

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
September 17, 2015
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 10:00 a.m., September 17, 2015, in the Auditorium of the Harris State Building, Oakland, 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

Eric Berg, Acting Deputy Chief of Research
and Standards

Others Present

Brian Costa, Solar Craft Solar
Laurel Fish, Unite Here Local 2
Liz Keegan, Unite Here Local 2
Carmelita Cotten, Unite Here Local 2850
Annette Jagers, SEIU 1021 Nurse Alliance
Marti Fisher, CalChamber
Aaron Cramer, San Francisco Gen. Hospital
David Jones, AGC of California

Pam Jahlee, Retired UCB LOHP
Shannon Clark, Unite Here Local 2850
Tiffany You, Unite Here Local 2
Mark Stone, EPIC Insurance Brokers
Kevin Thompson, Cal-OSHA Reporter
Mike Horowitz, Cal/OSHA
Rita Lewis, CCHCS
Bill Vail, Sunrun

Julia Miller, Solar City
Michael Strunk, IUOE Local Union No. 3
Rex Haber, Sungevity
Gail Bateson, Worksafe
Xiomara Diaz
Elsa Monroe, SEIU 1000 Nurse Alliance
Alejandro Godov, Local 2
Nancy Olsson, R&S Staff
Carlos Ramirez, Solar City
Ingela Dahlgren, SEIU

Dan Leacox, Greenberg Traurig
Tho Do, Unite Here
Michael Musser, CA Teachers Association
Irma Perez, Unite Here
Gail Bautiste, SEIU Local 121 RN
Jay Weir, AT&T
Grace Corse, Local 721
Tami Olenik, LAC & USC Med Center
Katherine Hughes, SEIU

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.

Carmelita Cappen, Doubletree Hotel Berkeley, stated that she has tendonitis in both hands, and she believes that it was caused by her work as a housekeeper. She said that she had two surgeries on her hands in the same month, and another one will be happening soon. She stated that housekeepers at her hotel are required to clean 15 rooms in one day. She said that when they make the beds, they must lift heavy mattresses to tuck in the sheets, as well as lift heavy furniture in the bathroom and push heavy linen carts. She stated that housekeepers need to be able to work so that they can provide for their families. She urged the Division to move the proposal for hotel housekeepers forward before the end of the year.

Tho Do, Unite Here, thanked the Division for releasing its most recent draft of the hotel housekeeping proposal. She said that her organization has submitted written comments in response to it that they believe will further strengthen the proposal. She stated that hotel housekeeping jobs are very physically demanding, and non-union housekeepers are often forced to clean 25 – 28 rooms per day, which puts them at increased risk for injury. She said that her organization is looking forward to the next advisory committee on this issue before the end of the year. She asked the Division to quickly review the comments that it receives on this draft of the proposal, and to post the comments on its website for all stakeholders to review.

Irma Perez, Housekeeper, stated that she is glad that the Division is putting together a proposal to protect hotel housekeepers from injury. She said that housekeeping work is very physically demanding, and housekeepers like her suffer hand and back pain from having to lift heavy mattresses and doing repetitive motions. She asked the Division to move this proposal forward as soon as possible so that housekeepers can be protected from injury. **Martias Salazar, Hyatt Hotel**, echoed Ms. Perez's comment.

Martias Salazar, Hyatt Hotel, stated that housekeepers at her workplace are forced to clean 9 suites and 2 traditional rooms each day, which is a heavy workload. She said that they are given 45 minutes to clean each suite, and if they do not complete their work in the allotted time, the hotel management gets upset with them. She stated that because of the layout of the

hotel, and the fact that they must go from one floor to the next to clean rooms, they have to think of creative ideas for how to get all of their work done in the time that they are given.

William Posadas, Unite Here Local 2850 Oakland, stated that his organization wants the most protective proposal that is possible to protect hotel housekeepers from injury, and his organization believes that the latest draft of the hotel housekeeping proposal will make hotel housekeeper jobs much safer. He said that hotels need to provide housekeepers with tools to use that will make their jobs safer, as well as training on safer ways to clean rooms. He also stated that hotels need to revise the amount of time given to housekeepers to clean each room. He said that his organization is eager to attend the next advisory committee before the end of the year.

