

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
January 21, 2021 OSH)
Standards Board Meeting)
_____)

VIDEOCONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20, and Executive Order N-33-20, the
PHYSICAL meeting location has been cancelled for January.*

THURSDAY, JANUARY 21, 2021

10:00 A.M.

Reported by:
Elise Hicks

APPEARANCES

BOARD MEMBERS:

David Thomas, Chair
Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
Dave Harrison, Labor Representative
Nola Kennedy, Public Member
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Sarah Money, Executive Assistant
Michael Nelmidia, Sr. Safety Engineer

BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Michael Manieri, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Regulatory Analyst

DIVISION STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

Eric Berg, Deputy Chief of Health

ADDITIONAL ATTENDEES:

John Gotcher, TKO
John Roensch, TKO
Maya Morsi, TKO
Michael Howard, TKO

INTERPRETERS:

Susana Haikalis
Ashley Nunez-Sheriff
Julie Drucker

PUBLIC COMMENT:

Bruce Wick, Housing Contractors of California
Maggie Robbins, Worksafe

PUBLIC COMMENT (cont'd):

Robert Moutrie, Cal Chamber
Cassie Hilaski, Nibbi Brothers General Contractors
Kevin Bland, Ogletree Deakins
Eric Frumin, Change to Win

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Although any Board Member may identify a topic of interest, the Board may not substantially discuss or take action on any matter raised during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)

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Next Meeting: February 18, 2021
 Teleconference and Videoconference
 (In accordance with Executive Orders N-29-20 and
 N-33-20)
 10:00 a.m.

Reporter's Certificate 45

Transcriber's Certificate 46

1 PROCEEDINGS

2 JANUARY 21, 2021

10:00 a.m.

3 CHAIR THOMAS: Good morning. This meeting of the Occupational Safety
4 and Health Standards Board is now called to order. I'm Dave Thomas, Chairman. And
5 the other Board Members present today are Ms. Barbara Burgel, Occupational
6 Health Representative; Ms. Kathleen Crawford, Management
7 Representative; Mr. David Harrison, Labor Representative; Ms. Nola
8 Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management
9 Representative; Ms. Laura Stock, Occupational Safety Representative.

10 Also present from our staff for today's meeting are Ms.
11 Christina Shupe, Executive Officer; Ms. Sarah Money, Executive Assistant;
12 and Mr. Michael Nelmidia, Senior Safety Engineer, who is providing
13 technical support.

14 Supporting this meeting remotely are Mr. Michael Manieri,
15 Principal Safety Engineer; Ms. Autumn Gonzales, Chief Counsel; Ms. Lara
16 Paskins, Safety Services Manager; Mr. David Kernazitkas, Senior Safety
17 Engineer; and Ms. Jennifer White, Regulatory Analyst.

18 Via teleconference, we are joined today by Mr. Eric Berg,
19 Deputy Chief of Health representing the Division of Occupational Safety
20 and Health.

21 On December 30, 2020 Governor Gavin Newsom appointed
22 one new member to the Standards Board and reappointed two existing
23 members. Before proceeding with today's meeting, we will proceed with
24 the swearing in of our new Board Member, Kathleen Crawford, and for
25 reappointment, members David Harrison and Laura Stock.

1 I had the opportunity and pleasure of administering Ms.
2 Crawford's oath in person earlier this week.

3 Mr. Gotcher, would you please present the video.

4 MR. GOTCHER: Presenting the video now.

5 (Whereupon video is played)

6

7 CHAIR THOMAS: I, Kathleen Crawford --

8 BOARD MEMBER CRAWFORD: I, Kathleen Crawford --

9 CHAIR THOMAS: Do solemnly swear --

10 BOARD MEMBER CRAWFORD: Do solemnly swear --

11 CHAIR THOMAS: That I will support and defend --

12 BOARD MEMBER CRAWFORD: That I will support and defend --

13 -

14 CHAIR THOMAS: The Constitution of the United States --

15 BOARD MEMBER CRAWFORD: The Constitution of the United

16 States --

17 CHAIR THOMAS: And the Constitution of the state of

18 California --

19 BOARD MEMBER CRAWFORD: And the Constitution of the

20 state of California --

21 CHAIR THOMAS: Against all enemies --

22 BOARD MEMBER CRAWFORD: Against all enemies --

23 CHAIR THOMAS: Foreign and domestic --

24 BOARD MEMBER CRAWFORD: Foreign and domestic --

25 CHAIR THOMAS: And that I will bear true faith and allegiance

7

1 --

2 BOARD MEMBER CRAWFORD: And that I will bear true faith
3 and allegiance --

4 CHAIR THOMAS: To the Constitution of the United States --

5 BOARD MEMBER CRAWFORD: To the Constitution of the
6 United States --

7 CHAIR THOMAS: And the Constitution of California --

8 BOARD MEMBER CRAWFORD: And the Constitution of
9 California --

10 CHAIR THOMAS: And that I take this obligation freely --

11 BOARD MEMBER CRAWFORD: And that I take this obligation
12 freely --

13 CHAIR THOMAS: Without any mental reservations --

14 BOARD MEMBER CRAWFORD: Without any mental
15 reservations --

16 CHAIR THOMAS: Or purpose of evasion --

17 BOARD MEMBER CRAWFORD: Or purpose of evasion --

18 CHAIR THOMAS: And that I will well and faithfully discharge -
19 -

20 BOARD MEMBER CRAWFORD: And that I will well and
21 faithfully discharge --

22 CHAIR THOMAS: The duties upon which I am about to enter.

23 BOARD MEMBER CRAWFORD: The duties upon which I am
24 about to enter.

25 CHAIR THOMAS: Thank you very much and congratulations.

1 BOARD MEMBER CRAWFORD: Thank you.

2 (End of video).

3 CHAIR THOMAS: Perfectly executed. Anyway, welcome, Ms.
4 Crawford. We're pleased to have you on the Board with us.

5 At this time, we'll also swear in Mr. Harrison and Ms. Stock
6 who are recently -- who were recently appointed to the Board again.

