

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

March 4, 2010

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

In Attendance

Acting Chair Kristen Schwenkmeyer

Commissioners Catherine Aguilar,** Faith Culbreath,** Sean McNally,** Robert Steinberg,
Darrel "Shorty" Thacker, and Angie Wei**

** Participating by conference call

Executive Officer Christine Baker

Call to Order

Acting Chair Kristen Schwenkmeyer called the meeting to order at 10:00 a.m. She explained that Commissioners Sean McNally, Angie Wei and Catherine Aguilar will be participating by conference phone. Action items will be presented first by Christine Baker and informational items will follow in case a quorum is lost.

Action Items

Christine Baker presented the action items. She stated that she would expand on the action items during her Executive Officer presentation. None of the items require approval of recommendations; all items are either items for posting or further study.

Minutes from the December 10, 2009 CHSWC Meeting

Ms. Baker stated that the first item for vote will be on the Minutes of the December 10, 2009 meeting.

CHSWC Vote

Commissioner Thacker moved to approve the Minutes of the December 10, 2009 meeting, and Commissioners Aguilar and McNally seconded. The motion passed unanimously.

RAND/Navigant Report "California's Volatile Workers' Compensation Insurance Market Study"

Ms. Baker stated that the RAND/Navigant report "California's Volatile Workers' Compensation Insurance Market Study" has been posted for public comment since the previous Commission meeting, but no comments have been received; therefore, a vote to post - the report as final, is in order.

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CHSWC Vote

Commissioner Thacker moved to approve that and Commissioner Aguilar seconded. The motion passed unanimously.

RAND Working Paper “How Effective are Employer Return to Work Programs?”

The RAND Working Paper ‘How Effective are Employer Return to Work Programs has been presented a number of times by Seth Seabury of RAND. A vote on posting for feedback and final posting within a month is in order.

CSHWC Vote

Commissioner Thacker moved to approve for posting and feedback the RAND Working Paper “How Effective are Employer Return to Work Programs?” and Commissioner Aguilar seconded. The motion passed unanimously.

Disability Evaluation Unit Rating Delays and Supplemental Qualified Medical Examiner Reports Study

Ms. Baker stated that there are delays in the QME process and Commission staff would like to do an in-depth study. She stated that Lach Taylor would do a full presentation on the Disability Evaluation Unit (DEU) Rating Delays and Supplemental Qualified Medical Evaluators (QME) Reports study later in the meeting. This study would be conducted by staff by matching data records between the QME and DEU. There would be technical assistance from the University of California for this study.

Commissioner Faith Culbreath joined the meeting by conference call.

Steve Cattolica, representing the California Society for Industrial Medicine and Surgery, asked how the comparison would be done. Ms. Baker responded that by matching the date that the report is requested and when it is rated by the DEU. Mr. Cattolica asked if that would be the date that the injured worker requests the report. Judge Lachlan Taylor responded that the study would look at the date a valid QME panel request comes in (many of them are defective and there are problems there), the date the panel is assigned, the date of the examination, the date of the QME report, and the date of the DEU rating. It should also be possible to match the QME’s examination to the ultimate rating to perhaps get a sense of the consistency of QME evaluations.

Mr. Cattolica asked how the matching of the report to the ultimate rating would take place, and Judge Taylor responded that if you have the injured workers’ identity and rating and QME panel assignment, you can match that to the QME examination. This can be down by a random sample. Mr. Cattolica asked how the range would be established, and Judge Taylor responded that in a large enough population with QMEs randomly assigned, you can look at average ratings. He commented that you cannot do that with agreed medical evaluators (AMEs) as they are not randomly assigned. Mr. Cattolica asked if the sample would have similar diagnoses, and

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Judge Taylor responded that they are still looking at the available data to see what is available, but there should be a large enough sample to make some conclusions. Ms. Baker commented that it should be possible to track the timelines. Mr. Cattolica stated that if you were to talk to the injured worker and the physician, the uniqueness of each case should preclude the study from making a reasonable conclusion except if an outside entity were to be asked to indicate what the range should be for a particular situation, and he stated that he would be interested in knowing who the outside party would be. Judge Taylor responded that there would not be an attempt to use an outside rater. The sample should be large enough to make observations.

Mr. Cattolica asked if the resulting comparison would indicate that there is a range and where a physician fits in the range. Judge Taylor stated that the analysis would not be looking at particular physicians but trying to assess the problem heard from the community that the quality of the report is so variable that injured workers sometimes prefer to wait for an AME panel, often as long as a year, rather than go to a QME. The analysis should help determine if this is happening. Mr. Cattolica stated that that aspect of the analysis would take the most care because it would have the most variables. Ms. Baker stated that they did not know what the results will be until the data are examined. Judge Taylor stated again that they hoped the analysis would reveal what the range of quality would be and why injured workers are waiting a year for an AME panel rather than go to a QME, which would be available on a shorter time frame.

Mr. Cattolica asked whether there will be a cut at the number of panels where an unrepresented worker would choose one of the three at random or the injured worker is represented and each side would be allowed to strike a name and the one standing is the QME. He also asked what would happen to AME panels and whether that would be a separate database. Judge Taylor stated that he did not think they could determine that. Mr. Cattolica stated that he disagreed and the three categories should be kept separate. Judge Taylor stated that the unrepresented panels, which are more random, and the represented would be separate. Mr. Cattolica stated that what he would like to see, knowing what his organization's members are faced with, is if it is possible, to discern from the unrepresented panel QMEs if the carrier attempted to steer or otherwise advise the injured worker as to which physician to choose. This does occur, in writing or not, in some situations; this might be a fourth category of situation. Judge Taylor stated that he would talk with Mr. Cattolica about how to track that.

Harry Murphy, an injured worker, stated that this sounded possibly a set-up to weed out QMEs that have a higher average rating, even like a "witch hunt." He asked if there are any controls to ensure that this would not ultimately happen, and that QMEs that offer a higher rating would not be singled out. Mrs. Baker responded it is not what the study is going to do and that they are tracking timeframes to understand complaints about delays on the QME panels; there would be no identification of individual data, only overall averages and an analysis only of patterns. Mr. Murphy asked how the doctors that have a pattern of higher ratings would be identified. Ms. Baker responded that individual doctors would not be identified.

