

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

December 11, 2015

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

In Attendance

2015 Chair, Sean McNally

Commissioners Daniel Bagan, Doug Bloch, Martin Brady, Shelley Kessler, Kristen Schwenkmeyer, Angie Wei

Absent

Commissioner Christy Bouma

At-a-Glance Summary of Voted Decisions from the CHSWC Meeting

Approval of Minutes from October 16, 2015, Meeting	Approved
Election of Angie Wei as Chair	Approved
Release and post, pending final edits and updates, the 2015 WOSHTEP Annual Report	Approved
Release and post, pending final edits and updates, the 2015 CHSWC Annual Report	Approved
Post for feedback and comment and for final posting in 30 days, when available, the draft report "Wage Loss and Benefits for Permanently Disabled Workers in California: Recent Trends and the Impact of SB 863"	Approved
Funding for a Janitorial Workload Project (\$83,000)	Approved

Approval of Minutes from the October 16, 2015, CHSWC Meeting

CHSWC Vote

Commissioner Kessler moved to approve the minutes of the October 16, 2015, meeting, and Commissioner Bagan seconded the motion. The motion was passed unanimously.

Commissioner Kessler asked about the process of independent medical review (IMR) applications and being able to download and fill them out. Referring to page 3 of the minutes, she said that it is not currently allowed under the statute—the IMR is supposed to be filled out by claims administrators and then be sent to both injured workers and attorneys. She reminded everyone of her question about how it was sent—by snail mail or some other way. She stated that what she is concerned about is that when people are injured on the job and can no longer work, so they become more mobile; they may not be able to afford rent, and they move, or whatever. They are encouraged to file IMRs because they will get money as a result, but if they never receive the documentation, what happens? She asked whether they know who does not receive

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

what they are supposed to, and whether there is any tracking or certification of letters that are sent. She said she wanted to figure out how this process works for people who may have moved.

Destie Overpeck, Administrative Director of the Division of Workers' Compensation (DWC), stated that they do have an audit process. The letters show the address to which they were sent. The best anyone can do is to send the letter to the last-known address of an injured worker. That information is in claims files, which are subject to an audit. Ms. Kessler asked whether mail is ever returned marked "not at this address." Ms. Overpeck stated that the claims administrator has an obligation to correct it and resend it. Claims administrators are administering the claims so they should be up to date with that information; they are sending benefits, so it is all the same.

Commissioner Kessler referred to page 6 of the minutes, where there is a discussion about the fact that system-wide spending rose much more rapidly than predicted based on price inflation. She said that she was wondering whether the lower workers' compensation inflation rate is due to the fact that most of the services under workers' compensation are subject to fee schedules, yet the inflation factor for physician services was negligible. She said she did not understand how that could be, given that anyone who has ever gone to a doctor does not necessarily find that this is negligible. When they go to physicians, they find that rates usually go up. She stated that she was curious about how this was determined. Director Baker stated that the Resource-Based Relative Value Scale (RBRVS) has a fee schedule—the physician fee schedule. Overall, that pegs rates to 120% of Medicare.

Commissioner Kessler said the only other things she had questions about were on page 8, where there was a discussion about a report showing spending increases that varied by type of payer, and in the third carve-out under the third bullet, it said that there was a variation in which the study did not adjust for case mix but did drill down into various categories by the type of employer. She said she had asked what the results and types of employers are; it said that the average for the State of California was 69% and for the self-insured it was 16%, for private 43%, and self-insured 20%. So there is a variation. She said she was curious about the type of employer because they were talking about the rise of employment in low-wage work, a lot of which is non-union and a lot of which is in industries that have a higher propensity for injuries than higher-paying environments that are represented by a bargaining agreement. She asked how they find out the types of employers and the results. She said she asked Eduardo. Director Baker said that she thinks the premiums reflect in part the cost of the type of employer; they can get that information. The Rating Bureau publishes information about the cost of workers' compensation per \$100 of payroll. For carpenters, it is \$16 per \$100 of payroll, for office workers it is \$2 per \$100 of payroll. (She gave these figures for illustrative purposes, so the actual rate may be different.) She said it all depends. Commissioner Kessler thanked Director Baker and said she would appreciate the information and that it helps to inform the work that they do. Director Baker said it depends on the industry; it varies widely, but on average it is about \$2.45 per \$100 of payroll, but it can range from less than \$2 to more than \$16 per \$100 of payroll, depending on their experience and the type of industry.

