

Commission on Health and Safety and Workers' Compensation

**MINUTES OF MEETING
August 7, 2003
San Francisco State Building
San Francisco, California**

In Attendance

Jill A. Dulich, Chair
Commissioners Tom Rankin, Kristen Schwenkmeyer, Robert B. Steinberg,
Darrel "Shorty" Thacker, and John C. Wilson
Christine Baker, Executive Officer

Not In Attendance

Commissioners Allen L. Davenport and Leonard McLeod

Call to Order

Chairperson Dulich called the meeting to order at 10:05 am and introduced Herb Schultz, Acting Secretary and Undersecretary of the Labor and Workforce Development Agency.

Mr. Schultz introduced himself and the Labor and Workforce Development Agency which he stated has been in existence for one year. Mr. Schultz expressed his appreciation and thanks for CHSWC's work.

Minutes from the April 17, 2003 meeting

Chairperson Dulich asked for a motion on the minutes from the April 17, 2003 meeting.

CHSWC Vote

Commissioner Rankin moved to approve the minutes of the April 17, 2003 meeting in Sacramento. Commissioner Wilson seconded and the motion passed unanimously.

Status Update on the Division of Workers' Compensation

Richard P. Gannon, DWC Administrative Director

Mr. Gannon briefed CHSWC on the implementation of AB749 mandates and the DWC's staffing situation. Mr. Gannon noted that due to DWC's staffing reductions, DWC held a public meeting with the community to assist him in prioritizing existing mandates and those added by AB 749. The top priority determined by the meeting was the improvement of the adjudication system functions, first and foremost, the adoption of the medical fee schedules, and changes to the audit system. He remarked that DWC has implemented some of the recommendations of the CHSWC Judicial Study conducted by RAND that urged DWC to conduct a comprehensive review, refinement, and coordination of all procedural rules. DWC has finished the revision of the rules by the Appeals Board that became effective on January 1, 2003. The main objective for revision of the rules was to create uniformity in the adjudication process.

Mr. Gannon then reviewed the status of DWC's implementation of AB 749 mandates. Thus far,

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

DWC has completed its rulemaking process for several programs and issues including: audit program, priority conference calendar, Workers' Occupational Safety and Health Education Fund Fee, HCO program and vocational rehabilitation. All of the regulations for these programs became effective in January 2003. He further remarked that DWC is in the process of conducting rulemaking for other AB749 mandates including: claim form and posting notice, adoption of a standardized medical billing format, establishment of a pharmacy fee schedule, conducting the medical cost control study, and the carve-out program.

Mr. Gannon further remarked that DWC's staffing reductions have made quick implementation of all of the AB749 mandates more difficult. He stated that in the beginning of Fiscal Year (FY) 2001-02 DWC had 1,028 authorized positions and had lost 120 positions in the beginning of FY 2002-03. Mr. Gannon commented that currently, DWC is short 40 clerical positions, but additional positions would be added in the new budget.

Commissioner Rankin asked what happened to the idea of upgrading clerical positions. Mr. Gannon replied that the RAND study identified the lack of staffing as one of the major reasons for backlogged calendars. DWC has identified the appropriate classifications necessary to implement this recommendation and is requesting the necessary funding through the budget process.

In response to Commissioner Rankin's question if the changes to the HCO program resulted in additional use of HCOs, Mr. Gannon responded that there has been a growth in HCOs.

Commissioner Steinberg asked if the Court Technology Feasibility Study Report (FSR) has been funded by CHSWC. Mr. Gannon replied that this was the case and thanked CHSWC for providing the funding for the FSR. He also remarked that the CHSWC Judicial Study prepared by RAND has given DWC the opportunity to create a more efficient court system. The implementation of the recommendations from the CHSWC Judicial Study is projected to save DWC \$300-500 million per year.

In response to Commissioner Steinberg's question whether the new court technology would cost about \$15 million, Mr. Gannon replied in the affirmative. Ms. Baker pointed out that this cost would be spread over a 5 year period.

