

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
July 21, 2016
Oakland, 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 10:03 a.m., July 21, 2016, in the Auditorium of the Harris State Building, Oakland, California.

ATTENDANCE

Board Members Present

Dave Thomas
Dr. Robert Blink
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent

David Harrison

Board Staff

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

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Francisca Carranza, Unite Here 2850
Melody Li, Unite Here 2850
Michael Strunk, IUOE Local No. 3
Bruce Wick, CALPASC
Elizabeth Treanor, PRR
Jonathan Buren, FSC
Carisa Harris-Adamson, UCSF/UCB
Chizuko Calhoun, Unite Here Local 483
Irma M. Perez, Local 2850
Leif Paulsen, Unite Here Local 2

Carmen Rosas, Unite Here 2850
Socchro Atspriola, Unite Here 2850
Larry Wong, UCOP
Jamie Carlile, Southern California Edison
Gail Blanchard-Saiger, CA Hospital Assoc.
Steve Johnson, Alliance Roofing Co.
Dan Leacox, Leacox & Associates
Sergio Rangel, Unite Here Local 483
Pamela Vossenias, Unite Here 10
Kyle Bautista, Unite Here Local 2

Beatriz Franco, Local 2850
Karen Tynan, FSC
Mike Farris, Elevator
Amanda Gullesterian, International
Entertainment Adult Union

Michael Musser, CA Teachers Association
Kevin Thompson, Cal-OSHA Reporter
Adam Cohen, AIDS Healthcare Foundation
Melissa Hill, I.E.A.U.
Stephen Derman, Medishare Env. Health &
Safety

James Mackenzie, Southern CA Edison
Bill Benham, Bill Benham Consulting, LLC
Kevin Bland, Ogletree Deakins
Altagracia Garcia, Hotel Sofitel
Alara Romero, Local 11
Yolanda Barron, Unite Here
Carmen Reyes, Unite Here Local 483

Nicole Marquez, Worksafe
Mirna, Saavedra, Hotel Sofitel
Maria Galvez, Hotel Sofitel
Diana Colon-Guzman, Unite Here
Cynthia Perez, Unite Here

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.

Dan Leacox, Leacox & Associates, representing the Styrene Information Research Center and the American Wood Council, stated that there has been an ongoing discussion regarding permissible exposure limits (PELs) and feasibility criteria. He said that comments have been made about recommendations that were suggested in the past without mentioning what those recommendations are. He stated that Ms. Stock has been asking questions and making recommendations on this subject, and he would like some clarification regarding some of the things that she has said. He also said that it would be helpful if the suggestions and recommendations from the Board and the public that were made in the past were restated again. He stated that Labor Code Section 144.6 puts the burden of demonstrating feasibility on the Board, and that Ms. Stock recommended putting the burden on stakeholders to prove that the suggested PEL is infeasible. He said that Ms. Stock's recommendation is a very different construct because it is very difficult to obtain good feasibility information at the level that is being proposed when it hasn't been a regulatory level, which would make it difficult to prove whether or not the level is feasible. He stated that he feels the Board has not met its burden of proof regarding the feasibility of a PEL simply because stakeholders are not able to prove that the PEL is infeasible.

Ms. Stock stated that it is very important to her that the process of how feasibility is determined is made very clear. She said that she hopes that when the Division explains how feasibility is determined, that the Division will be as transparent as possible so that it is clear. She stated that this will give the Board Members the tools that they need to determine whether or not they want to comment on that process.

Mr. Thomas stated that the Board Members can only go by what information they are given, and then use that information to decide if the burden of proof has been met. **Mr. Leacox** stated that the notion of having the Division come to the Board and demonstrate that a PEL is

feasible is much different than the notion of assuming that a PEL is feasible until a stakeholder can prove it to be infeasible. He said that it is important for the Board Members to understand which one is being met and which one is correct. **Ms. Hart** stated that Mr. Leacock's concerns are very important issues in the rulemaking process that should be addressed when the Division puts together new procedures for its new staff person that will be handling this. She said that it is important that those procedures indicate how these issues are addressed. She stated that if the rulemaking process is clearer, there will be less confusion and questions about how feasibility has been determined.

Ms. Smisko stated that there are a lot of unknowns when it comes to dealing with PEL's and feasibility, and a lot of questions from the Board Members are attempts to get more clarity and understanding. She said that it is difficult to understand what the unknown impact of these PEL's might be, so transparency and understanding of the process is important.

Ms. Quinlan stated that it all comes down to what the scope of the feasibility committee is and what their mandate is. She said that people will disagree about the burden of proof for feasibility or infeasibility, and who the burden of proof falls on. She asked the Division to look at the statute and clearly define the burden of proof in its procedures.

