

**MINUTES FROM CHSWC PUBLIC  
MEETING**

**Friday, September 15, 2023  
Elihu M. Harris State Building  
Oakland, California**

**In Attendance**

Commissioners: Doug Bloch, Martin Brady, Shelley Kessler, Nick Roxborough, Meagan Subers, and Sid Voorakkara

**Absent:** Chair Sean McNally and Mitch Steiger

Martin Brady introduced himself and announced that he would be acting Chair of the meeting due to Sean McNally's absence.

**I. Approval of Minutes from the July 14, 2023 CHSWC Meeting  
Martin Brady, Acting Chair**

Commissioner Brady moved directly to the first item on the agenda, the approval of the minutes, and called for a motion to approve the minutes. Commissioner Voorakkara motioned, and Commissioner Roxborough seconded. Before calling for a vote, Commissioner Brady asked if there was any discussion.

Commissioner Voorakkara referred to the last meeting when they discussed the RAND study and its expected completion sometime in mid-September. He asked if there were any updates since he did not see it on the agenda. He also commented that he did not think he saw in the Minutes when or if that study was due to the legislature at any time. Mr. Enz explained that the study had been submitted to the legislature and it had been completed mid-September. He said that George Parisotto might have more information on some next steps. The motion passed.

**II. Stakeholder Presentation  
Rena David, Senior Vice President, Research and Operations, CWCI**

Ms. David gave an overview of the California Workers' Compensation Institute (CWCI).

- Established in 1964.
- Private, nonprofit organization of insurers licensed to write workers' compensation in California, as well as public and private self-insured employers.
- Primary functions are to collect and analyze claims data to improve benefit delivery to injured workers, identify system wide trends, and address key issues of interest to the workers' compensation community and public policymakers.
- Senior Staff of highly experienced experts.

- Dedicated to improving the California workers' compensation system through:
  - ✓ Education
  - ✓ Information
  - ✓ Research

#### Areas of Research

- Benefit Development
- Medical Treatment and Pharmacy Trends
- Access to Care
- Industry and Regional Variation
- Cumulative Trauma
- Models of Proposed and Enacted Statutes and Regulations
- COVID-19
- On-line Applications

#### Commentary

- Rules and Regulations
- Significant Court Decisions
- Amicus and Moot Court

Ms. David explained the following subjects of her presentation would be COVID and Non-COVID Claims, their Interactive Application, Cumulative Trauma, and Medical-Legal Fee Schedule / QMEs.

#### COVID and Non-COVID Claims Interactive Application

Ms. David said that at the start of the pandemic there was a lot of uncertainty about the future claim volume, what would be filed as a workers' compensation claim. She said that getting information out to the public was a primary need for the community. She explained that the DWC and CWCI collaborated to develop an interactive application using DWC's Workers' Compensation Information System (WCIS) data, which she said is available in almost real time. She said that they built a reporting tool on the CWCI website.

Ms. David explained that CWCI has been updating the tool at least once a month since June of 2020, and they know that it has been a good resource for other researchers like the National Institute for Occupational Safety and Health (NIOSH) and the National Council on Compensation Insurance (NCCI) and the Workers' Compensation Research Institute (WCRI), as well as the Workers' Compensation Insurance Rating Bureau (WCIRB) in California. She explained that the tool receives more hits than anything on record on their website.

She explained that the tool provides the volume of reported workers' compensation claims that California has had since the beginning of the pandemic through August of this year (2023). She said that California had almost 10 million infections or a positive test in the working age population, and 32,000 deaths in the working age population. She said that those working age

numbers represented about 78% of the total infections and about 31% of the deaths in the state according to the California Department of Health. She then explained how many claims were filed as work related, about 324,000 cases to date and almost 1700 deaths, and demonstrated that about 3% of the working age population infections resulted in a work-related claim and 5% of the COVID deaths for the working age population had a workers' compensation claim. She said that the pandemic affects people in all aspects of life. She explained that people who used working age numbers of COVID infections for cost estimates overestimated workers' compensation costs.

Ms. David then showed a graph on monthly COVID claims and explained that COVID claims since the beginning of the pandemic had waves - peaks and valleys - that exactly mirror the infection rate in the state. She explained that if there were more cases in the community, there would be more workers' compensation claims. She said that what they have seen in the last seven months or so 2023 is that workers' compensation claim volumes are much lower than they were in previous years. She said that they did see an increase in July and a little bit more in August, but it's still half the volume they saw in January and February of this year.

Ms. David said that if they look at the last 12-months combined, COVID and non-COVID claim volumes, they are about 1% below the pre-pandemic levels. When they look at non-COVID claims alone, they are about 6% below the 2019 levels for those same months. She then showed a chart of the distribution of non-COVID claims by industry sector from 2019 through 2023 through the month of July and noted retail, healthcare, and manufacturing as the top industries, making up a third of all claims for the years during 2020 and 2021. She noted that education industry sector claims dropped significantly, as schools were closed. She noted that transportation increased in 2021 as more and more deliveries were made in lieu of face-to-face transactions. She said that at this point, now in 2023, the distributions of claims are close to pre-pandemic levels. She explained that these are just a handful of measures that are available through the application, and she encouraged people to go to the CWCI website and play around with the tool; she said it has many other statistics there. Ms. David said that it has been a wonderful partnership with the DWC that they are able to get this application out with such current information.

### Cumulative Trauma

Ms. David said that cumulative trauma (CT) is a topic the institute has been studying for a long time. In fact, she said, when they moved their offices, they found a study from 1976 and 1978. She said that back then, they were concerned about the increase from 1½% to 3% of claims in terms of the share. She said that they are in a little bit of a different place now.

She said in the current study they are primarily looking at the characteristics of CT claims, especially compared to non-cumulative trauma claims and focusing on the most current data from 2018 to 2021. She said that they will be looking at the impact of those different claim characteristics and then they will also be looking at the trend over time. She said that in their research they use carrier notice to define the time period because they are mainly concerned about the trend in claim reporting as opposed to injury date, which for CT claims can be in dispute. That is why they use carrier notice in their research to get equivalent measure for both CT and non-CT claims.

Ms. David explained that among the characteristics that are very different for CT and non-CT claims is the litigation rate. 72% of the CT claims are litigated as opposed to 20% of the non-CT claims. Once they look at how the claims administrator is notified of the claim, 79% of the litigated CT claims are notified from the attorney, as opposed to 32% of the non-CT claims. There is a very different pattern of reporting for CT claims because of the general differences in litigated versus non litigated claims. They focus most of their analysis on just litigated claims for both CT and non-CT to increase the comparability.

Ms. David said that a unique feature of CT claims is that they are much more likely to be filed as a part of a group of overlapping open claims, than non-CT claims. In fact, 25% of the claims filed have another open claim. She said that when they break that out, they see the majority 64% have one CT and one non-CT when there are multiple claims. But they were surprised at the 29% that had multiple CT claims and then another 7% that had multiple CT claims along with the specific non-CT claims. She explained that they received some feedback from their claims committee that it appears that at least some attorneys may be filing multiple claims for the same person to make it easier for them to get two QME panels or increase the likelihood that they'll be able to get QMEs from multiple specialties on the claim. She said that she has no way of verifying this, but that is the theory that was given. When they look at the distribution by body part, they see a stark difference between CT and non-CT: 43% have multiple body parts associated with them, as opposed to 15% for non-CT; and then there are higher ratios of mental disorders and even more than you see there in the 4% because there's another 2 1/2% that are part of the multiple body part group.

Ms. David said that in a more detailed part of the study, they looked at claim characteristics. She said that they generally look at just descriptive statistics and then they look at, for example, regional variation and the percentage of claims that are CT. She said that they can see that there is a difference in that Los Angeles has almost half of their litigated claims filed are CT claims, compared to 33% for San Diego and 23% for the rest of the state. The problem with descriptive statistics alone is that researchers do not know how much of the differences in the rates are explained by other factors other than region, like industry mix, age, or other characteristics that would make it more likely that it would be associated with the CT claim. Therefore, that is why they use regression analysis to help tease apart what is caused by factors just associated with the region versus other factors in the claim.