Commissioner Brady said that there are a lot of moving parts, and therefore it is very difficult to nail down a particular answer to the question. All the parts are moving simultaneously, so you have class codes, you have modification factors, which are based on the individual experience of

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

the employer, and you have territorial issues, depending on where the business is located. He said that he understands what Commissioner Kessler is trying to get to, but the answer is: “it depends.” (Much laughter filled the air.) Commissioner McNally said that it was a long answer to say: “It depends.” (Further spirited collegial exchanges ensued.)

Nomination for Chair of the Commission in 2016

Commissioner McNally asked for nominations for chair of the commission in 2016, and Commissioner Kessler nominated Angie Wei. Commissioner Brady seconded it and asked for a vote. Commissioner Wei was elected unanimously.

Update by the DWC Administrative Director

Destie Overpeck, Administrative Director, Division of Workers’ Compensation

Formulary Update

- DWC issued a request for a proposal for an economic analysis and implementation plan.
 - Bidding period has closed.
 - DWC is evaluating what it has received.
 - Notice of award is scheduled to be posted on December 14, 2015.
- Initial assumptions
 - The formulary should be designed to (1) maximize the quality of care and health and work-related outcomes and (2) control spending.
 - Time and resource constraints favor initially adopting an existing evidence-based formulary.
 - Formulary may become CA-specific over time through the updating process.
 - Implementation policies should be tailored to meet AB 1124 requirements.
 - The formulary will apply to drugs prescribed for all injured workers consistent with the medical treatment utilization schedule (MTUS).
 - Network and out-of-network care
 - Pharmacy and physician dispensed
- Per the statute, the formulary regulations should be in effect by July 1, 2017.
- The statute says the formulary should include “Guidance on the use of the formulary to further the goal of providing appropriate medications expeditiously while minimizing administrative burden and associated administrative costs.” They want to explore ideas for quicker approvals or denials—for example, in Texas, utilization review (UR) is done in three days, in Alabama, one day.

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Electronic Forms and Records Update

- Working internally to begin process of creating an electronic Request for Authorization (RFA)/Progress Report (PR-2) and medical records platform/depository.
- Need to create a unique identifier for each injured worker claim assigned at the beginning of the claim to identify the reports and records.
- If a depository is created, the necessary parties will need to have access to the records and reports.

Regulations Update

12/7/15: Spanish version of new benefit notices, which go into effect on January 1, 2016 (they are available on the DWC website), were posted.

11/30/15: Public Hearing for Home Health Care Services Fee Schedule was held.

12/19/15: 15-day comment period for MTUS Chronic Pain and Opioids Treatment Guidelines ends.

Comments by Commissioners

Commissioner Bagan said that the minutes of the previous meeting mention that drug testing had increased 14-fold, and he asked whether the formulary would include a provision for regulating drug testing. Ms. Overpeck said that DWC would certainly consider including Durable Medical Equipment (DME) and other things like drug testing.

Commissioner Wei asked what the interaction between the formulary and UR will be. Ms. Overpeck said that DWC is working that out. It would likely have provisions that simplify UR for an approved drug that is being requested. For example, some drugs may be preapproved, and first filled prescriptions may not need to go through pre-approval. Retroactive UR could take place if there is a question. A lot of pharmacy benefit managers already have software. So when someone comes in with a prescription, they can immediately tell whether it should be considered approved before the pharmacist releases it. She said the formulary allows them to take advantage of current practices and make the process work better and more easily for injured workers if the treating physician chooses a drug that is already on the list that is approved. Therefore when it comes to the pharmacy, the pharmacy will know this is something on the formulary, and it can proceed to fill the prescription.

Commissioner Wei asked whether it was necessary to allow drugs that are prescribed off the formulary to go through UR. Ms. Overpeck said that most formularies actually allow all drugs.

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

The question is whether this drug needs preauthorization because of the kind of drug it is. It is a little more nuanced than that, but there may be a way to specify drugs on the formulary that should be allowed to be approved upfront.

Commissioner Wei said that they have had discussions about how the formulary can be used to decrease the friction of unnecessary UR and ultimately IMR because so many of the Requests for Authorization (RFAs) that are going to IMR have to deal with drugs. She said that she was worried that they are not going to reach that objective unless they think through what these interactions are and whether some things can be preapproved or approved without needing UR. Ms. Overpeck said that that is part of what they are hoping their study will help them work out. Other states with formularies have found a decrease in disputes. Primarily what they are hearing is that in the Texas model, the physicians pick the drugs that are listed because it is easier and more efficient and thus will be approved. A formulary decreases friction in two ways: the physicians change their behavior in order to be able to have prescriptions filled more quickly for injured workers, and the payers change their behavior because they know that these prescriptions are evidence based and appropriate for that kind of treatment.

