

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

January 19, 2012

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

In Attendance

2012 Chair Angie Wei

Commissioners Catherine Aguilar, Faith Culbreath, Sean McNally, Kristen Schwenkmeyer, Robert Steinberg,

Acting Executive Officer D. Lachlan Taylor

Absent

Commissioner Darrel (Shorty) Thacker

Approval of Minutes from the August 18, 2011 CHSWC Meeting

CHSWC Vote

Commissioner Culbreath moved to approve the Minutes of the August 19, 2011 meeting, and Commissioner Aguilar seconded. The motion passed unanimously

Election of 2012 Chair

Commissioner Culbreath nominated Angie Wei for 2012 Chair, and the motion passed unanimously.

Chair Wei thanked the staff for able service and stated that it was a pleasure to work under Commissioner McNally's leadership and that she appreciates the partnership between labor and management that has been fostered at the Commission.

Chair Wei welcomed participants from the workers' compensation community and introduced Christine Baker, Director Department of Industrial Relations.

Comments by the Director Department of Industrial Relations (DIR)

Christine Baker, DIR

Christine Baker stated that she was appointed as Director in December, and she is grateful to serve in this administration. These are difficult economic times and there are difficult choices; however, as director, she and her team are finding many ways to improve the delivery of services

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to the public. The efforts of the first six months were internally-focused and included internal strategic planning that identified key immediate needs. These discussions indicated the need for more outreach and education for workers and employers, and the need for internal training and updated policies and procedures, as well as the need to integrate information from the department's different systems. More internal training began immediately with the Division of Workers' Compensation (DWC) holding judge training regionally, which had not been done in many years, the Division of Occupational Safety and Health (DOSH) holding ongoing training, and the Division of Labor Standards Enforcement (DLSE) holding statewide training. It was clear that staff across the department needed training as that was part of the problem of the inconsistency in application of the law. Ms. Baker also stated that there are efforts being made to break down the silos within DIR, with all the chiefs working together as a team. She stated that Labor Secretary Marty Morgenstern has been extremely supportive of the work done by DIR.

Ms. Baker stated that a key change has been redirecting the Economic and Employment Enforcement Coalition (EEEC) from the Labor Agency. EEEEC primarily focused on sweeps in a non-scientific method, and the effort is now being run out of the DIR director's office; it is focusing on improving the targeting and eliminating overlapping enforcement efforts and focusing on the really bad players. Ms. Baker also stated that the work of the Commission is being used to provide different methodologies for targeting to include matching records for coverage, and the new approach involves working closely with Employment Development Department (EDD), the tax branch, and other agencies to match records and find out where we should target. In other efforts, offices in DIR have been closed which had furniture and no function, and duplicate functions have been eliminated. In addition, a pilot is going on to use the Workers' Compensation Information System (WCIS) for targeting on OSHA high hazard inspections. The experience modification (Ex-mod) methods did not provide establishment information.

Ms. Baker stated that there is definitely awareness of a need for a permanent disability benefit increase, but that in this economy, it is also important to be careful not to increase costs to employers. Ms. Baker stated that thanks to the work of the Commission, there are a lot of areas that can be improved. The Commission will continue to play an important role in providing the empirical basis for needed policy improvements for liens, fee schedules, medical treatment, utilization review (UR), return to work, litigation, overhead costs, a dysfunctional qualified medical evaluator (QME) system, and other areas.

Ms. Baker stated that DIR will be looking to the community for feedback in these areas and will be holding fact-finding forums throughout the State in the near future. Division of Workers' Compensation Administrative Director Rosa Moran and her team will join her; they are doing a great job of making the system work. Richard Newman, the acting chief judge, is dedicated and finds ways to solve problems. Mark Fudem is managing the EAMs project with vigor and dedication, and many EAMS problems will be solved.

Ms. Baker stated that she has weekly project meetings with management and there are many projects to improve the infrastructure within DIR. The Department will have online capabilities

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for billing, processing applications, such as farm labor contractors, and electronic payment systems, with payments now available online.

Ms. Baker stated that Chief of Apprenticeship Diane Ravnik is stellar and dedicated. There are many new projects and partnerships with Workforce Investment Boards have been developed by the Labor Secretary and herself, requesting that they include certified apprenticeship programs to be listed on the Eligible Training provider lists, which in turn allows funding to be more directed. Labor was instrumental in getting some legislation through on this. In addition, DIR is being added to the Go-Business site and is exploring expanding apprenticeships in partnership with the Public Utilities Commission (PUC) and many other organizations.

Ms. Baker stated that enforcement is important and enforcement efforts are being strengthened. The strategy is not to go after the compliant employers but to focus on the bad players. There may be fewer inspections, but they will be in-depth and well-documented, and penalties will be high. The Department is also partnering with EDD on collections of the penalties, which were not completely done in the past, so that when penalties are assessed, there will be a strong collections effort.

Ms. Baker stated that the Department is losing many people due to retirements, and now that the hiring freeze is partially lifted, key positions are being replaced throughout DIR. She also stated that DIR has an incredibly collaborative team. Julie Su, the Labor Commissioner is working around the clock on behalf of the working people of California. She also is the fairest and most energetic person. Ellen Widess is dedicated and devoted to the safety cause, and she has done a number of collaborative projects with Hetch Hetchy, the Department of Mental Health and others. Rosa Moran, with assistance from Kathy Zalewski, is working closely with the director. Finally, the Commission team has helped with DIR director requests, and she appreciates that.

Mrs. Baker stated that the ship is turning around and DIR will be known for its effectiveness, fairness and openness. She stated that her door is always open, and she looks forward to working with the Commission to move forward to restore the balance in the system for workers and employers.

Chair Wei stated that she is pleased that Ms. Baker could be present and the Commission could hear what is happening across DIR, and that it is also great to have Ellen Widess, head of Cal/OSHA, and Rosa Moran, administrative director of the Division of Workers' Compensation, present. She stated that the Commission appreciates their commitment to public service.

Permanent Disability Ratings Under the AMA Guides
Seth Seabury, RAND

Seth Seabury stated that the study evaluating the permanent disability rating system is a work in progress. The study examines the changes to the disability rating system made by Senate Bill (SB) 899 and evaluates the new rating system that uses the American Medical Association *Guides to the Evaluation of Permanent Impairment, 5th Edition* (AMA Guides). The findings in

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this briefing are preliminary since this study has not gone through the RAND peer review process and therefore presents an opportunity to get feedback and comments from the Commission and the public. Everything that has not gone through the RAND peer review process is subject to change, but this report represents an understanding of the issues as they currently stand.