Ms. Baker asked for a vote from the Commission on whether it would like to carry out the study.

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CHSWC Vote

Commissioner Aguilar moved to approve for posting and feedback the memorandum on DEU Rating Delays and Supplemental QME Reports Study, and Commissioner Wei seconded. The motion passed unanimously.

Study of Benefit Notices

Ms. Baker stated that the Commission has the Labor Code authority to evaluate benefit notices. The Division of Workers' Compensation is continually updating and doing regulations to improve benefit notices. The Commission would like to carry out an independent study to evaluate benefit notices to determine if there could be better/more streamlined communication to injured workers. She stated that a task force would be created for that effort.

CHSWC Vote

Commissioner Thacker moved to conduct a study of benefit notices, including the creation of a task force, and Commissioner Aguilar seconded. The motion passed unanimously.

Firefighters Musculoskeletal Injuries Study

Seth A. Seabury, RAND Corporation

Seth Seabury stated that Musculoskeletal Disorders (MSDs) are one of the most common types of workplace injuries. They represent a substantial fraction of employer costs, and they can be controversial in that there are challenges in determining the work causality and there can be uncertainty over effectiveness or cost-effectiveness of some treatments.

Mr. Seabury stated that they are interested in MSDs in firefighters because firefighting is widely regarded as one of the most dangerous occupations, and the risk to individuals is inherent to the job. Firefighters are asked to make an enormous private sacrifice in order to protect the public. He stated that considerable focus has been made to make firefighting safer, but a lot of that focus has been primarily focused on the risk factors that drive fatal injuries and how to prevent those injuries. He stated that much less work has focused on the causes and consequences of nonfatal injuries. Nonfatal injuries are more frequent, and can be costly events. He stated that it is not clear that the risk factors are the same and thus prevention effects may also not be the same.

Mr. Seabury stated that the research is not about how to reduce MSDs, but to evaluate whether MSDs are more harmful to firefighters than to workers in other occupations. He stated that they found that the frequency of MSDs is higher for firefighters, the physical demands of firefighters are particularly high – it requires high fitness levels -- and firefighters must be able to perform all possible job tasks while on active duty. He stated that this means that modified work is largely unavailable. Therefore, there is concern that MSDs can be more disabling and have a larger impact on the functional status of firefighters. He stated that they want to evaluate whether MSDs lead to greater restrictions in a firefighter's ability to work.

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Mr. Seabury stated that they are also interested in understanding how workers' compensation reforms have impacted firefighters with MSDs. He stated that disability ratings for permanent disability (PD) claims have fallen, which have led to declined in benefits. He stated that there are new apportionment rules that require physicians to make determination of causality, impacting benefits. He stated that causality is particularly difficult with MSDs. He stated that a number of reform place restrictions on medical treatments, such as treatment guidelines and caps on chiropractic and physical therapy visits. He stated that this raises the question whether the reforms have hurt the ability of injured firefighters to meet the physical requirements to return to work.

Mr. Seabury stated that these questions and the implications are relevant for all workers. He stated that the specific research goals of the study were to characterize the risk of MSDs to firefighters, including frequency and severity, and the economic impact compared with other occupations. The study evaluates the impact of reforms on firefighters with MSDs, such as whether firefighters experienced the same declines in ratings as other occupations, and have firefighters with MSDs been hurt by new medical treatment restrictions, and the impact on return-to-work/employment outcomes.

Mr. Seabury stated that the approach to describing firefighter MSD risk is to obtain injury data from the Bureau of Labor Statistics (BLS) for descriptive information about the risk and evaluate the economic impact. He stated that to evaluate economic impact, the study matches claims and earnings data to analyze the return-to-work outcomes, as they often do for wage loss studies. To assess the impact of reforms, the study uses data on disability ratings to compare the changes by occupation and type of injury, uses a systematic literature review evaluating the expected impact of medical reforms on outcomes, and looks at trends in return-to-work outcomes.

Mr. Seabury stated that he would discuss what a musculoskeletal disorder is. He stated that the term is broad and is used to refer to a vast array of adverse health events. MSD most commonly refers to injuries to low back, neck, shoulder, forearm, and hand. Common conditions include chronic low back pain, carpal tunnel syndrome, osteoarthritis, sciatica, etc. He stated that the wide variety of conditions can be challenging because MSD definitions vary by data set. For example, the BLS definition is more specific, and specifies the event or exposure leading to injury (bending, climbing, crawling, etc.). However, workers' compensation data tend to be very non-specific, often just stating the body part, such as back, neck, arm, etc., that was injured.

Mr. Seabury stated that the BLS data are California-specific providing the number of injuries and median days off work for 2003-2007. The data compare firefighters to private sector workers. The demographic profile of firefighters is primarily males over 25+ years old. In this data, the study was able to restrict private sector workers to the same demographic profile for more accurate comparison. Mr. Seabury stated that firefighter injury rates are high for all injuries: 5% for firefighters vs. 1.5% for private sector workers; and when including MSDs, over 1.0% for firefighters vs. under 0.5% for private sector workers. He stated that for firefighters, it the risk ratio was 3-3.5 higher. However, he stated that injury rates for firefighters are increasing with age, and the increase is more pronounced for MSDs. In the private sector, there is a slight decline in injuries with age, but there is no observable trend with age. However, for firefighters, the injury rate is much higher with age in the 45-54 and older age ranges. When the focus is

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only on MSDs, there is a similar pattern, a slight decline in the injury rate in the private sector, but an increase with age for firefighters, which is especially steep for the 55 and older age range. Therefore, the risk of MSDs for firefighters increases significantly with age.

Mr. Seabury stated severity is measured by the time it takes to return to work or the number of lost work days. The median days off work in the private sector is about 12 days compared to about 17 days for firefighters. He stated that when comparing MSDs, it is slightly higher for the private sector workers, about 15 days, but the median days off work is 30 days for firefighters. Broken down by age, the median days off work for MSDs is much steeper with age, especially the 55 and older age range (90 days). He stated in summary that firefighters take significantly longer to return to work after an MSD, and older firefighters take significantly longer to return to work after an MSD, roughly four times longer to return to work relative to older private sector workers. He stated that older firefighter injuries represent a small proportion of total firefighter injuries, but represent a high proportion of the costs.