Carisa Harris-Adamson, UCSF and UC Berkeley, stated that the repetitive motions and lifting of mattresses that hotel housekeeper do when making beds is a source of musculoskeletal disorders (MSD's). She said that she conducted a laboratory-based study of 16 female hotel housekeepers to quantify the biomechanical and cardiovascular exposure effects of bed-making, as well as a study of the effectiveness of a mattress lift tool and fitted sheets as interventions in decreasing the hotel housekeeper's risk of being exposed to MSD's. She provided an abstract document to the Board that further explains her study [Please see the file copy of the Board packet to view this document]. She stated that the results of her study prove that hotel housekeepers are at significant risk for developing MSD's when making beds without using interventions such as mattress lift tools and fitted sheets. She said that her study also proves that mattress lift tools and fitted sheets help to reduce the housekeeper's risk of developing these disorders by reducing the muscle loads while making beds, and therefore, they should be considered as interventions for hotel housekeepers to use. She said that the proposed hotel housekeeping standard will encourage employers to let hotel housekeepers use these tools and will reduce the number of MSD's that hotel housekeepers are exposed to, making the hotel housekeeper's job easier.

Dr. Blink asked Ms. Harris-Adamson if her study has been peer reviewed and published yet. **Ms. Harris-Adamson** stated that her study has not been published yet because she is finishing up one final analysis using a lumbar motion monitor, so there is more biomechanical analysis to do. She said that it should be published by the end of the year. She stated that her study has been peer reviewed and accepted to two international conferences. **Dr. Blink** asked Ms. Harris-Adamson to provide the Board with whatever information she can from the entire study, including the peer reviews that have been done.

Nicole Marquez, Worksafe, thanked the Board staff and the Division for their continuing work on the hotel housekeeping standard. She said that she is looking forward to the rulemaking process beginning before the end of the year. She stated that this is a very important proposal to both unionized and non-unionized housekeepers.

Pamela Vossen, **Unite Here**, thanked the Board staff and the Division for their continuing work on the hotel housekeeping standard and for adding a monthly update as an agenda item. She said that her organization would like a clear explanation on each part of the process to get to rulemaking as the proposal for hotel housekeeping moves along through the process.

Mirna Saavedra, **Hotel Housekeeper, Hotel Sofitel**, stated that the housekeepers at her hotel must clean 13 rooms every shift. She said that they do not have a cart on which to carry their supplies, so they must carry them by hand from the supply closet to each room. She showed the Board photos of how the housekeepers have to carry items from the supply closet and from room to room [Please see the file copy of the Board packet to view these photos]. She stated that housekeepers must carry the following from room to room:

- A bucket filled with 5 bottles of cleaning supplies such as window cleaner, bleach, and furniture polish
- A laundry bag on their back containing items for cleaning, linens, and amenities for the rooms
- A separate plastic bag for room trash on one arm, while pushing a vacuum with the other arm
- For those who get to use a mop, they must carry the mop too

She stated that while cleaning each room, the housekeepers have to make 3 to 5 trips to the supply closet to drop off dirty linens and pick up clean linens and robes for the room. This means that they are making 39 to 65 trips to the supply closet over the course of their shift. She said that they are always rushing to get their work done, and as a result, she fell in the bathroom and was injured.

Maria Galvez, **Hotel Housekeeper, Hotel Sofitel**, stated that she was injured on the job due to lifting and carrying heavy items. She said that working without a housekeeping cart makes a housekeeper's work harder and leaves them at an increased risk for injury because it takes them more time to do their jobs. She stated that many housekeepers do not take their breaks because they are unable to get all of their work done if they do. She said that she must take pain medicine before going to work so that she can manage the pain in her waist and back and get her work done. She asked the Division to not delay the hotel housekeeping proposal any further so that it can go to rulemaking.

Altagracia Garcia, **Hotel Housekeeper, Hotel Sofitel**, stated that she has been out of work for a year after she fell while cleaning a bathroom and injured her head and back. She said that she worked in pain before that because she had to carry so many things on the job. She stated that the huge workload has led to housekeepers having to rush to get the rooms cleaned. She said that many hotel housekeepers are afraid that they will be disciplined if they do not get the workload done before the end of their shift. She also stated that many housekeepers buy their own tools, such as mops, because the hotel will not provide them for the housekeepers to use. She asked the Division to move the hotel housekeeping proposal to rulemaking so that housekeepers' health will be protected.

Carmen Rojas, Hotel Housekeeper, Doubletree Hotel Berkeley Marina, stated that she has been out of work for a year due to a sciatic nerve injury that she sustained while lifting and making beds. She said that housekeepers at her hotel have to lift 31 beds per day in order to make them. She also stated that the company does not do anything to help make the hotel housekeepers' jobs easier.