Mr. Seabury stated that the old permanent disability rating system was subject to controversy and had many critics. RAND evaluated the old rating system in a study for the Commission using empirical data on earnings losses, identifying positive and negative features. The positive features were that, looking at any two people, the person with the higher rating had higher earning losses on average. The disability ratings in the old system were able to target benefits, on average; however, RAND found many inconsistencies. For example, if a person with a back injury and a person with a shoulder injury both had the same disability rating, very different earnings losses were observed between them. Ideally, one would like a disability rating system that is able to match disability ratings to losses across body parts and within body parts. SB 899, in response to criticism by RAND and others, adopted the *AMA Guides*, which are more widely used across the country than the old California disability rating system.

Mr. Seabury stated that new controversies have arisen regarding the current permanent disability rating system. While the *AMA Guides* have been widely used, they have not been empirically validated as a tool for measuring disability. The *AMA Guides* use clinical data to measure physical impairment but acknowledge that there is a difference between impairment and disability. The *AMA Guides* have not been evaluated as a tool for determining disability. There are future earnings capacity (FEC) adjustments that were adopted to address the inequities in the old rating system. The FECs are based on the observed relationship between earnings loss estimates and disability ratings from the old system, and not from the *AMA Guides*. It is not clear that the inconsistencies that RAND found with the old schedule would be the same if RAND matched the data on the *Guides* to the earnings losses today. There is also concern over the levels of benefits, after the sharp drop in the ratings, as well as the potential exclusion of cases that would have been rated under the old system and not under the *AMA Guides*.

Mr. Seabury stated that the current study that RAND is conducting for the Commission addresses a wide range of issues related to disability ratings including the following: whether the *AMA Guides* ratings accurately reflect earning losses that permanently disabled workers' experience; whether FEC adjustments match differences in general and in terms of earnings losses across different parts of the body; how adequate and equitable permanent disability benefits under the current schedule are; and whether there are barriers created by medical-legal processes that lead to delays in the timely resolution of claims and can exacerbate the return-to-work problems. This is a broad study that is evaluating the ratings on a different number of dimensions. Mr. Seabury stated that today's briefing would not evaluate all the questions because it would be a very long study but would focus on whether the *Guides*' ratings effectively reflect the earnings losses for permanently disabled workers.

Mr. Seabury stated that the methods the study uses are similar to other California disability studies that RAND has conducted for the Commission. The study takes data on permanent partial disability (PPD) claimants in the California workers' compensation system, using the

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ratings specifically from the Disability Evaluation Unit (DEU), and focuses on the cases rated under the *AMA Guides*, 5th edition, from years 2005 to 2008 and earnings data from 2000 to 2009. The focus is on people with injuries from two years before the injury date up to three years after the date of injury. This is the standard approach that RAND has used for many studies it has conducted for the Commission which link workers' compensation to earnings.

Mr. Seabury stated that in this study, RAND looks at cases that were in the DEU record but did not have a ratable impairment and were assigned a zero rating. RAND was able to link the zero-rated cases to earnings and compare them to the cases that have the ratable impairment to see if there were earnings losses. Mr. Seabury stated that the study estimates the earnings losses by linking data from DEU to quarterly earnings records from Employment Development Department (EDD), unemployment insurance (UI) data. The study matches injured workers to uninjured "control" workers at the same firm with similar earnings. RAND has discussed this approach in the past explaining that the control workers proxy for what injured workers would have earned had they not been injured.

Mr. Seabury stated that it is difficult to look at injured workers and see how much they would have earned before and after an injury based on what they were making before the injury because people's earnings are not static over time. Therefore, it is necessary to estimate what the injured worker would have been making at a point in time in the absence of an injury. RAND did that with the uninjured control workers. The difference in the earnings of the uninjured workers minus the earnings of the injured workers is the earnings loss. In the earnings loss estimates, RAND looked at cumulative earnings loss; however, one of the challenges is that this incorporates the losses during the temporary disability (TD) period, and this period cannot be eliminated because the data do not identify when someone becomes eligible for maximum medical impairment and becomes eligible for permanent disability (PD). To focus on the permanent component of earnings loss, the study focuses on earnings losses in the third year after injury, since earnings losses for workers are not stable over time. The study measures earnings loss at the percent loss in earnings of injured workers in comparison to the control group.

Mr. Seabury provided a hypothetical example, in which there is an injured worker making \$3,000 in the quarter after injury. RAND then matches the injured worker to the uninjured worker using the criteria mentioned before. In this hypothetical case, the uninjured worker is making \$6,000, so the earnings loss in this quarter is \$3,000; this is a 50 percent proportional loss. The earnings loss estimates and the actual disability ratings that are assigned to these workers are compared. A key question is: if there is a higher rating, are there also higher earnings losses? The *AMA Guides* are meant to be a measure of the severity of the impairment, and a key question is how closely that corresponds to the severity of disability, so the study uses earnings losses to estimate the severity of the injury and validate the *AMA Guides'* ratings.

Mr. Seabury showed some results that compared the quarterly earnings of injured and uninjured workers before and after the quarter injury. Zero represents the quarter of injury, and at this point, injured workers display a big dip in their earnings. After this big drop, earnings plateau at a lower level than prior to injury. Mr. Seabury stated that the earnings of injured and uninjured workers are very similar prior to the injury. For the period after the quarter of injury, there is a

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higher level and the difference is called the earnings loss for the uninjured worker of about a 20 percent. In the third year after injury, the focus of this study, there is approximately a 20 percent difference over the entire period.

Mr. Seabury stated that one of the things known is that when California switched to the AMA *Guides*, the level of the ratings fell dramatically. To give a sense of the ratings data, the study uses the distribution of ratings to show the unadjusted impairment ratings prior to any adjustments made by, for example, FEC factors, age and occupation adjustments, and the percent of cases with that rating after adjustments have been made. There were higher levels of adjustments after the ratings have been made. About seven percent of the data have an impairment rating of one. A fairly large fraction of cases have an impairment rating of 10 or less in the AMA *Guides*. This is much lower than the old California system. However, when the adjustments are made, the distribution shifts out. Less than one percent of the cases have an AMA impairment rating of 50 or higher. One would have to have been very severely disabled to get an AMA impairment rating of 50, but after the adjustments, it is about four percent. This shows how the impairment ratings differ from the actual disability ratings.

Next, the study takes the impairment ratings and compares them to earnings losses. The study grouped cases with an impairment rating of one to four, then grouped cases from 5 to 9 and so on. It is convenient to group them together for sample size purposes. A clear relationship is seen where losses are increasing with ratings. The cases with no ratable impairment are similar to low-rated claims; therefore, the zero-rated cases do have earnings losses, especially when there is poor return to work.

Mr. Seabury stated that even long-duration PD cases result in TD, and one sees examples where these cases have long-term earnings losses. This is an issue when an injured worker has poor return to work; when an injured worker is out on disability for a substantial period of time, there is earnings loss even for three years out. This is something that was found with the zeros and for the very lowest-rated claims. However, with the higher ratings, the relationship between AMA *Guides* ratings and earnings losses is very pronounced. From a rating of 1 to 4 or 5 to 9, the earnings losses double from 10 percent to 20 percent on average. These higher-rated cases, although fairly uncommon, have significantly higher losses. Under the AMA *Guides*, ratings of 20 are associated with 50 percent earnings losses on average. Individuals with a rating of 50 or higher lose a vast majority of their earnings. These are very severe disabilities at the right part of this distribution. Mr. Seabury noted that these cases reported here include multiple impairment cases and all the different cases.

