

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING November 19, 2015 Costa Mesa, 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., November 19, 2015, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

ATTENDANCE

Board Members Present

Dave Thomas
Dr. Robert Blink
David Harrison
Patty Quinlan
John Sacco
Barbara Smisko
Laura Stock

Board Member Absent

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

Steve Smith, Principal Safety Engineer

Others Present

Monica Aleman, UNAC/UHCP
Sandi Marques, UNAC/UHCP
Edwin Guardado, UNAC/UHCP
Katherine Hughes, SEIU
Virginia Anders-Ellmore, Harbor UCLA
Medical Center
Grace Corse, SEIU Nurse Alliance

Scott Byington, UNAC/UHCP
Marcia Gayton, UNAC/UHCP
Marti Fisher, CalChamber
Bruce Wick, CALPASC
Thea Weintraub, Harbor UCLA Medical
Center
Maria Elena Diaz, SEIU 121 RN

Steve Johnson, Condon-Johnson & Assoc.	Dan Leacox, Greenberg Traurig
Sara Modugno, UNAC/UHCP	Gayle Bautiste, SEIU 121 RN
Maria Ruiz, Unite Here Local 11	Aorelia Robadan, Unite Here Local 11
Victoria C. Lopez, Unite Here Local 11	Celia Lopez, Unite Here Local 11
Reyes Lopez, Unite Here Local 11	David Morris, DOSH Elevator Unit
Larry Wong, University of California, Office of the President	Diana Hansen, UNAC/UHCP
Merilee Luther, LAC & USC Med. Center	Wen-Chi Chang, UNAC/UHCP KBPRNA
Joseph Murphy, Unite Here Local 11	Ana Lepe, Unite Here Local 11

Ms. Stock stated that Dr. Julia Quint passed away last week. Ms. Stock, Ms. Quinlan, and Mr. Thomas offered their condolences to Dr. Quint's family. **Dan Leacox, Greenberg Traurig**, also offered his condolences.

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.

Edwin Guardaro, Nurse, St. Francis Hospital, stated that he has noticed an increasing trend of workplace violence occurring at his workplace. He said that patients and their family members can become irate or violent because they don't know or understand what is going on. He stated that oftentimes, security must intervene to separate a patient from the family so that the staff can treat the patient. He said that better safety regulations and plans are needed to protect healthcare workers from workplace violence.

Ana Lepe, Housekeeper, Disneyland Grand California Hotel, stated that the mattresses at her hotel are very heavy to lift. She said that housekeepers are required to put 3 sheets and a duvet cover on each bed, resulting in them having to lift each mattress 4 times. She stated that the management refuses to buy lighter mattresses and elastic fitted sheets for the beds. She also said that the housekeeping carts that the housekeepers have to push are very heavy. She stated that they are required to carry both clean and dirty linens and towels, trash, and racks of glassware and mugs on their carts all at the same time, which makes the carts even heavier and harder to push down the carpeted hallways. She said that as a result of all of this, her arms and back are in a lot of pain. She stated that she does not go to the doctor for her injuries because she cannot afford to miss work. She said that she is a single woman, and this job is her only source of income, and she is worried that she will be injured in the coming years to the point that she will no longer be able to work.

Victoria Lopez, Housekeeper, Hilton Anaheim Hotel, stated that the housekeeping carts at her workplace are more than 30 years old, weigh more than 150 lbs., and have wheels that don't work anymore. She said that having mechanized housekeeping carts would really help, but the management refuses to buy new carts because they are too expensive. She stated that she injured her left knee while she was working, and when she told the management about it, they blamed her for the injury. She asked the Board to help change this situation so that housekeepers will be protected from injury.

Ben Fonseca, Unite Here Local 11, stated that his organization is thankful that the proposal for hotel housekeeping is moving forward and that another advisory committee meeting will be held on December 3 in Oakland. He said that there are many ways to make hotel housekeeper jobs safer, but employers continue to not do anything to make these jobs safer. He stated that the injuries that happen on the job for housekeepers are preventable, and without a regulation in place, they will not get safer. He said that a clear and strong regulation is needed to make hotel housekeeping jobs safer, and the regulation needs to provide clear instructions to employers regarding the tools that are available to make these jobs safer. He stated that mops, long-handled tools, fitted sheets, and motorized carts are possible solutions that employers can use to address the hazards that hotel housekeepers face. He asked the Division to release the final proposed draft of the regulation by the end of the year so that the proposal can begin the rulemaking process in January 2016.

