

**Commission on Health and Safety and Workers' Compensation**

**MINUTES OF MEETING**

**December 12, 2014**

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

In Attendance

2014 Chair, Angie Wei

Commissioners Martin Brady, Daniel Bagan, Doug Bloch, Christy Bouma, Shelley Kessler, Sean McNally and Kristen Schwenkmeyer

**Approval of Minutes from the August 15, 2014 CHSWC Meeting**

*CHSWC Vote*

Commissioner McNally moved to approve the Minutes of the August 15, 2014 meeting, and Commissioner Bouma seconded. The motion passed unanimously

**Election of the 2015 Chair**

*CHSWC Vote*

Commissioner Brady nominated Commissioner McNally, and Commissioner Bouma seconded. The motion passed unanimously.

**Report on Department of Industrial Relations**

Christine Baker, Director, Department of Industrial Relations

Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation

Dr. Rupali Das, Executive Medical Director, Division of Workers' Compensation

**Comments by the Director**

Christine Baker stated that Division of Workers' Compensation staff, Destie Overpeck, Dr. Rupali Das, Richard Newman, George Parisotto and their teams, is dedicated and responsive to issues. Senate Bill (SB) 863 reduced a huge number of liens that were clogging the court system. Approximately 650,000 liens were coming in per year with more expected, but the volume is now down by 60%. Prior to SB 863, liens could be filed for resolution of billing disputes with few restrictions. Now, provider billing disputes are handled through Independent Bill Review (IBR). Once the Copy Service Fee Schedule and the Interpreter Fee Schedule and In-home Health Care Schedule are in place, those services will also go through IRB and will no longer be clogging the courts, which means more attention will be given to injured workers and the law.

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Director Baker stated that across DIR, the focus is on prevention and preventing bad medicine in workers' compensation. SB 863 was the key to reducing the frictional costs of having a medical legal system make decisions on care. It also improves the delivery of medical care through medical provider networks (MPNs) by requiring doctors to be listed online, removing doctors who do not acknowledge their membership, and providing medical access assistants to identify an available doctor should the injured worker be unable to identify one. The runaway medical care outside of the network was brought into the expedited hearing process. Director Baker stated that IMR was agreed upon because of the cumbersome medical legal process to resolve disputes which often led to a judge having to decide appropriate medical care. Inappropriate incentives were changed by changing fee schedules for spinal hardware and ambulatory centers and by updating the physician fee schedule. This is a paradigm change, and some people are not used to it yet. There needs to be a cultural change.

Director Baker stated that the previous process took 9 steps and over 9 months to resolve, and most treatment was approved. Now, the key steps are: negotiating over the selection of an agreed medical evaluator (AME); obtaining a panel, negotiating selection of a qualified medical evaluator (QME); making an appointment and waiting for examination; and waiting for the evaluators' reports, and if the parties still disagree, waiting for a hearing with a workers' compensation judge and then getting the decision from the judge. The process was cumbersome. There is still a long way to go to change the system to be responsive to workers and be cost-effective to employers. DIR can use everybody's help. All the teams in DIR are dedicated and are moving forward to update the Medical Treatment Utilization Schedule (MTUS) and opioid guidelines and are in the process of fixing copy service fees, with interpreter fees next.

Director Baker stated that on the Cal/OSHA front, there is now a fantastic chief, Juliann Sum, who has been acting chief for over a year. She has brought order and a systematic evidence-based method to organizing Cal/OSHA efforts. There are two enforcement directors, one south and one north, to coordinate on enforcement efforts. Most recently, Acting Chief Sum developed a guideline for inpatient hospitals. The guideline is a model not only for the state of California, but for the nation and the world. This was the Ebola guideline. It was extremely difficult to develop.

Director Baker stated that Cal/OSHA teams are working on carrying out the process safety management regulations for refineries, which will also be a paradigm change for California for performance-based enforcement. This will lead to better safety and risk-management systems in place in refineries.

Director Baker also stated that Labor Commissioner Julie Su is bringing employers into compliance and protecting workers from wage theft, and along with Juliann Sum, she is developing and consolidating and streamlining systems for reporting violations and compliance. A new coordinated office information system for reporting violations has been put in place. Also, Department of Apprenticeship Standards Chief Diane Ravnik is expanding the apprenticeship program which is so important to young people and the State, in order not to lose qualified technical workers. Director Baker stated that the Labor Enforcement Task Force (LETf) team, which is using data to target those employers not in compliance and those in the underground economy and bring them into compliance, will provide a report today.

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**Report on the Division of Workers' Compensation Regulations**

Destie Overpeck, Acting Administrative Director, Division of Workers' Compensation (DWC), stated that she would provide an update of (DWC) regulations since the last meeting. She stated that MPN regulations have been completed and became effective on August 27, 2014. DWC is almost done with the Copy Service Fee Schedule: the second 15-day comment period closed on November 8, 2014, and DWC is determining whether an additional 15-day comment period will be needed before completion. DWC is also in the drafting phase of the Interpreter Fee Schedule regulations which will be posted on the DWC forum which allows people to give informal comments before formal rulemaking is started. She stated that RAND has been working on a Home Health Care Fee Schedule study to help advise DWC, and the study is near completion. As with the Interpreter Fee Schedule, the Home Health Care Fee Schedule regulations will be posted on the DWC forum in order to get informal comments before formal rulemaking. Ms. Overpeck stated that for the Benefit Notice regulations, efforts have been to streamline the notices and update them to comply with various Senate Bill (SB) 863 changes. A public hearing was held on September 3, 2014, and comments are being reviewed. A 15-day public comment period will follow.

Ms. Overpeck stated that the non-SB 863 regulations include the Medical Treatment Utilization Schedule (MTUS). DWC is working on the "strength of evidence" regulation which clarifies how the presumption could be rebutted. She stated that the second 15-day comment period just closed on December 9, 2014, and DWC is in the process of determining whether another 15-day comment period is needed. She stated that the draft Opioid Guideline was already posted on the DWC forum, and the draft Chronic Pain Guideline was just posted on the DWC forum, with a comment period that closes on December 18, 2014. Once those comments are in and reviewed, DWC will go forward with both regulations in formal rulemaking. She also stated that DWC is in the process of updating the requirements for reporting medical bill information to the Workers' Compensation Information System (WCIS). The second 15-day comment period closed on November 28, 2014, and comments are being reviewed. In addition, DWC is working on the draft of Audit regulations. She also stated that DWC also completed the changes needed to the Billing Guide for ICD-10 references. Those regulations went into effect on October 1, 2014. In addition, the Qualified Medical Evaluator (QME) On-line Panel Request for represented initial panels asking for QMEs is in place, and DIR's Information Technology (IT) department is working on creating the system; DWC should be issuing formal rulemaking notice in January 2015. WCIS penalties regulations were posted in April 2014 on the DWC forum, and work with IT is in process so that WCIS will automatically update who is reporting and who is not reporting. Once that is clarified, it will be clear exactly how the system will work, and formal rulemaking will begin.