Mr. Seabury stated that the study took the average losses for each impairment point and only looked at single impairment cases and compared them to earnings losses. Even at the individual rating-point level, there is a tight correlation between earnings losses and impairment ratings. Each additional rating point was associated with higher losses, and there is approximately a straight-line relationship. These are the average earnings losses for each impairment, and the data fit a linear relationship. The linear relationship is close to one; losses increase close to proportionally on average on ratings.

The key findings of the study mean that there is a tight correlation between losses and ratings

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and suggest that the new California ratings system does predict which impairments have the most disadvantageous effect on earnings on average. The *AMA Guides* seem to be a reliable predictor of disability in terms of effect of the impairment on the ability of an injured worker to work on average. People with higher ratings are less likely to go back to work due to earnings losses. This is a strong relationship which was seen under the old schedule as well with respect to the relationship between ratings and losses. If anything, the new system predicts losses more closely. These results are useful for showing that higher ratings show higher losses on average.

Mr. Seabury pointed out that these findings do not mean that people with higher ratings always have higher losses. These are statistical estimates of losses associated with each rating point; it does not mean that any individual will exactly match the prediction. Mr. Seabury stated that the study also found that the zero-rated cases have fairly similar losses to very low-rated cases on average, and this ties into what has been found in past studies. Return to work has been an issue for workers' compensation cases, not just PD cases, but cases that have long duration of TD. Return to work has been and continues to be a problem in California's workers' compensation system, and there are residual earnings losses even for low-rated or zero-rated cases as a result.

Mr. Seabury stated that the way the California system is currently construed it assigns increasingly higher benefits to higher ratings. In other words, going from a 30 to 31 gives a bigger increase in benefits than going from a 10 to an 11, with the idea being that the more severely injured a worker is, the higher the earnings losses and therefore, the higher the compensation should be assigned. The evidence found does not suggest that ratings and losses match the relationship that is implied by the benefits schedule. Earnings losses actually increase proportionally to ratings with a linear or a straight-line relationship between ratings and losses. If the relationship between ratings and losses which is implied between the California benefit schedule was evident, it would show that each rating point is associated with a more than proportional increase in earnings losses. That is not what is being seen. If anything, the data are indicating a more concave relationship between ratings and losses, and it appears that the way benefits are assigned right now is inconsistent with the evidence.

Questions and Comments from Commissioners

Commissioner Steinberg asked if Mr. Seabury could explain the relationship between the benefits and the losses. Mr. Seabury responded that the way the system is currently constructed, there is an increasing relationship so benefits appear to be increasing more than proportionally to ratings. The question is whether earnings losses increase more than proportionally to losses and the higher the rating points, the higher the impairment severity, and the higher the losses, the greater the need for more benefits. Mr. Seabury stated that this is a fairly proportional relationship so that as the relationship goes from a level 10 to 11, or a one-point higher rating, the increase in the earnings loss on average is pretty close to the earnings loss seen on average from going to a 20 to a 21. Moving up the scale, this increasing relationship between losses and ratings, which is what would be expected to be seen if it was consistent with the way we are currently assigning benefits, is not seen. Mr. Seabury stated that one possible policy solution is to think about assigning benefits proportionally to ratings the way losses are being proportionally related to earnings, rather than more than proportionally. That is the interpretation that RAND will attach to its findings.

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Chair Wei asked Mr. Seabury to explain the distribution of ratings and their relationship to the percent of cases with unadjusted AMA *Guides* impairment ratings and adjusted ratings, in other words, what the ratings are that people receive on average. Mr. Seabury responded that in the sample in the study, seven percent of the disabled workers had an AMA *Guides* rating of one and five and a half percent had a rating of two, so the higher the adjusted bars are and the lower the unadjusted bars are, a larger fraction of the sample has lower ratings on average. Mr. Seabury stated that the study showed what the AMA *Guides* ratings look like in the data. Chair Wei asked whether the comparison between the unadjusted AMA *Guides* impairment ratings and the adjusted ratings are from the same sample but show what the distribution look like after the different adjustments have been made in the system. These compare the standard rating and the final rating after adjustments for age, occupation and FEC factors have been made. FEC probably has the biggest effect on average.

Chair Wei asked if the data showed that the adjusted ratings are higher than the unadjusted ratings and that the FEC adjustment is working for someone above a certain rating. Mr. Seabury responded that it is certainly working for some people as it is moving the average rating up; the average AMA *Guides* rating in the sample is 7.7 percent, and the standard average rating under the old system was 14 or 15 percent, and the ratings are unadjusted for age, occupation, and FEC. Mr. Seabury stated that the reason that the study looked at unadjusted ratings was to see if the AMA *Guides* are working. It would be misleading to say that the average disability ratings in California were 7.7 percent given that the FECs and other adjustments raised the mean of the ratings. The two distributions are different, and the adjustments are working for some people in the sense that they are raising the average rating. Mr. Seabury stated that he does not know what this fraction of cases would have been under the old system, but they would be more than what we are seeing now even after the adjustments. The average unadjusted rating is approximately 7.7 percent and is close to the median. Chair Wei asked whether 7.7 is the median with half of cases rated above and half below, and Mr. Seabury responded that that was the case and that if the ratings are added up, they would get to 50, which is obviously lower than the previous system. The study shows the distribution of the ratings.

Chair Wei stated that this is an action item for the Commission and asked if the Commission wishes to post the draft report for 30 days for feedback and comment. Lachlan Taylor stated that the Commission does not have a report to post for public comment at this point. Chair Wei responded that when the report is available, it will be posted for public comment.

Public Comments

Mark Gerlach with the California Applicants' Attorneys Association stated that he wanted Mr. Seabury to provide more information on whether the study looks at single impairment category and whether the entire study is for claims with a single impairment rating. Mr. Seabury responded that the study included both multiple and single impairment ratings but compared direct single rating point to average earnings losses in these figures and then took the multiple impairment ratings out and focused on single impairment cases. The overall relationship is consistent whether they are included or not. Mr. Gerlach further asked what percentage of cases Mr. Seabury eliminated because of multiple impairments and focused on single impairment. Mr.

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Seabury responded that in the data, approximately 30 or 35 percent of the cases have multiple impairments.

