

MINUTES FROM CHSWC PUBLIC MEETING

Date: Thursday, September 30, 2021

Time: 10:00 am

Place: Video/Audio Conference - online only

NOTE: In accordance with [Executive Order N-29-20](#), the physical meeting location was cancelled for September, 2021.

In Attendance (via online video)

Chair: Martin Brady

Commissioners: Doug Bloch, Christy Bouma, Martin Brady, Shelley Kessler, Sean McNally, Nick Roxborough, and Mitch Steiger

Absent: None

I. Approval of Minutes from the March 4, 2021 CHSWC Meeting

Chairperson Brady asked for a motion to approve the March 4, 2021 CHSWC meeting minutes. Commissioner Bouma moved the motion and Commissioner McNally seconded the motion; the minutes were approved unanimously.

Chairperson Brady announced that Nick Roxborough joined CHSWC as a commissioner.

II. Department Of Industrial Relations – Update Director Katie Update

- Director Hagen provided an update on key issues for the Department of Industrial Relations (DIR). Director Hagen discussed operational issues regarding COVID-19. She provided an update of DIR's operational challenges and then discussed the path forward.
- She stated that a majority of DIR employees worked part time in the office, particularly in Cal/OSHA, the Division of Workers' Compensation (DWC) and the Labor Commissioner's Office. Depending on the role, it was a combination of being in the office and in the field.
- DIR's public counters were open to the public. Until a couple of months ago, DIR had public access by appointment only.
- DWC was concerned that it would see a lot of traffic when they reopened but it was able to manage and keep everybody safe. There were no real operational challenges. It was a requirement to hold in person hearings and trials on October 1, 2021; and that was effectively when most of DIR teams returned to enhanced in-person operations. They had continually seen an increase in staff returning to the office. Since DIR's COVID-19 employee case rates tracked closely with community spread, DIR continued to keep the office density light with most employees engaging in some level of telework.
- DIR was tracking its vaccination rates. Director Hagen said she was proud that 81% of its workforce was vaccinated, so they were continuing to track it and doing what they could to mitigate anyone from getting sick.

- On June 11, 2021, Executive Order N-07-21 formally rescinded the stay-at-home order effective September 30, 2021, and DWC no longer has the authority to unilaterally order virtual hearings. That said, parties can agree, subject to the approval of the judge assigned to hear their case, to hold their hearings virtually. DLSE's conferences and hearings are also conducted in-person and remotely, depending on the complexity of the case and individual circumstances. DIR was trying to find the balance for some of its more complex cases; they had been conducting those or plan to conduct those in the office.
- The Labor Commissioner's conferences and hearings were conducted either in-person or remotely, depending on the complexity of the case and individual circumstances. As always, DIR teams in all divisions continue to prioritize COVID-19 related complaints while continuing to balance all mission critical work.
- DIR had regained its hiring authority from its control agency as Director Hagen had shared at the last Commission meeting on March 4, 2021. DIR continued to address long-standing operational and management issues with its examination, recruitment and hiring infrastructure while making steady progress in hiring. It made 668 appointments over the last twelve months, and while this was terrific progress, DIR still have a way to go to catch up. She wanted to clarify the word appointments and it was not necessarily new hires many of those were internal transfers and promotions. While this is good progress, DIR still has to catch up due to several years of sort of stymied hiring efforts.
 - They were initiating several new strategies to ensure hiring. Hiring is everyone's priority for the organization to increase the numbers and diversity of interested applicants into our hiring pools, including an upcoming virtual job fair for Cal/OSHA while also looking for ways to make the hiring process more efficient. She would share the link with Executive Officer Enz so that he could send it out to all who were interested. They were always looking for ways to improve the hiring process to recruit qualified folks; please send ideas to DIR.
- Director Hagen discussed legislation for 2021. Each year DIR manages a bill load of roughly 120-130 bills. In 2019, the Governor signed 35 bills directly impacting DIR; in 2020, that number was 24.
- In 2021, as of September 27, 24 bills had been signed by the Governor.
 - A couple of examples of key legislation are AB 701 and SB 321:
 - **AB 701** (Gonzalez, Chapter 197, Statutes of 2021): Applies to warehouse distribution centers and provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or Cal/OSHA standards. It would also prevent employers from taking adverse employment action against employees who do not meet quotas that were either not disclosed, or quotas that do not allow employees to take meal or rest periods, or to comply with health and safety laws such as frequent, adequate hand washing for at least 20 seconds.
 - **SB 321** (Durazo, Chapter 332, Statutes of 2021) requires Cal/OSHA to convene an advisory committee to make recommendations to DIR and the Legislature on ways to protect the health and safety of privately funded

household domestic service workers. The committee will also develop voluntary guidance to educate household domestic service employees and employers on ways of preventing illness and injuries at work.

- Director Hagen highlighted these to show their significance and there were many more important bills that DIR was working to implement.
- Director Hagen discussed the strategic plan implementation. DIR launched its strategic plan in January 2021, and it had four major goals and over 100 initiatives planned in its business plan. Its strategic plan is available on the DIR website. More than half of these initiatives were underway, including implementation of the bills that she just mentioned that went into effect this year or were continuing from the last legislative year.
- One of the initiatives was the Subsequent Injuries Benefit Trust Fund (SIBTF) study that DIR would like to undertake and its scope of services was finalized. DIR was assembling a list of potential vendors to send the Request for Proposal (RFP) to. In approximately the next 60 days the RFP will be released. She was hoping that this review will provide some recommendations on what was working, and structural recommendations for making it better. This could include examples of automation and increased staffing.
- Other strategic plan initiatives of interest were the wage claim automation effort, and DIR's evaluation of automation needs for Cal/OSHA. The Labor Commissioner's Office, and DIR Office of Information Services (DIR-OIS) were working on developing and implementing an online wage claim system. The Labor Commissioner investigates approximately 32,000 wage claim cases per year, claim forms are currently received in person, by email or mail, which requires manual input. The new system will enable workers and advocates to submit claims by using an online form as opposed to the former more cumbersome submission methods. Their estimated timeline for the initial phase (public facing) to go live was November/December. A demonstration will be given soon so she was looking forward to seeing it.
- Cal/OSHA could benefit from an overall assessment of automation needs that will help it move away from hard copy files. The increase automated workflow opportunities will allow for more efficient communication and intake with employers and workers, and help give Cal/OSHA investigators and attorneys the tools they need to work more effectively, including an interface with the Fed/OSHA system. Director Hagen was pleased that DIR was finalizing the contract as soon as Monday. The scope was drafted and ready for release.
- Director Hagen added that she met regularly with Executive Officer Enz and looked for ways to help support him and CHSWC.

Commissioner Questions or Comments

Commissioner Bouma asked about the update on SIBTF. She also asked about apportionment and the role it played in increasing the number of parties trying to access this fund. She asked if in working on the RFP, if there was a research question to identify whether the increase happened immediately. She said the increase happened approximately within five years of that apportionment statute getting passed, and so she would be very curious about the connections. Was it just a relief valve for what was happening in apportionment, or was it being used inappropriately?

Director Hagen replied that she believed it was incorporated, but she wanted to double check, but that was a core question that DIR wanted to have addressed. DIR wanted to go back and look at data for over a 10 year period and look at various questions, and there were several questions around that. She will meet with Executive Officer Enz and share that information with him.

Commissioner Bloch asked for an update on hiring which he said was a very important issue. He also mentioned AB 701 and automation at DIR because it was a reminder of conversations about technology at the Governor's Future of Work Commission. That technology in and of itself was neither inherently good nor bad; it was the intent and how it was being used.

Commissioner Bloch added that AB 701 was a teamster bill and a response to automation and technology in the logistics industry, as a Union it was their core jurisdiction. Most technology introduced in warehouses actually improved efficiency, health and safety for workers and he can give many examples of that. It sounded as if the automation DIR was doing was going to be good for workers because it can help them easily access services. The reason why he introduced that bill was the danger of what was happening in warehouses. It was not that people were going to lose their jobs to robots, but they were being supervised by robots and algorithms or being treated like robots. But given all of the conversations about automation at the Future of Work Commission as well as how much the pandemic had accelerated trends like remote work, and automation in industries across the board, he believed that there was a research question for the State and for regulatory agencies. The question was how to deal with technologies and algorithmic management in the workplace that was a significant and important subject.

Director Hagen said in automation there were two polar opposites: paper and robots. She said DIR was somewhere in the middle, and had been looking for ways to make the job easier for all of its employees and provide the public with the information it needed. The Labor Commissioner's Office and to some degree the DWC had a sound core of automated systems that needed updating as all systems do, but there was a foundation and a method to track work, and their caseload. She stated that they were working on a legal case management system for all attorneys across the enterprise; they did not have automation in that department. This was a summary of automation effort within DIR. DIR was updating to current automated technology and it was a long term investment since automation does not happen quickly and a reason was that it was a huge cost driver for everybody. So she really sees these as being tools for employees and not necessarily a mechanism to manage employees. There will be a management tools that come out of automation such as caseload monitoring. She was hoping backlogs will improve and to employ initiatives that help catch up with those backlogs. She thought they were just at the beginning of some significant automation efforts. She asked Executive Officer Enz if he wanted to tackle the larger question of a study for California workers towards implementation of automation. You don't dehumanize your workforce and she had been automating for many years in State government. That was a key part of change management, and there was definitely much information on how to effectively implement automation.

Executive Officer Enz stated that innovations currently discussed were relatively new. Commission Staff can take on some of the initial research and look at algorithmic supervision that would be a start. He could also take a look at some of the work that was done with the Commission and put

something together. Another option is to entertain any proposal that either has been put together by the Commission that Commissioner Bloch served on.

Commissioner Steiger stated that he wanted to reaffirm some of the things that Commissioner Bloch and others said about worker privacy, particularly Microsoft Teams, which was an effective worker surveillance tool. It can tell your employer a lot of information, such as how long you were at work, what you were doing, and can send some details that may make it look like you were not working when you were. This was a very serious issue that is only going to grow in future years. It was growing in terms of something that all needed to pay more attention to and it came up in this last legislative session on one piece of legislation and will be far bigger next year with the 1/1/23 California Consumer Privacy Act (CCPA) for employees. He said this was definitely going to be a lot more work for DIR's agencies, DLSE in particular, in making sure that as all of this technology gets folded into the workplace in a way that tests workers' rights, especially privacy when they were not at work. It was also reasonable privacy when they were at work and how all that folded into all sorts of different collective bargaining agreements and other protections is going to be a very complicated to deal with. He stated that he was looking forward to being as involved as he can, and figure out how all of that was going to be regulated. It was going to be a really, really big issue that's going to be with us whether we like it or not. This issue was going to need to be a new focus of concern for some sub-agencies under the Labor Agency.

Commissioner Steiger said that when they were discussing SIBTF, it reminded him that when DIR had the time and resources it may want to perform a similar examination of the Uninsured Employers Benefit Trust Fund (UEBTF). The few times he tried to help workers through that experience, it had not worked very well. It was extremely time consuming and can be extremely complicated. It was very difficult for workers to deal with when they were not aware that they were the victims of improper misclassification of labor and the employer was breaking laws. It can be really hard to immediately get the necessary medical care and benefits when an employer was one of the worst and had not been doing what they were supposed to be doing as employers. When they had the time and resources they had to start a conversation around what that study may look like and the different ways to improve that program because it does provide important benefits. He said it took time and it could be really, really tough for workers to deal with. Many of these workers were not in a good place when accessing benefits through that fund. Director Hagen agreed with Commissioner Steiger regarding the UEBTF because of similar experiences and the two funds were related and they are both benefit trust funds. She thought it was an excellent idea. Commissioner Roxborough agreed with Commissioner Steiger and he had similar experience with the UEBTF.

