

**MINUTES FROM CHSWC PUBLIC MEETING**  
**Wednesday, September 27, 2024**  
**Elihu Harris State Building**  
**1515 Clay Street,**  
**2<sup>nd</sup> Floor, Rooms 1-2 (and virtual)**  
**Oakland, CA**

**In Attendance**

Acting Chair: Meagan Subers

Commissioners: Shelley Kessler, Nicholas Roxborough, Mitch Steiger, Sidharth Voorakkara

**Absent:** None

**I. Approval of Minutes from the May 15, 2024, CHSWC Meeting**  
**Meagan Subers, Acting Chair**

Acting Chair Subers thanked and congratulated former Commission on Health and Safety and Workers' Compensation (CHSWC) Executive Officer Eduardo Enz for his retirement after many years of service to CHSWC. CHSWC Commissioners were excited for him and acknowledged and appreciated the time he spent with them and with CHSWC Staff. Acting Chair Subers welcomed David Botelho as their Acting Executive Officer and looked forward to working with him. Commissioner Kessler said former Executive Officer Enz took over from Director Christine Baker during a tumultuous time and rose to the occasion; he did great work for CHSWC. She appreciated his gentle spirit, his patience and his ability to deal with the myriad of issues that came across his desk. She wished Executive Officer Enz well and thanked him for his service; and that if he needed help in the future from the CHSWC Commissioners they were available.

Before a vote on approval of the CHSWC May 15, 2024, minutes, Commissioner Kessler said she had concerns about a RAND report. The Commissioners never had a chance to review the report, and she did not know if they have to act on it. If anything impacts the work of their Commission, it would be helpful to be able to get that information prior to the presentation. If CHSWC is asked to take a position, it should receive the report in advance so CHSWC Commissioners can review articles and reports. Commissioner Roxborough said he agreed with Commissioner Kessler. He shared an article from a Work Comp executive that summarized the study, and it showed \$7.9 billion owed by California employers. He asked his fellow Commissioner Kessler to review that study, but it is now posted on the DWC website. CHSWC could get the report through the DWC website. It was a significant issue, and they should review it in conjunction with a strategic partnership with the DIR and DWC.

Acting Chair Subers asked for a motion to approve the May 15, 2024, CHSWC meeting minutes. Commissioner Roxborough moved the motion and Commissioner Kessler seconded the motion; the minutes were approved unanimously.

## **II. Stakeholder Presentations**

### **1. Enforcement of Worker Safety Standards**

**Eddie Sanchez, Co-Director of SoCalCOSH; and Alexis Nava Teodor, Workers' Rights Director of the Pomona Economic Opportunity Center**

Mr. Sanchez thanked the Commission for the opportunity to share today. He acknowledged what Commissioner Steiger said about their being very close to the experience of worker injuries, and worker illnesses. He explained that he became involved in this work by way of a friend who passed away from a workplace injury and that has been the driving force to continue to do this work and the source of his appreciation for this work.

Mr. Sanchez thanked the Commission for the opportunity to present today. He explained that they will discuss the enforcement of worker safety and the role that staffing levels plays in enforcement. To begin, he introduced himself as Eddie Sanchez, Co-director for the Southern California Coalition for Occupational Safety and Health. He said their organization was founded on the principle that all workplace injuries, illnesses and deaths are preventable. He said that they work with a lot of workers, worker centers, unions, individuals who are trying to address workplace hazards - from filing Cal/OSHA complaints to mitigating the actual hazards in the workplace.

Mr. Sanchez then gave space for his colleague to introduce himself. Alexis Nava Theodora thanked the Department of Industrial Relations for having them present at the meeting. He explained that he was the Worker Rights Director for the Pomona Economic Opportunity Center. He said that they are a worker center in Pomona where they operate in San Bernardino and Riverside counties. Mr. Teodor said that they recently experienced two deaths of worker members, some of whom also experienced health and safety violations. He said that he wanted to honor the name of Jesus Garcia Mayor, and invoked that may he rest in peace and to put it out in the spirit.

He said that they are a workers' center in the Inland Empire that represents day laborers and domestic workers. He said that currently they have been filing complaints with the Agency (Department of Industrial Relations and Cal/OSHA) about health and safety violations by employers that they are tracking. He said that he hopes that what they show today can help inform the ongoing work that the Commission is doing already.

Mr. Sanchez said that they wanted to show the story of Carlos Castro, which was covered in the Sacramento Bee. Mr. Sanchez presented a video of an amputee injured worker Carols Castro in which he said that if Cal/OSHA was adequately doing their job, there might be a great, great possibility that he wouldn't be living through life legless. He said that he thought if there had been more of a presence from them, it may have helped his situation to be quite honest; he said that who knows, maybe he still could have been in an accident while I was there working. He said that maybe if Cal/OSHA were there, the chances would be lessened. He said that is was

extremely hard and that it wasn't until probably the last six months where he finally felt like himself again. He said that he used to be the joking type (of person) and jovial, but for two straight years he was the complete opposite of that. He said that there were times when he would actually roll his manual wheelchair to the swimming pool, stare at it and contemplate rolling in because he was in such a dark place that that seemed like at that time a viable solution for him. He said that the one thing that kept me from doing it was that most of his friends he has known for 30 years. He said that they love him and that he can feel it, and I know it. He said his mother loves him, and he feels it and knows it. He said that when he was sitting there at that pool, all their faces were going through his head like, "If I did this, they would be so distraught, you know. I just couldn't do that. I wouldn't want to hurt that many people, and I know that they would be completely devastated." The video portion of the presentation concluded.

Mr. Sanchez said that, as Carlos illustrated, the presence of Cal/OSHA is something that is very valuable and they know - it's become very common knowledge now from a lot of news reports and a lot of (media) coverage - that the staffing levels are not where they need to be. He said that in situations like those of Carlos and for other workers, there is a clear feeling on the ground that without the presence of Cal/OSHA, there is a lack of safety for workers. Even more so, as California passes new protections like the indoor heat standard, there becomes concern about what that means for enforcement. He said that they can pass many wonderful, amazing standards, and many wonderful and amazing protections for workers, but without the capacity to show up and actually enforce these standards, they become a bit hollow. He then presented a chart with historical numbers of Cal/OSHA citations. He said the chart demonstrated that the number of citations issued has declined since the early 2000s. He said that this is a sentiment that workers sometimes will tell them as they are trying to help them – they are not sure if anyone (from Cal/OSHA) will show up. They are not sure if anyone is actually going to do anything about the issues that they are facing in the workplace. Mr. Sanchez said that it was quite sad to experience that and to try to work through the barriers for workers to address workplace health and safety, not just in the workplace, but also through the mechanisms that should be protecting them.

Mr. Sanchez said that they are also seeing the results of this by the fact that inspections are down and that letter investigations are up. He said that for folks who are not familiar with letter investigations, essentially what happens is that a letter is sent to the employer and that acts as an investigation itself, rather than an inspector coming to the workplace and having a visible response to addressing the hazards. He said that the experience is kind of deflating, where workers you know are submitting Cal/OSHA complaints and then there is no physical response to these hazards that they're experiencing.

Mr. Sanchez continued that they know that this is not just unique to Cal/OSHA; he said that they know that the Labor Commissioner is also experiencing extreme backlog. He said that he believes the number was close to 47,000 claims in backlog that was last reported through an audit. He said that also has a lot to do with staffing. He said that from the lack of staffing they are seeing in many ways, delayed claims, delayed cases, responses and investigations. He said that ultimately, workers are paying the price for that.

Mr. Teodor continued by presenting a local example that they were currently working on. He reminded the audience that he was from the Pomona Economic Opportunity Center. He said that they cover the cities of Pomona surrounding the areas of Pomona in Los Angeles County, the unincorporated areas of L.A. County, San Bernardino County, and Riverside County. He illustrated with the business named 99 Cost Bargain as an active investigation ongoing, and provided case number 220-6897. He said that this employer has been in existence for the last 10 years, and they have evidence that for the last 10 years, they have not been following wage laws in the Labor Code, and as it applies to health and safety protections. He said that they know the issues, so in conjunction with SoCaCOSH and UCLA LOSH, they consulted with them, and they decided to move forward and report this employer to Cal/OSHA and DIR. He said that due to the as the issue that Mr. Sanchez is highlighting, he did speak with the Monrovia District Office in advance and made a suggestion to have an in-person inspection. He said the reason why they first suggested that is because they know the employer, and they know what was going on inside because some of their members are actively working in this workplace. He said that they hear what the employer does every day. He said that even though this employer corrected, and attempted to correct, some of these violations - and took pictures and sent them back to the Monrovia office - they know that now the workplace is back to how it was. He explained that this is just one impact of not doing in-person inspections when workers actually come forward.

Mr. Teodor explained that there is a difference between a worker by themselves filing versus a worker who is part of a membership-based organization that has a worker rights department that has the resources and the capacity to support the worker in navigating a Cal/OSHA complaint for the first time. He said that their job is only 50% complete because the other 50% is dependent on the law, Cal/OSHA and DIR. He said that while it was good that Cal/OSHA sent a letter, the limited impact of such letter inspections as Mr. Sanchez was highlighting does contribute to not correcting violations 100%.

Mr. Teodor said that is where the worker then realizes the limitations of the government, and then they become discouraged. They are discouraged from continuing to document violations because they believe that now that the government was going to leave them alone, and to never get to their workplace. He said that the limitations of letter investigations are that the employer never posted this letter in the workplace. When they get this letter, they're supposed to post it in the workplace for all workers to see. He said that the employer never did that. Even though some of the workers saw some changes happening, they still do not know that it is Cal/OSHA actually looking into their workplace. He said that since a culture of fear and retaliation is still in place (at this workplace), some of these workers talk to them because they are from the community, but they are going to be discouraged from talking to agents if there are no agents that come physically. Mr. Teodor said that there is a tool that Cal/OSHA is not properly using right now, which is called deferred action for Labor Enforcement. He said that when you have a workplace that is primarily immigrant workers, if you issue a statement of interest for all the workers there, including the last two years, then you have a big pool of workers that will properly report, document and serve as star witnesses to make sure the investigation succeeds. He said that even though he reached out to the Monrovia office again and that they are still recommending for them to do an in-person inspection, he has yet to hear back from the office.

Mr. Teodor said that he would conclude with the observation that they “see eye to eye” with the agencies; they depend on each other to properly make sure that worker rights and the Labor Code is enforced throughout California. He said that their membership is getting extremely frustrated with them because now they believe they (the Pomona Center) are not doing their jobs. He said that the impact of the agencies and the lack of staffing is transferring over to them, where the worker believes that they also are not doing their part - which is not entirely true. He said that these are the types of issue that are created in membership-based organizations like theirs because the workers end up waiting for a long time or they may never meet an agent in their life.