Linda Atcherley from the California Applicants' Attorneys Association asked whether the adjusted and unadjusted ratings include cases or ratings that fall within a range from zero to 50 percent. Mr. Seabury responded that the data have ratings of 50 plus. Ms. Atcherley replied that there is nothing presented that correlates the rating with the wage loss for the corresponding impairment. Mr. Seabury stated that he had not looked at wage losses and corresponding impairments; one could have data with a percent of cases with earning losses at different levels, but he does not have it in this particular data set. Ms. Atcherley stated that this is just a distribution graph showing ratings, unadjusted or adjusted, and 50 percent would fall between 15 percent or lower. Mr. Seabury responded that over 95 percent of the ratings are 50 or lower, and over half are 10 or lower for unadjusted ratings. Ms. Atcherley replied that her understanding is that 50 percent of the cases that are rated, whether adjusted or unadjusted, would fall below 15 percent, and Mr. Seabury responded that that was correct.

Jason Schmelzer, California Coalition of Workers' Compensation, asked if the PowerPoint presentation was going to be available to the public. Mr. Taylor stated that it will not be published as it has not been approved by RAND for distribution. Chair Wei stated that when the report gets posted for public comment, the Commission will post this PowerPoint presentation.

Steven Kessler, member of the City of Berkeley's Labor Commission, stated that he is not speaking as an official representative. He stated that he is curious about the inadequacy of the data in terms of reported accidents. There are certain requirements that workers' compensation insurance companies are supposed to fulfill regarding the duty to inform clause. He stated that he is not a lawyer. In his personal experience, he was hit by a car backing into him when he was going to start his first session on physical therapy after having a construction accident. The car accident set him back and he called the insurance company; his friends told him the insurance company would subrogate it. Mr. Kessler stated that he did not know what that was about. Two and a half years later, Mr. Kessler stated that he met a recently retired hearing officer from workers' compensation who stated that the injury would not have happened if the initial industrial accident did not happen. Mr. Kessler would like to know, in terms of the data, if the study would be able to capture events like his, as he was much more severely injured and out of work for a longer period of time and not able to do construction work. Mr. Kessler stated that he does not believe that this is only his problem but that it is a general problem in terms of getting better data and that he would like feedback on this. Chair Wei stated that she does not have an answer from the Commissioners at this time, but she would ask the Commission staff to get an answer for him.

Brad Chalk from the California Applicants' Attorneys Association asked about the straight-line relationship issue that Mr. Seabury raised, stating that there is not a straight-line relationship and the difference between 10 and 11 and 30 and 31; he asked what happens to the earnings loss when one gets to above 50 in the ratings the earnings loss, and Mr. Seabury responded that it was a significant loss. Mr. Seabury responded that it means that if we are comparing the relationship between ratings and losses, on average, it is proportional throughout the set of ratings. Mr. Seabury focused on 0 to 30 because that is where most of the data are. If one looks beyond 30,

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they would be able to fit a line, but it is not going down or up but increasing because losses are higher, but there are fewer observations so it is much more variable. The reason the study is focusing on lower ratings is because they have much more data. Mr. Chalk stated that when one gets to a certain point in the AMA ratings, we know that the person probably has a total loss of earnings capacity. Mr. Seabury responded that earnings losses are increasing, but benefits increase more than proportionately with ratings. Mr. Chalk noted that 60 percent on the AMA rating would have a total loss in earning capacity. Commissioner Aguilar interjected that it is still proportional. Mr. Seabury responded that one would have an inability to work when one gets to 100. Mr. Chalk replied that when one gets to 100, one is dead and that is irrelevant. The linear study by Mr. Seabury does not take into account the losses for 50+ and what happens to the earnings losses. Mr. Chalk stated that the point is that the relationship is proportional is accurate but the straight line falls apart the more a person is injured. Mr. Seabury responded that there is less to say above 30 because there are so few data, and there is less to say at higher ratings because there are so few data points. Mr. Seabury stated that they are confident in the linear relationship between losses and ratings. Chair Wei stated that above 50, it is still a straight line but a steeper slope. Mr. Seabury stated that one could show in the figure that the relationship exists, but there are so few points that it is hard to graph the linear relationship. Chair Wei stated that her understanding from these graphs is that what the AMA *Guides* did was to push down all the ratings to the bottom end, and so many highly rated cases are not being seen because they are all pushed down to the bottom end of the rating schedule. Mr. Chalk agreed.

CHSWC Vote

Commissioner McNally moved to approve for release and public comment for 30 days the draft “Impact of the Adoption of AMA-Based Permanent Disability Rating Schedule in California,” and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Comments by the Labor Secretary Marty Morgenstern

Chair Wei mentioned that Labor Secretary Marty Morgenstern was present and that this was the first time that the Labor Secretary has attended a Commission meeting, and the Commission is very pleased to have him here. Mr. Morgenstern thanked the Commission for inviting him and he thanked the Commission for its work. He stated that the Governor thinks that Labor Secretaries know what they are talking about 10 percent of the time. He stated that the most important work he has been doing has been to ensure that the governor’s appointees to DIR are good solid public servants, such as Christine Baker, Julie Su, Ellen Widess and Diane Ravnik and all the other chiefs and staff who are working hard to have DIR be an effective agency for protecting workers and law-abiding businesses and have a level playing field. He stated that he has been told over the years that the work of the Commission is very important for seeing that the agency does a good job in protecting the people of California. He thanked the Commission and said that the work it does is very much appreciated. The Governor has spent a lot of time delving into workers’ compensation and OSHA, even though that was not reflected in his speech yesterday. Labor Secretary Morgenstern concluded by stating that there is commitment to

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continue to be an efficient provider of industrial relations policy in the coming years.

Working Paper “Are There Unusually Effective Occupational Safety and Health Inspectors?”

John Mendeloff, RAND

Mr. Mendeloff stated that work in this area is exploratory and there are not lots of studies to build on. Mr. Mendeloff stated that the research started from the finding from previous studies that have shown that OSHA inspections that levy penalties lead, on average, to reductions in injuries of about 20% over 2 years. He stated that it would be helpful to know more about the factors that make inspections effective and those that do not. One line of research has begun to focus on whether it matters which standards are cited. For example, when the Personal Protective Equipment standard is cited, injury rates go down. Some standards probably matter more than others in terms of injury prevention.

Mr. Mendeloff stated that almost no attention has been given to the possible role of the inspector. Some questions include whether some inspectors more effective and, if so, why. The study tries to define and describe: what is meant by effectiveness, why inspectors might be more or less effective, and what types of inspection behavior might be linked to effectiveness; how much inspector behavior varies; and whether injury rates can be linked to inspector behavior.

Mr. Mendeloff stated that in this study, effectiveness is measured by the extent to which establishments' injury and (acute) illness rates decline following inspections. This is a narrow definition, excluding exposures to toxic substances and other outcomes. Many other factors besides inspectors affect injury rates; that is why they do not view this study as a potential performance measure for individual inspectors. Instead, the study tries to identify the characteristics of inspectors that might be linked to better outcome. Inspectors may have a small impact on health and safety outcomes, but, as the study suggests, they can have an effect.