Commissioner Kessler thanked Director Hagen because it helps to understand the depth and breadth of the challenges she faced. She stated how being hired was difficult because of the different requirements and qualifications needed. The labor community could have additional apprenticeship programs. Apprenticeship training or training through the Community College system could help. Or other places where people can start to shadow or work with staff to help learn the different kinds of ways that the different positions were required to perform their functions and duties. Commissioner Kessler added that on one hand, having impressions makes it harder for a Journey level person to look after someone. On the other hand, if you have someone who was competent and wanted to be

engaged in this work, you might find someone who really does help lift the load and it gives them a pathway to employment. It also gives an opportunity to see what it is that they were doing that can help enhance the way that the job was performed. It might be a good idea to look at the hiring process to see whether or not there were opportunities for an apprenticeship program to help people come into the system in a way that was not traditionally done for the hiring practices at the State.

Director Hagen stated that she was in support of apprenticeships since DIR had the Division of Apprenticeship Standards (DAS) within its organization. She added that DIR had championed apprenticeships in her 25 years in State government. She started an apprenticeship program when she was at the Office of the Department of Corrections. She was aware of the value and it was an amazing program for participants and the upward mobility that became available. There were a couple of initiatives that DAS undertook with the Labor Agency that are looking for ways to add apprenticeship as a workforce development initiative within State government, not just within DIR, but within the larger state government. There were challenges, and DIR was boxed in with the civil service classifications that they were required to appoint people to. There were a few carve-outs with classifications that were for apprentices in the Department of Corrections but there were not many of them, and so we either have to create them or find another creative solution to bring them in. In her last department, the Department of Tax and Fee Administration, she was participating in two apprenticeship programs, one for Information Technology (IT) and the other for financial services. Apprentices used the training and development assignment route, and they stayed in the classification in which they were appointed and then trained for two years to move into an apprenticeship. So, there were ways to do it. It was not necessarily a possibility for all classifications. Just like you know the challenges in the private sector, but it's definitely something that she would like to add to DIR workforce development strategies working with the Government Operational agency within State government to see how we can expand that. But certainly that was something she wanted to introduce at DIR at some point.

Chair Brady said they had a rather thoughtful conversation about some of the issues that were quite broad and both in the short term and the longer term, it's a tradition for us to open this up to members of the public.

Public Comments or Questions

Doctor Robert Blink was in independent practice in occupational medicine and quite active with the Western Occupational Environmental Medicine Association (WOEMA), although he was not speaking on behalf of WOEMA today. The discussion on AB 701 was important since although he shared the speakers' great concern over the role of automation, inefficiency and how that may be inattentive to safety factors it was important to remember that the underlying issue is that employers have financial incentives to improve their efficiency potentially with a calculation to how much safety was worth. It was never okay to sacrifice employee safety for financial reasons within limits. He said not to get lost in the automation issue and realize that the underlying problem is that employers are always charged with keeping their workforce safe and deliberately improving efficiency at the cost of safety was not acceptable.

Chair Brady stated that both the private and the public sectors are committed to safe environments for all of our staff, and he knew that was something that's dear to all of us, and so we want to unite around that fact and hopefully have workforces that continue to operate profitably, but also safely.

III. DWC Update

George Parisotto, Administrative Director, DWC

George Parisotto discussed the incoming filings through the Division of Workers' Compensation (DWC)'s Workers' Compensation Information System (WCIS).

A brief summary of COVID-19 workers' compensation data was:

- Up to September 2, 2021, 157,260 COVID-19 cases were reported in the Workers' Compensation Information System, and among them 1,044 were death cases.
- Currently, COVID-19 claims account for 15% of all workers' compensation claims since the pandemic started. Last December, COVID-19 accounted for over half of the claims filed; there were over 43,000 COVID-19 claims filed in December, 82,000 overall claims. In May and June of 2021, 700 claims per month; with the Delta variant in July and August: 4,500 and 6,000 COVID-19 claims, respectively.
- Industries with the most reported COVID-19 claims are hospitals with 16,500; Government support: 15,800; Ambulatory Health Care Services: 15,000; Nursing and Residential Care: 12,400; Justice, Public Order, and Safety Activities: 10,500; and Couriers and Messengers: 7,400.
- Covid-19 claims still have a significantly higher denial rate than non-Covid-19 claims. Their denial rates are 30% versus 10% for other types of claims.
- Industries with the highest denial rates include: Couriers and Messengers, with an 80% denial rate, Mining: 76%; and Sporting Goods, Music, and Book retail stores at 75%.
- Conversely, industries with the lowest denial rates are: Justice, Public Order, and Safety Activities: 12%; Health and Personal Care Stores: 12%. Hospitals and nursing are at 23%.
- Most of the claims come from Southern California: Los Angeles – 42,800; Orange County – 14,000; San Bernardino – 13,000; Riverside and San Diego – 10,000. The Northern California County with the most reported COVID-19 cases was Santa Clara with 6,300.
- Again, he hoped this pandemic is winding its way towards its end and these numbers drop dramatically, but he thought everybody needs to stay safe and he applauded everybody on this call who has helped make that happen.
- Mr. Parisotto discussed several specific program items:
 - DWC will continue to telephonically here all mandatory settlement conferences, priority conferences, status conferences and lien conferences via the individually assigned judge's conference lines. He amended his hearing notices to indicate that these were updated as of September 17, 2021.
 - In Person Hearings:
 - October 1, 2021 - In-person hearings will resume at all DWC district offices except for our satellite offices (Eureka and Bishop, Marysville, Chico and Ukiah).

- This will involve trials, lien trials, expedited hearings and special adjudication unit (SAU) trials only.
- Parties can agree, subject to the approval of the judge assigned to hear their case, to hold all hearings virtually.
- The return was in response to Executive Order N-08-21, Paragraph 55 of which terminated Paragraph 11 of Executive Order N-63-20 effective September 30, 2021.
- As director Hagen said, parties can agree subject to the approval of the judge assigned to hear their case to hold all hearings. Our return was in response to the executive orders issued by Governor Newsom, which brought our hearings back to the office.

Med Legal Fee Schedule – Became effective on April 1.

- Replaced time-based billing codes with flat fees.
- Eliminated complexity factors.
- Flat fee applied to evaluations involving less than 200 pages of records review.
- Established a page-based reimbursement for document review that was three dollars per page record review once above minimum.
- Increased the reimbursement rates for Medical-Legal testimony and for reports involving psychiatric, toxicology and oncology.
- Created new declaration requirements (documents sent/received and meet and confer requirement).
- Standardized The Payment Owed For A Missed Appointment. The payment owed for missed appointments. We are following the fee schedule to see how it's working. It has increased reimbursements for the QMS. In our system. We will be amending the fee schedule to make sure that we cover any holes that may be in there, and I think that there are some practitioners or some of QMEs who will do toxicology and oncology reports that will get increased modifiers for that and so we're looking forward to see how our fee schedule will work and we think so far it's doing a good job in helping move our claims along.

Medical Treatment Utilization Schedule (MTUS) Update

- DWC adopted additional treatment guidelines from the American College of Occupational and Environmental Medicine (ACOEM). These include: COVID-19 Guidelines (June 28) Anxiety Disorder Guideline (July 19). DWC was in the process of adopting Low Back Disorder Guidelines (hearing Sept.17).
- DWC had updated the MTUS Drug formulary to include the drugs recommended in these adopted guidelines.
- Other Regulations: DWC adopted QME Emergency Regulations for electronic service of documents and telehealth evaluations are going to be extended (set to expire **Oct.12**). But DWC has asked for those to be extended an additional 180 days and soon we will be initiating them.
- Will be initiating additional QME rulemaking regarding:
- Revision of the number of hours necessary for initial qualification of physicians as QMEs and for continuing education. This will anti-bias training.

- Further, we are going to clarify the use of probation as a disciplinary sanction and also the listing of specific grounds for the denial of reappointments of our QMEs. So that will be coming up.
- Clarifying the use of probation as a disciplinary sanction and listing of specific grounds for denial of reappointment.
- Copy Service Fee Schedule (hearing August 30). We did have a hearing on August 30th that unfortunately had some technical difficulties, so it's very likely that we will have another public hearing- a virtual meeting.
 - An increase of the flat rate for copy services from \$180 to \$225 for records up to 500 pages, and includes all associated services such as pagination, witness fees for delivery of records, and subpoena preparation.
- This fall we will also likely move forward with updating the Pharmacy Fee Schedule.

Independent Medical Review (IMR) Update

- Regarding Independent Medical Review, the procedure is operating without any delay. Currently, decisions are issuing within 10 days of the receipt of the medical records, far below the 30 day deadline.
- As of the end of August, there has been 92,700 eligible IMR applications filed, which means we are on track for 140,000 this year. Last year, there were 136,700 applications filed, which was a significant drop from the approximately 175,000 applications averaged the past few years. While applications are slightly down, 95% of the unique application filings were deemed eligible.
- Pharmaceuticals is still the most-requested treatment review – about a third of all requests, but this is down from 45-47% that's been the average the past few years.
- Mr. Parisotto stated that the DWC formulary has had a great effect in reducing the number of pharmaceutical disputes in our system in terms of overturn rates. Finally, we will be holding our DWC educational conference in the early part of 2022. They were planning the conference was held virtually and did receive good feedback, so that's a brief update of what with what's going on with our program right now.
- Overturn rates of utilization review decisions have remained steady, about 8-9% overall.

DWC Educational Conference

- Finally, we will be holding our DWC educational conference in the early part of 2022. DWC was planning on having it to be an in person conference, but I think we're trying to determine whether it should be virtual this year. I think the pandemic will, of course, determine how that goes. So that's a brief update of what with what's going on with our program right now.
- DWC was planning on having it to be an in person conference, but I think we're trying to determine whether it should be virtual this year. I think the pandemic will, of course, and how in the course of it will probably determine how that goes
- Finally, we will be holding our DWC educational conference in the early part of 2022. They were planning the conference to be held virtually and did receive good feedback so that's a brief update of what with what's going on with our program right now.

Commissioner Questions or Comments

Commissioner Steiger asked about the Covid-19 denial rate and the gap from industry to industry was concerning. He asked if those numbers reflected the denial in whole or in part, and did that denial go all the way through IMR or is that just at the initial employer. Mr. Parisotto stated the denial was the employer denying as a whole or in part, the initial claim. We get the report of the first report of injury through the WCIS system from the claims administrator, indicating that a claim has been filed and we get initial identifying information and then if the claim is denied, it's reported to us that the claim is denied, but we unfortunately do not get the reason for the denial through the DWC data fields. From what he understood, denials are individuals that file a claim who feel symptoms, are tested, and the test result comes back negative. I've heard that these scenarios make up a good percentage of those denials.

Commissioner Steiger asked if DWC knew if there was a way to find out how many were denied for AOE/COE (Arises out of and Occurs in the course of the employment) reasons for the employer. If the employer believed that it was not occupational exposure, that's information. Mr. Parisotto replied that unfortunately, he did not get that information through the WCIS system. He can look to see if there is some source that he had, but he could not answer that right now.

Commissioner Bloch asked if Mr. Parisotto could discuss any efforts to attract more doctors into the workers' compensation system. Mr. Parisotto replied that this was a significant concern of DWC because of the drop off in the number of Qualified Medical Evaluators (QMEs) in the system. DWC has updated its fee schedule, and he hopes it will be helpful. However, not only does he think they will have a problem with QMEs, but also with our treating physicians. I think that's a big concern because big concern of his over the course of the next few years. He has heard that there will be a dwindling number of physicians available and he wanted to make sure that there are doctors out there who will treat injured workers. During the next couple of months DWC was going to have a public meeting that's going to discuss and invite everybody to attend regarding a frequent friction. It will be regarding the delivery of medical treatment in our system because he understood that physicians were worried or concerned about the administrative burdens in the system and he wanted to see where those were: were the reports being filed too burdensome?; is the compensation sufficient for their physicians?; what were the problems that people are having with utilization review and medical provider networks?

Mr. Parisotto stated that he wanted to hear about the issues and possible solutions because it was essential when someone gets hurt on the job and needs medical treatment, that they get them back to work. And providing evidence based medicine and doing it as efficiently and as effectively as possible; without having burdens of reporting or anything else. What they hear was mostly anecdotal. DWC wanted to hear what the problems were and what solutions can they move to. Whether that involves more electronic reporting or whether DWC needs to bring technology into this. Commissioner Bloch replied that he looked forward to hearing more after DWC had its public meeting.