Ms. David explained that there is a 25-percentage point difference between LA and the rest of the state. Of the 25%, 5% of that percentage point difference is explained by difference in case claim mix while 20% is purely due to the fact that they are in LA versus another part of the state. She said that they do this with all the claim characteristics they look at, as will be noted. She said the process is one of isolating the impact of a specific characteristic versus all other attributes of the claim.

### **Commissioner Questions and Comments**

Commissioner Roxborough asked about how they control for numerosity in the LA area, meaning LA County has 10 million people so obviously there are going to have a lot more cases there. He

asked how they make that proportion. Ms. David explained that what they are looking for specifically is a share of CT claims. Within each characteristic, for example for LA, 50% of the litigated claims filed in LA are for cumulative trauma. She said that they are not necessarily looking at the proportions. If one is in LA and one has a litigated claim, there is about a 50% chance of it being CT. Commissioner Roxborough said that that sounds about right.

Ms. David continued that when they look at age, the older age groups do have a higher share of CT claims, but about 36% of the CT claims are filed for workers under 40 - so it is not just presenting for older folks. When they look at the regression analysis, they see that being under the age of 30 presents less likelihood to have a CT claim, but for the other age groups characteristics are almost equally balanced between the impact of age and other factors associated with the claim. For age 65-plus, one is less likely to file if one is 65-plus, which was a little bit of a surprise in the data, but other factors would influence having a CT claim so they kind of counterbalance the age and other factors associated with the claim. Ms. David said that they see a lot of variation in the percentage of the claims that are CT by industry. Food service and manufacturing have the highest proportion of CT claims in their claims, and agriculture and construction have the lowest - and these are the higher volume industries in their study sample. When they look at the regression results, they see that differences in CT for food service, construction and manufacturing are explained almost equally by the fact that they are in those industries and other factors associated with the claim.

Commissioner Kessler asked about the results and said that the nature of trauma happens in the hospitality industry for people who are changing sheets, such as housekeeping staff, janitors, and other people who are leaning over and picking up heavy loads or whatever and that is not mentioned as part of the results. She said that when results show that agriculture and construction have lower than average claims, it seems odd to her because in her experience it has been cumulative trauma in places like agriculture where people who are predominantly non-union and who do not have access to a legal process by which they can even file claims or that they are willing to prepare due to - you name the issue - deportation, firing, you name it. She said that her experience from talking to people who work in those areas, they say there are lots of things that happen to people, and they're not reflected in Ms. David's chart. Ms. David explained that these measures are proportions of the claims filed. She said that even with agriculture, 21% of the claims filed are CT. She said that this could be reflective of a higher risk on the non-CT side - construction is that way as well. She said that they are describing the proportion of claims that are CT, and what they are seeing in agriculture is not that they are not filed, it is that the share of the total claims filed that are CT that they are measuring, why and how different it is from what they see on average across the state.

Commissioner Kessler asked if that makes sense and whether people feel empowered to be able to file. She said in her experience, especially in non-union environments for agriculture, just as an example, a lot of the reasons people do not file is for fear factors. She said while they could measure proportionality based on what has been filed, all she is saying is that it feels like it is misrepresenting the actual number of cumulative trauma injuries that probably does happen to people at work. Ms. David explained that in all their research they can only look at what has been

filed. She said that what she is presenting is the number of claims filed through an attorney. These are all represented claims filed by an attorney, and the share of CT claims as opposed to non-CT claims is lower for agriculture. She said financial sector claims are not in the presentation but the percentage of CT claims in finance - which has kind of lower risk on non-CT injuries - is much higher as well. Ms. David clarified that they cannot know what hasn't been filed, but only those that are filed with attorney representation; the presentation is for the split between CT and non-CT if that makes sense.

Acting Chair Brady asked about the size of the database, and the percentage of workers' compensation claims that are in her database. Ms. David said that they have in their database about 68% of the insured market and they have large public and private self-insureds as well within CWCI's database. She said that other researchers have come and looked at their data, and they feel it is representative. She said that the data consists of those that contribute data to CWCI, which is again almost all the larger insurers in the state, as well as many of the large public and private self-insureds that would be the mix that you see here.

Ms. David said in this exercise they are trying to describe the relative impact of the fact that an injured worker is working in the industry versus other factors like age or other things that may contribute to the likelihood of the CT claim.

Commissioner Bloch said that he understands that they are playing with the cards that they are dealt, so they are working with the data that is out there and available in terms of litigated claims. He asked if they wanted to try to get a handle on workers experiencing CT who have no representation and who may not be getting help through the workers' comp system, but who are going into the group and health system, how do they understand that.

Ms. David said that in prior studies they had looked at the entire population. She said that 72% of CT claims that are filed have an attorney involved. She said the reason they chose in this exercise (study) to look at just litigated claims is because of some intangibles associated with having attorney representation. She said that they did not look at the lower rate of litigation on the non-CT side, because they wanted to take that out of the mix. She said that they were trying to identify the characteristics that are going to make it more or less likely to have a higher share of CT, and so wanted it to be all litigated. She said that in their study, they do have some information about all CT claims filed.

Ms. David said that in their past studies, even in their 2016 study, they looked at both litigated and non-litigated and they have the data; if there is a specific question the Commissioners have, they would be happy to look into it. She said that they have not published it yet, so are always looking for other ideas for what to look at. She said in this area of cumulative trauma, it is a fact that, especially in LA, 83% of the claims are litigated - so it is a vast majority of the cumulative trauma claims that that are litigated.

Commissioner Bloch said that Ms. David's explanation helps answer his question. He asked whether Ms. David consulted with the applicant attorneys in this study. She said that they are showing volumes and what we're seeing in the data in terms of characteristics of the claims, and therefore, the study is a descriptive analysis. She said that they are just trying to take the data

they're seeing and bring it out to the community for further discussions. Ms. David said that she did not know what Commissioner Bloch was thinking of and whether he meant ideas of what to look at? Commissioner Bloch said that given the high volume of litigated claims, talking to the people who do the litigation seems like it would give more insight onto what this data is showing instead of just leaving it up for observers (to interpret) using raw interpretation. Ms. David said that that is a lot of what they do - they give the data and then wait for the next level of questions. She said that they stand behind the data, that they are real numbers, and that this is a valid way of presenting the volumes in the system. She said that there are some things they cannot explain with the data, like the tremendous difference in different parts of the state in terms of the proportion of claims that are CT, there's nothing in the data that explains it.

Ms. David said that it is up to others to try to understand and maybe delve more into or with the attorney community about why practices would be so different in the North than in parts of the South. She said that that is not their role in a lot of ways, that they are there to communicate and provide data to the community. She said that the follow-up on policy and practice implications is not in their purview.

Commissioner Kessler said that the information is dense, so she is trying to figure it out. She asked whether CWCI did any analysis about union versus non-union. Ms. David said that they did not have that data and the union status of the individual injured worker is not in their database. That wasn't something that they could study because they really never go into the attorney issues and who gets to have the opportunity to file these claims.

Commissioner Kessler asked if one gave this information to people and one expects them to do the analysis, if there are any people who follow up with them to say, "Given you said this is this, do you think this is a correct assumption or does this make sense or is it appropriate with which one can build a policy or legislation or whatever..." Ms. David answered that they are limited to what's collected in the administrative data. She said that as a researcher, she cannot, if it's not explained through the data, she cannot make assumptions about causes; and that really is more of a policy process.

Ms. David said that the disparity, say, between LA and the rest of the state is one that's been increasing over time. Ms. David said that they could do a survey of applicant attorneys, of defense attorneys, and of claims people. She said that that could be the research avenue they could go, but it is not something that they have the resources for now. She said it was certainly possible if they wanted to get more opinions about it (the disparity). She explained that other states, along with the other parts of California, have much lower incidents of cumulative trauma. She said that one of the differences is just in the rules in most other states. One has to show predominant cause to be able to a file claim - similar to the psych thresholds that are in California. She said that is what other states have, that is where their policies lie. She said that California is different in this area, and she will leave it at that in terms of where to take this. She said that she hoped they provided a benefit by just showing a baseline and what the numbers are. She said that they would leave it to policymakers to go from there.

Commissioner Roxborough referred to Commissioner Kessler's question about the unions because to get the data complete from 2/3 of the data whether 1/3 of the data that is missing is from the unions. Ms. David replied saying no. Commissioner Roxborough explained that one of the reasons he asked is because he knows from experience that if you are a union worker, you don't need a lawyer, those cases often don't get litigated, and it goes through arbitration. He said this is not always the case, but what he is saying is that it is a different process with union workers. He said it is a question about the data, how accurate the data is if you go through arbitration, it's supposedly more efficient, less contentious. That's the theory, he said.

