

**Commission on Health and Safety and Workers' Compensation
Minutes of Meeting
September 26, 2019
Elihu M. Harris State Building
Oakland, California**

In Attendance

2019 Chair, Sean McNally
Commissioners Martin Brady, Mona Garfias, Shelley Kessler, and Mitch Steiger

Absent

Commissioners Doug Bloch, Christy Bouma

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

| Action Item | Vote Decision |
|--|-----------------|
| Approval of Minutes from the Previous Meeting, on April 26, 2019 | Approved |
| Approval of the Draft Report "The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California Update" | Deferred |

Approval of Minutes from the April 26, 2019, CHSWC Meeting

CHSWC Vote

Chair McNally asked for a motion to approve the April 26, 2019, meeting minutes. Commissioner Brady moved to approve the minutes, and Commissioner Garfias seconded. The minutes were approved unanimously.

Chair McNally then welcomed Mitch Steiger as a new Commissioner and said that he was a strong addition to the team. Commissioner McNally said that they had worked together in the past and that he looks forward to working with Commissioner Steiger. Commissioner Steiger thanked the Chair and said that he looks forward to working on the issues.

DWC Update

George Parisotto, Administrative Director, DWC

Mr. Parisotto provided an update on DWC activities.

1. Hiring Practices

- For the past several months, the primary focus of the Division of Workers' Compensation (DWC), together with the Department of Industrial Relations (DIR), has been reviewing its hiring practices, training hiring managers, and evaluating

its internal structure. DWC is working to ensure that it is sufficiently staffed, especially in the District Offices, so that cases are adjudicated in a timely fashion. Assembly Bill (AB) 5, which took most of everyone's attention in the past few months, will likely increase the workload of DWC, and it needs to be prepared to handle that.

2. Medical Treatment Utilization Schedule (MTUS) Updates

- All chapters of the MTUS were updated in November 2017.
- Effective April 18, 2019, new treatment guidelines are available for:
 - Ankle and foot disorders
 - Spine disorders
 - Elbow disorders
 - Hand, wrist, and forearm disorders
 - Workplace mental health: post-traumatic stress disorder and acute stress disorder.
- Effective August 11, 2019, adopted:
 - Low Back Disorders Guideline
 - Introduction to the workplace Mental Health Guideline.
- Pending Approval:
 - Hip and Groin Disorders Guideline (public hearing held August 26, 2019) and should be adopted soon.
- Upcoming
 - Workplace Mental Health Guideline: Depression
 - Last week DWC launched an updated free online education course for physicians on the use of the MTUS and how to navigate the treatment guidelines.
 - Physicians will get education credit and have free access to the treatment guidelines.

3. Drug Formulary

- Adopted the Drug Formulary and the MTUS Drug List, 5th version, effective August 1, 2019
 - This is the fifth update since the formulary became effective January 1, 2018. As the MTUS is updated the drug formulary is updated.
 - Addition of drugs addressed in the Post-Traumatic Stress Disorder (PTSD) Guideline.
 - Designation of additional drugs as “special fill” eligible, due to treatment recommendation in the PTSD Guideline.
 - New drug recommendations pertaining to diclofenac sodium and divalproex sodium.
- WCIRB Study (August 2019)
 - Share of prescriptions for exempt drugs—not subject to prospective utilization review—increased by 41 percent compared with the pre-2018 level, while that of non-exempt drugs declined by 18 percent.

- The use of opioids, compounded drugs, physician-dispensed drugs, and brand name drugs with generic alternatives dropped significantly in 2018.
- Pharmaceutical costs continue to decline.
- Pharmacy and Therapeutics (P&T) committee meets quarterly. The next P&T Committee Meeting is November 20.

4. Revision of Medical-Legal Fee Schedule

- August 6, 2019: DWC drafted a new Medical-Legal Fee Schedule consisting of a synthesis of the proposals received by the DWC and it was posted to the forum (forum closed August 23).
- Proposal was a single, flat fee for comprehensive evaluations (\$1,650), fee for follow-up evaluations (\$1,010) and a fee for supplemental reports (\$275).
- Additional payment for review of medical records based upon the number of pages reviewed.
- Elimination of complexity factors.
- An increase in the hourly fee for medical-legal testimony.
- An increased modifier for evaluations performed by a psychiatrist or psychologist.
- An increased modifier for evaluations performed in underserved areas.
- Standardization of the fee that can be charged for a missed appointment.
- Based on the pages of records that we have heard are submitted on a typical case, this works out to about:
 - \$3,000 for a comprehensive medical evaluation
 - \$7,700 for a psychiatric exam
- Reviewing comments before initiating any rulemaking.
- DWC wants to make sure that Qualified Medical Evaluators (QMEs) are appropriately trained and that quality reports are being written.
- Next step is likely a stakeholder meeting with parties from all sides to discuss DWC proposals and what they see as various solutions.

5. Independent Medical Review (IMR) & Independent Bill Review (IBR)

Slight decline in the number of IMR applications. See below.

| Topic | Comment |
|---------------------------------|---|
| IMR Application Filings | 2018: 200,000 “unique” applications filed. 2019: 182,000 “unique” applications projected. |
| IMR Mailed and Processing Times | <ul style="list-style-type: none"> • Over 98% of all case decisions issued within statutory time requirements. • Average age from assigned date—24 days—average for the past several months • Average age from complete medical records—7 days—average for the past several months |