*Questions from Commissioners*

Commissioner Wei asked if there was any interaction between the Opioid and Chronic Pain Guidelines and independent medical review (IMR), since they are hearing about how so many prescriptions are going to IMR. Ms. Overpeck responded that 45% of all of the IMR requests are for pharmaceuticals. Dr. Rupa Das, DWC Medical Director, stated that about 60% of those requests are for opioids or pain killers. Commissioner Wei asked what the interaction is between

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the Medical Treatment Utilization Schedule (MTUS) and IMR, given such large numbers of requests. Ms. Overpeck stated that she would defer to Dr. Das to respond to that question during her upcoming presentation. Ms. Overpeck stated that in regard to utilization review (UR), last year, the California Workers' Compensation Institute (CWCI) issued a report on how many UR requests are issued vs. how many treatment requests go to IMR. She stated that DWC looked at its own resources to try to answer this question. DWC does not get notification of UR, and DWC does not collect UR data. What is known is how many treatment request bills are reported. She stated that in 2013, there were 561,702 new workers' compensation claims filed requiring medical treatment; and from 2000-2013, there have been over 10 million new workers' compensation claims filed. Looking at just the 2013 claims, there were 54.3 million treatment requests of bills reported to WCIS for all dates of injury. In 2013, 84,000 IMR applications were filed; however, that is a low number because it did not apply to all dates of injury for the first six months. She stated that based on year 2014, between 140,000 to 180,000 IMR applications can be expected. On average, each application requests two treatments. That would mean there are 180,000 times two treatment requests or a total of 360,000 treatment requests that are sent to IMR per year. If that number is compared to 54.3 million treatment requests billed, less than 1% of all treatment requests are submitted to IMR. Commissioner McNally asked if 54.3 million is an accurate number, and Ms. Overpeck responded that it is. She stated that using the overturn rate of 16% for 2013, even with the large number of IMR requests, more than 99% of requested treatment is in fact being provided to the injured workers.

Commissioner Kessler asked Ms. Overpeck why the number of treatment requests (1%) submitted to IMR is so low. Ms. Overpeck responded that either a lot of the treatment requests are automatically approved through pre-approval, or they are approved at the claims administrator's level and then also at the next step at UR. Commissioner Kessler asked whether people might think the IMR process is responsive enough to be worth pursuing; she asked whether a lack of trust in the system might have something to do with the number of treatment requests. Ms. Overpeck responded that DWC is only looking at the first years of IMR, so she does not know if people at this early stage have come to any conclusions about IMR being a good system or not. She stated it is very easy to request IMR; all you have to do is sign the filled-out form and send it in. Commissioner Kessler stated that there might be a survey which captures what people do in regard to IMR. Director Baker stated that they are releasing a report later in the day on IMR from 2013 data.

Chair Wei stated that she has questions as well and that she would like to leave today thinking that 99% of all medical treatment requests are getting approved, as stated in Ms. Overpeck's presentation; however, she has a hard time believing that that is true. She stated that she believes there are potential issues with the data, and that since it is such an important issue, that DWC should make sure that the assumptions are accurate and shared broadly. She asked whether out of the 54.3 million treatment requests all of them are eligible for IMR. She stated that she believes the answer is no. Therefore, she believes the base (denominator) may be inaccurate for the 360,000/54.3 million calculation. To be accurate, the base should be a number that represents that every request that could go to IMR. Ms. Overpeck responded that it depends on the question being asked. DWC is trying to figure out how to define a universe of how much treatment is being given vs. denied. That is a different question from the question than out of how many treatment requests going to UR, how many are being overturned. Commission Wei stated that

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she agreed with the distinction, but she still has a hard time accepting the conclusion that 99% of all treatment requests were getting approved. She stated that she is not certain that that is the right conclusion from some of the data. She stated that she has another point which she believes Commissioner Kessler was getting at, which is that if less than 1% of treatment requests are being submitted to IMR, that assumes that everyone who went through UR got approved. She stated that what could be happening is that people are going through UR and getting denied and then not going through IMR, so that there is going to be a drop-off of the people in the universe. Ms. Overpeck responded that this is correct. Commissioner Wei stated that therefore she believes the following two points – and potentially more, if they talked through it some more – are shaky assumptions: that 54.3 treatment requests are eligible to go to IMR, which does not seem accurate; and that every request that goes through UR gets approved. She stated that she does not want to walk away today from this presentation and go out to her base and her members and leaders and say, “99% of all treatment requests are getting approved” if it is not accurate. Ms. Overpeck responded that she believes that that is a fair comment, but again, DWC has limited resources to try to put any kind of numbers on this. DWC is trying to take data that it knows it has and come up with a calculation that at least has some basis in data. Commissioner Wei stated that she appreciated that and that she thought that DWC could use the data, but that she was not sure this is methodologically refined enough. Ms. Overpeck responded that they are still hoping to one day capture the number of URs that are denied, and that would answer some of these missing questions.

Director Baker stated that DIR currently has a RAND study going on that is independent and will be looking at data and providing a more in-depth analysis that, hopefully, will tell DWC more about this. She stated that DWC wants to better understand the IMR and UR process. DWC would like to have the UR data, but it does not have it currently. DWC might want to explore how to get that UR data. She stated that DWC has asked for it but has not received it. Chair Wei asked if they could get that data through the Audit regulation that is going to be redone. Ms. Overpeck responded that the data would have to come through WCIS, and WCIS follows Electronic Data Interchange (EDI) which is a national reporting system, and as she understands it, that is not one of the data fields that is nationally requested. Director Baker stated that she believes that there are some data fields that they can add. Ms. Overpeck agreed, and stated that as the new releases that come out are adopted, release 3.0 perhaps, the ability to receive that data will be possible. Director Baker stated that this will be explored since it is critical to the analysis. Chair Wei stated that she thought the Audit regulation could provide some ripe opportunities. She stated she was just rereading Labor Code Section 129.5 and it is pretty broad, and she thinks there are opportunities there to try and get this data directly from claims administrators. Director Baker stated that that data together with the number of claims that qualify for IMR could be available. Director Baker added that the other issue is that most injuries are not permanent disability; 80% is medical-only, and those flow through the system, get cared for and turned around. Chair Wei stated that the data do not necessarily speak to that or need to speak to that. Director Baker responded that there is a 20% area that is more contentious. She stated that going to Commissioner Wei’s point of the 53.4 million, that number includes all of the medical-only; one could narrow it down to where there is friction. She stated that she is hoping that RAND can help DIR with this and that RAND analysts, Barbara Wynn and the team, can dig deeper.

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Commissioner Bloch stated that he is concerned about workers who are injured and may not be availing themselves of IMR, for example, a limited English-speaking worker who has no union representation or legal representation. He asked whether he was correct in assuming that the forms are not available in multiple languages. Ms. Overpeck responded that they are not available in multiple languages; however, DWC has trained Information & Assistance (I&A) Officers in every district office to help injured workers with this procedure. Commissioner Bloch stated that he was surprised at the numbers and has raised questions at previous meetings about whether there is a way to understand why the original projections of IMR cases are much higher than anticipated. He stated that while he applauds DWC staff for clearing up the monumental backlog of cases, he would like to know if DIR knows why the numbers were larger than expected. He stated that that also leads him to be concerned about the projections of IMR applications going forward. Ms. Overpeck responded that she does not know the answer to that question and that she was not involved at the time the estimates were given. Director Baker stated that the initial estimates were based on QME reports on treating physicians, and that there were no data, so it was just an estimate. She stated that many cases are also getting re-opened; half of the cases during 2013 are for older cases. That means that people on opioids for long periods of time are getting reviewed. Commissioner Bloch stated that he remembered the explanation and thanked the Director for refreshing his memory.

Commissioner Kessler asked about the 16% overturn rate and whether those cases are the ones being reopened. Director Baker responded that they were. Ms. Kessler stated that she did not know why the physicians were anonymous for IMR review. She was concerned that if injured workers do not know the circumstances for either upholding or overturning these cases because they cannot get to the physicians who made the decisions, how would they be able to know about the accuracy of the decisions. Director Baker responded that the decisions have to be made based on an evidence-based method; and they have to be based on the DIR Medical Treatment Guidelines, which are based on evidence-based medicine. She stated that part of the rationale for keeping it blind is so that physicians are not pressured one way or the other to do something other than evidence-based medicine. Commissioner Kessler asked how someone would appeal the decision if they do not know how the decision was made to begin with. Director Baker responded that she would defer to Dr. Das on that question.