Commissioner Roxborough continued, explaining that when you have contracts with unions, that's the process. It frees up time from the WCAB. He said if that's the case, not always with some of the time, that is something that next year CWCI can look at and segregate that out to see if that process is effective, is it doing a good job for the injured workers, are there efficiencies and that sort of thing.

Ms. David said that in the past they have looked at carve-outs for the Commission and the ombudsman and the arbitrator model is something the Institute studied in the past. She said that when she was with California Healthcare Foundation, they gave a grant to the Commission for doing a study of 24-hour care specifically on this topic. She said that they never had enough volume to do a credible assessment and did a more qualitative study. She said that the difficulty with these pilot programs is generalizing to the general population, but in the little program that they funded, it worked well.

Ms. David said that they tried to get a 24-hour pilot going in Sacramento early in her career and, again, they were very proud of their program, but it was just one program. She said that they were departing from the current presentation, but in terms of things they could study, they could certainly look to see if there are differences in the findings that they have for the litigated claims and the non-litigated as well. Ms. David said that this may be something they can look at, if not now for this study, in the next iteration. She said that is certainly something we can take a look at again, but their primary desire was to not try to compare litigated claims to non-litigated claims in the non-CT population because there's always some level of severity associated with litigated claims typically (hence not good comparison populations). She said that they were trying to level the playing field in a way.

Ms. David continued with her presentation explaining that for average weekly wage, lower wage workers have a higher share of CT claims and when they look at the regression it is a comparable impact between the wage itself and other claim factors. She presented data for CT as a percent of litigated claims from 2010 to 2021, which went from 30.5% to 41% in the last two years of the study. Ms. David said that when they broke this out by region, they see a 13.4 percentage point difference for LA (from 37 to 50), San Diego went up 10 percentage points and only two percentage points for the rest of the state, and for most of the years, the rest of the state was up and down from the 2010 values. She said that this significant 10 point increase they saw for the state is really a Southern California phenomenon.



## Medical-Legal

Ms. David said that they did a study last July, right after the implementation of the Med-Legal fee schedule. She said that they are in the process of updating that study with more current data and they will have a paper out by the end of the year that will go through the full year of 2022. She said she wanted to kind of recap what they saw in the early stages of the evaluation and then describe what they are seeing so far in the data. She presented what she called a dense slide, explaining that it describes for each type of exam or report what the old fee schedule was based on and what the new fee schedule is based on.

Ms. David explained that comprehensive exams went from a flat fee in the case of Med-Legal code (ML) 102 and ML 103 and a per-time for ML 104 to a higher flat fee and a single flat fee for all the exams, plus a per-page review for all pages over 200 pages in the medical records, of \$3 per page. Supplementals and follow up went from time-based to a flat fee, plus an incremental payment for medical review. She added that there were some additional changes in the fee schedule. In conclusion, she said the basic finding is that in the first few months after implementation they had about a 48% increase in the payments for comprehensive evaluations. She said that what they found so far for 2022 is that the higher levels have continued. She said that they are in the 50% range of higher levels than they were prior to the change in the fee schedule. She said that when they look at supplemental reports, they had a little bit later implementation date. They saw about a 43% increase in the latest study month and 39% overall.

Ms. David said that they are seeing slightly smaller amounts in the more current data, maybe in the 30 to 35% range, but still a significant increase in the payments from the prior fee schedule. She said that when they look specifically at the per page review cost, if you look on the far left of the chart, that percent with MLPR, that's the billing code for the per page payments. She said that they can see that 40% of the comprehensive exams have excess page review, 25% of the follow up exams and 30% of the supplemental reports. She said that one can see the average pages, Max, and Median. She explained that on the right-hand part of the chart is the maximum pages for a single exam or report. She said that in their early data they found that the maximum was \$52,000 for a single supplemental report medical page review.

Ms. David said that in their most current data, they had a number over \$50,000 - \$60,000 for a single exam and their highest was \$75,000 for 25,000 worth of pages. She explained that it sometimes comes up why do they send all those pages. She explained that the number of pages that get sent needs to be agreed to by both parties when it's litigated and sometimes that they can't agree, and it goes to the WCAB/Judge, and they decide what number is going to be set. Ms. David said that a high-cost item in this area is certainly all the page review.

Ms. David said that when they looked at the distribution of the medical exams for 2021 and queried what injury years they were for, they saw only a small share was for the current year. She said most of the medical exams are for two to three years back, and 9% of the exams being done on claims older than 2014. She said that they are seeing the same pattern again for 2022. She said that one of the goals of the fee schedule was to increase the number of QMEs coming into the system. She said that they looked at that very early on and did see some incremental increases in 2021,

kind of going back to the 2019 levels. But they were not expecting to see a very large change in that first year because it takes time for someone to take the QME exam and be certified by the DWC. She explained that they did just this week get a refresh of the QME data from DWC. She said before they publish the paper, they will see if they have made progress in terms of drawing more QMEs into the system.

Ms. David explained that another thing they look at is the specialists that are available, the combination of doctor and specialty. She said that they see that chiropractic is the largest specialty available, and orthopedic is around 17%. She said that, unfortunately, about 50% of the requests are for orthopedics, so there is a kind of specialty mismatch in terms of supply and demand in the area. She said that they will look at this in their update.

Commissioner Voorakkara asked if in the updated study they will look at all the specialties and supply and demand. Ms. David replied that they will be looking at the share of exams by specialty and what proportion they are compared to the share of available QMEs in that specialty. They will examine what kind of balance is there. She said, for example, if 30% of available QMEs have a particular specialty, and a smaller share of the panel requests are for that specialty, they will be out of balance.

Commissioner Kessler asked to see the specialties listed on a previous chart and asked about a missing one for oncology. Ms. David explained that they would look at the top 10 just for the purpose of the presentation. She said that they have all the specialties, just not in the presentation, but the list this covers about 85% of the specialties. Commissioner Kessler mentioned her concern about firefighter mechanics and cancer. Ms. David said that in prior CWCI research, there are maps of all the specialties and where the exams took place and compared that data to where the physicians were located. There were some specialties, she believes it was pathology, where there were barely enough in the state to do the treatment. She said that they are going to face the impact of a physician shortage in all aspects of care. She said that that is true for group health as well, and that as a state they have to contend with the lower availability of some of the specialties not only for exams but for treatment, and it is not just a workers' compensation issue.

Commissioner Voorakkara said that they talked about age for CT, but they did not see gender. Ms. David replied that they did look at gender and it tends to fall more towards females, partially due to carpal tunnel. She said that they have a lot of other claim demographics and characteristics but that they would be there all morning if they gave them all the time for description. She said that in their next iteration they want to have more fine-tuning of occupation because they felt like gender may have been more associated with occupation than industry. She said that they did struggle with how to interpret that, but in the descriptive statistics there is higher a ratio of female to male.

Acting Chair Brady asked how California compares to other states for CT and said that Ms. David had mentioned a little bit on the CT and the compensability issues. He said that that was their experience, where you start with one percent, then 10%, then it goes to predominant cause. He said that was their history in terms of how stress claims started. He asked for confirmation with Ms. David that the threshold in other states is predominant cause. Ms. David responded that she thought in almost every other state - there may be one or two that are not - but that is her

understanding of the cases. Acting Chair Brady asked therefore, whether they anticipate that the sheer frequency of claims with CT in California is much higher than others?

Ms. David confirmed, and she said that she verified with some of their (insurance) members who insure nationally that the volume in other states is lower and certainly the share of CT claims in California is much, much larger than the rest of the country. She said that even within the state, obviously they can see a difference between the south and the north that is not explained by other claim characteristics. Commissioner Brady said that it is very helpful to look at the raw numbers and the data. He said that it is somewhat surprising in terms of the spiking in Los Angeles for some reason. He said that they need to have some further analysis to figure out what's going on there. He said in his own (northern) programs, the one that they work with on schools, their litigation rate is only 6 to 8% after 48 months, and he said that most of those are with CT. He said that he was surprised in terms of the contrast down in Los Angeles. Ms. David said that they had hoped to look at post termination CT claims, but the field is just not available in the claims data; it is in the notes, but they cannot get it on any larger scale. She said that they certainly saw examples of, where a restaurant closed and 30 people filed a claim on the same day; it was the same day as the restaurant closure. She said you could see evidence of volumes of post-termination claims, but it's just not something they could evaluate given the data that they had.