Commissioner Bouma asked to follow up on the identified concerns about treating physician access and she would like to flag those treating physicians eligible to be QMEs for mental health issues, post-traumatic stress. She has a recent and unfortunate story of how some of her staff tried to call doctors in the Stockton area to try to find a single practitioner who would treat under

workers' compensation for a mental health condition and they came up empty. So there's a lot of self-procuring going on out there and work-around to the system. She applauded some employers who are working with their unions to have some direct access for her members to get treatment. But it was also disappointing that a system that's designed to support injured workers and that folks have to figure out how to work around that system. So she appreciated also what has been identified as a task for pulling together stakeholders to identify what the issues were, and how can we bring people back into the system so she appreciates it.

Commissioner Bouma asked about the lack of efficacy of the data, with particular deficiencies in the public sector whether benefits are administered by third party administrators or self-administered internally, and these larger employers. She would like a similar public meeting or recommend that there is some forum where they can understand whether or not has there been improved compliance since the last big reform, and what was left. She added that the CHSWC Chair is always the exception to the rule in his JPA. She was certain that many of her public agency employers do not get that Gold Star and there were too many studies that are requested by this body and others about what the conclusions were; but, be cautious about quoting the findings because the data was incomplete. That would be another significant issue from her perspective.

IV. Report on First Responder Mental Health Study Michael Dworsky and Denise Quigley, RAND

Dr. Dworsky explained that the study focuses on post-traumatic stress disorder or PTSD in the workers' compensation system. He explained that the reason for a study was the enactment of Senate Bill 542, which was enacted in 2019 to make it easier for workers to access workers' compensation benefits for PTSD through the workers' comp system. It did so by establishing a rebuttable presumption such that, for firefighters and peace officers, PTSD would be considered work-related. He said that presumptions are not new in California workers' compensation. Dr. Dworsky explained that the rebuttable presumption is an approach the state has taken for a number of other health conditions that affect firefighters and police officers. He said that what is unusual about the presumption in SB 542 is that it is temporary. The presumption took effect at the start of 2020 and under the Labor Code, it is going to expire at the end of 2024. It will be on the books for five years, and then go away without further legislative action. He said that means that there is a kind of future debate expected over how the state should address PTSD related to first responders and whether to extend the presumption (into the future) or modify it in any way.

Dr. Dworsky explained that at the time the presumption was passed - within a day or two of the governor signing the bill, he believes - Assembly Member Daly wrote a letter to CHSWC that identified a number of questions where lawmakers did not have sufficient evidence at the time the bill was being debated. He said the letter laid out a very broad scope of questions that RAND addresses in the report. CHSWC forwarded those questions to RAND when the study was commissioned. He said that all of those questions are addressed in the report - to the extent possible.

He presented both the goals of the legislation and several of Assembly Member Daly's twelve questions.

Goals of legislation:

- Address mental health and suicide among first responders
- Reduce perceived stigma
- Enable first responders to obtain needed mental health care

Questions spanning many topics, including:

- How widespread are PTSD, suicide among first responders?
- How often do WC claims involve PTSD?
- Are claims involving PTSD frequently denied?
- Cost impacts of SB 542 for state and local governments
- Is it possible to prove that PTSD is job-related?

Dr. Dworsky said that in interest of brevity, he and Dr. Quigley were going to select a handful of key findings and discuss those. He added that the final report had gone through RAND’s peer review process and there is a copy available as well as a research brief with the agenda materials on the CHSWC website. He said that they are both going to be published by RAND sometime in the next month to month and a half. He added that the public comment period on the report would open up shortly after the meeting closes and he encouraged people to read the full report if interested, and if so inclined to also make a public comment.

Mixed-Methods Approach to Address Research Goals

- Qualitative:

Key informant interviews with:

- Firefighters and peace officers who experienced mental health conditions
- Applicants’ attorneys
- Department chiefs
- Claim administrators
- Mental health providers

- Quantitative:

Analyzed survey, administrative data:

- Analyzed survey data from UCLA California Health Interview Survey (CHIS) 2013-2019
- Analyzed WCIS claims data (2008-2019 injuries)
- Modeled costs to state, local governments

Dr. Dworsky said they used a mixed methods approach to address the study’s aims. Dr. Quigley lead a set of qualitative analysis that centered on in-depth interviews, mostly with firefighters and peace

officers, who had experienced mental health conditions and who, for the most part, sought care and compensation through workers' compensation. He said they also spoke with other stakeholders who were (applicants' attorneys, department chiefs, claim administrators, and mental health providers) involved in management of fire departments or peace officer organizations, or who were involved in the claims process. They also spoke to mental health providers who have treated firefighters and peace officers.

Dr. Dworsky said that he had led some quantitative analysis that focused both on survey data from the California Health Interview Survey (CHIS) as well as administrative data from the Workers' Compensation Information System (WCIS), which the Commission is familiar with, and which George Parisotto was discussing earlier in the meeting.

He said that RAND drew on those estimates, as well as estimates from the published literature to try to model some of the costs that might result to state and local governments with SB 542 in place. He said that that was one of the key objections to the legislation during its debate, and it was one of the issues highlighted both by Assembly Member Daly and by CHSWC.

Dr. Dworsky noted lastly that the study was informed by input from a Technical Advisory Group that met twice over the course of the study to give RAND feedback both on the approach and on the preliminary findings.

Dr. Dworsky explained that before they looked at workers' compensation data, they looked at the California Health Interview Survey (CHIS), which is representative of the population of California, to look at the prevalence of mental health conditions as well as suicidality among First Responders. He said RAND refers collectively to firefighters and peace officers and to other occupations that they think are similar or at least potentially similar on-the-job trauma exposure.

He said the results he shows in the briefing are from the quantitative analysis in the report and are in a similar format.

He showed bar graphs with estimates for firefighters, peace officers and other comparison groups highlighted in different colors. He explained that RAND used "comparator" groups using comparison occupations that were very close to the many study occupations. He said that they also used the entire California workforce as another comparison.

Dr. Dworsky explained that RAND measured the prevalence of the symptoms, that is, the proportion of workers who are experiencing symptoms at a given point in time of either moderate or serious mental distress. He said that they were not able with available data to look directly at PTSD. He said that is a limitation of the study, but they were able to look at a broader construct of mental distress. The construct indicates either that one is somebody who would benefit from mental health care, which is labeled moderate distress, or that one is likely to have diagnosable serious mental illness, which is labeled serious distress.

Dr. Dworsky said that when they compare the rates of mental distress across occupations, firefighters and peace officers do not appear to have higher rates of mental distress than workers and other trauma-exposed occupations or than the overall California workforce does. While this does not directly measure PTSD, as was noted by one of the reviewers of the study, this does more broadly

reveal information about the mental health status of these workers. He said that they do not see evidence that things were dramatically worse when compared across occupations.

Dr. Dworsky said that they also looked at suicidality, as measured by self-reported suicidal ideations in the survey data. Specifically, the CHIS has a survey measure asking people confidentially whether they have ever seriously considered taking their own life. He said the rates for firefighters and police officers are somewhat lower than what they see in other trauma-exposed occupations. He said that just under 3% of firefighters answered yes to that question and about 5% of peace officers answered yes. He said that they see somewhat higher rates for some of the other trauma-exposed occupations. He summarized that the CHIS data indicate that there is no obvious evidence of dramatically worse mental health or higher rates of suicidality among firefighters and police officers.

Dr. Dworsky said that this finding is discussed in the report, and he could provide further detail in the Q&A portion of the presentation. He admitted that there are limitations to how far one can push or interpret that finding but he believes that this at least addresses one of the first questions that was raised by Assembly Member Daly.

Dr. Dworsky then moved on to the workers' compensation system, and explained that the first question they wanted to look at was the volume of claims that involved PTSD before SB 542 took effect. He said they measure PTSD by looking at the principal diagnosis on all the medical bills submitted to workers' comp, including bills that are denied. As long as a therapist or other mental health providers sent in at least one bill with a PTSD diagnosis, they picked up that workers' compensation claim. He said that there is a lot of sensitivity analysis as well as other definitions of mental health conditions in the report, but this definition (PTSD diagnoses) was the focus in this presentation. He said that before SB 542 took effect, a little bit under 1% (0.9%) of firefighter claims and 0.7% of peace officer claims involved PTSD. He explained that that means PTSD was involved much more often than for workers throughout the entire workers' compensation system, which is 0.4%. There were also statistically significant differences observed in other occupations with trauma exposure.

Firefighters were more likely to have PTSD-involved claims than any of the occupations they compared them to. He said peace officers were actually less likely to have PTSD-involved claims than the other occupations they compared them to, especially corrections officers.

The next question they looked at was claim denial rates, and noted that Mr. Parisotto set the stage nicely for the discussion because he talked about the definition of claims denial in the WCIS. Dr. Dworsky said they looked at initial claim denials -- denials that happened before any benefits are paid on the claim. In the report they have estimates of denials later in the course of the claim -- full denials, including AOE (not work-related), and claims fully denied for other reasons as well. What we see here is that firefighters and police officers claims for PTSD are more likely to be denied than PTSD claims from workers in other occupations. He said that that is true when you compare them to the overall workers' compensation system but it is also true when you compare them to other trauma-exposed occupations. Overall, 27% of peace officer claims and 24% of firefighter claims that involved PTSD are initially denied.

Dr. Dworsky said that they looked within claims filed by these first responders to compare PTSD-involved claims involving other health conditions that are covered by presumptions. The average across all other presumption conditions that were on the books before SB 542, note this was also before the pandemic. Overall, 9% of firefighter claims and 13% of peace officer claims for conditions covered by presumptions were denied in the years leading up to SB 542. Those rates are dramatically higher when they look at PTSD claims. (Dr. Dworsky noted that the differences in the data for individual health conditions like cancer, hernia, lower back impairments, are also substantial and statistically significant.)

Dr. Dworsky said that they totaled up the cost of paid benefits, which does not include legal fees or cost containment. He noted that the other cost drivers, other than paid benefits, are very substantial in California. He said they looked at the amount of indemnity benefits, settlements, and medical benefits that are paid out and found that PTSD claims are actually very costly, compared to the average for all claims filed by peace officers and firefighters. They also compared the data to the average cost for all conditions covered by presumptions and claims for cancer, and found that PTSD claims had higher paid benefit costs.

Dr. Dworsky said that as detailed in the report, compared to the overall workers' compensation system, indemnity benefits make up a larger share of compensation for first responders. He said part of that (high cost) is explained because Labor Code 4850 pay is included. In the measure of indemnity benefits that they were using, the LC 4850 costs are required to be reported to the WCIS and so they included these costs. When they include the LC 4850 cost, the average cost for a claim involving PTSD before SB 542 is about \$59,000 for firefighters, and about \$65,000 for peace officers. He said in summary, PTSD claims before SB 542 were relatively infrequent, less than 1% of the firefighter's claims, and followed by peace officers. He said that they are relatively constant (percentages) when they're actually filed, so they took those estimates along with assumptions about how many people were suffering untreated PTSD to examine how claim behavior would change and how denial rates might change. They then modeled the costs to state and local governments with and without SB 542 in place.

Dr. Dworsky showed a figure called the status quo before SB 542 took effect, and the outcome of the predicted cost of benefits per year from 2020 to 2024 for claims that were filed for PTSD with 2020 and later injury dates. He said that the definition of the scenario was detailed in Chapter Seven of the report. He said they calculated that without SB 542 enacted, state and local governments would be expected to pay about \$6 million a year in benefits for PTSD claims for firefighters, and about \$14 million per year in PTSD claim benefits for peace officers. He said that most of that difference is driven by the fact there are many more peace officers than firefighters in the state. Under what they consider intermediate assumptions, which he said he could discuss in the Q&A, those costs would increase dramatically, by a factor of three for firefighters, and by roughly a factor of six for peace officers. He urged the Commissioners to not hang too much on that particular estimate because there is a wide range of uncertainty in those cost projections. He explained that because even with all the data that they had, they did not have great estimates of how many people were in the population with untreated PTSD. He said that even if they knew that, it would be hard to say how behavior would change and how many of those people would actually come into the system.