Cynthia Perez, Hotel Housekeeper, stated that she injured her knee doing repetitive housekeeping work, and she just found out that she will need surgery to fix it. She said that she has a son at home to provide for, so she cannot afford to take time off from work to heal from surgery. She stated that working as a hotel housekeeper takes a huge toll on the body, and the proposed regulations would greatly help hotel housekeepers to avoid injury.

The following individuals also commented in support of the proposal for hotel housekeeping:

- **Yolanda Carmona, Hotel Housekeeper, Hyatt Hotel Emeryville**
- **Carmen Reyes, Hotel Housekeeper, Asilomar Monterey Bay**
- **Chizuko Calhoun, Hotel Housekeeper, Hyatt Monterey**
- **Irma Perez, Hotel Housekeeper, Courtyard Downtown Oakland**
- **Francisca Carranza, Unite Here Local 2850 Oakland**

Karen Tynan, Free Speech Coalition, expressed support for the petition that was submitted to the Board in May by her organization to help protect employees from bloodborne pathogens in the adult film industry.

Five Star, Adult Film Crew Member, stated that she supports Petition 560 and is looking forward to helping create regulations that protect adult film performers and crew members from bloodborne pathogens. **Ariel X, Adult Film Performer, and Sean Van Buren** echoed Five Star's comment.

Mona Wales, Adult Film Performer, thanked the Board and the Division for including performers' voices in the process of developing a proposal to protect adult film workers from bloodborne pathogens. She asked the Board to adopt the Free Speech Coalition's proposed bloodborne pathogen plan. She said that these regulations will affect her body, and she should be in control of her sexual and reproductive health.

Adam Cohen, AIDS Healthcare Foundation, stated that when the Board votes on Petitions 557 and 560 next month, it should be cautious about following the Division's recommendation to convene an advisory committee to consider and discuss the standard that was set forth in Petition 560. He said that convening an advisory committee to discuss the standard that was proposed in Petition 560 would be futile because the standard is not at least as effective as the federal standard, and therefore, cannot be enacted. He stated that the current standard in Section 5193 requires employers to use universal precautions to protect employees from bloodborne pathogens, and in the case of the adult film industry, it requires adult film workers to use condoms. He said that the Division has concluded that when condoms are used correctly, they provide the best protection against STD's, and that the alternative methods identified by the petitioner behind Petition 560 provide less protection. He stated that it is important for the Division and the Board to use time wisely on this issue because it has

provides additional protection. **Mr. Kernazitskas** stated that this regulation was patterned after the existing language in the Construction Safety Orders, and he is not aware of any issues in the Construction Safety Orders. **Dr. Blink** stated that he would prefer that a minimum of 3 joists be required because the motion of the planks or solid platforms 2 inches either way could cause it to fail. He said that requiring a minimum of 2 joists might create a safe harbor for employers to do something that is unsafe. **Mr. Kernazitskas** stated that if the plank slipped, it would no longer have 2 or more joists, and the employer could be cited under this regulation for not providing a safe workplace.

Ms. Stock asked how these concerns can be addressed. **Ms. Hart** stated that a Board Member can request that the Board staff put together a 15-day notice to address these concerns.

Dr. Blink requested the Board staff to put together a 15-day notice to address the language regarding the 2 joists so that these regulations will provide some assurance that the catwalk will maintain its position of providing necessary support. **Ms. Hart** stated that, as a result of Dr. Blink's request, this proposal will not be voted on today so that the Board staff can review the proposal and follow through on his request.

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Colton Swingle
Petition File No. 555

Petitioner requests the Board amend Title 8, General Industry Safety Orders, Section 4307, with regard to portable power-driven circular saw blade guarding.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to deny the petition request.

MOTION

A motion was made by Ms. Quinlan and seconded by Dr. Blink that the Board adopt the proposed decision.

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

2. Scott McAllister
Petition File No. 556

Petitioner requests the Board amend Title 8, Electrical Safety Orders and Telecommunication Safety Orders, Sections 2940.6 and 8615, with regard to Elevated Work Platforms.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to grant the petition request to the extent that an advisory committee will be convened by the Board staff.

MOTION

A motion was made by Ms. Quinlan and seconded by Ms. Stock that the Board adopt the proposed decision.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he was aware of no unresolved legal issues that would prevent the Board from considering for adoption the items on the consent calendar.

MOTION

A motion was made by Ms. Stock and seconded by Ms. Quinlan to adopt the consent calendar.