| | |
|---|---|
| Ineligible IMR Applications 2018 | <i>Projected</i> 11,000 ineligible applications in 2019. 6% of all “unique” applications. Down from 14,000 in 2018. In 2015 30,000 ineligible applications were received. |
| IMR Case Decisions and Outcomes 2019 | <i>Projected</i> 170,000 Final Determination Letters (FDLs) in 2019 would be an 8% decrease from 2018 (184,700) and similar to the three preceding years. For case decisions: 84% of cases upheld, 6% of cases partially overturned, 10% of cases overturned. |
| IMR Injured Worker Representation 2018 | In 2018, ratios of case outcomes were similar for represented and unrepresented workers. No change is expected in 2019. |
| IMR Case Outcomes by Geographic Region | In 2018, case decision outcomes continue to be consistent across all geographic regions. No change is expected in 2019. |
| IMR Service Categories | Overturn rate of 10.3% in 2019—almost identical to last year |
| IMR Service Categories [2] | Pharmaceuticals were 42% of all Utilization Review (UR) denials sent to IMR in 2018, 37% in 2019. Requests for all other service categories were stable or increased slightly. Mr. Parisotto believes the formulary has an impact. |
| Medical Treatment Utilization Schedule | Expert reviewers apply the recommended MTUS Guidelines to approximately 75% of all treatment requests. |
| IBR Applications Filed and Decisions Issued | Application filings are declining for the third consecutive year. DWC receives about 2,000 a year. |
| IBR Applicable Fee Schedule 2019 | Physician services continue to account for at least half the evaluated services. |
| IBR Case Decisions issued in 2019 | 71% of cases that go through review are awarded additional reimbursement and favor physicians. \$1,055,600 awarded so far in 2019. |

6. Electronic Adjudication Management System (EAMS)

- DWC was working with DIR Information Technology (IT) Unit and California Department of Technology to update EAMS.
- Goals:
 - Streamline staff work and filing system
 - Improve use of online forms
 - Improve the community experience with EAMS (more easily file documents and access information on DWC’s on-line system)
 - Reduce costs and allow for easier upgrades
 - Allow for better processing of payments to DWC
 - Allow for easy access for judges and staff for trial and reconsideration purposes. (Currently judges must sift through multiple documents to determine which documents are trial exhibits.)

7. Anti-Fraud

Lien Stay Activity

180 criminally charged individuals (and their entities) currently have their liens stayed by operation of law under Labor Code (LC) section 4615.

- Over 650,000 liens are currently designated as “4615” in EAMS.

Suspension Activity

Over 370 physicians, practitioners, or providers have been suspended under LC section 139.21(a).

Lien Consolidations

19 consolidated special lien proceedings, pursuant to section 139.21 (f), have been initiated since the effective date of the statute.

Lien Dismissal Activity for Failure to File 4903.05 Declaration

- 288,990 liens have been dismissed for failure to file a Labor Code Section 4903.05 Declaration.
- Drop in lien filings: from 30,000 per month to 6,000

8. Regulations

- Copy Service Fee Schedule
 - Revisions on DWC Website Forum (closed August 16)
 - A one-time increase in the flat fee rate for copy services from \$180 to \$210
 - Annual cost-of-living adjustments to the flat fee for copy services
 - Mandatory billing codes, including proposed new codes for sales tax, contracted fees, and additional sets
- Pharmacy Fee Schedule—update to reflect changes in the Medi-Cal dispensing fee
- Interpreters Fee Schedule
- Home Health Fee Schedule
- Testing Electronic First Report of Injury (FROI); stakeholders gave feedback. This is a two-part system where large medical groups will send electronic data interchange on the doctors’ FROI and smaller doctors will be able to access an online portal where they will be able to send that information directly to DWC. That will give valuable information about the claims that are filed in the system.
- Utilization Review
 - Changes in regulations almost finalized
 - DWC reviewed a Physicians Reporting form and received feedback; it has sufficient information to move the claim forward. People will pay more for a Physician Reporting form if it has solid information and helps bring the claim to closure.

Comments by Commissioners

Commissioner Kessler asked about the Physicians Reporting Forms and fees physicians were paid. She stated that physicians were less likely to do the work if they were not paid and asked whether there was discussion about how to deal with this expense. Mr. Parisotto replied that Commissioner Kessler may be asking about fees for QMEs under the medical legal fee schedule. DWC was working on it and had posted a fee schedule; it was a work in progress. Stakeholders from both sides need to discuss it. The treating physicians were paid under the Official Medical Fee Schedule, which is 120% of what Medicare pays, and that is mandated by statute. It is updated annually and quarterly to reflect the updates in the Medicare payment system. DWC pays \$12 for a one-page Physicians Progress Report (PR2). Mr. Parisotto commented that \$12 for the PR2 is not adequate. DWC will have a form that requires more information but will require more compensation. They need to eliminate friction and administrative burdens in the system, and by getting the treatment guidelines in place, then they can get information to the claims administrator to see what the physicians are doing. For an injured worker, this is the appropriate care that is required. That is important to avoid litigation and Utilization Review (UR) denials.

Commissioner Kessler stated that any website updates should also be in different languages, beginning with Spanish.

Commissioner Steiger asked for a Utilization Review Accreditation Commission (URAC) accreditation update; he asked whether those standards were in place and being enforced. Mr. Parisotto replied that in July 2018 claims administrators and Utilization Review Organizations (UROs) that deny or modify requests were required to get URAC accreditation. All of them had one or two organizations, and DWC was following up on that. DWC regulations will include the approval process that will require them to provide DWC with URAC accreditation. DWC will work with URAC to see that they are regularly audited. An audit is required to be conducted regularly by URAC, and it costs \$30,000. URAC is conducting regular audits, and DWC will hold them to that.

Commissioner Steiger asked about AB 5 and outreach to affected employers. His conversations revealed that many insurers may not be aware that AB 5 extends to unemployment insurance and workers' compensation. The bill included a delay for the enforcement of workers' compensation provisions. Therefore, DWC might expand the forms of outreach to both insurers and employers so that they are aware the law has changed, and there is a new appointment test that has to apply to workers' compensation starting July 1, 2020, so no one is surprised, and everyone has time. What they heard from the insurer community was that it was more complicated than they thought, and it was the main reason for the six-month delay. It is appropriate to inform employers and insurers that the law has changed. Mr. Parisotto replied that it was an excellent point, and AB 5 applies to workers' compensation, and outreach needs to occur. DWC has

contacted DIR and the Labor Agency about the best way to do that. As a division, they have not been as proactive as they should be in terms of outreach to the community. In terms of outreach, DWC will have various digital means, including video.