Dr. Dworsky said what is more important probably than the numbers is the wide range from the low cost scenario to the high cost scenario in the report. He said costs vary by over a factor of 10 for firefighters and over a factor of five for peace officers. He said that Dr. Quigley was going to talk about some of the findings of the qualitative work as well as policy recommendations and some areas for future research.

Dr. Quigley said she would highlight some findings from the qualitative section, and then provide some conclusions as well as discuss areas where there may be need for further study.

Dr. Quigley said that one of the direct questions that Assembly Member Daly asked was to contact mental health providers about whether mental health injuries are feasible to prove for first responders. She said that RAND spoke to mental health providers that were both clinicians as well as organizations. She said that mental health providers replied that first responders were exposed to traumas daily, that they could be single incidents, or could also be effects of cumulative trauma. In any given day, trauma could cause mental distress, psychiatric injury, or PTSD. They reported that there is much more exposure to these types of traumas for first responders when they are in urban settings. Providers pointed out that first responders are in a (occupational) culture to serve and to be strong, and that many of the employees have stigma around wanting to seek help in the sense that they don't want to reach out. First responders do not want to feel that they are weak in any way, and that causes them to prolong the time when they may say they really need mental health care.

Providers also explained that, after one understands the fact that first responders are in this type of culture and that they're exposed to this many traumas on a daily basis when they're out serving our public, it was important to understand that first responders are not like any other type of worker. First responders face very stringent psychiatric and physical screening and that they are able to mentally compartmentalize emotions and traumatic exposures differently than many other workers. Providers responded that they believed that the profession only lets in the types of workers that can handle what they are asked to do.

Dr. Quigley explained that providers believed that if someone came onto the force (into the profession) as a first responder and had no symptoms at the time when they were screened - and prior to the trauma they were exposed to on the job - that they could (later) infer that the mental health condition was from the job-related traumas that they were exposed to on the job and after they had joined the force. She said that they heard similar things from claims administrators and other perspectives from stakeholders and it is discussed in the report.

Dr. Quigley said that they also interviewed first responders who were receiving mental health treatment. RAND recruited first responders through mental health providers that RAND spoke to across the array of departments that were sampled across California - for both peace officers and fire departments, as well as across northern and Southern California. She said that those first responders indicated that they faced many challenges getting adequate and timely mental health care. The main thing that RAND heard from first responders was that they relied on paying for mental health treatment out of pocket without reimbursement and without insurance. Dr. Quigley explained that that happened for a number of reasons. First, many of first responders who tried to seek treatment and have it paid for through employer-sponsored health insurance or group health discovered that the mental health providers themselves would not put the claims in through group health or the

employee-sponsored health insurance because the providers knew that the claim would get denied because the trauma they were talking about was related to the job (occupational injury). Accordingly, the first responder would have to pay for it out-of-pocket. Another reason it was paid out-of-pocket is that the employee assistant programs (EAPs) that are available in all the departments were viewed as ineffective for first responders when their trauma and their need for treatment was so high.

Dr. Quigley said there was a need for specific assistance having to do with exposure and cumulative trauma or single incident trauma, and the first responders found EAP was ineffective for two main reasons. One, they were unsure that the program was confidential. She said that it is also true that the EAPs were not necessarily staffed with mental health providers that the first responders felt were culturally competent. By that, she said she meant a mental health provider who understands the realities and exceptional demands of what first responders work entails. She said that they felt that they could not speak to the provider at a level that the provider understood what the first responders were dealing with on a daily basis or over the course of their careers. Two, first responders emphasized the need to have an effective provider, a culturally competent mental health provider with whom they could actually openly share and discuss the exposures that they had had to deal with. First responders wanted to have culturally competent mental health providers, and unfortunately, they also had little success accessing that type of mental health care through these employee assistance programs or through the workers' compensation medical provider networks, or even through employer insurance. RAND found that first responders needed to seek out the culturally competent health providers on their own and figure out how to pay for it out of their own pocket.

Dr. Quigley said that there are some other findings in the report, but she only want to highlight these few. She said that RAND researchers feel that the study has some limitations. She explained that it applied both to the claims data and also to the interviews of injured workers as well as interviews with the people who supported them. She said this was primarily due to the fact that the injury dates for the workers' comp claims are before 2019 or earlier, and even the interviews where they were talking to people who had experiences with claims, those claims were filed prior to SB 542. She observed that RAND was hearing how conditions were before the passing of the bill.

Dr. Quigley added that, as Dr. Dworsky pointed out, PTSD and suicide completion were not measured in the survey data, and she noted that this should be studied more directly in future work. She said the RAND researchers believe that the impacts of SB 542 itself was not observable in the data that they used for this study.

Dr. Quigley said the RAND researchers have conclusions with policy implications from the work that they did. She said some of the findings support the rationale for having a PTSD presumption. The first finding is that first responders' PTSD claims are frequently denied, as Dr. Dworsky pointed out, and those denials are also frequently reversed. That finding was a result of studying the data and also from interviews that RAND conducted. She said the time it takes between when the claim is initially denied and then reversed is when first responders are unable to move forward and many times not able to get the care that they need, causing additional trauma.

Dr. Quigley said the interviews revealed a lot of difficulties and experiences with the workers' compensation system. If first responders do file a claim and they want to move forward with treatment - two big hurdles - it is also true that it is not easy for them to be able to get the mental

health care treatment that they need to heal from their PTSD. Some findings from the study also substantiate employer concerns about costs that were raised at the very beginning of SB 542. She noted that Dr. Dworsky explained the data, which found the claims involving PTSD have high disability costs, and they are expensive compared to other workers' compensation claims. She said they also know that the costs that they estimated are uncertain, and so it would be better to have improved estimates with data after SB 542. She said that they also did not find worse mental health or higher suicide risk for first responders. She said that they do acknowledge that their findings have some limitations and must be interpreted with care.

Dr. Quigley said that the data that they were able to review and the experiences that they heard, they were able to see that there are some important questions that were not addressed, and that would call for further research. They present data on PTSD prevalence, not incidence, since suitable data on new-onset PTSD cases was unavailable, and so it could be useful to add questions, for example, to the California Health Interview Survey and so be able to add something like the PTSD checklist to be able to gain that incident information. She said that there is also a possibility of being able to analyze restricted data files from federal surveys; in effect, there are other ways to think about how to get better estimates of incidence in future work.

Dr. Quigley said that the other area where there could be further research is that when first responders get mental health treatment, a lot is unknown about how that impacts their productivity and also their job retention, and what those benefits (of treatment) could be. She said it is possible that one could quantify the benefits of having earlier and more effective mental health treatment for first responders. Those benefits would be both for the first responders themselves and for the employers, and in terms of being able to quantify costs of the productivity loss and turnover when they do not get the treatment that they need.

As they have said before about the study's limitations, the data is prior to when SB542 was in effect, so they would hope that it would be possible to gather data and look at the impacts on claim volumes, denials and reversals, as well as actual costs from state and local government in order to look at the data post-SB 542.

Dr. Quigley said, lastly, they also identified some challenges that maybe cannot be addressed by the bill, but may call for some other policy solutions and issues for people to think about. The most important is that first responders reported such difficulty accessing and paying for mental health care even when they went forward with workers' compensation claims - even when the claims were accepted. She explained that this is based on a couple reasons. One is that as mentioned, culturally competent mental health providers are very hard to find and there could be solutions to make them easier to find both in the workers' compensation system and outside. She said it is also true that there is a fragmentation of health care payers, which delays care and complicates matters when timely care is of importance in this particular case. She said they did uncover that there is direct care provision being used by departments (where they were recruiting interviewees), where the departments themselves working with their unions in their cities and actually contracting directly with mental health provider organizations, to be able to bypass the workers' compensation system and be able to have more timely care for their first responders in terms of mental health treatment.

Dr. Quigley concluded that it is true that the trauma-exposed occupations that were not covered by SB 542 do appear to have worse mental health than the first responders do, and so maybe they should also be included under the presumption. She explained that those were the occupations that Dr. Dworsky pointed out were non-firefighters paramedics and EMTs, security guards and correction officers.

Commissioner Questions or Comments

Commissioner Bouma thanked the RAND team for their work and singled out her appreciation of the qualitative part of the research. She said she believed that when one talks to workers, one sees things differently in the data or one sees through the data to things that are deficient in the analysis. She spoke for all Commissioners saying they should look forward to digging into the 247 pages of the report. She said that it is a great value not just to the members that she represents in her capacity as a Commissioner but all of the injured workers. She said she is certain that the frustrations at accessing mental health support in the workers' compensation system spans every type of worker and every classification of worker. She admitted the importance of making public comment and said that maybe some of the organizations will do so.

Commissioner Bloch expressed his appreciation to the authors of the study. He said that he was not personally involved in the passage of the original legislation, but speaking on behalf of Teamster members in California - a very diverse union. He said that they represent law enforcement officers in some jurisdictions. For example, he said his members were there with the firefighters first on the scene after the (gas) pipeline explosion in San Bruno in 2011. He said that they have corrections officers who work in the jails. He said that they have deputy district attorneys in many places who are also called into horrible homicide scenes and, especially for the newer hires, do experience PTSD after being exposed to that. He said he wants to echo Commissioner Bouma's comments and said that the parts of the study looking at occupations that were outside of the original legislation, but where rebuttable presumption might help workers access mental health treatment, is very important. He said he would encourage the researchers to expand the scope. He said the first responder universe is much larger than just police and fire.

Commissioner Roxborough (he asked whether trial lawyers were considered also to suffer from mental distress as he was hearing about the lawyers and imagined they would be a good comparison) said it was heartbreaking to hear that access to mental health in the workers' compensation system seems to be in decline. He says there seems to be a lack of confidence in (system) performance during the time that the firefighters, peace officers, etc. are employed. He asked whether the denials are arising out of a specific incident. There was mention about the continuous trauma in any given day. He said that what he has seen is at the very end of a career of a firefighter or police officer a filing is made for mental stress claims. He asked why is it that presumption is being so heavily litigated case, given that the RAND data shows stress and cost in cities, counties and everybody are more than cancer costs. He said that he is having trouble understanding why mental stress claims are higher than cancer costs. He asked whether one of the reasons is because employees do not feel comfortable coming in in the first or second year, perhaps, of performance or the denial of access to workers' compensation is restraining them from entering the system.

Commissioner Roxborough said if they could help the folks during the time that they are employed for 20 or 30 years, it is better for everybody obviously. He said since the workers' compensation was designed over 100 years ago to be a no fault system, it certainly starts with having ready access, and maybe there are some suggestions on education to get mental health (treatment). He said that perhaps education for firefighters to do away with the stigma that perhaps one is not a tough person and that one really does need assistance during the time spent after, say, two months fighting fires or in other horrible situations.

Dr. Quigley replied first about the cumulative trauma. She said that of the people that they spoke to, which was a handful of firefighters and peace officers, some of them were filing at roughly 18 years. She said that had people that were in the forest service who they talked to that were filing at 30 to 35 years. She said that of those people they spoke to, they all had a PTSD claim. She explained that they did not intend to find these people, rather they were intending to interview people who were receiving mental health treatment; but in the end, they all ended up having a PTSD diagnosis -- and it was not only from a single incident. She explained that many times, if it was a single incident relation, it was because of the fact that it was a trigger that brought up cumulative trauma from the course of their employment. She said if the first responder wrote the claim for the individual specific incident, they claimed that and then the other cumulative. She said she believes it comes from both sources and she agreed that the claim seems to come towards the later end of their career.

Dr. Quigley continued that the employees are very heavily invested, very expensive, very highly trained police officers, firefighters, first responders, and so the cost when they cannot be working for your department is quite high. They are not easily replaceable human beings.