Mr. Mendeloff stated that inspectors might vary in several ways or skills that affect an inspection's outcome, such as: knowing what to look for and having better preparation for an inspection, as well as more knowledge from experience and/or training; getting people at the worksite to provide information; educating people about risks; and persuading people to make changes. All of these are possible skills that might be linked to having a better outcome as a result of an inspection.

Mr. Mendeloff stated that they spoke with people who supervise inspectors and asked them what some of the characteristics are that they think make a difference. Supervisors indicated that good performance is linked with being: knowledgeable; intelligent; diligent; persuasive; firm but reasonable; and having good interpersonal skills. Since it is difficult to find in the data which people have good interpersonal skills, supervisors were asked if they could identify some inspection behaviors that they could relate to effectiveness. Suggestions focused on correlates of low effectiveness: citing the same set of standards in most inspections – an issue of diligence; citing a limited set of standards across all inspections; having an unusually high percentage of inspections with zero violations cited; and not citing for lack of an IIPP plan.

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Mr. Mendeloff stated that the study looked at the measures supervisors and others had identified to see how much variation there was on these measures. He stated that inspection data are from the Integrated Management Information System (IMIS) (1990-2007). It included data on 464 inspectors with 30 or more inspections from 1994 to 2007. The total number of inspections was 60,261. The study limited the scope to manufacturing, utilities and transportation, wholesale trade, and health care (Standard Industrial Classifications [SICs] 20-51 and 80). Variations for each of several types of inspections (programmed, safety-complaint, health-complaint, accident) were examined; for each type, only inspectors with at least 30 inspections of that type were included.

In the interests of time, Mr. Mendeloff presented the findings only for safety complaint inspections, but he noted that findings for the other inspections types were very similar. The study looked at the percent of non-union inspections where a worker accompanied an inspector and the percent of union inspections where a worker accompanied an inspector. These distributions were examined because the data for at least programmed inspections indicate that inspectors are better able to detect serious violations when a worker accompanies them; therefore, getting a worker to accompany an inspector seems to be a good skill to have. While this behavior is not totally under the inspector's control, in union workplaces, 10% of inspectors have a worker accompany them 10% of the time or less, and 10% of inspectors have a worker accompany them 89% of the time. In non-union workplaces, it is more difficult to get a worker to accompany an inspector, but some inspectors still manage to do it; that is, 10% manage to do it 56% or more of the time, whereas others do it 0% of the time. There are large variations in these cases.

Mr. Mendeloff stated that another issue is that complaint inspections for safety typically are limited to the subject of the complaint, but if an inspector sees a problem that they think deserves attention, it can be expanded. Ten percent of the inspectors expanded an inspection 2% of the time or less, and 10% of the inspectors expanded an inspection 73% of the time. Again, large variations are seen in the ways inspectors carry out those activities. For complaint inspections, 10% of the inspectors cite no violations 17% of the time, and 10% of the inspectors cited no violations 61% of the time. For programmed inspections, there was a similar range. For complaint inspections with serious violations cited, 10% of the inspectors find 0.04 serious violations per inspection, or 1 every 25 inspections, essentially, and another 10% have almost 1 (0.74) serious violation per inspection, almost 20 times more often.

Mr. Mendeloff stated that other distributions looked at the number of unique standards cited, the percent of "top 10" and the "top 5" standards cited. The study also looked at district offices for variations, this time using quartiles. In 25% of districts (of 23 in total), 20% of inspections have 0 violations, and in the upper 25% of districts, 45% have 0 violations. For serious violations, the bottom quartile has 0.44 or fewer serious violations per inspection, and the top quartile has 1.11 or more serious violations. For citing a lack of an Injury and Illness Prevention Program (IIPP), the bottom quartile has 20% and the top quartile has 53%. For inspections where a worker accompanied an inspector at a union workplace, it was 9% for the lower quartile and 35% for the upper quartile. The study therefore found that even at the district level, substantial variations do exist.

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Mr. Mendeloff stated that a follow-up question is whether those variations link to differences in outcomes, or whether some of these practices make a difference. The study used data on inspectors with 30 or more inspections of a particular type, representing a couple of years of work, and used data on inspectors with 60 or more inspections, and found that the variation declined very little. The variations seem more enduring differences than what one might think would appear with a new or less-experienced inspector with fewer inspections.

Mr. Mendeloff stated that the study did some analyses for each inspector with the dependent variable being how the injury rates went down. The study controlled for the characteristics of the establishment (size, union, industry), characteristics of the inspection (type, i.e., accident, complaint, health, safety, etc.), and whether it was health or safety. Manufacturing represented over 50% of the sample, mostly under 100 employers.

Mr. Mendeloff stated that injury rates declined more after inspections when the inspections were carried out by inspectors with more years of experience. There were over 140 inspectors in the study, and it was expected that 7 inspectors would by chance have unusually high or unusually low impacts. Instead, the study found that 21 inspectors were unusually high or unusually low. This suggests that some of the performance by inspectors was not just due to chance but was due to being more or less effective. That does not explain much of the total variation in injury rates. Only 3% of the variation in injury rates (changes after an inspection) is explained by which inspector did the inspection. Nonetheless, it appears that there are some inspectors who are more or less effective than others. The study did not identify who these inspectors are and, in fact, scrambled and encrypted IDs. In addition, the study also looked at districts and found small differences. For example, Region 3, District 7 (a fairly small district) was statistically worse than the reference group, and Region 4, District 3 was higher than the reference district. Those districts were not looked at further, as this is exploratory research to determine what kinds of behaviors by inspectors make a difference. Districts were included because inspectors are linked to districts, with many inspectors working in one district for most of their career.

Mr. Mendeloff stated that in terms of the study results, research so far has found that there is some impact depending on the district and depending on who does the inspection. There is a lot of variation between inspectors and within districts and across districts in how practices are carried out, and good or bad performance is linked to different clusters of behaviors. He stated that research will continue to work on defining the differences and behaviors.

Questions from Commissioners

Commissioner Aguilar asked what the goal of the study is and what will be done with this information, and whether the plan is to go back to districts to have districts create a plan for more consistency. Mr. Mendeloff responded that this is not part of this study. If they find, for example, that inspectors who have workers who accompany them or who cite larger numbers of standards are more effective, then that could certainly be part of training efforts. There is not much that can be done with the finding that more experienced people do better, except perhaps to work harder at retention, as it is not something very easy to manipulate, though some of the other measures would be subject to manipulation. The other part of the study was simply to find out how much variation there really is in the behavior of inspectors. The study is not saying the

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variation is not justified; it is simply trying to describe it more clearly than it has been described before so that Cal/OSHA and others can look at this more closely to see whether these are in fact reasonable differences, and if they are not, they can be used for training purposes. He stated again that the research is not intended to point fingers at individual inspectors or districts.