Commissioner Wei said that she appreciates those statements and the assumptions that underlie them: that the use of MPNs will cause everyone to change behavior based on the rules. But she does not think they have actually seen that happening with the new IMR, so physicians need to be trained, in order to incentivize or help push change in behavior. She said she is not convinced today about those underlying assumptions. She said that Ms. Overpeck laid out two goals for the formulary upfront, and one was controlling spending. She said she thinks that in these discussions, controlling spending usually means pushing out fewer pills, and she hopes that the goal of controlling spending also includes the frictional issues. Ms. Overpeck agreed. Commissioner Wei said that they want to make sure that they get to the second objective, which is using UR and IMR with the formulary to decrease friction. She said that they were told that that is going to be one of the outcomes; they have got to see that.

Director Baker said that one of the ways in which they can address this—touched on by Ms. Overpeck—is by speeding up the delivery of a formulary drug, a “yes drug.” Approval has to be within 24 hours, 2 days, or immediately, or you can preapprove it.

Commissioner Wei said she appreciates all that, but she thinks that they need to think of all the ups and downs of all those options. For example, a first fill: when they started looking at dispensing a decade ago, they learned about doctors writing prescriptions for small amounts to get the injured worker back to work, so maybe they could get the dispensing fee. So there are always incentives that are created when they (we) do things, so she wants them to think through what all of those are, before the rules come out.

Director Baker said that multiple means, multiple formulary teams, are in the workers’ compensation system, outside the workers’ compensation system, in group health, and in public health, so they are getting exposure to a full range of issues being confronted in all the systems. Director Baker said that they hope to bring best practices to the California system, to which Commissioner Wei added: “with the objective to decrease friction in the system.”

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Commissioner Bloch said that he made a request two meetings earlier to get a report on the formulary, and he thanked Ms. Overpeck for telling them what is happening. He said he is not going to repeat Commissioner Wei's comments except to say, "Me, too," on sharing those concerns. He asked what the interaction is between the formulary and the opioid guidelines and how the timing on developing both of those overlaps. Ms. Overpeck said that the opioid guidelines should be completed soon, and she mentioned that the 15-day comment period closes in the next week; if that is the last comment period, the guidelines should take effect in January or February [2016]. They will be done, and the formulary takes effect a year later. They will work together. The formulary is a list of drugs by class, and the MTUS talks about appropriate treatment by injury or condition. When physicians are treating a patient, they follow the MTUS with respect to the appropriate way to treat the injured worker using the evidence-based medicine and, then, based on the classification of the drug, see which drugs are on the formulary.

Commissioner Bloch said, hypothetically, suppose that a worker is injured and the treatment guidelines dictate the prescription of an opioid. The physician will turn to the formulary for the list of approved opioids or pain killers that are appropriate for that particular worker's injury. He asked where the education is for the physician about the proper way to deal with opioids for an injured worker. Referring to Commissioner Wei's comments, he said it seems that a lot of the disputes they are seeing concern the long-term use of opioids. Some people with long-term injuries are kicked out of the system now through UR and IMR and have developed problems with pain killers, in particular, opioids but are being denied those prescriptions. Anecdotally, a lot of his members are thrown out and may have chronic pain, and they do not know where to go. Sometimes they end up going to the union, which sends them for drug and alcohol rehabilitation, and maybe the costs are shifted to their Health and Welfare Trust Funds (which are operated by the union). He said he knows he is opening a big can of worms but, going back to the need to minimize disputes in the system, many of which concern pain killers, when that physician sees that drug on the formulary list, where is the education and training about the pitfalls of prescribing this and how to work with workers to try to minimize the chance that they will develop an addiction to it?

Ms. Overpeck said that this matter is addressed in the opioid guidelines. She reminded Commissioner Bloch that Dr. Rupali Das worked with the California Medical Association [in 2015] to develop the opioid guideline, which includes the morphine milligram equivalent (MME)—80 milligrams—throughout the State of California, whether for a prescription as part of workers' compensation or in general health care. She said that, starting in July [2016], educational sessions that cover opioids will be ready and will be posted on their webpage. Treating physicians can earn continuing education credit for taking those courses.

Commissioner Bloch asked whether the formulary will refer people to those guidelines. Ms. Overpeck said the formulary is a list of drugs, but, referring to the example of the State of Washington and its web page, they intend to add links to the treatment schedule where the formulary is posted. Ms. Overpeck said they will set it up to create a useful reference for physicians and other users so that they can go between the various related parts and find the help that they need.