Overview and scope of the Feasibility Study Report for the Court Technology Study

Geoffrey Greig, Gartner Group

Paul Denvir, Gartner Group

Mr. Greig made a presentation on the overview and scope of the Feasibility Study Report for the Court Technology System. Mr. Grieg first gave a brief background of the study noting that the CHSWC report prepared by the RAND Institute found that the current case management system, the Claims Adjudication Online System (CAOLS) lacks full functionality of a modern case management system and insufficiently supports DWC's case management needs.

Ms. Greig remarked that internal users of the current system identified several problems

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

including: difficult system navigation, redundant processes, and lack of system and data integration. External users expressed a strong desire for online capabilities to increase their efficiency, reduce costs, and decrease reliance on paper. Other key findings of the FSR were that DWC/Cab's principal business problem is that cases are not being resolved in a timely, efficient, and predictable manner. This stems from ineffectiveness in case management, calendaring, document management, and business intelligence.

Mr. Grieg stated that the FSR recommended alternative to solve the existing problem with the current CAOLS system was to procure and integrate the best of breed commercial off the shelf (COTS) case management product and COTS integrated document management product and to integrate these with complementary functionality. Mr. Grieg further commented that the initial estimate costs for this solution, which are subject to Department of Finance review, would be one-time cost of \$14.5 million and on-going costs of \$1.3 million per year. Mr. Grieg noted that the FSR was submitted to the Department of Finance. When the FSR is approved, the Request for Proposals (RFP) will be initiated.

Commissioner Wilson asked how was it possible to project costs of this project into the future. Mr. Grieg responded that it was possible to make cost estimates since the cost of technology is fairly stable over time.

Briefing on the Labor Code 132A issue

Joel Gomberg, CHSWC Staff Judge

In its February 2002 Commission meeting, Commissioner Wilson had requested that the CHSWC consider a study of Labor Code Section 132a and related court decisions regarding medical benefits with respect to a possible conflict with the Education Code. Consultant Larry Swezey and CHSWC Staff Judge Joel Gomberg prepared background memo and presented a summary of the issue. At the CHSWC meeting in July 2002, Judge Gomberg noted that an important Supreme Court decision important to the case has not yet been published.

At this meeting, Judge Gomberg briefed CHSWC on the latest developments regarding the Labor Code 132a Issue. He reported that a Supreme Court decision relevant to the case had been recently issued. The Supreme Court case determined that in order to establish the case of a violation of Labor Code section 132a, an employee must establish not only that the employer engaged in detrimental conduct, but also that he/she was subjected to differential treatment as a result of his or her industrial injury. Judge Gomberg stated that due to the court decision it seems fairly clear that in the future the courts will find that if there is no differential treatment, the termination of health insurance benefits to injured workers will not be in violation of Labor Code 132a.

CHSWC Vote

Commissioner Wilson moved to release Judge Gomberg's report on the latest developments on the Labor Code 132a issue to the public. Commissioner Thacker seconded and the motion passed unanimously.

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

Follow-up on the Disciplinary Procedures of the Industrial Medical Council

Joel Gomberg, CHSWC Staff Judge

At CHSWC's invitation, representatives from the Industrial Medical Council gave a presentation on its disciplinary procedures at the April 2002 CHSWC meeting in Los Angeles. At that time, Commissioner Davenport requested that CHSWC hold the QME disciplinary matter open for further investigation or public testimony for a CHSWC meeting in Northern California.

Following Commissioner Davenport's request, public testimony was heard from Dr. Susan McKenzie (Executive Medical Director of the Industrial Medical Council), Ms. Sherry Smith (steward of SEIU Local 707 and an injured worker), Mr. Chip Atkin (social worker and member of SEIU Local 707) and Mr. Jim Fisher (IMC Attorney). The testimony presented in San Francisco in December 2002 was on the issue of physicians disciplined by the IMC.

Pursuant to this meeting, Commissioner Davenport directed CHSWC staff meet with SEIU Local 707 members and the Industrial Medical Council and to report back with analysis and recommendations. At this behest, Ms. Baker and Judge Gomberg went to Santa Rosa and met with SEIU and IMC staff. Judge Gomberg had prepared a Draft report entitled "Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulation of QME's."

The above draft report was released for comment after the February 2003 CHSWC meeting. Mr. Gomberg stated that CHSWC received comments from SEIU Local 707, CAAA, and the IMC that were addressed by CHSWC. In particular, the recommendation concerning public members on the Industrial Medical Council was removed from the report due to comments received.