Commissioner McNally stated that it seemed that more often than not, it would be difficult to have a meaningful inspection without a worker accompanying an inspector to talk about the dynamics of the workplace and the particular situation that has been complained about, or in an accident inspection, to discuss what the procedure is that was either not followed or was followed, or that they did not recognize the hazard before the interview happened. He stated this is more a comment than a question as it is amazing to him that there are a significant percentage of businesses that do not have someone representing the workforce accompanying an inspector. Mr. Mendeloff responded that even in union workplaces, workers accompany an inspection only 50% to 60% of the time, and in non-union workplaces, the number is 10 to 15% of the time. He stated that it clearly makes a difference in programmed inspections. In complaints or accidents, inspectors know what they are coming to look at, and it does not affect the number of serious violations they find. He stated that it is not just the pressure of having a worker accompany the inspector; otherwise it would show up in complaint inspections and the like, but it only shows up in programmed inspections where it is really the information that the employee is providing. Commissioner McNally stated that it works both ways; it is an opportunity for both parties to learn, to have a better outcome, a better informed inspection. He stated that theoretically, an inspector and the worker would walk away from the inspection with a better understanding of each other's perspective. Mr. Mendeloff stated that it is potentially an opportunity for Cal/OSHA to do some training on the barriers to getting a worker to accompany an inspector and what, if anything, an inspector could do.

Public Comments

Stephen Kessler, City of Berkeley Labor Commission, stated that the data on whether a worker accompanied an inspector caught his attention. It seemed to him that that should be a general procedure that a worker does accompany an inspector at all possible times. The State could let the employer know ahead of time that someone who is regularly assigned to that position or shift where the incident has happened should accompany the inspector. He was concerned that this was not already a policy and he thought the Commission should address that.

Chair Wei stated that they did hear from Director Baker at the start of the meeting that Cal/OSHA and the Labor Commissioner's Office are going through intensive internal training to align the inspectors on mission and goals. She stated that she knows that that training is being well received and that the study shows that intensive training is needed. She thanked Mr. Mendeloff for his work.

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School Action for Safety and Health (SASH) Program
Robin Dewey, University of California, Berkeley

Robin Dewey stated that the School Action for Safety and Health (SASH) program is a Commission-funded project aimed at reducing injuries and illnesses among California's school employees and helping school districts come into compliance with Cal/OSHA's Injury and Illness Prevention Program (IIPP) standard. The Commission has prioritized school employees because the injury rate among school employees is nearly twice that for general industry. Also, districts were being fined for being out of compliance with the IIPP, as well as other violations. The program is being implemented by the Labor Occupational Health Program (LOHP) at UC Berkeley, in collaboration with the Labor Occupational Safety and Health Program (LOSH) at UCLA.

Ms. Dewey stated that SASH includes three broad elements related to helping districts create strong health and safety programs that meet the requirements of the IIPP standard: educational materials and resources; a one-day training program; and ongoing technical assistance. Educational materials include fact sheets on the different elements of an IIPP, as well as tools to help implement an IIPP. There is also a series of factsheets and tools such as checklists and tracking forms, and there is a Guidebook with a template for writing the district's IIPP. All of the materials have been approved by Cal/OSHA. Another part of the program materials is occupation-specific tip sheets for employees in different occupations within school districts. The program also provides a fill-in-the-blank poster, which is intended for employee break rooms, which includes a place to write in whom to call at the school or district about health and safety issues. Finally, there is an online resource guide with lots of factsheets and other materials related to occupational and environmental health issues for school employees which are updated regularly.

Ms. Dewey stated that the one-day training program targets both human resource (HR) staff who are often responsible for writing the district's IIPP, as well as maintenance and operations (M&O) supervisors and other department leads who often have the responsibility to identify and correct the hazards in the schools. It has been very important to get both groups in the room. Ms. Dewey stated that a key message of the program is the importance of getting district employees to think about employee health and safety, not just the health and safety of students.

Ms. Dewey stated that in outreach efforts for the program to recruit participants, they work closely with the county offices of education, the unions, the Joint Powers Authorities (JPAs), and the risk management consultants who work with school districts. Over the past two years that the program has been up and running, LOHP and LOSH conducted 31 one-day training programs, in which 594 people have attended, and the program has reached 226 school districts and 32 out of 58 counties. In some cases, countywide trainings have been held. In other cases, people from surrounding small counties have gone to a training in a different county other than where they work.

Ms. Dewey stated that an evaluation component has been built into the project for two purposes: to assess the effectiveness of the program based on attendees' responses to questions posed in an evaluation form provided at the end of the training; and second, to evaluate if the program is

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having an impact, that is, if trainees are going back to their districts and using skills gained in the course, specifically to write and implement an IIPP. An electronic follow-up survey was conducted with SASH course participants. After that, a small number of participants were also contacted by phone. Ms. Dewey stated that in addition to these evaluation efforts, the program has received a small amount of additional funding from NIOSH, which is being used to determine whether the California program can serve as a model for other states. This is particularly important given federal OSHA efforts to establish a standard similar to the California IIPP standard.

Ms. Dewey stated that the course evaluations show that SASH outreach methods have been very effective in reaching the target audience: of the 231 participants, a total of 181, or 82%, of these participants were district-level school employees; and of the 181 district employees attending a SASH training, about three-quarters are from the HR or M&O departments, indicating that SASH is reaching its target audience. The program was particularly interested in reaching district-level employees because IIPPs are written and implemented at the district level. Also, there has been an even distribution of districts from urban and rural, large and small districts. Ms. Dewey stated that in terms of the impact of the program, the majority of SASH participants report that they are already carrying out health and safety activities, such as serving on a health and safety committee, conducting inspections, or reviewing injury and illness data. Almost half of SASH participants are responsible for writing the IIPP. In addition, participant feedback about the value of the course content was very positive; all participants thought the course content was excellent or good, and many participants gave positive written feedback about the participatory activities and group activities in the course. Participants also mentioned that the participatory activities helped promote team-building and provided a good opportunity to get ideas from others. Finally, participants responded that they were pleased that there was no cost for the training.

Ms. Dewey stated that the course evaluations also asked participants to report how much knowledge they gained in each of eight topic areas related to developing an IIPP. From 73% to 77% of the 231 participants reported that they gained “some” or “a lot” of knowledge as a result of the course in each of the course topics. It is important to note that those who responded that they learning nothing or a little were a group of Environmental Health and Safety specialists who attended a single class in Southern California, who, obviously, know a lot more about health and safety than the average district employee. Finally, the evaluation asked how confident participants were leaving the course that they could actually do the tasks involved in writing and implementing an IIPP. Nearly all participants (97%) reported that they “can or probably can” carry out at least three of the above tasks, and 85% reported that they “can or probably can” carry out all six tasks involved in an IIPP.

