

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

November 6, 2008

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

In Attendance

Chair Angie Wei

Commissioners Catherine Aguilar, Allen Davenport, Sean McNally, Kristen Schwenkmeyer,
Robert Steinberg, and Darrel "Shorty" Thacker

Executive Officer Christine Baker

Call to Order

Angie Wei, 2008 CHSWC Chair, called the meeting to order at 10:05 a.m.

Chair Wei congratulated Commissioner Aguilar for her re-appointment to the Commission and thanked her for her service.

Minutes from the June 26, 2008 CHSWC Meeting

Chair Wei requested a vote on the Minutes of the previous meeting.

CHSWC Vote

Commissioner Thacker moved to approve the Minutes of the June 26, 2008 meeting, and Commissioner Aguilar seconded. The motion passed unanimously.

Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and Implications for Public Policy

Seth Seabury, RAND

Seth Seabury acknowledged joint funding for the study by the Commission and the National Institute on Safety and Health (NIOSH). The study was motivated by the fact that public safety workers are more likely to be hurt or killed on the job, imposing costs on workers and leading to high workers' compensation and disability retirement costs for employers. Recently, a number of issues have been raised about possible abuse of disability retirement systems for public safety employees, motivating efforts to improve health and safety and reduce injuries for these workers. The unique set of risks for public safety works suggests a need for specialized safety interventions. The study looked at: what kinds of injuries affect public safety employers, particularly what kind of injuries with modifiable risk factors; how these injuries differ from injuries suffered by other workers, public and private; and what strategies can be taken to reduce injury and disability rates without hampering the ability of public safety workers to do their job.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Mr. Seabury reported that one finding from the study is that existing safety and health initiatives are hampered by problems with the monitoring of nonfatal injuries and illnesses for public safety employees. First, he stated that there are significant gaps in available data on nonfatal injury risks for public safety employees. In particular, there is limited data that break down injuries along essential categories such as type of injury and the circumstances surrounding injury. Data are better for firefighters and better for fatal injuries for all departments. Commissioner Davenport asked if there is more or less available data than for other occupations and industries, and Mr. Seabury responded that there is less, because there are less reporting requirements of nonfatal injuries for public employers.

Mr. Seabury stated that the second key problem with data on health and safety risks for public safety employees is that the reported rates of injury, death and disability can be influenced by institutional factors and compensation mechanisms. As an example, he discussed the impact of presumptions that heart attacks for firefighters are job-related. For many firefighters and police officers, heart disease and other chronic illnesses are presumed to be job-related, while in most other occupations, they are not presumed to be job-related. Reported work-related fatality rates for firefighters are very high if heart attacks and strokes are included, but the rates drop considerably if heart attacks and strokes are excluded. The rates including heart attacks and strokes help generate the perception that heart disease is the leading occupational health risk for firefighters.

Mr. Seabury explained that another of the study goals was to get an operational view point on risks and which safety interventions would be effective. To do this, in-depth discussions were held with members of eight California agencies, including fire/EMS, police and corrections. He reported that a number of possible interventions were raised as having the ability to improve safety: improved monitoring and analyzing data; additional training; improved command structure; and equipment improvements. However, views on how to prioritize the safety interventions and health promotion were mixed. There were differences among fire and police, with fire placing a high priority on interventions that reduce job-related heart disease. There was general concern over the potential high cost of many interventions, especially equipment upgrades or training.

Mr. Seabury stated that another study goal, to compare health outcomes of public safety and non-public safety workers, was done in two steps. National surveys were used to compare the frequency of multiple adverse health outcomes: disability, chronic health, injuries, obesity and smoking. In addition, administrative data from 29 municipal agencies in California were used to compare claims for work-related disability. The surveys were not focused on work-relatedness, so the incidence of adverse health outcomes should not be driven by differences in injury compensation (as could be the case with workers' compensation data). On the other hand, the administrative data are better for studying patterns in work-related disability claims because of increased sample sizes for public safety employees. The study found that public safety workers appear significantly healthier overall than non-public safety workers. They are less likely than non-public safety workers to report being disabled, having poor or fair health, having a functional limitation, displaying symptoms of mental illness, and smoking. The evidence supporting a presumption that heart disease is job-related is at best mixed. Public safety workers are more likely to be overweight or obese. However, while there is some elevation of heart disease risk at older ages, the overall finding was statistically weak.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Mr. Seabury stated that the administrative data indicate that despite their overall good health, police officers and firefighters are significantly more likely to experience a work-related disability than other public employees. This effect was especially pronounced at older ages; injuries were significantly more likely to result in a permanent disability for older public safety workers. For non-public safety workers, an injury at older ages was no more likely to result in a permanent disability. This suggests that the physical nature of public safety work could make it more difficult for older public safety workers to overcome an injury, and improving their options for modified work at older ages may help reduce disability retirement costs.

Mr. Seabury also discussed the study's implications for the issue of disability retirement abuse. He pointed out that recent scandals have raised concerns that disability retirement systems are subject to systemic abuse, known as "Chief's Disease." This issue could not be addressed directly with the study data, but the study did not find the same high rates of disability and disability retirement in the study sample that have been reported in the scandals. Mr. Seabury concluded by summarizing the study findings and arguing in favor of re-prioritizing existing safety and health initiatives. He pointed out that most widespread efforts center on health and wellness programs designed to reduce the high perceived risk of job-related heart disease. However, he pointed out that this perceived risk is likely influenced by the presumptions of job-relatedness for firefighter heart disease. The study findings suggest that more work is needed to establish whether there truly is a causal effect of public safety work on heart disease risk and whether current health and wellness interventions and health and wellness programs will help reduce nonfatal injuries (the key driver of employer costs).

Questions from Commissioners

Commissioner Aguilar asked Mr. Seabury whether the administrative data the study used could identify whether 4850 payments were reported as indemnity payments or wages. Mr. Seabury responded that 4850 payments could not be separately identified in the data. However, this did not affect the study findings, since indemnity payments were not used in the analyses. Commissioner Aguilar asked if the disability discussed in the study is primarily permanent disability, and Mr. Seabury responded that it is.

Commissioner Davenport stated that the conclusions of the study seemed to be that some overweight people are doing physically demanding things they may not be able to do, and he asked whether that was a conclusion being drawn in the field. Mr. Seabury agreed that this was a possibility but noted that the focus discussions did not directly address this issue. Commissioner Aguilar stated that the aging workforce is a factor. Mr. Seabury explained that the issue of obesity came up in discussions; firefighters were concerned about obesity and there are more programs for health and wellness for firefighters, while police often argued that police employees keep themselves in shape. Commissioner Davenport asked if there are any data to corroborate that, and Mr. Seabury responded that the data include both police and fire and indicated that the group as a whole were more likely to be overweight (but there was insufficient sample to differentiate). Commissioner Davenport stated that he has the impression there is a relationship between obesity and heart disease, and asked whether there was an attempt to treat obesity through exercise. Mr. Seabury acknowledged that health and wellness programs do target obesity and could help reduce injuries as a result. He explained that the overall evidence was mixed: risk factors were higher (obesity) or lower (smoking), while there was only a weak indication of elevated heart disease risk. He argued that the presumptions and current health and

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

safety priorities are not necessarily wrong, but that they are not based on strong empirical evidence.