CHSWC Vote

Commissioner Rankin moved to release the report "Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulation of QME's," Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Report on the California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work

Draft Factsheets on Workers' Compensation Medical Costs, Quality and Access funded by the California HealthCare Foundation (CHCF)

Christine Baker, CHSWC Executive Officer

Allard E. Dembe, Sc.D., Associate Professor and Senior Research Scientist

Center for Health Policy and Research, University of Massachusetts Medical School

Ms. Baker reported on the success of the California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work held in May 2003. Ms. Baker stated that over 270 people attended the Colloquium and CHSWC covered the costs of this event through grants and registration from the Colloquium. She noted that the Commission staff is currently working on two projects, which evolved from the Colloquium. The first project is to develop a publishable document from the Colloquium that would contain peer reviewed Colloquium studies and presentations. CHSWC is working with RAND on this issue.

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

CHSWC is also working on a grant from the California Healthcare Foundation with Dr. Al Dembe from the University of Massachusetts Medical School and Ms. Juliann Sum to develop four factsheets . CHSWC staff is putting together the fact sheets on costs and system overview while Dr. Dembe and Juliann Sum are developing the factsheets on quality of care and access with review from CHSWC staff. Ms. Baker further remarked that the fact sheets are still in the process of being fine-tuned.

Ms. Baker stated that the California Healthcare Foundation would like CHSWC's approval to use these factsheets as informational materials as soon as they are finalized.

Commissioner Wilson asked if the factsheets can be released as drafts for public comment and then finalized. Ms. Baker responded that this project has a short timeframe since the intent is to have these fact sheets out before the legislative session. Commissioner Dulich remarked that the California Healthcare Foundation is also very anxious to disseminate these fact sheets as soon as possible.

Commissioner Schwenkmeyer asked if the four-factsheet project is indicative of a potential on going relationship between the Commission and the California HealthCare Foundation (CHCF) or is it a stand alone project? Ms. Baker responded that the California Healthcare Foundation is very interested in working with CHSWC and the CHCF staff has suggested that they would like to work with CHSWC on an on-going basis.

CHSWC Vote

Commissioner Wilson moved to approve the dissemination of the four Medical Fact Sheets funded by the California Healthcare Foundation given the fact there is still fine tuning. Commissioner Thacker seconded and the motion passed unanimously.

Report on the CHSWC Study of Workers' Compensation Benefit Notices

Chairperson Dulich stated that since Ms. Sum is not here today, this agenda item would be moved to the next Commission meeting.

Update on Workers' Occupational Safety and Health Training and Education Program (WOSHTEP)

Update on Young Worker Program

Christine Baker, CHSWC Executive Officer

Robin Baker, Labor Occupational Health Program, University of California, Berkeley

Ms. Christine Baker presented the work that CHSWC staff, together with University of California partners, has contributed to the pre-planning stages of WOSHTEP.

Ms. Baker stated that CHSWC was able to enter into a small interagency agreement with Labor Occupational Health Program (LOHP) at the University of California to begin the planning and design phases of the WOSHTEP. LOHP, in turn has collaborated with their sister training program at UCLA Labor Occupational Safety and Health Department (LOSH) and has also consulted with the Agriculture Safety Center at UC Davis to aid in the development of a program with statewide scope.

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

She further noted that although no funds were allocated to this program from January 1st through June 30th, 2003, CHSWC was able to borrow two employees from the Division of Occupational Safety and Health (DOSH) to assist in collection of the funds and to begin planning WOSHTEP.

Ms. Baker further stated that funds for WOSHTEP have been collected from the carriers and have been deposited in WOSHTEP. However, Ms. Baker noted that CHSWC did not use the assessment monies for the six-month pre-planning period of the program.

Ms. Baker reported that the CHSWC has recently received spending authority from the Governor to utilize these funds and continue work on WOSHTEP on a larger scale. Brooke Nagle is currently performing the role of overseeing WOSHTEP on behalf of CHSWC and is doing excellent work on this project.