Mr. Teodor explained that they already requested what's called a Statement of Interest that he knows Cal/OSHA and the DIR can grant right now. He said that he also suggested the Monrovia office give them an appointment so that the Pomona Center can come into their office and interview all the workers in case they don't have the capacity to come to the workplace. He said that he still has not heard from them yet, but they are still going to track the employer because they know they are still violating the law, even though they have responded otherwise. He said that they are back to square one. If an in-person inspection is done, it will make a whole difference here. In order to succeed and make sure that this employer never does this again on health and safety, but also on wage and hour issues, if a Statement of Interest is granted for this workplace, it will be beneficial to the agency in the long run.

He said that this is one example of many where when there are no in-person inspections, it lowers the bar of the expectations of the worker in terms of their rights being protected. And it also lowers the bar for the employer because then the employer knows that they (Cal/OSHA) will never come to their workplace, so they can deceive the agency.

He said that if the Commissioners have any questions or comments or on this specific case, they can always reach out to him individually or to Mr. Sanchez.

Mr. Teodor said that he is keeping Mr. Sanchez informed of this case because they want to try to make this an example, being this is the first employer in Pomona that they have referred to the agency but are now experiencing a limitation as well.

Mr. Sanchez thanked Mr. Teodor and said he wanted to reiterate two things that he said related to their experience with complaints and trying to address health and safety in the workplace. He said that when workers are discouraged and there is a culture of fear, it creates a chilling effect for worker health and safety. He said if there is a discouragement that's also coming from the experience with the agency and a culture of fear in the workplace, they cannot have an expectation that workers are going to stick their neck out to achieve protections, and it becomes extra labor and burdensome to the workers. He said he wanted to echo another thing that Mr. Teodor explained. He said that they do appreciate their relationships that they are building with the agency and working together. He said he thinks he saw Brother Ali (Zulfiquar Merchant of Cal/OSHA's Santa Ana Enforcement Office) in the online group meeting during the presentation - so he really appreciates the work that they do together, but they need more and he said that the numbers show that they need more; the fatalities for workers are up, injuries for workers are up and they need to do more.

Mr. Sanchez explained that they wanted to come not with just the doom and gloom, but also with possible solutions. He said that potential solutions are addressing minimum qualifications for filling the Cal/OSHA State positions. While they are hearing various stories about how the minimum qualifications are creating barriers for potential candidates to fill these positions, sometimes the minimum qualifications (MQs) are just are too high and don't allow for people to get into the door. He said that sometimes the minimum qualifications are being considered at the wrong process. He said that along the hiring phase and essentially you have people going through interviews and testing and then their MQs are examined, and then they are no longer a potential candidate. He said that there are different challenges that they are hearing for MQs, but they know this is a major barrier. And the potential solution is addressing the minimum qualifications to get more people into these positions. He said another potential solution is pipelines to fill the positions. He said that they all know, probably in this meeting room and virtually know that working people want to fill these positions. They know people who think this sounds like great work, a really cool job to do that is something that they are interested in, and who to learn how to do the work – but there is no a real pipeline for folks to get into this profession or to get into these jobs. He said that there is a clear interest from the community, from worker advocates and from working people, but there isn't a tangible pipeline that folks can just jump into tomorrow. He said that the challenge of this issue of staffing sometimes becomes a question or response from agencies is “send us your people;” and they would love to send their people to fill these positions, but there just isn't the mechanism to get them into the positions.

Mr. Sanchez said that exploring a pipeline to fill these positions is something that would be a wonderful solution to explore. He said some folks in the room may not like the next solution, but it's a real solution and it addresses retention, but focusing on what the current employees and current employee representatives have – such as offering competitive pay, offering clear promotion pathways and even more. He said that they know current employees understand what's going to keep them there. And if they are talking to the current employees, they can figure out how to stop the bleeding that is happening in Cal/OSHA. He said that if they want to fill these positions, it would make no sense to create something like a pipeline or just a minimum qualification if it just turns into a cycle of folks coming in and folks leaving. He said that if they really want to fill these positions, they have to do it from both angles - bringing people in and one of ensuring that folks are not looking at the front door to leave.

In conclusion, they believe that staffing needs to be addressed in California. If California wants to provide effective protections to workers, they believe that reduced staff is equivalent to reduced enforcement. They believe CHSWC can help in addressing the problem. They know that creative solutions are needed, and research for an effective pipeline could be their collective effort to addressing staffing needs. They believe that there could be an opportunity, if CHSWC is interested, to essentially look at creative solutions such as a pipeline, and do research on creating such an effective pipeline. They would like the opportunity, if CHSWC is interested, to come back with a formal proposal on what this pipeline could look like; and they would be happy to offer even more data or information on what that could look like. He said that they are very much open to following up offline, answering any questions or concerns, sharing more about the cases, sharing more about the experiences of workers on the ground. He said that this was just

one example of many that they hear. He said that he included citations for the articles about the cases they shared in the presentation. Mr. Sanchez thanked the Commission and Commissioner Steiger for the opportunity to present at the meeting.

### **Comments from Commissioners**

Commissioner Steiger thanked both of the presenters and said that they did a great job and that it was an incredibly helpful and informative presentation of an issue that they in the labor community have been wrestling with for a very long time. He said that they go to these Cal/OSHA Advisory Committees, and they have seen the relationship and the mix between in-person investigations and letter and phone investigations continually go in in the wrong direction. He said that this is not necessarily a knock on Cal/OSHA. He said that they know that the agency does the absolute best they can with very limited resources and has been prioritizing solving this problem for a really, really long time. He said that Cal/OSHA is aware that the vacancy rates are too high and is really, really trying to get their arms around the problem. He said that he appreciates all their efforts on that, but if this is the way that it has to be, they totally understand. But it is not ideal, and he is sure word has gotten out in the employer community that you are far more likely than not to now get some sort of a letter or phone investigation if a complaint is filed, depending on the seriousness and informal versus informal nature of the complaint. Obviously, in-person inspections are the way to go because if it's just an isolated issue in the complaint, then the problem can be identified and dealt with. He said but often Cal/OSHA will go out there and they'll find all sorts of other things that the worker didn't call about that could then be used to make that workplace much safer than it was beforehand. He said that the solutions were all really helpful and hopefully they will have time in the future to explore those more fully. Commissioner Steiger said that he was hoping to kind of throw it to the employer Commissioners to get their take on this problem and the potential solution. He said that they were hoping that this was an area on which the employer and labor sides could agree that they are not talking about new regulations or adding a bunch of new things on employers to comply with. He said that this is just better enforcement of existing law and so just wanted to get the employers' take on this problem and some of the potential solutions to see if maybe this is an area where both sides could come together and potentially get behind some reforms that could make a real difference for this problem.

Commissioner Voorakkara thanked the speakers for their presentation. He said he greatly appreciated the video to bring it home and make it very personal as well; and for not just laying out problems but also offering solutions. He said he wanted to go back to their slide with the Cal/OSHA letter that was displayed on one of the slides in the presentation. He said that he had a specific question about the letter itself. Commissioner Voorakkara said that there was a line in this specific letter that "the Division does not intend to conduct an inspection of your workplace." He said that he was curious if they know if that is a standard line in all letters that go out and curious if that is a case-by-case question. He asked if legal counsel requires that language to be inserted in the letter. He explained that often times once you put that out there, perhaps there becomes a mindset that they could just send some photos in and then they can go back to business as usual because there's no intention that someone is going to actually come out and inspect. He said that he was not suggesting that there has to be an intention of going out if you remove that sentence, but it certainly leaves the door open, even if the division isn't planning

to go and visit. He asked if anyone might have answers to that or whether there is a legal reason why that language is there. Commissioner Voorakkara asked if they felt comfortable responding to his question about the letter and if that is something they normally see in those letters that they state outright that they're not going to visit the workplace.

Mr. Teodor said that when he was filing complaints when he was working in Koreatown, that sentence on claims he filed was not there in the letters. He said that he did raise the issue with the local office because he thought Cal/OSHA was investigating complaints. He said that the way the District Manager explained it is that they do an investigation but not in-person. Mr. Teodor complimented the person (Commissioner Voorakkara) who raised the question. He said that when they compare the behavior of the employer after the 14 days of this letter, it is exactly as what the question was posed. He said that that is exactly what happened (business as usual). He said that even now, they do not know the status of any investigation. Mr. Teodor said to answer the original question, that this is the first time he has seen that sentence in a letter.

Acting Chair Subers said that they would circle back to Cal/OSHA and see if they can ask someone about this sentence.

Commissioner Roxborough thanked the presenter and shared the recognition of the problems of being understaffed. He said by way of background, almost all of the State of California – for example, the city of L.A. Airport Commissioner – to get more people is not as easy for Cal/OSHA to do as a private enterprise can do. He said that private enterprise can just take on and hire someone. He said it was noted that all the testing and restrictions prevent the State from getting good quality people. He said that the solution is you have to go to City Council; you have to go to the legislature and get those archaic methods of interviewing modified. He said that the DIR/DWC are short staffed, despite how hard they try to get people; everybody tries to get people and there are lots of folks out there willing to work. He said until you change the application process, he hates to say it, but he is not sure CHSWC really can do anything other than to make a recommendation to the legislature to take a look at it. He said that he did not think they need a lot of hearings about it because it is pretty evident that that's a problem for the great folks who work in government in California and who provide public service. He said they just can't get the help they need. He said that is the first impediment that he sees.

Commissioner Roxborough asked how the accident of the amputee injured worker Carlos occurred and what could OSHA have done such that the horrible injury to Carlos could have been prevented? Mr. Sanchez said that the way Carlos explains it sounds like there was a build-up of issues leading up to the point of injury. He said that Carlos was in construction and had mentioned before potential hazards in the workplace, and because they weren't addressed before there wasn't a presence before it got to the point where the injury happened. He said he was not sure if it was a fall or if something fell on him, but he remembers reading that it was a fall. Carlos essentially was injured at the legs. Carlos and other workers were flagging these issues prior, and with no presence to address them or no enforcement there to address the hazards, they built up to the point where Carlos is injured.



Commissioner Roxborough asked whether this was a large construction company that they would recognize by name, or a smaller contractor. Mr. Sanchez apologized (for not having more details) and said that he uses Carlos's example as an anecdote and wanted to zoom out too and say that this is much more common than they would like it to be. To zoom back into Carlos, he said he would be happy to send over the article. They did not include it in the in the presentation, but they can upload the article and would be happy to send over those details for folks to examine. Commissioner Roxborough thanked the speakers.