Commissioner Brady asked about the number of IMRs and about how many that do not deal with medical disputes were administrative (e.g., a lack of records). He added that there was another pathway for those types of claims, as opposed to medical disputes. Mr. Parisotto replied that they wanted to ensure that disputes over medical necessity applied to IMR and that those that do not are deemed ineligible. They had that problem where there was a UR denial because of a lack of records. An IMR application was included, and they went to IMR, and it was deemed ineligible and returned. DWC was getting regulations so if there was a lack of information, then it goes back to the physician or claims administrator, and they get the records necessary to make the medical necessity determination. What is important is active communication so that a physician is talking to a UR physician, and things are resolved before they are elevated to that level. Non-medical necessity disputes should not go to IMR. Commissioner Brady stated that the IMR is not being filed by physicians but by attorneys, and he was sure they were trying to address it. Mr. Parisotto replied they are looking at the filing process.

Third Interim Report on Wage Loss Monitoring for Injured Workers in California's Workers' Compensation System

Stephanie Rennane, RAND

Dr. Rennane presented the report, whose co-authors were Misha Dworsky and Nick Broten.

Dr. Rennane stated that wage loss monitoring is needed in California's Workers' Compensation System because:

- Employment and earnings are key indicators of worker well-being after workplace injury.
- Earnings loss data are needed to evaluate benefit adequacy or return to work interventions.
- Labor market outcomes are not reported to the Department of Industrial Relations (DIR), impeding monitoring, research, and evaluation to injured workers.
- RAND is working with DIR and the Employment Development Department (EDD) to build the infrastructure for regular wage loss monitoring.

Dr. Rennane stated that the briefing on September 26, 2019, provided an update on RAND's Wage Loss Monitoring Study:

- Three-year project (2017–2020).
- Three Monitoring Reports in the first two years:
 - Monitoring for 2013 injuries (Spring 2018)
 - Monitoring for 2014–2015 injuries (Fall 2018)
 - Monitoring for 2016–2017 injuries (forthcoming).

- Final Policy Report in third year of the project that will identify the factors that caused the trends.

This presentation showed trends in earnings over 2005–2017 injury dates:

- Focused on workers injured in 2016–2017.
- Show trends for all injured workers and compared them from earlier time frames back to 2005.
- Describe earnings for subgroups defined by:
 - Region
 - Cumulative trauma versus other injuries
 - Industry
- New analysis of workers with permanent disability for injury dates through 2015. These injuries take longer to stabilize and need a longer follow-up period to examine outcomes.

Economics and policy contexts that may be affecting earning loss trends:

- The unemployment rate in California from 2005 to 2017 shows an increase in the unemployment rate during the Great Recession, from 6% in 2005 to a peak of 12% in 2011. After that peak, there was a steady decline in the unemployment rate to 2017.
- Workers injured in 2016–2017 may benefit from sustained reductions in unemployment.

Workers injured in 2016–2017 may be affected by recent policy developments:

- Legislation to reduce provider fraud:
 - AB 1244, SB 1160 (2016)
- Implementation of prescription drug formulary (effective January 1, 2018).

SB 863 Implementation Coincides with Economic Recovery

- SB 863 (enacted 2012) introduced major reforms.
 - Overhaul of medical payment, dispute resolution
 - Increased permanent partial disability (PPD) ratings, maximum weekly benefits
 - Established Return to Work Fund.
- SB 863 changes rolled out during economic recovery, most of them in 2014 and 2015.
- This was a period of steady economic growth.
- RAND results were not a report card for SB 863 because they cannot disentangle the economic recovery from the policies of SB 863.

RAND employed methods developed in past RAND studies to estimate earnings losses:

- Earnings loss was defined as the difference between:
 - What workers *actually earn* after injury
 - What they *would have earned* in the absence of injury.
- *Actual earnings* can be observed in the data from the EDD, but they can never directly observe what the worker would have earned in the absence of the injury; potential earnings have to be estimated.

- RAND compared injured workers to co-workers who work at the same employer in a similar type of job for a similar period. Because they find workers who are so similar on so many dimensions who did not file a workers' compensation claim, these co-workers can provide a credible estimate of what injured workers could have earned if they had not been injured.

RAND examined actual earnings over the first year after injury relative to control workers:

- Prior to injury, the relative earnings are 100% (the same) of potential earnings and after the injury relative earnings are less than 100% of potential earnings.
- The study uses the second year after injury as the primary measure of earnings loss because it takes a while for earnings to stabilize after the worker returns to the labor force.
- Observing the second year after injury for workers in 2017 would require a full calendar year of earnings in 2019, and that has not happened yet since this report was being presented in September. Today, Dr. Rennane is presenting information on a combination of the first and second years, depending on the focus of the injury dates.

In 2016–2017, injured worker earnings held steady as a percentage of potential earnings:

- From 2005 to 2017, prior to the Great Recession (in 2008) relative earnings were 95% of potential earnings. Then relative earnings decline; after that, they remained stable through 2016 and 2017. Relative injuries were 92% of potential earnings as the average for injured workers in 2016 to 2017. That was the first year after injury.

Small improvements in 2016–2017 for injured workers with indemnity payments:

- Next, RAND separated workers with medical-only claims from indemnity payments.
- For indemnity-only claims, payments decline until the Great Recession, and then relative earnings have a small improvement in the most recent years.
- Relative earnings in the second year after injury through 2016 were 82% of potential earnings, a one-percentage-point increase over the prior three years.
- In the first year after injury in 2016 and 2017, relative earnings were 78% of potential earnings, an increase of one percentage point over the prior three years.

Subgroup: Monitoring report shows trends in worker outcomes for subgroups of workers:

- Conducted separate analyses on which groups of workers have higher or lower relative earnings compared to statewide averages.

Relative earnings:

- Which groups of workers had better or worse outcomes compared to the statewide average?
- Analyze changes in overall trends for workers injured during 2016–2017 compared to workers in the same sub-group who had injuries in prior years.
- Poor outcomes may point to system challenges calling for closer examination.

Trends for all workers with indemnity payments serve as a point of comparison.

- Compared relative earning for each subgroup to statewide average.
- Control workers: Using earnings data, RAND only able to observe what is collected in the wage records from employers. They tried to match as closely as they can.
- Relative earnings in Los Angeles improved by 2% in the first year after injury, but declined by 1.9% for workers in the Bay Area in the first year after injury. No significant changes in relative earnings are seen for regions of the State of California.