Scott Byington, Nurse, St. Francis Medical Center, stated that he has experienced numerous incidents of workplace violence from patients and families at his workplace. He said that verbal abuse can escalate to physical violence very quickly and without warning. He said that he has witnessed several occasions where gang members have threatened the staff, and since there are no metal detectors at his workplace, people can bring knives and other weapons into the facility without anyone knowing. He stated that this type of an environment makes it very difficult to care for patients. He said that legislation is needed to protect workers and the community from this kind of activity, and it will let the perpetrators of that violence know that they will be dealt with accordingly.

Sandra Marquez, Nurse, St. Francis Medical Center, stated that a regulation is needed to protect healthcare workers from workplace violence, and without a regulation in place requiring hospitals to do it, they will not do it. She said that at her workplace, workers do not feel safe walking to their cars after they are threatened at work. She stated that there is not enough security on staff to make them feel safe, and when incidents occur, the police want for the hospitals to handle these incidents themselves, but the hospitals are not equipped to do that. She said that many workers experience PTSD symptoms, such as nausea and vomiting, following a workplace violence incident. She stated that it is time to hold hospitals accountable for protecting their employees from workplace violence, and this regulation is needed to make that happen. **Maria Alcan, UNAC/UHCP**, echoed Ms. Marquez's comments.

Diana Hansen, Nurse, Kaiser Riverside, stated that she has been assaulted by patients at her workplace. She said that panic can come on very suddenly and in the most mundane and ordinary situations. She stated that there are a lot of expectations and demands placed on those who work in the healthcare industry, and now is a good time to put a regulation in place to hold hospitals accountable for providing safety and security for their staff and patients.

Jonathan Bestwick, Nurse, Kaiser Permanente, stated that he has seen an increase in workplace violence during his 25 year career as a nurse. He said that he has been threatened with numerous types of weapons, including hospital equipment, and he has also received death threats from gang members. He stated that he has had to take time off following some of these incidents because of the injuries he has received. He said that hospitals do not do enough to protect the staff, other patients, and the public from violent patients. He stated that healthcare workers need a safe environment in order to provide safe care. He also stated that healthcare workers need to have their psychological duress properly addressed following a

workplace violence incident. He said that when healthcare workers speak up about problems like these, they are threatened with termination or other adverse actions. He stated that a regulation is needed now to protect healthcare workers from workplace violence.

Gwen Chi Chang, Nurse, Kaiser Permanente, stated that supervisors have forced employees to work in situations where they know that the employee can get hurt by the patient because the patient is known to be violent. She said that employees are forced to do it without the patient being restrained or without assistance from other staff, putting them in danger. She stated that she cannot afford to be hurt on the job and then out of work for a long period of time because she is a single mother. She asked the Division to continue moving forward with the proposal for workplace violence prevention in healthcare so that healthcare workers like her can be protected from workplace violence.

Sara Modugno, Nurse, St. Francis Medical Center, stated that she works with patients who are psychologically unstable or very angry. She said that her patients sometimes see or hear things that are not really there, and as a result, they act out. She stated that the nurses are unable to explain or rationalize to the patient that what they are hearing or seeing is not real, and therefore, they are at the mercy of what the patient is seeing or hearing. She also said that security does not always respond right away when they are called. She stated that she saw a co-worker get beat up by a psychologically unstable patient, and since then, she has had an irrational fear of patients who display that type of behavior. She asked the Division to implement a regulation that will help provide safety and support for healthcare workers.

Virginia Anders-Ellmore, Nurse Practitioner, Harbor UCLA Medical Center, stated that employees at her workplace have been asking the management for more staff to help them monitor patients better because patients are becoming more and more violent. She said that the management has implemented the use of a wearable emergency button for staff to use when they need additional help, and when someone pushes their button, a “code blue” is called and extra staff come to assist. She stated that management will not hire more security staff, so another nurse asked them to provide more training in self-defense methods so that they can better protect themselves from violent patients. She said that the staff does not feel like they are being supported by the management. She said that the management blames the employee when violence occurs, and the hospital is more worried about protecting its image than protecting the staff.