Commissioner Kessler thanked the speakers for a really good presentation. She said that they appreciate the details and the fact that this is real life - this is not just an ethereal discussion. The suggestion or the question about putting in recommendations for staffing, she thinks at least any proposals are great. She said that she has suggested in the past that they should get apprenticeship programs created so that there are pathways that can help train people up and actually could go into a lot of these different skill set openings that they might be interested in - someone might be interested in (industrial) hygiene, somebody else might be interested in construction, whatever it is. She said that by putting together an apprenticeship program and even running it through the Apprenticeship Standards Board might be an option to at least create something that gives opportunity and the pipeline that the speakers have referred to. She said she did not know how realistic that is, but she thinks it is worth considering as they make presentations for proposals about how to help the staffing. She said what Commissioner Roxborough said is really true. They know how difficult it is and how arcane some of the language is for passing (tests). She said that they want people to come into the skill sets that are qualified. She said that this is not just well-intentioned people, but people who have the skills and know what they're looking at and what to recommend.

She said that the other issue that came up clearly in the presentation is the same thing they have talked about a bunch of times: employers who are not forced to deal with the issues (of violations), do not do so. And that leads to more injuries, and no one on this Commission wants anyone else to get injured on the job. So it's not just health and safety and workers comp as the main thing – they have talked a lot about how to prevent injuries to begin with - so she thinks enforcement is one aspect of it. She said that they are also talking about what good employers have done, that they need positive examples that are role models of things that employers have done to prevent people from getting injured. She said she did not know how that would play into it, but they cannot just be in attack mode. They also have to be in promotion mode, about what helps people in a safe workplace.

Acting Chair Subers said that she agreed. She also thanked the speakers. She said she made note of their request at the end that CHSWC consider coming up with some sort of plan or proposed plan on this recruitment and pipeline issue. She echoed Commissioner Kessler's point that they have a lot of great examples in this State of very successful apprenticeship programs. She said that she did not know what is viable there, but she thinks that is something that they are discussing. She said that she was sure there are other ideas that this group could come up with too. She said that they will take that back internally and discuss that as well.

## **Public Comment**

Bruce Wick, Housing Contractors of California, said he had three suggestions that CHSWC could do. The first is to have DIR do what they promised in 2009 and have never done: show up and give the Commission a presentation of what they've done with the money. Cal/OSHA's funding by employers has gone up from \$59 million in 2010 to \$217 million this year. If they're way understaffed, what are they doing with the money? Labor Commissioner funding from \$53 million to \$192 million this year. They're supposedly 80% understaffed. What are they doing with the money? Can we use some of that money for the suggestions people talked about: creating a pipeline, an apprenticeship program, all these things we could be doing? What are they doing with that money? He said in 2009, they wanted underground employers in construction pursued by both Cal/OSHA and the Labor Commissioner, and that's never happened effectively, still hasn't, and they need it. He said that they are all in agreement here. He said he thinks this is a human tragedy and a California tragedy.

Secondly, one is normally supposed to respond to things the legislature wants; let's turn that around and let's get somebody in the legislature say that they think they need to engage because whatever has to happen probably needs to be ordered in some way. He said he would also ask DIR to give an accounting of the money and they are the ones who can give the ideas for what would fix the hiring process - maybe it's two things, maybe it's 14 things. He suggested having them tell the Department, and don't spend time trying to fix that and the other part. He said that the Labor Enforcement Task Force combines multiple agencies. They have used this effectively in underground employers, because before the LETF was set up, they'd say, hey, we have this bad employer for construction and somebody would show up three weeks later, after the job's done and they are gone. LETF cross-trains their people enough and can get on site in time to catch the bad employer, get the names, get the issues and even if it's a CSLB person, they can turn it over to the Cal/OSHA or Labor Commissioner people and say, "Here's the employer, go find and get the information.

He said that there's a lot that CHSWC can do and it's time. He said that they on the employer side are frustrated and obviously, as they saw from the presenters Eddie and Alexis, they're really frustrated, understandably. He said it was time they got this underway. Acting Chair Subers thanked Mr. Wick.

Julia Sebastian from Jobs with Justice San Francisco explained that they are a coalition of labor unions and community organizations. She said she also works with a number of labor unions statewide who are addressing the impacts of climate change on working people, particularly extreme heat.

She said she was present to support the presentation that Eddie and Alexis gave. She said they all know the numbers in terms of the severe and chronic understaffing crisis at OSHA and they do not want to continue with another decade of these numbers. She said she appreciates DIR's recent push to get this crisis under control. She said, however, that marketing campaigns alone are not going to get them there, and they need a bold, multi-pronged strategy. She said that there is a very robust group of worker centers, UC labor centers, and labor unions who have come together to put a strategy forward. She said that what has been presented here by Mr. Sanchez and Mr. Teodor is the tip of the iceberg of what people have been trying to make for the next

years. She said she appreciates the Commissioners' comments on a potential apprenticeship program; they have been doing research about an apprenticeship program or a workforce development pipeline program and the role of CHSWC about potential resources to continue that research to look at all the options from legislation to an actual program.

Ms. Sebastian said that she appreciated Bruce Wick and his commentary on the large amount of surplus funds in OSHA related to the understaffing issues because the funds that go into OSHA are earmarked; the funds do not come out of the general fund. She said when the funds are not spent down, they add up and their understanding in some conversations with the Department of Finance is that actually those funds are refunded to employers through decreased fees - which is not what they need to see. She said that they need to see actual staffing happening. She said that there is potential for financing programs, once they get this research done and get an understanding of programs that that can be put to scale.

She said she encouraged the Commission to follow up with Eddie and with Alexis about everyone working together on a potential proposal to move this work forward.

## **2. Silicosis in Artificial Stone Fabricators in California**

**Robert Harrison, M.D., University of California San Francisco (UCSF) Division of Occupational and Environmental Medicine**

Robert Harrison, a member of the UCSF faculty, an occupational medicine physician, and public health medical officer and scientist with the California Department of Public Health (CDPH), presented on silicosis and artificial stone fabricators in California. At CDPH Doctor Harrison tracks and analyzes data on workplace injuries and diseases. He presented with Kristen Cummings who can answer additional questions about the data on the number of silica cases in California and other public health activities.

Dr. Harrison stated silicosis was an important emerging occupational disease that CHSWC should be briefed on. He began with a brief overview and said one of the major big box stores in California has a home renovation aisle with custom countertop solutions as well as a variety of products in different pallets, colors and designs. Almost all of these were made from 95 percent silica and are called engineered stone or artificial stone. Although there are many different manufacturers of this product the composition of this product is the same: it was about 95 percent silica, and it was called respirable crystalline silica because when these slabs were cut and shaped to be used in kitchen counters, it generated large amounts of silica dust, which is respirable and crystalline. The rest of these products are made with a polyester binder, a material that puts all the silica together in molds that are manufactured in large manufacturing facilities around the world and shipped as four-by-eight slabs into the United States (U.S.). Several of these facilities manufacture in the U.S. There are no manufacturing facilities in California, so once these slabs are produced and shipped, they will typically go into large distribution centers, wholesalers or warehouses.

Dr. Harrison said if a consumer was buying one of these patterns of engineered stone, a fabricator or contractor will measure and shape the four-by-eight slabs into the exact dimension of your kitchen counter; that means cutting the edges and the corners, polishing, grinding, doing crosscuts, taking out the hole for the sink and soap dispenser. The number of fabrication shops is estimated to be between 800 to 2,000 in California. Across the U.S., there are probably more than 10,000 shops; most of these shops are small, so they have less than 10 employees. If you were driving in neighborhoods in cities or suburbs, you will see warehouse districts where these shops are typically located in a warehouse district renting space, or they might have brick-and-mortar freestanding operations in industrial parts of California. The worker in these shops would cut out a kitchen sink and you can see that the white surface on the kitchen counter was silica dust that became airborne because it was all over the worker's clothes. A worker was wearing an air purifying respirator that was a mask that fitted over his face, and he was drawing in the air through the filters. The mask was dusty and uncomfortable, and he might be doing this work over an eight-hour day; the saw he was using was a Makita saw that does not have any local exhaust built on top of it or within it to suck away the dust, no water was used; all of these would be technologies or techniques to reduce dust exposure.

Dr. Harrison said engineered or artificial stone has boomed over the last decade. Data up to 2018, show about a five percent year-over-year growth in the emergence of this product, it probably accounts for two-thirds of all kitchen countertops sold in the United States and California. Consumers used to buy marble but now they will probably buy artificial stone. Caesarstone is a major manufacturer and one of the first to sell in the U.S. They have a manufacturing facility in Israel. Silestone is a brand made by Cosentino, which is a large Spanish manufacturer. Cambria is the only U.S. manufacturer, and it is in Minnesota. There are probably about 50 to 60 major engineered stone manufacturers globally. Engineered stone is made from a composite, a high percentage of crushed quartz or silicon tetroxide, which is bound with polymer resin pigment which could contain some metals, glass and other additives that give various colors. They go by various names such as artificial agglomerate, quartzite and the different brand names that he mentioned. There is high silica content in engineered stone compared to natural materials like granite. Everywhere that this product has been used there has also emerged a global epidemic of severe silicosis. The cases started being reported in Israel in 2012; now there are over 300 cases, followed by Spain with over 100 cases, Australia had 218 cases in August of 2023, and they are reporting even more. China reported over 250 cases. In the United States, the very first case of silicosis was identified in 2014 in Texas, and this was published in the Morbidity Mortality Weekly Report (MMWR) in 2015. Doctor Gary Friedman, pulmonary doctor in Houston, contributes to a blog co-authored by Dr. Harrison and a silicosis case in 2014 in a Cosentino fabrication facility in Texas.

Dr. Harrison said by 2016, Federal Occupational Safety and Health Administration (OSHA) had updated the current silica rule, which lowered the permissible level of silica dust in the workplace and put in requirements for medical testing and training. It was a major standard that was passed in 2016 that California adopted; it was a state plan state that adopted the federal standard in 2016.

Dr. Harrison said given the size of the California marketplace, they were waiting to find the very first case and that emerged in January of 2019 when they identified a young man in his 30s who had been hospitalized with silicosis. He started working at a stone countertop fabrication shop in 2004. By 2013, his doctor had diagnosed him with silicosis. Over the next three to four years his lung function gradually declined. He continued to work during this time, and by 2018, he had lost significant weight, he was on oxygen. He was referred to UCSF for a lung transplant but unfortunately, he was not eligible because he had many other medical conditions by that time. He died in September 2018 of accelerated silicosis. This form of silicosis is a terrible disease. It is relatively rapidly progressive over four to five years. Without a lung transplant, it is terminal. Dr. Harrison said a normal X-ray should be almost completely black; his lungs had massive silicosis and scarring, that was on both sides of his lung. After that case was investigated, and a second case was identified with the same employer, that worker also died with the same degree of exposure to engineered stone. With colleagues in Colorado, Texas and Washington, Doctor Harrison published the first large case series of artificial stone silicosis in the United States. There were 18 cases in this publication in 2019.