7 Mr. Harrison and Ms. Stock, please raise your right hand and
8 repeat after me.

9 CHAIR THOMAS: I do solemnly swear --

10 BOARD MEMBERS HARRISON AND STOCK: I do solemnly swear
11 --

12 CHAIR THOMAS: That I will support and defend --

13 BOARD MEMBERS HARRISON AND STOCK: That I will support
14 and defend --

15 CHAIR THOMAS: The Constitution of the United States --

16 BOARD MEMBERS HARRISON AND STOCK: The Constitution of
17 the United States --

18 CHAIR THOMAS: And the Constitution of the state of
19 California --

20 BOARD MEMBERS HARRISON AND STOCK: And the
21 Constitution of the state of California --

22 CHAIR THOMAS: Against all enemies, foreign and domestic --

23 BOARD MEMBERS HARRISON AND STOCK: Against all enemies,
24 foreign and domestic --

25 CHAIR THOMAS: That I will bear true faith and allegiance --

1 BOARD MEMBERS HARRISON AND STOCK: That I will bear
2 true faith and allegiance --

3 CHAIR THOMAS: To the Constitution of the United States --

4 BOARD MEMBERS HARRISON AND STOCK: To the Constitution
5 of the United States --

6 CHAIR THOMAS: And the Constitution of California --

7 BOARD MEMBERS HARRISON AND STOCK: And the
8 Constitution of California --

9 CHAIR THOMAS: That I take this obligation freely --

10 BOARD MEMBERS HARRISON AND STOCK: That I take this
11 obligation freely --

12 CHAIR THOMAS: Without any mental reservations or purpose
13 of evasion --

14 BOARD MEMBERS HARRISON AND STOCK: Without any mental
15 reservations or purpose of evasion --

16 CHAIR THOMAS: And that I will well and faithfully discharge -
17 -

18 BOARD MEMBERS HARRISON AND STOCK: And that I will well
19 and faithfully discharge --

20 CHAIR THOMAS: The duties upon which I am about to enter.

21 BOARD MEMBERS HARRISON AND STOCK: The duties upon
22 which I am about to enter.

23 CHAIR THOMAS: Thank you very much and congratulations.

24 Would any -- would either one of you like to comment?

25 BOARD MEMBER STOCK: Thank you. I'm looking forward to

1 another number of years serving with this great Board and making the
2 changes we can to improve conditions for workers in California.

3 CHAIR THOMAS: Thank you, Laura.

4 Dave, any comments?

5 BOARD MEMBER HARRISON: Yeah. I'd like -- echo the same,
6 that it's a pleasure working with the Board staff and the public at large,
7 and I'm looking forward to a pandemic free future one day.

8 CHAIR THOMAS: Amen, from your lips to God's ears.

9 And now we will continue on with our meeting.

10 If you're not -- if you have not already done so, we ask that
11 you email oshsb@dir.ca.gov to provide your name and contact
12 information, which will become a part of the official record of today's
13 proceedings. Today's agenda and other materials related to today's
14 proceedings are posted online at dir.ca.gov/oshsb/mtgsch.html.

15 In accordance with the Executive Order
16 N-29-20 and N-33-20, the January Board Meeting will be conducted via
17 teleconference with an optional video component.

18 This meeting is also being live broadcast via video and audio
19 stream in both English and Spanish. Links to these non-interactive live
20 broadcasts can be accessed via the "What's New" section at the top of
21 the main page on the OSHSB website at dir.ca.gov/oshsb/oshsb.html.

22 We have limited capabilities for managing participation
23 during public meeting periods, so we're asking everyone who is not
24 speaking to place their phones on mute and wait to unmute until there
25 are -- they are called to speak.

1 As reflected on the agenda, today's meeting consists of two
2 parts. First, we will hold the public meeting to receive public comments
3 on proposals on occupational safety and health matters. Anyone who
4 would like to address any occupational safety and health issues,
5 including any of the items on our business meeting agenda, you may do
6 so at that time. Members of the public who have contacted staff, either
7 by email or phone, and asked to be placed in the public comment queue
8 will be called on in turn. Additionally, those joining via Webex may ask
9 to join the queue via the chat function.

10 The Webex chat function is monitored exclusively by staff
11 and is only available to send requests to join the public comment queue.
12 It is not a method for providing public comments to Board Members.
13 Board Members will not consider or respond to any messages delivered
14 by the chat function, nor will such comments become part of the official
15 rulemaking record.

16 Please listen for your name and an invitation to speak before
17 addressing the Board. And please remember to mute your phone or
18 computer after commenting. After everyone in the queue has been
19 provided an opportunity to speak, then we will open the public comment
20 to anyone on the call who has not been able to enter the queue. If you
21 wish to speak more than once, please contact staff and have your name
22 placed back in the queue.

23 Board staff can be contacted by email at oshsb@dir.ca.gov or
24 via telephone at 916-274-5721 to be placed in the comment queue. If
25 you experience a busy signal or are routed to voicemail, please hang up

1 and call again.

2 After the public meeting has concluded, we will conduct the
3 second part of our meeting, which is the business meeting to act on
4 those items listed on the business meeting agenda. The Board does not
5 accept public comment during the business meeting unless a member of
6 the Board specifically requests public input.

7 We will now proceed with the public meeting. Anyone who
8 wishes to address the Board regarding matters pertaining to
9 Occupational Safety and Health is invited to comment, except however,
10 the Board does not entertain comments regarding variance decisions.
11 The Board's variance hearings are administrative hearings where
12 procedural due process rights are carefully preserved. Therefore, we will
13 not grant request to address the Board on variance matters. At this
14 time, anyone who would like to comment on any matters concerning
15 Occupational Safety and Health will have an opportunity to speak.

16 For our commenters who are native Spanish speakers, we are
17 working with an interpreter, Susana Haikalis, to provide a translation of
18 their statements into English for the Board.