Commissioner Davenport asked whether the “Chief’s disease” that was discovered in the California Highway Patrol (CHP) was not replicated in other municipalities. Mr. Seabury responded that the study did not find evidence of the high rates of workers’ compensation claims leading up to disability retirement, and the disability retirement rates in the study sample were much smaller than those for CHP. Commissioner Davenport asked if the study made a statistical comparison with the highway patrol and other municipalities, and Dr. Seabury responded that they used data reported by the highway patrol and compared that to the data from the previous study, which was older data from a different time period. The study used municipal data on injuries from 1991 to 1995 and looked at retirement rates for two years after that period. This would suggest that either it is less of a problem in municipalities or a more recent phenomenon. Commissioner Davenport asked if there was something that happened with the time periods studied that would indicate that the difference in time periods would have had a causal effect. Mr. Seabury responded that the CHP report suggested that the disability retirement claims appeared to peak in the early 2000s. Commissioner Davenport stated that in policy discussions, the point has been made that firefighters are more exposed than police to toxic fumes. He asked if there were distinguishing characteristics between firefighters and police. Mr. Seabury responded that there are definitely occupational factors that differ, but noted that across states there is “clumping” of benefits for police and fire. In particular, they often receive the same presumptions.

Commissioner Aguilar stated that a lot of firehouses have outlawed smoking and she asked whether there was any discussion in the focus groups about moving from a sedentary state to rapid activity. Mr. Seabury described that there was discussion of this as a contributing factor, including when the change of activity was happening during the night when asleep. He stated that this might be important but it might be a non-modifiable risk factor.

Commissioner Steinberg asked if the study was requested by the Assembly Insurance Committee, and he asked what the motivation for that request was. Ms. Baker responded that the Assembly Chair of Insurance requested the study and that at the time, there were reports of “Chief’s disease.” Commissioner Steinberg stated that there does not seem to be any evidence “Chief’s disease” as a result of the study. Mr. Seabury clarified that this was true of the study population, indicating that while “Chief’s disease” may exist in particular departments, it is not necessarily widespread throughout the State.

Commissioner Wei stated that the final report was an action item to consider for circulation and posting. She opened it up for public comment. There was no public comment.

CHSWC Vote

Commissioner McNally moved to approve for final release and posting the report on “Occupational Safety and Health for Public Safety Employees: Assessing the Evidence and the Implications for Public Policy,” and Commissioner Thacker seconded. The motion passed unanimously.

Chair Wei asked if the report would be submitted to former Chair of the Assembly Insurance

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Committee Vargas who requested the study, and Ms. Baker responded that it would be submitted to the current chair.

Return-to-Work Study Update

Seth Seabury, RAND

Mr. Seabury began by providing background and motivation for the return-to-work study. He noted that past RAND studies for CHSWC have indicated that permanently disabled workers in California had poorer return-to-work rates than other disabled workers in other states. Poor return-to-work rates lead to higher earnings losses, which explain why past RAND studies questioned the adequacy of California's permanent partial disability (PPD) benefits. He then noted that recent reforms have dramatically changed the workers' compensation system, and heightened the importance of return to work as a policy goal. After the enactment of Senate Bill (SB) 899, permanent disability (PD) benefits have fallen by over 50%, according to some estimates. On the other hand, SB 899 and other reforms included provisions intended to improve return to work: two tier PD benefit ("bump-up bump-down") in SB 899; a subsidy program to pay for workplace modifications by small businesses; and the return-to-work voucher program to replace vocational rehabilitation. While the reduction in disability benefits would worsen the adequacy of compensation, this could be offset if the policies also led to improved return to work and lower earnings losses. Thus, evaluating the effects of these policies on return to work is essential to understanding the impact of the reforms on disabled workers in California. Mr. Seabury stated that the study, which builds off previous RAND studies, will examine return to work since the adoption of the reforms of SB 899 and will assess the net impact on income replacement for disabled workers. Changes in the Fair Employment and Housing Act (FEHA) will also be assessed.

Mr. Seabury described the study's findings about the impact of employer return-to-work programs on the duration of work-injury outcomes. He pointed out that the policies designed to improve return to work will only be successful if employer-based efforts are truly effective. While this has been demonstrated somewhat with focused, targeted interventions, there is lack of systematic evidence on the effectiveness of employer disability management programs. Mr. Seabury described the study sample, which is made up of data from a RAND survey of 40 large, private, self-insured employers in California prior to the recent reforms. The survey collected detailed information about efforts by employers to improve return to work, and the information was matched to data on return to work for injured workers. He reported that the policies led to a noticeable improvement in return to work for injured workers: conservative estimates suggest a reduction of 1-3 weeks in time out of work and less conservative estimates suggest a reduction of up to 8 weeks. The results indicated that such policies are cost-effective for large firms with high workers' compensation costs, but are not necessarily cost-effective for smaller firms. As a result, the recent reforms will likely only have a significant effect if they offset enough of the program costs for smaller firms to make it worthwhile for them to adopt an effective return-to-work program.

Chair Wei asked about an example of what is included in the cost of return-to-work policies, and Mr. Seabury responded that this could include such costs as hiring full-time disability management personnel, having a retraining program, or having onsite medical personnel. Chair

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Wei asked how the cost could be up to \$800,000 per year, as was reported in the data, and Mr. Seabury responded that this was driven by the larger employers with many injured workers. He stated that while the data were able to provide insights on the current problem, further information would be needed to truly understand the cost drivers reported, and in particular, it was difficult to estimate how the program costs would vary across different employers.

Chair Wei stated that cost-effectiveness would be the crux of the decision for employers and asked whether there would be a comparison of factors between what constitutes a policy and what constitutes savings. Mr. Seabury responded that the study would provide a range of different options of cost estimates. Chair Wei stated that there could be tendency of employers to over-report on what they are spending on a return-to-work program. Mr. Seabury acknowledged that this is an important point, and responded that the study would highlight the fact that there are a number of other limitations in the cost-savings estimates (e.g., loss time, productivity , re-hiring and retraining), but he emphasized again that the data represent an advance over previous studies, even though additional questions remained..

Mr. Seabury stated that due to the helpful suggestions of the Commission at a previous meeting, the study would also look at whether recent changes to FEHA have affected the return to work of workers' compensation claimants in California. Assembly Bill (AB) 2222, which was a major strengthening of FEHA, went into effect in 2002, several years prior to SB 899. Mr. Seabury stated that there are potential interactions between FEHA and workers' compensation, which could affect the incentives and ability of employers to bring injured workers back to work. He described how FEHA affects disabled workers, highlighting the fact that FEHA requires employers to reasonably accommodate employees with disabilities to perform essential job functions. AB 2222 included numerous changes that ultimately made it easier for disabled workers to file a claim. If the threat of a FEHA claim provides incentives for employers to retain disabled workers, then AB 2222 could have led to improvements in return to work rates for workers' compensation claimants in California. Mr. Seabury explained that evaluating the effects of SB 899 on return to work is complicated because the changes to FEHA predate SB 899, so part or all of any changes in return-to-work rates since SB 899 could be attributable to changes in FEHA. To illustrate this, Mr. Seabury presented data on the number of FEHA claims from 1996 through 2005. The data showed that the number of claims alleging disability discrimination rose significantly more than other discrimination claims after 2002. The data also indicated that this increase was driven mostly by increases in allegations of refusal to accommodate, which would have been most affected by AB 2222.

Chair Wei asked what the number of claims in 1996 was, and Mr. Seabury responded that the initial claims were in a range from 1,500 to 2,000. Mr. Davenport asked if these were settled claims, and Mr. Seabury responded that they were initial claims only. Chair Wei asked for clarification about the percent changes reported in the figure, and Mr. Seabury responded that a 1 in the figure indicated a 100% increase.