Commissioner Bloch stated that like Commissioner McNally, he was surprised by the 54.3 million treatment requests. He asked that if on average, each IMR application has two treatment requests, and with 560,000 new claims in the system last year and 54.3 million treatment requests, what the average number of treatment requests are for each claim. Ms. Overpeck responded that the total treatment requests was 54.3 million for all existing cases in the system, but that from 2000-2013, there were over 10 million new claims. Commissioner Bloch thanked Ms. Overpeck.

**Update on DWC Medical Unit**

Dr. Rupali Das, Executive Medical Director DWC, stated that she planned to discuss the Independent Medical Review (IMR) report, but offered to answer any questions first. Chair Wei stated that the Commission would prefer the report first. Dr. Das stated that she did not have a PowerPoint presentation as she usually does, but that she is pleased to report that most likely

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later in the day, DWC will be releasing the progress report on IMR based on analysis of 2013 IMR decisions, which represents applications that were submitted as of December 31, 2013, although there were other applications submitted for injuries in 2013 after that date. She stated that she would give some highlights of that report. She stated that she wanted to thank many of the staff who put the report together. In addition to those mentioned in the report, she wanted to thank Amy Coombe who helped format it and refine it in the form that it is in on the website.

Dr. Das stated that in 2013, slightly over 73,000 IMR cases were opened, of which 74% were closed in the same year. A closed case could be one in which a decision was either issued or was terminated for some other reason. 22% of those cases were ruled ineligible. A total of 3,723 Final Determination Letters were issued by the end of December. Additional cases were closed after December. As stated previously, each case had an average of two disputed medical treatments; some contained one, some contained five, but on average, there were two. For 2013, physician reviewers upheld 84% of decisions. She stated that it is also important to note that more than 1,200 IMR decisions overturned UR and resulted in approval of medically necessary care for more than 800 workers in 2013. As previously discussed, a higher volume of IMR applications was submitted than anticipated, and efforts were made to catch up by changing processes and including many different kinds of resources, both staff as well as technology. By October of 2014, the IMR decisions that were being issued were timely. There is a little bit of a backlog in older cases, where medical records are still lacking; however, for an application submitted today and for which medical records are submitted timely, a decision is issued in a timely manner. In addition to catching up to the backlog, and in spite of the considerably higher-than-anticipated volume, costs were reduced by 25% beginning in April, and there was an additional tiered reduction in costs for pharmaceuticals and a few other categories.

Dr. Das stated that findings for 2013 include that more than half of workers' compensation claims and IMR applications arose from treatment requests managed by the top ten UR organizations or claims administrators. Nearly a third of all workers' compensation claims, as well as a third of IMR applications, originated from the Los Angeles area. She stated that she wanted to stress that it is not that disproportionately more IMR applications came from the Los Angeles area, but that there are more claims in the Los Angeles area, and that is reflected in the number IMR applications that were submitted. Dr. Das stated that in 2013, an IMR application filed by an unrepresented injured worker was more likely to result in an overturned IMR decision than one filed by a represented worker and was also more likely to be declared ineligible, perhaps because workers found the eligibility requirements confusing. She stated that some of the data highlights were already heard earlier, specifically that pharmaceuticals comprised nearly half of IMR disputed treatments and of that category, the majority was opioids. She stated that DWC has a detailed analysis of treatments and what was more likely to be upheld or overturned, which will be in the IMR report. 60% of IMR reviewers were California-licensed; in order to catch up with the backlog, more non-California-licensed reviewers were hired on a temporary basis. She stated that the goal is that the majority, if not all, of IMR decisions should be made by reviewers who are California-licensed reviewers, if they are qualified to review the disputed treatments. She stated that some of the questions previously raised had to do with how the decisions are being made and how DWC knows that the decisions are being made well, taking all of the relevant medical facts into account. Dr. Das stated that according to statute, the IMR decision is required to be made based on medical evidence and the statute specifies a hierarchy

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of evidence. The strength of evidence regulations, as they call them and as Ms. Overpeck referred to them, are currently in the rulemaking process; they spell out in much more detail how an evidence-based decision is to be made and what trumps the DWC regulation, the Medical Treatment Utilization Schedule (MTUS). It is very detailed, very scientific, and that will be in effect once the regulations are finalized. She stated that right now, according to the statute, the MTUS is the top rung in the hierarchy in the decision-making. This regulation was already in place prior to the statute. She stated that both treating physicians as well as reviewers, which include those doing UR as well as IMR review, are required to first go to the MTUS; then, if something is not in the MTUS, they go to other levels of evidence. The IMR decision is required to specify what evidence is relied on to make the decision. The report on 2013 decisions actually analyzed what the reviewers based their decisions on and what was more likely to be overturned. In addition, DWC selected 50 decisions and did a detailed review of the evidence as well as the quality of the decision. Dr. Das stated that the evidence that is relied on to make the decision is transparent as it is stated in the IMR decision; the quality of the other specifications of the reviewer – their name or other demographics of the reviewer – really should not factor into how the decision was made because the rationale for the decision is specified in the decision and documented on the decision letter and is based on the medical evidence. She stated the decision letter documents how the UR decision was made, what evidence it was based on, if it was based on evidence, and what evidence the IMR reviewer based the decision on and whether those two pieces of evidence agreed or did not agree and how that resulted in an overturn or uphold. All of that is specified in the IMR report.

Dr. Das stated that the DWC analysis showed IMR decisions were primarily based on the MTUS or other evidence-based treatment guidelines. The clinical rationales that are specified in the decision letter that DWC reviewed in detail were sound, and the analysis suggested that most UR decisions that denied or modified a request for treatment were also evidence-based, with the majority based on the MTUS. The IMR reviewer was more likely to overturn a UR decision if it did not adhere to the MTUS. The physician reviewer was more likely to uphold a decision if the disputed treatment was not consistent with evidence-based treatment guidelines. She stated that DWC wants to see that a decision is based on medical evidence, or scientific data, which shows that treatment is effective. She stated that there is much more detail in the report, but this is basically a highlight.

*Comments by Commissioners*

Commissioner Brady stated that he had a comment about the percentage of opioids; he stated that that was a big number. The pharmacy number is a big number, and of that number, the number of opioids is pretty shocking. However, this is consistent with what they are hearing out of the Center for Disease Control (CDC), that the U.S. has a world population of 4% and it consumes 90% of the world's opioids. He stated that it is troubling to see these types of numbers.

Commissioner Bloch stated that the vast majority of Teamsters in Northern California who are in his jurisdiction do not really talk to the union unless there is a problem. He stated that he is hearing a lot from his members who are having problems with the system. He is hearing from Teamsters who have been driving trucks and handling packages their whole lives, who have blown out their knees and hurt their backs, and in some cases, they have been on prescription

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drugs as a result of that for a long time to manage the pain. He stated that he ends up feeling both ways on this. He shares the concern expressed by this Commission about the rising use of opioids and pain medications; however, at the same time, given the presence of old cases that are now coming through the system, he wonders how many of these people are like his members who have been in the system on drugs for a long time and are now being kicked off. Dr. Das responded that she was not sure she could answer that specific question, but DWC does know how many cases are from injuries prior to 2013. She stated that she does not have that data in front of her, but the report does contain that information. It has the number of cases that were new injuries in 2013, and it tracks back several years to show when the date of injury was. She stated that, as Director Baker noted, about half of the case are prior to 2013 and the other half are new injuries in 2013. There is a portion of those older cases that is for pharmaceuticals; the newer cases tend to be more for surgery, while the older cases have more pharmaceuticals than surgical interventions. She stated that the data are in the IMR report. Commissioner Bloch stated that he very much looked forward to seeing the report and discussing it at the next meeting.