19 At this time Ms. Haikalis will provide instruction to the
20 Spanish-speaking commenters so they are aware of the public comment
21 process for today's meeting.

22 Ms. Haikalis.

23 INTERPRETER HAIKALIS: Buenos dias. Gracias.

24 [READS THE FOLLOWING IN SPANISH] Public Comment Instructions.

25 "Good morning, and thank you for participating in today's Occupational

1 Safety and Health Standards Board public meeting. Board Members present are Mr.
2 Dave Thomas, Labor Representative and Chairman; Ms. Kathleen Crawford,
3 Management Representative; Ms. Barbara Burgel, Occupational Health Representative;
4 Mr. Dave Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris
5 Laszcz-Davis, Management Representative; and Ms. Laura Stock, Occupational Safety
6 Representative.

7 "As reflected on the agenda, today's meeting consists of two parts. First,
8 we will hold a public meeting to receive public comments or proposals on occupational
9 safety and health matters. Second, after the public meeting has concluded, we will
10 conduct a business meeting to act on those items listed on the business meeting
11 agenda.

12 "We have limited capabilities for managing participation during the public
13 comment period. We are asking everyone to keep their phones and Webex audio on
14 mute until your name is called to address the Board. Please remember to mute again
15 after you have finished commenting."

16 "Please note that the Webex chat function is not a method for providing
17 public comments to Board Members. Board Members will not consider or respond to
18 any messages delivered via the chat function, nor will such comments become part of
19 the official rulemaking record.

20 "This meeting is also being live broadcast via video and audio stream in
21 both English and Spanish. Links to these non-interactive live broadcasts can be accessed
22 via the 'What's New' section at the top of the main page of the OSHSB website at
23 dir.ca.gov/oshsb/oshsb.html.

24 "Please listen for your name to be called for comment. If you have not
25 provided a written statement, please allow natural breaks after every two sentences so

1 that we may follow each statement with an English translation."

2 Gracias.

3 CHAIR THOMAS: Thank you, Ms. Haikalis.

4 INTERPRETER HAIKALIS: Thank you.

5 CHAIR THOMAS: At this time, Mr. Gotcher, do we have any
6 commenters in the queue?

7 MR. GOTCHER: Our first commenter is Bruce Wick from the
8 Housing Contractors of California.

9 CHAIR THOMAS: Good morning, Bruce. Can you hear us?

10 MR. WICK: Good morning. Yes Sir, I can.

11 CHAIR THOMAS: Go ahead.

12 MR. WICK: I thought there were others signed up.

13 I do want to congratulate Dave Harrison and Laura Stock for
14 reappointment and welcome Kate Crawford. Look forward -- it's really
15 nice to have a full Board, so looking forward. 2021 is starting off well.
16 Thank you.

17 I do want to just talk about the COVID reg, the advisory
18 committee, and the importance, I think, you know, of this Board really
19 pursuing a collaborative effort with the Division. You know the Division's
20 resources are, I think limited as, you know, your staff is as well, we
21 understand. But there's so much that can be done, especially if we're
22 trying to promote an emergency reg. You know, we've looked at the
23 Q&A. I mean, we're already up to 69 questions and some of them were --

24 (Audio cuts out)

25 CHAIR THOMAS: We lost you, Bruce. Are you there?

1 MR. WICK: -- you know, some of -- yes. Can you hear me?

2 CHAIR THOMAS: I can hear you now. Yeah, we lost you for a
3 second, so you might want to go back and repeat.

4 MR. WICK: Okay. Thank you. Sorry.

5 So we just hope in the upcoming advisory committee that
6 there's -- that the Division staff will work in concert with your staff
7 because that's how we get true collaboration. That's how we get proper
8 vetting and that's how we come up with regs that really do -- are able to
9 be implemented and implemented well. We can have a reg that has a lot
10 of protection on paper, but on the employer side especially, we have to
11 translate that to supervisors who understand it and can demonstrate it
12 and teach it to their employees. And so it's important how clean and
13 clear and implementable, if that's a word, a regulation is when we
14 promulgate it, when we promote it.

15 So appreciate that and look forward to, you know, working
16 together on this as we go forward with the advisory committee.

17 Thank you.

18 CHAIR THOMAS: Thank you, Mr. Wick. Appreciate your
19 comments.

20 Mr. Gotcher, who do we have in the queue?

21 MR. GOTCHER: Our next commenter is Maggie Robbins from
22 Worksafe.

23 CHAIR THOMAS: Hi, Maggie.

24 MS. ROBBINS: Hi Board. Can you hear me all right?

25 CHAIR THOMAS: We can. Go right ahead.

1 MS. ROBBINS: All right, thank you.

2 I just want to make a few brief comments. First, yes, indeed
3 welcoming and re-welcoming the Board Members who were sworn in
4 today.

5 I just wanted to thank you again for completing the COVID
6 Prevention Standard. We're getting so many questions about it, as we do
7 with any new standard, and a lot of enthusiasm, and a lot of, you know,
8 high expectations. So, at any rate, I just wanted to pass that on. There
9 is keen interest in this reg, you know, very broad across a lot of the
10 people who reach out to us and a lot of the organizations that we partner
11 with.

12 We, too, are looking forward to the advisory committee
13 meeting process and continuing to have updating -- a dialog to update
14 the standard, as is -- as is needed. And we're paying keen attention to
15 the legal challenges to the standard and I want to assure you that we're
16 participating in that and will be providing, or have provided, supporting
17 amicus briefs to those lawsuits and we await to see how they turn out.

18 At any rate I, again, just wanted to really thank you and to
19 say you've done a lot of work and we really appreciate it and we're
20 looking forward to having it fully implemented.