RAND analyzed workers with cumulative trauma.

- Workers with cumulative trauma in Southern California have low relative earnings. Separated workers from Southern California from all other workers in the State.
- Relative earnings in the first year after injury for workers with cumulative trauma in Southern California improved in 2016–2017 and increased by 3.8 percentage points over prior years.

RAND also analyzed outcomes for workers with PD:

- These workers experienced the most severe injuries in the system and claimed the most indemnity benefits.
- PD claims take longer to emerge because it takes time for workers to reach maximum medical improvement and to go through the disability rating process.
- Workers can begin to claim disability benefits even three years after injury, a longer follow-up period is needed to get a more comprehensive picture of what is happening to workers with PD.
- Ideally, allow for at least three years post-injury to have valid comparisons over time.
- Focus on *constant-maturity* sample of PD claims:
 - Workers who receive PD benefits within 36 months of injury date
 - For example, workers injured in December 2015 were included in the constant maturity benefit who had PD benefits begin by December 2018.

Improvements observed for workers with permanent disability in 2014–2015:

- Outcomes improved for PD cumulative injuries in Southern California.
- Showed trends in relative earnings by industry, constant-maturity PD.
- Relative earnings in the second year after injury was 71% in 2013–2015, increases in 2014-2015 compared to prior few years.

Analysis on workers with cumulative injuries and focused on cumulative injuries and PD:

- Lower cumulative earnings but an improvement of 3.8 percentage points in 2016–2017.

Trends in workers with PD by industry:

- They found that in 2014-2015 relative earnings declined for workers in manufacturing, but no statistically significant trend is seen in other industries.
- Education and public administration have higher relative earnings. Other industries may have earnings lower than overall state-wide averages.

Conclusions of third interim monitoring report on wage loss monitoring:

- Overall labor market outcomes held steady for workers injured during 2016– 2017.
- Improvements in outcomes for workers who have had poorer outcomes in the past, including cumulative trauma injuries in Southern California.
- Some preliminary evidence of improving outcomes for workers with PD.

Next steps on this RAND project:

- Final policy report in September 2020.
- Updated claims data for longer follow-up for PD.
- Analyze findings from interim reports more extensively:
 - Understand trends in relative earnings and benefit adequacy for workers with PD.
 - Explore characteristics of cumulative injuries in Southern California.
 - Consider impact of broader economic indicators on injured workers.
 - Compare differential impact to injured workers compared to typical workers in the State of California.

Comments by Commissioners

Commissioner Kessler asked whether injured workers were matched to uninjured workers with similar characteristics. Dr. Rennane replied that they matched them with as many characteristics as possible that they can observe. Dr. Dworsky clarified that the study's estimates do not account for gender and age because those are only in the workers' compensation claim. Earnings data do not include age and gender because they are not provided by the employer.

Commissioner McNally asked whether people who do not receive any PD benefits still have a reduction in income post-injury of about 10%. Dr. Rennane replied yes and said that their relative earnings were 90% (historically) of their potential earnings. This study shows second-year injury results. Because they are looking at 2015 injuries, they could observe the second year after injury.

Commissioner McNally stated that when workers have medical-only claims, they had a reduction in earnings post-injury, even though they did not lose time from work. Dr. Rennane replied that the relative earnings are between 100% and 95% of potential earnings—a small reduction in relative earnings. They apply the constant maturity definition to workers who receive other indemnity payments so that they have a reasonable comparison between the two lines on that graph.

Commissioner Steiger asked how PD benefits factor into injured workers' earnings considering that they are not included in earnings. What you earn on the job (maybe at the job of injury) is not accounted for in PD benefits. Dr. Rennane stated that this is correct. The study identified workers who were or were not receiving PD benefits, and separately analyzed earnings from EDD data. Commissioner Steiger asked what percentage of workers with PD claims get PD benefits within 36 months of injury. He also

asked whether there was any relationship between delayed payments and worse wage loss. Dr. Rennane replied that was not the focus of this study, but that they could explore it for the final policy report. The reason to apply the 36-month window was that it was fairly comprehensive in capturing nearly all the workers who claim PD at some point, but there could be some workers who continue to receive PD even after the 36-month window. Dr. Rennane stated that they tried to have a long-enough window to ensure representation of all workers who claim PD.

Dr. Dworsky stated that an earlier RAND study had looked at PD workers prior to SB 863. The timing of ratings at the Disability Evaluation Unit (DEU) relative to the injury date did not perfectly map to when the benefits began. They did find that the longer a worker goes before reaching that point in the claim, the worse the earnings losses and the higher the ratings were. It did look as if there is a relationship between case severity and complexity and the time it takes to work through the system. One implication of their estimates is that they may be missing high-severity cases that violate that 36-month window. Without making that kind of limitation, there is no good way to get comparable trends over time.

Commissioner Steiger wanted to see whether there is a way to fold in the number of disputed requests for medical treatment. The feedback he has received from injured workers and their attorneys is that the injury gets worse when it is a complex claim and disagreement emerges over which treatment is appropriate. It would be good to compare what the wage loss looks if they get the treatment quickly and when there are delays such that treatment and benefits are not received until much later, in order to see whether wage loss is worse as a result of these delays. Dr. Dworsky stated that they needed to see whether the data support that. Dr. Rennane added that this would be an excellent thing to look into.

Commissioner McNally asked whether RAND could analyze PD data to determine the injury by body part for injury severity and effects on future earnings. Dr. Rennane replied that this monitoring report includes additional analyses by body part, and they do have those estimates.

Commissioner Garfias commented that carve-outs were increasing, and many industries were using them, and then asked whether this study looked at workers' compensation carve-outs. Dr. Dworsky replied that carve-out arrangements face the same WCIS reporting requirements, so people in the carve-outs should be in the sample.

Commissioner Brady stated that the nature of work was changing. He asked whether the cumulative trauma (CT) cases were standalone or included as add-ons when there are other injuries. Dr. Rennane replied that there could be other injuries. Dr. Dworsky added that all classifications of injuries were based on First Report of Injury (FROI). Some injured workers who were diagnosed with CT approximately two or three years after injury were not picked up in FROI. Since they were interested in findings through 2017, it was important to stay with the FROI, rather than doing something more sophisticated that would take longer to develop. Commissioner McNally commented that CTs were not subsequently amended for CT trauma application after an injury was treated; CTs alleged later are disputed and cause a delay in authorization for treatment and benefits. Dr.