Dr. Das asked Chair Wei if she could answer a previous question she asked about the MTUS, chronic pain and IMR. Dr. Das stated that they wanted to be sure that workers receive appropriate treatment. She stated that there is an epidemic of opioid overuse; however, DWC also wants to be sure that workers get appropriate treatment and that they are not abruptly cut off from medications that are addicting by their nature and can cause problems if they are abruptly cut off. She stated that the Opioid Treatment Guidelines do specify when the indications are such that they favor an opioid being used for an acute injury, but also specify for those who are on chronic opioids, and it is harder to take them off, how the dose should be decreased, with recommendation for weaning and not abrupt cessation. She stated that that is pretty clear in the guidelines, and she wanted to stress that the goal for people who have been on opioids for many years is to get the dosage lower, but not to abruptly cut off opioid medications.

Commissioner Bouma asked if when counting the denials related to opioids, a denial includes modifications, if a denial is in fact a weaning or if a denial is a non-renewal of a prescription for an opioid. Dr. Das responded that when a treatment goes through UR, a UR physician has the opportunity to modify the request. The physician could say, "We are not going to give you 90 pills; we think you should wean, and this is the weaning regimen we think you should follow." She stated that if that gets appealed and goes to IMR, the IMR reviewer right now only has the opportunity to either uphold or deny the treatment. IMR reviewers currently do not have the ability to modify the request. However, the opportunity to modify exists at the UR stage. Commissioner Bouma asked if the injured worker would have to resubmit the request to go through UR, or how they would start over. Dr. Das responded that the UR physician should be discussing the request with the treating physician, and that communication needs to occur and the appropriate treatment needs to be given before it gets to IMR. Chair Wei stated that that would happen in a perfect world. Dr. Das responded that that was the role of the UR physician. Chair Wei stated that that is supposed to be the process; however she asked if that was happening and how one captures that iterative process. Dr. stated that there needs to be a lot of education for physicians and that they plan to do that for the MTUS. She stated that they want to work with treating physicians as well as UR organizations to convey that message.

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Commissioner Kessler stated that she has a question about timeliness and whether for the denial or the reopening of a decision, DWC knows if any of the reviews are based on whether a review did not meet a time constraint. She stated, for example, that if people do not get the information to IMR in a timely fashion, then IMR may deny something that otherwise might have a different outcome if it had been within the required time frame. Dr. Das responded that there certainly were delays for the first year; due to the higher-than-anticipated volume, resources were not available to make timely decisions, so certain decisions were made in a longer time frame than the statutory requirement. She stated that during that time, the worker's condition could have changed, and in fact, sometimes the treatment has already been given by the time the IMR decision was made. That delay was a potential outcome during the first year; however, going forward, that should not be the case.

Commissioner Bloch stated that regarding opioids, in 2013, he witnessed several heartbreaking cases of workers, though he stated again that he only gets contacted when people are having problems, and the vast majority of members actually get representation through the union and attorneys and do just fine in the workers' compensation system. He stated that he dealt with a couple of workers this year who were injured on the job, and in between waiting for treatment, being denied treatment, and due to income loss and psychological pressure that came with trying to manage chronic pain, and trying to manage family finances, he watched several workers literally unravel before him. He stated that the question is where a worker like that in the system and a worker that is being cut off from medication or may have psychological issues not present prior to the injury can go. He asked if there is anything in the treatment guidelines that would direct a prescribing physician to refer somebody for treatment for opioid addiction or for psychological counseling to deal with some of these issues. Dr. Das responded that that was an excellent question and that the literature recommends that chronic pain has to be treated in a multi-disciplinary manner. She stated if an injured worker is on opioids, that is just one of many aspects of the condition, and there are many different treatment options in the Chronic Pain Medical Treatment Guidelines as well as the Opioid Treatment Guidelines, including cognitive behavioral therapy, physical activity, psychological counseling, and other kinds of treatment. The current version of the Chronic Pain Medical Treatment Guidelines really strengthens the recommendation for multi-disciplinary treatment for chronic pain, because the problem is not just a physical issue, but a psychological and mental health and wellness issue, as Commissioner Bloch indicated.

Chair Wei stated that in the data from Ms. Overpeck, there were 561,000 new workers' compensation claims in 2013, and then she referred to a data point on treatment requests for 2013. Dr. Das responded that the numbers refer to the bills submitted to the Workers' Compensation Information System (WCIS), which are paid bills. She stated that it is possible that there are some treatment requests that they are not capturing, but 73,000 is what they are using as the total number of treatment requests. Chair Wei stated that there were 73,000 IMR cases open in 2013. She stated that she is asking for the base or how many medical treatment requests that could have gone to IMR, and 73,000 went. Dr. Das responded that according to the data that Ms. Overpeck showed, 561,702 new workers' compensation claims were filed requiring medical treatment in 2013. Chair Wei stated that what she learned is that these claims have more than one request, so she asked whether these were total requests or total claims and what percent of the universe of treatment requests is going to IMR. Dr. Das responded that that was the

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information DWC does not have. A treatment is eligible for IMR if it is denied at UR; that is one of the denominators. She stated that they do not have the denominator for the total number of treatments that are denied or modified at the UR level. The data presented are what DWC has; however, DWC does not have the appropriate denominator. Director Baker stated that for 2013, 50% were for old cases. Director Baker stated that going forward, there should be better statistics. Chair Wei stated that DWC has the ability to track IMR data fairly carefully, but DWC does not have the same ability to track UR data. Dr. Das responded that that was true at this time, but that the RAND study that Director Baker earlier referred to is attempting to obtain UR data to compare it with IMR.

Chair Wei stated that if they were to follow this data linearly and see that 84% of UR is upheld, that they would then ask whether that argues that the treatment being prescribed is not following the treatment guidelines and whether they were going down the wrong path. Dr. Das responded that that was what the analysis of the decision suggests. Chair Wei stated she is being cynical and really wants to see data that show that that is what it is. She stated that she is on the cynical side, that there is treatment being prescribed and doctors are not following treatment guidelines. Director Baker stated that the positive aspect of this is that it is more transparent in terms of the data DWC is getting and will be able to analyze. In contrast, DWC could not analyze what was going on in the agreed medical evaluator (AME)/QME process, as data were not available. Dr. Das stated that there is a lot of information in the report for 2013, which is a fraction of IMR decisions made so far. She stated that since 2013, many more IMR applications that have been filed. DWC will continue to do the analysis for 2014, but at least there is currently a snapshot to answer some of the questions.

Commissioner Bloch stated that he has a comment, not meant to be disrespectful because he understands the goal of creating guidelines for the system and bringing transparency – and he stated he supports that goal – but at the same time, he stated that this takes a very human factor out of the system. That human factor involves human beings, workers who are injured, and doctors and attorneys in the system, and judges who are also human beings who are trying to shepherd people through the system to make sure they get treatment and hopefully return to work. In other words, there is a challenge here in that some of the subjectivity has been taken out of the workers' compensation process; he understands why it was done, but there are challenges that come with that, and some of the nuances in injured workers' cases may be missing through this new process. He stated that people may be falling through the cracks and being denied treatment. Dr. Das responded that the guidelines are based on evidence-based medicine, and the definition of evidence-based medicine incorporates all of those components which Commissioner Bloch described, which are scientific data, physician judgment and the patient's input. Dr. Das stated that the guidelines are one aspect of that, but the physician has to apply the guidelines, so judgment is definitely part of the process. Dr. Bloch stated his thanks for Dr. Das pushing back on his comment.