Mr. Seabury stated that severity is also measured by evaluating the economic impact of MSDs on firefighters. He stated that time off of work could be described as a short-term impact that directly affects employer costs, but there is also an impact on the injured workers. To measure the impact, the study used a technique used in other previous RAND studies. Data on permanent disability claims from the Disability Evaluation Unit (DEU) were used, so that the focus was on the most severe injuries that cause a permanent disability. The data are then matched to data on earnings from the Employment Development Department (EDD). The study then matches data on the injured firefighters from an employer and compare that data to data on uninjured “control” workers at the same employer with similar pre-injury earnings. This allows analysis of the economic impact on the injured worker. He also stated that the study compares earnings and employment before and after an injury. This technique allows the study to evaluate across occupations and measure post-injury employment and post-injury earnings outcomes.

Mr. Seabury stated that post-injury outcomes are measured by the available data, employment data that include earnings in a quarter (days or hours worked are not available, for example). The data do not indicate when or how often someone works. Therefore, someone is defined as working if they have any earnings in a quarter. He stated that they create measure called a relative employment ratio: the likelihood that injured workers are employed in quarter divided by the likelihood their uninjured control workers are employed. So if the relative employment ratio is 0.8, that means that one is 80% as likely to be working, or 20% less likely to be working than the uninjured controls. He stated that another measure is proportional wage loss or the fraction of earnings that a worker loses because of a disability.

Mr. Seabury stated that the comparison between firefighters and other public workers, specifically police, corrections and teachers, which are not public safety but share some similar traits such as more likely to be unionize but less likely to have a lot of training and job security factors, indicates that firefighters have better post-injury employment than private sector workers (construction and labor, both physical jobs with similar demographic profiles). He stated that despite firefighters experiencing greater severities in injuries in terms of time off work, because of the job security they have and extra compensation mechanisms, such as Labor Code Section 4850 benefits that guarantee increased workers’ compensation benefits the first year after an

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injury, the economic impact is mitigated. Mr. Seabury stated that, while significant, firefighters have a 20% wage loss three years after an injury, the wage loss is much less than that experienced in the private sector. Firefighters tend to do worse than police in terms of economic losses, while workers in Corrections have the most earnings losses, and teachers the lowest earnings losses, perhaps due to less physicality of the job.

Mr. Seabury stated that the most common MSD is back injury, followed by shoulder and knee injuries. These injuries have a moderate effect on employment for firefighters. More severe injuries include cardiac or heart disease. Unlike other occupations, firefighters receive a presumption for job causality for heart disease, respiratory ailments and cancers due to the exposures they face. He stated that the economic impact of heart disease has a huge impact, and a firefighter with heart disease is less likely to be working one, two or three years later.

Mr. Seabury stated that when looking at age, there is a significant difference. Older firefighters with MSDs do much worse than other public workers. Only 40% of injured firefighters 55+ years old compared to the uninjured controls are likely to be working two years after injury, which is about the same as 55+ year-old construction workers. Mr. Seabury stated that these data reflect returning to work at any job, not necessarily at the at-injury job; firefighters are not taking disability retirement and working somewhere else; they are not working at all. This is a much greater impact, despite disability retirement, for firefighters than for any other group of workers.

Mr. Seabury stated that the study looked at the impact of reforms that began in 2004 on disability ratings. Changes to the new rating system have led to dramatically reduced disability ratings. The adoption of the *AMA Guides* has led to a decline in ratings and has increased the fraction of cases that receive a zero rating, or do not get rated. He stated that when new rules on apportionment with respect to the degree of job-related causation are applied, that will lead to a further reduction in the disability rating.

Mr. Seabury stated the study wanted to determine whether the changes in disability rating due to the reforms disproportionately affect MSDs and whether they are disproportionately affecting firefighters. The trend in disability ratings has fallen sharply for all workers. Firefighters have a higher percent of zero rated claims as compared to six other occupations, but the zero rated claims involve relatively minor injuries and low levels of disability; therefore, disabilities with zero ratings have little adverse impact on employment. Looking at the employment rate for claims that get a positive rating vs. those that get a positive rating show 80% relative employment rate two years after injury, vs. firefighters with a zero claim have a 93% employment rate two years after injury. Mr. Seabury stated that the impact of the ratings merits greater observation.

Mr. Seabury stated that the study compared the apportionment rates for back injuries vs. others injuries. The percent of apportionment on claims is considerably higher for back injuries than other injuries across all occupations. Firefighters do not look particularly different from those in other injuries. However, apportionment does target MSDs more severely than other injuries; therefore, firefighters who are more at risk for MSDs are more likely to have claims where apportionment is applied.

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Mr. Seabury stated that when the research began, the focus was not on medical reforms more generally but on the caps on physical therapy and occupational therapy. The study focused on understanding whether medical treatment reforms impact outcomes for firefighters. In 2003, California introduced Assembly Bill (AB) 228 to help constrain medical costs in workers' compensation, with a presumption of treatment guidelines, caps on the use of controversial treatment, specifically a cap of 24 visits each for chiropractic, physical therapy and occupational therapy, effective in 2004. He stated that outcomes should be worse if workers are denied or delayed in receiving necessary care. He stated that if treatment guidelines improved quality of care, then outcomes should improve.

Mr. Seabury stated that the reforms had a large immediate impact on medical costs (paid medical benefits). He stated that low back injuries were affected the most, due primarily to the caps on the utilization of certain kinds of treatment. The study took a two-pronged approach to evaluating the impact on workers, looking at the effect of the caps and treatment guidelines. A systematic literature review was conducted, searching for evidence of the effectiveness of chiropractic care and physical therapy and work outcomes. Average utilization rates and effectiveness studies were examined, and other analyses using the Medical Expenditure Panel Survey (MEPS) data were done.