Dworsky agreed with Commissioner McNally and added that they were classifying injuries for this report according to FROI or EDD wage data. The data on industry and firm size came from EDD, and characteristics of injury were from FROI.

Commissioner Steiger asked about the geographic difference in outcomes for injuries between Northern and Southern California and whether FROI has a CT component; he noted that for claims with CT, wage loss is worse in Southern California than any other area. He commented that the rise in CT claims in Southern California comes with an explicit or implicit assumption of fraud. The worse wage loss for those (CT) workers seems to conflict with the idea that the spike in CT cases is related to fraud. He asked why it is worse in Southern California than the rest of the state even though Southern California has a significantly higher proportion of claims with CT component than the rest of the state. Dr. Rennane replied that they were sensitive to CT claims in Southern California, but the drivers or explanatory factors behind that and whether fraud plays a role were outside the scope of this study. She hopes to look into more detail on the characteristics of the injuries in the final report. The study documented trends without looking at the explanatory factors. Dr. Dworsky added that fraud may be on the part of the worker, but anecdotally there are regional differences in medical provider fraud, and workers who are paired with a fraudulent medical provider are likely to receive lower-quality care. Dr. Dworsky added that they did not yet bring medical claims data into this analysis and would like to work with DIR to understand whether there is any interaction between providers known to be fraudulent and worker outcomes. There is no guarantee that they will be able to identify those cases.

Commissioner Steiger stated that some injured workers paid thousands of dollars yet received substandard care, workers do not get the required treatment, and that might suggest why their wage loss is worse. In the eyes of the WC system, they received care, but in reality, the worker received inadequate care. Dr. Dworsky replied that was one of their working hypotheses, and much more needs to be done to substantiate whether that really matters in this case.

Commissioner Kessler asked whether other challenges may not have been discussed, as Dr. Rennane's presentation noted that "poor outcomes may point toward system challenges calling for closer examination." Dr. Rennane replied that the main one was the CT issue, although they have not seen significant trends in relative earnings for many of the other subgroups that they had analyzed in the report. The study highlighted a few industries in which they have seen declines, but they have not been as persistent as in CT. She would also like to study PD.

Alternative Work Arrangements and Their Effect on Income Risk after Workplace Injury

Michael Dworsky, RAND

Dr. Dworsky stated his co-authors were Nicholas Broten and David Powell.

- This study was not a DIR/CHSWC study; rather, it was supported by the U.S. Social Security Administration (SSA).

- His disclaimer is that the findings and conclusions expressed are solely those of the authors and do not represent the views of SSA, any agency of the federal government, or the National Bureau of Economic Research (NBER).
- The authors are grateful to the California DIR and the EDD for providing the data used in this study.
- Alternative work arrangements include many different types of worker-employer relations and different types of work arrangements, other than direct hire.
- Employees in alternative work arrangements:
 - Temporary agency or professional employer organizations (PEO) workers
 - Other contract firm/labor intermediary workers
 - On-call/short-term workers.
- Self-employed nonstandard workers:
 - Independent contractors or small business owners
 - Day laborers
 - On-demand/online platform/gig economy workers

This study focused on workers at temporary agencies, PEOs. Research questions are:

- How do alternative work arrangements affect employment and earnings after workplace injury?
- Do workers' compensation benefits reduce—or magnify—differences in income risk associated with alternative work arrangements?

Temporary work arrangements are challenging to study because the datasets typically used are not well structured to pick up all types of work arrangements. In practice, workers are not good at telling survey takers whether they are direct hires or temporary workers.

- Employment through temporary agencies and PEOs has grown substantially in recent decades, from 1.3 million to 3.3 million over the past decade.

Medical-only injuries allow us to control for differences in employment dynamics.

Temporary workers have more injuries, as measured by workers' compensation (WC) claim rates, and they have greater injury severity than direct hires:

- Temporary workers have higher WC injury rates than direct hires in same industry (Smith et al., 2010; Zaidman, 2017)
- Disability duration is longer for temporary workers (Park and Butler, 2002; Smith et al., 2010).
- What happens to these temporary workers after the labor claims close?
- There is no prior evidence on earnings or employment outcomes for temporary workers after a WC claim ends.

RAND uses data on WC claims and earnings in California

- Combine data on WC claims with earnings data
 - WC claims from WCIS:
 - Class code identifying activity at host employer. Risk classifications that were developed by the Workers' Compensation Insurance Rating Bureau (WCIRB) for pricing WC premiums. There are roughly 500 class codes that

- slice up the California economy into different types of workplaces or work activities on the basis of risk and expected WC cost.
- Link to EDD data on wage/salary earnings:
 - Industry code identifying employer of record
 - If workers are injured doing warehouse work, and the unemployment insurance data state that the employer is a temporary agency, then they are temporary employees
- Data used to study injuries range from 2005 to 2011.
- Focus on lost-time injuries (3+ days).
- Focus on 62 class codes with high volume of WC claims by temporary workers. Working paper reports percentage of injuries for temporary workers, as opposed to direct hires, in the top ten class codes. The most likely type of work for injured temporary workers is general merchandise warehouses.
- Injuries for temporary workers also common in warehousing, transportation, material moving and handling, fruit packing, low-wage construction, and higher wage classifications in nursing or computer programming.

Injured temporary workers earn less than direct hires and have different demographics:

- Even before injury, temporary workers have lower weekly wages, have shorter job tenure, and are less likely to be full time.
- Temporary workers are also younger and more likely to be male (by 8 percentage points).
- Even within the same classifications, the temporary and directly hired workers have different socioeconomic characteristics.
- They are also less likely to work after an injury that led to lost work time, but many other differences between temporary and direct-hire workers could explain lower post-injury employment for temporary workers.