Commissioner Brady stated that he appreciated the information from all of the reports presented this morning. He stated that it helps the Commissioners sharpen their questions and be more informed. He stated that he knows that they are not done, that it is a longer pathway and journey, and he stated his appreciation for all of the hard work dedicated to getting the material to help

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them sharpen their questions. He stated that he looked forward to the next meeting when they might be able to go further into the issues, and he thanked the presenters.

Dr. Das stated that the details of the IMR report will be available later in the day, and there are some future directions based on the analysis done to note. DWC is automating the data collection. In 2013, 73,000 IMRs were submitted. As of this week, over 278,000 IMRs were submitted. As a result, the process used to analyze the data in 2013 and 2014 is not going to work anymore. DWC manually entered that data. Now, DWC is automating the collection of the data which will facilitate the analysis, but the process of automation is taking a little time. She stated that to-date they had issued 153,000 Final Determination Letters, and 85,000 IMR applications have been determined to be ineligible. Future plans are to expand automation so that hopefully at every meeting of this Commission, she will be able to give up-to-date data in spite of the large volume.

Dr. Das stated that along with this report and with the updating of the MTUS, DWC plans to roll out an education campaign for physicians, many of whom do not know about the MTUS or find it difficult to follow. She stated that they believe this needs to go hand-in-hand with issuing these guidelines, because if physicians do not know about them or the guidelines are not practical for them, they are not going to follow them, and as a result, there would be more IMRs. She stated that they are also partnering with the IMR organization to review the content, quality and consistency of IMR decisions. DWC lets them know when there are inconsistencies in the decision or something that they think should be improved so that they can correct the process going forward. DWC plans to continue to post the IMR decisions on the website. Currently, only the 2013 decisions are online because they were able to do a manual redaction process. With the volume, it is very difficult to manually redact, and manual redaction is very unreliable because you can always miss personal identifiers. She stated that they have changed the process and changed the format of the IMR report for posting on the website. The automation process has taken some time; however, DWC hopes that by the next Commission meeting, the 2014 decisions will be posted on the website. She stated that DWC will continue to analyze the data and present it so that they can find out where the holes are. One of the goals of IMR is to see where the gaps are in the MTUS and to improve the MTUS. She stated that that has actually happened for chronic pain specifically; the problems with IMR and where the guidelines need to be improved have been identified. She stated that DWC will continue to do that.

Commissioner McNally stated that listening to Dr. Das present and explain what they are doing, what data they have and what they do not have, where the gaps are, how they are identifying them, the thought process about identifying them, and what they plan to do next gives him a very high level of confidence that the whole process is in Dr. Das's very capable hands.

Commissioner Kessler stated that she is just learning about this area but she can appreciate how difficult this must be to not only revamp a system that had been in place for a while but also to postulate what is needed in the future, so that one can set up the structure to meet those challenges which, as having just been injured herself, she knows is difficult. She stated that she has the skill set to pursue some of the challenges in the process. She asked about the case if someone is denied, and they do not know who to chase to find out why the denial occurred, if they did not get a timely report from their treating physician because there are some gaps in

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terms of timing, and if this information is anonymous, then how can people chase the result to challenge it. She asked if even when it is a medically-based decision, if the medical decision was based on incomplete information, if there are options for someone to chase a denial while they are still in a compromised physical condition. As Commissioner Bloch stated, when people have lost their income, their ability to pay an attorney to do this for them is compromised as well. She stated that she did not understand what structure and, going forward, what plans there are to fix some of the issues that have been a challenge in the past. She asked if that was part of how Dr. Das sees getting people access to have the ability to challenge a decision that may have, not always, been decided incorrectly. Dr. Das responded that the IMR decision is based on a review of medical records and that is the basis of the medical decision; it has to be based on objective information. The medical records that were reviewed are listed on the IMR decision that is sent to the worker and to the parties. She stated that that information will not be posted online because it is usually private information and there is no field for that anymore on the online versions that will be posted. She stated that the worker and the treating physician have the ability to see what the reviewer bases the decision on. If there were a record missing or there were an error in the dates, they would have the ability to appeal that. She stated she was aware of at least one situation of a successful appeal; a physician appealed a decision because a record that was submitted was not included as part of the IMR review. She stated that that ability to look at what the decision was based on and to appeal it successfully does exist.

Chair Wei asked if the appeal was internal. Dr. Das responded that it is not technically an appeal, but a request for correction of an error. Chair Wei stated that it was more like the injured worker has pick up the phone and call. Ms. Overpeck stated that the same process would apply; you could appeal it via the trial level at the Workers' Compensation Appeals Board (WCAB) and say there was a mistake, that it is missing a record, and they will give a new IMR and the opportunity to make sure all the records are included the second time around. Dr. Das stated that her example was not through the WCAB; it was a communication to DWC and DWC worked with the IMR organization, and it never went to the Appeals Board; it was corrected during the 30-day time period before the time to appeal the IMR had run out.

Chair Wei thanked Dr. Das. She then stated that she wanted to propose that the Commissioners think about requesting from the capable staff at the Commission and DIR some scope-out about data collection on UR. She stated that the data Dr. Das and Ms. Overpeck provided on IMR were very helpful, and it seems that they should be able to get that kind of data for UR, that the Commissioners need to understand systematically what is happening, and perhaps a scoped-out study of what it would take to try to get at some of the UR data would be helpful.

**Update on LETF and the Underground Economy**  
**Amy Coombe and Dominic Forrest, Department of Industrial Relations**

Dominic Forrest stated that the Labor Enforcement Task Force (LETF) is a coalition of State of California enforcement agencies that work together and in partnership with local and federal agencies to combat the underground economy. In this joint effort, information and data are shared to ensure that employees are being paid correctly and are being afforded safe work environments, as well as honest, law-abiding businesses have the opportunity for healthy

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competition. LETF conducts joint inspections targeting the most egregious violators operating in the underground economy, and the joint inspections are a much more effective strategy than burdening compliant businesses with multiple separate inspections.

Mr. Forrest stated the underground economy affects all Californians. It is difficult to measure the overall impact, but by some estimates, California loses between an estimated \$8.4 to \$28 billion dollars in taxes every year from lost income and sales tax. Compliant businesses are unable to compete against businesses that are cutting corners and gaining an unfair competitive advantage. Also, informal-sector workers often may be denied their due pay and benefits, may be exposed to unsafe working conditions, and may not be covered by workers' compensation insurance. Consequently, taxpayers end up being burdened with the increased cost of social insurances.

Mr. Forrest stated that LETF participating agencies include: Division of Occupational Safety and Health (Cal/OSHA); Division of Labor Standards Enforcement (DLSE); Employment Development Department (EDD); Contractors State Licensing Board (CSLB); California Department of Insurance (CDI); Board of Equalization (BOE); Bureau of Automotive Repair (BAR); State Attorney General's Office (DOJ); and Alcoholic Beverage Control (ABC). These agencies collaborate to combat the underground economy. Each agency has its own area of specialty, and they combine to enable more effective and thorough enforcement.

