

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

MINUTES OF MEETING

Meeting Day and Date: Thursday, September 18, 1997

Meeting Location: State Department of Consumer Affairs
400 "R" Street
First Floor Auditorium
Sacramento, California

Commission Members Present:

Chairman James J. Hlawek
Commissioner Gerald O'Hara
Commissioner Leonard McLeod
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Robert B. Steinberg
Commissioner Gregory Vach

Commission Members Absent:

Commissioner Darrel "Shorty" Thacker

Commission staff:

Christine Baker, Executive Officer of the Commission

Call to Order

The meeting was called to order at 10:00 a.m. by Chairman James Hlawek.

Minutes of the September 1997 Meeting

Adoption of Minutes

Chairman Hlawek asked for a motion regarding the minutes of the Commission meeting on July 25, 1997, which had been submitted for approval by Christine Baker. A motion to adopt the minutes was made by Commissioner O'Hara and seconded by Commissioner Vach. There were no objections and the motion passed unanimously.

Preliminary Permanent Disability Study Findings

The Commission had contracted with RAND for a study of workers' compensation permanent disability. The following persons from RAND attended the meeting to present their preliminary findings:

Lloyd Dixon, RAND Institute for Social Justice
Rachel Kaganoff Stern, Political Scientist
Mark Peterson, head of the Permanent Disability study
Robert Reville, Labor Economist
Peter Barth, consultant to RAND from the University of Connecticut

Mark Peterson, the project head, introduced the project team. Mr. Peterson disclosed that RAND, as part of its general procedure, had distributed the draft report to several "readers" for comment. Although the readers had been instructed to keep the draft report confidential, there were indications that some had discussed it with some members of the workers' compensation community. Mr. Peterson apologized for that breach of confidentiality.

Ms. Kaganoff Stern described the research tools utilized by RAND in the PD study, including

- Qualitative interviews
- Literature review
- Multistate comparisons
- Stakeholder interviews
- Descriptive statistical analyses
- Wage Loss Study

Minutes of the September 1997 Meeting

Qualitative Interviews

Qualitative reviews were conducted with over 50 participants in California's workers' compensation system. Interviews were conducted such that northern and southern California viewpoints could be distinguished.

Most of the participant groups believe that

- The system is still highly adversarial and very litigious.
- The system appears more complicated in the period after the two sets of reforms than it was prior to the reforms.
- The transactions costs are still very high in the state of California, particularly when compared to the benefits paid out.
- Claims, premium and insurers' costs have decreased in the last seven years.
- Medical costs have been substantially reduced.
- Claims abuse is down -- an opinion shared in both Northern and Southern California. However, there is still opportunity to reduce fraud.
- Unresolved medical liens are increasing as a problem in the state.

In several areas, there was little consensus among the participant groups, particularly about the permanent disability rating process

- Whether or not it is successful.
- Whether determining disability ratings is the right way to manage.
- How this should be handled in an alternative system.

Concern was expressed about

- Variability in certain areas, although there was no consensus as to the negative impact of variability versus the need for flexibility.
- The continued slow pace of the Workers' Compensation Appeals Board.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

- The performance of the DWC Disability Evaluation Unit
- Late and short payments are continuing to plague the workers' compensation system.
- Treating doctors don't know the correct language or the proper way to evaluate workers' compensation claims. Thus, the researchers noted very little support in the state for continuation of the presumption of correctness for the treating physician.

Multistate Comparison

A multistate comparison of Colorado, Oregon, Texas, Washington and Minnesota was made by Professor Peter Barth. These states were selected because they were involved in reforms addressing the same kinds of problems faced by the state of California and were trying innovations that California may want to look at.

These states are concerned with the same core issues -- delays in processing claims, the costs of claims, and fairness/equity issues. All of these states have recently enacted reforms and none of them are currently satisfied where they are. So it's not all that much better anywhere else.