Mr. Seabury stated that the average utilization rates for chiropractic treatments fall in the range of 10-15 visits per year. Average utilization rates for physical therapy treatments fall in the range of 6-16 per year. This is for patients with chronic low back pain who report higher utilization rates, between 15-20 visits per year. He stated that the median treatments range from 4-14 visits per year. Most fall between 5-7 visits per year. These figures are based on national data.

Mr. Seabury stated that Medical Expenditure Panel Survey (MEPS) estimates are consistent with the literature. Mean visits are 10.1 for chiropractic care and 11.7 for physical therapy. Median visits are 6 for chiropractic and 7 for physical therapy. Visits are slightly higher for patients with an MSD but not significantly different. He stated that roughly 10.5% of patients went to a chiropractor or physical therapist more than 24 times, exceeding the cap; while not a trivial effect, the caps do not appear binding for the average patient.

Post-Reform Utilization Rates in California Fall in Line with National Rates

Mr. Seabury stated that pre-reform workers' compensation utilization rates in California were very high and would shatter the national rates. In 2002, mean chiropractic and physical therapy treatments were 28.5 and 20.4, respectively, in California. He stated that post-reform rates are comparable with national averages: 12.6 for chiropractic treatments and 11.2 for physical therapy treatments.

Mr. Seabury stated that the study should indicate how effective chiropractic and physical therapy treatments are in return-to-work outcomes. The large drop in utilization of therapy suggests that the caps would have a significant impact on return-to-work outcomes, creating a worsening in return-to-work outcomes. The study looked at clinical evidence from several randomized control trials and a few population studies, and some other literature reviews, focusing on primary

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outcomes in health, return to work and cost-effectiveness. The evidence on health outcomes tended to be mixed. The literature suggests that chiropractic and physical therapy treatments are generally superior to placebo. The studies were unclear if chiropractic and physical therapy treatments are more effective than “conventional” treatments, i.e., physician visits. There is a lack of long-term studies to evaluate effectiveness. Few studies consider intensive therapy that would exceed the caps as was seen in California.

Mr. Seabury stated that there was little evidence that chiropractic or physical therapy improves return-to-work. Most studies find no significant difference in return-to-work rates for patients relative to physician visits. There was some evidence that early treatment improves return-to-work outcomes, but there was no evidence on extensive, long-term therapy. Mr. Seabury stated that there was evidence that chiropractic or physical therapy had an impact on patient satisfaction. Most patients are more satisfied with chiropractic or physical therapy treatments than treatment from a physician. Most patients visit a chiropractic or physical therapy more often, on average, relative to a physician; therefore, the average cost of therapy is higher. Higher satisfaction comes with higher costs. He stated that it is unfortunately difficult to incorporate satisfaction into cost-effectiveness analysis.

Mr. Seabury stated that it is also useful to know if treatment is different for firefighters. There are not many studies on firefighters in particular. Firefighters could have greater demand for the therapy because they are at greater risk from an MSD and due to the demands of the job. He stated that there was no evidence to suggest that treatments will have a differential effect on firefighters compared to the general workforce. There was not a lot of age-specific evidence, so it is unclear how it would affect older firefighters. More research is needed in terms of clinical evidence to identify potential treatment shortcomings.

Summary of Existing Evidence and Study Findings

Mr. Seabury stated that the imposition of caps appears to have brought the use of chiropractic and physical care closer to average levels outside the California workers’ compensation system. It is unclear whether to expect an impact on outcomes, since there is little evidence that therapy improves return-to-work and little evidence on the effectiveness of intensive therapy. There is no reason to think the effects differ for firefighters with MSDs than the general population.

Mr. Seabury stated that looking at two years after injury, return-to-work rates for different occupations have been improving since the mid-point of 2003, when a decline in medical costs began to be evident in the data. There is no obvious trend in any of the occupations studied. There is an overall positive trend in return-to-work rates over this period, especially in the public section, not as much in firefighters and police. Statistical models also find no effect from the medical reforms (caps). The study looked at return-to-work outcomes for firefighters, occupation, controlled for age, firm size, injury time frames, etc. There is no evidence of a trend from the imposition of the reforms, even when controlling for the economy and other factors.

Mr. Seabury stated that to summarize the study findings, there is evidence that firefighters are at greater risk for MSDs and have worse short-term outcomes, but better long-term outcomes. However, older firefighters with MSDs do have more frequent MSDs and less successful return-

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to-work rates. Evidence on the effectiveness of intensive chiropractic and physical therapy treatment is mixed at best. The study finds no impact of the medical reforms on the employment outcomes.

Mr. Seabury stated that for policy implications, it is difficult to identify adverse affects of the medical treatment reforms. There was no impact on employment return-to-work outcomes. That does not mean there will not be any effect at all. It could worsen patient satisfaction of care, and it could impact satisfaction with the workers' compensation system more generally. He stated that more research is needed to evaluate the long-term effectiveness of some of the unconventional therapies, targeted specifically at older firefighters.

Public Comments and Questions

Luis Cordero asked whether in the group of 55 years or older, if injuries are of a cumulative nature or if there are specific injuries with specific events. Mr. Seabury responded that they did not examine whether it was a specific exposure or cumulative exposure. He stated it would make a difference and one could imagine that older firefighters would be more subject to a cumulative trauma type of injury. Mr. Cordero asked about the influence of retirement. Mr. Seabury responded that he did not see retirement being a direct influence on lost days; he stated that older firefighters with a permanent disability would be more likely to take disability retirement and exit the workforce. He stated that that is why the study looked at return to work at any job vs. leaving work entirely and found that older firefighters are more likely than other workers of the same age to leave the workforce entirely. Disability retirement will mitigate the earnings losses; however, it is still having an employment impact.

Richard Valdez stated that for the physical therapy claims, he believes that safety workers are getting 3% of retirement for each year of service. So when they are getting close to 55 years of age and at 30 years, one is looking at 90% retirement. He stated that he has several friends who were safety workers and they are not working. He stated that regarding apportionment, he believes firefighters have a presumption for back injury as well. He stated that in 2006 reforms, apportionment allowed for back injuries and other injuries to be presumed. Judge Taylor stated that for clarification, the presumption for back injuries is for peace officers who carry a gun belt; he stated that he did not believe it applied to other safety officers. Mr. Seabury stated that he would look into this more carefully.