Mr. Forrest stated that an LETF inspection team covers multiple areas of authority based on the agencies participating and is better able to enforce laws under one joint inspection. LETF has teams statewide which are divided by geographic location. There is a statewide presence, which focuses on targeted inspections, and it targets businesses based on various considerations including seasonality, geography and industry type. The teams work together to do data-matching, information-sharing, screening, and physical surveillance of businesses in order to identify the most effective target for inspection.

Mr. Forrest stated that LETF focuses on several key target industries which comprise a significant segment of the California workforce and a significant segment of the underground economy. LETF found that over 70% of all businesses are out of compliance in the most two recent fiscal years. For certain industries such as garment and automotive, the percentage is closer to 90%. LETF joint inspections show violations across multiple agencies and the impressive results of joint inspections. When DLSE, EDD, and Cal/OSHA all go together as a team to inspect a business, 40% of the time, the business will be found out of compliance by all three participating agencies. This lends weight to the theory that if a business is out of compliance in one particular area, there is a high probability that the same business is also out of compliance and breaking laws in other areas.

Mr. Forrest stated that LETF has a public hotline so the public can call and give leads on the underground economy. For FY 2013-2014, a total of 634 violations were reported to the LETF hotline. In addition to the enforcement program, LETF also has a statewide program on education and outreach for both employers and employees. LETF is continually improving and updating the LETF website, and this month, LETF released a new online lead referral form. The public can use this easily accessible online form to submit leads to LETF.

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Mr. Forrest stated that to help combat California's underground economy, DIR & EDD have joined forces through their respective enforcement programs, which are LETF and the Joint Enforcement Strike Force (JESF). The LETF and JESF collaboration has resulted in a streamlined administration, sharing of resources, and preventing overlap of efforts. In September 2013, LETF launched the Roofing Compliance Working Group (RCWG). RCWG is a collaborative effort between LETF partner agencies, local district attorneys, and roofing union and contract groups to combat unsafe and unfair business practices in the roofing industry. Thus far, LETF roofing inspections have resulted in over 60 violations and nearly \$100,000 in initial assessments.

Mr. Forrest stated that LETF contact information includes: the LETF hotline at 855-297-5322; the LETF website: <http://www.dir.ca.gov/letf/letf.html>, where there is an online referral form; and the LETF email address: [LETF@dir.ca.gov](mailto:LETF@dir.ca.gov). LETF welcomes suggestions, comments and questions, and anyone can contact LETF by any of these methods.

*Comments by Commissioners*

Commissioner Bouma asked about what percentage of those complaints called into the LETF hotline is found to be violations. Mr. Forrest replied that it is difficult to tell because LETF refers many calls to other agencies since they may not be appropriate for LETF. For example, LETF gets many callers looking to file individual wage claims, and other leads are more appropriate for LETF partners such as JESF. He stated that although he does not have an exact answer, every call is logged in the LETF database and linked to the inspection office. Director Baker commented that many calls are about wage claims or about wages that are underreported, so they go to DLSE, and others are tax-related or about someone who does not have coverage. The 13% of violations reported on the LETF hotline goes across the state and matching records is done and the teams investigate. The database gives the information that can be used in the field offices and direct those teams to go after those particular employers.

Commissioner Kessler thanked Mr. Forrest for the presentation and stated that she appreciated that he articulated that unions and taxpayers should not shoulder the burden of increased social services agencies and insurance. Accountability is so important in the unorganized arena, and there are a lot of employers who are not held accountable for their actions which means that the taxpayers have to pay for that. She stated that she could provide many opportunities to identify employers who are violating labor laws, and she asked how to prioritize the list so they could be inspected. Director Baker stated that they do partner with various unions and work collaboratively with labor and management, and if they can partner with the construction industry, it could be more effective in the enforcement efforts to go after the employers who are not compliant. She stated that the union partner management teams are compliant because they have unionized workers. Commissioner Kessler stated that she would suggest increasing the staff for LETF. Director Baker said that DIR would love to have more LETF staff.

Commissioner Bloch stated that this Commission does not have the ability to increase staff but he thanked Mr. Forrest and Director Baker for the presentation. He stated that at one time, the Teamsters Union was the largest union in the United States prior to the deregulation of interstate trucking. When trucking was deregulated, a breakdown in the relationship between the employer

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and employee started; that relationship was the fundamental social contract which was to take care of each other. In the trucking industry, they have seen a significant increase in misclassification of workers from being employees to becoming independent contractors. In the first five years after de-regulation passed, half the trucking companies in the United States went out of business. Commissioner Bloch stated he has been very pleased with work with DLSE since it has been going after misclassifications in trucking, particularly in ports. Misclassification is a huge issue in bakeries, construction sites, and other industries, such as food process and warehousing, where he represents workers. The rise of the use of labor contractors and temporary agencies has led to some non-union workplaces undercutting compliant employers where the issues around workers' compensation and wage claims and sexual harassments are big issues. Commissioner Bloch stated that he applauds DIR for the coordinated approach between agencies because in the past, his union might have had to fight an employer and there are multiple agencies looking at different violations and they are not talking to each other, so it is difficult to get the "big picture" of what is happening at the worksite. He stated that his employers routinely come to him and state that the competition is undercutting the standards. Director Baker thanked Commissioner Bloch for speaking about this issue and stated that it is a high priority for DIR.

Commissioner Brady stated that one can look at the number of LETF inspections per industry per year and penalize the non-compliant employers, but a better way would be to affirm employers who are industry leaders and have best practices for their specific industry and to find a way to use them as role models within their market segment; that can be a powerful tool. Director Baker stated she agrees and that is why the labor-management partnership targeting of non-compliant companies works well.

Commissioner Bloch stated that he wanted to applaud Labor Commissioner Julie Su at DLSE because her department implemented a significant change and that was offsite interviews with workers. Cal/OSHA is not currently conducting off-site interviews. The lack of offsite interviews puts a worker in the unfortunate position of having to give an interview to an enforcement agency while their boss knows about them doing an interview. Also, Julie Su started doing surprise inspections. In contrast, Cal/OSHA gives employers advance notice of an inspection, so they often shut down the plant and send workers home early and hurry to get things prepared for the inspection. He stated that Julie Su has done amazing work in her agency. Director Baker stated that they are coming in with a resource package for Cal/OSHA, and it is a primarily based on programmed inspections which will be random.

**Update on WOSHTEP, IIPP and SASH Programs**

**Robin Dewey, University of California, Berkeley, Labor Occupational Health Program**

Robin Dewey stated that she would provide an update on three of the Commission's health and safety programs: the Worker Occupational Safety and Health Training and Education Program (WOSHTEP); the Injury and Illness Prevention Program (IIPP) project; and the School Action for Safety and Health (SASH) program.

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*Worker Occupational Safety and Health Training and Education Program*

Ms. Dewey stated that WOSHTEP is administered by the Commission and implemented by three Resource Centers that are part of the University of California system: the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley; the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles; and the Western Center for Agricultural Health and Safety (WCAHS) at UC Davis. The goal of WOSHTEP is to reduce injuries and illnesses and as a consequence, workers' compensation costs. There are five major components of WOSHTEP. The first major component is the Worker Occupational Safety and Health Specialist (WOSH) training program. This three-day class teaches worker-leaders in a variety of industries and occupations to learn health and safety skills so that they can work with management and co-workers to solve health and safety problems. Sometimes these classes are "open enrollment" classes where participants are from a variety of workplaces. Other classes target a specific group, either a union or labor-management group, and are held at a specific workplace. The "open enrollment" classes are often held at government offices or at community colleges. To-date, over 3,300 worker leaders from around the state and from a diverse set of industries and occupations have graduated from a WOSH Specialist course. The three WOSHTEP Resource Centers provide ongoing support and technical assistance to WOSH Specialists through emails, newsletters and refresher classes.