Dr. Dworsky rephrased the other question about why PTSD costs are higher than cancer claim costs. He explained that this does point to a limitation of the way that they looked at PTSD claims. He said that toward the end of a career, people have multiple health conditions involved. He said that the numbers that they showed in the presentation are all the claims with PTSD, which may or may not have other conditions, and taking the average for them, and similarly for cancer. To make sure that we weren't saying PTSD is costly because PTSD claims also come in with five other physical health conditions, they looked at claims reported with a PTSD diagnosis that came into the system only as mental health as the cause of injury. He said they think those are likely to be the ones without the co-occurring physical health conditions. He said that they actually found the costs for those were very similar to what we reported. He said that they were a little surprised that the average medical costs on PTSD were similar to what was paid out for cancer; however, they do not see how much medical care is being paid for outside the worker's compensation system using (only) the workers' compensation claims data alone. They do not know if people are spending either out-of-pocket or using group health for their cancer care. He said they do not know whether they see specific specialists, for example, who may not be in the MPN. Dr. Dworsky said most of the costs here are driven by indemnity benefits and settlements, and that is where the gap in costs between PTSD and cancer comes in.

He referred the Commissioners to Chapter Seven of the report, table 7.1. The cost of indemnity and settlements is about \$14,000 higher for PTSD for firefighters than cancer and about \$18,000 higher for peace officers for PTSD. He said the data tells them that when a worker has PTSD on the claim,

it is likely to indicate that things have gotten pretty bad and there is really significant disability, both temporary and permanent, and they think that is a driver of the higher costs. Commissioner Roxborough said he appreciated the breadth and the insight, complimented the researchers, and said he was satisfied with the answer, given it was his first meeting as a Commissioner.

Commissioner Kessler asked how many firefighters and peace officers were interviewed for this study. Dr. Quigley answered that they had 13 interviews, seven peace officers and six firefighters. The way that they sampled them for a diverse viewpoint was by going through departments. She said they used the WCIS data and they were able to identify employers. From those employers they calculated the volume of mental health claims and looked at those with high volumes of mental health claims. They then looked at those with high and low denial rates for mental health claims. From those lists, they then used the location information and were able to select and recruit departments that were in Northern and Southern California, and urban and non-urban areas. They recruited the department and asked the department to provide the names of the mental health providers that the first responders were referred to. From the first responder mental health providers, they recruited for a mental health provider. She agreed that 13 is a small number but they come from quite a diverse population across the State of California. However, she said that it is amazing that they hear such similar themes from first responders and police officers across the entire state.

Commissioner Kessler said (as all the Commissioners know) that she is married to a retired firefighter and have work relations with the union that represented him and other unions. She said that when she was at the Labor Council, she had five firefighter locals in her jurisdiction. She said for the record that 13 people does not make a study cogent; she said it just is not acceptable in her estimation to really understand the depth and the breadth of populations that have experience - and as Commissioner Bloch referred to - really outrageous situations. She said that there have not been the kind of resources that first responders need in order to help them through those moments.

Commissioner Kessler echoed Commissioner Bouma's comments about people who have sought mental health access and discover that there are not (qualified) people available. She said that she will read from one of the firefighters that she spoke with so that the researchers understand her position that does not comport with 13 firefighter and police officer interviews. She was told that even when first responders have contact with a mental health network to provide anonymous help that people were unable to find individuals to assist them - as Commissioner Bouma has also stated. When the person in question first read the study they learned that serious mental distress was less common in first responders. The firefighter cohort was only 4.4% the size of the comparison group - 136 versus 3068. However, in the studies showing the first responders have higher levels of PTSD diagnosis, the firefighter cohort was 40.4% of the comparison group, 115,347 versus 285,111. She said that the reviewer commented that he could not help but think that the discrepancy might be due to the low number of firefighters involved in the study. The reviewer said his experience was that even when they went out to find mental health professionals to help with PTSD moments, they could not find them even though they negotiated in their contracts to have access to these professionals. The other issue is cumulative versus single event situations.

As Commissioner Bloch stated in San Bruno when the (gas) fire occurred in San Bruno and people responded, even now there are people experiencing PTSD because of that situation. She said all it

takes is even experiencing the reviews that they have done on 9/11, all of that comes back, and people are starting to feel that all over again because what they saw, what they experienced is so traumatic and is not visible. The stigma of being heroes in a situation leads to a repression of those situations that people experience as trauma. She said her request is that if any more studies are done by RAND or anybody else that a genuine diverse group of people in larger numbers from different categories are reached to verify and validate their experiences – both short term and long term. She said that 13 people just does not make a study in her perspective and position. She said she has a passion about this, and this is why she is on this Commission. She said these are important issues and they all depend on first responders every single day to be there for us when we need them. She asked that should another study of this nature be conducted that there be more people, firefighters, police, first responders, EMTs, whomever, in order to make sure that it's valid and that researchers use their collective bargaining environments because, as Commissioner Bouma and Bloch can tell you, going through the collective bargaining units and union representatives there will be more trust in having those kinds of discussions, and their own collective bargaining agents could help them find those resources rather than the employer groups. She said she did not think that the report has the level of competency she thinks is necessary in order for it to be a valid study. She apologized and said that it is not a personal criticism.

Dr. Quigley explained that she is a qualitative researcher. She believes there is extreme value in understanding people's experience in depth, and there is a lot to learn from talking to somebody about their experiences and gaining an understanding of how all the pieces fit together. She said she is in complete support of what Ms. Kessler said. She said she has done qualitative studies where she obtains 110 interviews from a much larger sample. In this particular case, the scope of the study was to have actually eight interviews. She said that RAND took all first responders who called so they did not turn away any first responders who wanted to talk about their experiences. She said she agreed that it is a small number. She said she believes that at least they were able to try to get a diverse set of firefighters and police officers across the state so that at least we could see a range of experiences. She said she thinks that the value that it has is being able to document the things that were similar across such a diverse set of people who are in urban and non-urban locations.

Dr. Quigley said she thinks they did find exactly what Commissioner Bouma and Commissioner Kessler have mentioned. RAND did hear how difficult it was to find mental health providers and they sometimes circled through 3, 4, 5 to finally get to somebody who was a culturally competent mental health provider. She said that they also heard the same experiences about having an event and ending up not having anything that triggers the event again until years later. She said that many of the events that they heard about in interviews were not a recent PTSD experience; they were exposures over the course of the trauma that they experienced when they have been called out. She said there were all kinds of experiences, which can be read about in the report. She said she would gladly do a study that has larger numbers and does a survey or work to actually get more in depth experiences across a wider set. She said RAND decided to do the mixed methods approach for this study of claims in order make sure that we had some experiences from all different stakeholders, applicant attorneys, first responders, the mental health providers themselves, claims administrators, and department chiefs to be able to support or confirm that what they hear are the same things that they were finding in the claims data.

Commissioner Kessler said she did not denigrate the other people that they included in the study, the other applicant attorneys, the police chiefs or whoever. She said that she believes that RAND did not do enough of the interviews of the (injured) individuals. She added that she had questions about how a survey is developed. For example, before you use the survey, have you checked in with the people who are impacted by that survey to see if it really gets to the kinds of questions you are seeking to answer.

Commissioner Brady said that he thought they can all agree that further research is probably needed in this area and in others, and so expanding the base and the breadth of the study could be for consideration going forward. He thanked the RAND researchers for their work and for the report. He said it is very important that we recognize that sometimes there is advancement or progress when we sharpen our questions. He said we end up with better questions moving forward, and that allows us to take a step forward, indeed, as a community.

Commissioner McNally said that he thought this could be a pretty good illustration of what they were talking about at the very beginning of the conversation. He said it is very difficult to get to these people and then to culturally step up. The fact is that RAND contacted 13 people and that the Commission would like a lot more interviews than that is in no way a criticism of the researchers. He said that if they want a broader group of people to be interviewed, then they need to give RAND the time and the ability to go back and continue to try to “till this field.”

Commissioner McNally said that he did think that RAND worked in a very appropriate, very delicate way through the providers and he thinks that it is also the right way and the gentlest way to go. He said that it is also probably the least efficient way go as well.

Commissioner Brady said that the Commission has three questions from members of the public and would like to open those up for some consideration here. He asked each person to please identify themselves, who they represent, and then also recognize that there is a three-minute limit standing rule.

Public Comments or Questions

Cole Query with AFSME thanked the Commission for giving him the floor and also thanked the presenters for the presentation. He said he was able to find the study on your website. He said he was wondering if CHSWC had made the PowerPoint presentation available to the public and if so where it can be found and if not, if there was a way for interested parties to connect with you and obtain it.

Dr. Dworsky replied that the slide deck that they just presented is on the CHSWC meeting webpage. He added that he cautioned people not to take slide decks out of context, and referred also to their research brief which is much shorter than the full report. He said that is also on the CHSWC meeting page website. He said that the pre-publication reports are also on the RAND website. He said that they always appreciate questions, requests for clarification or other feedback.

Michael Wilson with Research and Standards at Cal/OSHA said he was present to speak to a different agenda item, but this (mental health study) is an enormously important study with large implications. He said his concerns are on the firefighter side, specifically, and that he comes to this (podium) with doctoral training in exposure analysis as well as 13 years of service in the EMS and fire service. He

said that there are four fairly serious concerns around exposure misclassification, at least with regard to the presentation. The first, he said echoes the concerns of Commissioner Kessler around the sample size and with standard practice from the like of the American Industrial Hygiene Association and other associations. He said it is very difficult to draw conclusions from a sample size (that small) of six interviews. The second has to do with the dose response relationship between the years of service and the reality of cumulative trauma. The third is the volume and nature of calls between urban and suburban departments. He said the presenter raised that question, but it is not clear to Mr. Wilson from the presentation that the difference in the volume in the nature of calls was taken into consideration. He said, finally what he is most concerned about is that grouping firefighters together as a single exposed group washes out the effects among what he would consider a highly exposed subgroup among firefighters, which is those who are serving as dual-trained firefighter-paramedics. He said that 80% of the work of fire departments in California is responding to medical emergencies. He said that that work falls on the shoulders of the paramedic who is assigned to the engine company. He said that many of the state's cities also provide ambulance services through the fire departments and those medics are running high call-volume compared to firefighters on engine companies.

Mr. Wilson said to Commissioner McNally's point that he would strongly recommend revisiting the study and collaborating with the California Professional Firefighters to access a larger, more representative sample and a more diverse and realistic sample.

Mr. Robert Blank, Occupational Environmental Medicine physician, said that he has had several positions where he has evaluated and been part of the care planning and compensation for hundreds of firefighters and police officers over the years. He said that although many occupational medicine physicians are leery, to say the least, of presumptions for causation - in this case amongst his colleagues, there was really no objection. This is due to the sometimes severe and very widespread nature of psychological trauma amongst our first responder populations. He said it just doesn't make sense to spend time dickering about these things when delays and arguments often make the condition that these people are suffering from much worse, and can be even worse than the original trauma in some outlier cases.

SB 542 is in the workers' compensation law and they really do not need to re-litigate that. He said he thinks they are looking at what the effects are. He said he would be very interested to see a comparison of how the pre-and post-SB 542 performs and how much difference it actually makes. He said the real underlying problem here is getting treatment, getting access to adequately trained, adequately prepared, and as the phrase was used and I appreciate it, culturally competent providers. He said culturally competent usually does not refer to the culture of a workforce, but in this case it does because the culture of police and fire is truly unique. He said he thinks that the numbers of individuals studied in this particular study is obviously very, very low. He said everybody would agree on that and he would join the chorus to please include a much larger group when the final or next phase comes through. He asked how do we overcome these barriers to accessing providers. He said that this is a problem not just for this discussion, but also for California workers' compensation in general. Psych is the most affected of all these specialties, but there are others as well. He said WOEMA is in the process of coming out with some discussions and they will be presenting those to DWC as soon as they are able. He said that among some thoughts, one could encourage providers to come into the workers' compensation system. He said the major barrier is administrative. A major

barrier is you have people who are already way too busy. Why would they go out and get themselves into a situation where there is this very large barrier to entry into a system that you know nothing about. Total workers' comp as part of the medical system is maybe one percent. Any kind of a safe harbor that would allow some sharing of the administrative burden in order to encourage people to enter, he thinks would be the way to go and he and his group looks forward to future discussions.

Commissioner McNally commented that from where he was in Kern County, they have one provider that is willing to take these types of cases and you can wait for six to nine months to get a report back. He said that the availability of qualified examiners and positions in this area is incredibly lacking. Commissioner McNally said his point is very well taken that we need to do more to encourage folks into this field. Mr. Blank said telemedicine is one way that might assist this shortage; it is not as good as seeing people in person, but he thinks that frankly some effort is deserved to try and improve the access in general.