Ms. David said that they did try their best to do that in this study. She said that it is certainly a hypothesis that people have given - that there's a higher rate of post-termination CT claim filing – but that is not something she can verify with the data.

Nurgul Toktigonova from CHSWC in the audience asked about the percentage figures of COVID deaths. Ms. David explained that she reported on the statewide data that's reported through the Department of Health and looking by age, the percentage of total claims that are for working age. There were 32,000 (working age) deaths in the state, and that was only 31% the total statewide death. So, the statewide number would probably be closer to 100,000. She said she was just focusing on the working age population and then the 1700 or so (1,666) that they see in the workers' compensation arena are those claims where they had a death benefit paid, the source being from WCIS in the DWC. She clarified that it is not a death rate figure. Most of the deaths are in the older population.

Acting Chair Brady reminded the audience that public comments for all their important items are for later in the meeting. Commissioner Brady thanked Ms. David and CWCI not just for this report, but for the multitude of reports that CWCI produces, and which helps them throughout the year; it is very significant.

### **III. DWC Update**

#### **George Parisotto, Administrative Director, DWC**

##### **1. Introduction**

- Mr. Parisotto said the Division of Workers' Compensation (DWC) continues to operate in a virtual environment with little to no interruption in work or service to the public. DWC

has successfully transitioned to a hybrid work environment with staff in the office two to three days per week to meet operational needs.

- The current vacancy rate is approximately 12 to 13 percent although, like many other state agencies, it is difficult to hire in high-cost urban areas.
- The DWC Adjudication Unit, which administers the litigation of workers' compensation claims throughout the state, continues to conduct 25,000 hearings per month at DWC's 24 District Offices.
  - DWC is conducting in-person trials while allowing all other hearings to be conducted in a virtual manner.
  - DWC anticipates moving two district offices, Stockton and San Jose, within the next six months, and Santa Barbara within the next year.
  - In the process of rolling out Wi-Fi for all district offices.
- DWC successfully held its first in-person education conference for stakeholders in February and March 2023, with over 1,500 attendees.
- Annual Judges' Training next month – first live training since the pandemic.
- Last month's stakeholder meeting for medical providers to discuss the fee schedule, utilization review, bill payments, and Medical Provider Network (MPN). DWC will likely continue this quarterly and hold additional meetings on specific topics raised such as MPN all with the goal of streamlining the provision of medical treatment to injured workers.
- Studies –
  - RAND – *Alternative Payment Model for the California Workers' Compensation System* study for providers submitted last month. Currently being reviewed for pilot project.
  - Director's Office – Study of the Subsequent Injuries Benefit Trust Fund (SIBTF) program
  - In progress – Medical-Legal, Medical Access

## 2. Technology

- Electronic Adjudication Management System (EAMS) Modernization
  - Currently gathering requirements.
  - Anticipating a Request for Proposal (RFP) for the system built in the current fiscal year.
- Workers Compensation Insurance System (WCIS) Upgrade to International Association of Industrial Accident Boards and Commissions (IAIABC) Version 3.1
- Forms and Website Updates
  - Improve outreach and training.
  - Note Treatment Guidelines and QME online programs.

- Team with UC Berkeley Center for Occupational and Environmental Health for an online course in Medical Legal Report Writing. Available October 6<sup>th</sup>.
- Resumption of Injured Worker workshops – in English and Spanish – on virtual platform
- Electronic Doctor’s First Report
- Additional Forms that will be electronic:
  - Treating Physician Report (PR-2)
  - Request for Authorization (RFA)

### 3. Regulations

- DWC continues to timely update the Medical Treatment Utilization Schedule (MTUS) treatment guidelines and MTUS Formulary with the most recent evidence-based medical information.
  - American College of Occupational and Environmental Medicine’s (ACOEM) Guidelines: Effective August 10, 2023. Additional guidelines include:
    - Work Disability Prevention and Management
    - Shoulder Disorders Guideline
    - COVID-19 Guideline
- Qualified Medical Evaluator (QME) Process Regulations – Awaiting Office of Administrative Law (OAL) approval.
  - Delineate QME Appointment and Reappointment Procedures
  - Clarify QME Disciplinary Measures
  - Update Continuing Education Requirements for QMEs
- Upcoming
  - Utilization Review
  - Pharmacy Fee Schedule
  - EAMS – mandatory filing and e-signatures (modernization)
  - 5710 Deposition Fees for attorneys
  - Interpreter Fee Schedule
  - Supplemental Job Displacement Benefit regulations will include - forms.
  - Disability Evaluation Unit regulation commutation tables and making that process simpler.

### 4. Anti-Fraud

- There have been 1,031 providers suspended under Labor Code section 139.21 since the statute went into effect on January 1, 2017.
  - Providers are suspended from the workers’ compensation system when they have been convicted of fraud-related crimes, have been suspended from the Medicare or Medicaid programs due to fraud or abuse, or have lost their professional license.
- There are currently 74 criminally charged providers with liens stayed under Labor Code section 4615.

- The names of the suspended providers and criminally charged providers are posted on the DIR's website.
- There are currently 534,000 liens designated as stayed pursuant to section 4615 in EAMS with an estimated lien value of \$4.5 billion dollars. There is significant loss in workers' compensation fraud.
- There have been 40 Lien Consolidation Orders. Of those, 21 have been resolved and 19 are still in process.
- There have been 68,000 liens dismissed pursuant to section 139.21 in EAMS. The liens dismissed pursuant to section 139.21 requested payment for \$773 million.

## 5. IMR Update

- Regarding Independent Medical Review, the procedure operates without any delay. Currently, decisions are being made within 10 days of the receipt of the medical records, far below the 30-day deadline.
- 2023 Applications (to Aug. 14)
  - 108,056 received, 83,001 eligible.
- 2022 Applications
  - 170,853 – 140,384
- 2021 Applications
  - 178,927 – 145,702
- 2020 Applications
  - 184,100 – 148,713
- 2015-2018 250,000
- Pharmacy disputes used to be at 50% and now it was 30-40%

## Commissioner Questions and Comments

Commissioner Subers thanked Mr. Parisotto for updates on the *Alternative Payment Model for the California Workers' Compensation System* Rand study. She asked about the automatic payments and DWC's recommendation of a pilot and if DWC had to go back to the legislature to move forward with the pilot project. Mr. Parisotto replied that it was up to DWC, and they were going to schedule meetings with their providers and claims administrators about the next steps. He said they had a unique system because in Group healthcare, there were deductibles and co-payments unlike in workers' compensation. DWC will determine the benchmarks, standards, and areas of treatment to focus on.

Commissioner Subers asked about the WCIS update to 3.0, and if it will collect more information points. She also asked if they had a list of what those new information points would be. She stated that they were always interested in trying to add to the WCIS and trying to advocate for adding to First Report of Injury reports. She was curious if some of those new information points that will be collected under the update could include some of those. Mr. Parisotto said they could provide a side-by-side comparison. For example, currently there was an indication as to whether a claim is denied; they will get more information about denials.

Commissioner Roxborough asked about the 12% vacancy rate and given that DWC was conducting a pilot project was there anything CHSWC could do to help DWC get additional staff. Mr. Parisotto replied that they will need additional resources, and once they have broad parameters they will reach out for help. Commissioner Roxborough added that Cal/OSHA and DWC both needed staff and suggested that a study might be needed for additional staff. Commissioner Bloch stated that unfortunately it was that way with every state agency.

Commissioner Roxborough asked about simplifying the process for doctors to participate in the workers' compensation system and encouraged them to do that because there was a shortage. He said it was a short-and a long-term problem. He added that anything that needed to be done to encourage legitimate doctors to come into the system was always encouraging. He then asked about fraud and the 340,000 liens and said there were some physicians who were charged and were found not guilty, or their cases dismissed. He asked if they were charged, whether they must prove their innocence before they can get paid. Mr. Parisotto replied that if they were charged, their liens were stayed, so there was really nothing that was going to happen. If the physician was exonerated at the end of the criminal process, then what should happen is they remove the stays on the liens and they would move forward at that point. It was only when that conviction happened when the next step was taken of getting those liens out of the system. Commissioner Roxborough added that he was reading about an eight-year case where millions of dollars were spent, and defendants were found not guilty across the board.