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Commissioner Wei said she had a final question. She said it was the end of a busy year for her and all her staff and thanked Ms. Overpeck and everyone for their hard work and service to the public; it is hard work. Ms. Overpeck thanked Commissioner Wei. Commissioner Wei asked Ms. Overpeck for any reflections about where she thinks the Division is now: how are they doing, are things evening out; most of the regulatory work is done, so what are the challenges she is looking forward to in 2016; since it is the end of the year, what is the big picture wrap?

Ms. Overpeck said that she is proud that they have most of the SB 863 regulations completed; the main one remaining is the interpreter fee schedule, and they plan on coming out with that very soon. Going forward she thinks it will be very exciting, working on issues such as the formulary and the electronic medical records. New ways of treating some of the issues they have in workers' compensation are going to be very positive developments. She said they have a great team with a lot of hard-working people; they are working across departments and divisions and within their units. She said they also plan to take a look at UR to see how they can improve that system, and if there can be better reviews of that to ensure that UR is operating in the best way possible.

Commissioner Brady said he had a quick question about compounds and said he assumed that part of the study will include compounds and physician dispensing and so forth as well. Ms. Overpeck said that they will be dealing with compounds in the formulary.

Report on the Wage-Loss Study
Michael Dworsky and Seth Seabury, RAND

Final Results of the Wage Loss and Return-to-Work Study (Seth Seabury)

The project has two phases, as follows:

- The first phase describes some challenges, guidelines, and recommendations for implementing the Return to Work (RTW) program in SB 863.
- The second phase describes the changes in the benefits under the new reforms and how they affect benefit adequacy.

The second phase is the topic of this presentation.

Important questions addressed in the report:

How will the SB 863 reforms affect benefit adequacy and return to work?

- How have changing economic conditions affected permanently disabled (PD) workers?
- Did other factors drive earnings loss trends?
- How adequately did permanent partial disability (PPD) benefits compensate disabled workers over this period?
- How have the reforms affected the equity of disability benefits?

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Specific questions addressed in report (Michael Dworsky)

- How did labor market outcomes for PD workers evolve from SB 899 to SB 863?
- What impact does SB 863 have on adequacy and equity of PPD benefits?
- Outcomes examined in today's briefing include:
 - Earnings Losses
 - Employment
 - Return to Work
 - PD Ratings and Benefits

The key limitations of the study:

- Hard to track paid amounts after 2012.
- Simulating SB 863 is more accurate if statutory benefits are analyzed, rather than paid benefits.
- Ratings may evolve as parties adapt to new policies.
- Restricted attention to AMA guide ratings, excluding alternative ratings (Almaraz/Guzman) from analysis.

Conclusions:

- Large earnings losses for PD workers remain a serious policy challenge in California.
- The challenge was exacerbated by the Great Recession, which disproportionately affected PD workers, and the enactment of SB 863 does not change that.
- Earnings losses increased by about a third since 2008, and they have not bounced back.
- SB 863 will lead to more benefit adequacy than was seen under SB 899.
- Earnings losses have not recovered to pre-recession levels, and it is not clear when or if that will happen.
- Tracking earnings losses moving forward is important for assessing the level of benefits in the system.
- It is not clear whether workers are applying for RTW benefits, so this needs to be tracked.
- What are Almaraz ratings going to do to the ratings and the ratings based on AMA guidelines?
- Permanent Disability Rating Schedule (PDRS) age and occupation adjustments are important for equity and should be set according to data on earnings losses.

Comments by Commissioners

Commissioner Kessler asked Mr. Dworsky, with regard to the higher likelihood that injured workers are older and female, whether his study includes any data on a worker's immigration status or race. Mr. Dworsky said that they do not have any data on ethnicity, citizenship status, or nationality. He said it would be an excellent thing to address from other data sources in the future.

On earnings losses

Commissioner Bloch asked Mr. Dworsky to rephrase what he had said for the non-economist or non-researcher—did he mean that if you make more money before you are injured then you will

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

lose less money when you return to work? Mr. Dworsky confirmed that higher-wage workers lose a lower percentage of wages. Commissioner Bloch said if you are at the bottom as a low-wage worker, not only are you at the bottom but you get kicked when you are down because your earnings losses are a larger percentage of your wages. Mr. Dworsky said, yes, the earnings losses relative to the control workers are higher for people at the bottom of the income distribution. He said this relationship looks steeper if you do not control for other characteristics. But if you do not control for other characteristics, it is hard to say what the independent effect of one factor is. For instance, lower-wage workers might be younger, and that might have an independent effect on the outcomes, to which Commissioner Bloch added, “or a low-wage worker may be undocumented.” Mr. Dworsky said that is correct, but they do not directly observe that, controlling for things like industry and firm size might give some kind of proxy for that, but they do not directly observe citizenship status, to which Commissioner Kessler added: “or their ethnicity.” Mr. Dworsky said that, too, is correct. Commissioner Kessler said that is where that cluster lives.