Kristine Schultz from the California Chiropractic Association asked whether utilization review was included in the statistic for declining medical costs. Mr. Seabury responded that the study looked at paid medical benefits for the worker, so he does not believe that would be included. Ms. Baker stated that there has been a reduction overall. Ms. Schultz asked whether when chiropractic and physical therapy medical costs were compared to regular physician visits, the cost of medication was included. Mr. Seabury responded that they did not include medication costs, rather employment outcomes. Some of the studies reviewed included medication costs. Ms. Schultz asked about whether the studies provided patient satisfaction levels. Mr. Seabury stated that they differed from study to study; the study would try to summarize the results from those studies.

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One member of the public asked about return-to-work rates and a missing element of economic necessity. He asked whether they examined those injured workers who needed to get back to work. Mr. Seabury asked for clarification about this, whether benefit amounts affect going back to work. The member of the public stated that he was an injured worker and receives less than \$800 per month, but he cannot work. He stated that other people have families and other responsibilities and asked how they expect someone to live with workers' compensation. Mr. Seabury responded that the zero rated claims are going to be a big downward shock to one's benefits, so one might see more people returning to work in those instances. He stated that this would be less of an impact on firefighters and the public employees because they do have disability retirement options. If they cannot go back to work because they are disabled and it is a work-related injury, then the disability retirement option is going to protect them more than the average private sector worker.

The member of the public then asked about the effectiveness of chiropractor and physical therapy vs. satisfaction, whether it was emotional satisfaction or physical satisfaction, i.e., was the person happy with the treatment or was the treatment successful? Mr. Seabury responded that satisfaction generally refers to whether one is happy with the treatment. First it is how people report the level of satisfaction with their care (a self-reported satisfaction), and then one can look at the actual outcomes after treatment. Mr. Seabury stated that they wanted to distinguish between those satisfaction outcomes regarding health outcomes and return-to-work outcomes indicating if someone is working or not. The study looked at these different potential outcomes and did not see a big impact on health or on return to work, but they did see a big impact on satisfaction. He also stated that it is difficult to determine cost-effectiveness because it is not clear how to put a price on satisfaction beyond what the actual outcomes are. He stated that this is a challenge, and economics struggles with assessing cost-effectiveness when the actual outcome affected does not have an obvious monetary value. The member of the public stated that he thought that RAND should have considered that factor, and Mr. Seabury responded that a lot of people try to measure non-economic costs, and it is something in the tort system that comes up all the time.

Sam Gold with the National Organization of Injured Workers stated that he has questions about the data. He stated that the model uses a 25 and older male and asked about women firefighters. He stated that there were many women firefighters in the State and around the country. Mr. Seabury responded that the demographic breakdown was due to the BLS data, for frequency and severity. For workers' compensation data, with the economic impacts, there was no break-down by gender; it was all firefighters compared to other all professions. Mr. Gold stated that he believes that the department should be specified, as injury claims and benefits received vary by department. He stated that different types of causation should also have been included. Mr. Seabury responded that one can only talk about outcomes on average, and there is certainly a lot of variability behind all the study numbers presented, and the actual impact on any individual is going to vary from the average outcome. However, the study results give a clear picture about the average worker and firefighter. Mr. Gold then stated that there is no such thing as an older firefighter; when they are over 55 years of age, they are battalion chiefs, captains or inspectors. Mr. Seabury stated that the data that they have list firefighters, and it is clearly a small portion of the population, and a population at very high risk.

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Briefing on DEU Rating Delays and Supplemental QME Reports Study

Lachlan Taylor, CHSWC

Judge Taylor stated that the time it takes obtain a DEU rating of a QME report in the unrepresented case has been a concern. CHSWC was notified of the delay in rating by the School Insurance Authority (SIA), although SIA is not the only one who has mentioned the delay. SIA stated that it was taking as long as a year to get the DEU to issue a summary rating on a QME report for an unrepresented worker, and this is a problem because in many instances the worker's case is on hold until a QME report is obtained. According to SIA, the DEU rating problem is compounded if there is a defect in the report that needs clarification on issues of permanent disability, impairment, or apportionment, because the QME cannot be asked to correct the error until after the summary rating has been issued. Judge Taylor stated CHSWC was presented with the previous issues and is trying to understand the facts.

Judge Taylor stated that the review began with the DEU data that showed the date the report was received by the DEU and the date that the rating was issued by DEU; the DEU data was reviewed for a 16-month period (from September 2008 through December 2009), and CHSWC was able to understand the issues. Across this 16-month period, the ratings were prepared an average of 104 days from the date the DEU received the medical-legal report to the time it issued its rating. The ratings can be separated by summary ratings for the unrepresented workers, and by consultative ratings which are typically for represented cases. For the unrepresented workers, the waiting time for summary rating was an average of 129 days, or four months, and for represented workers the average was 84 days. If the average for unrepresented workers is four months, it is plausible that a few could be taking a year or longer.

Judge Taylor presented a graph titled *Time to Rating, Unrepresented versus Represented Cases* in the Commission Meeting. For each month during a 16-month period from December 2008 to December 2009, the graph shows the median and mean time for DEU receipt of the report until the issuance of the rating, separately for both represented and unrepresented workers. From December 2008 to December 2009, for every measure, DEU is doing better a year later except for the average time to rating for unrepresented workers. DEU has speeded up the turnaround for median and mean time to ratings of represented workers and the median time to rating of unrepresented workers. The point is whether anything should be done, as some constituents have suggested, about how they cannot get a correction if there is a flaw in the report for an average of four months after the report comes out, and whether that extends the time it takes to resolve the case. The regulation which puts an embargo on requesting supplements was enacted partly in reference to the fact that the statutory time to issue ratings was 20 days, but this is unrealistic given the other workload DEU is facing. It was suggested by a constituent that the embargo against getting supplemental reports should be removed because it prevents correcting errors for so long, and by the time the errors are corrected, the injured worker will be all the more upset by the change in apportionment if the employer demonstrates that the doctor was not correct. The embargo was adopted because the administrative director was getting complaints from experienced judges about claims administrators who were requesting repeated serial supplemental reports from QMEs and badgering them with potentially inaccurate theories of law and trying to get the QMEs to say certain things, and the injured worker would have no sophistication or ability to resist that type of tactic. It was thought that waiting until the