Commissioner Brady said that he had a couple of reflection points of his own. One is that he thinks we live in a time where there is erosion in healthcare professionals across the board, not just in counseling, but in our medical communities, across the board, and so it's up to each and every one of us to try to support and thank those people who are stepping up and still remain viably active in the communities across California. He said that there are some location issues across California's rural/urban settings. He said they have to do more thinking about how they come up with resources to help our staff and our injured workers. He said it was a good point of conversation.

Commissioner Brady said that he knew that this report, even though it is a draft report, is an action item for the Commissioners. The Ask is that they put this report on the CHSWC website for 30 days in order to get further comment and feedback. He said this might be appropriate because there could be a whole slew of insight that comes in as a consequence. He opened up that request to the floor and asked if there is was motion to approve that step. Commissioner Bouma moved that request and Commissioner McNally seconded the motion. They voted on the seconded motion to post the report for 30 days on the CHSWC website.

Commissioner Kessler asked whether there should be acknowledgement that there were some inadequacies and challenges identified during the meeting about the report that need to be addressed in the future.

Commissioner Brady said he would ask Executive Officer of CHSWC, Eduardo Enz, if he could put a footnote that speaks to the robust conversation they had today and that they are seeking further clarification from the general public through a comment period. Mr. Enz asked for clarification and Commissioner Kessler said she would submit something as a written suggestion perhaps along with Commissioner Bouma.

Commissioner Kessler said she would submit such a written suggestion so that people understand that there is an effort to try to make this report as thorough as possible for the purposes that it was intended.

Commissioner Brady concluded by saying there would be some mechanism to enable the Commissioners to add some comments to the report. He said that he thought there could be many more insights that are shared as a result of posting the report for 30 days.

Commissioner Brady called for a vote, with one abstention from Commissioner Kessler, and the vote passed.

Commissioner Brady thanked the researchers, saying it was an extraordinarily delicate dance, praised the historical work, and thanked them in advance for the work that is yet to be done.

V. SASH Program Update

Robin Dewey, UC Berkeley-LOHP

Robin Dewey introduced herself as a Program Coordinator with the Labor Occupational Health Program, which is part of the UC Berkeley School of Public Health. She explained that she was going to provide an update on the Commission's School Action for Safety and Health (SASH) program including recent activities.

Ms. Dewey explained that the School Action for Safety and Health (SASH) program was established in 2010 with the goal of promoting safe and healthy workplaces for California school employees. She said SASH is administered by the Commission on Health and Safety and Workers' Compensation and coordinated by LOHP. LOHP contracts with the Labor Occupational Safety and Health (LOSH) program at UCLA to conduct training activities in Southern California. She said that geographic distinction is less needed now that they are doing everything virtually but they continue to appreciate the partnership between the two centers.

Ms. Dewey said she would brief the Commission about all the activities they have been doing over the last year, and what they have been learning. She said that she wants to get the Commission's input on anything in particular that they think that they should be focusing on to meet the overall goal of promoting healthy and safe workplaces for school employees.

Ms. Dewey began with an update on their Injury and Illness Prevention Program (IIPP) trainings for school employees. She said these are trainings where they teach lead HR, Maintenance and Operations, custodians, transportation workers, food service, and others about health and safety in the workplace and how to set up an effective program that comes into compliance with Cal/OSHA's IIPP standard. Since 2010, LOHP and LOSH have taught 94 classes in person, reaching over 2000 school employees. She said they have some very strong partners in this program, including all of the Commissioners, which include JPAs, County Offices of Education, and the unions representing school employees, CDPH and others.

Ms. Dewey said as can be imagined, this past year has been quite a challenge in terms of providing school employees with training. They were not able to deliver the trainings in person so had to convert the classes to online classes. They spent a lot of time figuring out how to restructure the classes so they could be delivered online and still maintain the interactivity of the in-person classes. They also had to reduce the length of the class to four hours. Their first class was in April 2021 and since then have taught nine classes. They have another seven that are scheduled for the fall. After that, they will be doing another 11 more through the fall of 2022.

One of the things Ms. Dewey added is that they have had to include COVID-19 protections as part of these trainings now. The content of the trainings is not just IIPP, but also specifically how do schools protect school employees from COVID-19 and make sure they are in compliance with

Cal/OSHA's COVID-19 CPP Emergency Temporary Standard as well. In addition to talking about COVID-19, there are some other issues that they have found to be of great concern to school employees, wildfire smoke being one of them. She said that stress is also a significant issue and so they have been including both information and activities in their trainings that address these topics as well.

Ms. Dewey also wanted to mention for the past three years they contracted with an evaluation consultant to assess these classes to determine whether participants are getting what they need from the class, to find out if they learn the key concepts, and whether they're likely to take health and safety actions when they go back to their school district after the class. They also send a follow up survey six weeks later to see if they were able to take any actions, and then they conduct interviews two to three months after that to get any stories that they may have that LOHP can then put into their newsletters. She said that they have built-in incentives for responding, so they get a good response. She said that their evaluator is now in the process of writing up the final report. The evaluator is going to need to separate out the evaluation of the in-person classes from the online classes, just because they have ended up being pretty different. Even though they are meeting the same objectives, it is just too complicated to put everything together.

Ms. Dewey said other activities that they are working on are a number of fact sheets that they have developed as part of SASH. The most recent fact sheets are about health and safety issues that paraeducators sometimes face with their students with disabilities, as well as a fact sheet on active shooter incidents at schools. She said that they are in the process now of finalizing fact sheets on COVID-19, wildfire smoke, and stress. She said those would be ready soon and will be designed and put on the websites, etc.

Another activity that they have been engaged with as part of the SASH program are a number of webinars. They have conducted five this year and are planning several more before the end of the project year. She said as part of this effort, they are also developing some short videos that can be integrated into their trainings and used in other settings as well. They also periodically write newsletters for the school employee community addressing some of the health and safety issues related to the school environment. She said that they are working on their next one now, which she hopes will be sent out in the next month.

Ms. Dewey said that they have some special projects as part of their contract, and one of the special projects they are working on now starts the Friday of this meeting week. It is teaching a health and safety training for a group of new college students with intellectual disabilities. This is a brand new four-year program at UC Davis that just started. LOHP's goal is to not only teach the students about health and safety on the job, but also help them to develop those skills by reaching out to school employees about schools-related hazards. So it meets that goal of the SASH program, but they see this as also fitting into their other CHSWC-administered programs that relate to young worker health and safety, and also workers with disabilities.

Ms. Dewey said that they want to develop another special project and so she is looking for input from all of the Commissioners. By way of introduction, she said she would really like to do something specifically for teachers. They have not done a lot for teachers specifically through the SASH program in part because there is no way they can really attend the SASH (in-person) IIPP trainings.

Teachers are not really in a position to develop and implement a school- or district-wide health and safety program so they have not been a target.

Ms. Dewey said that they have been finding in conversations with JPA reps, the unions and with teachers themselves that what they are going through is really difficult right now. As you can imagine with COVID-19 and the issues related to protecting their students and issues that come up with parents. She said that when they talked to the community, the principals too are just completely overwhelmed. She said that this is a very, very challenging time, as everyone knows, for school employees. She said that they want to help as much as they can. She presented contact information for the SASH staff for any needed follow-up.

Ms. Dewey offered to answer any questions or receive any suggestions about where they should be spending their efforts in terms of special projects. She added that what they are hoping to do is some training-of-trainers programming, specifically targeting JPAs to help promote some of these health and safety issues for school employees.

Commissioner Comments or Questions

Commissioner Bloch thanked Ms. Dewey for this important work, said he appreciated the work that LOHP does, and was glad that the Commission supports it. He asked about his Teamster members in the school district who are bus drivers for children with special needs. He said the Teamsters also represent people that do food service distribution in the schools. He said that none of his members, at least very few, are actually direct employees of any school district. He asked if the SASH training was put out there to contract employees within districts or just classified workers and teachers. Ms. Dewey said that it has been through the school districts but that he is raising a really good point and it means they are missing a lot of people. She said that she would like to coordinate better with him to reach the contracted employees so that they know about the health and safety issues that they are facing. They are the same issues as those that are employed by the district. She said thank you and she would do a better job about that.

Ms. Dewey asked who their employers are. Commissioner Bloch responded on the school bus side, First Student and Durham; they are the two largest school bus companies in that realm. He said that they are driving small passenger vans for children with special needs. He said that there are already many issues just working with that population. He said Commissioner Brady knows about that, and then you add the pandemic on top of it... Ms. Dewey said she was very familiar with that piece as well.

Commissioner Brady said to Ms. Dewey that when SASH incorporates technology and the use of videos, the Schools Insurance Authority could reach far more people. He said she was correct about our educational community. He said that they have roughly 1000 school districts in California right now. In order to cover the state more efficiently and effectively, coming up with electronic resources will allow us to have a much bigger footprint. He said that he knows that she has led the charge there, so it is very much appreciated.

Commissioner Kessler thanked Ms. Dewey for her efforts. She said that there are two other unions that she knew cover the bus driver employees that Commissioner Bloch was talking about. She said the Amalgamated Transit Union and AFSCME both have people who are the drivers for many of the

buses. She said that she might be able to get her the names of those who represent the bus drivers for special needs kids. She said that there are many different jurisdictions that the school boards and their school districts cover.

Ms. Dewey said that they wrote that in a fact sheet specifically for paraeducators, but she thinks it would apply to the bus drivers as well, so maybe they need to make sure that they get that out to them. She admitted it is just one little piece and not the full thing.

Commissioner Kessler asked Commissioner Brady as someone who works in the school district environment whether if LOHP and UCLA were to send to the school districts such a fact sheet and informational items, if the Schools Insurance Authority would be able to send that out to their contract employees. Commissioner Brady said that he could find out but did not see why not. He said that he believes that they receive other notification newsletters. He said he thinks it is a good idea. He said that everyone who is trying to support school operations are those who they should do outreach to.

Commissioner Brady thanked Ms. Dewey for her ongoing work.

VI. Executive Officer Report Eduardo Enz, CHSWC

Executive Officer Eduardo Enz briefed the Commissioners on Commission staff activities since the last meeting on March 4th.

CHSWC Studies Update

- The CHSWC study requested by Assembly Member Tom Daly, “Posttraumatic Stress in California’s Workers’ Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers” prepared by RAND has been completed and posting of the draft report for feedback and comment is an action item today. This study evaluated the cost impact of SB 542 and assessed the occurrence of mental health conditions or illnesses that affect active firefighters and peace officers and whether claims of mental health conditions or illnesses filed by active firefighters and peace officers are accepted or denied.
- The CHSWC study “Impacts of COVID-19 Claims and SB 1159 Presumptions of Compensability on the California Workers’ Compensation System” by RAND is in process. A preliminary report from CHSWC is due to the Legislature and the Governor by January 31, 2021, with a final report due by May 31, 2022.
- The CHSWC study “Cleaning and Disinfection during the COVID-19 Pandemic: Determining Safe and Effective Workloads for California Janitors” by the Northern California Center for Occupational and Environmental Health, a collaboration between UC Berkeley, San Francisco and Davis campuses, will be underway next month. Executive Officer Enz anticipates a draft report of preliminary findings by September 30, 2022 and a finalized report by November 30, 2022.

Legislative Requests to the Commission

- The Commission received a legislative request from Assembly member Tom Daly, Chair of the Assembly Committee on Insurance to undertake a study regarding the workers’ compensation investigation period and penalties assessed as part of the workers’ compensation system, specifically public safety employees with presumptions. He advised

that this study may be able to be conducted in-house using WCIS data and he was in the process of determining next steps. He will proceed to respond to Chair Tom Daly's request and evaluate the best way to conduct the requested research as well as determining data availability.

- The Commission also received a legislative request from Senator Dave Cortese, Chair of the Senate Committee on Labor, Public Employment and Retirement to undertake a study to analyze presumptive injury claims data to determine how often these claims are denied in the first 90 days or delayed beyond the 90 days and how often penalties are imposed in the system for unreasonable delay or denial. He advised that CHSWC was reviewing this request and will determine next steps including how best to address requested research and determining data availability.