Mr. Seabury then provided an update on the progress of the earnings loss and return-to-work estimates. He stated that the study will use a matching procedure to estimate earnings loss and return-to-work outcomes similar to past RAND studies for the Commission: data on injured workers will be matched to data on wages; injured workers will be matched to "similar" uninjured workers based on pre-injury wages; and the difference between the wages and employment of matched uninjured workers and their injured counterparts will be used to

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

estimate the change in employment and earnings resulting from the injury. The study will evaluate whether or not there are any changes in the estimated return-to-work rates and earnings losses that correspond to the dates of policy changes in California (i.e., SB 899 or AB 2222). Mr. Seabury stated that the study will also seek to identify whether any changes in return-to-work rates varied by important factors such as type of injury, injuries with and without PPD, firm size and insurance status. The study will also consider differences in return to the at-injury employer versus any return to work. It will also examine whether the percent of injuries receiving PPD benefits changed after the adoption of SB 899. Mr. Seabury stated that enough time has lapsed so that some information on post-injury earnings is available for workers injured after SB 899 and after the changes to FEHA. He reported that the matching is underway for data on injuries reported to the Workers' Compensation Insurance Rating Bureau (WCIRB) data. Data will also be matched for injuries reported to the Disability Evaluation Unit (DEU) and to claims for Social Security Disability Insurance (SSDI). Earnings loss estimates are being generated for these data, and the study findings are expected in the summer of 2009.

Questions from Commissioners

Commissioner Aguilar asked whether training for a new job with a different employer would satisfy the FEHA requirement. Mr. Seabury responded that his impression was that the interactive process would be involved even with another employer, but that this was a point that would require further research to clarify. Commissioner McNally stated that it might be an overstatement of the law to state that it requires employers to accommodate injured workers, and that the law requires a good faith effort which is what the interactive process is about.

Commissioner Wei asked if RAND is using data or the same methodology of the Division of Workers' Compensation (DWC) 2007 study on return-to-work rates, and Mr. Seabury responded that the study was using similar methods of matching data, but his impression was that the studies were not using the same data. Chair Wei then asked if the study would be able to quantify earnings losses as well as return-to-work rates, and Mr. Seabury responded that both would be presented. Chair Wei stated that this could be an important study for both return-to-work rates and income-replacement policies. Mr. Seabury stated that the study would evaluate the impact of the reforms on income replacement, and noted that return to work has become such an important issue in part because of its impact on both earnings losses and income replacement.

Commissioner McNally stated that the study does not seem to discuss the differences between the workers' compensation return-to-work system versus the FEHA return-to-work system. The FEHA interactive process requires that the employer ask injured workers if they agree with the doctor's opinion and if they can do the job with the accommodations being made, and if they feel they cannot, they need to go back to the doctor and find out if there is a different assessment of what the injured worker can and cannot do. Commissioner McNally stated that it would be important to integrate that type of analysis in the study. The workers' compensation return-to-work system has more restrictions than the FEHA system. It would be easier to evaluate the workers' compensation return-to-work success rate with the non-industrial success rate and thereby shed some light on how the more open-ended FEHA process is working. Mr. Seabury responded that the study will consider differences between the two systems, but that the focus was more on how the two systems interacted and how this affects workers' compensation claimants. For example, an area of interest for the study is the impact of the FEHA interactive process on disability determinations under workers' compensation. Commissioner McNally

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

stated that workers' compensation injuries are incorporated under the FEHA process, and Mr. Seabury responded that that would be an important consideration. Commissioner Aguilar commented that the two processes are not overlapping each other very well at this time. Mr. Seabury indicated that these process differences and their implications would be a good idea to analyze qualitatively as the study progresses.

Commissioner Aguilar asked about whether it would be possible to assess how effective the "bump-up bump-down" benefit is. She stated that there has been a lot of confusion about that benefit. There is no neutral position; it is either an up or down change, even if the injured worker voluntarily wants to leave the job. Mr. Seabury responded that identifying the use of the "bump-up bump-down" benefit could be difficult to track in the data. While the benefit is not specifically indicated in the data, the study will explore how often indemnity benefits appear 15% higher or lower for a given rating. Nonetheless, while it may not be possible to assess quantitatively, the study will explore the issue qualitatively through interviews and discussions with stakeholders. Commissioner Aguilar asked if the study will take into account that there was not a lot of dissemination of information about the incentive program for small businesses and the incentive program was not being used. Chair Wei asked if the program has been shut down, and Ms. Baker responded that it has been extended for a year with the budget, and the Administrative Director has asked requested that the Commission evaluate that return-to-work program.

Ms. Baker asked how the study would address the self-insured issue and whether there can be a parallel assessment of this study versus the previous study. Mr. Seabury responded that information on claims from self-insured employers is available from the DEU, which will provide information on claims from a larger and more representative sample of employers.

Chair Wei stated that this was not an item for action and she would not open the discussion for public comments. She stated that she would ask that there be further discussion of the study methodology and findings before the study goes out to print.

Quality Management and Job Quality: How the ISO 9001 Standard for Quality Management Systems Affects Employees and Employers

David Levine, Haas Business School, UC Berkeley

David Levine stated that he and Mike Toeffel, Harvard Business School, studied the effects of the ISO 90001 standard for quality management systems on employees and employers. ISO 9000 quality programs, which are very popular in California and require that quality problems be tracked and fixed, were likely to be a good complement to safety and health programs. There were some examples in other states of taking the quality program standards and applying them to safety and health programs. There have also been some concerns that quality standards are improving product quality but not necessarily improving workers' health and safety.

Mr. Levine stated that the study linked data on businesses in California that have the ISO 9000 quality programs with workers' compensation data on injury rates and injury costs. Other data from Dun & Bradstreet and WCIRB about survival of the firm indicate that the companies with quality program data do have better survival rates, as well as more jobs and higher salaries. At the same time, the data do not show any increase in injuries, especially not in repetitive motion

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

injuries as compared to similar workplaces. All findings are detailed in the report.

Questions from Commissioners

Commissioner Davenport asked about the conclusion of the study that doctors are more likely not to report injuries in workers' compensation while at the same time the study did not find any difference in cost. Mr. Levine responded that they found one result that was significant but that was not related enough to be a robust finding. Commissioner Davenport asked if there was any connection between what workers were doing and how they were reporting injuries. Mr. Levine responded that they expected to see an increase in reporting of non-serious injuries, but the data did not support that.

Commissioner Davenport then asked how whether an increase in quality and no reporting of injuries seems odd, and Mr. Levine responded that the main result of the study is that ISO 9000 quality certification does not affect workplace health and safety. Commissioner Aguilar stated that the study did indicate that there was longer survival for those firms using ISO 9000 quality programs, and Mr. Levine responded that that is good for employers and workers, but on safety and health issues, there was no significant effect.

Chair Wei stated that this is an action item and she would entertain a motion to approve the final release and posting of the report.

CHSWC Vote

Commissioner Aguilar moved to approve the final release and posting of the report "Quality Management and Job Quality: How the ISO 9001 Standard for Quality Management System Affects Employees and Employers," and Commissioner Davenport seconded. The motion passed unanimously.

State Disability Insurance

Frank Neuhauser, SRC, UC Berkeley

Frank Neuhauser stated that California is one of five jurisdictions (six, if Puerto Rico is included) that has a near universal non-occupational disability program which covers the same workers that are covered by workers' compensation. California is the first jurisdiction to make these data available at the individual level for researchers to use. California is also the only state that has a paid Family Leave Act in conjunction with its State Disability Insurance (SDI) program.

Mr. Neuhauser stated that because the SDI and workers' compensation programs are very similar at the level of the benefits paid, with temporary disability (TD) payments and SDI compensation for frequently similar kinds of conditions covered, there is a concern that one of these programs might be subsidizing the other. Mr. Neuhauser stated that they might find that conditions that should be reported on the occupational side are being reported on the non-occupational side, i.e., the SDI program. Or, it might be that the non-occupational conditions are being reported on the occupational side, because the benefits are more generous. Mr. Neuhauser stated that secondarily, if misreporting in these two systems is identified, there are solutions to solving this problem that might offer benefits to both employers and workers. Workers' compensation, which

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

is entirely paid for by employers, and SDI, which is entirely funded by workers, are meant to be separate programs.