Dr. Harrison said they estimated the number of silicosis cases in the United States and based on their screening of the workers from the shop with two severe cases, they estimated about a 12 percent prevalence of silicosis; if they were to test workers in the United States, that would be over 12,000 workers. Occupational Health and Safety Administration (OSHA) had significantly lowered the permissible level of silica dust in the workplace from 100 micrograms to 50 micrograms, averaged over an 8-hour day, and from 50 to 25 micrograms for an action limit. It was a comprehensive standard: it required dust control, the employer is required to write an exposure control plan, have training, medical exams and record keeping. After they identified the first two cases and published that in MMWR, the California Occupational Health and Safety Administration (Cal/OSHA) initiated a Special Emphasis program. They had inspected approximately 100 fabrication companies, many small, a few large, and found that 47 companies had an exposure measurement, of those almost half had an exposure above the permissive exposure limit. These shops were significantly out of compliance with the 2016 OSHA standard. 25 micrograms is the Permissible Action Limit, and some shops had exposures 10 to 15 times over the Permissible Action Limit.

Dr. Harrison said workers in the engineered stone shops were young, less than 40 years old. They had not worked very long. A quarter them were cutting engineered stone dry and none had a required silica medical exam. The medical exam was an X-ray and breathing test. Employer screening of 43 employees in California found a prevalence of this disease at about 12 percent. In Australia, a government-sponsored program that was paid for by the equivalent of the United States Labor Department, screened 544 employees and used a more sensitive test than they used in California. In Australia, they used a lung Computed Tomography (CT), which can pick up the tiny scarring and approximately one in five workers had silicosis, a high prevalence. In August 2023, Jane Fazio with colleagues from UCSF and the California Department of Public Health published 52 cases of severe silicosis that Dr. Fazio saw in her practice at the University of California Los Angeles (UCLA) Olive View. UCLA Olive View is the county affiliate of UCLA and is in the northern San Fernando Valley close to Los Angeles with many fabrication shops.

Most of these workers came from Central and South America and lacked health insurance. They were either uninsured or had restricted scope Medi-Cal. Seven out of 52 had filed for workers' compensation. Half of them had initially presented in the emergency department when their disease was severe. Many were hospitalized and they had very advanced disease. An example of simple silicosis is where there were tiny amounts of scarring in the lung; the case he saw in his practice at UCSF, was of 60- or 70-year-old man, this patient may have been working in a surface mine and had not been exposed to naturally occurring silica dust. The complicated cases of silicosis, in the artificial stoneworkers represented about 38% of all cases severe, immense scarring in their lung and 15% have been fatal and counting.

Dr. Harrison said the first published case was from Israel in 2012, and their first case was in 1997 and then they reported cases to 2012. Their case reports between 2010 and 2022 were alarmingly the same. When he read this Israeli paper, he thought they were going to see this and can they prevent this in California. As a result of the high number of cases, there was an artificial stone silicosis epidemic in California, the Cal/OSHA Standards Board approved an emergency temporary standard to control silica dust exposure in fabrication shops; in August 2022, Cal/OSHA approved the promulgation unanimously after hearing moving testimony from one of the workers affected with silicosis. The emergency standard went into effect in January 2024. It requires a series of trigger tasks that automatically mean the employer must put in wet methods, create a regulated area, and have a higher level of respiratory protection with powered purifying respirators. According to Mike Wilson Cal/OSHA has had either 62 or 64 inspections since January 2024, and several of these shops were issued orders prohibiting use. It gives Cal/OSHA a more effective tool to shut the shop down if they see any dry cutting. Now they are in the process of permanent rulemaking that will go to the Standards Board at the end of this year to take that emergency standard, which is in effect for a year and make that standard permanent. It would tighten the Cal/OSHA silica regulations on fabrication shops in California.

Dr. Harrison said in addition there has been significant community employer and worker outreach and education. Education assistance attempts to increase medical testing and encourage physicians to report cases. Silicosis will shortly become a mandatory reportable disease in California. A bill introduced by Luz Rivas earlier this year was going to require registration and enforcement. That bill passed the Assembly but stalled in the Senate, so it has not reached the Governor's desk this month.

Dr. Harrison said on July 1, 2024, Australia banned engineered stone. Engineered stone is defined as any material that was artificially manufactured. It did not set a percent threshold for silica. After using its regulatory process to enforce strict safety rules on silica dust exposure, doing outreach and education, and offering free medical screening to their fabrication workers, the Australian government decided the most effective policy to prevent silicosis would be to prohibit the sale of engineered stone in Australia. That law was passed in the early part of 2024 and became effective on July 1, 2024. Australia followed the hierarchy of controls in occupational medicine or occupational health. At the top is the concept of elimination, of eliminating this type of countertop and it is followed by substitution. Australia followed the substitution paradigm by replacing the hazard. After they prohibited the use of engineered stone

several manufacturers developed and will be offering for sale in Australia a non-crystalline silica-containing product. Breton is an Italian manufacturer that makes the equipment to manufacture engineered stone. Caesarstone is one of the larger manufacturers offering a Caesarstone Mineral, crystalline silica-free stone. The company said it would offer a curated range of its most beloved designs transitioning to a new silica-free material; there is a brochure that a customer can download online and choose a crystalline-free material in Australia.

Dr. Harrison asked for CHSWC's support for safer alternatives to engineered stone containing respirable crystalline silica in California. He said there is an opportunity to increase consumer demand if there were alternatives for a safer project. The regulatory compliance that Cal/OSHA is enforcing along with a significant medical and public health impact there are going to be confluent forces that will move California into substituting these products with a crystalline silica-free alternative. That could either be through a legislative requirement or a voluntary withdrawal and the emergence of safer alternatives.

### **Comments from Commissioners**

Commissioner Kessler asked about compliance and inspections. She asked Dr. Harrison about the legal requirements and whether employers were willing to get safer materials or should it be legislative. She said if people can make money illegally, they are going to continue; the inclination is to make money and not protect workers in some respects for some industries. Commissioner Kessler asked about the level of compliance with employers' legal obligations. She also asked if Dr. Harrison had proposed a legislative pathway to get safer materials into the marketplace and promote those. Dr. Harrison replied when Cal/OSHA inspected these shops in 2019 about half of them were out of compliance and many were significantly out of compliance with the OSHA silica rules. He will need to check of the approximately 60 shops that are inspected under the emergency standard how many are out of compliance with the silica standard, and how many are above the permissible exposure level or the action limit. He suspected many of them were, but he did not have the total. There were approximately 1,000 to 2,000 shops and Cal/OSHA has inspected about 62, so more inspections were needed. For legislative policy solutions, he proposed that CHSWC should take an interest. He would like to follow up with a proposal to CHSWC in partnership with UCSF and the California Labor Lab to examine that question. He would ask what the policy alternatives are and would it be voluntary because of market forces. These safer alternatives were going to emerge in Australia. He thought they were safer, but he did not know if they were absolutely safe; his answer was no because more research is needed about the toxicity of those substitutes. They were probably better than the high proportion of crystalline silica they saw in California to answer if it would take voluntary market forces, or does it require a legislative solution that would phase out those products in California. This is the process that Australia went through from 2021 to 2023, and he said this was a process that California should go through as well.

Acting Chair Subers asked when silicosis will be a mandatory reportable disease. Dr. Cummings answered it is in process and it is a health department project at CDPH. It would be in a couple of months, it was in progress, and it will be this calendar year. It was part of an update to Title

17, and they must go through their procedures. Commissioner Kessler asked to be notified when silicosis is a reportable disease.

Commissioner Voorakkara said that they had discussed silicosis in Australia. He asked what was happening around the world and if a trend was changing around silicosis. Dr. Harrison said he had heard rumors that Spain was thinking about the same process to look at how well their regulation and public health prevention is working and whether they ought to do something like Australia. Dr. Cummings added Australia is the leader they are pushing the rest to think about the next steps. In the United Kingdom, they had identified their first dozen or so cases and so they were grappling with this as well. They have been looking to Australia. Dr. Cummings was asked about the latest number of cases reported in California, and she replied there were up to 180 cases, at least 13 deaths, and 22 lung transplants. Lung transplants are a serious medical intervention and many of those transplants are happening in relatively young people in their 30s and 40s.

Commissioner Roxburgh asked if the end-user was harmed once the product was in the marketplace. Dr. Harrison answered that would be the customer installing kitchen countertops or commercial building needed commercial counters. Dr. Harrison replied less so. There is final polishing, cutting and trimming when these slabs go out, and sometimes these shops cut those slabs to form in the driveway and there are clouds of dust in the driveway. But the major hazard is to the workers in the fabrication shop. Commissioner Roxborough said it highlighted the theme which is the last data are from 2019 and five years old. Many were out of compliance in 2019 due to OSHA violations. Dr. Harrison agreed that the last data set that they published were a couple of years ago. Commissioner Roxborough said there was a CHSWC theme that they need more funding for Cal/OSHA so they can do their job.

Commissioner Roxborough asked if the 180 cases were recent or a total over the last 10 years. Dr. Harrison replied most of them were recent. Dr. Harrison said he did not show the CDPH EPI curve and asked Dr. Cummings to comment. Dr. Cummings said in 2019 they made a concerted effort to look for cases. The date of diagnosis of the first case was 2006, but there were few cases until recently, and there has been a significant increase recently. That goes with what they know about exposure and disease latency. Commissioner Roxborough asked about causation. In recent years, not 2019, did employers do better at providing masks and if they are effective when used. Of the 180 cases, were the 20 or 30 cases in the last year or two due to employers not providing masks or were undertaking the type of safety that they were supposed to be given. Dr. Harrison said their collaborators in Los Angeles County were probably the best able to answer. They are contracting with a couple of community-based organizations, and they have visited between 200 and 300 shops. The emergency standard requires that those workers get powered air-purifying respirators; it was a different level of protection. They cost between five hundred to six hundred dollars. The filters alone were fifty dollars to change so they were supposed to be using them in those shops. Whether they are, is mixed based on what his colleagues in Los Angeles have said, and he does not have the data. They have to get that data. Doctor Cummings added it takes approximately five to ten years of exposure to develop this disease. If they were to ban this



product today, they would still see disease for years to come because people have already been exposed. They were trying to prevent future cases.

Director Hagen said these questions are better directed at Cal/OSHA. She said even though Dr. Harrison is a wonderful collaborator, last week DIR gave an hour-and-a-half presentation to the OSHA Standards Board on silicosis and discussed their enforcement and outreach on silicosis. They had worker testimony; that was very powerful. There was a reference to 2019 data but since they passed the emergency rule making, they have been proactively educating people and flagging employers if they had not signed online for their newsletter Newsclips. She recommended going online and signing up for Newsclips. It was a week ago that they had a press release on several employers that they cited for silicosis. That came because of a news article in Los Angeles it was a series of small businesses in a complex that was profiled in the news.