Thirty-eight states (including four of the five states studied) are utilizing the American Medical Association (AMA) Guides. It was noted that there has been a lot of difficulty in implementing newer editions of the AMA guide -- workers' compensation is so politically contentious that many states avoid reopening debate just to implement a new edition of the guide. Most of the states are using the third edition released in 1989; a fourth edition was released in 1994 and a new edition is in process. There is little data to evaluate whether the AMA guides yield ratings which are consistent and reliable. Studies done in Texas and Maryland were limited in scope and are inconclusive.

Four of the five states studied already use some form of multitrack claims evaluation -- scheduled tracks and unscheduled tracks. Some injuries are treated in the system in a simplified manner, other kinds of injuries are handled in a more complicated manner. This concept is being tried in other states as well.

The difficulty in training treating physicians and improving the quality of medical reports is shared by all states. There appears to be no consensus or "miracle cure".

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Commissioner Vach asked, in states which use scheduled and unscheduled tracks, were there guidelines or other assistance for use of the unscheduled track. Professor Barth replied that use of the unscheduled portion was consistently more problematic and that some states provide simple guidelines.

Descriptive Statistical Analyses

Mark Peterson said that the project team tried to pull together existing databases within the State of California dealing with workers' compensation claims and look at the data in different ways.

The USR database of the Workers' Compensation Insurance Rating Bureau (WCIRB) was the principal database used. It contains information about claims received from injured workers of insured employers but lacks data from self-insured employers. The database contains substantial amounts of data about the characteristics of a claim, limited information about the injuries, and information about payments, liabilities and responsibilities under the policies.

The WCAB computer system has the potential of providing more information -- there's limited information about claims but a lot about WCAB processes. The Disability Evaluation Unit (DEU) database was also looked at, primarily the relationship between WCIRB and the DEU.

The project team has observed that there are two major types of injured workers with permanent partial disability -- they present different demands on the system, have different characteristics, but are presently subject to the same PPD process.

Most of the claims involve relatively low ratings, below 25%, also known as "minor" claims. [Special Note: the WCIRB defines "minor" claims as those having ratings of 25% or below. RAND considered claims having ratings at or below 20% to be minor. The general observations are the same.]

These minor claims dominate the system -- they represent 90% of all claims, 80% of all medical benefits, 70% of indemnity benefits, and 60% of legal expenses.

To evaluate the predictability and consistency of ratings under the PDRS, the study team looked at the initial and final permanent disability ratings calculated by claims adjusters and the rating determined by DWC disability evaluators. They found a difference of approximately six points between the DEU rating and the final claims adjuster rating.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

For minor claims, there is a fairly high consistency between the initial and final ratings, but in major claims there is much less. Thus the amount of money that a claim costs can be relatively well-anticipated for a low rated claim.

While higher-rated claims take longer to resolve, it was noted that only less than half of the low-rated claims were resolved within two policy periods -- eighteen to thirty months. Even after five years, ten percent of the low-rated claims are still open.

The project team concluded that the difficulty, the inconsistency, the troubles with the use of the Permanent Disability Rating Schedule (PDRS) are primarily a problem of high-rated claims, not low-rated claims.

While high-rated claims cost more individually, the cost driver in the system is the aggregate of low rated claims.

Wage Loss Study

Robert Reville stated that the purpose of the wage loss study was to measure the amount of earnings loss for PPD claimants. The permanent disability benefit is intended to compensate workers for their loss of ability to compete in the labor market. But since "loss of ability to compete" cannot be measured per se, the project team determined to what extent workers receive lower wages after injury.

The study compared the permanent disability benefits paid to get a sense of the fraction of wage loss compensated. It also looked at the validity of the disability rating by observing whether higher disability ratings have higher wage losses.

After discussing the study methodology whereby a group of injured workers is compared to a control group, Mr. Reville presented the following conclusions from the wage loss study:

- All disability rating categories have significant wage loss.
- Benefits seem inadequate, particularly for the lowest rating categories.
- When equity is measured by whether or not the replacement rate is associated with the proportional wage loss, benefits are not equitable among the low ratings. However, among the higher ratings, the fraction of wage loss compensated is in line with proportional wage loss.
- Employment retention is a critical problem.