Ms. Dewey stated that the follow-up survey attempted to determine whether participants were actually carrying out the activities involved in implementing an IIPP. The results from the electronic survey show that many trainees went on to implement changes to the health and safety programs in their district. More than three-quarters (78%) of survey respondents used the skills they gained from the SASH training to improve their district’s health and safety program. Actions by SASH participants contacted by the electronic survey and follow-up phone calls indicate that they: wrote an IIPP plan for a district that did not have one; updated an already

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written IIPP; used the SASH materials to update their own materials or to train school employees; started having safety meetings with staff or added safety topics to staff meetings; shared information from the SASH training with others (supervisors, co-workers, supervisees); had a greater overall awareness of safety; revitalized a health and safety committee or started a new health and safety committee; became more skilled at identifying and prioritizing hazards; were able to focus on and work better with departments that have high injury rates and need attention; and learned how to pinpoint root causes of safety problems and remedy them.

Ms. Dewey stated that the evaluation asked about challenges respondents were facing in implementing their IIPPs. Not surprisingly, responses included: not enough money or budget considerations; not enough staff; not enough time; and difficulty getting buy-in (mostly from leadership and mostly to prioritize health and safety). However, participants also stated that the skills they learned in the SASH training to make the case for safety to administration helped to provide them with strategies that they are using to overcome these challenges and make recommendations for health and safety improvements.

Ms. Dewey stated that follow-up plans for the California SASH program include to continue: to provide trainings each year the program is funded, although because the funding has been reduced significantly, the numbers of trainings which can be provided is more limited; to explore how to reach more remote districts through video-conferenced training programs, based on conducting two trainings through video-conferencing; to provide technical assistance through the SASH Resource Center, which includes preparing and emailing out regular newsletters with new health and safety information relevant to school districts to add to the 5 newsletters sent out to-date; and to do presentations at schools-related conferences to promote SASH. In addition, as part of the national SASH/NIOSH-funded project to assess whether California SASH can serve as a model for other states, the next step is to contact schools-related organizations in other states to explore their interest in adapting the California SASH materials for their states.

Questions and Comments from Commissioners

Commissioner Aguilar stated that she participated in one of the early SASH trainings and it was excellent. She asked Ms. Dewey if there would be a SASH presentation at the Public Agency Risk Management Associations (PARMA) conference, and Ms. Dewey responded that there would not but that there would be a presentation at the California Association of School Business Officials (CASBO) conference.

Changes in Permanent Disability Awards Under Senate Bill 899

Frank Neuhauser, University of California, Berkeley

Mr. Neuhauser stated that the Commission had asked him to update his evaluation of the impact of the Permanent Disability Rating Schedule (PDRS) that was adopted in 2005 as part of the reform legislation; two other presentations were given on this topic in 2007 and 2009; and this is the third and possibly the last presentation. The changes in the PDRS were due to the change to the American Medical Association (AMA) *Guides*. The AMA *Guides* schedule mostly gives lower ratings to the same impairments rated under the 1007 PDRS. Mr. Neuhauser stated that

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apportionment was already in the law, but after adoption of the *AMA Guides*, apportionment has been applied much more frequently. Mr. Neuhauser stated that the study covered 2003 and 2004, when cases were under the old schedule, and 2005, and ratings that were done in 2010 and 2011 after the schedule change and the *Almaraz/Guzman* and *Ogilvie* cases were decided. Mr. Neuhauser stated that he has not looked at the trend lines in between those periods.

Mr. Neuhauser stated that the average rating under the 2005 PDRS compared to the 1997 PDRS, broken down by unrepresented cases and represented cases: the average rating for unrepresented cases dropped by 40 percent, from 22 percent to about 13 percent; and the average rating for represented cases dropped by 28 percent, a smaller drop. Compensation increases more rapidly than the ratings, so the impact of the decline in ratings is larger on compensation than it is on the average rating. Unrepresented cases had about a 52 percent decline in the average compensation, before apportionment, and represented cases had about a 37 percent decline in average compensation before apportionment. Prior to *Almaraz/Guzman/Ogilvie* set of cases, the change in compensation between the two schedules was almost identical for represented and unrepresented cases. Since the *Almaraz/Guzman/Ogilvie* set of cases, the change in compensation for represented cases has declined significantly, because ratings and compensation of represented cases increased. The ratings did not change for unrepresented cases and have not been affected by *Almaraz/Guzman/Ogilvie* decisions. Commissioner Wei asked how many cases were represented and how many were unrepresented. Mr. Neuhauser responded that 66 percent of the cases were represented and 33 percent are unrepresented and that that has stayed constant for basically the entire period.

Mr. Neuhauser stated that apportionment can be seen in the Disability Evaluation Unit (DEU) ratings for the unrepresented cases. When a case where apportionment is indicated comes to the DEU, that case is reviewed by a judge and the legal determination is made whether apportionment is appropriate and if so, apportionment is applied in those cases. That decision is not made in represented cases, so judgments cannot be made on what fraction of the represented cases are apportioned. For represented cases, since the decision about apportionment is made in settlement or in trial, they are not part of the DEU process, so apportionment is not seen in DEU cases.

Mr. Neuhauser stated that there is a five to six percent lower compensation due to apportionment on unrepresented cases, and the impact of apportionment is probably larger in represented cases. Apportionment is more likely to lead someone to get an attorney, and the represented cases tend to be larger.

In an effort to understand the impact of the 2005 schedule, Mr. Neuhauser calculated the fraction of cases that would have been rated under the previous schedule that are not rated under the *AMA Guides*-based schedule. The main differences are that the work capacity guidelines and prophylactic work restrictions are frequently used under the 1997 PDRS but are not used under the *AMA Guides*. The *AMA Guides* are thought to be much more restrictive in assigning any impairment. It is difficult to measure cases that we do not see because they are not submitted for ratings because they are zeroes. Zero-rated cases also include ones that are submitted because a doctor wrote the report and they received a zero rating. Mr. Neuhauser stated that he tried to estimate all the zero-rated cases including those that were not submitted because they did not

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have a ratable impairment under the AMA *Guides*. The trend lines in all indemnity cases were compared with the trend line in DEU-rated cases and set up as 100 percent in 2000 and mapped going forward. This is the period where the implementation of the 2005 *Guides* became effective and these accident years of injury and cases in 2004 were nearly all rated under the 2005 schedule. Some of the cases in 2003 were rated; it depended on those what those cases became. Mr. Neuhauser stated that it shows that the decline in the permanent disability rating was the much steeper than the decline in the number of cases that had any indemnity.

Mr. Neuhauser stated that the trend line in the indemnity cases has been declining over the whole period; in fact, it has been declining since 1995, but the cases that were rated with a positive rating in the DEU database declined much more rapidly than the overall indemnity trend after 2004. The decline suggests that over this period, a significant fraction of these cases were never received by the DEU to be rated because they had received zero impairment rating. These were unrepresented cases, so all of them had to go to the DEU. That decline suggests that a minimum of 25 percent of cases that would have been rated under the 1997 schedule were not rated under the 2005 schedule. A quarter of the cases that would have been rated under the 1997 schedule were not rated because they did not have any impairment under the 2005 schedule, so this was a substantial impact.