Director Hagen said there were several great comments and feedback received today. She would like to request that at the next meeting DIR be given an opportunity to discuss what they were doing regarding these issues. DIR has many divisions that regularly report this information. She has outlined their plans, but she recognizes they have different stakeholders on different calls. She is happy to come to a CHSWC meeting or she could have their new Cal/OSHA Chief speak. Commissioner Roxborough said that would be terrific and conveyed to Director Hagen that was important because they did have Cal/OSHA speaking earlier this year. They heard from Cal/OSHA about the frustration of not hiring enough people. He thanked Director Hagen because they only hear from one side, and it was very good to hear the presentation on all their great work for a balanced viewpoint. They should send that invitation sometime this year or next year, about a good balanced approach to understand their need. Commissioner Kessler said they need to have enough time to be able to have presentations and discussions. Acting Chair Subers said she wanted Director Hagen to present.

### **Public Comments**

There were no public comments.

### **3. Cal/OSHA Updates**

#### **Zulfiquar Merchant, Senior Safety Engineer, Santa Ana Enforcement Office, Cal/OSHA**

Mr. Zulfiquar Merchant introduced himself and explained that the Commissioners may call him Ali as well. He said that he was honored to represent the Division of Occupational Safety and Health (DOSH) today, also known as Cal/OSHA. He said that he wanted to extend his gratitude for the invitation to speak at the Commission on Health and Safety and Workers' Compensation meeting. He said this was his first event to participate in, so he is excited to be present. He explained that he will provide an update on three areas: one is the enforcement activities, two is rule making updates, and three the Cal/OSHA Call Center.

Mr. Merchant said that Cal/OSHA has been significantly expanding its enforcement offices and increasing their presence throughout the state. He said that they recently opened a new region, Region 8, in the Central Valley in Central California, and they also hired a new regional

manager. Their offices for Region 8 will be dedicated in Fresno, Modesto, San Luis Obispo and Santa Barbara. These district offices within Region 8 will have Fresno as its headquarters. Additionally, Cal/OSHA is planning and hiring for a new agriculture unit; it is called the Agriculture Enforcement Task Force and Outreach unit (AETFO) and it expects to create and staff five (5) new district offices. The first one will be El Centro, which will cover the Imperial County, then Salinas in Monterey County, Bakersfield in the Kern County, Lodi in San Joaquin County, and lastly the fifth District will be in the San Francisco area covering the San Francisco County. Mr. Merchant said that along with these offices, Cal/OSHA is also planning to open satellite offices within these counties. He said, as they know, these counties are quite large and therefore these offices will give them a better opportunity to get to people, and it will particularly focus on serving and protecting workers in the agriculture sector.

Moving on to rule making, he said he just wanted to highlight some of things that he believes people already know. Regarding indoor heat, on June 20, 2024, the Occupational Safety and Health Standards Board approved the California Code of Regulations, Title 83396 Heat Illness Prevention and Indoor Place of Employment. He said 833395 is for the outdoors and now they have a particular standard which addresses the indoor heat – 833396. He said that this particular standard went in effect on July 23rd, 2024, a couple months back. He said that this particular Heat Illness Indoor Places of Employment regulation applies to most indoor places, such as restaurants, warehouses, and manufacturing facilities.

Next rule making is the Silica Emergency Temporary Standard (ETS). He said that silicosis is increasing across the state and also they heard from Dr. Harrison about the hazards of silicosis - a great presentation. In response to these alarming trends, Cal/OSHA has intensified its enforcement activities and educational efforts. As far as the standard is concerned, in December of last year, it was almost in the end of the last year, 2023 an emergency standard temporary standard was adopted for existing guidelines for respiratory and silica hazard. The standards were voted on and the Board readopted the emergency temporary standard at its August 15, 2024 meeting.

Mr. Merchant said that another important standard which was adopted is a workplace violence prevention for general industry, non-health care settings standard. So in October, I'm sorry. On September 23, 2024, California Senate Bill 553 (Cortese) was signed into law and California Labor Code Section 6401.9 went into effect on July 1st, 2024. The employers that fall within the scope of this law must establish, implement, and maintain an effective written workplace violation prevention program.

He said that lastly, he wanted to remind everybody that the Cal/OSHA call center is still operational. They have extended the hours to this particular call center from 9:00 AM to 7:00 PM. He said that it was initially was up till 5:00 PM, but they have extended it to 7:00 PM for the folks who may be getting off work and cannot call before 5:00 PM. At least there was an opportunity for them to reach out to us. He said they also have people at the call center who are bilingual Spanish speakers. He said that anybody who wants to call Cal/OSHA can reach out and file a complaint and the agents would be happy to take their concerns down.

Commissioner Kessler asked what the phone number was and he replied that the number is **833-579-0927**.

Commissioner Steiger asked if there was an update on the permanent infectious disease standard. Commissioner Steiger clarified that it was the one that was slated to replace the COVID standard when that one expires. The plan was it to be replaced with a permanent general industry infectious disease standard. Mr. Merchant said he would look into it and get back to them.

There were no questions from the Commissioner and no public comment. Acting Chair Subers thanked Mr. Merchant for his presentation.

### **III. Janitor Time-Motion Project Update**

**Carisa Harris, Center for Occupational and Environmental Health (COEH), UCSF**

Carisa Harris-Adamson is a professor at UCSF in the Division of Occupational, Environmental and Climate Medicine, as well as the Director of the Northern California COEH at the University of California (UC) Berkeley. Dr. Harris-Adamson gave an update on *The California Janitor Workload* study and in the future will give updates on other aspects of the project. Dr. Harris-Adamson has presented various results on the survey and focused on the time motion study. She discussed methods and compared time spent on tasks with the industry recommended time allocations. This project was started because there are many janitors in California with a high prevalence of pain and injury. In their survey data many workers were experiencing high levels of pain and reports of injury. Exposures from cleaning tasks have been associated with an increased risk of work-related musculoskeletal disorders. Part of the issue is how their work is assigned and whether they have adequate time to perform many tasks. They were also interested in disinfection requirements that increased during COVID-19 and how that impacted their ability to complete their work. The International Sanitary Supply Association (ISSA) provides time recommendations based on space: area that is cleaned and fixtures that are cleaned; various tasks performed like sweeping, mopping, vacuuming, disinfecting; and tools are used. From this information they can identify what the recommended allocated time should be for a janitor with certain assignments. The objective of this presentation is to compare ISSA time allocations to the actual time spent cleaning at four different venues. Dr. Harris-Adamson presented results by both space and task, and then she quantified the differences on an individual level because it is important to see how these differences would impact an individual worker.

Dr. Harris-Adamson discussed the study methods including study design and participants. She said there were four venues, and they had to change these. Even after the changes, they struggled to get enough participants. They ended with four venues and 24 participants across those venues. She discussed the challenges later in this presentation. They had to videotape the workers while they worked. They also kept a diary or log of tasks of what they were doing and watched them for at least a minimum of two cycles of work, meaning a pattern of work that that repeated, or up to four hours. They had hoped to put wearable devices on workers for better objective measurements, but there were very few participants; most were not comfortable with the wearable devices. What they did do was walk and videotape the workers, so they had a good time-study approach knowing what workers were doing and how long different tasks took. They

also used a measurement wheel and simple instruments such as strain gauges and scales to identify or collect direct measurements about their work, such as how much it weighed to lift different garbage bags. They collected floor plans of the work area, or they used this floor plan to identify the space that they were asked to clean. They processed the video using multi-video task analysis and the video allowed them to bring this video into the software that assigns each frame. There were 30 frames per second of video for a category of interest, and they had different analyses by task space. Then they performed risk analysis of the upper extremity and the back. The upper extremity also uses this software. Dr. Harris-Adamson did not have time to go into those risk assessments at this presentation, so she focused on the assessments by task and space.

Dr. Harris-Adamson said this is a very laborious process, and they had multiple students conducting detailed analysis of videotaping workers. The categories included different spaces that they cleaned such as bathrooms, hallways, common spaces, outdoor areas, kitchens, cafeterias, as well as others. The tasks included what they were doing in the space where they used a mop for sweeping, washing and cleaning mirrors or windows. They educated themselves on how to use the ISSA guidelines and they were able to review the guidelines to identify the tasks in the ISSA handbook and find the production rate recommended by ISSA. They found the measured unit from the direct measurements that they took and then took measured units divided by the production rate to get an allocated time on task. Then they identified the right area, the task, and the specific tool. Next, they used square footage and tool size to get an idea of the allocated time per task: what it might look like if a worker was disinfecting using a spray bottle chemical or a cloth. If a worker was cleaning about 25 square feet, they would allocate a certain number of minutes or seconds for it. They could identify the time impact of cleaning different fixtures in restrooms. The goal is to compare the actual time that workers took to perform different tasks with the allocated time estimated using the ISSA guidelines. If one worker cleaned the café-lounge-kitchen area and then cleaned the bathroom, they could identify the section of the ISSA, the rate, the unit, and then identify the time allocation recommended by the ISSA. Then they used the MBTA software analysis to identify how many minutes and seconds the worker took to perform that task. In one instance the time allocated for these two tasks in the café-lounge-kitchen area was greater than the time that they took. It took more time to complete bathroom cleaning.

Dr. Harris-Adamson said they reviewed the absolute percentage of deviation, and this was calculated as the standard time minus the observed time divided by the standard time. The standard time was the ISSA calculated time; they did this because sometimes were higher and some were lower than what was observed. They wanted to calculate the deviation between the two times. When they looked at the airport, the mall, and the Convention Center, there was a different time spent in these different spaces and performing different tasks across these areas. One challenge was that janitors do different tasks. With 24 janitors they had to identify the most common tasks and spaces, and then summarize them.

Dr. Harris-Adamson said the results were by areas cleaned and those were the common space, bathroom, café-lounge-kitchen, outdoor spaces and janitorial storage spaces. There were several samples with different spaces, and the percent deviations were when the worker used less time

than what the ISSA recommended or allocated. Several samples used more time - where the observed time exceeded the ISSA recommendations. ISSA overestimated and other times ISSA underestimated the time required to clean these spaces. For bathroom, kitchen and outdoor spaces, workers tended to spend less time than what would have been allocated. For janitorial storage tasks, workers tended to spend more time performing janitorial storage tasks such as resupplying their cart than what ISSA recommended.

Dr. Harris-Adamson said when they examined tasks, some ISSA estimates underestimated time and some overestimated times. These were percentages of deviation, and it was a way to normalize the differences they observed. More workers spent less time than the ISSA recommendations for bathroom cleaning, although some spent more time. For transport and walking, workers spent significantly more time than what was accounted for in the ISSA recommendations. Disinfecting meant there was a spray bottle used liberally with hand-finger triggers on the spray bottle. Wiping time meant using a cloth to wipe without requiring a spray bottle in that hand. With washing windows and disinfecting as well as wiping, disinfecting, scrubbing tasks in their survey, both wiping and disinfecting tasks reported increased time because of the pandemic and people spent additional time than what is captured in that ISSA allocated time recommendations. For picking up trash more workers were spending less time than the ISSA recommendations. For cleaning escalators workers spent less time, although there was a variety of how they were cleaning escalators.