Mr. Neuhauser stated in summarizing the findings that 13% of injury and illness claims in the SDI system should be reported to the occupational system. He stated that this is about 7.5% of illnesses reported and about 21% of claims for injury; this represents about 10% of employees' contributions to SDI, i.e., about a \$400 million subsidy from SDI to workers' compensation, from workers to employers.

Mr. Neuhauser also stated that he would argue that the much higher administrative costs observed in workers' compensation for delivering a program like TD may offer opportunities to combine these two programs into an integrated benefit and save employers as much as \$750 million to several billion dollars a year, while allowing employees to reduce what they pay for occupational disability by \$400 million dollars a year. He stated that even though the subsidy to employers and workers may be eliminated, employers could still pay less for their contribution to occupational conditions.

Mr. Neuhauser stated how the direction and size of misreporting between these two systems could be identified. If the assumption is that both systems accurately sort conditions, the frequency with which a condition occurs on the non-occupational side should not be related to the frequency with which occurs on the occupational side. Incidence rates in workers' compensation should not be related to non-occupational incidence rates. The method requires that we control for differences in the characteristics, like age or gender, of workers in different occupations that might affect their probability of being injured or falling ill.

Mr. Neuhauser stated that if there is a relationship between occupational incidence rates that would indicate a subsidy of one system by the other. For example, if it is a positive relationship, then it could be said that occupational conditions (injuries) were being reported in SD and SDI is subsidizing workers' compensation. He stated if a negative relationship is found to exist, higher occupational incidence rates in industries associated with lower non-occupational incidence in SDI, then it would imply that the subsidy is going in the opposite direction, or SDI injuries being reported in workers' compensation. He stated that the latter (the negative relationship) is the direction expected to be seen in the study.

Mr. Neuhauser stated that one might think that in occupations where one might expect workers to have an occupational condition, that one would observe more commonly that non-occupational conditions are defined as occupational, a negative correlation. However, the opposite was observed.

Mr. Neuhauser stated that he developed the non-occupational disability rates from the SDI system. There is a "single client file," which is similar to unemployment insurance – everyone that receives benefits through SDI is in this file, it reports benefits and characteristics of the worker, the industry, and it can be tied to the employer; industry-level employment data came from EDD for each of the industries found in the SDI file. He stated that they developed the occupational injury and illness rates from Bureau of Labor Statistics (BLS) data for California, again reported by industry.

Mr. Neuhauser stated that the population of workers in one industry may not be identical to the population in another industry. For example, for a population of workers who are younger, more male and more likely to be a certain ethnicity, this could affect their non-occupational injury

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

rates. He stated that they controlled for these characteristics. The scatter chart between incidence rates of occupational and non-occupational conditions for injuries, illnesses and both combined indicate a positive relationship going from SDI to workers' compensation – the conditions reported in SDI would more accurately be reported in the workers' compensation system. He stated that to measure the extent of the problem they use regression to control for other characteristics.

Mr. Neuhauser stated that the results show that for every illness reported in workers' compensation, two illnesses that are occupational are being reported in SDI. There are very few illnesses reported in workers' compensation, so this statistic may not be surprising, but it is a huge effect. About two-thirds of occupational illnesses are probably being reported as non-occupational and are being paid for by SDI. Overall, about 20% of occupational conditions are being reported in the SDI system as opposed to the workers' compensation system.

On the SDI side, about 7.5% of the illnesses paid for by the SDI system would more accurately be paid for under workers' compensation; about 21% of injuries in the SDI system would more accurately be paid for under workers' compensation. Or, about 13% of claims observed in SDI for injuries and illnesses are more accurately occupational, although identifying which ones are occupational is probably impossible. That represents 9-10% of employee contributions, excluding pregnancies and family leave. For workers, that's about \$400 million in contributions.

Mr. Neuhauser stated if the two benefits were integrated, three policy goals could be accomplished: (1) the employee subsidy to workers' compensation could be eliminated; (2) the cost to workers of their non-occupational disabilities could be reduced by eliminating the subsidy; and (3) employers' total cost on the occupational could be reduced as well.

Mr. Neuhauser stated that the estimated cost of delivering \$1 of direct temporary disability (TD) benefits in workers' compensation ranged from between \$0.80 and \$2.42. He stated on the SDI side, the estimated cost of delivering \$1 benefits was about \$0.06. He stated that these were very different administrative costs. If the two benefits were integrated and the administrative costs of SDI could be applied to the workers' compensation benefit, workers' would pay about \$400 million less. Admittedly, it would be politically difficult to convince employers to pay \$400 million of the cost of SDI, a worker-supported program. However, if employers could pay for delivery of TD at an overhead similar to SDI (6%) rather than workers' compensation (at least 80%), they could save substantially more than the \$400 million that should be covered by workers' compensation instead of SDI. At the 80% administrative cost under workers' compensation, \$1.5 billion of benefits cost about \$2.8 billion, At SDI overhead (6%), the same \$1.5 billion would cost only \$1.6 billion to deliver, a saving of 41.2 billion. If employers also paid the current \$400 million subsidy currently covered by workers, employers would still save at least \$750 million. This would all be possible if TD was covered under SDI and that process was eliminated from workers' compensation. If the administrative costs in workers' compensation continue to reflect the very high administrative costs observed since reform, the savings would be \$3.2 billion annually.

Mr. Neuhauser stated that there are still differences between SDI and workers' compensation; they are not large, but they are different. Most important, workers' compensation pays benefits up to 104 weeks, and SDI pays for up to 52 weeks. SDI minimum and maximum benefits are the same, but SDI pays 60% of the average weekly wage whereas workers' compensation pays

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

66.7% of the average weekly wage up to the maximums. SDI has eligibility requirements that do not exist under workers' compensation; for example, full benefits are paid from the first day of work in workers' compensation, whereas in SDI, a bank has to be built up in one's account, and benefits might become exhausted before returning to work, depending on how long one has been paying into SDI. About 6-7% of workers in workers' compensation that have claims that exceed 365 days of TD, and about 3.9% of workers in SDI run out of benefits before they return to work or reach the 365 day maximum.

Mr. Neuhauser stated that overall, the differences between the two systems are not that large. The potential for savings does exist if the systems were integrated. Money could be saved on the administration side. Workers are likely subsidizing the workers' compensation system, and it is not likely that the misreported injuries and illnesses in the SDI system can be identified. Back injuries are difficult to define as occupational or non-occupational, and it may not be worth the effort. Noteworthy is that a substantial fraction of the administrative costs in SDI, even though low, is spent to fight the issue of compensability by EDD against employers or insurance companies. These are often in dispute and occupy a substantial part of the administrative costs in SDI.

Questions from Commissioners

Commissioner McNally asked how the two systems would be integrated into SDI when the duration of payments is 53 weeks in SDI and 104 weeks in workers' compensation. Mr. Neuhauser responded that one method of integration, while maintaining the distinction between one and two years for duration of disability benefits, is to pay SDI disability benefits for a year, and if the claim is occupational, then the worker can ask for up to an additional year. Those two tracks would not be defined until that small fraction of workers reached a year. Commissioner Aguilar asked whether it would still be necessary to determine compensability. Mr. Neuhauser responded that it would still need to be determined and that that decision is probably already being made on the workers' compensation side, or being argued. Commissioner Davenport stated the decision will still need to be made because of medical care. Mr. Neuhauser responded that was true but the issue of delivering TD benefits could be moved out of that equation.