Policy Issues

Mr. Peterson went on to describe some policy issues raised by this research:

- There is a mixed picture of ratings in the PPD schedule. Ratings for the minor claims are consistent but, ironically, they are not related to wage loss. Ratings for major claims are inconsistent but are more related to wage loss.
- The permanent disability rating schedule seems to contribute to uncertainty in litigation, particularly for the major injury claims.
- The disability benefits only provide limited recovery for the workers' wage loss, particularly for the low rated disability claims.
- Return to work is a difficult problem, because not only are workers out of work for a significant amount of time, but they often return to work and go back off work again.
- The present PPD schedule seems poorly suited for minor injuries.
- There was unanimity that the WCAB is poorly utilized and is burdened by unnecessary paperwork and issues. It could operate more efficiently if resources were directed more effectively.
- The PPD system does not have enough data.

Policy Recommendations

Based on these issues, Mr. Peterson discussed some policy recommendations.

- Establish a task force with a policy component and a technical working group should to address problems and issues and consider possible reforms. The Commission may be the most appropriate place to do this.
- Understand why there are such significant wage losses at the low rated claims in particular.
- Consider revising the permanent disability rating schedule, both to address consistency problems and to base it on wage loss analysis.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

- Consider an elective "fast track" system to obviate the whole problem of trying to set a rating for the vast majority of claims -- the low rated claims. The goals of this process are to provide injured workers with a certain amount of money, get claims paid faster, get people back to work faster, and reduce whatever animosity or tension exists between workers and their employers because of the continued pursuit of the workers' compensation claim.
- Develop a database of closed workers' compensation claims.
- Consider strategies to get injured workers back to work and keep them at work.
- Establish some system in the Disability Evaluation Unit to routinely check the reliability and consistency of the ratings by the disability evaluators. This would provide a means of training and standardizing the performance of disability evaluators and for identifying where the problems are in the rating schedule, where there is repeatedly an inconsistency in the process.
- Improve the utilization of the medical evaluations. Consider providing the medical report to insurers, the applicants and their representatives, the WCAB by electronic filing. The DWC and the IMC might work together to develop an "expert system" to inform physicians of important issues and relevant terms in workers' compensation.
- Eliminate the presumption of correctness of treating physician reports for those injured workers not electing to take the fast track system.
- Consider electronic filing of claims to expedite litigation in DWC.
- Consider eliminating WCAB review of Compromise and Releases for injured workers represented by an attorney.
- Consider allowing injured workers to receive a lump-sum payment of some portion of their benefits. Currently, this is allowable under a Compromise and Release settlement, but the injured worker may then forego important rights to continuing medical care.

Thoughts on Revising the Permanent Disability Rating Schedule

Mr. Peterson summarized the problems with the current Permanent Disability Rating Schedule (PDRS):

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

- The schedule is hard to deal with, particularly for someone who does not routinely operate in the workers' compensation system.
- The PDRS is excessively complex and not user-friendly.
- PDRS does not meet Legislative mandate to have compensation related to loss of capacity to participate in an open labor market, a wage loss concept.
- The ratings differentiate among claimants in ways that have nothing to do with wage loss.
- Research suggests that the PDRS may be of questionable validity, particularly for low-rated claims.
- Revisions to the PDRS might make it simpler, less contentious and more consistent with the objective of the statutory mandate.

Mr. Peterson went on to say that injured workers who have reduced ability to compete in an open labor market presumably have a bigger wage loss. So, in order to compensate for that reduced ability to compete, one would like to have a schedule -- some method of prediction -- of how much the wage loss actually is. The current schedule in California and other state schedules have been the product of political compromise, are not empirically based, and are not directly related to wage loss. Neither are impairment guidelines, such as the American Medical Association (AMA) guides.

RAND's recommendation is to consider deriving a permanent disability rating schedule empirically by comparing actual wage losses with characteristics such as injuries, age, occupations and so on to develop a predictive model.

Mr. Peterson also indicated that it was important to understand why workers with modest disability ratings would sustain big wage losses. However, this understanding is not a necessary condition of revising the schedule.