Dr. Harris-Adamson said, on an individual level, the results compared the impact on an individual of the different tasks observed and their recommended ISSA times to the time spent over the course of a work shift. One worker spent 71.8 minutes doing a particular task in the café-lounge-kitchen area; 27.8 minutes picking up around the café-lounge-kitchen area; then 53.9 minutes cleaning the bathroom; the estimated allocations per the ISSA were: 110 minutes, 31.3 minutes and 37.7 minutes. The total time that the ISSA would recommend was 179.2 minutes to complete these tasks; the worker took 153 minutes which was a difference of 25.7 minutes over the course of their observation time, which was approximately two and a half hours. If they were to extrapolate across a work shift of 7 1/2 hours, that would be a 75.3-minute difference. It means that workers should have been allocated or should have taken 75 additional minutes to clean these spaces. Why the workers did not, she could not answer, but it seems that over the course of a shift workers should have been allocated more time to complete that work.

Dr. Harris-Adamson said she did not have time to go over every single venue, but one venue that they analyzed had variation, workers worked faster than their allocated times, and some worked slower. For two workers, the impact on the shift would have been between 9 and 25 minutes slower. One person was working quite a bit slower than what the allocated time would be and did a lot of walking. The worker did all the walking and disinfecting, and that was interesting data.

Doctor Harris-Adamson said the ISSA time allocations varied significantly by space. Common space cleaning time which over and underestimated it, but higher magnitudes of underestimation were measured. The bathroom, café-kitchen, and outdoor spaces were more frequently overestimated, meaning the ISSA allocated time was greater than the observed time. The janitorial closet visits were more frequently underestimated. She said it was possible that usage

and percent capacity should be included in these time estimates. The bathrooms had a lot of use and needed a lot of time for cleaning but other times they did not. It depended on the time of day, and how busy an airport or mall was at a given time. That could be one reason why they were seeing differences across spaces. The location of storage closets and the number of trips, given how many supplies they can say put on their cart, was important; that was not necessarily addressed in detail in the ISSA allocation, and did seem to impact how much time they had for other tasks. Going back and forth to the storage closet was time consuming for many workers. ISSA underestimated time workers spent on wiping, disinfecting, walking, transportation, vacuuming and washing windows. ISSA overestimated time spent on picking up trash in bathrooms. What was unclear whether workers spent less time on some tasks to compensate for inadequate time provided for other tasks or whether they needed less time to complete those tasks. It would be important to know whether bathrooms are cleaned or picking up trash is occurring at a rate that keeps up with the actual trash accumulation. Considering that the impact an individual worker is quite large, and it was worth researching in more detail. On an individual level, the difference in ISSA estimated the time versus observed time varied across workers; some were greater, and some were less. Four workers took less time to complete tasks than what the ISSA would have allocated, and when that was extrapolated to a shift resulting in one to four hours that should have been allocated to perform the task that they performed. Again, they were unsure if ISSA allocations were inaccurate, and they can perform those tasks successfully and safely without that extra time or they did not give it enough time. Given the high prevalence of pain and injuries in this population she thought that they were not given enough time to clean all the space and complete all the tasks that they were being asked to do. Of the three workers that took more time than the ISSA allocated estimates, two of those were less than 25 minutes. One person who would have taken four hours or more to complete the work, they spent most of their time walking and wiping down surfaces which took more time than allocated by ISSA. They saw a consistent mismatch of how much time people took for those activities and how much time was allocated per the ISSA recommendations.

Dr. Harris-Adamson said some of the limitations included tasks, spaces and tools that were not described in the ISSA guidelines. They include recycling areas, rider machines, transporting furniture and resupplying carts. They did have difficulty getting direct measurements on everything they wanted. They had to use maps or estimates for many spaces. One of the biggest limitations or challenges is that they had hoped for more participants. After time and effort trying, they have 24 participants and because they had to line up property owners, janitor companies, union representatives and workers, and they all had to say yes at the same time. They needed them to approve taking videos and some locations just were not comfortable with videotaping.

Dr. Harris-Adamson concluded by saying based on the observation of these janitors, there are large discrepancies between the ISSA allocated time on task and observed time performing those tasks, particularly for disinfecting, wiping, walking, and vacuuming tasks. Workers tended to spend less time cleaning bathrooms and removing trash than the ISSA allocations, but that could vary widely based on usage and building capacity, and it also could be a way to compensate for having too many requirements performing other tasks. Workers could have severe deficiencies in

the time allocated to them, depending on the type of tasks and the space that is assigned to them. What she learned in this study and with this cohort, is that the approach being used to allocate janitorial work needs revision. It needs to incorporate measures of building capacity and tasks that are currently ignored that take significant time. Preliminarily, they were seeing differences in risk scores across the tasks, and it should include allocation of risk in the tasks as well and how to allocate that work. They are working with their colleagues in Washington State Department of Labor and Industries. The goal in the upcoming year was to work with Dr. Steven Bao on including this information in the workload calculator and piloting how it could be used by industry to make it safer for workers.

Dr. Harris-Adamson thanked CHSWC, Service Employees International Union (SEIU), The Maintenance Cooperation Trust Fund (MCTF), and other funders at the University of California Research Lab for their support along with students and colleagues for collaboration on this study.

### **Questions from Commissioners**

Acting Chair Subers said she appreciated the update. She asked if Dr. Harris-Adamson had presented on risk scores and pain and injury elements in her last presentation. Doctor Harris-Adamson said she presented a survey summary that included the prevalence of pain and severity of pain. The risk scores are calculated by the revised NIOSH Lift equation when people lift, and they have been calculating the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for hand activity. She did not present those at this meeting because it requires significant explanation and at a future meeting she can go over the results.

Commissioner Kessler was concerned that people would not wear the equipment which would have given specific information about their work. She asked since workers were videotaped, did that change the way they did their work; do you speed up because someone is watching you and your employer is going to know it, so you work faster to complete your job faster; did those elements exist during this study. Dr. Harris-Adamson answered no. They had the opportunity to observe workers when they were not videotaping them, and it did not appear that there was a big difference. They videotaped workers up to four hours and it was very hard to keep up something artificial for four hours without having visible signs of fatigue or just not being able to keep up. Given the duration of time that they videotaped the workers, double-checked them when they were not videotaped, and followed them, she felt comfortable that this is representative of their work pace.

### **Public Comments**

There were no public comments.

## **IV. Follow Up Discussion on Potential Changes to Frequency of CHSWC Meetings, Topics Covered in Meetings, and Goals of Commission CHSWC Commissioners**

Acting Chair Subers explained that this agenda item is the follow up discussion that they started at the last meeting around potential changes to frequency of our meetings of the Commission, what topics should or could be covered, and overarching goals for the Commission.

She explained that at the last meeting, they started a healthy dialogue about how they can reinvigorate the work of the Commission, of the Commissioners and to set goals to achieve. She referenced Commissioner Kessler who mentioned earlier in one of the presentations that they focused a lot in recent history on workers' compensation, which has been helpful and good, but they also have the mission on the health and safety side. She said that they want to try to remind themselves about the things that they have at their disposal at the Commission, things that they can be doing more of. She said she wanted to open it up first to any other Commissioners who want to speak. She said that she personally thought that it would be great if they were meeting more frequently, or at least she said she thinks this might only be their second meeting that they have had this year, which is concerning. But she clarified that she knows that it is not any of their faults, nor the staff's fault; they have had vacancies, other issues with COVID outbreaks, which she knows is a concern. She said just focusing on being able to have more frequent meetings will let them have this dialogue on a more ongoing basis and give them an opportunity to set themselves some goals.

Commissioner Roxborough said that he knows that Chair Steiger was in favor of more meetings because they are trying to get solutions for the State of California and so if they are to be effective, he said he thinks everybody here is in favor of it from public policy standpoint. He said that his preference would be every other month - six times a year. He said he thinks that is consistent with the statute, six times a year. With more frequency, they could then play a role and create some solutions and road maps for everybody, and they would be more effective. He said that there was also discussions about rotating the locations. He said he did not feel strongly one way or the other because they have alternatives.

Commissioner Kessler said that they have talked about the definition of what this Commission is supposed to do. She said she thought reviewing that would be a good thing. She said that having the ability to have less (items) crammed into their agenda so that they actually have time to really tease out issues that need to be discussed and then what impact, if any, do they think they can achieve.

She said that, yes, they would like to prevent people from getting injured. They would like to make sure that the workforce system is more effective for people to navigate it because it's so arcane and difficult that injured workers - especially those who don't have a union or a lawyer to represent them - are really in a bind to navigate the system. She said she thinks that they should have a meeting just to talk about what this Commission's role should be or could be, instead of jamming a whole bunch of other information in that doesn't allow them to really think hard and try to come up with proposals that might be effective and could work.

She said she also believes that having different presentations from stakeholders has been good, and she thanks Mitch for pushing for this. It's really good to have reality checks about what all this stuff is impacting people's lives. Accordingly, she appreciates it when they have the



opportunity to hear from different people about what the implications are for this work, what their experiences are, and what they see as potential solutions. She said when they hear the folks from the first presentation say, “Hey, we'll make some proposals about what to do about” some of these issues or staffing or whatever, great. Commissioner Kessler said she thinks if people can make positive solutions, that's wonderful. She said she would like some dedicated time just to talk about where to go from here for the Commission.

Acting Chair Subers said she agreed with Commissioner Kessler and she thinks the addition of the stakeholder presentations has been helpful. She said that when she thinks about what they could be doing better as a Commission, she starts thinking what they are we supposed to be focused on right now. She said that in the last couple of weeks, the staff was able to share that the new RFP for the public safety mechanics was out, which is great. She said for her, it has been difficult to keep track of what else is on their plate. What else are they supposed to be focusing on, now that they know that is pending? They know they have this janitorial time motion study that they have been getting updates about. She said from her own experience that there was a bill signed last year that has asked CHSWC to do two more studies and she said she did not think they have done anything with those. She said that she did not know what else is out there, these are just things that she was aware of. She said it would be helpful to have a conversation about what their requirements are as a Commission. She said that she knows the staff have a ton of work on their plate every year when it comes to the annual report. She said none of them know what that will take, or how much time they have to spend on that and how time consuming it is. She said that they have to review the annual report for accuracy and for content and they approve it, but they do not know what it takes for the staff to do it. She said it would be helpful to have a conversation about how our work gets done and the process everything has to go through to get to the Commissioners. She said luckily they have staff that produce products that they get to review. She said it would be helpful to have that conversation because they get stakeholder questions asking them for status of things, and they do not always know. She said she wanted to put that out there as something that would be helpful to have a thorough conversation. She said the Chair will talk to the staff and set the agenda for the next meeting, but it seems like some of these things are more time sensitive and would be beneficial to talk about sooner than later. She said that their next meeting is technically December 13th.