Commissioner Voorakkara asked when they find out if they had been criminally charged. Mr. Parisotto replied that they relied on reporting and that they have an anti-fraud unit as part of the DWC and they have been expanding their operations over the past three years. Now they have a better idea to be able to find this out on their own, but generally they rely on people telling them and there was no interagency agreement as with the Attorney General's office. When they were starting to sign agreements with district attorneys' offices in the state of California, they had to be able to provide them with information. Mr. Parisotto said he hoped what will happen with the new EAMS system is that it will be able to integrate with the WCIS data so that they will have a better picture of what happens with claims as they move through their system, but also provide them with the ability to do more robust data analytics. To see patterns a few years ago, they started on that project by looking at medical bills, prescribing habits, and who was prescribing in various chains and networks that existed in their system. That was very helpful. He hoped that with more robust data they will be able to see this clearly.

Commissioner Kessler said she wanted a copy of Mr. Parisotto's presentation because she realized that many people do not know what they do, do not know how broad and intensive the work is. She wanted to write an article that can highlight items such as streamlining the process so that people know that these issues were being worked on. She asked if Mr. Parisotto would be sharing his notes. He replied that he will provide his notes to Executive Officer Enz. Mr. Parisotto added that Commissioner Kessler had an interesting point about some people who did not know what DWC does and that one area where they have not performed well was outreach about what they do and what they can do. DWC was looking at creating more online videos and presentations that people can watch. For example, if a person hurt themselves on the job, what do they do at that

point- so doing more of a comprehensive workers' compensation 101 program. Commissioner Kessler said she had been working with many people in her union regarding training. She said that when she was walking through all the COVID-19 information, she was sponsoring training for job stewards so that they knew what the regulations were, what was going on. She added that if DWC could do those training courses and if help is needed, she can assist them, at least in her community, to be able to say here this is the basic training that would be needed because they would make that happen. Many of her trainings are being done virtually on Zoom, so I if that's a possibility, she would really like to be able to pursue that. Mr. Parisotto said he had outreach staff and said that was a fabulous idea.

Commissioner Kessler said that based on the last CHSWC meeting that they had questions about the RAND study such as who the stakeholders were, how was an outcome defined, what determined it, and how it was defined. She said they did not have the opportunity to pursue these questions, nor have they submitted any answers to the questions. Commissioner Kessler said she was concerned about RAND's pilot project and the process because RAND said they did not have all the information. She said she was concerned about starting a pilot project and the processes getting institutionalized. She added that she was concerned about what they were putting in place as they did the assessment, if it was not working, how to avoid unintended negative consequences. Mr. Parisotto replied that he appreciated those concerns. As they move forward, he would like to work with CHSWC and keep it advised as to how they were moving forward. Mr. Parisotto apologized on behalf of the DWC, and said it was reviewing their processes with that study to see how it fell short. He said he could work with Mr. Enz to determine some type of a Memorandum of Understanding (MOU) or protocols so that if a study is needed with CHSWC's input that everybody has sufficient time to provide meaningful comments. Commissioner Kessler agreed. She said that if things get done incorrectly, and were not corrected appropriately, it left a stain. She added that then people do not want to participate, and they do not want to trust that they were looking out for their welfare. Mr. Parisotto replied it was in their interest to do it right. Trust was very important.

Commissioner Voorakkara said it was a very important question about access and it was reflected in the minutes where the researchers said access was what they were there to talk about. He said he felt every conversation has been about not having enough providers. He stated that they need to have better incentives for providers and hopefully they can get more providers in the systems of care. He said he was hoping that they can have that kind of discussion of how we engage the conversation around access and that it is an important part of everything they do. Mr. Parisotto replied that they were going to start a separate access study which would be helpful, but it's tough. As he said, in terms of the general health care system in the state they were a small part of that. It was a statewide problem, and it was a national problem, but they must make sure they can do what they can. Having that access study will be helpful as well as other steps to bring the providers to them.

Acting Chair Brady said he liked the comments about efforts to simplify the process. He said they could do more of that and when they talk about having nurses and physicians engage and embrace industrial accidents, it's that adage about an incentive. He added that it was about being able to be



good partners in their program and if they try to pay physicians within 6 to 10 days, their schedule opens up. De stated that they do have access and mechanisms to simplify and to streamline. He said that they wanted to make sure that they were doing their part. He said that he appreciated Mr. Parisotto taking the time to go through just a litany of things that he and his staff do. He added that it's just amazing in terms of the amount of work that is getting done.

Commissioner Bloch said the fraud data shows the staggering high cost of workers' comp fraud. He said that what bothered him was that the workers' compensation system was set up to deliver benefits to injured workers. He stated that it was disheartening to see so much fraud in this system because it distracted from doing the very important job it needed to do for injured workers. He said he was happy to hear about the work DWC was doing with medical providers and he would like to discuss it further when Mr. Enz delivered his report. He added that he would encourage them to keep doing that work as well as working with other stakeholders in the workers' compensation system.

Commissioner Bloch stated that Mr. Parisotto had mentioned that the EAMS system was obsolete the day they turned it on in 2007. He said that unfortunately, he has worked with many public sector unions and heard these horror stories of government agencies working with technology providers to set up new systems and the day they turned it on, the workers that must work with those systems hated them and reported the system was not functional. He added that with all the attention right now on technology, artificial intelligence, and autonomous vehicles, he would strongly encourage them as they put out this RFP and solicit help from companies that can redevelop their system. He said that they should work with their unions at the DWC and involve those frontline workers in the process to talk about what they need from the technology to make their jobs better, to make them more productive and efficient and involve them every step of the way so they do not have the horror story the day you turn the switch on. Mr. Parisotto replied that they were trying to do that as best they could and were in the requirements gathering stage. He added that what they have done is they have gone to each of their job classifications, those people that use the system and asked them what they used, how they use the system and what they did. He said that more importantly, they had asked employees what they envisioned the system to be, where did they see it in the future and what would make it easier for them. He said that they have input from all levels of employees. He stated that when they build the system, they will be continually going back to a group of their employees, the subject matter experts, to see if it worked. Mr. Parisotto said it will be important as they move forward to include technology in their system. Discussions have included one central repository, and they can see it with EAMS for all workers' compensation documents if they have a system where it was easy to upload documents and to respect the privacy of the information that was in those documents, making sure that they have a very secure system to gather the WCIS data. So, for example, when a judge reviewed the case, it showed the benefits that were paid. He said that it included how long this was in the system, how long this claim had been open because California does have more open claims than any other state, so he said it was good to get that entire snapshot.

Commissioner Bloch said that Mr. Parisotto’s input about technology at the workplace that involved the people who must use it for their jobs was good and he encouraged them to publicize it and that DWC was a good role model for public agencies.

#### **IV. Cal/OSHA Update**

##### **Jeff Killip, Chief, Cal/OSHA**

Cal/OSHA Chief Killip will discuss the following agenda items:

- Hiring for 2023 – through Aug 31
- Enforcement update – Data Management System Automation Project
  - Expansion
  - Heat Inspections
  - Silica Special Emphasis Program (SEP)
- Consultation
- Outreach + Alliance Agreements

Chief Killip also discussed Cal/OSHA work in the following areas:

- Rulemaking
- Agriculture
- Heat & Wildfire Smoke Season/Heat SEP/Caravans
- *Centro Binacional para el Desarrollo Indigena Oaxaqueño, Inc. (CBDIO)/CAMPO* meetings with Agricultural Community Advocacy Group.
- Assembly Bill 1643 – California Heat Study: Advisory Committee

Enforcement Staffing (January 1, 2021, to August 31, 2023)

- Cal/OSHA Hires (Total number of Positions)
- Classification
  - Management/Supervisor Total number of authorized positions 39  
(4 Previously Authorized 4 – 7/1/22)
    - Staff on Board\* 33
    - Percent of Positions Filled 77%
    - Total Number Hired\* 15
    - Total External Hires\* 1
    - Retired Annuitants Hired 0
    - Attrition (retirements, transfers, promotions, or separations): 6
  - Senior Safety Engineer 31 (previously auth.)  
(2 Previously Authorized. 7/1/22)
    - Staff on Board\* 21
    - Percent of Positions Filled 64%
    - Total Number Hired\* 12
    - Total External Hires\* 0
    - Retired Annuitants Hired 2
    - Attrition (retirements, transfers, promotions or separations): 14