Commissioner McNally asked how the issue of the percentage of wages would be handled. Mr. Neuhauser responded that it would be a policy question as to whether the benefits should be paid differentially. He stated that that might be a clumsy process and that it is simple to think about the small fraction of workers who have benefits lasting more than one year and asking at the end of the year for more benefits. It is more complex to argue for a different rate for every case, especially the ones that have not yet been decided yet. The benefit rates used to be significantly more different; over time, they have become more comparable and the differences are now small, though still not insignificant.

Commissioner McNally asked how the SDI rate is adjusted or indexed. Mr. Neuhauser responded that the maximum and minimum SDI tracks workers' compensation. Commissioner Davenport stated that given the additional costs that have gone into the disability system with the Family Leave, the difference is very small. Mr. Neuhauser stated that the payment rate was reduced because the system was overfunded.

Commissioner Wei stated that the SDI fund has \$4 billion in the fund, as opposed to the Unemployment Insurance (UI) Fund, for example, which is funded by employers on a much

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

smaller wage base. The UI Fund wage base is at \$7,000, and SDI is at \$86,000. The UI Fund is broke, and the State is going to have to borrow from the federal government. She stated that it is a concern that while the UI Fund is broke, people will start looking for a big pot of money at SDI and want to use it for other things. She stated that there are interesting options, but that they should move cautiously in terms of how to set up an integrated system. She stated that it was outrageous to look at those administrative costs on the TD and that they should integrate or move to an exclusive state fund.

Commissioner Aguilar stated the move would be to a monopolistic fund. Mr. Neuhauser stated that Washington State would argue that they have substantially low administrative costs, and he stated that it was probably true. However, he stated that he is not suggesting getting rid of private insurers in California, but it might be possible to move this particular benefit to the exclusive state system. California is unusual, with the exception of New York, in that it has a non-occupational disability system that is near universal and that matches the same set of workers that are covered by UI. Integration would not be practical in another state without a current non-occupational system. It is reasonably practical in California, given that the administrative structure is in place and it has worked successfully for the past 40 years.

Commissioner Wei stated that the draft report was an action item to consider for feedback and comment. She opened the discussion for public comment. There was no public comment.

CHSWC Vote

Commissioner Davenport moved to approve for circulation and comment the draft report on State Disability Insurance, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Evaluating the WCIRB Proposed Pure Premium Increase

Frank Neuhauser, SRC, UC Berkeley

Mr. Neuhauser stated that he presented the same information to the Department of Insurance (CDI) at its Rate Hearing. It is not exactly a Commission study, as there was no ability to contract at the time of the study, but Commission staff provided assistance in preparing some of the information for the rate hearing. He stated that any opinions and mistakes are his.

Mr. Neuhauser stated that the Rating Bureau proposed a 16% increase to the pure premium rates that eventually became 16.4%. He stated that he felt that these increases were somewhat high, given the direction of current costs and current premiums. He stated he did some work with the assistance of Commission staff, and made some alternative estimates. His estimates of the frequency impact on future rates reduced estimated pure premium rates 5.8%. He stated he felt that the indemnity increases projected by the Workers' Compensation Insurance Rating Bureau (WCIRB) were 0.6% too high. WCIRB's estimates due to the loss adjustment expense impact were about 2.8% too high. He stated that these differences were multiplicative rather than additive, meaning the estimated increase should be at least 10.4% lower, based on his figures. Looking at the frequency trend, WCIRB estimates that the impact of frequency declines would be 2% per year in terms of indemnity claims. Mr. Neuhauser stated that his argument is closer to

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

5% per year, which is consistent with long-term trends. He stated that his number has the impact of reducing the proposed pure premium rate of about 5.8% below what WCIRB recommends.

Mr. Neuhauser stated that this is just one look at some of the trends seen in frequency. In WCIRB 15-year annual year trend data for indemnity claims, there is a 4.9% decline. Since 2000, it is about an 8.9% decline, but perhaps the long-term trend is more reliable. Bureau of Labor Statistics trends since 2000, show that all claims are down about 4.9%; claims with days away from work are more consistent with indemnity claims and are down about 6.7%. Workers' Compensation Information System (WCIS) data show a downward trend of about 5.9% in claim rates, even if claim reporting might be getting better. Hospital discharge data for emergency room business, paid for by workers' compensation, sees a decline of 7.5% on an annual rate over the three years that data were collected. All of these figures would argue for a lower rate.

Mr. Neuhauser stated that he also presented information that suggested that WCIRB's estimate on an annual basis of the frequency change on indemnity claims year-to-year and the actual change since 2000 has been off 10 percentage points on average, and it has always been on the low side. That is, they always underestimate the decline in frequency, which is an unusual circumstance. When you are estimating, you should sometimes be high, and sometimes low; you should not consistently be low, and you should never be consistently low by 10 percentage points on year-to-year estimates of this kind. Commissioner Davenport asked if WCIRB was consistently overcharging people 10%. Mr. Neuhauser stated that they are setting pure premium rates for the following year based on an estimate that involves an overestimation of the frequency of claims by an average of 10%. He clarified that this is for the recommended pure premium rate and that what insurers actually do is another matter that he will discuss later.

Mr. Neuhauser stated that wage growth drives indemnity increases. His estimate is lower, about a 0.6% difference with WCIRB's. He stated that he has a very different method for Loss adjustment expense than WCIRB. The WCIRB approach is very difficult to interpret. WCIRB has the effect of loss adjustment expenses increasing and increasing pure premium rates 2.8%. He estimated conservatively that loss adjustment expenses would stay the same. Loss adjustment expenses over the period since 1995, as a fraction of losses, were about 20% up to 2002, as estimated by WCIRB. In 2003, there was a huge increase in loss adjustment expense; WCIRB and insurers typically justified this as a consequence of complications introduced by reacting to the reforms, which make the system more complicated in the short-term but could lead to higher expenses in the short-term and then should decline towards the historical average in the long-term. He stated that after 2005, there is a decline in loss adjustment expenses as a percentage of losses, consistent with insurers becoming more capable of handling the reforms. He asked whether they should expect that trend to continue to decline or to increase. He stated that he believes they will probably continue to decline, unless the higher loss adjustments expenses are simply built into the way the system is now structured. He stated that he used the conservative assumption in his estimates that loss adjustment expenses would stay the same.

Mr. Neuhauser stated that his examination of the estimates put out by WCIRB began at 16%, which later said would be adjusted up to 16.4%, but then left it at 16%. CDI's actuaries came up with 9.4% as their recommendation to the Insurance Commissioner. Mr. Neuhauser stated that his recommendation for pure premium should be 5.6% or less. The Insurance Commissioner was even more conservative with a 5% increase in pure premium rates, as a final decision.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Mr. Neuhauser stated that there was a final question about whether pure premium rates are even tracked by insurers, since they are only advisory and help the Insurance Commissioner determine solvency. The percentage charged by insurers over the pure premium rate during the period from open rating and 2001, was approximately zero, sometimes a little above zero and sometimes a little below zero, but about 100% of the pure premium rate. Since 2001, this has changed dramatically with insurers charging 40%-50% above the pure premium rate. He stated that it is not clear that pure premium rates dictate actual premium rates; they seem to be reasonably tracking now, but at a much higher level than before the reforms. He stated that if that tracking continues, then the pure premium rates and the Insurance Commissioner's lower estimate will reduce employers' costs substantially. He stated that there are two interesting issues of interest for the Commission to address in future efforts: one, there is a large difference between premiums that insurers charge relative to the pure premium rate, and what they charged even five years ago; and two, earlier, the same impact was observed for loss adjustment expense; there is a much higher loss adjustment expense as a percentage of costs. The effect is that about 60% of what employers are paying now in premiums is for administrative expenses, and only about 40-42% is actually paid in benefits to workers. The majority of what is paid for in the workers' compensation system now is the administrative profit, overhead, taxes and assessments, and only a small fraction is actually paid out in workers' compensation benefits. Controlling medical and disability costs is not where the biggest impact is these days; it is in controlling the other costs.