21 Thank you.

22 CHAIR THOMAS: Thank you.

23 Mr. Gotcher, who do we have next in the queue?

24 MR. GOTCHER: Our next commenter is Rob Moutrie from Cal
25 Chamber.

1 CHAIR THOMAS: Mr. Moutrie --

2 MR. MOUTRIE: Good morning, I'm trying a new microphone
3 that's less obtrusive. Can everyone hear me okay?

4 CHAIR THOMAS: We can. Go right ahead.

5 MR. MOUTRIE: Thank you. Sorry to be the person who
6 always asks that question.

7 CHAIR THOMAS: Everybody does. It's all right.

8 MR. MOUTRIE: Yeah. It's one of the things for this last year
9 or so.

10 So briefly, I'd like to start off, as Ms. Robbins and Mr. Wick
11 did, congratulating Kate and congratulating Laura and Dave on their
12 reappointment. It is nice to have a full Board and nice to have some
13 stable government going on in the context of things.

14 So with that, I'd like to briefly flag some of the ongoing
15 concerns of the COVID ETS, which we're hoping will be addressed coming
16 up, but in light of the recent released FAQs, I thought
17 I'd -- the Board deserves kind of an update on
18 how -- what those FAQs had or hadn't addressed, so you are apprised of
19 where our concerns were there.

20 So I would like -- also like to echo Ms. Robbins comment
21 regarding interests. You know, not a day goes by that I don't have emails
22 or calls from employers saying, what exactly does this mean? How do we
23 quite do this? And the FAQs have helped at some points and I would like
24 to thank Division staff for their hard work there. Obviously, they haven't
25 slept in six to eight months. I know Eric certainly probably has not, and

1 Doug as well, so thank you for that work.

2 Briefly flagging some ongoing -- some points. I'd like to also
3 express appreciation for Division staff for the careful balance struck in
4 its delayed fines, where citations will be issued but the fines will not be
5 issued for a brief bit. Just until early next month, so very brief, but
6 giving businesses a little time to figure this out while still including that -
7 - that stick of citation.

8 As to ongoing concerns. We still get questions and the FAQs,
9 I think, don't address this, regarding employer's ability -- around the
10 leave, the sick leave provided and whether it's meant to be creating a
11 new sick leave category or whether it's meant to -- and is it meant to be
12 unlimited or is it meant to include existing sick leave? We have legal
13 concerns that the employer cannot, as a legal matter, compel the use of
14 paid sick leave, which the present FAQs imagine to be feasible. So that's
15 an issue which we will be talking about at the advisory committee and
16 you may be hearing about in March.

17 Also, we have ongoing concerns with availability of tests, and
18 I think this is an across the aisle issue. You know, enough tests out there
19 makes this work and makes everyone safer. So we're hopeful the State
20 will do more there.

21 We also have ongoing concerns about the use of
22 nonemployees starting an outbreak. You know, the old grocery store
23 example. A family of three comes through and tests positive. Later,
24 under this regulation, the grocery store is in an outbreak, though no
25 employees have caught it. So those are some specific examples which

1 we'll be talking about at the upcoming advisory, and which you may
2 hear about in March.

3 And the last big issue, which I hope the Board will weigh in is
4 vaccinated employees. You know, as the vaccine is spreading out,
5 thankfully, and actually I hope some of you will be getting this soon. I
6 know I will not be getting this until the last round probably, but as it
7 spreads out, we're hopeful to see the regulation reflecting that. And
8 hopeful to see that, kind of, so that we can get to a place where it
9 reflects both unvaccinated and vaccinated employees as soon as possible.

10 So turning to that, the last point I'll make is to Bruce's point
11 about the advisory committee meeting. Really glad to see it coming.
12 Really glad to talk about the changes there with Division staff. Two
13 comments, and this goes back to comments we've had with the Board for
14 the last year or so, we're really hopeful to see that interactive, kind of
15 Standards Board model process where we can talk through items and --
16 with everybody at the table. You know, labor, management, you know,
17 public, private, everybody there to work through the issues and come to
18 a more workable document as soon as we can. And hopefully that'll
19 happen before the March meeting and we can give you the update then.

20 I don't want to take more of your time. So thank you all.
21 Hope you're staying safe and healthy.

22 CHAIR THOMAS: Thank you, Rob. Appreciate your
23 comments.

24 John, who do we have next in the queue?

25 MR. GOTCHER: There are no further commenters in our

1 queue.

2 CHAIR THOMAS: No way. Are you serious?

3 MS. SHUPE: See if there's anybody who couldn't join the
4 queue.

5 CHAIR THOMAS: Yeah. So if there's anybody who would like
6 to join the queue or make comments, you have your opportunity now and
7 I'll give you a minute or two. Oh, I see --

8 MS. SHUPE: Kevin.

9 CHAIR THOMAS: Kevin Bland.

10 MS. SHUPE: And Cassie.

11 CHAIR THOMAS: And Cassie. So can
12 you -- John, do you have their -- do you have them in your queue, John?

13 MR. GOTCHER: I do not, but I just got a message that the
14 queue is being updated right now.

15 CHAIR THOMAS: Okay. So we'll wait a second, see what we
16 get.

17 MR. GOTCHER: So. Okay. Our next commenter is Eric
18 Frumin from Change to Win.

19 CHAIR THOMAS: Eric, are you with us? Hello, Eric.
20 Remember to unmute yourself.

21 MS. SHUPE: While we're waiting for Eric, I'd like to note that
22 Board Member Nola Kennedy has lost her connection to the meeting.

23 CHAIR THOMAS: Oh.

24 MS. SHUPE: We still have a quorum, so we'll continue, and
25 we'll try to get her reconnected.

1 CHAIR THOMAS: Okay. Mr. Frumin, can you hear us?
2 John, let's go on to the next and we'll go back to Eric. Who
3 do we have next up in the queue?