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supplemental report was out would somehow level the playing field, and if there were a 20-day turnaround, the embargo would be fine. CHSWC does not have any recommendations at this time. It may be credible that there are some carriers who are doing what the judges complained about, and it is also quite credible that there are some QME reports which are defective. Just a couple of days ago at the Division of Workers' Compensation (DWC) education conference, we heard about the difficulty of knowing the right questions to ask on apportionment was discussed, as well as how cases go to reconsideration and the Board states what to ask the doctor and sends the case back down, and the attorneys still do not ask the doctor the right questions. Probably there are supplements needed and probably there are corrections needed, and the existing rules and the turnaround time are adding to the time it takes to get the evidence complete to finalize the workers' cases. CHSWC staff does not have any recommendations at this time; at this time, it is presenting statistics.

Questions from Commissioners

Commissioner Steinberg asked whether these are formal ratings or advisory ratings. Judge Taylor responded that the ratings are broken down into summary ratings, which are automatically generated by QME reports for unrepresented workers, and consultative ratings, which are primarily done in represented cases and may be done for a rating conference or a walk-in rating and formal ratings, those done at the request of the judge after trial and the issue of permanent disability has been submitted; those are a very small fraction of the total caseload. Judge Taylor stated that they did not review formal ratings.

Mr. Steinberg stated that he is unclear about where the problem is. Judge Taylor responded that the problem is not due to formal ratings; rather the problem is that unrepresented workers at the end of the QME exam are waiting for a rating; until that occurs, they cannot resolve the worker's case. The parties are waiting for an average of four months, sometimes more. In addition, there is a question of what they can do if the report is inaccurate; this is a complicated area of law and people are making mistakes, including the QME panels, the doctors, the lawyers and the judges. In addition, there is the question of how long it takes for these issues to be sorted out so the case is resolved.

Commissioner Steinberg asked whether, in an unrepresented case, there is a watchdog who finds out whether there is an error in the rating. Judge Taylor responded that there is no watchdog unless the case goes to trial. The claims administrator should not badger the doctor into giving apportionment based on a legal theory, nor is the claims administrator going to accept liability if apportionment was called for and not granted.

Mr. Steinberg stated that the problem results from the unrepresented cases and there is a disparity because of a knowledgeable claims representative badgering the rating person and the unrepresented applicant is at the mercy of the system. Judge Taylor noted that this is a complicated area of the law where lawyers and judges cannot agree on. Mr. Steinberg responded that as a lawyer, he suggests that the unrepresented applicant get a lawyer. Judge Taylor responded that it would be nice if they did not need to get a lawyer.

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Comments or Questions from the Public

Luis Cordero stated that he is a rater and sometimes it is not four months to get a rating but one, two, or three years to get a rating; and it depends if it is a represented or an unrepresented case. Mr. Cordero asked if the study found out if consultative ratings are receiving a priority. Judge Taylor responded that the difference between the consultative rating, for the representative track, and the summary ratings for the unrepresented workers, can be accounted for by the fact that the represented cases are more likely to be walk-ins and they are more likely to be set on the calendar for a Rating Mandatory Settlement Conference, and that seems to account for the difference. There was some suspicion that the represented cases are jumping the queue to the disadvantage of the unrepresented worker, but as best as can be determined, this is not happening.

Mr. Cordero noted that it is a complicated area of the law and mentioned apportionment specifically. He noted that about 90% of the problems with the medical report might be the misapplication of the American Medical Association (AMA) guidelines, which allows a person with knowledge about AMA guidelines to question the report. From what he sees, claims administrator are doing just that; for instance, questioning of the cause can be either about range of motion or some other diagnostic related group (DRG) category. Judge Taylor responded that the impairment evaluations are also subject to this embargo because the claims administrator is not permitted to ask the QME to correct an error in the impairment evaluation until the supplemental comes out. The claims administrator can send a request to the DEU, but with all the other work that the DEU has, they do not have time to triage the requests or review the requests by the claim administrator. DEU could act on requests on its own initiative or prompted by the claims administrator to tell the QME to correct the impairment rating.

Mr. Cordero questioned why the ability of the claims administrator to ask questions was taken away since it was the claims administrator who was handling those claims. Judge Taylor responded that this ability was taken away from claims administrators because parties may be subjected to the same sort of badgering for inappropriate conduct by claims administrators. Permanent disability, apportionment and impairment are the three issues that are subject to a freeze from asking for corrections. Sometimes claims administrators complain that they cannot ask for advice on return to work or some other issue, but that is incorrect and they are misreading the regulation.

Mr. Cordero asked whether the persons who complained were knowledgeable judges who reviewed an official database or did these judges base their complaints on the fact that a particular judge did not like anyone but judges or attorneys to ask questions. Judge Taylor responded that he cannot tell how bad the problem was, only that there is credible evidence through some judges that it was happening, nor does he know how bad the problem is of defective reports that need to be corrected before they can move on the case. It is plausible to state that both are true and the problem is where to balance them.

Steve Cattolica stated that he wants to report on a couple of issues about the process. Many doctors, the QMEs, are never told when the DEU has rendered an opinion; they do not know when the rating is completed so they can perform the supplemental report and be in compliance

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with the regulation; that communication never happens, and that could help in some respect with the changes that are being considered. Judge Taylor responded that the request is not supposed to be sent to the QME by the claims administrator until the rating process is completed. Mr. Cattolica noted that it is ex-parte to do so. With respect to thirty-party reviews of QME and AME reports that are also ex-parte, the regulations are very clear that you cannot submit to the QME for consideration any report that has been rejected if the report is coming from someone besides a treating a physician or one of the treating physicians or a QME or an AME on the case. Third-party review organizations that take this to an expert may be attempting to get a second “bite at the apple” and create a dueling QME situation to which the QME or AME unwittingly may end up admitting whatever the review has to say on to the record when it is not admissible besides responding to it. Mr. Cattolica stated that with respect to the time frame, he has no recommendation. With respect to the process, there is a huge issue and all the marbles are sitting in the carrier’s court; the QME and the injured worker just do not have the same “horsepower” without the regulation being what it is today.