Pam Tau Lee, retired from UC Berkeley School of Occupational Health, stated that the hotel housekeeping standard that is being proposed will greatly benefit hotel housekeepers. She said that housekeepers currently have high numbers of rooms to clean, and they must clean them at a very fast pace in order to get all of them done during their shift, which puts them at a high risk for permanent injury and illness. She stated that housekeepers are given 30 minutes to clean unoccupied rooms and 10 minutes to clean occupied rooms. She said that many hotel housekeepers do not take meal or rest breaks because they are concerned that they will not be able to get all of the rooms cleaned before the end of their shift. She also said that housekeepers do not drink water or go to the bathroom on a regular basis because the hotel management only allows them to do so in the basement locker rooms, and it takes too much time to go down there to do that. She stated that allowing fitted sheets to be used on beds and providing tools for housekeepers to use to reach up and clean the tile in the bathroom will help prevent injury and illness for housekeepers. She also said that training for managers and housekeepers is essential, and management should communicate properly with housekeepers without blaming them when they are unable to clean large numbers of rooms in the time that they are given.

Katherine Hughes, SEIU Local 121 RN, stated that since the July 17 meeting, SEIU and the California Hospital Association have held several meetings to discuss the definition of workplace violence, as well as the CHA's privacy concern regarding the violent incident log. She said that they were not able to come to a mutual agreement on the definition of workplace violence. She stated that the Division and the CHA agreed that fear for one's safety and threats of violence are indeed workplace violence, but the CHA would not agree to that in writing. **Gail Bautiste, SEIU Local 121 RN**, echoed this comment. As a result, the Division offered 2 alternative definitions for workplace violence that recognize that harassment, intimidation, or other threatening or disruptive behavior that could cause fear for one's safety is workplace violence. She stated that the CHA offered the following definition for workplace violence:

“The verbal or implied threat of physical force, or the use of physical force against an employee.”

She said that her organization is concerned about that definition because there does not need to be a threat of physical force in order to cause the worker to fear for their safety. She stated that her organization does not believe that these behaviors will be covered under the regulation unless they are covered by the definition of workplace violence and fall within the

scope of the regulation. Her organization offered the following definition for the term “threat of violence”:

“A statement or conduct (such as harassment, intimidation, or other threatening or disruptive behavior) that causes a person to fear for his or her own safety and serves no legitimate purpose”

She said that this definition brings into account all of the language that was offered by the Division, as well as all of the items that the CHA verbally agreed to. She stated that her organization looks forward to continuing to work with the CHA and the Division on this issue.

Grace Corse, L.A. County USC Medical Center, stated that a nurse at her workplace was cornered and yelled at in an office by a manager and a human resources staff member. She said that the nurse was unable to escape because the manager and human resources person were blocking the door. She stated that the only way this nurse could have gotten out was by shoving them and being violent, which would have gotten her in a lot of trouble. She said that this is why the language regarding harassment, intimidation, and disruptive behavior is very important to have in the proposal for workplace violence prevention in healthcare.

Elsa Monroe, San Quentin State Prison, stated that nurses in correctional facility environments put their lives on the line daily to commit to taking care of their patients, and they themselves need protection from workplace violence. She said that there are still problems with the term “physical force” in the proposal for workplace violence in healthcare. She stated that a co-worker threw a set of metal keys at her, and that should qualify as “physical force” under the terms of this proposal because it caused her to fear for her safety, which is not acceptable.

Annette Jagers, Registered Nurse, stated that she has seen an increase in verbal abuse from patients over the last few years, which has created a threatening and intimidating work environment. She said that it occurs to all staff in healthcare, not just nurses. She stated that management has built up a level of tolerance toward this behavior that allows it to continue. She said that a regulation that addresses workplace violence and has zero tolerance for this type of behavior will be beneficial to all healthcare workers.

Rita Lewis, CDCR, stated that everyone deserves to have a safe working environment. She said that in her workplace, in addition to the violence from prisoners, there is a lot of management-on-management, colleague-on-colleague, and management-on-staff workplace violence that occurs. She stated that the training requirements in the workplace violence prevention proposal need to be taken seriously and clearly outlined so that it is clear what types of training are needed. She also said that it needs to clearly state the consequences and corrective actions for negligence.