To carry out such a revision of the PDRS, Mr. Peterson suggested that the wage loss study be expanded and built upon. The relative wage losses suffered by various disability groups would be examined and then the development of an empirical relationship between injuries and wage loss would be attempted. While there are a number of methodological questions that need to be addressed, he believes that such an analysis could be done.

Mr. Peterson said that such an analysis would depend on getting claims-level data about medical findings and, for that reason, he believes that DWC's efforts to build a claims-level data base is crucial. While the WCIRB database is a very valuable tool, it does not have the data items which are in the PDRS or the AMA guides. The AMA guides would be a wonderful source for identifying the kinds of factors one would want to consider in trying to determine how badly someone is hurt, how much they are impaired. Such data could then be related to wage loss. Information from the Employment Development Department (EDD) is also important and Mr. Peterson suggested that DIR develop a good institutional relationship with EDD.

The "Fast Track" Proposal

Mr. Peterson then turned to a description of the "fast-track" proposal. This system would allow injured workers to choose either to participate in the workers' compensation system as it now exists (or as it might exist after revising the PDRS), or alternatively to look at a list and choose to accept a certain amount of money given a specific type of injury with certain characteristics.

This listing of fixed amounts of money for definable kinds of injury would be based on the historic level of compensation for these kinds of claims. It should be available to most of the low-rated claims, the ones that currently dominate the system. These low-rated claims are most of the claims, they use up most of the money, they use up most of the indemnity costs, they use up most of the resources of the adjusters, they use up most of the resources of the courts, and they take years to resolve.

With the fast-track option, such claims could be resolved much more quickly, to the benefit of the injured worker. The WCAB would then have more resources to deal with the more complicated claims and resolve those more quickly as well.

Mr. Peterson pointed out that currently a lot money is being spent to fight over small differences with most claims. Ironically, these differences do not have much relationship to the injured workers' capacity to compete in the labor market.

The fast-track system would apply only to "admitted" injuries where AOE/COE is not in dispute. However, a summary process to resolve AOE/COE issues is also suggested to subsequently enable those claims to utilize the fast-track system.

The fast-track claim could be submitted on the basis of the treating doctor's evaluation. If the employer objects to the treating doctor's report, the claim would be sent to a kind of "doc in the box" system for a quick review, and then proceed.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Mr. Peterson went on to say that it was important for applicants' attorneys to participate in the fast-track system. Injured workers need to be advised to make learned and informed decisions about their choices between the fast-track and regular systems.

Future Activities

Mr. Peterson stated that there needs to be further testing of the feasibility and more quantitative analyses, requiring additional data, before these recommendations could be implemented. A politically-balanced policy task force and a technical group committed to progress are very important to this endeavor.

Mr. Peterson concluded by saying there is room to improve the workers' compensation permanent disability system in California in very important ways -- ways that would benefit workers, employers, the taxpayers, and the people who work within the system.

Chairman Hlawek thanked Mr. Peterson and the study team for their report and emphasized that this was a preliminary briefing.

The permanent disability study and proposal will be discussed in greater detail at the CHSWC public forum "Summit on Workers' Compensation Permanent Disability" on Friday, November 21, 1997.

Update and Discussion Regarding Commission Studies and Projects

Chairman Hlawek then asked Executive Officer Christine Baker to present her report on the status of Commission studies and projects.

Ms. Baker remarked that the Commission has been very active over the summer months and there a lot of issues to cover.

Permanent Disability Study

The preliminary findings from the Permanent Disability study were just presented by the RAND study team and the report will be issued in October.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Proposal for Continuation of Permanent Disability Project

Ms. Baker reported that Commission staff have developed a proposal

- to systematically process and utilize the recommendations from the RAND study, and
- make specific legislative and administrative recommendations to improve the permanent disability system by
- optimizing the timely delivery of proper benefits to injured workers at the lowest possible cost to employers.

The proposal creates Policy and Technical Advisory Committees, consisting of experts and members of the community, to achieve these objectives. It is expected that this preliminary process will last several months - from October 1997 through June 1998.

Ms. Baker said that the Commission staff and RAND were still working on a draft proposal to determine what specific tasks will be accomplished by RAND and the Policy and Technical advisory committees. The estimate for such a contract is approximately \$150,000.