CHSWC Projects and Activities Update

- Commission staff was working diligently to prepare the draft 2021 CHSWC and WOSHTEP Annual Reports in time for our December meeting. CHSWC staff planned and participated in the WOSHTEP Advisory Board meeting on March 30th that focused on an overview of program accomplishments in the past year as well as a discussion of future goals and objectives. The meeting addressed issues such as the process of transitioning to online classes due to COVID-19, new content including introduction of COVID-19 protections, preliminary evaluation results for WOSH Specialist classes and a discussion on the impact of COVID-19 on work including an overview of the Labor Workforce Development Agency COVID-19 work being conducted by the three centers at UC Berkeley, UCLA and UC Davis.

Decision on the Fire Mechanic Cancer Study Report

- CHSWC contracted ToxStrategies, Inc. after going through a comprehensive Request for Proposal to conduct the study outlined in AB 1400 entitled Assessment of Risk of Carcinogen Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles. The vendor conducted this study from June 2020-March 2021 and a presentation on the draft report was scheduled for the March 4th CHSWC meeting. However, the presentation and decision on approval of the report were ultimately canceled as recommended by both AFSCME and Cal/OSHA due to the perception that the vendor did not address certain issues, such as obtaining sufficient samples to reflect the variety of exposures among these workers.
- Cal/OSHA staff reviewed the draft report and indicated that the vendor did not provide an accurate and sufficient sample of carcinogens in the work environment of Los Angeles County fire mechanics. (Per Cal/OSHA, the study does not accurately characterize exposures to carcinogens and their associated potential health risks among these workers.)
- Executive Officer Enz also wanted to advise that these issues, the RFP and the contract with the vendor have been reviewed by the legal department and they have indicated that the vendor met the requirements stipulated in the contract.

Since the draft report is complete, potential additional work needs to be carefully considered due to budgetary concerns and other priorities. This is an action item for consideration.

Action Item

- 1) Does the Commission wish to approve the DRAFT report titled “Assessment of Risk of Carcinogen Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles” by ToxStrategies and send it to Senator Sydney Kamlager pursuant to her request?

VII. Other Business

Commissioner Discussion on “Assessment of Risk of Carcinogen Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles” by ToxStrategies

Commissioner Steiger asked if Cal/OSHA could give a presentation to explain and give more detail as to their concerns with the deficiencies in the study, and to allow them more than three minutes to really get into those details. It would be good to first hear from Cal/OSHA to get more of those details. They should have a little bit more of a discussion about the study itself once they heard from Cal OSHA.

Commissioner Kessler said she wanted to hear from Cal/OSHA, but she wanted to make a motion in regards to this report. She would submit it in writing, but it was long.

Commissioner Roxborough commented that the tri-annual audits at the California Department of Insurance of the carriers and third party administrators might speak to the presumptive issue on claims and denials, and might be something to be considered as part of their response to Senator Cortese’s letter. It was what was addressed earlier. Commissioner Bloch added that since Commissioner Roxborough raised the issue about Senator Cortese’s letter, and in reviewing that letter it went back to the issue that was discussed with DWC Administrative Director Parisotto earlier about getting more doctors into the workers’ compensation system.

Commissioner Kessler stated that since the study concerned her machinist union that does repair work that she had background on this issue. Her motion was to reject this study to insure that it could not be used for any purpose. The study was not conducted appropriately or adequately and that there should be a cover letter that captured relevant information from the initial study which summarized the Commission’s actions. She will submit that in writing and can share it at this meeting. Additionally, she would like to have a new RFP that addressed the deficiencies of the current study. The RFP also guaranteed that Cal/OSHA staff from the Research and Standards unit can review the RFP prior to submission. The RFP should insure that all necessary issues were captured and that work products were of sufficient technical and quality standards, and DIR provided support to units to conduct the review of the study for CHSWC. The support was during the course of the study, as well as upon completion. The RFP should allow sufficient time for all qualified bidders to respond within a minimum of 90 days and included workers from across the State of California. She would submit her motion in writing. It was a long motion because it was a result of a thoughtful analysis that what the Commission received was deficient. She asked for a second to her motion. Commissioner Bouma seconded the motion.

Commissioner Bouma asked if there were regular updates or reports from the studies that CHSWC commissioned. She asked who received the interim reports about the study and how it was being

conducted or what was lacking. She was not sure if that calendar trail was available to them. Chair Brady asked Executive Officer Enz if he could provide a response to Ms. Bouma's request. Executive Officer Enz replied that they had monthly meetings with each vendor and the vendors send monthly reports to CHSWC. He added that if Chair Brady would like to see those reports he could certainly forward them to him or to any of the other Commissioners.

Chair Brady stated that they had a request to hear from Cal/OSHA to answer their questions. Although Commissioner Kessler had put a motion and a second on the floor, Chair Brady would like to hear from Cal/OSHA and Commissioner Kessler agreed. Commissioner Kessler stated that she would like to hear from Cal/OSHA before the next step on the motion. She would like to make the motion with the broadest amount of evidence and feedback.

Commissioner McNally asked Commissioner Kessler about her motion and whether her motion was to start over with a new RFP. He asked if there was consensus that this study was not salvageable, and also, whoever had done such a poor job that CHSWC cannot guide them to bring it around to a more meaningful study. Commissioner Kessler replied there were very few salvageable parts of this study, one was that there were carcinogens in the work environment. However, the study was not competently conducted. If a different study was done with the necessary information to do a proper analysis of those work environments that would be a more qualified assessment about the exposures that these workers had. She did not believe ToxStrategies was capable of doing the study in a way that netted necessary information. Commissioner Kessler added that the RFP needed to be revised. There were many problems and as the Commissioners hear from both Cal/OSHA (because all Commissioners were sent their analysis), as well as from AFSCME who originally brought the study to them. AFSCME was at this meeting and we will be able to hear its concerns regarding the way the study was conducted. Commissioner McNally stated that assuming they approve this motion, then the next steps would be to reach out to Cal/OSHA, have a more robust conversation with Cal-OSHA, and then prepare a new RFP. CHSWC can send the RFP out in 90 days.

Chair Brady added that Executive Officer Enz had stated that there was a legal review regarding the original RFP, and that the contractor did meet its obligations. They may want a separate RFP, which he would be in favor of, but he would like to hear from Cal/OSHA so that their needs were met in the future. He asked about the timing to have Cal/OSHA share its counsel. He added if it was something to envision in the next CHSWC meeting or can action be taken today on a secondary RFP today. Executive Officer Enz said it depended on whether Commissioners felt comfortable moving forward today with issuing another RFP then they will move forward. If not, then it can wait until the next meeting.

Commissioner Kessler stated that as the author of the motion, she asked Chair Brady to request Mike Wilson from Cal/OSHA to speak to the issues instead of waiting; thus concerns could be heard before they took action on the motion. She did not know which should come first, and her suggestion was to hear from Cal/OSHA, and let them discuss the issues that are of concern before the Commissioners voted.

Chair Brady asked if there was a tolerance for getting into the details on what the deficiencies were and what the course of scope should be for a new RFP today or did they want to have some of those conversations take shape offline. It is up to the Commissioners and he will defer to the group. However, Commissioner Bloch said he would prefer to hear from Cal/OSHA before they considered a motion in regards to this study. Commissioner Steiger stated that he would agree that it would really be helpful in deciding what to do with the motion to hear some more details from Cal/OSHA and hopefully enough that we can make an informed vote on the motion. Commissioner Steiger asked Mr. Wilson if he was ready to speak at this Commission meeting.

Mr. Mike Wilson stated that he was prepared to summarize Cal/OSHA's concerns at this Commission meeting. Chair Brady asked if it was enough for a new RFP and what should be included in a new RFP. Mr. Wilson replied that the sequence could be as follows: the first question was for the Commission to decide whether to accept or reject the report from ToxStrategies. Then the second question was whether to move forward with a second RFP.

Commissioner Kessler's motion was that Cal/OSHA would support Commission staff in developing that RFP in light of challenges with the last effort. He did not know if they would actually get the text together on the day of the meeting, but he could certainly put that together working with Executive Officer Enz and Commission staff.

Commissioner Kessler added that it was important to hear Cal/OSHA regarding how this study was conducted and submitted for the Commission to make an informed decision. Some at this meeting who brought this issue forward; especially someone who had Stage 4 cancer had concerns about how it was conducted and submitted. Cal/OSHA was here to discuss these issues. CHSWC had received much of this information via email, but it was important both for the public and for the Commission to hear it. Then the Commissioners can take the motion or table it.

Chair Brady asked if the Commissioners can make a determination regarding the report either to accept it or reject it. He asked if the decision on the report could be truncated into two separate steps; it would be his recommendation. Commissioner Bloch supported a two-step decision process that Chair Brady proposed. He stated that since 2012 he could recall only one study that the Commission rejected. He would like Cal/OSHA to talk to the Commission about what they saw as the deficiencies in the study so the Commissioners can make a decision at this meeting. People here asked for this study and they represent non-fire personnel and fire departments all around the state that are potentially exposed to carcinogens in addition to other unions. He would like to hear from Cal/OSHA and then decide at this meeting what to do with the study. As far as fixing it, he was fine if those discussions happened offline.

Mike Wilson Presentation

Mike Wilson, Industrial Hygienist, Cal/OSHA Research and Standards Health Unit, stated that his comments were closer to 8 minutes so with the Commission's consent he asked for additional time. This was an important study with a fairly large amount of money and large implications. He stated that the division conducted a careful analysis of ToxStrategies' work products. He believed that AB 1400 had the potential to really improve our understanding of on the job cancer risks among fire department mechanics, but that after our analysis, unfortunately, that's not what played out in this case. Therefore, I'm going to explain the division's concerns. As you know, the bill required site

visits to fire departments with repair facilities. It required interviews and surveys with current and former mechanics, measurements of the exposure levels to carcinogens, and finally a report of findings. ToxStrategies was awarded the contract to do that work, and in February 2021 they submitted a 481 page draft study report to the Commission for its review. The ToxStrategies report contained four steps of a very traditional risk assessment each of which builds on the findings of the previous step. The four steps were:

- 1) There was a literature review.
- 2) There was a qualitative exposure assessment.
- 3) There was a quantitative exposure assessment.
- 4) And then there was an overall cancer risk assessment.

Mr. Wilson stated that ToxStrategies did many things right, but they also made numerous errors in the areas of the scope of the study, the questionnaire they conducted, both the qualitative and quantitative analysis, and in their conclusions. He can discuss the degree of each of these errors, but taken together Cal/OSHA concluded that those errors were serious enough that the work product in its assessment was invalid, and it did not answer the charge posed by the Legislature.

Mr. Wilson discussed one example. He stated that in assessing chemical exposure, it was well recognized that inhalation exposures were by far the most harmful compared to dermal exposures that occur when a chemical comes into contact with the skin. When you inhale a chemical vapor or gas, those chemicals are delivered very efficiently to the bodies' organ systems where they can inflict damage. They take measurements of the concentration of chemicals in the breathing zone of workers, and then apply statistical tools to those measured levels to determine the underlying distribution of exposure. It was like a bell curve. It was that distribution, not the measurements themselves that were then used to derive all of the resulting conclusions. Everything hinges on the quality of that exposure assessment and the conclusions about to what extent these workers are seriously exposed to chemicals; or this job is creating a high lifetime cancer risk; or that are particularly task needs, exhaust ventilation and so forth. All of that hinges on the quality of that assessment of those measurements and the statistical work to which those measurements were applied. It was akin to measuring the speed of cars across a highway over the course of a week. One cannot stand there for 24 hours a day and measure all of the cars. You have to take a random sample of 6 to 10 cars, knowing that was not representative, and you then apply statistical tools to build a probability distribution based on those measurements, and that gives the upper and lower tails of the distribution. In this analogy, the fastest and slowest cars on the highway.

Mr. Wilson said it would be erroneous to claim that the six to ten cars measured represent the speed of all cars on the highway. But that was precisely the error that ToxStrategies made in its analysis. First they obtained a very small number of breathing zone samples from 20 workers who were performing four different tasks. If each of those tasks were equivalent to a highway in this analogy, in good professional practice each of those tasks would require 6 to 10 samples, so there should have been between 24 and 40 samples.