Thea Weintraub, Psychiatric Nurse, Harbor UCLA Medical Center, stated that the hospital has given the staff emergency pendants to wear and instructed them to push the button on the pendant if they need assistance in a violent situation, but the button does not always work properly. She said that the pendant is connected to a computer in the hospital that tells where the situation is occurring, but the computer malfunctions a lot and often sends out an alarm when there is no situation occurring. She also stated that the computer monitors the entire hospital, and as a result, when the button is pushed and a code is called, the staff assigned to assist may be far away and not readily available to assist. She also said that she when she got stuck by a needle that had been used on a patient, the attending physician would not order lab work on the patient to check them for possible communicable illnesses unless the patient agreed to it.

Marilee Luther, Nurse, LAC USC, stated that a co-worker of hers has been out on stress leave for the last 2 years and may not ever be able to come back to work as a nurse due to the psychological trauma that she experienced from the hospital management. She said that her co-worker has lost a lot of weight and suffers from industrial hypertension because of it. She stated that management should not be allowed to treat anyone the way that they treat the staff at her facility, and she asked the Division to help address the situation.

Elena Diaz, Nurse, SEIU 121 RN, stated that she experienced workplace violence when a physician hit her in the head. She said that when she reported it to the management, they offered to transfer her to another unit that she was not trained for, rather than doing something about the doctor. She stated that she has also been attacked by violent patients, and when that occurs, the hospital chastises and blames the workers for it. She said that the hospital also rewards patients and their families for their bad behavior. She said that there is a lot of shame and stigma around speaking out about workplace violence that occurs. She also stated that the security staff at her workplace are elderly and do not have weapons, and as a result, there are times when the housekeeping staff has to step in and help the worker who is being attacked. She said that the proposed regulation for workplace violence prevention in healthcare needs to move forward as soon as possible.

Gayle Bautiste, SEIU 121 RN, stated that management continues to threaten staff at her workplace, and she and the staff are going through the grievance process right now as a result. She said that the psychological threat is real, threatening, and intimidating and must be addressed now. She stated that when she is on her way to work each day, when she gets within a block of her workplace, she begins to have anxiety attacks where she is unable to breathe or think clearly because she is worried about what the management will do or say to her that day. She said that healthcare workers cannot give good patient care when they are worrying about what their management may do or say to them, and patients are not safe when healthcare workers are unable to focus on their jobs as a result. **Katherine Hughes, SEIU 121 RN**, echoed this comment. Ms. Bautiste stated that harassing and threatening behavior should be included and addressed in the regulation to prevent workplace violence in healthcare. She thanked the Division for its work on this matter and asked that it continue to move forward.

Katherine Hughes, SEIU 121 RN, stated that she is glad that the proposal for workplace violence prevention in healthcare is very close to becoming the first workplace violence prevention regulation in the country, and it is very good. She said that healthcare workers do not blame their patients for the violence that they experience, even though they are the majority of the attackers. She stated that they blame the management system. She also said that this regulation will not eliminate workplace violence completely in the healthcare industry, but it will put reasonable measures in place, such as adequate security and staffing, training, and alarms, to prevent it as much as possible. She stated that harassment, intimidation, and threatening or disruptive behavior that causes someone to fear for their own safety is sometimes a precursor to physical violence, so it must be addressed. She thanked the Division for its work on this proposal and said that she is looking forward to the public hearing on this proposal next month.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:52 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:52 a.m., November 19, 2015, in the Council Chambers of the Costa Mesa City Hall, Costa Mesa, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
New Article 37, New Sections 1950 through 1962
Confined Spaces in Construction (Horcher)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock that the Board adopt the proposal.

Mr. Sacco stated that it is important to make sure that Section 5156 for those employers involved in construction is no longer subject to Section 5158 because it will cause confusion for people if they have to comply with both 5158 and the new regulation. He also said that in the 2 areas of the standard that talk about the order of testing, it would be good to add that monitoring can be done simultaneously with the testing.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Dennis J. Evans
Petition File No. 548

Petitioner requests that the Board change Title 8, General Industry Safety Orders to include standards requiring the use of "Safety-Pundit Safety Management System."

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to deny the petition.

MOTION

A motion was made by Mr. Sacco and seconded by Ms. Quinlan that the Board adopt the proposed decision to deny the petition.

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 adopting the items on the consent calendar.