- Safety Engineer (Associate, Assistant, Junior) 221
  - (9 Previously Authorized 7/1/22)
  - Staff on Board 165
  - Percent of Positions Filled 72%
  - Total Number Hired\* 72
  - Total External Hires\* 49
  - Retired Annuitants Hired 11
  - Attrition (retirements, transfers, promotions, or separations): 66
- Industrial Hygienist (Senior, Associate, Assistant, Junior) 21
  - 22 (Authorized 7/1/22)
  - Staff on Board 9
  - Percent of Positions Filled 23%
  - Total Number Hired\* 16
  - Total External Hires\* 15
  - Retired Annuitants Hired 0
  - Attrition (retirements, transfers, promotions, or separations): 9

Cal/OSHA Hiring – The hiring process showed the following progress:

- Job Offers Accepted
  - August 2023: 16
  - Total 2023: 66
- New External Hires On-Boarded
  - August 2023: 7
  - Total 2023: 38
- Reinstatement - Transfer
  - August 2023: 0
  - Total 2023: 2
- Resignations
  - August 2023: 3
  - Total 2023: 14
- Transfers to Other State Agency
  - August 2023: 1
  - Total 2023: 13
- Retirements
  - August 2023: 0
  - Total 2023: 10
- Request to Hire Packets Submitted
  - August 2023: 16
  - Total 2023: 88
- Number of Job Postings on CalCareers/Number of positions to fill:
  - August 2023: 25/40
  - Total 2023: 127/99

- Over the last year and a half from 2021 through August 2023, the enforcement staff had about a 35% vacancy rate and that had been slightly inflated because about 99 positions were approved by the legislature over the last fiscal year, and that has kept the vacancy rate higher as they were trying to fill those new positions.

Chief Killip briefed CHSWC about the streamlined automation project as requested by Commissioner Roxborough. He said that the automation project allowed Cal/OSHA to obtain and share essential information and data in real time. It was a streamlined system, and an inspector will be able to identify the location of agriculture workers due to data entered. He said that data will be available in real time to be shared across the agency. Chief Killip stated that employees and the public will have the ability to file complaints online and employers would be able to report accidents, upload documents, and have a user friendliness that does not currently exist. He added that external stakeholders will also be able to get information in real time.

Chief Killip said that they were in Stage 3 of procurement management that has completed several phases, and they were looking for an RFP from an outside vendor later this year to bring the automation project to life. Mr. Killip said this project would allow Cal/OSHA to be more effective and alleviate the burden of the high vacancy rate.

Chief Killip said that Cal/OSHA had expanded its presence through their new Cal/OSHA Enforcement Offices and hiring. He said that Fresno will have a new high hazard regional office and that Santa Barbara and Riverside will also have new offices. He added that Cal/OSHA will hire about 30 total positions for those three offices with most of them in Fresno. He indicated that there was a business need for expansion in that region. There would be enforcement expansion in Kern County (14%), Monterey County (70%) and Southern California (16%).

#### Current Footprint in the Central Valley

- 17 District Offices
- 2 High Hazard Unit (HHU) District Offices
- 2 Labor Enforcement Task Force District Offices (LETF)
- 3 Mining and Tunneling (M&T) District Offices

#### New Footprint

- 19 District Offices
- 3 HHU District Offices
- 3-LETF District Offices
- 3-M&T District Offices

Chief Killip also said there was an update regarding their consultation program in which they hired four area managers and were excited about their growing consultation program:

In July & August 2023 there were:

- 154 onsite consultations (44 in Spanish)
  - 59 Construction
  - 40 High Hazard employers

- 14 Agricultural
- 14 Formal Trainings (4 in Spanish) with >3,000 attendees
- Continued partnering with the Labor Occupational Health Program (LOHP – funded by CHSWC) for numerous seminars/webinars.
- Partnership Programs – 70 Voluntary Protection Programs (VPP) and 13 VPP in Construction
- Addressed “emphasis” hazards during consultation
- 153 IIPP / COVID-19
- 133 Heat Illness
- Free webinars on heat-illness prevention held every other Thursday in Spanish and English (exploring Alliance Agreements to boost)
- Hired 4 Area Managers to fill vacancies in the Fresno, La Palma, Sacramento, and Van Nuys offices, and hired one Regional Manager

#### Meetings & Events

- Workers’ Memorial Day
- Imperial County Worker Caravan Event – March 10, 2023
- Central Coast Worker Caravan Event - April 19-21, & 27
- Central Valley Reg. Relationship Building June 6, 2023
- Labor Rights Week (participated in 18 events)
  - Radio, FB Live, in-person presentations, & staffed tables
  - Aug 28 – Sept. 1

Chief Killip said they had hired four area managers, and they were very excited about that. The newly hired area managers were in the Fresno, La Palma, Sacramento, and Van Nuys offices.

Chief Killip and Ms. Lilia Garcia-Brower of the Labor Commissioner’s Office met at the Agriculture Worker Pop-up workshop in Fresno on September 8 with *Centro Binacional para el Desarrollo Indígena Oaxaqueño, Inc.* (CBDIO) to discuss challenges and worker safety and health.

Chief Killip shared a story from the September 8<sup>th</sup> meeting when they met the leadership and then later in the day, they met with all the workers in the parking lot for a couple hours. He said that when he was 19 years old, he had worked on a fishing boat in Alaska and during that summer when he came back the very next day, he was picking cucumbers during a heat wave. He added that it was approximately 98 degrees with 90% humidity, and he almost collapsed even though he was in the best shape of his life at the time. He shared what it felt like to work under those conditions. It was a good opportunity because some of the workers shared with him during the question-and-answer session that he had done this for one day and they had been doing this for 30 years. He said that it was a rich opportunity for Cal/OSHA to build more trust and to build on their ability to work collaboratively and more effectively with the agriculture worker community.

Chief Killip said he was very proud of the Cal/OSHA Training Academy. He noted that it included their COVID-19 prevention standard and training on respiratory protection.

## Meetings & Events

- Monthly events with Radio Indigena
- Participated in the CA Labor Federation Joint Legislative Conference
- 2023 Union Women: Stronger Together Conference – State Building and Construction Trades Council of CA & the CA Labor Federation
- Provided training to UFCW 770
  - July 22, 2023

## Alliance Agreements:

- Allow to gain traction to prevent workplace safety and health challenges. An announcement of consultation or alliance agreements is worth a pound of enforcement down the road and below are a couple of the alliance agreements they've had recently.
- March 28, 2023 – National Safety Council (NSC)
- September 2023 – Mexican Consulates renewal (pending signatures)
- October 17, 2023 – BETA Healthcare Group

## Rulemaking:

### Silica (title 8 section 5204)

- California Department of Public Health (CDPH) notified Cal/OSHA of over 70 cases of silicosis in artificial stone countertop workers at just one California hospital with a 17 to 20 percent fatality rate.
- There is no cure for silicosis and the disease progresses even after all exposures are eliminated.
- On July 20th, 2023, the Occupational Safety and Health Standards Board (OSHSB) passed a decision on Petition 597 that requested that DOSH prepare and propose language for an emergency regulation to eliminate silicosis in the countertop fabrication industry.
- DOSH has, following an advisory committee meeting, proposed draft language and has submitted initial rulemaking documents to OSHSB for review. A vote by OSHSB could be as early as the December Standards Board meeting.

Chief Killip said that Cal/OSHA issued more than 800 letters to these tabletop employers across the state, giving them information about the hazards for this industry, advising them that they need to report to Cal/OSHA that they were working with a carcinogen and if they do not report to Cal/OSHA within a certain period of time, they put them on this Tier one list for inspections. He said they might conduct a randomized inspection of the premises for those on the Tier one list because they hadn't reported back to Cal/OSHA.

Chief Killip said that there was a blacklist for higher risk employers. He indicated that there were methods that Cal/OSHA is using to determine when they go out for an inspection for this silica SEP and employers were given helpful information to protect their workers and promote their consultation programs. He said that they'll come out for free and that they'll show these employers how to do this safely to protect their workers.