4 MR. GOTCHER: So there is no one else in the queue at this
5 time.

6 MS. SHUPE: Can we move to Kevin Bland, then?

7 CHAIR THOMAS: We'll just open it up. Yeah, Kevin, can you
8 hear us?

9 MR. GOTCHER: So -- so Eric Frumin, we're reaching out to by
10 telephone, so he should get a turn soon.

11 But Kevin Bland, if you -- next.

12 CHAIR THOMAS: Let's see. Hold on. Kevin Bland, where are
13 -- Kevin, can you hear us? I -- we can't hear you. Can you unmute? Not
14 yet.

15 MS. SHUPE: Okay. John, can we please move on to Cassie
16 Hilaski --

17 CHAIR THOMAS: Yeah.

18 MS. SHUPE: -- with Nibbi Brothers?

19 MR. GOTCHER: Okay.

20 MS. HILASKI: All right, can you hear me?

21 CHAIR THOMAS: We can.

22 MS. HILASKI: All right. So also congratulations to the new
23 Board Member and returning Board Members.

24 Just very briefly, I wanted to just make a comment about --
25 with the advisory committee meeting and reviewing the language of the

1 regulation, just an encouragement for ensuring that language that's
2 currently in FAQs to clarify and provide really necessary and helpful
3 clarification. Thank you so much for those FAQs, they've been very, very
4 helpful. But without that language being in the final regulation, there's
5 lots of people in the regulated community who are concerned that they
6 will still be cited, even as they're following what the FAQs tell them to
7 do, but there's too much room for interpretation in the actual text of the
8 regulation itself.

9 So just an encouragement to try to include as much clarity in
10 the final text as possible so that we don't have unnecessary citations of
11 employers who are trying to do their best to comply based on the FAQs.

12 And that is it. Thank you.

13 CHAIR THOMAS: Thank you. Thank you, Ms. Hilaski.

14 John, do we have anybody else in the queue?

15 MR. GOTCHER: I'd like to circle back to Kevin Bland and see
16 if he has figured out his mute issue.

17 CHAIR THOMAS: I don't know if we should or not. Are you
18 there, Kevin?

19 MR. GOTCHER: So I can see that you're unmuted on Webex.
20 If you're using external microphone, you might need to unmute that as
21 well.

22 CHAIR THOMAS: Yeah, I think that's it.

23 MR. GOTCHER: Or you could need to change your
24 microphone settings in Webex. If you see your mute button at the
25 bottom, there's a dropdown menu and that should allow you to choose

1 your microphone.

2 MR. BLAND: How about this microphone. Does this work?

3 CHAIR THOMAS: There you go.

4 MR. BLAND: Okay. All right.

5 CHAIR THOMAS: Don't move.

6 MS. SHUPE: So good to hear your voice.

7 MR. BLAND: I actually -- I actually tested it before I got on,
8 where you can do the test, make sure the microphone and speaker and
9 everything is coming and it speaks back to you. But oh well.

10 Good morning, Chairman and Board Members and welcome
11 to the Board, Kate. And welcome, I guess back to the Board, or
12 continued on the Board, Dave and Laura. It's good to have a full Board,
13 as everyone else has said this morning.

14 I just have a couple things, and this is more like if we have to
15 go through anything like this with an emergency reg in the future. The --
16 I know there's a lot of time and energy and (indiscernible) in to putting
17 the language together in this regulation by those. But what we ended up
18 with, without having the vetting process in the beginning, has really
19 made it very difficult to advise clients on compliance with it. I
20 understand we have, you know, 69 FAQs. Some of the FAQs go beyond
21 what the language says. Some may fall short of what the language says.
22 And so we're trying to ferret through that, and I know we hear a lot of
23 stories from folks about noncompliance. I can probably match those
24 times ten on stories of trying to comply, and compliance at great lengths
25 by employers.

1 And just like an example of something of that I think about,
2 we have this excluding COVID cases from the worksite and we -- we're in
3 an outbreak situation and it says no positive test is required to go back
4 to work. Right? But do they get back into the testing pool? Because
5 when you have -- we're out of the contagion period, you can still test
6 positive, some folks up to three months. And so what is -- how do you
7 ever get out of your numbers whenever you've had your COVID cases and
8 they go back in? That's not -- that's not identified in the reg, wasn't -- I
9 don't think was contemplated. That's an example.

10 The other thing is the notices and the crossovers between
11 685 and 3205 and the notices, I mean, at some point, you're giving the
12 same person as many as six different notices. I may be exaggerating a
13 little bit. But there's basically six notices and they don't all match. And
14 you end up sending -- and if you're in an outbreak situation, you're
15 sending a new notice that says the same thing every single day. So I
16 don't think that was completely contemplated about how that -- when
17 rubber meets the road, how the interface with 685 was and the
18 practicality of the notices and the distinctions between different notices.

19 One example of that is if you tried to do a combined notice,
20 3205 notice has testing information and is really going to the employees
21 that are excluded because of an exposure meaning the six, 15, 24 rule,
22 six feet, 24 hours. They're going to get tested, they're going to be
23 excluded for 14 days. Well, on top of that, you also has 685 notice that
24 has to go to those same folks that doesn't have the same information.
25 And if you try to do one combined notice, you're going to be sending the

1 same notice through the worksite to everyone that's going to be
2 excluded plus everyone that is there and it's going to cause this
3 confusion.

4 So some of these things I hope we can get ferreted out in the
5 advisory committee. But of course that's going to be no change for six
6 months from now. So those are things that if we could have vetted this
7 early on, it would have been beneficial. I understand the pressures, the
8 pressures of this pandemic. It's new and novel, it's called novel because
9 it's novel. Right? No one exactly knows what to do with it at any given
10 day and any given time. We have a lot of theories and a lot of different
11 things.

12 So from a compliance standpoint, and the same thing we're
13 going to deal with on enforcement, if they issue citations, we're just
14 going to get totally backlogged on all these nuances of whether we're in
15 compliance, not in compliance. And so unintended consequences of this,
16 we really need to hope if we ever have a situation like this again, we can
17 jump on it, get together, employers, and labor, and the Division, and
18 Board staff, and think through it a little bit more.