MOTION

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

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

D. OTHER

1. Division Update on Hotel Housekeeping Timeline

Mr. Smith stated that the Division provided a written timeline to the Board, as requested at last month’s meeting [Please see the file copy of the Board packet to view this document]. He said that the Division will hold its fifth advisory committee meeting on December 3. He stated that the Division hopes that this will be the final advisory committee meeting for the hotel housekeeping proposal. He said that a revised discussion draft has been posted on the Division’s website, and written comments will be accepted until the end of December. He said that the Division anticipates that there will be a lot of comments, with many of the labor folks asking the Division to move forward on the proposal and many of the employer groups in opposition. He stated that after the comment period ends, the Division will begin preparing the proposal for rulemaking, and the Division plans to submit it to the Board staff for its review by June 2016.

Ms. Stock asked Mr. Smith when this proposal will be brought before the Board for public hearing. **Ms. Hart** stated that after the Board staff receives the proposal from the Division, the Board staff will do its review, and after that, it will still need to be approved by the Labor and Workforce Development Agency and the Office of Administrative Law before it is noticed for public hearing, so it may not come up for public hearing until the end of 2016. **Ms. Stock** stated that it has been over 3 years since this proposal was first introduced, and the process is very slow and creates a lot of frustration for the public and the Board. She urged the Division and Board staff to work as hard as possible to get this proposal to the Board for public hearing before the end of 2016. **Mr. Smith** stated that the issues regarding the hotel housekeeping proposal are very contentious, and the timeline that the Division has provided to the Board is very aggressive. He also said that it does not have a deadline by which action must be taken, and not all of the issues will be resolved at the advisory committee meeting on December 3.

Mr. Thomas stated that he understands that it will cost employers a lot of money to implement these changes to make hotel housekeeping jobs safer, but worker's compensation claims for hotel housekeepers that are injured because these changes are not implemented will also cost employers a lot of money. He asked the Division to do everything that it can to get this proposal to the Board for public hearing before the end of 2016 because it will increase hotel housekeeper productivity and prevent a lot of injuries and heartache for hotel housekeepers.

Dr. Blink stated that 3 years is too long for a proposal like this to get to the Board for public hearing, and people are affected by it daily. He also said that if changes in equipment are required, a phase-out period may be needed, which will take some time too.

2. Executive Officer's Report

Ms. Hart stated that the 2016 Board meeting schedule is in the Board packet. She said that meetings will continue to be held on the third Thursday of each month in locations throughout the state. She stated that it is becoming increasingly difficult to find meeting locations, and for the locations that the Board staff can find, it is difficult to book them because many of them do not release their calendars for booking for the next year until nearly the end of the current year.

Ms. Hart stated that two advisory committee meetings have taken place:

- Working Alone in Construction: A subcommittee was held last week and chaired by Michael Nelmidia to come up with regulations to govern surveyors only because it was too broad of a scope for all of construction. During the meeting, necessity was established for regulations governing surveyors, but necessity was not established for regulations governing pre-construction, post-construction, maintenance and service personnel field operations. Operating Engineers Local Union No. 3 has volunteered to draft language for the committee to consider, and the minutes and recommendations will be sent back to the full advisory committee. The Board staff will also reach out to find surveyors who are willing to participate in the advisory committee process. No date has been set for the next meeting, but the Board staff hopes to hold it sometime in the first trimester of 2016.
- Residential Fall Protection Trigger Heights: The meeting was very well-attended and had lots of participation from attendees. Federal OSHA also attended and presented their ideas regarding a six-foot trigger height for fall protection. Everyone supported the idea of keeping California's standard as is. Mr. Manieri is working on the minutes and details of what occurred at the meeting. The Board staff will bring this issue before the Board for discussion and questions at the January meeting. The next advisory committee meeting has not been scheduled, but when it does take place, it will look into the issues and questions that the Board brings up.

Ms. Stock stated that she is interested to find out what other states do to comply with the six-foot fall protection trigger height, as well as what is done in commercial construction

to comply with the 7½ foot trigger height. **Ms. Hart** encouraged the Board Members to submit their questions to the Board staff ahead of time. **Mr. Sacco** stated that since he does a lot of work in that area, he might be a good resource for the Board staff to use. He said that he supports keeping the California trigger height.

3. Future Agenda Items

No future agenda items were suggested.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:23 p.m.