Mr. Cordero stated that he went to the best AMA guidelines class in the State of California in 2005 on impairment rating, given by this group, and he has a recommendation for improving the rating process. After that, DWC and its Medical Unit only allowed attorneys to train physicians. He stated that California is the only state where QMEs can be trained by attorneys so there is a bias toward defense or applicant. In California, about 90% of officers are being trained applicant attorneys. There are issues about DEU rating and impairment rating, and Mr. Cordero stated that he asks that the State of California take over the training physicians correctly so the authority is not taken away by attorneys. A certain portion of the problems would disappear if the State of California Medical Unit, or this body, takes over training of QMEs and ensures that there is a balanced training on AMA guidelines and it not biased for either applicant or defense. Judge Taylor noted that this will be taken as a suggestion for better guidance for QMEs so there is less need for corrective reports.

Update on Lien Study

Lachlan Taylor, CHSWC

Judge Taylor stated that the next item on the agenda is a status report on the study of liens. Over 400,000 liens are filed annually, and this has an adverse impact on the workers’ compensation system. The number of liens filed dropped below 250,000 in 2005 while there was a \$100 filing fee in place, but spiked to over 700,000 twice, once in 2003, just before the filing fee took effect, and again in 2007, after the filing fee was removed. The processing of liens consumes substantial resources. CHSWC estimates it costs the defense side about a \$1,000 per lien to move the lien through all the steps for processing, and it takes Workers’ Compensation Appeals Board (WCAB) time. Sometimes it requires the trial courts to schedule separate lien calendars. These lien hearings are often continued for lack of time, and the parties have to come back again and again; this costs money for the providers and the lien claimants, as well as the payors who have to send their representatives. The fact that we have these claims pending means that legitimate providers of services are waiting to get paid for an unknown period, and the waiting time is compounded by the fact that the liens are put off until the workers’ case is resolved. Other states do not have this problem with the volume of liens; they are getting their disputes resolved early

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on so that services are being appropriately paid for or they are not being rendered under lien. CHSWC has set out to characterize what these hundreds of thousands liens are about. The majority of the liens are medical or medical legal, which are more in the nature of claims for benefits from the payor than a traditional lien that is a claim on a workers' benefit. Examples of a claim on a worker's benefits are family support liens or coordination of benefit liens from EDD.

Judge Taylor stated that there have been various interventions proposed to address the volume of liens, and it would take out some of the guesswork to try to estimate the impact of these interventions. If this population of liens could be better characterized, then there would be a better idea of what the intervention will be and what the impact will be. For example, if a large volume of liens can be traced to the interpretation of the medial fee schedule, then there would be an idea of many of these disputes could be taken out of the judicial system if there were an expert billing review process; another possible reason might be that the volume of liens is due to an antiquated set of codes for certain procedures and it is difficult to figure out how to correctly code them. Perhaps the volume of liens is driven by scavengers who go through old accounts of services that were properly paid at fee schedule and accepted by providers, but scavengers found a way to get around the fee schedule and tried to collect the as-billed charges. Perhaps some delays are due to claims administrators who fail to pay. For example, when reviewing a lien, it is obvious that it is an accepted injury, the doctor is being paid, and the treatment is appropriate. However, sometimes services are paid and other times they are not, and this raises questions. The other concern is where Medical Provider Networks (MPNs) fit into this and whether are there disputes coming from MPNs.

CHSWC's project uses three approaches to try and understand the liens:

- A sample of liens coming in from incoming workflow into the WCAB.
 - Liens that are submitted by e-filings.
 - A sample of liens that are being scanned in from paper liens.
- A survey of the incoming work flow of liens with some of the payors.

Some problems seen are unauthorized treatment, inappropriate treatment, and inexplicable denials of payment or gaps in payment. For instance, there are cases where a medical food, which, according to the manufacturer's website, is effective for 60 days and is being dispensed every month for a year and a half by a physician. The doctor is charging the fee schedule of \$130, while the manufacturer's website states that it is sold for \$50. Judge Taylor commented that there are various horrors stories, but he will not discuss them at this time. Judge Taylor stated that surveys are being sent to claims adjusters at the third-party administrator (TPA) , insurance carriers, and self-insured employers who are co-operating by categorizing the liens as they come in and trying to see what the issues are that are generating the liens. The system does not work for anyone if it takes years to pay the bills or has to go back to the hearings to get rid of a bill. Judge Taylor noted a report should be ready at the next Commission meeting.

Public Comments and Questions

Steve Cattolica asked whether there is a quantification process and whether it is by geographic quantification. Judge Taylor responded that they are concentrating on boards in those areas

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where the majority of the liens come from such as Los Angeles, Van Nuys, and Los Angeles basin areas. Mr. Cattolica stated that there is not a comparison per se but selecting the ones with the biggest problems. Judge Taylor stated that the potential policy intervention would not distinguish Redding from Van Nuys, so it would not be helpful to make those distinctions in the survey. Judge Taylor stated that the Commission invites comments and perspectives on what needs to be done.

Nancy Roberts of Boehm & Associates questioned whether CHSWC is surveying any lien claimants. Judge Taylor stated that he would like to contact a few lien claimants for response, but in a survey, that is less of a cross-section than what is coming in to DWC. The reason for surveying payors was that DWC data do not tell anything about MPNs and authorizations and do not identify what the issue is. One of the questions for payors would be why this is even a lien. Ms. Roberts stated that as someone representing payors, it is clear that sometimes payors do not know what the issue is, but lien claimants might know better. Judge Taylor stated that he would like to discuss this issue with Ms. Roberts to get her perspective. He stated that this is not a RAND study with a perfectly randomized survey, but it is an attempt to understand the situation. A member of the public stated that his chiropractor did not get paid for five years and he no longer can use that provider. Judge Taylor responded that part of the problem is that if it takes this long to resolve the billing, it is affecting workers' access to care. It is important to resolve issues much earlier. Mr. Murphy asked if they were going through lien claimants and categorizing different types of providers, such as doctors, chiropractors, and physical therapists. Judge Taylor responded that they are trying to resolve this by type of provider; even if it does not have as much detail as one would like, that will be part of the snapshot.