Gail Bautiste, SEIU Local 121 RN, stated that her organization appreciates all of the work that has been done to develop a comprehensive standard to address workplace violence in the healthcare industry. She said that her organization and the CHA need to continue working together with the Division to ensure that threatening and intimidating behavior that makes a person fear for their safety is addressed in this proposal. She stated that she and her co-workers are currently experiencing threatening and intimidating behavior from a manager at her

workplace. She said that she and 17 of her co-workers have filed grievances with their union to address the situation, but the grievance process has been dragged out for a long time. She stated that she and her co-workers also have anxiety attacks on their way to work each day because of the manager's behavior. She urged the Division to include language in the proposal to address threatening and intimidating behavior.

Tami Olenik, LAC & USC Medical Center, stated that she has been a victim of egregious acts of workplace violence. She said that she filed a grievance against her employer regarding it, but when her case finally came to arbitration, the arbitration agency had disbanded itself. She is currently in litigation with her employer to address the matter. She has struggled to find the strength to go to work each day after what she has been through.

Ingela Dahlgren, SEIU Nurse Alliance of California, thanked the Division for the hard work that it continues to do with stakeholders on the workplace violence prevention proposal for healthcare workers. She said that the language in this proposal will be the best that it can be because of that, and her organization plans to take the final proposal to the national level after it is adopted. She stated that her organization is looking forward to going through the formal rulemaking process with this proposal very soon.

Regem Corpuz, Southern California Coalition for Occupational Safety and Health, stated that it is unacceptable that healthcare workers are at the highest risk for injury and illness due to workplace violence. He said that these injuries and illnesses can destroy a healthcare worker's financial and emotional security, and it can take an intolerable toll on workers and their families. He stated that workplace violence does not discriminate among employees and comes in more forms than just physical force, including intimidation, harassment, and verbal abuse. He said that the mental, emotional, and social effects that it can have on an employee can make it difficult for the employee to concentrate on their work. He stated that SEIU, CHA, and other stakeholders have had pleasant discourse regarding the issues associated with workplace violence in healthcare, and they have verbally agreed that threats and fear for one's safety are elements of workplace violence. He said that his organization hopes that the work on this proposal continues so that a comprehensive, effective, and enforceable regulation is produced that can serve as a model for the whole nation to follow.

Ms. Stock thanked the hotel housekeepers and healthcare workers for their testimony on the proposals regarding hotel housekeeping and workplace violence prevention in healthcare. She asked for an update on the status of each of those proposals. **Ms. Hart** stated that the proposal for workplace violence prevention in healthcare is in the final stages of approval and will most likely be noticed at the end of September for public hearing in November in Costa Mesa. She said that the Division recently released a new draft of the hotel housekeeping proposal for stakeholders to review and comment on. She stated that the Division plans hold another advisory committee for that proposal by the end of this year. **Ms. Stock** stated asked the Division to provide a more specific timeline for the hotel housekeeping proposal at next month's meeting.

Mr. Thomas stated that he agrees that the language in the workplace violence prevention standard for healthcare workers needs to be the strongest that it can be, and when the language finally enters the rulemaking process and comes before the Board for public hearing, he will

do whatever he can to make sure that the language is the strongest that it can be. He said that verbal abuse is just as bad, or in some cases, even worse than physical abuse, so it is important that the language is strong and able to address this.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:56 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:36 a.m., September 17, 2015, in the Auditorium of the State Resources Building, Sacramento, California.

Mr. Thomas opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Sections 3207 and 3212
 Fall Protection for Work Around Skylights

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

Mike Horowitz, Division (speaking on his own behalf, not for the Division), stated that he supports the proposal, but he has some concerns. He said that building owners and managers should be aware of what the strength levels are for the skylights in their buildings. He also stated that a regulation is needed that requires building owners and managers to keep and maintain that information on hand, and when they work with contractors to install and maintain the skylight, they should be required to give that information to the contractor so that the contractor will know what they are dealing with and can take steps to keep themselves safe while working on the skylight.

Dan Leacox, Greenberg Traurig, representing the California Solar Energy Industry Association, stated that his organization supports the proposal and feels that it will save lives. He said that it provides a number of options for fall protection, including screens above the skylight, a guardrail system, personal fall protection, and covers, for workers who are working on a roof and may come within 6 feet of a skylight. He stated that when these methods are demonstrated to be impractical or create more of a hazard, this proposal allows workers to use a fall protection plan or use the exception noted in the proposal. He said that the exception recognizes the fact that all of the previously-mentioned options for fall protection have limits and shortcomings. He stated that non-compliance is too high and will not be fixed by enforcement. He said that temporary measures require compliance, and difficulty in complying leads to non-compliance. He stated that this proposal creates two additional options for protection:

- 1.) It allows screens to be installed underneath the skylight. This is a good option

because it is a permanent fix that does not require compliance. It is a feasible option in construction technology that has the added bonus of creating burglar bars.