#### Lead (title 8 sections 1532.1, 5155, 1598)

- Public Hearing on proposed regulation to prevent lead poisoning was held on April 20, 2023.
- Changes to the proposal to address public comments were posted on the Standards Board Website on July 2, 2023, as part of a 15-day change notice. DOSH is preparing a second 15-day notice in response to recent comments.
- Vote on the proposal by the Standards Board is expected in Q1 2024.

#### Indoor Heat (title 8 section 3396)

- Public Hearing on proposed regulation to prevent indoor heat illness was held on May 18, 2023.
- Changes to the proposal to address public comments were posted on May 18, 2023, on the Standards Board website. DOSH is preparing additional revisions in response to these comments and anticipates proposing a second 15-day notice to be posted in November of 2023.
- Vote on the proposal by the Standards Board is expected in Q1 2024.

Chief Killip said that in 2023 the number of heat inspections that have taken place this year have increased, and they have broken the previous records for heat inspections. He said that there were 41 inspections in 2021, 117 in 2022, and 238 to date in 2023.

#### Workplace Violence in General Industry

- Cal/OSHA continues to work on the development of the workplace violence prevention standard for general industry.
- Cal/OSHA will notify the public once there is a new draft available for public review and hold an advisory meeting accordingly.

#### Aerosol Transmissible Diseases (ATD) (Title 8 section 5199)

- Cal/OSHA is finalizing proposal to clarify requirements in the Aerosol Transmissible Diseases regulation for COVID-19, recognize COVID-19 as an airborne infectious disease and include COVID-19 vaccinations in the list of vaccination offered to workers.

#### Infectious Diseases

- Cal/OSHA is working on a discussion draft to protect employees not protected by section 5199 from aerosol transmissible diseases.

#### Trichloroethylene (title 8 section 5155)

- Cal/OSHA is finalizing proposal to lower the Permissible Exposure Limit for trichloroethylene.

#### First Aid Kits (title 8 section 1512 and 3400)

- Cal/OSHA is finalizing proposal to updated first aid kit requirements.
- The Standards Board staff terminated the previous proposal in January 2023.

#### Respiratory Protection for Wildland Firefighters

- Cal/OSHA is meeting biweekly with CalFire, LA County Fire Dept., respirator manufacturers, and other experts on developing, studying, testing, and implementing new technologies to protect wildland and wildland-urban interface firefighters.
- The new technologies will be the basis for the new regulations.

- On August 30, 2023, Cal/OSHA and LA County Fire co-hosted a study with about 25 frontline firefighters from LA County Fire Dept. and Cal/Fire to field test (without smoke or flames) five different prototype powered air purifying respirators (PAPRs), and non-powered negative pressure respirators. This study was repeated on September 12, 2023, in Northern California co-hosted by Cal/Fire.

#### AB 1643 – California Heat Study: Advisory Committee

- On Cal/OSHA website: <https://www.dir.ca.gov/dosh/doshreg/Heat-Advisory-Committee/>
- Email Address: HAC@dir.ca.gov
- 1st meeting - June 27, 2023
- Posted recording of meeting
- Outlined the statutory requirements.
- Discussed potential scope of study to be performed in 2024.
- 2nd meeting is September 26, 2023, in Sacramento and via Zoom for the public.

#### COVID-19 Prevention Non- Emergency Standards

- Updated our interactive training in English and Spanish with certificates.

#### Respiratory Protection

- Voluntary Use of Filtering Facepiece Respirators Spanish Video

### **Commissioner Questions and Comments**

Commissioner Bloch said that he was happy to hear about the rulemaking, the enforcement expansion, and the new office in Fresno. He said he was excited to go down with the Los Angeles Fire Department and test this new technology for the frontline firefighters and involve the people whose jobs depend on this technology.

### **V. Executive Officer Report Eduardo Enz, CHSWC**

Mr. Enz thanked the Commissioners for the opportunity to brief them on staff activities and thanked the speakers for their excellent presentations. He said that since the last meeting in July, staff has been busy fulfilling Commission requests and closely monitoring and working on several projects and studies. He said that he was going to provide an update on the RAND Alternative Payment Model study but recognized that Mr. Parisotto effectively addressed it during his presentation.

Mr. Enz said that the redo of the CHSWC study “Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles” is pending completion of a revised Request for Proposal. He said that they are working with the DIR Contracts and Procurement Office to finalize and post a Request for Proposal (RFP) on the state’s public bidding site (Cal eProcure) that includes an extended timeline to facilitate equal access, ensuring worker participation, adhering to scientific standards, and communicating findings. He said that they want to make sure that all the requested elements are included in the draft RFP. Mr. Enz said that he appreciates the Commissioners’ patience during this process and



that he wants to ensure that they get this right. He said that he will advise the Commissioners when it is ready to be posted on the state's bidding site (Cal eProcure).

The CHSWC study "Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors" by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, UCSF and UC Davis campuses, is still in process. He said that they now anticipate a finalized report by June 2024, due to access issues. He said that the project Principal Investigator (P.I.) Carisa Harris Adamson (Ph.D.) indicated that they have had two student theses completed on the data from the survey and that they currently have access to four (4) sites right now (and all 4 venue types) and are actively collecting data.

Mr. Enz explained that per Dr. Harris, they may need additional sites per venue depending on the participation rate; and their current challenge is participation, particularly with wearable devices. He said that she also indicated that they encountered another glitch with access to collect data. After months of working with CalPERS, their site will not be viable. They are now trying to get access to UC Janitors because they think that will be the easiest way to proceed. They plan on finishing data collection before the end of this year but will still need to analyze the data in the winter/spring of 2024.

Mr. Enz advised that final versions of the 2022 CHSWC and 2022 WOSHTEP Advisory Board annual reports approved at the last meeting were released and posted on the CHSWC website. CHSWC staff is currently working intensively to prepare the draft 2023 CHSWC and the 2023 WOSHTEP Advisory Board Annual reports. He advised that these draft reports will be ready for public feedback and comment in time for the next meeting in December.

Mr. Enz said that CHSWC staff will be attending and participating in the California Partnership for Young Worker Health and Safety meeting held on October 5th. The meeting will focus on Young Worker project updates, coordinating young worker outreach efforts and discussing new initiatives to help promote Young Worker Safety and Health in California. The California Partnership for Young Worker Health and Safety is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers and others. The partnership develops and promotes strategies to protect youth at work and serves as an advisory group.

Mr. Enz said that they are currently planning the next WOSHTEP Advisory Board meeting as well as the SASH Advisory Committee meeting and they anticipate that these meetings will be scheduled in the first quarter of 2024. He explained that CHSWC convenes the WOSHTEP Advisory Board meetings to provide an overview of the WOSHTEP program and updates to the board and receive their guidance on new directions for the program. He identified Mitch Steiger as involved. He said that the SASH advisory board meetings are convened to help identify emerging issues and share best practices from varying school employee safety and health perspectives. He identified Martin Brady as involved.

Mr. Enz said that aside from approval of the July 14th meeting minutes, there were no additional action items for consideration at the meeting. He indicated that he concluded his report.

## Commissioner Questions and Comments

Commissioner Subers apologized for risking repetition and asked if there is a timeline for the RFP. Mr. Enz explained that they need to finalize the RFP within the next few weeks and then turn it into contracts and procurement. He said that they will then give their feedback, it will be finalized and then they can send it out.

Commissioner Subers asked a question about the agenda. She said that when they added the spot for a stakeholder to speak, she wondered if they could talk about what the process has been to have someone speak as a stakeholder. She said that they have talked a lot today about access to care and maybe we could hear from a provider about their experience in the system. She said they are all guilty of getting bogged down with data, and while the data is important, when they heard from an injured worker at the end of last year, she thought that it was impactful. She said that they all kind of live in a bubble about what the system is, but she said she thinks it is also important to hear from people that have to use the system. She said that she wanted to put that out there as something that she would be interested in hearing about. She said that she may not speak for everybody, but she would like to hear more from the practitioners - from all angles – practitioners who are working within the system in some form, whether it's a worker, a provider, a claims administrator, or something like that.

Commissioner Bloch added that given the presentation and talk about litigation and CT claims, that he would love to hear from an applicant attorney as part of the list of stakeholders. Commissioner Brady suggested a point/counterpoint format having a defense and an applicant attorney and have them go at it.