On representation

Commissioner Bloch asked whether his interpretation of Mr. Dworsky’s result showing that represented workers have increased benefits compared with unrepresented workers is correct—that the real advantage for workers in the workers’ compensation system is having representation either through an attorney or, as Commissioner Kessler whispered to him, a union. Mr. Dworsky said that he could not take a stand on whether it was an advantage (to have representation), but on average the workers who have representation experience higher ratings and benefits. He said the reason he cannot take a stand is that generally workers with more severe, complex cases seek representation. It is hard to say what the effect of having a lawyer is, and the data are consistent with his interpretation. Commissioner Bloch said that he is happy to take a stand on that. Mr. Seabury added that the same cases have higher earnings losses and also lower return to work. He believes there is a strong severity effect between cases that do have representation. Cases with higher ratings do so because of having higher losses, so there is a severity effect. Commissioner Bloch replied that it is the most severely injured workers who need the most help. Mr. Seabury stated that it cannot be suggested that it is the representation that leads to higher ratings, so one should be careful about attributing cause and effect.

Mr. Dworsky stated that, in evaluating the adequacy of benefits under SB 899, whether representation is good for the worker is not evident, but it is important to take it into account when we are trying to measure the level of benefits. Commissioner Kessler stated that, for injured workers who are severely injured or seek attorneys, and those who are not high-wage earners to begin with or who do not have union representation or have another source of representation, that is also represented in the bottom line (of a lower final rating). Therefore, the issue of immigrant workers, ethnicity, and the character and quality of the actual work environment is important when looking at statistical data because some elements are missing that could help us understand the data and assess their accuracy. These elements are worth examining because the actual impact is whether injured workers can return to work and the quality and type of work they can return to. Mr. Dworsky replied that Commissioner Kessler’s points are well taken and there is the bigger question of whether there is access to justice and representation in

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

the system; it is a very important policy question that they cannot address in this study and are interested in exploring at some point.

On add-ons

Commissioner Bloch asked about the low number of psychiatric add-ons. He also asked about the worker who has been out of work for two years and the impact of psychiatric add-ons for the rating. The worker who has been out of work for two years is much more likely to have psychiatric issues than the worker who has been out of work for three months and has been injured. What happens not only during the first quarter or the first year of injury but what happens when they project it out longer is also important. Mr. Dworsky replied that the limitation of looking at post-SB 863 data is that the more severe cases have not shown up in the Disability Evaluation Unit (DEU).

On delivery of benefits

Commissioner Bloch asked whether they are tracking the benefits that people are entitled to under SB 863. Director Baker replied that they have a mandatory program that audits insurers for the timeliness and accuracy of the benefits paid out. Mr. Dworsky stated that a large proportion of the PPD cases are settled, so the settlement process seems to add divergence to what the statutory benefits would be based on the rating, rather than the amount paid as indemnity. There is concern that the DEU rating may not reflect what the parties agreed upon, especially in the cases that go to court. In the data that they have, it is difficult to benchmark the percentage of benefits paid out compared to what should be paid out. On average, the statutory benefits are higher than the amounts that are paid out; this is always true in the data, but it is hard to say whether it is wrong. Commissioner Bloch asked whether they know how many people have applied and received payouts from the Return to Work fund. Director Baker stated that the benefits are being delivered very quickly and without any encumbrance.

Commissioner Brady asked what changes may be in the data after significant changes in the minimum wage. Mr. Dworsky stated that the effect of the minimum wage on wage replacement rates is complex. There is no scholarly consensus on the impact of the minimum wage on employment, which he needs to know before predicting the effect of the minimum wage on earnings losses. If the minimum wage increases without any negative employment effects, then fewer workers will fall below the minimum benefit floor, but very few workers fall below the minimum benefit floor currently. It is not clear what the impact will be on overall replacement rates. Mr. Seabury added, in general, when wages increase, the effect of the average earnings losses comes from people who are not working. Actual earnings losses affect people who are working, so if wages to people who are working increase, the wage loss will rise mechanically because if what they are being paid increases, then the losses will increase. Holding constant the employment effect and any wage increases will make earnings losses look larger.