19 And I appreciate all the efforts and I understand the
20 positions you guys are in in this situation, but these are just food for
21 thought future. And then kind of leads into the importance of this
22 advisory committee. You know, I've been doing this for almost 20 years
23 and I find that the Board and the Board staff do an excellent job at
24 advisory committees. We have worked together through some very
25 difficult problems before, come out on the other end with, maybe it's not

1 a regulation that everybody likes, but we feel like we can comply with as
2 employers, the Division can enforce effectively without a bunch of
3 litigation over what a word means, and moving forward.

4 So I'm hoping this next advisory committee can at least be
5 co-chaired, maybe with Board staff and Division staff. I understand it's
6 probably the Division's to hold because it's a health standard but I would
7 really urge and hope that -- especially because it's at the Board's behest
8 that this advisory committee take place, that we can do a good joint
9 advisory committee and be effective with the outcome of that so that we
10 can try to dig ourselves out of this quagmire.

11 So I really appreciate your time this morning. Sorry. I guess
12 -- I want to apologize, you're probably happy I'm short today because
13 I've got to jump on to a COVID webinar call in about four minutes. So I
14 appreciate it.

15 Congratulations to the Board having a full Board staff. And
16 thank you for all your hard work.

17 CHAIR THOMAS: Thank you, Kevin.

18 All right. John, who do we have next up in the queue?

19 MR. GOTCHER: Our next commenter is Eric Frumin from
20 Change to Win.

21 CHAIR THOMAS: Eric, are you there?

22 MR. FRUMIN: I am. Can you hear me okay, Dave?

23 CHAIR THOMAS: Yes, we can hear you. Go right ahead.

24 MR. FRUMIN: Thank you very much. My name is Eric Frumin,
25 I'm with the labor union federation Change to Win.

1 I'm calling in by phone because I had some difficulty signing
2 in on the Webex version. Apparently, it's new software, so I apologize
3 for that and look forward to participating by Webex in the future.

4 I have some very brief comments to make. First, again want
5 to express our appreciation to the Board and to DOSH and to OAL for
6 their rapid action in the end of November moving the standard forward
7 and now to all of you and to the Attorney General's office for supporting
8 the standard in the face of the challenges to it by the parties who feel
9 aggrieved.

10 I think the spirit of cooperation that we've seen from many
11 commenters and that we saw at the advisory committee meeting in
12 December was very positive and we certainly hope as we've seen on this
13 call today, different parties including unions and worker advocates who
14 will make a good faith effort to participate in the advisory process that
15 you have laid out in front of us to keep this thing moving in a positive
16 direction and responding to the myriad of problems that are undoubtedly
17 going to arise trying to implement the standard. But when done in good
18 faith in recognition of the crisis, you know, we'll get through it.

19 I think it's unfortunate that some people refuse to accept
20 the notion that this is an emergency and that's even reflected in some of
21 the appeals. It's kind of odd that anyone would take that position but
22 nonetheless, it certainly is an emergency, the Board has done a good job,
23 and I appreciate this leadership's declaration in the court case
24 reaffirming the process for finding an emergency and that's really vital to
25 supporting this regulation. So, many people will take it for granted, I

1 just want to say we appreciate the Board's efforts to keep the standard
2 moving forward and provide a beacon of hope for people who are in this
3 very difficult time trying to figure out a way forward.

4 I would also (indiscernible) to the Board Members to see not
5 only the documents that the attorney general filed on your behalf but
6 also those filed by the unions at the legal services community describing
7 the crisis from the standpoint of workers. These are very powerful
8 descriptions of what workers have had to experience. We've heard a lot
9 of that on the Board's calls. But there's quite a bit more there if anyone
10 has any reservations about considering this an emergency, an ongoing
11 emergency and a need for employers to respond to a mandate, rather
12 than to guidance which does not seem to have had much effect on some
13 portions of the employer community.

14 I don't want people to misunderstand. There are obviously
15 other portions of the employer community who have taken this very
16 seriously and we've seen good evidence of that on these calls and the
17 public comment period and we'll continue to see good evidence of that in
18 the advisory committee process. But it certainly is not comprehensive
19 and there's a lot of places, different industries, the food service industry
20 certainly being a large one, where workers continue to be exposed
21 through today to preventable exposure to COVID hazards.

22 So thank you again for your work. We'll, you know, we'll
23 keep the faith and we'll continue to work with you going forward. I don't
24 want to repeat the comments from Maggie and Chris and other worker
25 advocates about the FAQs. Again, there's a lot to work out and I support

1 their concerns, and we look forward to working with you again.

2 So thank you again for your hard work.

3 CHAIR THOMAS: Thank you.

4 John, who do we have -- who do we have next up in the
5 queue?

6 MR. GOTCHER: There are no commenters in the queue at
7 this time.

8 MS. SHUPE: Let's check again.

9 CHAIR THOMAS: So we're going to check again. If there -- is
10 anybody who would like to comment, please go to the addresses I gave
11 out at the beginning of the meeting. We'll wait just a couple of minutes
12 and see if anybody decides to come online.

13 MS. SHUPE: I would also offer that if there's anybody who
14 did not have the opportunity to join the queue who did want to address
15 the Board who's on and able to speak now, please take this opportunity
16 to do so.

17 CHAIR THOMAS: Any takers, John?

18 MR. GOTCHER: No one has popped up into the queue.

19 CHAIR THOMAS: So we're going to move on.

20 Thank you for your comments, the Board appreciates the
21 comments and testimony. The public meeting is adjourned and the
22 record is closed.

23 We will now proceed with the business meeting. The
24 purpose of the business meeting is to allow the Board to vote on matters
25 before it and to receive briefings from staff regarding the issues listed on

1 the business meeting agenda.

2 Variances. Proposed variance decisions are -- for adoption
3 are listed on the consent calendar.

4 Ms. Shupe, will you please brief the Board?

5 MS. SHUPE: Thank you, Chair Thomas.

6 On the Board's consent calendar today are 18 items, A
7 through R. At this time, I'm removing Item D, Department of State
8 Hospitals from the consent calendar.