Commissioner Kessler said that the issue still has come up about the RFP process and while they have talked about this a lot, the whole thing about how they know when an RFP is being drafted and whether it captures the intent of the request of the study. She said because it has to go through so many machinations internally in order for it to pass muster for the legal beagles and the grammar people, whomever, they never get a chance to really review it before it becomes a public document.

Commissioner Kessler said that they had the whole discussion that took place about the history of how RFPs are developed and the ways that they capture some of those issues. She added that the process is so cumbersome, but then they have to deal with what the results are, which may not be even in line with what the intent was when the study was requested. Commissioner Kessler asked if there was any movement in Mr. Enz's discussion with folks internally about their ability to weigh in on how these RFPs get drafted?

Mr. Enz replied that there are still confidentiality issues. He said there is an option if one member of the Commission would like to be able to review the draft of the RFP before it goes to the public. He said one of the ways that they found was to publish it for 30 days on Cal eProcure so it becomes a public document. Mr. Enz added that he believes that was the best they could do at the time, but he is happy to go back to them and follow up if needed.

Commissioner Kessler asked for clarification on what happens after the draft is posted for 30 days. She asked if one of them finds something in the draft that they think needs to be edited in some

way, what is the process by which that occurs, and does it occur? Mr. Enz said yes, it will occur, and that is the point of the 30 days. The draft is in draft form and after the 30 day period they get all the feedback and can make the changes.

Commissioner Kessler said that there was one question she had asked last time about sending them a draft of the RFP and Mr. Enz had said he could send them all a draft. She wanted to confirm that Mr. Enz would send them all a draft and he replied he absolutely would.

Commissioner Kessler added that after draft RFPs are posted and there are responses have other draft RFPs been changed. Mr. Enz replied that they have. He added that DIR has never gone this route but that the Department of Government Services (DGS) and other State of California organizations have done this frequently. Therefore, it was an option.

Commissioner Roxborough followed up on Commissioner Kessler's question and asked when the RFP has been approved if it was listed as a consent item that the Commission approves. He said they never approve anything. They are told that a study has been conducted and they had criticisms that the study wasn't what was represented. Commissioner Roxborough asked from a procedural standpoint, why CHSWC doesn't approve the RFP as the final body. Mr. Enz replied that this was something they could do; and once it got back to CHSWC after the 30-day period and the edits are made, they could approve it since it was a public document. Commissioner Roxborough said once it was a public document, then it becomes an agenda item, and they do not want to delay it, but he shared Commissioner Kessler's concern about looking at the RFP more carefully.

Commissioner Roxborough said it was a year ago he brought up the issue of diversity and asked what the criteria in their RFP was. He added that he believed the people they hire should reflect California and he felt strongly about when they see the same organization because they were the only ones bidding then there was nothing they can do about it. He would like to open the bid to a broader group of people in California to get diversity, to get a different perspective. Commissioner Roxborough said for example that a friend of his runs a hedge fund and he has English majors running his hedge funds even though he has mathematicians from Stanford, Yale, and Berkeley. He wanted to have philosophy majors and English majors or a different perspective. Commissioner Roxborough reiterated that he wanted to get a different perspective on some of the studies they would undertake. That was something they would appreciate because that should be a criterion in California on the RFP process. Mr. Enz replied that there were a variety of criteria, such as minority owned businesses, woman owned businesses, and small businesses were all included in that process. He said they could include a three-month period once the RFP does get approved by the Commission for proposals to be submitted. He added that they were trying to allow as much time as possible for as many candidates to be able to bid. Commissioner Roxborough said the RFPs go out, then they see who the competitors were, then they looked at the criteria and why they were selected. That was the process that he would like to see implemented.

Commissioner Kessler said they also raised the issue of institutions like the University of California at Berkeley or the State that also want to conduct research have to be allowed time for the cumbersome process to proceed. They had a previous discussion about getting the best

qualified personnel not only because of a quick turn-around time but also because they have money and staff, but they also wanted their expertise. There should be enough time for the process.

Commissioner Voorakkara said as long as he has been with CHSWC he has only seen study updates. He asked who had the final approval. Even in today's meeting with Ms. David there were many questions about the methodology. He asked once you see the data have there been opportunities to discuss what methodology was planned before the studies began. He asked if there could be a discussion in the beginning for CHSWC Commissioners to weigh in as part of the public record on the methodology and that they were thinking about these questions. He said he did not know if that had happened or if they could even consider it. Mr. Enz replied that he did not recall that happening while he was at the Commission.

Acting Chair Brady added that there were many ways to look at this and with advanced information and approval there was room for improvement. He said that CHSWC must take that under advisement of incorporating it in the future. Above all, since CHSWC is an investigative body, there must be independence and the quality of the individuals conducting the research needs to be the best because they were providing CHSWC with insight and served as a compass to make decisions going forward.

Commissioner Voorakkara said that he was not wanting to change the methodology, but wanted to know upfront what their plans would be and why so that they were not going halfway through a study period asking questions. Mr. Enz replied they could start doing this after this RFP process is complete and after the entire process plays out, they can have the researchers come before CHSWC to share their methodology. Acting Chair Brady said the question was how big the universe was for their expertise, who the premier researchers in California were that can help CHSWC accomplish what it needs. The more criteria they include the narrower and more expensive it was going to be.

### **Public Comments**

Acting Chair Brady asked if there were any comments from the public to please come down, state their name and identify themselves, adding that they have three (3) minutes.

Ms. Lisa Bickford of Coventry, an Enlyte Company, said that regarding anti-fraud, she wanted to suggest something that would help them when processing bills to find and identify fraud. She said that it would be helpful if they had some sort of numeric identifier such as the National Provider Identification (NPI) number, and/or the federal Tax ID (FEIN). Ms. Bickford added that having a specific numeric identifier for the suspended providers will ensure that they are able to correctly identify bills that come in and further ensure that these folks do not inadvertently continue to get paid. She stated that it also helps to avoid confusion, especially in situations where a provider has a common name (like John Smith, MD in Los Angeles) so they avoid accidentally not paying bills with providers that should be paid, and vice-versa. Ms. Bickford added that their technology/bill processing department would really like to see this change implemented as soon as possible by the DWC, as it has been difficult to maintain the Suspended Providers list on a manual basis.

Diane Worley of the California Applicants' Attorneys Association said she wanted to thank the Commission for all the great work and said she wanted to point out how respectful they are to each other. She said that even though they may have different interests at times, in terms of bringing stakeholders that practice in the system and applicants' attorneys and the defense, they'll be respectful to each other. Ms. Worley added that they might agree in some manner regarding how the system works. She said that she has always been a spokesperson and works in the policy area and in data. She said that she also thinks that when one works in a vacuum and when one does not understand how this system works, damage can be done. Ms. Worley stated that she often hears "Where's the data?" But when it's convenient, sometimes anecdotal stories are used, and there is a lot of conjecture and speculation. She said that she welcomes the opportunity to have the applicants' attorneys and defense attorneys talk.

Ms. Worley said she also wanted to thank the Commission, as she has watched over the last two years as it pushes back on these studies. She said that ten years ago when she started coming to these meetings, she was kind of appalled at this kind of rubber stamping of studies that really didn't have good research and good contact with stakeholders. Ms. Worley expressed her appreciation for the Commission's work.

Acting Chair Brady asked if there were any more public comments and there were none. Acting Chair Brady said that he wanted to take some editorial privilege about software and development and updates. He said that he deals a lot with cyber exposure, underwriting, cyber coverage, and he said that it is important for them to incorporate defensive cyber software development, dual authenticity, and all of that. He said that as they move forward throughout this workers' compensation industrial accident process, they are trying to improve their standards, and that they obviously have professionals that help in the effort. He said he wanted to underscore the importance of that step, and that it is very critical for them to be on guard, especially today.

**Other Business**

**None**

**Adjournment**

Commissioner Brady asked for a motion to adjourn, Commissioner Bloch moved, and Commissioner Voorakkara seconded. The motion passed unanimously.

The meeting was adjourned at 1:06 p.m.

**Approved:**

---

Martin Brady, Acting Chair

---

Date

Respectfully submitted:

---

Eduardo Enz, Executive Officer, CHSWC

---

Date