Overall, for the represented and unrepresented cases, the average rating dropped by 31 percent. Overall, the decline in compensation was 40 percent. If everything is included -- the zeros, the compensation, the average rating and apportionment, as well as the impact that *Almaraz/Guzman* had on represented cases by increasing the rating -- there has been a 58 percent decline in compensation in the cases that were rated in 2003 and 2004 and the cases that were rated in 2010 and 2011. Therefore, the bottom line is that there has been a 58 percent decline in the level of compensation for workers and the reduction in that much for the cost of permanent disability.

Questions and Comments from Commissioners

Commissioner Aguilar asked Mr. Neuhauser if he had included zeroes and apportionment when he conducted the previous studies. Mr. Neuhauser responded that for the 1997 period, apportionment was never applied so what was seen as apportionment after that was attributed to the change in the law; this is for unrepresented cases so it is always assigned specifically in the DEU rating process.

Commissioner Wei asked if there is anything surprising in the data for Mr. Neuhauser given that this is the third time he conducted this study. Mr. Neuhauser responded that the study can be used to estimate the number of zeroes. Previously, people were estimating the zeroes to be 20 to 30 percent, and it seemed extraordinarily high that that many cases were cut out of the system as a result of the PDRS. However, it turns out that this is the case. At a minimum, 25 percent of the cases are involved, and if a different starting point is picked, it would be 30 or 35 or 40 percent of the cases, so this is a dramatic reduction. Mr. Neuhauser stated that some of the work he is doing now will provide an opportunity to look at workers who had a zero rating. What is striking is that since 2005 for the unrepresented cases, the average rating has stayed absolutely constant, but the represented cases have increased significantly in their average rating. The Rating Bureau is seeing that there is an increase in compensation and that that increase is all for

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represented cases. It might be that the impact of *Almaraz/Guzman/Ogilvie* requires the skills of an attorney to get compensation for a worker. The composition of cases has not changed and the unrepresented cases did not see a change in compensation between 2000 and this period, but represented workers have.

Commissioner Steinberg asked if losses under the AMA *Guides* system were 58% and how there could be an increase in ratings at the same time. Mr. Neuhauser responded that if the measures were done in 2007 when there was no access to zero-rated claims, there would have been losses in the range of 70 percent, but apparently, the represented cases have been getting gradually higher ratings over the period from 2005 to present. Commissioner Steinberg asked if the trend has been recent. Mr. Neuhauser stated that he has not mapped the trend, but he would guess that trend is mostly post-*Almaraz/Guzman*.

Commissioner Wei stated that she would like to have public comments since this is an important item with key numbers. She stated that the Commission could choose to have both public comment and then receive comments when the report is posted. Commissioner McNally reiterated that public comment is important since it would be additional feedback. Commissioner Wei stated that the Commission will take brief public comment and each comment would be limited to two minutes.

Public Comments

Linda Atcherley from the California Applicants' Attorneys Association asked whether when Mr. Neuhauser talked about the difference in compensation or ratings for represented and unrepresented cases, he had any control because unrepresented applicants can only get a second opinion from a Qualified Medical Evaluator(QME) panel, but represented workers can go to Agreed Medical Evaluators (AMEs); she asked whether Mr. Neuhauser had any control over the effects of AMEs versus the strict panel QMEs process. Ms. Atcherley asked if Mr. Neuhauser was aware of the panel QME report that the Commission authored because when someone is represented, they have a different choice of treating physician. Mr. Neuhauser stated that he did not know if the composition changed over this period, but he would look into it. Mr. Neuhauser stated that he had tried to identify AMEs and panel QMEs in the data, and he stated that Ms. Atcherley has an excellent suggestion. Ms. Atcherley replied that an injured worker who is represented can avail himself of a panel QME and a different treating physician, and if this can be identified, it would be better than an *Almaraz/Guzman/Ogilvie* adjustment. Mr. Neuhauser replied that this would have been very difficult had they not done the work previously.

CHSWC Vote

Commissioner Culbreath moved to approve for release and posting for public comment for 30 days, the "Changes in Permanent Disability Awards Under Senate Bill 899" report, and Commissioner McNally seconded. The motion passed unanimously.

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Acting Executive Officer Report

D. Lachlan Taylor, CHSWC

Study on Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program

Lachlan Taylor stated that in January 2011, the Commission posted the RAND paper on the use of compound drugs for public comment and that that paper has served as a resource during legislative action leading to enactment of Assembly Bill (AB) 378. A number of public comments were received; most of them were supportive and some expanded on what was in the report.

CHSWC Vote

Commissioner McNally moved to approve for final release and posting the "Use of Compound Drugs, Medical Foods, and Co-Packs in California's Workers' Compensation Program: An Overview of the Issues" report, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Medical Care Provided Under California's Workers' Compensation Program

A multi-year study of the medical care provided under California workers' compensation program by RAND was presented at the Commission meeting in August and has been on the website for public comment. Comments were received from Republic Indemnity and the California Chiropractic Association. There appears to be no substantive error in the report.

CHSWC Vote

Commissioner Aguilar moved to approve for final release and posting the "Medical Care Provided Under California's Workers' Compensation Program: Effects of the Reforms and Additional Opportunities to Improve the Quality and Efficiency of Care" report, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Evaluation of the California Injury and Illness Prevention Program

The CHSWC/RAND report on the California Injury and Illness Prevention Program was presented by John Mendeloff at the August Commission meeting and it was approved for posting for public comment. The report is on the website until February 10th.

Memo on the Role of Insurers in Requiring Employers to Prepare an Injury and Illness Prevention Program

At the August Commission meeting, the Commissioners asked the staff to prepare a memo on the role of insurers in requiring employers to prepare an Injury and Illness Prevention Program (IIPP). A memo has been submitted to the Commissioners. In 2003, it was required that every insurer needed to do a written report of every new insured employer's IIPP; this proved to be too costly and it was amended four months later to apply to every new employer with an experience modification (Ex-mod) rating of 2.0 or greater.

CHSWC Vote

Commissioner Culbreath moved to approve for posting and public comment for 30 days the January 19, 2011 "Requirements for Insurer Review of Employer's IIPP" memo, and

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Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Commission's 2011 Annual Report, 2011 Report Card, and 2011 WOSHTEP Advisory Board Annual Report

Commission staff has prepared the 2011 CHSWC Annual Report, 2011 Report Card, and 2011 WOSHTEP Advisory Board Report. These reports are ready for release pending final edits and updates.

CHSWC Vote

Commissioner McNally moved to approve for final release and posting, pending final edits and updates, the 2011 CHSWC Annual Report, the CHSWC "Selected Indicators in Health and Safety and Workers' Compensation: 2011 Report Card for California," and the 2011 WOSHTEP Advisory Board Annual Report, and Commissioner Schwenkmeyer seconded. The motion passed unanimously.

Other Business

None.

Adjournment

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

Approved:

Angie Wei, Chair

Date

Respectfully submitted:

D. Lachlan Taylor, Acting Executive Officer

Date