Ms. Baker suggested that the Commission consider voting to amend the existing contract with RAND and provide flexibility for the Commission Executive Officer to work out the details of the proposal. Commissioner O'Hara so moved, Commissioner Steinberg seconded and the motion passed without objection.

Commission Meeting Schedule

Ms. Baker requested that the scheduled CHSWC meeting in October 1997 be canceled, because of the staff workload generated by the preparation for the upcoming Summit in November and various project advisory committee meetings. Commissioner Rankin so moved, Commissioner McLeod seconded and the motion passed without objection.

Ms. Baker continued by saying that the Commission staff also recommends that no Commission meetings be held in January or February 1998 in order to carry out the continuation of the permanent disability project.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

A draft Commission meeting schedule for 1998 was prepared and included in the Commissioners' information packet. Staff have also coordinated with the Industrial Medical Council to insure that the Commission meeting schedule does not conflict with the IMC meeting schedule for 1998.

Commissioner O'Hara moved that the draft 1998 CHSWC meeting schedule be adopted, Commissioner Vach seconded and the motion passed without objection.

In 1998, the Commission is scheduled to meet on the following Thursdays:

March 12, 1998	Los Angeles
May 14, 1998	Sacramento
July 30, 1998	San Diego
September 10, 1998	Los Angeles
November 12, 1998	Sacramento

PDRS Memorandum of Understanding

Ms. Baker reported that the acting DIR Director and the DWC Administrative Director have signed a Memorandum of Understanding (MOU) which clarifies the Commission's role in future activities to make changes to the Permanent Disability system and schedule.

After some discussion, Commissioner Rankin moved to accept the MOU, amended to provide that if the Permanent Disability Rating Scheduled is revised pursuant to public hearing, the revised PDRS would come back to the Commission for review and approval. Commissioner O'Hara seconded and the motion passed without objection.

Permanent Disability Summit Conference

The Commission will hold its public forum entitled "Summit on Permanent Disability" on Friday, November 21st in South San Francisco.

Letters have been sent to selected members of the workers' compensation community requesting that they or their designees present their views about the RAND study report at the Summit.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

This Summit conference will give the community and the public an opportunity to discuss the findings from the RAND study. Ms. Baker emphasized that the Commission is making every effort to keep the costs to the public at a minimum -- the public will be charged only \$40 to cover the costs of beverage breaks and lunch.

The 1996-97 Commission Annual Report

The draft 1996-97 Commission Annual Report has been sent to the Commission members for review and comment. Ms. Baker indicated that an error in the table of contents in the draft has been corrected.

Commissioner O'Hara moved that the 1996-97 Commission Annual Report be adopted as corrected, Commissioner Steinberg seconded and the motion carried without objection.

Commission Hearing on Anti-Fraud Activities

Draft findings and recommendations from the Commission Hearing on Anti-Fraud Activities in February have been sent to the Commission members. Ms. Baker explained that the revised draft report includes proposed recommendations that have Department of Insurance concurrence.

Commissioner Steinberg moved that the report from the Commission Hearing on Anti-Fraud Activities be adopted, Commissioner Rankin seconded and the motion carried without objection.

Commission Roundtable on DWC Lien Problem Resolution

On June 30, 1997, the Commission held the first meeting of the DWC Lien problem resolution Roundtable. There was much interest in the subject and an additional meeting on August 28 was held to further discuss the issue. A status report of this meeting was included in the Commissioners' information packet.

Lien claimants and the California Applicants' Attorneys Association believe that legislation is not necessary. DWC staff suggest an additional six months of monitoring the lien problem would assist in its resolution.

Ms. Baker noted that, although current backlogs may indeed be eliminated during that six month time span, it is important to determine the level of staff resources

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

necessary to resolve liens after the case in chief has been decided. Commission staff were directed to continue evaluating this situation on an ongoing basis.

The Vocational Rehabilitation Reform Project

Ms. Baker stated that the interim report from the study of the impact of the reform on the Vocational Rehabilitation benefit, issued in July 1997, has been made available to the public and is also accessible on the internet.