Differences in employment outcomes between injured temporary workers and direct hires:

- Temporary workers are 14 percentage points less likely than direct hires to be employed three years after lost-time injury.
- But temporary workers are also 21 percentage points less likely than direct hires to be working the year before lost-time injury.
- To isolate effect of work arrangements, assume minor injuries (medical-only claims) have similarly small effects for temporary, direct-hire workers.

Compare outcomes between directly hired and temporary workers:

- Before injury versus after injury
- Injuries that led to lost work time versus medical-only (minor) injuries
- Temporary versus direct hire
- Adjust for demographics; nature and body part of injury; job tenure; region in California; weekly wage; part-time or full-time status at the time of injury.

Temporary workers with an injury that led to lost work time were compared to direct hires.

Dr. Dworsky showed a chart (Figure 1 in the working paper) to illustrate the main results. He said that, in terms of employment, the chart showed the lost-time employment effects of a workplace injury on temporary workers compared to direct hires. He said the assumption, whether from a severe or moderate injury, was that the line (the earnings effects) would diverge before the injury if there was a difference between temporary workers and direct hires. He said that the data did not diverge before the injury, and that the research team was confident that the data truly picked up the effects of the injury only. He said that immediately after the injury, there is a dramatic drop in employment, with a 6 percentage point drop in the first quarter for temporary workers and a 4 percentage point drop at year's end, but the difference between temporary workers and direct hires fades over time. He said three years after injury, temporary workers return to the workforce at a rate similar to direct-hires, gradually closing the gap in employment after injury between the two groups. He said that the earnings outcome after injury was far worse for temporary workers than for direct hires, with earnings about 5% lower for temporary workers even three years after injury.

He said that RAND performed various sensitivity analyses and found no characteristics that would influence earnings outcomes other than hiring status. Commissioner Kessler asked about immigration status, and Dr. Dworsky said that such characteristics would not be recorded on a WC claim.

Dr. Dworsky presented the main findings on earnings and employment risks after injury.

Temporary work was associated with:

- Lower employment and earnings after a lost-time injury
- Employment effect fades by two years after injury
- Earnings effect remains significant three years after injury

Temporary workers lose an additional 9% of income over three years after injury compared to direct hires injured at the same time in the same class code.

He said their other research question was: "Does workers' compensation protect temporary workers against additional risk?" RAND found that temporary workers face additional earnings risk after workplace injury compared to direct hires. He said that they calculate the sum of labor earnings plus WC benefits and test whether WC benefits close the gap in post-injury income, with analysis using pre-tax earnings. RAND created five benefits categories and estimated uncompensated losses after adding each benefit type to earnings. He said direct hires and temporary workers both received temporary and permanent disability benefits, as well as settlements. Temporary workers were three times as likely as direct hires to have "unspecified settlements."

Between 2005 and 2011, benefits for workers appear to make up for the losses experienced from an injury. Temporary workers face larger income risk after injury, but WC benefits appear to offset these additional losses. Over three years after injury,

temporary workers lose an additional 9% of income compared to similar direct-hire workers injured in same job. WC benefits offset the gap in pre-tax earnings when settlements are included.

Dr. Dworsky said that there are implications for WC coverage and debates over worker classification. Other non-standard workers may value WC if they face similar differences in income risk. RAND's estimates are not directly applicable to other arrangements (e.g., independent contractors). Dr. Dworsky said that the results are potentially relevant to AB 5 impacts if compliance with the law is achieved by shifting independent contractors to temporary/contract employee status (instead of paying for WC insurance).

Comments by Commissioners

Commissioner Kessler said that she was concerned that the population examined by RAND did not reflect all types of workers, such as immigrant workers. She said that, on page 30 of the report, RAND stated that it examined only workers who filed WC claims. She said that a whole component of the population is not covered in the RAND report. Dr. Dworsky said that this was a fair criticism. He said that this is an inherent limitation of the types of analysis that RAND conducts using administrative data. He said that segments of the population are invisible to researchers if they do not file a WC claim. He said previous research (published in 2001) found that temporary workers were more likely to file a claim for a given injury, essentially because they know they are temporary and do not have much to lose by "picking a fight with their employer." Commissioner Kessler said that those are temporary workers who do not face the same types of challenges as immigrant workers. She said that the study's temporary workers are in a safer or more secure environment from which to file a claim. She said many other workers—and she said LOHP and WorkSafe can attest to this—are not captured in the study. She said that there are probably hundreds of thousands of people who have been injured and have not filed over time because they feel challenged and threatened about doing so.

Commissioner Kessler requested that future reports define some terms, such as "heteroskedasticity," so that the lay reader can understand them. Dr. Dworsky apologized for presenting an economics paper to the Commission with the kind of technical language that is expected by [research] journals. He said that after the paper is accepted by a journal, RAND can start circulating it and extracting research briefs that are more comprehensible to non-economists. He thanked Commissioner Kessler for carefully reading the report and noticing the problematic term.

Commissioner Steiger asked Dr. Dworsky for more detail about what an "unspecified settlement" is. Dr. Dworsky said that every benefit payment is reported to the WCIS with a benefit-type code. The claims administrator is responsible for accurately reporting whether a benefit payment is for temporary disability (TD) or PD or something else. He said one of the event codes is for "unspecified settlements." He said RAND sent an inquiry to WCIS staff about the meaning of the code, and they said that they were not certain

either. He said what RAND does know is that WCIS staff cap the unspecified settlements as indemnity claims. He said it was frustrating not to know exactly what type of payment it represents.

Commissioner McNally asked whether unspecified settlements were compromise and release settlements (C&Rs) which do not delineate how much is attributable to PD and how much to future medical, as well as retrospective TD; so what they [WC judges and the parties to the claim] do is have a lump-sum settlement that does not delineate them; they just compromise on everything. Commissioner Brady added that it appears to be a global settlement. The alternative is a stipulated award, in which one settles the indemnity portion and leaves the medical portion for future medical. Commissioner McNally added that in a stipulated award, one can say exactly how much is for PD. Commissioner Steiger asked for clarification about whether C&Rs do not have to state the percentage for future medical. Commissioner McNally said that it often depends on the judge; he said, based on his personal experience, most judges do not require it. Commissioner Brady said that one challenge they [as insurers] have experienced is in using the technical programming software used by all claims examiners throughout the state. They [claims examiners] do not have specific categories designed to extract this information. He said when they try to do research, the information is not there. One is left with big chunky buckets [of information]. He expressed his sympathies to RAND [for the challenges they face]. He said that they [the WC community] need to do a better job to get that type of detail.