9 I'm aware of no unresolved procedural issues regarding the
10 remaining items A through C and E through R. And they're ready for your
11 consideration and vote.

12 CHAIR THOMAS: So a motion would be in order. There are
13 any -- are there any questions, first?

14 BOARD MEMBER HARRISON: Motion to approve.

15 BOARD MEMBER STOCK: Second.

16 CHAIR THOMAS: There's a motion to approve. Do I have a
17 second?

18 BOARD MEMBER STOCK: Second.

19 CHAIR THOMAS: There's a motion and a second to approve A
20 through C and E through R.

21 If there are no further questions, I don't see any.

22 Ms. Money, will you please call the roll?

23 MS. MONEY: I have Mr. Harrison as a motion and Ms. Stock
24 as second; is that correct?

25 BOARD MEMBER STOCK: Correct.

1 CHAIR THOMAS: I believe so.

2 MS. MONEY: Okay. Take off my mask so you can hear me.

3 Ms. Burgel?

4 BOARD MEMBER BURGEL: Aye.

5 MS. MONEY: Mr. Harrison?

6 BOARD MEMBER HARRISON: Aye.

7 MS. MONEY: Ms. Kennedy?

8 BOARD MEMBER KENNEDY: Aye.

9 MS. MONEY: Ms. Laszcz-Davis?

10 BOARD MEMBER LASZCZ-DAVIS: Aye.

11 MS. MONEY: Ms. Stock?

12 BOARD MEMBER STOCK: Aye.

13 MS. MONEY: Ms. Crawford?

14 BOARD MEMBER CRAWFORD: Aye.

15 MS. MONEY: Chairman Thomas?

16 CHAIR THOMAS: Aye. And the motion passes.

17 Let's see. Division update. Mr. Berg, will you please brief

18 the Board?

19 MR. BERG: Thank you, Chairman Thomas.

20 CHAIR THOMAS: There you go. Go right ahead, Eric.

21 MR. BERG: Okay. Thank you.

22 At Cal/OSHA, we are working diligently now on the undraft

23 proposed changes to the emergency COVID-19 Prevention regulation

24 based on comments we received prior to and after the December

25 meeting. And once we're finished with those proposed changes to

1 address all the comments, we'll post those so everyone can look at
2 them.

3 And then we'll schedule an advisory committee meeting to
4 go through an interactive process to make changes to the draft proposal
5 as needed. And the advisory committee meeting should be scheduled for
6 mid-February.

7 Thank you. That is all I have.

8 CHAIR THOMAS: Thank you, Eric.

9 Legislative update. Ms. Shupe, will you please brief the
10 Board?

11 MS. SHUPE: The Legislature briefly convened on December
12 7th to swear in newly elected legislators during which time bills were
13 introduced. The Legislature then recessed and reconvened on January
14 11th, 2021.

15 There is a written legislative briefing in your Board packet
16 and also posted as part of the Board packet on our website. As of
17 January 11th when that briefing was prepared, of the 158 bills that had
18 been introduced, staff have identified four with potential impacts to the
19 Board or its work, including AB 7, Emergency Ambulance Employees
20 Subsidized Protective Gear; AB 62, Income Tax Credits Cost to Comply
21 with COVID-19 Regulations; AB 73, Employment Safety Agricultural
22 Workers Wildfire Smoke; SB 46, Employment Contact Tracing and Safety
23 Policies Related to COVID-19.

24 Now the Legislature had only been in sessions for a few days
25 when we prepared this briefing so we'll have a much more substantial

1 briefing for you coming in February.

2 Thank you.

3 CHAIR THOMAS: Thank you, Ms. Shupe.

4 Executive Officer's Report. Ms. Shupe?

5 MS. SHUPE: Did Ms. Stock have a question?

6 CHAIR THOMAS: I don't know, did she?

7 MS. SHUPE: Oh, okay. I'm seeing -- no.

8 CHAIR THOMAS: No.

9 MS. SHUPE: Okay. Thank you.

10 The first thing I would like to do is officially welcome our
11 new Chief Counsel Autumn Gonzalez to the staff. Ms. Gonzalez joined us
12 on December 21st and will be leading the effort to ensure the Board is
13 properly represented in all legal matters.

14 Since our last meeting, the Board has been named as a
15 defendant in two lawsuits challenging the COVID-19 emergency
16 temporary standards. As noted on the agenda, the Board will meet in
17 closed session for the purposes of being briefed on the pending
18 litigation.

19 And I'd like to say that while we are thrilled that Ms.
20 Gonzalez has joined our team, it's important to note that the Board
21 continues to experience an unprecedented workload. In addition to
22 litigation, in 2020, the Board received record numbers of public
23 petitions; a record number of variance applications, both common and
24 uncommon; and processed a record number of emergency actions via the
25 wildfire smoke protection and COVID-19 ETS in addition to our regular

1 rulemaking duties all while adapting to the realities of the pandemic.

2 I want to thank the Board Members and our stakeholders for
3 your grace and patience during this time and ask that you continue to
4 offer it as we move into 2021. Our challenges are not yet in the rearview
5 mirror.

6 Looking forward to February. The Board will consider a
7 proposed decision for Petition 581 which seeks to amend title 8 to enact
8 regulatory protection specific to COVID-19 for rail and transit carriers in
9 California.

10 Are there any questions from the Board Members?

11 BOARD MEMBER STOCK: Yes, I have a question. This is
12 Laura.

13 I -- I had read in the paper that there -- that the Governor's
14 budget included an increase for the Standards Board which I was glad to
15 see. And I just wanted to comment to see if you had any comments on
16 that and whether that might be able to help increase staffing or provide
17 you with greater resource. Excuse me.