Ms. Dewey stated that for the most part, WOSHTEP Resource Center staff conducts the WOSH Specialist trainings, but the Centers also teach a Training-of-trainers (TOT) course so that others, who are called WOSH Specialist Network Trainers, can teach the course to their constituents. For example, UCLA LOSH has provided a Specialist training and TOT for the Warehouse Workers Resource Center staff in Ontario, CA. LOSH has also provided a TOT to Worker Center trainers who are now teaching Awareness Sessions to workers in residential construction and landscaping. LOHP has worked with California Prison Industries Authority (Cal/PIA) over the past several years to train their health and safety coordinators to become network trainers who then teach the WOSH Specialist class to inmate workers who are doing a lot of hazardous work. A recent evaluation conducted with WOSH Specialists found that these inmate workers are actually helping to solve health and safety problems in their workplace, and they see the class as giving them marketable skills for when they are released from prison.

Ms. Dewey stated that another major component of WOSHTEP is Awareness Sessions. Over the past few years, a special effort to collaborate with community-based organizations has been made in an effort to better reach underserved working populations as mandated by the legislation establishing WOSHTEP. This past year, LOHP worked with a local Day Labor Center to plan and conduct different occupational safety and health classes in Spanish for day laborers. LOSH has delivered Awareness Sessions at Esperanza Community Housing Corporation, the Garment Worker Center, CLEAN Carwash, and many other community organizations. In addition, all three Resource Centers have also provided a number of presentations to various groups including at Workers' Memorial Day events. LOSH and LOHP have also planned and conducted labor conferences, to which WOSH Specialists and others were invited. To-date, through the WOSH Specialist course and the Awareness Sessions, WOSHTEP has provided training or presentations to approximately 13,000 workers across the state, with close to 8,350 hours of instruction in WOSH Specialist Courses and Awareness Sessions.

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Ms. Dewey stated that a third component of WOSHTEP is Small Business Resources, which targets small business employers. Training guides were developed to help employers teach their employees basic health and safety skills. The main goal of these materials and training is to encourage employers to involve their employees in health and safety efforts. Materials, available in English and Spanish, as well training sessions are offered for general industry and for restaurants, dairies and janitorial companies, all in Spanish and English, for California-specific and national workplaces. In addition, the restaurant materials have also been translated into Chinese.

Ms. Dewey stated that two years ago, a new WOSHTEP project was developed which specifically helps small businesses, especially those with fewer than 50 employees, develop and implement effective health and safety programs and come into compliance with Cal/OSHA's Injury and Illness Prevention Program (IIPP) standard. The project has a half-day training program and materials. A unique partnership has been formed to help plan and implement the project. The partnership includes Cal/OSHA Consultation, DIR, State Compensation Insurance Fund, the Department of Public Health's Occupational Health Branch, and two small business associations, Small Business California and California Small Business Association. Each class is co-taught by an LOHP or LOSH trainer and an experienced Safety Specialist from Cal/OSHA Consultation Service. The materials are currently being translated into Spanish, Chinese and Vietnamese as part of a related DIR-funded project. In addition, a version of the IIPP materials and training program specifically for the agricultural industry was developed by the WOSHTEP Central Valley Resource Center, WCAHS. In addition, Ms. Dewey stated, a day-long training for larger businesses on how to develop and implement an effective IIPP is offered under WOSHTEP. Through the Small and Larger Business IIPP and other small business training sessions, WOSHTEP has provided training to over 1400 small business employers.

Ms. Dewey stated that the fourth component of WOSHTEP is a three-day Young Worker Leadership Academy (YWLA) which is offered statewide each year in January to increase awareness among young people about the importance of workplace health and safety. Although LOHP takes the lead on this project, LOSH helps LOHP run the academy and a number of youth teams come from the south. Teams of youth, along with an adult supervisor, come from around the state to UC Berkeley where they learn about occupational safety and health skills and begin planning how they will get key health and safety messages out to their communities during California's Safe Jobs for Youth month, which is in May each year. Examples of activities the teams conduct during Safe Jobs for Youth month include: developing materials such as wallet cards, brochures and videos; conducting media outreach; and working to develop policies so that all youth in their school seeking work permits receive information about child labor laws. To date, 88 teams, with a total of 340 youth, have participated in the 15 three-day Academies.

Ms. Baker stated that the last component of WOSHTEP is the Resource Centers at LOHP, LOSH and WCAHS which provide technical assistance and resources to WOSH Specialists, WOSH Network Trainers and others. The Centers also maintain a *Multilingual Resource Guide* with online access to many health and safety resources in 23 different languages. Additional WOSHTEP educational materials and resources include: a Construction Case Study guide that LOHP developed in collaboration with the State Building and Construction Trades Council for use by apprenticeship trainers and others to teach about key hazards in construction; and *The*

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*Whole Worker* booklet which is an educational piece on how to integrate occupational safety and health into workplace wellness programs.

*Comments by Commissioners*

Commissioner Kessler stated that she has used LOHP's services in her organization multiple times, and she wanted to acknowledge that the information and resources are very effective. People are eager to take advantage of the trainings and information. She stated that she wanted to affirm that LOHP does important work for both the organizations that she serves and for businesses. Ms. Dewey responded it is important to offer the trainings for free, and that all the trainings are participatory with the goal of having people leave with new skills.

Commissioner Bloch stated that he would second Commissioner Kessler's comments. He stated that he has worked with LOHP and Worksafe to customize trainings for Spanish-speakers, rank and file union members, shop stewards, and business agents. Ms. Dewey stated that partnering with organizations is important to tailoring information and increasing outreach. Commissioner Bloch stated that after taking the training, workers are able to identify health and safety violations at their worksite and in some cases, work collaboratively with their employers, using good labor-management relations skills, to fix those violations, and in other cases, they have gone to Cal/OSHA and then seen fixes happen. Ms. Dewey stated that an evaluation of the program a few years ago revealed that workers are going back to the workplace and making changes. Commissioner Kessler stated that the education efforts do not always happen only in a workplace. An LOHP staff member had come to speak about better health and safety conditions in agriculture to a Latino Chamber of Commerce business organization, and that helped people understand why it is important to deal with heat illness and other conditions. Commissioner Kessler stated that she considers the trainings and information provided useful, not just in the labor community but in public venues.

*School Action for Safety and Health Program*

Ms. Dewey stated that Commissioner Brady was involved with the School Action for Safety and Health (SASH) program at the beginning, and she mentioned again, that partnerships are critical to having an effective program. SASH was initiated in 2010, after the Commission determined that school employees were being injured on the job at high rates and that school districts were being fined by Cal/OSHA for being out of compliance with the IIPP standard. She stated that the Small Business IIPP project discussed earlier grew out of the success of the SASH program. SASH includes a training program, materials and technical assistance through an LOHP Resource Center. LOHP at UC Berkeley is the lead on this state-wide project but subcontracts with UCLA LOSH to conduct the southern California classes. The materials include a guide and template on how to write and implement an IIPP, factsheets and tools, and a poster, as well as Tip Sheets that are occupation-specific for school employees. The training is a one-day program on developing an effective workplace health and safety program (IIPP) targeting key health and safety staff, Human Resources staff, Risk Managers, Maintenance and Operations (M&O) Directors, Lead Food Service, and Lead Custodians. The key partners for doing outreach and setting up trainers have been the Joint Powers Authority (JPAs), insurance companies, County Offices of Education, and unions. The key messages are that injuries are costing school districts money; schools are workplaces; and it is important to identify hazards and work together toward solutions to protect school employees.