Commissioner Steiger said he wanted to second the comments of pretty much everyone, especially Commissioner Kessler, about being able to have a meeting where we talk about our focus, how they can be most effective and best achieve the statutory direction of proposing reforms, but then also to take that next step and figure out how we can best not just propose things, not just “scream to the heavens” about what needs to be done, but also to try to actually make it happen. He said that may also dovetail with some ongoing conversations about the annual report and how that could be more effective, maybe that could be a little bit lighter on pages and pages of wonky numbers and a little bit more about things that need to happen and where they are, things like proposed legislation or proposed regulations. He said that they can figure out steps to try to make them happen, or if it's just proposed, a suggestion to a state agency about something they can do.

He said that they can follow up on that and that is a heap work for the as-of-yet not hired, permanent Executive Officer. That could be something that they or someone else at CHSWC can focus on to keep them accountable and make sure that all of these ideas, that hopefully they latch onto and support and propose, make some progress towards actually happening. He said that he thought that would be a great topic for a meeting and maybe they can find time in November or something where that could happen. He said he also wanted to throw out there that they did kind of get a gift in the form of the first stakeholder presentation list of solutions. He said that maybe those could be a first set of reforms that they could get behind. He said that maybe at the next meeting he could come with a specific enumerated list of things that were proposed as potential solutions to Cal/OSHA's staffing problems, and which of these can they all agree on and get behind, and then through the rest of the discussion about what they do next with all of these proposals, they figure out the three (or other number of) things that they all unanimously voted on, and they think these are the reforms that should happen. Then, what do they do to try to make sure that those actually happen and then that can all kind of fit together as a discussion on their future as an institution. He said he thought there were all great comments and hopefully at the next meeting they can make some progress towards all of that.

Commissioner Voorakkara said that he appreciated all the comments that he has just heard, and wanted to echo and second what he has heard as well. He said that he was trying to figure out and will leave this to the chair to determine, you know, when is that right timing to have that discussion about giving the space and time to really think through what they can concretely do as a Commission. He said that it would be great if they could have a meeting between now and November, or between now and December, since they have had so few meetings. He said to Meagan's point that there's no fault; there's just been lots of activities that have happened or reasons why. If it's possible, that would be terrific. But at the same time, he said he also likes the idea of the Chair as they are thinking about, with staff on, the agenda and agenda setting on this discussion topic. Commissioner Voorakkara said that he likes the beginning of the year to start with a, "Here's what we can concretely do." He said that they then also could have a mid-year half-agenda item to ensure they are keeping pace and they are actually doing the things that they say they are going to do at the beginning of the year and that they are making sure that they follow-through at the end of the year.

Acting Chair Subers said that she did not want to pick a date for a next meeting, explaining that she is not the Chair and only filling-in for the meeting. The Commissioners made jovial commentary about taking advantage of her (temporary) title, but she deferred to Chair Steiger's leadership.

She said that she thought it would be great if Chair Steiger speaks with the staff after this meeting and discuss whether it is feasible to have another conversation between now and December 13th. She said that she thought that would be ideal and hopefully they have given enough feedback, but can review again things they would like to discuss in the interim. She said that level-setting and knowing what is on their plate is most urgent, such as the things they need to be doing that they might be running out of time for, such as things required by the legislature,

for example, and their status. She said that is a concern for her because one of those deadlines is at the end of this year.

Commissioner Roxborough pointed out that Acting Executive Officer David Boetelho's report is next (on the agenda). He suggested that they will get some guidance about where they are with everything. He said it seems like they have pretty much agreement that everybody wants - as volunteers they are actually wanting to do more, which speaks how great this Commission really is. He said it is nice to hear, but they need the guidance and input in terms of feasibility. He said that he was in favor of every other month, even if it's just an hour and a half, just to keep pace.

Acting Chair Subers said that if it's still possible to do virtual, she thinks it is easier. So if that changes, she asked to let them know. Acting Executive Officer Botelho said that logistically that's not an issue.

Commissioner Kessler said that CHSWC needs a better program than the one they have been using virtually because "this thing doesn't work very well sometimes." Acting Chair Subers suggested that is working. Commissioner Kessler she said today it is working because it is in the house.

Acting Chair Subers said she appreciated the conversation today, and asked if there was any public comment on this item, but did not see anybody's hands raised. She said they would move on to the next agenda item.

## **V. Acting Executive Officer Report David Botelho, CHSWC**

Acting Executive Officer Botelho thanked the Commission for welcoming him today at his first meeting with the Commissioners and the team. He said that he did not have a lengthy report to share with them today. He said that they can address some of the administrative things, how they take care of the meetings and how they handle these meetings. He said that this room, for example, today was chosen specifically because of access to Wi-Fi, which works much better at this location than it does in the auditorium. He said that they would have had more difficulty in auditorium.

He said that he did want to bring up one point for the Commissioners to consider as they move forward with the hiring of a new Executive Officer - a permanent one as he was there only temporarily. He said that in that process, they are going to advertise that position. He said that once they receive applications, they are going to screen them to see who's the most eligible to be considered for interview, and then hold the interviews. He said that at another Council (Commission) in a similar role that he has held, they had a subcommittee of the full Council, or in this case of the Commission. He said that if the Commissioners would be interested, they could participate in being part of the interview panel. He explained that they had a subcommittee of four - two members from the labor side, and two members from the corporate side participated, along with the Chair. He said that he is offering this option for the Commissioners to consider. He said that the advertisement has not gone out yet, but will go out shortly and then things will start to happen much faster after that so.

Acting Chair Subers said that she did think that would be a good idea, and clarified that it would be “two and two.” Acting Executive Officer Botelho said ideally, yes, but it did not have to be, that it could be one and one, etc. Acting Chair Subers said that she didn't know if four was too many. Acting Executive Officer Botelho said that it (any larger number) can be overwhelming to the candidates, but it is up to the Commissioners (to decide). Acting Chair Subers said that she thought two and two was a good idea.

Acting Executive Officer Botelho said that he wanted the Commission to make that decision before they move forward, and as things start to move along, they will already know that is the plan, and the Commissioners can vote on who is going to be on that side. Acting Chair Subers said that there are only two employer representatives on the Commission right now, and indicated to Commissioner Roxborough that it would be his task (by default). Commissioner Roxborough accepted and said that he would be available, and added that he has been on some search committees, and that one learns a lot.

Commissioner Kessler said if they have permission to talk amongst themselves on the labor side then they will probably figure out. Acting Chair Subers asked if they need a public vote on who those people would be. Acting Executive Officer Botelho said yes, that that they can do that at the next meeting or if they have that today, that is fine too. Acting Chair Subers then asked Commissioner Kessler if they would be interested in doing this and being on it (a subcommittee). Commissioner Kessler said that she would be interested, that she probably has more time than Acting Chair Subers does. Acting Chair Subers said that if Commissioner Kessler is interested, she would defer to Commissioner Kessler.

Acting Chair Subers then nominated Commissioner Steiger and the year's Chair to be on it (the subcommittee). Commissioner Steiger said he was honored to accept the nomination.

Acting Executive Officer said that they have their four (subcommittee members) [Note: David said that there had to be a vote, but then spoke as if there was an ‘informal vote,’ but the communications proceeded without a Roberts Rules process. Taken literally, there are four names informally nominated without a final vote taken, despite how the flow of the conversation took place. Someone may wish to interpret this as a consensus result and that the formal voting might not be necessary. It is noteworthy that such a vote was not mentioned on the agenda, but not all items for vote are publicized on the agenda prior to a vote.]

Acting Chair Subers continued with a tally, saying they have Shelley (Kessler) and Mitch (Steiger), and Nick (Roxborough) and Sid (Voorakkara). She said to Commissioner Sid Voorakkara that she did not even ask him you, but unfortunately... (that there was no other option). Commissioner Voorakkara said that he could do simple math, so he understands (and did not protest, expressing great kindness).

Acting Chair Subers concluded that they are good, and comfortable with that (the nominated names).

Commissioner Kessler said to Acting Executive Officer, “Good luck scheduling it.” He said that he would work with each of the Commissioners to schedule that and make that happen, and location as well. He said that ideally they would like to do that in person.

Acting Executive Officer then confirmed that they did (already) vote to approve the May minutes, and all were in agreement that they did.

DIR Director Hagen said she wanted to offer a couple of things for the Commission's consideration, having listened to the last couple of discussions. She said she has offered to work with David Botelho as their interim (Acting) Executive Officer and then he can have appropriate discussions with the Chair about in what capacity DIR can support the Commission in this interim period. She said, first, the easy one is the technological support for the meetings. She said that the Commission has been using DIR staff, but that they also have a service that we contract with called TKO that does a lot of their hearings. She said that there is a cost associated with that, so they would need to check to see if CHSWC has the budget to participate in that, but that it is often an easier way to manage the meetings, particularly when you have stakeholders from the outside. She said that they could that going forward.

Director Hagen said that the other issue that she heard mentioned is authority, what is the CHSWC authority, and where does that land. She said coupled with that, what are the things they are legislatively required to be doing on top of that authority, and then tying into the staff and what they are focused on. She said that to her, that sounds like a work plan or a work assessment. She said that she thought she and David could support the Board (the Commission) in the short term on working with the team, or they can defer that to when they hire their Executive Officer. She said that she thought that is probably easily done.

Director Hagen continued saying she had a question for the Commissioners. She said that when she was listening to the Janitorial report - the time and motion study report - it struck her that they just had a bill that was signed for DIR to do a janitorial study. She said she wondered if maybe they want to think about having a legislative presentation occasionally for CHSWC. She said that she was happy to offer a member of her legislative and regulatory team to come and present on the bills that impact DIR. She said that it would not necessarily be specific to the Commission, but at least they would have a global view of the laws that they are required to implement as a department. She said that she wanted to offer for a future meeting agenda item the option of a legislative report. She referred also to regulations and said that it sounds from the presentations that folks have an idea of what is out in the universe on regulations. She said that she does receive a 15-page regulatory report every month, so there's a large volume because they are a rulemaking organization and would be happy to give updates on that.

Director Hagen explained that she has suggested for their DIR boards and commissions using a governance model document(s). She said that as they are working on hiring their Executive Officer, it will take on even more significance. She explained that it is a document that helps you as a Commission determine what they want to delegate to your staff versus decisions being made by the Chair or the Commission. She said that she finds that it is very helpful to have that on paper for a lot of their independent boards and commissions, so that there is no confusion about

their authority or their scope of responsibility, or even what tasks Executive Officer performs on your behalf versus department staff. She said that she thinks sometimes there's some confusion about that, and sometimes the governance document can help clarify that. She said that she would be happy to share that with the Chair and with Acting Executive Officer David Botelho. She said that she has shared it with all of their independent boards and commissions, and they have one implemented so she can send a copy of what the California Apprenticeship Council (CAC) implemented. She said that she recently proposed it to the (Occupational Health and Safety) Standards Board and the new Chair and the new Executive Officer there as well.