Ms. Baker mentioned that thus far several action items have been accomplished as part of the pre-planning of the program including:

- Regulations were written to implement the Workers' Occupational Safety and Health Education Fund (WOSHTEF)
- A Budget Change Proposal (BCP) was submitted and accepted for the 2003-04 fiscal year to allow an increase in CHSWC's positions
- CHSWC staff has conducted a survey of state, national and international worker health and safety training programs which is now posted on CHSWC's website
- CHSWC, in collaboration with LOHP and LOSH, has developed needs assessment questionnaires for all the major stakeholders in this process including insurance carriers, labor, employers, agencies, community based organizations, and educators
- There is ongoing development of a listing of health and safety materials on-line, including materials in languages other than English that insurers and others pointed to as a very high priority training need in California
- Several pilot training programs are in the initial planning stages both in Northern and Southern California.

Ms. Baker further remarked that the Labor and Occupational Health Program (LOHP) is designing a core curriculum after evaluating the results, suggestions and comments from the various constituencies who participated in the needs assessments. Core curriculum topics include Injury and Illness Prevention in the Workplace, Identifying and Controlling Hazards, Rights and Responsibilities under Cal/OSHA, Introduction to Workers' Compensation and Return to Work, Resources and Strategies for Taking Action.

Ms. Baker remarked that once full funding is released in 2003, the program will continue the initial planning activities of WOSHTEP. This will include: conducting additional needs assessments, exploring a certification system for training, translating materials, and conducting and evaluating pilot trainings. In addition, CHSWC plans to conduct extensive outreach to small employers to inform them of loss control services available to them through their insurance carriers and promotion of WOSHTEP.

Ms. Baker then introduced Robin Baker of the Labor and Occupational Health Program (LOHP) who has worked on planning the program to further discuss WOSHTEP's accomplishments.

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

August 7, 2003

San Francisco, California

Ms. Robin Baker noted that LOHP has been conducting needs assessment for the program and the needs assessment report by the CHSWC staff will be completed once all the information has been collected from the stakeholders. Ms. Baker remarked that the consensus that has emerged from all the stakeholder needs assessment is that WOSHTEP should be prevention oriented, helping workers to work in collaboration with management to create safer workplaces, and distinct from regulatory driven programs that already exist. Many also have pointed out in the needs assessment that special attention would have to be paid to making the program accessible to the most vulnerable workers as well as providing the training in multiple languages.

Ms. Baker further pointed out that a training certification program is being developed based on consensus from the needs assessments. She indicated that a worker certified as a WOSH Specialist who has completed the WOSHTEP training program will be able to among other things: understand what injury and illness prevention programs are, help identify the full range of hazards that may exist in the workplace, and serve as a health and safety resource for others. The certificate program would be made up of core subjects and supplemental modules.

Commissioner Dulich remarked that in the supplemental modules for the WOSH Specialist certification there are no objectives listed. Ms. Baker commented that the program is still in the pre-planning stage and these objectives will emerge as more ideas are developed and collected from stakeholders.

In response to Chairperson's Dulich question as to where the trainings will be held, Ms. Baker responded that the training will be held in Southern and Northern California. Current training locations being discussed are Bakersfield, Los Angeles, and San Francisco with a fourth location to be determined.

Commissioner Wilson recommended that contact be made with the University of California Chancellor's Office and the California State University Risk Management Department. He specified that these departments have their own training programs and it would be useful for CHSWC and its consultants to understand what others are currently doing on safety training.

Commissioner Steinberg asked how extensive will the WOSHTEP program be. Ms. Christine Baker commented that the programs' concept of training more and more trainers would lead to WOSHTEP's expansion. Commissioner Wilson said that both the public and private sector are always looking for resources in the training area and thus WOSHTEP would be a very good program to have.

Commissioner Wilson further commented that the CHSWC document "Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" prepared by LOHP is an excellent resource especially for employers that would like to have a foreign language safety training program at their workplace. Ms. Baker commented that this document has been posted on the CHSWC's website.

Commissioner Rankin commented that the program is off to a very good start and he hopes that WOSHTEP would produce better results than the previous OSHA's loss control program. He further commented that the most common violation of OSHA standards is the lack of injury and illness prevention programs and more attention should be paid to preventing injuries from occurring.