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Ms. Dewey stated that to-date, 46 full-day SASH classes have been conducted, with 4-6 classes planned for fiscal year 2014-2015; 33 of 58 counties have been reached, with a total of 847 participants. A preliminary evaluation of the SASH program found that the training was well-received, and that participants recognized the importance of health and safety committees and the concept of looking at underlying causes of injuries and not just blaming employees, as well as involving employees. As with the other health and safety training programs, participants like hearing from other districts and sharing information and tips on resolving problems. Trainings are currently planned for Sacramento, Merced and Contra Costa counties, and the focus of the program this year is on helping the districts in those counties improve their health and safety committees.

*Comments by Commissioners*

Commissioner Brady stated that he wanted to thank LOHP and the Commission for working with schools. He stated that he runs a JPA with over 70 schools districts, and he is very pleased with the way the program has served schools, as well as very pleased to work with this program and will continue to distribute information to many districts statewide.

Chair Wei asked Ms. Dewey to share information on the programs with partners that the Commissioners work with.

**CHSWC Report**

Eduardo Enz, Acting Executive Officer, CHSWC

Eduardo Enz stated that since the previous meeting on August 15<sup>th</sup>, the staff has been working to prepare the 2014 CHSWC Annual Report and has been continuing to focus on projects that support and consolidate Senate Bill (SB) 863 implementation and that monitor and evaluate its effects.

*Ongoing Studies: Evaluation of SB 863 Medical Care Reforms and Wage Loss Study*

Mr. Enz stated that the Evaluation of the SB 863 Medical Care Reforms study by RAND is underway and promises to reveal important insights into how changes to medical delivery, dispute resolution and payments brought about by SB 863 are affecting both workers and employers.

Another critical study the Commission is monitoring is the Wage Loss study by RAND and UC Berkeley. This essential study will help discern recent trends in workers' compensation claims, costs and earnings losses and will illuminate the impact of SB 863 reforms on workers' compensation adequacy and equity.

*Study on the Risks of "Sharps" Injuries in Non-healthcare Occupations*

Mr. Enz stated that the Commission is closely following the study on the risk of "Sharps" injuries in non-healthcare occupations being conducted by UC Berkeley's Center for the Study of Social Insurance. This study collected data on the frequency and severity of "sharps" injuries (essentially needle sticks) among non-healthcare occupations to help identify the appropriate

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level of prevention activities needed for non-healthcare settings and the actual impact of “sharps” injuries on employer insurance costs. This study should be ready to submit to Commissioners prior to the next meeting in March 2015.

*Prevalence and Causes of Work-Related Injuries and Underreporting in the Low-Wage Labor Market*

Mr. Enz stated that the Commission is also tracking the Prevalence and Causes of Work-Related Injuries and Underreporting in the Low-Wage Labor Market study by UCLA-LOSH. This study will generate important information on a workforce not frequently captured in standard data surveys by identifying common injuries and reporting experiences of workers who often fall through the cracks of the existing workers’ compensation system.

*Data for a New Workers’ Compensation Research Institute Study*

Mr. Enz stated that CHSWC staff is working along with Division of Workers’ Compensation (DWC) to provide data to the Workers’ Compensation Research Institute (WCRI) in order to choose a sample of injured workers to conduct survey interviews for the 10<sup>th</sup> edition of the WCRI Worker Outcomes Study for California. This study will look at five areas of worker outcomes: (1) speed and sustainability of return to work; (2) recovery of physical health and function; (3) earnings recovery; (4) access to care after injury; and (5) satisfaction with care. In addition, the study will involve interviewing California workers injured in 2012.

*Commissioner Requests for New Studies*

Mr. Enz stated that one request from Commissioners for initiating new studies was for a study on the medical cost shifts to group health insurance with a specific look at the Taft Hartley Trust Funds which would be completed with recommendations by the end of 2015. A second request, in an effort to focus more on health and safety, was to conduct a follow-up study to a previous Aging Workforce study to determine whether to resource training for older workers who are more injury-prone. Commission staff will address these important requests from Commissioners by convening research teams to get some ideas on how to set up the requested research.

*RAND Studies on Utilization Review and Independent Medical Review*

Mr. Enz stated that Barbara Wynn from RAND is currently evaluating utilization review (UR) and independent medical review (IMR), important topics for all stakeholders in the workers’ compensation system. Dr. Rupa Das will also be putting out an Annual Report on IMR.

*Walkthrough on Navigating the Workers’ Compensation System*

Mr. Enz stated that based on conversations with Commission Chair Angie Wei, Commission staff is working to arrange a walkthrough in the Oakland offices so that Commissioners have an opportunity to observe firsthand how injured workers navigate the workers’ compensation system. Commission staff is asking DWC Chief Judge Richard Newman to help work out the logistics for this walkthrough and schedule it so that it would roughly coincide with the next Commission meeting in March 2015.

*Finalized and Posted Studies*

Mr. Enz stated that the Bickmore report for the Commission by Mark Priven, “Examination of the California Public Sector Self-Insured Workers’ Compensation Program,” was posted on the

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Commission's website and the final report was released in early November. The study made a number of recommendations regarding benefit expenditure, claims administration and solvency of California's Public Sector Self-Insured Workers' Compensation Program.

*Draft 2014 CHSWC Annual Report*

Mr. Enz stated that the DRAFT 2014 CHSWC Annual Report has been prepared for Commissioner review and approval.

*CHSWC Vote*

Commissioner McNally moved to approve or final release and posting, pending final edits and updates, the DRAFT 2014 CHSWC Annual Report, and Commissioner Bloch seconded. The motion passed unanimously.

*Draft 2014 WOSHTEP Advisory Board Annual Report*

Mr. Enz stated that the DRAFT 2014 WOSHTEP Advisory Board Annual Report has been prepared for Commissioner review and approval.

*CHSWC Vote*

Commissioner Kessler moved to approve for final release and posting, pending final edits and updates, the DRAFT 2014 WOSHTEP Advisory Board Annual Report, and Commissioner Brady seconded. The motion passed unanimously.

*Comments by Commissioners*

Commissioner Bloch asked if the WCRI study is looking at the differential in costs for self-insured employers to get workers back to work, as this relates to cost-shifting. Mr. Enz responded that it would be important to look into this issue and that the WCRI work on the connection to the Taft Hartley Trust Funds would be a useful connection.

**Public Comment**

James G. Butler, Jr., Legislative Chair of the Applicants' Attorneys' Association (CAAA) representing the workers of the State of California, stated that 54.3 million utilization review (UR) requests sent to IMR were reported, and of those requests, 80% of that number was for medical-only claims, even if only for an aspirin or a band aid. He stated that the data pertain to all dates of injury and include a number of claims that are not eligible for IMR. He suggested that the RAND study look at the remaining 20% of claims which are for indemnity claims.

*Comments by Commissioners*

Commissioner McNally asked if Commission staff were going to be doing analysis of UR, and Chair Wei stated that staff had been asked to give direction to Commissioners about a study to UR. Commissioner McNally asked that Mr. Enz provide that information, and Mr. Enz responded that Commission staff would do that.

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Commissioner Bouma thanked Chair Wei for her work and said that she looks forward to working with Commissioner McNally as chair next year.

**Other Business**

None.

**Adjournment**

The meeting was adjourned at 11:15 a.m.

**Approved:**

\_\_\_\_\_  
Sean McNally, 2015 Chair

\_\_\_\_\_  
Date

Respectfully submitted:

\_\_\_\_\_  
Eduardo Enz, Acting Executive Officer, CHSWC

\_\_\_\_\_  
Date