Commissioner Kessler asked—with regard to the 5.2 million people who applied, only 9.6 percent received PPD—is that low? It seems low to her that so few people have access. Mr. Dworsky stated that 5 million is not the number of people who report permanent impairment but the total number of workers' comp claims that show up in the Workers' Compensation Information System (WCIS). Commissioner Kessler stated that the people who are most likely to

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

suffer the consequences of sleep disorders and sexual dysfunction, especially in agriculture or janitorial and many low-wage service-sector jobs, are the least likely to report it if they are unrepresented. This skews the statistical analysis because it does not capture the people who could be reporting injuries because generally they would lose their jobs. Mr. Dworsky stated that the important caveat in this study is that it is about the population of workers who file workers' comp claims and then end up being permanently impaired when they reach maximum medical improvement. Having a workplace injury or permanent disability is not the same thing as filing workers' comp claims, especially among disadvantaged populations. We have to see those people in WCIS.

On return to work

Commissioner Kessler asked whether any statistical data show that those who return to work are not fully healed and then are injured again after they go back to work. Mr. Dworsky stated that WCIS is a great data source, but it is not analyzed in the report. However, this study looks at people who are healthy and have a major impairment and then they are permanently disabled. Director Baker stated that these injured workers would be accounted for in the system if they have another claim. Mr. Seabury stated that they see a persistent long-term negative effect for people who come back and then drop out. Commissioner Kessler replied that sometimes people go back to work for financial reasons, not necessarily because they are healed.

Commissioner Bloch stated that he would like to follow up about the limitations in the data and the invisible part of the workforce that suffers injuries that do not show up in the system and are not reported. Mr. Dworsky had stated that agriculture accounts for a small proportion of PD claims in California, and he wanted to know the reasons. Mr. Dworsky replied that agriculture accounts for a relatively small proportion compared to the labor force, and other sectors, such as retail, account for a larger share of the PPD caseload. What is happening in agriculture is not driving the overall trends.

Commissioner Bloch commented that he has been advocating for over 20 years in this field. The overall economic trends and the difference during the recession show that when the economy is flourishing, it is good for both labor and management. However, being in a large and diverse union, he thinks that the experience in the high-wage industries and low-wage industries differs greatly regardless of economic trends. In good times and bad, in a low-wage industry the supply of labor outstrips the demand, and the injured worker is easily expendable in a workforce that is already expendable because of being undocumented and having people with limited English proficiency. When there are ten people who are willing to take your job, you are the "first to go." Commissioner Bloch's union represents the solid waste and recycling industry, which has a high degree of occupational injuries. However, if the driver of a garbage truck in San Francisco is injured on the job, the employer has every incentive to get that worker back to work because the job requires a high amount of training and skill. Also, those who work in parking lots are represented by the Teamsters. Teamsters also represent food-processing line workers, and when they are injured, their employment is terminated. However, when mechanics are injured, they return to work. When a line worker is injured, production is affected, and they are terminated from employment. When they file workers' comp claims, they are terminated.

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Commissioner Bloch stated that they are beginning to understand what is happening to low-wage workers and the people at the low end of the “food chain.” They cannot control for factors such as ethnicity and citizenship status and English-language ability, which affects workers’ ability to seek out representation when they are injured. Mr. Dworsky added that this is a compelling explanation of outcomes that are systematically worse for low-wage workers, and it has to do with differences in labor supply and labor demand. Mr. Dworsky also stated that understanding the mechanisms (of the difference between high-wage and low-wage industries) is extremely important, and they need the data to understand it.

Mr. Dworsky said that survey data sources are better than administrative data sources for analyzing workers’ ethnicity and citizenship. There is scope for California to do the surveys, and there are also federal surveys.

Commissioner Kessler stated that this study is very important to her constituency. She asked how much of the Return to Work fund is used and whether it can be eliminated. Director Baker stated that the fund cannot be eliminated; the money is allocated every year, and the funds roll over every year. Commissioner Kessler asked whether, if there is a budget crisis in the State of California, the fund can be affected. Director Baker stated that the fund is a separate assessment from the budget. Commissioner Kessler asked whether there had been any discussion about people’s access to the funds. For instance, is it possible that some workers lack access because they do not have computer skills or access to a facility? Has there been a discussion or analysis of the ability of people who have been injured to access the Return to Work fund? Director Baker replied that there is a computer kiosk in every DWC office and an information and assistance officer is available to injured workers to help walk them through the application process. Director Baker said that the office helps unrepresented workers. Ms. Overpeck added that the injured workers receive a notice about it when they receive their voucher: You are eligible for another \$5,000, and this is how you can get it.