Questions from Commissioners

Commissioner Davenport asked Mr. Neuhauser about the composition of the WCIRB Board and stated that he was once a minority member who sued to try to get voting rights. He stated that after he sued, he decided that he did not want to be complicit in WCIRB's behavior, so he resigned. He asked if anything had changed or if the majority of the Board is made up of insurers. Mr. Neuhauser responded that he had never been to a Governing Board meeting, but that he believes that the majority are insurers. Commissioner Wei stated that there are insurer members and four public members, two from labor and two from management. She stated that she is presently one of the labor members and most recently, public members have been invited to participate in the Governing Committee. She stated that, clearly, one can see how the votes go at the WCIRB.

Mr. Neuhauser stated that the allocation of loss adjustment expenses and the reasons for the difference between the pure premium rates and the actual rates all occur outside of WCIRB; WCIRB calculates those figures. He stated that he has a lot of respect for WCIRB's efforts to interpret their data. He also stated that he believes that the composition of the Board dictates many things.

Commissioner Wei stated that Mr. Neuhauser's report was stunning. She stated that employers should take note of what is happening with their dollars.

Commissioner Wei stated that the draft report was an action item to consider for circulation and posting. She opened it up for public comment. There was no public comment.

CHSWC Vote

Commissioner Aguilar moved to approve for posting the report on "Evaluating the Workers'

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Compensation Insurance Rating Bureau's Proposed Pure Premium Increase," and Commissioner Thacker seconded. The motion passed unanimously.

Issue Paper: First Aid Reporting

Juliann Sum, Research on Labor & Employment, UC Berkeley
Christine Baker, CHSWC

Ms. Baker stated that at the previous meeting, the Commission requested that staff prepare an Issue Paper on first aid and reporting criteria. The Issue Paper and an up-to-date booklet on the current law for reporting occupational injuries and illnesses for workers' compensation and Cal/OSHA have been prepared by Juliann Sum. This booklet could be helpful to employers and should be posted on the website and or circulated. In addition, a roundtable should be convened to discuss the options included in the Issue Paper which are to: eliminate the doctor's first report (DFR) requirement for cases involving only first aid, and allow all employers to self-insure for these cases; eliminate the DFR requirement for cases involving only first aid and allow employers to purchase insurance with deductibles reflecting the cost of these cases; maintain the current DFR requirement and require employers to file an employer's report of occupational injury and illness with the insurer even if the injury or illness involves only first aid; and explore other options.

Juliann Sum stated that employers and workers raised the problem of first aid cases. For some employers, first aid cases are included in their reporting and affect their experience modification (ex-mod) rating and therefore their insurance premiums; for other employers, first aid cases are not included. For workers, either some first aid cases are fully taken care of under workers' compensation, which is required by law, or workers are not getting any care because they do not know that they have workers' compensation as a right, or there is care for the first aid case but it is not tied into the workers' compensation system and if there is permanent disability at a later stage, this is not treated appropriately.

Ms. Sum stated that the draft booklet still needs some revision but is ready for feedback from the workers' compensation community. Appendix E of the booklet presents a one-page comparison of the three requirements to report workplace injuries and illnesses: (1) the requirements to report occupational injuries and illnesses in which a physician has a lower threshold than the employer, and the report ultimately gets to the DLSR (Ms. Sum stated that it is not clear what happens at that point with those reports); (2) for workers' compensation, all injuries are supposed to be covered if they are occupational, even if it is a minor injury that only requires first aid, and there is no claim form requirement and there is no employer report requirement; it is handled variously without consistency; and (3) for recordkeeping, there is a federal OSHA requirement with a comparable state requirement with Cal/OSHA. There is a different definition of first aid for recordkeeping purposes, and first aid is only one of the criteria by which an employer determines whether an injury or illness needs to be recorded in the Log 300 and whether to have an injury and illness incidence report on file.

Ms. Sum stated that with all these different requirements and because the federal requirements cannot be disregarded, from the employer point of view, it would be helpful to clarify the issues and to decide whether the differences are to be maintained.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Questions from Commissioners

Commissioner Davenport asked whether Ms. Sum was recommending that there be a standard form. Ms. Sum and Ms. Baker stated that they want to explore the feasibility of a consistent or similar definition of first aid. Ms. Sum stated that she hears that the use of the Doctor's First Report varies. She also stated that the DFR will be part of the discussion in a proposed roundtable.

Commissioner Aguilar stated that her interpretation was that the DFR had to be done the first time the doctor saw the person for treatment, not for evaluation; she stated that if the person is changing doctors later, a DFR is again required, even if it could be a year later. It is the DFR, not the employer's first report of the injury. Ms. Sum stated that so far, no one solution rises to the top and that more input is needed from members of the community.

Commissioner Aguilar stated that while her background is self-insurance, she understands insurers. She stated that in self-insurance, they made first aid a claim type and left it out when they ran the statistics for ex-mods to charge. Ms. Sum stated that removing it from the ex-mod is a potential solution. Commissioner Aguilar stated that first aid could be administered from the workers' compensation fund as opposed to some other fund, while keeping an eye on the claim's progress if it becomes a more serious injury, requiring reporting to a third-party administrator (TPA).

Commissioner McNally stated that historically, insurers have been unwilling to ignore first aid information. Small employers and less sophisticated employers end up paying the penalty for that as part of a loss adjustment expense (LAE) or in some way having it factored into a higher premium. Ms. Sum stated that some employers pay for first aid through some other source so that the workers' compensation insurer is not responsible for it. Commissioner McNally stated that the insurer is not responsible for it until the injury becomes severe. Commissioner Aguilar stated that it is then too late, and compensability comes into play.

Commissioner McNally asked what the composition of the roundtable would be. Ms. Baker stated that it was not yet decided, but it would likely include employers, insurers and labor. Commissioner Aguilar asked whether medical providers would be included. She stated that in her opinion, some clinics that are practically predatory go straight to the employer and make them a deal by offering to be paid directly in return for not sending in a report. She stated that these deals are being made all the time. She also stated that the medical community should hear that this is going on and that they have representation at the roundtable.

Commissioner Wei stated that since the issue paper and roundtable are an action item, she would open the discussion for public comment.

Public Comment

Steve Cattolica, representing US Healthworks, stated that they would expect medical providers to be part of any roundtable discussion. He also stated that there is significant fraud in this area. He stated that they are concerned, and that as best as they can tell, it is geographically localized. He stated that he agreed that the practice is predatory and that he would go so far as to ask that the Fraud Commission be part of the conversation. Commissioner Davenport stated that there are elements of fraud. He stated that they have janitors who are sometimes offered \$50 to forget

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

about it. He stated that there needs to be some work done on this issue.

Carol Reed, deputy district attorney from Monterey County, stated that she prosecuted workers' compensation fraud that involves applicant, premium and employer fraud. They work closely with the California Department of Insurance (CDI), and she stated that they see a lot of abuses. Self-insureds are already required to report all injuries, even first aid, and she has also seen problems in those cases. She stated that she agreed that it would be important to include someone from the Fraud Commission or possibly the CDI or the district attorney's office, as it received funds for a grant position.

CHSWC Vote

Commissioner Davenport moved to approve the issue paper for circulation and comment and to create a roundtable, and Commissioner Thacker seconded. The motion passed unanimously.

Executive Officer Report

Christine Baker, CHSWC

Chair Wei thanked Ms. Baker and CHSWC staff for all the work that has been done. Ms. Baker stated that most projects and studies were put on hold during the summer months until the State budget was resolved. She stated that they are grateful to Chair Wei and DIR Director John Duncan for expediting these contracts once the Governor allowed things to move forward. CHSWC staff took advantage of that time to work on aspects of our work that did not need outside contracts.