- 2.) It allows metal frame nets to be used. This proposal has strength requirements for metal frame nets. The metal frame net is a very feasible option because it goes over the top of the skylight, is quick to install, and easy to transport. It also encourages compliance.

He also stated that it clarifies the existing option of using skylight covers for permanent fall protection. He said that the proposal requires that the current strength of the cover must be documented at the time that it is used. He said that this proposal will help compliant contractors compete better with contractors who do not comply.

Bill Vail, Sunrun, stated that his organization is pleased to hear about the new standard being proposed because it has great levels of protection for employees. He said that it is difficult for workers to bring 2x4's and 2x6's up to the rooftop to install guardrails around skylights, so his organization is excited about being able to use skylight nets. He stated that skylight nets are a highly protective means of fall protection around skylights, and they are very cost effective to use.

The following individuals also commented in support of the proposal:

- **Brian Costa, Solar Craft**
- **Marti Fisher, CalChamber**
- **David Jones, Association of General Contractors**

Ms. Stock stated that it appears that this proposal only requires training in the section under "nets". She said that this seems unusual, and training should be required for all of the provisions in the proposal. She also stated that she is concerned about the exception listed in the proposal. She said that she does not see the need for it, but if it is going to remain in the proposal, it needs to be clarified. She stated that the exception does not define some crucial elements, such as "short duration". She said that the portion of the exception that states "these provisions may be temporarily suspended provided that adequate risk control is recognized and maintained" does not explain why the risk is any less because the length of time that it is used is of short duration.

Mr. Sacco stated that this proposal is very good because it offers additional compliance options that are more feasible than the options that are currently offered, but there are two areas in section 5 that need clarification:

1. It is not clear whether or not the labeling requirement in subsection (b) applies to skylight covers.
2. It is not clear to whom documentation must be made available upon request to prove that a skylight meets the 400 lb. strength requirement listed in subsection (b).

Dr. Blink stated that subsection (b) has a twin reference in the first sentence that is confusing regarding the total weight of the employee's equipment and materials that may be imposed on any one square foot area of the cover. He said that it does not address how much total weight can be placed on the cover. He stated that if the intent is to require that weight placed on any square foot area of the cover shall not be more than 400 pounds or twice the weight that would be placed on it, the proposal needs to clearly state that. He also said that the definition of a "qualified person" in this proposal is nebulous, and without clear criteria to determine who is considered to be a "qualified person", it is difficult to determine who is a "qualified person". He asked the Board staff to consider establishing a finite level of strength that would be required, rather than leaving it to individual judgment. He said that the finite level can be one or two numbers (one for the first clip below the level, and one for the second clip below the level). He also stated that temporary placement of protective materials adds additional items to the roof that could create a tripping hazard for employees if they do not attend to them during operations.

Ms. Smisko asked that the Board staff explain the practical reference why 400 pounds is a good number. She said that explaining that will provide further grounding as to the reality of what happens with people and equipment around skylights.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:32 a.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:32 a.m., September 17, 2015, in the Auditorium of the Harris State Building, Oakland, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that he sees no issues that could prevent the Board from adopting the items on the consent calendar, but he recommended file numbers 15-V-226 and 15-V-235, which are listed under item H on the consent calendar, be removed from the consent calendar and each voted on separately because Ms. Stock may wish to abstain from voting on file number 15-V-226 since she abstained from being on the hearing panel for that variance.

MOTION

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

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

MOTION

A motion was made by Mr. Harrison and seconded by Mr. Sacco to adopt the proposed

decision for file number 15-V-226.

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

MOTION

A motion was made by Mr. Sacco and seconded by Mr. Harrison to adopt the proposed decision for file number 15-V-235.

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

B. OTHER

1. Executive Officer’s Report

Ms. Hart stated that the Board staff has hired Dirk Duchsherer to the vacant Associate Safety Engineer position. She said that his start date is October 1.

2. Future Agenda Items

In addition to Ms. Stock’s request for more specific timeline for the hotel housekeeping proposal, **Ms. Quinlan** asked the Division to provide an update on the other health standards that it is working on.

C. CLOSED SESSION

Mr. Healy indicated that a closed session is not necessary this month.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:32 a.m.