Mr. Wilson said that more importantly, ToxStrategies used this small number of direct measurements to estimate cancer risk for these workers, rather than using those measurements to create the underlying distribution of exposure from which they could have derived the highest potential

concentrations of the top distribution in the 95th percentile. This was standard industrial hygiene statistical practice dating back to 1991, when the American Conference of Governmental Industrial Hygienists wrote: all too often the industrial hygienist believed that the exposure measurement obtained was truly the exposure concentration in the air. Unfortunately, the contractor went further and compared the risks they derived from this very small number of direct measurements against the result of a meta-analysis of 42 epidemiological studies on the incidence of cancer among firefighters and against cancer incidents across the entire US population. ToxStrategies interpreted these comparisons in such a way as to downplay the cancer risks among fire mechanics, and so they stated, and I quote from the report, “the theoretical estimated risks for the workers identified in this study are considerably lower than that measured among firefighters (0.2%-4% vs. 20-50% respectively). As a point of reference, the risk of developing cancer at some point during their lifetime for persons in the US is approximately 39.5%”. For many reasons, there were numerous and inappropriate comparisons, but to the reader of the ToxStrategies report, that statement says that the exposures experienced by these workers were negligible and therefore nothing really needs to be done to improve their work environment at least with any urgency. The claims potentially submitted by these workers to the workers’ compensation system for occupational cancer could be denied. Cal/OSHA concluded that both of those outcomes were inappropriate and do damage to the fire mechanics and are actually in direct opposition to the stated purpose of AB 1400. There were a couple of areas where the ToxStrategies report proposed a couple of practical steps to mitigate exposures around eliminating tetrachloroethylene containing products, increasing ventilation in the small engine repair shop. Those were practical recommendations and they make sense but they certainly did not require a quarter million dollar quantitative risk assessment to recognize. Mr. Wilson concluded with a statement that Deputy Chief Eric Bergen and he wrote in his letter to the Commission that ToxStrategies had failed to apply well recognized exposure assessment practices and statistical modeling tools to assess risks associated with exposure to carcinogens. Their analysis cannot be viewed as accurately characterizing those risks.

Commissioner Steiger stated to Mr. Wilson’s very last point that the common practices used in this kind of methodology did not imply that the conclusions and findings that were arrived at were invalid but were really undermined by the techniques that were used. So the question is whether we can fix this study or we need to start over. It sounded like they need to start over. It reminded him of what happens in the legislature where there was a bill that they opposed and were asked what amendments it would take for you to be okay with this. It would require deleting the whole bill and start with something else. It was the same bill, but it was basically starting over and it seemed to be a similar situation where they needed to start over. It would make more sense to do a new RFP with some new specifics about what was needed to make sure that they get everything they need. To get back to the original question, he asked Mr. Wilson to explain in greater detail why not using certain industry standards meant that the findings of this study were something that we could use. He asked Mr. Wilson to just summarize that specific piece. Mr. Wilson replied that the quantitative exposure assessment that was done in the small number of samples taken was the foundation on which they built all of their cancer risk estimates, and conclusions about whether and to what extent fire mechanics are exposed to carcinogens in the workplace. And, as you said, that analysis is just structurally flawed. Cal/OSHA had sent all of the references from the American Industrial Hygiene Association using documents cited by ToxStrategies in their reports to ToxStrategies to demonstrate

what they needed to do to salvage the work they had done. Their response was that they could do that for a large reinstallation of funding. They had a lot of discussion about it at the division side, and I think that your conclusion is correct that there are problems all the way back to the foundation of the risk assessment at the literature review, at the qualitative assessment, and then certainly in the sampling and quantitative methods that need to be revisited. A more robust project and study design needs to be put in place. Mr. Wilson said that would be Cal/OSHA's recommendation as well.

Chair Brady stated that it sounded as if there may have been a number of areas where the original study was not comprehensive enough. He was sensing that there was a request to have a further study drafted and sent out; he had not seen that. It sounds as if there was benefit to critiquing the original study in the hopes of getting a product that is useful or more comprehensive in the future.

Chair Brady stated that he heard Commissioner Kessler's motion and added that it had been seconded. He asked for further comments pertaining to that motion. Commissioner McNally wanted to revisit the motion and make it more concise, and allow Cal/OSHA, the Commission staff, and any Commissioners who want to participate in helping advise and prepare the next RFP, to give them the leeway. He said we might be restricting them with a lot of the parameters and restrictions that were put into that motion. He suggested rejection of this study. And then and at the same time, perhaps with another vote, to direct Cal/OSHA and the staff, and any Commissioners that want to be involved in helping prepare another RFP based upon what we've learned from the inadequacies of this one.

Commissioner Kessler said she heard Commissioner McNally's concern and that she was willing to split the motion to make sure that the first action is the rejection of the study by ToxStrategies and that it was not included in the new RFP to be developed. Commissioner Kessler stated that if they wanted to make that shorter motion, provided that the other aspects that she raised could be included in a second motion, she was willing to do that. She said it's really important to hear from the American Federation of State, County and Municipal Employees (AFSCME) members, the people who originally brought this forward. When she talked about this RFP, she specifically said because of the way the legislation was worded, that it not just be held in Southern California for the study. Her Machinist union had people in Sacramento, San Francisco and other locations. She wants to make sure when we redo this study that we do a statewide analysis for all the people that are doing this kind of repair work with the permission of Commissioner Steiger who seconded the motion to revise the original motion. The original motion was the rejection of the study done by ToxStrategies, that it should not be used as a basis for an analysis about carcinogens within the fire repair environment.

Commissioner Bouma asked Commissioner Kessler if she was willing to let go about who gets selected in the next RFP process and she said she did not know if that was within her purview. If it was going to be an open competitive process that we say they're disallowed from participating, and she asked Executive Officer Enz to comment.

Executive Officer Enz stated that the RFP process had to be open to all, that was the nature of the RFP process, and accept all bids and look at them; not accept but review them. He doubted that ToxStrategies would want to involve themselves in this RFP. But again, he could not speak for them. The Commission would have to review ToxStrategies bid. He would be very diligent about making sure that he looked at credentials and background and other requirements. Commissioner Kessler stated that the motion needed to be then that we just reject the study. So moved. Commissioner

McNally seconded to reject the original study. There were no abstentions. The motion passed.

Chair Brady asked Executive Officer Enz for a further point of clarification. There were other voices that provided feedback pertaining to the original study beyond Cal/OSHA. They could get insight from other parties that could help formulate the RFP. He asked if that was correct. Executive Officer Enz replied absolutely the representatives from AFSCME were at the meeting and it would be a good opportunity for them to weigh in. Chair Brady commented that he would be relying on Executive Officer Enz to work with the various interested parties in shaping an RFP that was comprehensive and thorough. So I'm very appreciative of Mr. Wilson sharing his insight as it pertained to the original study.

Public Comments or Questions

Robert Blink, occupational medicine physician, stated he was part of scientific research in epidemiology of cancer causation. For the members of the Commission and others, some things might be useful to reformulate here. Sounds like the main problem was that there were not enough measurements in order to have a decent focus on what the true levels of exposure are. So specifying that to some degree in the RFP would be helpful. Second, he agreed with Commissioner Kessler that looking at more than a single workplace makes sense if you're trying to generalize to all workers with this kind of exposure. Third, I looked at ToxStrategies' website and there was no physician in their organization. They were discussing human disease, and epidemiologists were wonderful experts and specialists, but one might consider having a physician epidemiologist in the group. When they were analyzing the results of a highly technical report like this the best way to do that is via peer review, and that means publication in a respected journal. He offered them for consideration and did not know if they could be included.

Ms. Alia Griffing stated that she is political legislative director for the American Federation of State County Municipal Employees (AFSCME) in California. AFSCME Local 119 has long suspected that the high cancer rates that they were experiencing in this small Local are likely linked to chemical and carcinogenic exposure during the course of their employment. This was the driving force behind Assembly Bill 1400 in 2019. They were the primary sponsor of this bill to establish this study. From a non-technical standpoint, there are a few things that stood out to them. Many of them have been covered, but once again it was going back to the insufficiency of the sampling. I do want to point out that the consultant declined an offer to come out to an active fire line. The Bobcat Fire campaign was going on in LA County at the time, and by declining the offer they omitted an entire way that their fire mechanics were exposed. They were often sent to active fire lines, sometimes for weeks at a time and without protective equipment. This was a significant error that they were hoping would not be repeated in the future RFP. Additionally, the consultant did not survey AFSCME members as directed in AB 1400, and that was another error that did not meet the legislative direction. Lastly, she wanted to point out that AB 1400 passed both the Assembly and the Senate without any opposing votes. There have been legislative inquiries about the status of the study, the next steps for their fire mechanics, and of offering help. There was legislative interest in this issue, and they had sick and dying members. This study, as mentioned before, would be a first in the nation looking at fire mechanics occupational exposure and risk and they owe it to the legislature. These fire mechanics dealt with cancer diagnosis or death. To get this right, it was critical that the final study used best practices and industry standards, it was comprehensive, and captured all the aspects of the fire mechanics exposure at work and how they were exposed. She appreciated the Commission's actions

and was looking forward to working with them in the future.

Luis del Cid, AFSCME representative of fire mechanics union Local 119, thanked everyone for rejecting the study. He stated that he was a cancer survivor and he has a list of his fellow fire repair mechanics; about half of whom were no longer with them. He stated that Ms. Griffing had already stated much of what he wanted to say. But he did want to emphasize that when ToxStrategies was at their site, they did ask questions regarding what they expected the study to be based on what was written in the law. As Ms. Griffin stated ToxStrategies was invited to an active fire. His deputy chief was actually willing to drive them to the active fire site so they would not feel they were going into a dangerous zone. They were going to have clearance from the command incident Commander, basically an escort, so they could see his fellow mechanics at work at the incident taking place. That would have been the most ideal place for them to have taken these samples with all that material floating around from the fire burning. If you look at the research, the Bobcat Fire data in California was a big fire. Also their mechanics were constantly at the fires and then the equipment comes to our facilities with all that stuff that they pick up at the fires and not just forest fires. They were talking about industrial fires, other types of fires and the stuff that gets on these trucks are what we were exposed to even when we were not at the Fire Zone. These chemicals and other substances they were exposed to in addition to substances they already knew caused cancer due to being a fire mechanic. These included motor oils and greases. He wanted to thank the Commissioners because he was there to represent those that could not be at this meeting. This was a good way to make a right, and they would be glad to continue to work with whoever to get this right. A mechanic was someone that worked with his hands, and that was all they know. They do their job whether they get the proper PPE or not. They are told to go and fix the truck because without that truck they could not put out the fire. He stated that they fix a helicopter because without it they could not put that fire out and they were there and do not complain. They were asking for this study to be done correctly so that they know the full story and can go back to the legislature with the results.

Chair Brady asked if Executive Officer Enz needed a separate motion to act in designing a future RFP for a study. Executive Officer Enz replied that it would be helpful to have some kind of statement so he could have direction from the Commission.

Commissioner McNally was asked to transfer comments he made earlier into a motion. Commissioner McNally made a motion to ask Commission staff, any Commissioners who would like to assist, and Cal/OSHA, to take what was learned about the deficiencies in this last study, and do a statewide, comprehensive study on this topic, and to prepare an RFP along those lines. Chair Brady said that was the motion. Commissioner Kessler said there were many details that need to be included in the way that the RFP was crafted. She would be willing to be one of the Commissioners to work with Cal/OSHA and the DIR staff to help formulate the RFP. Commissioner Kessler stated that she accepted the motion Commissioner McNally put forward. Commissioner Kessler seconded the motion. None opposed. The motion carried.

Chair Brady thanked the Commissioners and appreciated the insights that came from all sources, including the public and Mr. Wilson. Mr. Wilson also thanked the Commission and asked Mr. Enz to reach out to him if he has any additional questions along the way. Chair Brady concluded the meeting.

Adjournment

The meeting was adjourned at 1:45 pm.

Approved:

Martin Brady, Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date