Request for Proposal: Study of the Impact of Workers' Compensation Experience Modification Rating and Firm Age on Safety Behavior and Risk

Ms. Baker stated that over the past year, a research agenda on health and safety issues was developed. CHSWC staff also participated on the Commissioner's task force for experience modification review. As a result of both of those meetings, there are several recommendations for studies, including two requests for proposals (RFPs).

Ms. Baker stated that the first RFP, Study of the Impact of Workers' Compensation Experience Modification Rating and Firm Age on Safety Behavior and Risk, will study the impact of workers' compensation experience modification rating and firm age on safety behavior and risk. There has been an ongoing debate over the impact of experience modification on employer safety behavior. Currently, there is little research available in California or other jurisdictions that statistically demonstrates the effectiveness of experience rating as a safety incentive. There are at least two key areas where the understanding of the incentive effects of experience modification rating could substantially bring improvements for small versus medium-sized and large employers. In addition, the effects of new versus older firms are of interest. Studies have not looked specifically at firm age, but there are grounds for believing that new firms may be relatively unsafe.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Ms. Baker stated that the purpose of the study would be to identify: whether the application of and changes to workers' compensation experience modification rating has an effect on the safety experience of small, medium-sized and large employers; and whether new firms have a greater safety risk than older firms. WCIRB has shown some interest in partnering financially on this project since this was raised by the task force, and the mechanics of such a partnership is being explored. The staff recommendation is to proceed with this RFP whether or not WCIRB provides support funding.

Rationale for Study of California's Injury and Illness Prevention Program (IIPP)

Ms. Baker stated that the second RFF is the Rationale for Study of California's Injury and Illness Prevention Program (IIPP). 8 CCR Section 3203 of the General Industry Safety Orders took effect in July 1991 and required all employers in California to establish an Injury and Illness Prevention Program (IIPP). California is one of only a few states that have adopted such a standard, even though an IIPP is considered the first step for an employer to create a system for identifying, correcting, and preventing workplace safety and health hazards. Other Labor Code sections and regulations address specific industrial safety and health hazards and prevention requirements by type of workplace, type of equipment, environmental contexts and industry sectors.

Ms. Baker stated that since its enactment, Section 3203 has been the standard most frequently cited each year in inspections by the Division of Occupational Safety and Health (DOSH). The standard has nine different provisions which can be cited individually or in groups. Data on occupational injuries and illnesses at inspected workplaces can be used to test the importance of compliance with the standard as a whole and with its individual requirements. In 1998, federal OSHA took initial steps to promulgate a federal standard but stopped short, partly due to lack of evidence about its potential effectiveness. The purpose of this study is to evaluate the effect of the adoption and enforcement of 8 CCR Section 3203 regulations. The objective is not only to clarify the effects of the standard, but also to identify which elements may be most effective. Some provisions may deserve stronger scrutiny while others may deserve less. In addition to the value of this information for California, the study findings will inform debates elsewhere about the proper role of these requirements.

Ms. Baker also stated that this RFP will include a study on the effectiveness of Cal/OSHA inspections and whether some inspectors are better than others. Studies have been carried out with national data on the impacts of OSHA inspections on injury rates at inspected workplaces. One finding of those studies is that the effects can vary over time and, less clearly, in different jurisdictions. National studies to date have included too few California observations to provide separate estimates of impacts of inspections in California. A study of these impacts can provide an aggregate estimate of the impact and estimates related to the type of inspection (e.g., programmed, complaint, accident, health, safety) and the type of workplace (industry, establishment and firm size) inspected. This information would be helpful to CAL/OSHA in assessing where its current activities are most effective.

Ms. Baker stated that this study also provides the necessary precondition for examining whether the particular compliance officer who conducted the inspections makes a difference in terms of the impact on injuries. In many other fields, e.g., education and medicine, studies have indicated

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

important variations in performance. If the inspectors who have the most success could be identified, the ways their success differs from others could be examined. For example: do they tend to cite different standards? do they spend more time on site or preparing for the inspection? do they have a different educational background or different prior experiences? This information could be very useful in deciding how to select and how to train compliance officers in the future.

Ms. Baker stated that this study would not be used for assessing the performance of individual compliance officers. Their identities would be coded, and only the researchers would have the key. However, if the Commission and DIR decided to, the identities of only the top performers might be made public so that further lessons could be obtained from them. Enforcement agencies need to be able to learn more about how to become more effective, and this research provides an opportunity to learn more about toward preventing more worker injuries and illnesses.

Commissioner Davenport asked for clarification of the focus of the study, whether the focus would be to determine how those employers that have IPPs are implementing them and how Cal/OSHA enforces that. Ms. Baker responded that that was correct. Commissioner Davenport also stated that if the study identifies employees who are doing well, that information might be being obtained by other individuals for other purposes, and he asked how that would be prevented. Ms. Baker stated that they might look at the qualities of good performance and not recognize individuals. Commissioner Davenport stated that he thought that there would be better cooperation if the study were not focused on personnel management.

CHSWC Vote

Commissioner Aguilar moved that the two RFPs be prepared, one for a study on the impact of workers' compensation experience modification rating (ex-mod) and firm age on safety behavior and risk and the other for a study on the effectiveness of California's injury and illness prevention program and compliance officers, and Commissioner Thacker seconded. The motion passed unanimously.

Self-Insurance Group Study

Ms. Baker stated that CHSWC staff recently received a request for a study by Assembly Insurance Chair Coto, on Self- Insurance Groups. Specifically, he requested that the Commission undertake an analysis of the statutory and regulatory oversight provisions of California and New York laws and regulations and make recommendations regarding what additional provisions may be required to ensure the viability of these programs. If time and resources allow, contrasting these two state regulatory mechanisms with that envisioned by the National Association of Insurance Commissioners (NAIC) would be helpful. Assembly Insurance Chair Coto would like the analysis completed on or before March 15, 2009. CHSWC staff has begun to do background work with New York and has held a series of meetings. It has become clear that it may be important to use an outside financial consultant for the financial aspects of the study. Therefore, the authority to spend up to \$35,000 on a consultant, if needed, is requested.

Commissioner McNally asked if the financial consulting need would be for auditing and accounting practices to better understand how to recommend the standards that should be used going forward, and Ms. Baker responded that that was correct.

CHSWC Vote

Commissioner McNally moved to approve authority to spend up to \$35,000 on a financial

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

consultant, if needed, and Commissioner Aguilar seconded. The motion passed unanimously.

Insurance Study

Ms. Baker stated that the Insurance study was on hold for two months, but it is now moving quickly through the Memorandum of Understanding (MOU) to obtain data. Meetings are being held with insurers, and the study team is aggressively making progress. The Insolvent Workers' Compensation Insurance Carrier study began in June 2008 under contract with RAND. Data have been requested from the California Department of Insurance (CDI), the California Insurance Guarantee Association (CIGA), the State Compensation Insurance Fund (SCIF), and WCIRB for the study.

CHSWC Annual Report

Ms. Baker stated that CHSWC staff has been working diligently on the 2008 Annual Report. The draft that has been provided is awaiting a few updates of data. That should be done within the next several weeks. The report is a compilation the latest available data and information regarding the health and safety systems in California. Suggested recommendations based on empirical data and Commission studies have also been developed.

CHSWC Vote

Commissioner Davenport moved to approve for final release and posting CHSWC's 2008 Annual Report pending new data updates, and Commissioner McNally seconded. The motion passed unanimously.

