

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
February 15, 2018
San Diego, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., February 15, 2018, in Room 310 of the County Administration Center, San Diego, California.

ATTENDANCE**Board Members Present**

Dave Thomas
David Harrison
Chris Laszcz-Davis
Barbara Smisko
Laura Stock

Board Member Absent

Patty Quinlan

Board Staff

Marley Hart, Executive Officer
Peter Healy, Legal Counsel
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Kevin Graulich, Senior Safety Engineer;

Others Present

Mark G. Wickens, DOSH Elevator Unit	Jamie Carlile, SCE
John Egoeril, Aerotek	Tim Shadix, Worksafe
Grace Delizo, DOSH	Gail Blanchard-Saiger, CA Hospital Assoc.
Jay Weir, AT&T	Jane Thomason, CNA/NUU
Brian Heramb, San Diego Gas & Electric	Jose Lopez, CNA
Penny J. Smalley, International Council on Surgical Plume	Michael Musser, CA Teachers Association
John Swartos, Regional Safety Manager	Elizabeth Treanor, PRR
	Marti Fisher, CalChamber

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Jose Lopez, UCLA Santa Monica, stated that he works as a nurse in the operating room, and he regularly encounters surgical plume smoke there. He said that employers are inconsistently and inadequately implementing protective measures to protect employees from exposure to surgical plume smoke, so he hopes that the Board will grant Petition 567 so that this can be addressed. He stated that there are ways to address this, including using plume scavenging systems close to where the plume is being generated by the surgical device. He said that surgical plume causes eye and respiratory irritation, exacerbates asthma, and contains many substances, some of which are carcinogenic and can cause long term health effects. He also stated that whatever is in the patient's tissue that is being cauterized becomes aerosolized and gets into the surgical plume, including viruses, bacteria, and malignant cancer cells.

Renee Pink, UCSD Medical Center, stated that she has witnessed the effects of surgical plume, and she feels that regulations are needed that require employers to monitor how much plume is in the room, and to use devices that are designed to control surgical plume. She said that her workplace provides operating room staff with suction devices that attach to the surgical bovie, but these suction devices are designed to suction fluid, not surgical plume smoke. She also stated that regulations are needed that require a surgical plume control device to be connected to a bovie every time that a bovie is used. She asked the Board to vote "aye" on Petition 567.

Jane Thomason, California Nurses Association/National Nurses United (CNA/NNU), stated that surgical plume smoke affects workers in every setting where electrosurgery is performed, and employers have not followed through on implementing local exhaust measures to mitigate it. She said that as a result, her organization submitted legislation in both the 2015/2016 and 2017/2018 legislative sessions to address this issue. She stated that the Governor vetoed both bills, stating in his veto message that this issue is better handled by the Board, rather than through the legislative process. She said that there are no existing regulations, in California or on the federal level, that apply to surgical plume smoke, and it needs to be addressed. She asked the Board to vote "aye" on Petition 567.

Penny Smalley, International Council on Surgical Plume, stated that she was exposed to surgical plume back in the 1980's, and the odor of vaporized tissue is terrible. She said that it led to her and her coworkers having headaches and constantly coughing and sneezing. She stated that surgical plume is now a well-documented hazard that must be addressed, and there is no state or national mandate in existence to require the use of commercial smoke evacuators or scavengers. She said that using those devices is currently a matter of choice that is ignored. She stated that there are several types of commercial smoke evacuator and scavenger options on the market today that are easy to obtain and highly effective when used correctly. She asked the Board to vote "aye" on Petition 567.

Tim Shadix, Worksafe, stated that there are numerous studies and worker anecdotes that demonstrate how hazardous surgical plume smoke is to workers' health. He said that surgical plume can contain carcinogens and bloodborne pathogens, and the current regulations do not sufficiently address this hazard. He stated that a standard is needed that provides specific guidance regarding the use of plume scavenging systems, namely local exhaust ventilation systems, and how to implement them in the operating room.

Gail Blanchard-Saiger, California Hospital Association, stated that the equipment a physician uses during a surgical procedure has implications on patient care, and most private hospitals cannot employ physicians, so they cannot tell the physician what equipment to use. She said that more and more surgeries are being performed in outpatient surgical settings, so it is important to include them in this discussion if an advisory committee is convened. She stated that she knows many stakeholder groups that would like to be involved in the advisory committee process so that this issue can be evaluated fully with patient and employee safety also in mind. She said that the Governor's veto message did not state that the Governor feels that regulations are needed. It only deferred this issue to the Board's process, and the Board's process will evaluate it.

Michael Musser, California Teachers Association, thanked the Board and staff for their ongoing work to address workplace violence prevention in general industry. He said that he hopes the regulation that is created will be the most protective for California workers, that it will be enforceable, and that the industry will support and embrace it. He stated that he is looking forward to additional advisory committee meetings regarding this issue.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:22 a.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:22 a.m., February 15, 2018, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Donald W. Nielsen
California Nurses Association/National Nurses United
Petition File No. 567

Petitioner requests the Board amend Title 8, General Industry Safety Orders, to add standards addressing the removal of surgical plume/smoke.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to grant the petition to the extent that an advisory committee is convened by the Division within the next 12 months to determine if the Board should move forward with a rulemaking.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis that the Board adopt the petition.