Medical-Legal Evaluation Study

Last July, the Commission released the second report from its study of the impact of the Medical/Legal reform on California's workers' compensation program.

The July 1997 report has been made available to the public and is also accessible on the internet. The Medical-Legal study is ongoing.

Incomplete Physician Report Project

The Commission has contracted with UC Berkeley to study what many disability evaluators report as their largest problem, the poor quality of reports that they have to rate. The study is expected to be completed by November 1997.

Workers' Compensation Prototype Information

The Commission contracted with the UC Berkeley Labor Occupational Health Program for the development of prototype instructional written materials and a video on the workers' compensation system. A revised timeline for this project, showing tasks to be done through April 1998, was included in the Commissioners' information packet.

California Study Group on Young Worker Health and Safety

The Commission is funding a statewide task force -- known as the California Study Group on Young Worker Health and Safety -- charged with coordinating strategies to protect young people from work related illness and injury.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Ms. Baker reported that the study group has had several meetings and is working to develop recommendations, which are expected to be issued in December 1997. At its June 1997 meeting, the Commission voted to extend the California Study Group for another year, through December 1988.

Safety and Health Education Video for Young Workers

The Commission has contracted with UCLA Labor Occupational Safety and Health (LOSH) Program for the development of a video and discussion guide on workplace health and safety aimed at adolescent workers. This project has been completed.

The video and guide will be distributed at no cost to all 49 high schools in the Los Angeles Unified School District and will be made available to other school districts upon request. The Commission members will also receive a copy of the video and guide.

Tracking Illegally Uninsured Employers

The Commission has published an Issue Paper on various methodologies to identify employers illegally uninsured for workers' compensation and bring them into compliance.

The pilot projects described in the Issue Paper are underway. In addition, EDD has advised that the recommended language to notify new employers of the requirement for workers' compensation coverage will be included in the next edition of the EDD Employer's Handbook.

Ms. Baker reported that an interagency agreement in the form of a Memorandum of Understanding (MOU) between the DIR and EDD is being developed to facilitate work on the pilot projects.

Industrial Disability Retirement Issue

The Commission is overseeing the development of an issue paper regarding the interaction among industrial disability retirement determinations in various systems .

The Issue Paper is delayed due to other priorities. Staff recommends to defer this Issue Paper until the permanent disability project is completed.

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Interaction of Workers' Compensation and State Disability Insurance

The Commission is overseeing the development of an Issue Paper to address two important issues that have been raised concerning costs imposed on the State Disability Insurance system (SDI) by occupational injuries and illnesses.

The Issue Paper, dealing with the extent to which resources are being shifted from one system to another, is slightly delayed due to data coordination problems with EDD.

Carve-Outs: A Study of Alternative Workers' Compensation Programs

The Commission is carrying out an evaluation of collectively bargained workers' compensation programs in the California construction industry, also known as "carve-outs". Funding for this project is derived exclusively from the Commission's budget. The initial phase of this study is scheduled to be completed in December 1997.

Funding of other Potential Projects

The Workers' Compensation Research Institute and the UCLA LOSH have submitted proposals for additional projects. However, at this time the Commission has allocated its financial and staffing resources to projects in process. Ms. Baker indicated that the Commission may wish to consider these other project proposals in the future.

Other Business/ Public Questions/Comments

There were no additional public comments.

Future Meetings

The Commission's public forum entitled "Summit on Permanent Disability" will be held on Friday, November 21, 1997 at the South San Francisco Conference Center.

The next meeting of the Commission will be held on Thursday, December 18, 1997, at 10 a.m. in the First Floor Hearing Room at the Department of Consumer Affairs at 400 "R" Street in Sacramento..

Commission on Health and Safety and Workers' Compensation

Minutes of the September 1997 Meeting

Adjournment

The meeting was adjourned at 12:45 p.m. by Chairman Hlawek.

Approved:

Respectfully submitted,

for Christine Baker
James J. Hlawek, Chairman Date

Christine Baker
Christine Baker, Executive Officer

Enclosure

Executive Summary of Preliminary PD Study Findings and Recommendations