Medical Study

Ms. Baker stated that the Commission medical study has been delayed due to data acquisition. Meetings are being held with DWC and hopefully, a good data set will be obtained to evaluate the reforms including medical provider networks (MPNs). Services inside networks and services outside networks will be studied. An objective of the study is to develop a medical system report card that could be updated regularly by DWC. This will be the first time that data on medical reporting within WCIS will be used. During the last legislative session, language was being considered regarding developing a guide for employers and employees on return to work, FEHA and ADA issues. Many agreed at that time that this could be done without legislation and that the Commission could lead this effort. This would be coordinated with DIR. DIR Director John Duncan and DWC and key stakeholders fully support this project. Background research on the issues has begun, and a roundtable would be planned for December.

Chair Wei asked if this would be a guidebook on return to work for both employers and employees, and Ms. Baker responded that it was. Commissioner Davenport asked if the guidebook would come out after a report, and Ms. Baker responded that this would be an explanation of existing FEHA and ADA law.

CHSWC Vote

Commissioner Aguilar moved to approve that a guide for employers and employees be developed and that a roundtable be held in December, and Commissioner Thacker seconded. The motion passed unanimously.

Study on Spinal Surgery Hardware

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Ms. Baker stated that existing law requires at least partial duplication of payments for implantable spinal surgery hardware. This law might assure that necessary treatment is available to injured workers, or it might unnecessarily inflate costs to employers, and it might encourage unnecessary utilization of these complex procedures. In addition, third-party vendors are seeking to furnish the implantable devices to the hospitals and collect the separate reimbursement from the claims administrator. Claims administrators have adopted varying interpretations of whether the vendor is a “provider” to whom reimbursement is payable.

Ms. Baker stated that the study would examine the cost of spinal surgery hardware to hospitals, the reimbursement included within the diagnostic related group (DRG)-based fees, the cost to employers for the separate reimbursement, and the impacts of the separate reimbursement on the availability of these procedures and on potential excess utilization of these procedures. The Commission would potentially partner with the California Workers’ Compensation Institute (CWCI) for the data.

Commissioner Davenport asked if CWCI would pay for part of the study, and Ms. Baker responded that CWCI would provide access to data.

Commissioner Aguilar asked if there would be recommendations that could be handled through rules and regulations as opposed to a new law when the study was done. She stated that she would not like to see it increase costs. Commissioner Davenport agreed with Commissioner Aguilar and asked what the value of the study would be. Judge Lachlan Taylor stated that Labor Code Section 5318 states that for implantable hardware, the provider should be reimbursed the cost of the hardware in addition to the facility fees paid to the hospital. This is potentially a duplicate payment. The Administrative Director has the authority to change the fee schedule and change that separate reimbursement. There may be some pressure to eliminate the separate reimbursement and some justification for keeping it. The Commission study would give the Administrative Director some information to guide that decision.

Commissioner Aguilar stated that she is concerned about the necessity to do utilization review about this. Judge Taylor responded that the additional reimbursement may have been included for a reason, possibly to preserve injured workers’ access to the treatment. He also stated that there is a related issue of who is entitled to claim a reimbursement if it is retained as a separate reimbursement and that the study may provide information to address that issue. Commissioner Davenport stated that he is in favor of the study if it helps the Administrative Director.

Chair Wei asked if the study is a response to those in the medical world who provide the implantable devices, and Judge Taylor responded that that is one consideration. Providers of the devices have sought legislation to ensure that they are entitled to claim reimbursement. In addition, there was a study done two years ago by RAND that analyzed the reimbursement structure and suggested that it could use some updating.

Commissioner Aguilar asked if there is another example of unbundling similar to repackaging of medications, and Judge Taylor stated that the study should answer that question. Commissioner Wei stated that there are some providers who have been seeking legislative change so that they can bill directly and that that has been considered by some as a loophole to bill extraordinarily. This study could be an example of an investment to stop runaway costs in the future.

CHSWC Vote

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Commissioner McNally moved to approve that the Commission proceed with a study on implantable spinal surgery hardware, and Commissioner Davenport seconded. The motion passed unanimously.

Roundtables

Ms. Baker stated that over the past several months, several roundtables with various groups have been conducted on wellness and integration of medical care, and on developing a standardized IIPP project for school districts and schools. Contracts on these projects were delayed due to the budget crisis and are just now getting re-started.

Underground Economy

Ms. Baker stated that the study of the underground economy was placed on hold during the budget crisis and also is just now getting processed through the Contracts Unit.

Study on 139.49 to Evaluate Return-to-Work Program

Ms. Baker stated that the Deputy Administrative Director of the DWC has requested that the Commission take over the DWC study to evaluate requirements under Labor Code Section 139.49 and evaluate the return-to-work-program. The Commission is already investigating the return-to-work program.

Commissioner Davenport asked if there is any overlap between the Commission's return-to-work efforts and the Deputy Administrative Director's request, and Ms. Baker responded that the Commission would be subcontracting to DWC and that it would be a very narrow piece of the return-to-work requirements.

CHSWC Vote

Commissioner Aguilar moved to approve that the Commission proceed with a study on return to work at the request of the Deputy Administrative Director, and Commissioner Davenport seconded. The motion passed unanimously

Integration of Care Roundtables

Commissioner Davenport asked if there would be a summary of the integration of care roundtables, and Ms. Baker responded that there would be a summary report of all of the roundtables. There will be two roundtables the next week, one with CalPERS and the Department of Personnel Administration and one with health insurers and employer purchasing coalitions. The summary report will be completed after those roundtables.

Uninsured Employers

Ms. Bakers stated that as part of the Commission's work on addressing the problems of injured workers that have employers who are uninsured, there is a contract to develop some materials for those workers. Commission staff has been working with the Workers' Compensation Enforcement Collaborative and a number of groups, as well as the DIR Director, to develop materials for injured workers with uninsured employers that help improve access and reduce the burdens for filing a claim by exploring options for determining the proper legal name of uninsured employers. Commissioner Davenport asked if this issue was about identifying a proper

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

business address for the uninsured employer, and Ms. Baker responded that that was one of the key issues.

Worker Occupational Safety and Health Training and Education Program

Ms. Baker stated that there would be a report on the Commission's Worker Occupational Safety and Health Training and Education Program (WOSHTEP) at the next meeting.

Final Report: Reporting Workers' Compensation Injuries in California: How Many are Missed?

Ms. Baker stated that the report "Reporting Workers' Compensation Injuries in California: How Many are Missed?" has been circulated and all feedback has been incorporated.

CHSWC Vote

Commissioner Aguilar moved to approve that the final release and posting of the report on "Reporting Workers' Compensation Injuries in California: How Many are Missed"? and Commissioner Thacker seconded. The motion passed unanimously.

Comments by Commissioners

Commissioner Aguilar asked whether the Commission could look into the regulations regarding Continuing Education Units (CEU) being issued for claims examiners not being enforced. She stated that there may not be incentives to maintain skills of claims examiners. Commissioner Wei suggested that the Executive Officer discuss with the Department of Insurance whether anything is being done in this area and whether there would be any resources for a study and then report back on this at the next meeting.

Public Comment

Steve Catollica, representing physicians in occupational medicine, stated that he supports a study of compliance with claims administration certification and that he also suggests that bill review certification be examined. Commissioner Aguilar stated that the issue is that the employer determines that claims adjusters have met the criteria and do not have to get certified but only take continuing education.

Adjournment

Commissioner Wei stated that the next CHSWC meeting is scheduled for December 12, 2008, in Oakland, at 10:00 a.m.

CHSWC Vote

Commissioner Thacker moved to adjourn the meeting, and Commissioner McNally seconded. The motion passed unanimously.

The meeting was adjourned at 2:05 p.m.

MINUTES OF CHSWC MEETING
November 6, 2008 Oakland, California

Approved:

Angie Wei, Chair

Date

Respectfully submitted:

Christine Baker, Executive Officer

Date