Commissioner Steiger asked whether there was data on whether temporary workers are more or less likely to be represented. Dr. Dworsky said that there was data on that, but they did not look at that question in the study. He said that that was a good question. Commissioner Steiger said that if the unspecified settlements are vague C&Rs that do not discuss future medical and an attorney was present, there would be more negotiation about how much is future medical and how much is PD. He said if there is no attorney, it may be more likely to end up as an unspecified settlement.

Commissioner Steiger said that the report found temporary workers are more likely to get hurt but asked whether the report says how much more likely. Dr. Dworsky said that they did not look at injury rates in the study—and that it is partly a limitation of the data to which RAND has access. He said EDD does not give RAND the entire base wage file, so rates are not something it can look at. He said that from studies by Washington State and corroborated by one study from Minnesota, it knows that injury rates are quite a bit higher for temporary agency employees. The Washington State study [Smith et. al., 2010 as referenced in the report] looked at construction, manufacturing, transportation, and warehousing and found WC claim rates that were 20–50% higher in an industry for temporary workers. He said the group in Washington has excellent data for a decade on issues such as temporary worker health and safety; the group in Washington also has data on the differences in injury mix and type of hazards for temporary vs. direct hires. Commissioner Steiger said that Worksafe has been hearing from employers that if two workers are doing the same work in Northern and Southern California, insurers will price

insurance differently based on the higher costs in Southern California. He asked whether temporary agencies experience similar pricing differentials and whether temp agency employers pay more. Dr. Dworsky said that was a good question, but that RAND does not have data on premiums for specific employers. He said the WCIRB probably has that data.

Commissioner Brady asked whether there was a filter for companion claims. Dr. Dworsky said that they did not screen multiple claims from the same individual. He said that they might be able to do that but that they did not look at it for the report.

Janitorial Training Program Update

Suzanne Teran, UC Berkeley-LOHP

Ms. Teran said she would describe the training program developed for DIR and CHSWC, focused on preventing sexual harassment and abusive conduct in the janitorial industry. She acknowledged the funders and partners, and staff at DIR and CHSWC, as well as the janitorial union (SEIU-USWW), the Maintenance Cooperation Trust Fund (MCTF), the coalition of worker advocates and legal violence prevention, and health experts.

Ms. Teran said, for context, that in 2015, *Frontline* (PBS) released a documentary about the incidence of sexual harassment and sexual violence in the janitorial industry, and through the stories received from workers, the documentary suggested that harassment was prevalent in the industry. She said the documentary revealed that workers have very little recourse to address or respond to such harassment and that employers and supervisors were getting away with that kind of behavior. She said LOHP also did a report about sexual harassment in the industry, looking at the structural risk factors that contribute to workers' vulnerability, as a result of these situations at work—including isolation. She said that janitors not only work alone late at night or in small teams but also in isolation in terms of immigration status or having little knowledge of resources or where to turn for help, if needed. She said that, in terms of supervisors and the hierarchical systems of employment, the power relationship is male dominated. She said employers often use that power differential to proposition or harass the workers whom they supervise.

She said other factors that contribute to the incidence of harassment include economic structures in which workers have little opportunity to change jobs, cultural elements of the workplace that question or mock the seriousness of the harassment as well as supervisors not being held accountable for their behavior. She said the report includes recommendations on what effective employer policies might look like. She said AB 1978 in 2017 required training for all janitorial workers and employers, regardless of size. She said the law enforcement mechanism requires janitorial employers to register [with DLSE], which in turn is linked to the provision of sexual harassment training. Ms. Teran said draft regulations have been issued. Training has to be two hours in length, conducted in person and interactive. She said the CHSWC contract was to develop two-hour training

for janitors with corresponding training for supervisors. She said they also conducted a train-the-trainer program for *promotoras* (worker leaders who are educators). She said the curriculum is worker centered, participatory, and interactive. She said that it uses short videos as a way to get workers talking about what sexual harassment looks like at work and what possible solutions and strategies exist to address it. There is a strong element of worker voice. She said it acknowledges the wide range of attitudes and fears surrounding this issue. The training provides practical, concrete actions for workers. For example, reporting something to a supervisor may be too big a leap for some workers, so LOHP discusses other options.

Ms. Teran said there were four training objectives:

1. Defining sexual harassment and recognizing common examples of harassment and abusive conduct in the workplace.
2. Describing how harassment and abusive conduct affect workers.
3. Identifying strategies for the employer, supervisors, and co-workers to prevent and address wrongful conduct.
4. Describing options for workers experiencing sexual harassment or abusive conduct at work.

Ms. Teran said that it used three women's stories in the training video. Their experiences affect them:

- Physically
- Emotionally
- Financially
- In their personal/family life

As an example Ms. Teran then played a video in which a gay man is ridiculed at work by a co-worker, and other co-workers either go along with the taunting or do not try to stop it. Ms. Teran describes this as a hostile work environment. She said the other two videos show supervisors propositioning a worker for a date in exchange for payment or extra hours; she said one of these videos shows references sexual violence. She said the training shows that workers have a variety of options for solutions and strategies, and they are demonstrated in these three stories.

The training includes the following elements:

1. It provides examples of what workers can do to address sexual harassment, with the following in mind:
 - Seek help from coworkers, friends, or others
 - Prioritize personal safety
 - Speak up early about misconduct to prevent escalation
2. Harassment is not the worker's fault
3. Role of bystanders
4. Employers' responsibility in prevention

5. Laws that protect workers
6. Options for support or help, beyond the workplace

In her presentation, Ms. Teran showed one slide with the training guide, factsheet, and brochure.

She said the supervisor training also uses videos and has the following objectives:

1. Define sexual harassment by its legal elements
2. Recognize common examples of harassment and abusive conduct in the workplace
3. Explain how these affect workers, supervisors, managers, and employers
4. Describe how employers and supervisors can prevent harassment and abusive conduct
5. Respond to reports of wrongful conduct
6. Describe employer and harasser liability for harassment under state and federal law.