Acting Chair Subers said that they think we want to say yes to all those. She said she wanted to mention and maybe make a comment on the work plan. She said from her perspective, she did not think they need to wait for the new executive officer to be appointed because it would be helpful for that person to come in and have something on paper that guides them, but the other Commissioners may want to comment.

Commissioner Kessler said that it would be interesting to see what the new person thinks their role and job would be, versus what they (the Commissioners) might come up with that they would like to see on a wish list. Commissioner Subers said that it would be more the governance model that they are talking about. Commissioner Kessler said if they say this is the work plan and here it is and we want you to help us implement it. Acting Chair Subers said that she is assuming they could change it when they come in, but she thinks it helpful for them to have somewhere to start because she does not think they have a work plan. Commissioner Kessler said that they do not, although they have been pretty good about taking suggestions and recommendations from the Commission members about future topics and things about which we need to have conversations. She said as an example, the whole issue of RFPs (Requests for Proposals) and how do they get done. She said she is still not satisfied with this because she is not satisfied with whether or not we have the ability to have impact about what guidance is for the RFP, to make sure that whoever bids on it and gets it, is really complying with what it is they have asked for.

Commissioner Kessler said that when they have had RFPs (for projects and studies) and people have put on their (name), and the Commission has paid for them to do the study, they then claim it is theirs and they own it. She said in her estimation, if the Commission pays for it, it is the Commission's (property). She said if the Commission says that something is not articulated well and we want them to change it (and she said she could give a very specific example) and they choose not to and there is nothing that can be done about it, she said she does not like it. As an example, she said RAND (a research contractor) published a thing (report) about the first responders, and they only interviewed 13 workers. She said that the Commission said that this was not OK, and yet they go and publish it. She said that they have even had people testify about the differences between first responders, that they've suffered versus other work and the RAND report says there's really no difference between these different people, first responders or regular workers, and they all get the same kind of responses for PTSD. Commissioner Kessler said that it is not true, but they published it, it is on their website and they won't change it. She said she wants to talk about what does it mean when they put a study together, have it done with an RFP,

it gets completed, and then with the result, what impact they can have about whether they agree with the way the conclusions have been reached or that they've done inappropriately. She said that the people on the Commission who have been there awhile know that she has “a burr under her saddle” about this, but if they do other studies, they want to make sure it is done the way that it is appropriate for what they have asked them to do so. She said she would like to have that conversation, and maybe it is governance (or not).

Director Hagen offered to add some context. She said that they coordinated training a while back for the Commissioners, and she hoped that it was helpful. She said it sounds like they may need to have a subcommittee at some point where they have a deeper discussion, and maybe bring in the contracts folks (staff), and maybe they can ask their questions, and maybe a deliverable of the subcommittee could be an agreed upon template for what you want your contracts to look like. Director Hagen said that she was trying to remember the details of the issue she was raising because she does remember it when it came up. She said it also depends whether it is a legislatively required report or not. If it is not a legislatively required report, they have a lot more flexibility including publishing it. Some reports you have to publish, and some you don't. She said the situation will depend, but certainly that's an area they could have a subcommittee on, or they could also direct their Executive Officer to take certain actions, working with DIR, and come up with a template for discussion at upcoming meeting – but just know that is going to have to be in a public forum.

Commissioner Kessler said that they are getting three new members eventually and as far as integrating folks into the Commission itself and then having a conversation about how they see the role going forward, some of the Commissioners were not yet serving when there was the discussion about RFPs. Commissioner Kessler thanked Director Hagen for making a suggestion because it may be something they need to review. Acting Chair Subers said that she was not there for those RFP discussions either. Commissioner Kessler said it was a while ago. Acting Chair Subers said that she knows about it, but was not involved in it and was not on the Commission.

Commissioner Kessler said that with new members, maybe a review of basic stuff is in order. Referring to what Commissioner Roxborough said, she said it may require a few extra meetings than they have normally had just so that they can take topics and really delve into them, and make sure that people are well versed about the issues that that they are going to be faced with.

Commissioner Roxborough said that he would love to take Director Higgins up on this regulatory offer, and perhaps they can agendaize it for December 13th because it will be fresh. He said the legislature closed and there are new bills out there. He said they could be updated and it would be great to have it on December 13<sup>th</sup>. Governance suggestions from Director Hagan are a terrific idea and he said they need that. He said that RAND was supposed to get us their studies and reports way in advance before we see them today in the hearing. Getting them as the Commissioners sit there the night before, they have asked RAND that there should be a protocol for getting the reports with enough time to intelligently review what it is and to ask questions.

Director Hagen asked which report. Commissioner Roxborough apologized, and corrected himself that it was not RAND, it was the university, the janitorial report. He said they get these (reports) at the last minute. He said that they have also said that if they, from a governance standpoint, that if they are going to pay somebody a quarter of a million dollars, they are going come here in person and do (explain) the report. He said that that is part of the criteria of the RFP. He said about the RFPs, he knows a little bit about it. He said that they cannot really have input in who's selected, with 99.9% certainty. He said what they can do is that they can have input in the criteria that CHSWC feels should be part of it. For example, you agree to do in-person studies, you agree to get it to us a week in advance of the hearings, they have talked about diversity and inclusion and those sort of things, and also a mechanism to get broader participation out there in the California community, and not the same people always getting chosen. Commissioner Roxborough said that at the airport (the Airport Commission) they actually had a team that trained people or had tips on how to do an RFP. He said he did not know if DIR does that as well. Director Hagen said they did. Commissioner Roxborough said that they actually have some people to apply logistically (to the RFP process) and they lose out on some good people.

He said he loves the governance model and maybe they can just have a regulatory report on the 13<sup>th</sup> (of December) if the DIR has time or some representative or government relations person or something. He said it gives them an agenda for next year or two.

Commissioner Kessler said the thing about always having the same people (being awarded RFP contracts), here is the difference that she has with Commissioner Roxborough on that. She said that one can see it today in the presentations: they have organizations who for their existence do health and safety work. She said you really want people who are immersed in the topic to be able to do the study on it because it would be so much more competent, and people who would be willing to do the deep dives into those issues because these are the topics they care about on a daily basis in their work. She said that is why she has some problems with other organizations that apply who've never done any health and safety work, never did any workers' compensation work, any of that. She said in her preferences, she wants to diversify and make sure that they have a good group of people for whom to request, and to bid on their RFPs, but she also wants them to have expertise.

Acting Chair Subers asked Acting Executive Officer Botelho if they interrupted his report. He said was asking the team, Irina, if she had something on the RFP or RFI that they can share. She said not at this time. He said he wanted to make sure he did not miss that in his notes.

Acting Executive Officer Botelho said he did not know if there were any public questions or comments. Irina Nemirovsky said that the Firefighter Mechanics study did go out. Acting Chair Subers confirmed that they received that notice emailed to them in the last few days, 10 days, maybe a week. Commissioner Kessler said that she just got back from vacation and had not seen it and will go look. Commissioner Kessler asked who this came from, and Acting Executive Officer said that it came from him, that it is posted on the website and he provided the link to the contract page in an email.



## **VI. Other Business / Proposals/Public Questions and Comments**

Catherine Montgomery, Chief Executive Officer of Daisy Bill, said it was her first CHSWC meeting. It was spectacular and she was not expecting it to be so interesting and well thought out. She said the Utilization Review (UR) process in California was impacting injured workers access to treatment. Ms. Montgomery said daisyBill is a technology which helps providers submit their workers' compensation bills for payment so they can get paid. Workers' compensation bills to treat injured workers in California are more complex than submitting group health bills, and it was their mission by providing technology to providers to submit bills they can keep more providers treating injured workers. Daisy Bill has been in business for 12 years and it has added the capability that providers can submit Requests for Authorization. With the passing of SB 863 in 2012 in an attempt to control costs the State of California decided to give control of care that an injured worker received to the payers, self-insured employers, third party administrators (TPAs) and insurance companies. Over the years they have seen a drastic lack of access to care for injured workers because of this process. She was attending to raise concerns and because the CHSWC is able to analyze this problem. As an example, Sedgwick, which is the largest TPA in the State of California, advertises that they deny 54 percent of all treatment requested by providers on their website. On their website they boast that this 54 percent denial rate returns a "five to one return on investment" to the clients who use this service because they do not have to pay for treatment requested by providers. They represent over 3,000 providers in California who submit 2.5 million bills for workers' compensation. They have tons of data. They have many clients as providers who are really struggling to get treatment approved so they can so they can treat injured workers.

Ms. Montgomery said as a Commission it should be of enormous concern that recently Workers' Compensation Insurance Rating Bureau (WCIRB), an insurer financed organization whose data is unverified and self-reported, in their 2023 report, they reported California employers paid 0.49 cents of each dollar for administrative costs for every dollar of benefit employer paid. The national median is 0.26 cents. She asked why employers in California are paying 0.49 cents where the rest of the country is paying 0.26 cents. WCIRB also reported that it took seven years to close a claim in California, compared to a national average of three years. The situation in California is where injured worker or a provider cannot get care for their injured worker and employers are put into a loop system where is it because care is not being authorized. The injured worker's claim stayed open, and the process was a chaotic mess for which there was no data. She said it is of great concern for CHSWC and add to its agenda why UR in California for injured workers had a 54 percent advertised denial rate on Sedgwick's website. It should cause people to lose sleep. Acting Chair Subers said CHSWC Staff shared with the Commissioners a letter submitted a letter by Daisy Bill and the Commissioners have not reviewed it as it was submitted this morning. They will review the letter too, and for discussion amongst the Commissioners, consider her point of having a stakeholder presentation on UR in the future. Ms. Montgomery said that would be great because they do represent providers who should also be invited.

Yvonne Fernandez, California Labor Federation legislative advocate, wanted to confirm what was the timeline for the permanent rule making process for the silica standard the specifics of when the process will be occurring at the end of the year. Acting Chair Subers replied that she did not know the answer, but she will ask CHSWC Staff to ask OSHA and then notify him.

Acting Chair Subers said a study that is due to the legislature by December 31st, 2024, related to claims data for public safety dispatchers that submit claims related to post traumatic stress injury. She said nothing has happened with that study, she wanted to put it on the record. The Senator's office, who was author of that bill, has also reached out to the CHSWC staff with questions. She wanted to make herself available, and probably all the Commissioners too, to see how they could move forward on that request. It is supposed to be a claims data request. There was no qualitative analysis required because they are not covered by a presumption. The request is how many individuals have filed claims, how many have been accepted and how many have been denied. That is supposed to inform legislation in the legislature. She wanted to add that to the public comment

**Adjournment**

The meeting was adjourned at 12:47 p.m.

**Approved:**

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Meagan Subers, Acting Chair  
Acting Chair, CHSWC

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Date

Respectfully submitted:

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David Botelho  
Acting Executive Officer, CHSWC

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Date