18 MS. SHUPE: So we do have actually some staffing that has
19 been allocated to us but the reality is, is that we need even more,
20 particularly in legal support. And so we will be reviewing the Governor's
21 budget as it proceeds through the spring revise -- or I'm sorry, the May
22 revise and we will likely be submitting a budget change proposed list as
23 well going forward.

24 CHAIR THOMAS: Any other questions the Board might have?

25 Hearing none. Since we have no other business at this time,

1 we're going to go into a closed session pursuant to Government Code
2 Sections 11126(e)1 and 11126(a)1, the Board shall now enter a closed
3 session to confer with counsel regarding pending litigation matters on
4 today's agenda and consider -- consideration of personnel matters.

5 After the closed session is concluded, I will reconvene the
6 meeting and we will report on any closed session action.

7 We invite members of the public and staff to remain on the
8 teleconference until the Board resumes open session.

9 So thank you. So if you want to hang with us, we're going to
10 have a closed session. And Board members, you call in and --

11 BOARD MEMBER STOCK: Dave, did we get a number to call
12 in? I don't remember seeing that e-mail with instructions about how to
13 do that.

14 BOARD MEMBER LASZCZ-DAVIS: Yeah, I didn't see it either,
15 Laura.

16 MS. SHUPE: Ms. Money will be sending you the closed
17 session information shortly.

18 BOARD MEMBER LASZCZ-DAVIS: All right. Thank you.

19 BOARD MEMBER STOCK: And one last question. I just see on
20 our agenda before the closed session future agenda items. And I don't
21 know if we're going to do that after our closed session or should we
22 mention them now?

23 CHAIR THOMAS: I thought we covered a couple, but go
24 ahead, (indiscernible).

25 BOARD MEMBER STOCK: I'm sorry, I may have missed that. I

1 just wanted to put on a future agenda hearing from the Division, if they
2 can, what their enforcement experience is since the passage of the ETS.
3 Just to get a report about the inspections that they've done and the
4 outcomes of those inspections.

5 So if we can add that to maybe next month's agenda, I'd
6 appreciate it.

7 CHAIR THOMAS: We can do that.

8 BOARD MEMBER STOCK: Thank you.

9 CHAIR THOMAS: Any other items?

10 MS. SHUPE: I see Barbara.

11 CHAIR THOMAS: Barbara.

12 BOARD MEMBER BURGEL: Yeah, this is Barbara.

13 I would like to hear -- and I know this is probably, you know,
14 but what is the status of the Indoor Heat Standard? I just wanted to find
15 out what's happening with that, if anything.

16 MR. BERG: Yeah, this is Eric. Yeah, the SRIA we've been
17 working on the Standard Regulatory Impact Assessment has a third-party
18 contractor from -- sorry, third-party contractor that DIR has contracted
19 with. So they have to do that analysis which takes a long time. So we're
20 just waiting for them. We are working with them and giving them all
21 their data.

22 BOARD MEMBER BURGEL: Good.

23 MR. BERG: So as soon as they're done, we'll proceed with
24 finishing all the rulemaking documents.

25 BOARD MEMBER BURGEL: Okay. Thank you.

1 CHAIR THOMAS: Any other questions from the Board
2 regarding future agenda items?

3 All right. Hearing none, we're going to move into closed
4 session. And I will adjourn this part of the meeting and we'll reconvene
5 when we are finished with the closed session. Thank you.

6 (Recessed for closed session)

7 CHAIR THOMAS: And we are back in session.

8 All Board Members were present for the closed session. The
9 Board received a briefing on litigation and personnel matters during
10 closed session. No action was taken.

11 As a matter of housekeeping, our new Chief Counsel has
12 recommended that we formalize the Board's practice and authority
13 delegated to the Executive Officer.

14 So at this time I'll entertain a motion.

15 BOARD MEMBER LASZCZ-DAVIS: I'll be happy to do that,
16 Dave. I move the Board provide the Executive Officer limited authority
17 to take positions on litigation matters on behalf of the Board where time
18 constraints do not allow the matter to be considered at a Board meeting.
19 In these circumstances, the Executive Officer shall consult with the Board
20 Chair when invoking this delegated authority and report to the Board on
21 the position taken at the next meeting.

22 CHAIR THOMAS: Thank you, Chris. Do I have a second?

23 BOARD MEMBER STOCK: Second.

24 MS. BURGEL: Yeah, so moved.

25 CHAIR THOMAS: All right. I have a motion and second.

1 Sarah, can you take the roll call vote, please?

2 MS. MONEY: Yes, give me just one second.

3 CHAIR THOMAS: Sure.

4 MS. MONEY: Hang on just one second, I wasn't expecting
5 this. Hold on.

6 Okay. Okay. Okay. Okay, Ms. Burgel?

7 BOARD MEMBER BURGEL: Aye.

8 MS. MONEY: Mr. Harrison?

9 BOARD MEMBER HARRISON: Aye.

10 MS. MONEY: Ms. Kennedy?

11 BOARD MEMBER KENNEDY: Aye.

12 MS. MONEY: Ms. Laszcz-Davis?

13 BOARD MEMBER LASZCZ-DAVIS: Aye.

14 MS. MONEY: Ms. Stock?

15 BOARD MEMBER STOCK: Aye.

16 MS. MONEY: Ms. Crawford?

17 BOARD MEMBER CRAWFORD: Aye. Excuse me, aye.

18 MS. MONEY: Chairman Thomas?

19 CHAIR THOMAS: Aye. And the motion passes.

20 So at this time, there being no further business come -- that
21 has come before the Board, our next teleconference, video conference
22 will be on -- the date here, February 18, 2021. Same time, same place.

23 We will see you then. Thanks for your patience. Thank you
24 for your patience and this time this meeting is adjourned. Thank you.

25 (The Business Meeting adjourned at 11:58 a.m.)

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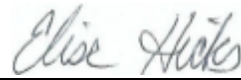
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ELISE HICKS, IAPRT CERT**2176

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IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2021.



Myra Severtson
Certified Transcriber
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