Aging Workforce Roundtable Report
Laura Stock, University of California, Berkeley

Laura Stock presented initial findings from the aging workforce roundtable held on November 13, 2015.

- A detailed final report will be available in January 2016.
- The roundtable was well attended by a diverse group, including researchers and unions.
- In general, older workers tend to experience more nonfatal injuries than younger workers do, and older workers tend to have more severe injuries.
- Women tend to have higher rates of injury than men, with that disparity peaking around age 55-64.
- Women had a 50% higher risk of injury than men. Data that was presented was not broken down by industry and occupation and was general.

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

- Experiences are very different depending on which group of workers you are looking at, and great disparities in reporting arise that have to be explored further. The roundtable also had a general goal of trying to define an age-friendly workforce.

Age-friendly workforce:

- The value of a universal design approach is not only for older workers but for everyone. It is important to eliminate the possibility of discrimination against older workers.
- Discussion about creating a reasonable and safe workload and production standards; as one gets older, it is more difficult to meet very high production standards in physically demanding low-wage jobs, so there was a discussion about how an age-friendly workforce should look at those issues.
- There was discussion about supporting workers when they need to take action, about fear of retaliation and its effects on reporting, and about work-life balance and how workers may have to take care of parents or grandchildren.

Ms. Stock presented a new proposal about workload in the janitorial industry.

- The workload has increased dramatically since the 1980s, when there was higher rate of unionization and certain types of wage gains to remain competitive and create an even playing field. The increasing workload is of great interest in many industries.
- Proposal will look in detail at the impact of increased workload and provide strategies and information that are more broadly helpful.
- Proposals are being developed in conjunction with the DIR that will be submitted for a vote on the janitorial issues that workers in that area face.
- The first component proposes conducting focus groups with janitorial workers and gathering qualitative data in order to better understand:
 - a. participants' experiences with changes in their workload in recent years,
 - b. the extent and types of changes they have experienced,
 - c. the impact of that increased workload on their physical and mental health, and increased soft tissue injuries and stress.
 - d. their concerns with respect to their workload and their health.

The project is broken up into two phases.

- The first phase is designing and holding focus groups in different regions throughout California. The second phase is analyzing the results and preparing a report on what they found and making recommendations for future action.

The anticipated timeline to complete both phases is February to July 2016.

Comments by the Commissioners

Commissioner Bloch thanked everyone who worked on the meeting. He stated the meeting had the right combination of people; the data shared was very compelling, and talking about the solutions was promising. The roundtable discussions were about solutions, and he would like the Commission to focus more on the prevention side than the workers' compensation side. He is looking forward to the recommendations to make workplaces more friendly for our ever-

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

changing workforce. Ms. Stock stated that the Commission charged the roundtable with finding practical solutions, and she will highlight that in the report.

Comments about Janitorial Project Proposal

Commissioner Bloch stated this is an opportunity to tease out the data that was missing from the previous presentation. It is a very important study, and it is helpful that the study will be taken to the workers.

Commissioner Kessler stated that she is happy that the meetings are off site because, in her experience, when workers and representative workers are interviewed on site, one does not get the answers and honesty that one gets off site. She commented that if there is retaliation against these workers, it is not clear that anything can be done. Particularly for workers who lack representation, it is important to capture the data. But she is fearful of things she has seen over time when people report on their experiences.

Commissioner Kessler asked about the protection being considered for the people being interviewed. Ms. Stock replied that part of the University of California requirements is the strict Institutional Review Board (IRB) requirement to protect individuals. Moreover, they should conduct recruitment with various entities involving both union and non-union workers, and those meetings should take place in neutral off-site places. It will be voluntary and will not name anyone specifically and will require that all sorts of precautions be taken. Commissioner Kessler asked, after the interviews have been conducted, will there be any follow-up or tracking post-report to see whether anything is affected or changed? Ms. Stock replied that this will depend on their partners who conduct the study, and they will recruit the partners with the assumption that they will keep in touch with participants in the study to ensure that there is no adverse outcome.

CHSWC Report

Eduardo Enz, Executive Officer, CHSWC

Executive Officer Enz stated that, as the year comes to an end, he is pleased to share the Commission's continuing work in a number of critical areas.

Aging Workforce Roundtable

The information on the Aging Workforce roundtable held in November was presented by Laura Stock.