She said that, to date, they had conducted 6 train-the-trainer programs, reaching 93 *promotoras*.

Ms. Teran said that the training concludes with a video of the same women seen at the beginning, and they say:

“It’s important to keep fighting this, so it’s not so hard, and we can be safe and respected at work. There’s a lot of support, [and] many organizations [are] willing to help you, but sometimes you don’t know they exist and you remain in silence.”

“We as women have the right to say ‘NO’ when it comes to our bodies. No one has the right to touch or look at us in a way we don’t want.”

Next steps:

1. Create supplemental module on sexual harassment for Worker Occupational Safety and Health (WOSH) Specialist training program. Reach other industries.
2. Technical assistance on *promotora* development.
3. Low-wage workers leading the way to culture change.

Ms. Teran concluded her presentation.

Commissioner Kessler said that it was a good presentation. She said there were some cultural challenges with employers that do not recognize that [sexual harassment] goes on—especially those who are not on a graveyard shift and do not see it. She said that [the International Association of Machinists and Aerospace Workers] had to bring Cal/OSHA in at midnight to review aircraft cleaners at the airport in order to observe the types of sexual harassment that happen—often to female workers in environments where employers do not necessarily see it because they are not on the premises or in that environment. She asked about the response from employers: do they understand or is

there resistance? Ms. Teran said that she was reporting on the curriculum and training development, but they had not as yet rolled out outreach. She deferred to the AB 1978 Advisory Committee staff for an answer to that question.

Kumani Armstrong, DIR Special Counsel said that he worked on the Advisory Committee for DIR and that there had been robust discussions with employer and employee groups, and the response had been positive. Commissioner Garfias said that her janitorial company was getting ready for training but the implementation date had been postponed. Commissioner Kessler then said (in Spanish), “Es muy importante por toda la gente.”

Commissioner McNally thanked Ms. Teran for her presentation.

Executive Officer Report Eduardo Enz, CHSWC

Mr. Enz thanked all the presenters for their presentations.

He thanked the commissioners for the opportunity to brief them on CHSWC studies, legislative requests, projects, and activities.

CHSWC Studies Update

He said the draft RAND report on Firefighter Musculoskeletal Injuries in California was posted for feedback and comment for 30 days, and they did not receive feedback on the report. He said that RAND indicated that the final report will be completed by next week.

Legislative Request on Incidence of Mental Health Conditions and Illnesses Afflicting Firefighters or Peace Officers

Mr. Enz said that the Commission received a legislative request from Assembly Member Tom Daly, Chair of the Assembly Committee on Insurance, to undertake a study on the incidence of mental health conditions or illnesses afflicting firefighters and peace officers and whether related claims filed by active firefighters and peace officers are being accepted or denied. He said that he will proceed to respond to Chair Daly’s request. Mr. Enz said that CHSWC is evaluating the best way to conduct the requested research as well as determine data availability.

CHSWC Projects

Mr. Enz said that Commission staff is working diligently to prepare the draft 2019 CHSWC and Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Annual Reports in time for the December meeting. He said that CHSWC has collaborated with LOHP at UC Berkeley on two Commission-approved projects. First, LOHP has finalized the Janitorial Sexual Harassment training curriculum for workers and supervisors (in English and Spanish) to comply with AB 1978. Second, the model-training curriculum for occupational safety and health training for child-care workers is complete and was rolled out in May. He said that there would be a presentation on that curriculum at the December meeting.

SASH Advisory Committee Update

Since the last meeting, the School Action for Safety (SASH) Advisory Committee met on May 15 in Oakland. Mr. Enz said that the meeting included updates on SASH training, an evaluation of the SASH training program, brainstorming potential new activities for the upcoming fiscal year, and a discussion on a proposed grants program for school districts and other local education agencies.

Action Item

Mr. Enz said that there was one action item: to approve the firefighter report. Chair McNally said in light of the fact that Commissioner Bouma was not there and that the report relates to her constituents, out of respect to her and her constituency, he asked RAND to post the report when it is ready with a clarification or disclaimer, stating that it is a final draft that has not yet been approved by the Commission. The Commissioners agreed to defer the vote.

Public Questions and Comments

Dr. Gabor Vari, Chief EO of California Medical Evaluators—a QME Practice Management Company—stated that he was at the meeting to speak about the medical-legal fee schedule. He said that delays are a common theme, but the fact is that too few QMEs in the system are not discussed, resulting in delays for adjudication of WC claims, and this costs employers needless money in frictional costs. He said the number of QME requests continues to set record highs, while the number of QME examiners continues to sink to record lows. He said the reason for the exodus of QME examiners continuing is simple: the QME fee schedule has not been updated since 2006. He said that since then, the state average weekly wage has increased by 58%. The lack of an increase in QME wages or a cost of living adjustment (COLA) is particularly concerning in light of the fact that the DWC is required under LC section 5307.6(a) to update the QME fee schedule whenever it updates the official medical fee schedule, which has been updated on a quarterly basis. He believed the Administrative Director has the authority to provide a COLA adjustment. He said he believed a quick increase in the COLA adjustment, which has not occurred for 13 years, would go a long way toward retaining the existing QME population and attracting desperately needed examiners in the system. He encouraged the Commission to explore the possibility of a quick and simple increase in the COLA to the QME fee schedule, in light of the massive change that is now being proposed. He was relieved to hear that Mr. Parisotto is going to look closely at the 435 pages of comments submitted in response to the recent August proposal; he urged the Commissioners to look at the comments as well. He said that the comments predominantly consist of negative feedback from QMEs stating that they will either leave the system or greatly reduce their participation in the program if the current proposal is implemented.

Commissioner McNally asked for any comments from the Commissioners.

Commissioner Kessler asked whether they would consider allowing public comment during the presentations, instead of waiting until the end. Commissioner McNally said that they would consider it.

Other Business

None.

Adjournment

The meeting was adjourned at 12:09 p.m.

Approved:

Sean McNally, 2019 Chair
Signature (on file)
Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC
Signature (on file)
Date