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

D. OTHER

1. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 1050: This bill pertains to permanent variances. It has passed the Assembly and the Senate Committee on Labor and Industrial Relations and has been sent to the Appropriations committee.
- AB 2272: This bill pertains to plume hazards in medical settings. On May 19, 2016, it passed the Assembly and the Senate Committee on Labor and Industrial Relations and has been sent to the Appropriations committee.
- AB 2539: This bill pertains to working conditions in the modeling industry. It is still under suspension in the Assembly Appropriations committee.
- AB 2295: This bill pertains to access to injury and illness prevention plan documentation. It has passed the Senate Committee on Labor and Industrial Relations and is now at the Appropriations committee, where it had its first reading on June 6.
- SB 1167: This bill pertains to developing regulations regarding indoor heat illness prevention. It passed the Senate on June 1 and went to the Assembly. On June 29, it passed the Assembly Committee on Labor and Industrial Relations and is now at the Assembly Appropriations committee.

Dr. Blink asked Mr. Healy to explain the amendment to SB 1167 and what the provisions refer to. **Mr. Healy** stated that this bill directs the Board to adopt heat illness prevention regulations that address indoor heat, and the provisions in the bill allow the Board to narrow the focus of the regulations to specific industries that are affected by indoor heat illness.

2. Executive Officer's Report

Ms. Hart stated that Board staff received the proposal for hotel housekeeping from the Division on May 31 and reviewed the documents. She said that the analysts are preparing the Board staff's comments for submission to the Division, and they should be submitted by the end of this week or early next week. From there, the Division will consider the Board staff's comments on the language and documentation, and if the Division decides to make any changes, they will send those changes back to the Board staff, and the Board staff will make those changes to the final documents. When the documents are finalized, the Board staff will prepare and submit a Secretary's Office Action Request (SAR), along with the necessary documents, to DIR and other agencies for signature. Once all of the necessary signatures have been obtained, the notice will be taken to the Office of Administrative Law (OAL), along with the necessary documents, for publication.

Ms. Stock asked Ms. Hart when the hotel housekeeping proposal might come up for public hearing. **Ms. Hart** stated that it will probably come up for public hearing in December or January, at the earliest, but it could be sooner if the necessary signatures on the SAR are obtained faster than expected.

Ms. Hart also stated that Nai Saechao, the Board staff's Variance Secretary, is leaving at the end of the month. She said that Ms. Money has been cross-trained by Ms. Saechao on variance-related tasks so that she can fill in until someone is hired to replace Ms. Saechao. She said that the position has been posted and some applications have come in, so the Board staff hopes to conduct interviews soon and get the position filled.

Ms. Hart stated that Title 8, Section 426 allows variances to be heard by either the Hearing Officer, a hearing panel, or before the Standards Board. She said that she and Mr. Thomas have discussed the possibility of allowing some variance cases to be heard solely by the Hearing Officer, as allowed by Section 426. She stated that she and Mr. Thomas have decided that, due to the predominance of frequently-recurring elevator variance cases that repeatedly address the installation of elevator models that are already widely in service from established manufacturers, the Hearing Officer will begin hearing those types of variance cases in lieu of a hearing panel. She said that she feels this will be a successful way to deal with the high multitude of variance cases and will reduce the need for Board Members to be available to hear these cases. She stated that the Board staff will be judicious when determining which cases will be heard by the Hearing Officer and which will be heard by a hearing panel. She said that when a variance case is more complex or not elevator-related, it will be heard before a hearing panel. **Mr. Healy** stated that the applicant still retains the right to request that the hearing be held before the Board or a hearing panel, as well as the right to challenge the qualification of the Hearing Officer or the hearing panel, if they wish.

Ms. Quinlan asked about the status of the revision of the Elevator Safety Orders. **Ms. Hart** stated that the Division has drafted language and the proposal will have significant cost. She said that she believes that the Division is currently using an outside source to evaluate the economic impact, so it will be a little more time before it comes to the Board.

Ms. Smisko asked Ms. Hart for an update on what is happening with the proposal for workplace violence prevention in healthcare. **Ms. Hart** stated that the Division sent the 15-day notice documents, along with its summary and response to comments, to the Board staff. She said that the Board staff reviewed those documents and sent them back to the Division yesterday with comments. She stated that the Division will review the Board staff's comments, make any necessary changes, and return the documents to the Board staff, at which time the 15-day notice will be issued. She said that after the 15-day notice is issued, the Division will need to respond to the comments received in response to the 15-day notice, and then the final documents will need to be prepared. She stated that she hopes the proposal will be ready for adoption in September, and the latest that it can be adopted is October.

Ms. Quinlan asked about the status of the process safety management (PSM) rulemaking. **Ms. Hart** stated that the notice for the PSM rulemaking has been issued and public comments will be heard at the September public hearing.

3. Future Agenda Items

No future agenda items were suggested.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:50 a.m.