOSHTEP is being conducted by an independent program evaluator. The two components being assessed are the 24-hour WOSH Specialist course and the Small Business/Restaurant Safety Training Program. Quantitative and qualitative data are being collected from Registration Forms, Post-training Forms (Post-Tests), and follow-up interviews to assess the impact of the trainings. The follow-up interviews will indicate the approximate percentage of WOSH Specialists who engaged in health and safety activities, how the information and skills learned were used, what challenges the WOSH Specialists faced, and what more they would like from the program. More specific information about the evaluation results will be available later in the year.

Robin Dewey from the Labor Occupational Health Program (LOHP) and UC Berkeley stated that WOSHTEP is a worker leader health and safety program and that all four components of WOSHTEP focus on workers who are taking a leadership role in health and safety in their workplace. The new 2007-2008 initiatives for WOSHTEP include expansion of WOSH Specialist courses to new areas of the state, including the Central Valley, San Diego, the Inland Empire, San Jose and Redding, and expansion to additional government agencies. Another initiative will be the development and implementation of new materials, including: a new Specialist course module on emergency response/disaster preparedness; a collection of materials on workplace wellness emphasizing integrating personal lifestyle issues with occupational health; a new fact sheet on prevention of motor vehicle accidents which are a major cause of injuries and deaths; and an updated English as a Second Language health and safety curriculum developed by LOHP for youth in agriculture.

Ms. Dewey stated that WOSHTEP will continue to offer the Restaurant Safety Training Project but will also expand small business health and safety training and materials to a new industry

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

with a strong employer association to partner with and a large number of small businesses, particularly those with low-wage workers, such as nursing and residential care, beauty and nail salons, landscape workers and tree trimmers, janitorial services, and grocery stores. Another small business effort will involve development of a collection of general health and safety materials that could be used by any small business. Another new initiative is to develop a Training-of-Trainers (TOT) class for Loss Control Specialists in the insurance industry to help them provide the restaurant training or general health and safety training using WOSHTEP materials for small businesses.

As part of the expansion of WOSHTEP in the Central Valley in 2007-2008, Ms. Dewey stated that activities with the University of California, Davis, will focus on agriculture and will include: conducting a heat stress education campaign starting this year; identifying a small business partnership in agriculture and draft training materials; school-based outreach to high schools and teens working in agriculture, using an updated ESL health and safety curriculum; selecting teams from the Central Valley to attend the Young Worker Leadership Academies; and offering WOSH Specialist courses and a TOT in Fresno.

Ms. Dewey stated that another new initiative will focus on exploring how to better integrate health and safety training into apprenticeship programs working with the State Building and Construction Trades Council. Finally, there will be a roundtable on workplace wellness and integrating wellness training into occupational health and safety.

Chair Schwenkmeyer thanked Ms. Delp and Ms. Dewey for all the hard work being done through WOSHTEP by LOHP and LOSH and stated it was a very impressive project.

Ms. Baker stated that three contracts with a start date of July 1st, 2007, would extend the work in the areas discussed.

CHSWC Vote

Commissioner Davenport moved to approve the contracts for WOSHTEP to UC Berkeley, UCLA, and the California Partnership for Young Worker Health and Safety, and Commissioner Thacker seconded. The motion passed unanimously.

Executive Officer Report

Christine Baker, CHSWC Executive Officer

CHSWC Reports

Ms. Baker stated that there were several reports that had been out for public comment and they are now ready for approval for release. They include: the “Summary of December 7, 2006 CHSWC 24-Hour Care Roundtable”; the “Summary of the November 17, 2006 CHSWC Return-to-Work Roundtable”; the “CHSWC Background Paper on the Uninsured Employers Benefit Trust Fund;” and the “CHSWC Report and Recommendations on the Spinal Surgery Second-Opinion Process.” Commissioner Wei asked if all public comments offered have been addressed and incorporated. Ms. Baker responded that that has been done.

MINUTES OF CHSWC MEETING
April 27, 2007 Oakland, California

CHSWC Vote

Commissioner Wei moved to approve the release of the 24-Hour Care Roundtable summary, the Return-to-Work Roundtable summary, the report on the Uninsured Employer Benefits Trust Fund, and the report and recommendations on the Spinal Surgery Second-Opinion Process, and Commissioner Aguilar seconded. The motion passed unanimously.

CHSWC Projects

Ms. Baker stated that CHSWC staff will be working on a Carve-out Conference in August. She also stated that fraud studies and return-to-work studies are in progress.

Ms. Baker also stated that CHSWC staff is starting work on the 2007 Annual Report which will be available in draft form for the next meeting. Commissioner Wei asked if the 2006 Annual Report was just released, and Ms. Baker responded that it was but that CHSWC is required to do an Annual Report each year and updating research is underway. She stated that this is a continuous effort. Chair Schwenkmeyer asked when the Annual Report will be out, and Ms. Baker responded that it will be out at the end of the calendar year. Ms. Baker stated that it takes several months to get through the process. Commissioner Davenport stated that there is always an Annual Report in progress. Chair Schwenkmeyer stated that that is because CHSWC does so much work, and Commissioner Wei stated that it is very much appreciated that the Commission produces the Annual Report as required.

Adjournment

CHSWC Vote

Commissioner Thacker moved to adjourn the meeting, and Commissioner Aguilar seconded. The motion passed unanimously

The meeting was adjourned at 1:05 p.m. The next CHSWC meeting is scheduled for Thursday, August 9th, in Oakland.

Approved:

Kristen Schwenkmeyer, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date