Executive Officer Report

Christine Baker, CHSWC

Ms. Baker stated that there was a quorum before Commissioner Steinberg arrived and some votes were taken. She then presented the Executive Officer Report.

Employer Handbook on Return to Work

Ms. Baker stated that since the previous Commission meeting, the employer handbook on return to work has been completed and posted. This handbook provides guidance primarily to small employers, but of course, it is really for all employers, and focuses on how to implement an effective return-to-work program and coordinate that program with Fair Employment and Housing Act (FEHA) and Americans with Disabilities Act (ADA) requirements. The handbook is receiving widespread acceptance. Zenith Insurance has contacted the Commission to say that they will distribute the handbook to all their policyholders. Small Business California and a number of other organizations have stated that the handbook bridges a gap in how to coordinate the two systems of benefits. The primary focus of the handbook is the interplay between workers' compensation and disability rights laws. This was a hugely collaborative effort, and the results are now posted based on your vote to finalize the handbook. We are grateful to a number of people who were involved, but primarily Juliann Sum for the excellent final product.

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Handbook for Workers of Uninsured Employers

Ms. Baker stated that the Commission will also be coming out with a handbook for workers of uninsured employers. It is still being reviewed, and the Department of Industrial Relations (DIR) is responding to some procedural issues that are complicated and need to be sorted out.

Safety Studies

Ms. Baker stated that there are several safety studies in progress that have been delayed due to contract stoppages and data acquisition from EDD, but that this week there appears to have been a breakthrough in obtaining the data.

Integration of Care

Last week, a roundtable on integration of care based on Frank Neuhauser's paper that describes the administrative costs of administering workers' compensation was held. It was clear that workers' compensation administrative costs are extremely high when compared to delivering group health. Some of the administrative costs are utilization review, bill review, and other cost containment areas. However, there are also frictional costs over medical-legal issues. The roundtable was productive and feedback from attendees is continuing to be received.

Occupational Safety and Health Programs: SASH and WOSHTEP

Both the School Action for Safety and Health (SASH) program and the Worker Occupational Safety and Health Training and Education Program (WOSHTEP) are developing new materials and delivering training across the State to further occupational injury and illness prevention efforts.

SASH

The goals of the SASH program are to prepare key individuals within school districts to serve as SASH Coordinators to: oversee development of the school district's written injury and illness prevention program (IIPP); participate effectively on a health and safety committee; and communicate effectively with and serve as a resource to school administrators and school employees regarding health and safety efforts.

A SASH Advisory Committee meeting will be held this month on March 29th. Also, materials have been developed for participants and instructors, and the first pilot was conducted in Northern California on February 4th, at the Alameda County Office of Education in Hayward; a second pilot is scheduled for Southern California on March 11th in San Diego with the San Diego County Schools Risk Management Joint Powers Authority (JPA). A third pilot will be scheduled shortly.

The Labor Occupational Health Program (LOHP) at UC Berkeley with whom the Commission has contracted has applied for a National Institute of Occupational Safety and Health (NIOSH) grant to develop lessons learned for expanding the model to others states, and they have included the Commission as a partner. This is being viewed as a very positive model.

WOSHTEP

This is the second year of the WOSHTEP three-year contract. New materials and Special Projects for 2009-2010 include: (1) a Wellness Booklet on Integrating Wellness and

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Occupational Health and Safety Programs, which will be available soon; (2) a Needs Assessment on Opportunities to Integrate Worker Health and Safety Education into Building Trades Apprenticeship Programs; (3) materials and training for Occupational Safety and Health Training for Sheltered Workshops; and (4) industry-specific materials for the Small Business Resources component of WOSHTEP for the dairy industry, which are being finalized in English and Spanish this spring and summer.

In addition, two very successful Young Worker Leadership Academies have been held, one at UC Berkeley in January and one at UCLA in February. Academy participants are planning young worker health and safety projects in their communities for Safe Jobs for Youth Month designated for May each year.

A WOSHTEP Advisory Board meeting will be held on March 17th to update Board members on accomplishments and to solicit their feedback about directions for new work.

IFDM 2010

Over the past six months, staff has been planning for a very large event in September, the International Forum on Disability Management (IFDM) 2010: *Collaborating for Success*. The topics range from advancing awareness and support for effective disability management outcomes and best practices, partnerships, medical providers, improving disability management, return-to-work coordination, employer best practices, effective government programs, case studies and much more. This work is being done in partnership with the International Association of Industrial Accident Boards and Commissions (IAIABC). The Commission is the lead and co-sponsor of this event which will be held September 20th through 22nd in Los Angeles. She asked the Commissioners to mark their calendars for this event. Over 29 countries will be participating. Over 120 papers were submitted from around the world, which are all interesting and present ideas that California can look to.

Insurance Industry Study

Ms. Baker asked Commissioner Steinberg if he had a comment on the Insurance industry study voted on at the beginning of the meeting, and Commissioner Steinberg responded that he did not.

Acting Chair Schwenkmeyer thanked Commission staff for all the work that was being done and the successful outcomes.

Public Comments and Questions

Mr. Gold asked whether there will be a proof of coverage database available, which will allow anyone to go on the web and look up information, even without a legitimate reason. Judge Taylor stated that the records with WCAB are considered public records like any court filing, but much of the information is considered confidential. There is disagreement over how much information should be considered private and how much public. The Commission has not tried to intervene in that area. Judge Taylor stated that he was pretty sure that medical information would be confidential. He suggested that concerns be addressed to DWC which sets the policy.

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Mr. Murphy stated that he has been dealing with his injury for seven years. He stated that the workers' compensation system does not work for people who do not understand the system. He has been trying to get something from WCAB for five months. He has the paperwork, but no one wants to listen. He asked why it takes so long for minor issues to be handled. He found that he was handling efforts better than an attorney. He asked for help to resolve some of his issues.

Other Business

None.

Adjournment

The meeting was adjourned at 1:30 p.m.

Approved:

Angie Wei, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date