Ms. Smisko stated that she supports the decision to convene an advisory committee because there are several things that need to be discussed, including:

- The hazards of exposure to clinical smoke.
- The capture efficiency of local exhaust ventilation options, including the nature and quantity.
- The noise factor, including the sound power level and speech frequencies.
- Ergonomic factors, including the weight of an evacuator pen and whether it is automatically activated or activated by the surgeon.

She said that although there are local exhaust ventilation options to mitigate surgical plume, there is no standard for testing the capture efficiency, and without a standard for testing capture efficiency for manufacturers to certify against, employers will have to do field testing and validation. She suggested that perhaps an organization such as Underwriter Laboratories could assist on that. She stated that having a testing standard to measure capture efficiency is very important. She also said that patient safety needs to be discussed, and there needs to be representation at the advisory committee from a wide variety of stakeholder groups from different types of surgery, and the feasibility of a one-size-fits-all approach should be discussed.

Mr. Harrison stated that in the course of his current work in the construction industry, and previously as an operating engineer working in oil refineries, he had been exposed to numerous chemical plumes. Prior to that, serving in the Army as an operating room technician, he also had been exposed to surgical plume. And looking through the petitioner's letter, at the chemicals found in surgical plume, many looked eerily similar to those in a refinery, benzene and some of the others, so he supported the petition decision, and would be looking forward to what resulted from it.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he is aware of no unresolved legal issues regarding items A-N on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Mr. Harrison to adopt items A-N on the consent calendar.

A roll call was taken, and all members present voted “aye.” The motion passed.

Ms. Smisko asked about items O-R on the consent calendar, which were not mentioned by Mr. Healy during his briefing. **Mr. Healy** apologized for the oversight and stated that he is aware of no unresolved legal issues regarding items O-R on the consent calendar, and he believes that those items are ready for the Board’s decision on the question of adoption.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Laszcz-Davis to adopt items O-R on the consent calendar.

A roll call was taken, and all members present voted “aye.” The motion passed.

C. OTHER

1. Legislative Update

Mr. Healy provided updates on the following bills:

- SB 772 would exempt occupational safety and health standard which may be adopted in the future from the standardized regulatory impact analysis (SRIA) requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. This bill was placed in the inactive file on January 22.
- AB 1576 pertains to modeling agency licensee requirements. He stated that this bill would require modeling agencies that are licensed by the Labor Commissioner to train their supervisors in sexual harassment as part of the licensing process. He said that under this bill, the Board would be required to adopt standards by June 30, 2019 that also address models’ rights to healthcare privacy and workplace safety issues, such as eating disorders. This bill is dead, since it remained in the suspension file past January 31.
- AB 1789 would require the Standards Board to adopt safety and health standards that address valley fever. This bill has been referred to the Senate Labor and Employment Committee.

2. Executive Officer’s Report

Ms. Hart stated that Eric Berg will be continuing the presentation regarding the HEAC-FAC process that Garrett Keating started last month. She said that Mr. Berg will be discussing feasibility, and she asked the Board Members to submit to her any questions that they would like Mr. Berg to answer during his presentation.

Ms. Hart stated that the list of proposed Board staff rulemaking projects for 2018 was included in the Board packet. She said that this list is tentative, and some projects may not get completed, while others that are not on this list may come up. She stated that one of the rulemaking projects listed on the list pertains to nighttime illumination and use of high visibility attire for nighttime agricultural work operations. She said that a proposal has been drafted and is currently undergoing an economic analysis. She stated that information was sought from various groups, and an online survey was conducted, and all of the information received has been forwarded to the Department of Industrial Relations. She said she hopes to see this proposal move forward with a rule in 2018.

Ms. Hart stated that the proposal for updating firefighter personal protective equipment is currently undergoing the SRIA process because the economic impact is estimated to be greater than \$50 million. She said that the proposed language has been drafted, and UC Berkeley is doing the economic impact analysis. She stated that UC Berkeley will submit a report on the economic impact analysis to the Board staff, hopefully in the next 2 months, and the Board staff will finalize it and submit it to the Department of Finance for review.

Ms. Hart stated that the proposal for residential fall protection in construction is written, and the Board staff are waiting for the economic and fiscal impact analysis to be completed. She also said that the consolidation of the crane and derrick standards, which Conrad Tolson has been working on, is almost complete. She said that Mr. Tolson has addressed concerns that were raised during preliminary reviews, and the rulemaking is back on her desk awaiting final review. She is hopeful that it will make it to public hearing in 2018.

Ms. Hart stated that the Board staff is also working on a proposals pertaining to single-user, gender-neutral toilets. She said that the Board staff is working with the Division and the Department of Fair Employment and Housing to update this standard, but it is difficult to do because Title 8 currently uses wording pertaining to male, female, numbers, and quantities.

Ms. Hart stated that the Board staff convened an advisory committee to discuss employee access to an employer's injury and illness prevention program (IIPP) earlier this week. She said that it was well attended, and the concerns of the petitioner were discussed, along with the failed legislation, to come up with a standard to address access.

D. CLOSED SESSION

The Board discussed only the closed session item listed on the Agenda, and no action was taken during the closed session.

E. OTHER

3. Future Agenda Items

No future agenda items were mentioned by the Board.

F. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:04 a.m.