The Worker Occupational Safety and Health Training and Education Program (WOSHTEP) and School Action for Safety and Health (SASH) Programs

The WOSHTEP and SASH programs are actively providing health and safety training. Since its inception in 2003, WOSHTEP has served about 14,000 workers and about 1,600 employers with 8,940 hours of instruction. The Labor and Occupational Health Program (LOHP) at UC Berkeley and the Labor Occupational Safety and Health Program LOSH at UCLA continue to conduct

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

WOSH Specialist and Train-the-trainers classes on an ongoing basis. Since the WOSH Specialist program was piloted in 2004, over 3,450 WOSH Specialists have been trained statewide. The Small Business Resources Injury and Illness Prevention Program (IIPP) Project has also conducted 22 classes, which have served 463 small business owners and leaders. From the time it was established in 2008 to the spring of 2015, the SASH program conducted 53 classes, with four more planned this past fall. The program has had 1,001 participants and reached 34 of the 58 counties in the state.

Included in the Commissioners' packets for a vote today is the twelfth WOSHTEP annual report, as required by Labor Code Section 6354.7. According to this mandate, the Commission must prepare an annual written report evaluating the use and impact of the programs developed for WOSHTEP.

CHSWC also has a draft of the 2015 CHSWC annual report available for approval. This report represents its work since 2014 and updates trends.

Wage Loss Study

The Commission has worked jointly with DIR/DWC on a number of areas, such as the medical study and the wage loss study. With this background in mind, the Commission requests approval of this study when it becomes available for posting and comment.

Janitorial Project Proposal

The LOHP at UC Berkeley has a proposal with both qualitative and quantitative components, at a total cost of approximately \$83,000.

Action Items for Commissioners

The commissioners considered and voted on the following action items.

- *Approval of the 2015 CHSWC Annual Report*
Commissioner Bloch moved that the Commission approve the 2015 CHSWC Annual Report for final release and posting, pending final edits and updates. Commissioner Schwenkmeyer seconded the motion. The motion was passed unanimously.
- *Approval of the 2015 WOSHTEP Annual Report*
Commissioner Bloch moved that the Commission approve the 2015 WOSHTEP Annual Report for final release and posting, pending final edits and updates. Commissioner Brady seconded the motion. The motion was passed unanimously.
- *DRAFT Report: Wage Loss and Benefits for Permanently Disabled Workers in California: Recent Trends and the Impact of SB 863 Report*
Commissioner Kessler moved that the Commission post for feedback and comment, and for final posting in 30 days when it becomes available, the report titled "Wage Loss and

MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California

Benefits for Permanently Disabled Workers in California: Recent Trends and the Impact of SB 863,” by Michael Dworsky and Seth Seabury at RAND. Commissioner Bagan seconded the motion. The motion was passed unanimously.

Commissioner Bloch commented that he would like it mentioned in the report that some in the Commission raised some concerns about the limitations of the data, specifying that some data are missing. The concerns were expressed earlier in this meeting, and he did not need to repeat them. He did not know how Commission feedback is directly incorporated into studies like this one. Commissioner Bloch also stated that if someone did not attend this meeting and just looked at the report, it might skew their perspective on what is happening in the workers’ comp system. He asked whether the request is out of order, given how the Commission operates with these studies. Commissioner Kessler stated that it is more important to note how the different comments are reflected in the report. Director Baker stated that the report is independent and the Commissioner comments are included in the minutes and the things that the Commission does. Commissioner Kessler added that she would like a copy of the addendum before it is posted because some specific topics that are raised need to be acknowledged in the addendum. It is not a personal criticism, but there are certain facets that may have affected the way the data were analyzed after their collection, so in the future analysis some of these issues could be part of the compilation. Commissioner Bloch stated that the report is only working with the data available in the system. Director Baker added that some data are not available because some people do not file a claim. Commissioner McNally stated that the Commission will draft the addendum. All were in favor of the addendum.

Staff Recommendation: Yes

- *Janitorial Project Proposal*

Commissioner Kessler moved that the Commission approve the Janitorial Project Proposal by the LOHP, which includes both qualitative and quantitative components, at a total cost of approximately \$83,000. Commissioner Brady seconded the motion.

Commissioner Wei inquired about the breakdown of the \$83,000 and received the response from Executive Officer Enz that approximately \$49,500 was for Phase I of the qualitative study by LOHP; \$16,500 is for analysis of the focus groups and the subsequent written report; and \$17,000 is for the statistical analysis by Frank Neuhauser at UC Berkeley. The motion was passed unanimously.

Public Comment

There were no requests for public comment.

Other Business

None.

**MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California**

Adjournment

The meeting was adjourned at 12:15 p.m.

**MINUTES OF CHSWC MEETING
December 11, 2015, Oakland, California**

Approved:

Angie Wei, 2016 Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date