

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
March 17, 2011
Van Nuys, California**

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., March 17, 2011, in the Auditorium of the Van Nuys State Building, Van Nuys, California.

ATTENDANCE

Board Members Present

John MacLeod
Bill Jackson
Jack Kastorff
Hank McDermott
Guy Prescott
Dave Thomas
Willie Washington

Board Members Absent

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
George Hauptman, Senior Safety Engineer
David Beales, Legal Counsel
Leslie Matsuoka, Associate Government Programs Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer
Deborah Gold, Senior Safety Engineer
Joel Foss, Acting Principal Safety Engineer

Others present

Steve Johnson, ARC-BAC
Mark Roy McGrath, LACOPU
Mark Stone, Epic Insurance Brokers
Wendy Holt, CSATF/AMPTP
Ricardo Beas
Bruce Wick, Cal PASC
Cory Bykoski, Dynalectric
Kevin Bland, CFCA, RCA, FSC

Adam Cohen, Reproductive Health Interest Group
Larry Wong, UC, Office of the President
Mike Mendoza, Cal-OSHA
Amit Gupta, Cal-OSHA
Rebecca Butler, CDC
Kim Knudsen, Cal-OSHA
Dusty Star Lord, Dynalectric
Thomas Carle, OSHA

Shelley Lubben, Pink Cross Foundation
Roger Niccum, Pink Cross Foundation

Jenni Case, Pink Cross Foundation

B. OPENING COMMENTS

Chair MacLeod 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

Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association, spoke in favor of the proposed adoption of General Industry Safety Orders (GISO) Section 3657, Elevating Employees with Lift Trucks, thanking Tom Mitchell for convening the advisory committee meeting and for considering stakeholder input in the development of the proposal.

Mr. Bland also presented remarks regarding Petition 519, which was proposed for adoption during the Business Meeting. He stated that there was a very drawn-out process regarding first aid two or three years ago, but there was no consensus. Mr. Bland expressed the hope that, if the matter is sent to an advisory committee for consideration, the work performed during the earlier advisory committee process will be considered and used as a starting point.

Bruce Wick, Director of Risk Management for the California Professional Association of Specialty Contractors, echoed Mr. Bland's comments regarding GISO Section 3657. Mr. Wick also thanked Board staff for changing the language in GISO Section 3380, Personal Protective Devices—Hazard Assessment and Equipment Selection. Further, Mr. Wick expressed concern regarding the consideration of amending a regulation in order to comply with the "at least as effective as" requirement, such as the proposed adoption of GISO Section 3209, Standard Guardrails.

Ricardo Beas, author of Petition 519, stated that the change requested in his petition is a common sense change. It would be very difficult to have a physician recommend first aid items for a particular company without being familiar with all of the activities performed by that company. The response he received to his petition referred to the first aid regulation for the construction industry, but his petition sought to expand the regulations to include not only a physician's approval of a first aid kit, but also to provide the option of complying with the ANSI standard that is included in the Federal regulations.

Mr. Beas also stated that the table presented in the Construction Safety Orders (CSO) does not make much sense, as it does not provide information regarding how much or how many of particular first aid supplies should be kept on-hand for the number of employees in a company.

Further, Mr. Beas expressed objection to the CSO prohibition against keeping aspirin or other analgesics, antiseptic medications, or other solutions or medications in the first aid kit unless it is approved in writing by a physician. He stated that that requirement is absent from the GISO, because it is unlikely that a physician would deny the employer permission to keep such items on hand.

In closing, Mr. Beas suggested that the Board ask for a consensus from stakeholders on rulemaking proposals for which there seem to be a number of similar comments.

Adam Cohen, speaking on behalf of the UCLA Reproductive Health Interest Group, made remarks regarding Petition 513, commending the Division's staff for the professional manner in which they have conducted the advisory committee meetings on this subject. He stated that since the Board had granted Petition 513 to the extent that an advisory committee be convened, a series of both positive and negative events have occurred.

On the positive side, both the *New York Times* and *The L.A. Times* have published editorials supporting mandatory condom use and greater oversight within the adult film industry. In addition, the American Public Health Association has produced a policy statement that outlines the serious health consequences (inaudible). That policy statement contained strongly-worded support for mandatory condom use and enhanced testing procedures.

Unfortunately, since the Board's vote on the petition decision, another performer has contracted HIV, likely through a workplace exposure. The proposed modifications of the bloodborne pathogens standards, such as fixed condom policy and a functional injury prevention plan, would not be sufficient to ensure worker safety. Mr. Cohen asked the Board to consider the cost burden placed on (inaudible) of the workplace, the average lifetime cost of HIV care is more than \$600,000. Since most performers lack adequate insurance coverage, the state also picks up the cost of treatment for repeated exposures to sexually transmitted infections. Condoms, on the other hand, are free.

Mandatory condom use, as presented in the proposed modifications to the bloodborne pathogens standard, would significantly reduce workplace injuries and the burden of disease (inaudible). Within California, the production and distribution of adult film is legal. Workers within this industry deserve to be afforded the same basic rights and protections of other California workers. The proposed modifications of the bloodborne pathogens standard by the AIDS Healthcare Foundation are easily understood and can be enforced in a wide variety of (inaudible). The UCLA Reproductive Interest Group fully supports the proposed modifications to the bloodborne pathogens standard.

Shelly Lubben, Executive Director of the Pink Cross Foundation and on behalf of the women employed in the adult film industry, thanked the Division staff for their tireless work on this petition over the past year. She stated that this issue is important to a large number of people in the adult film industry. Ms. Lubben then summarized her

experience in the adult film industry from 1993 to 1994 and her work as an advocate for young women currently working in the adult film industry. She stated that the reason there are not more adult film performers present at today's meeting is that they are frightened because they will be threatened and blacklisted for supporting the petition, and many of the performers do not know that the lack of protection in the workplace is illegal.

Jenni Case, also with the Pink Cross Foundation, is a former adult film actress. She reviewed her performance history, stating that she contracted chlamydia, bacterial infections, and urinary tract infections and had a severely damaged cervix. She stated that condoms were never used during any of the filming. She expressed her belief that the bloodborne pathogens standard that applies to all other workplaces also applies to the adult film industry. Any other workplace would be shut down until they were in compliance with the regulations.

Kevin Bland, speaking on behalf of the Free Speech Coalition, stated that he had discouraged his clients from attending today's meeting because the only relevant item on the agenda is an update. His clients have been involved in the advisory committee meetings and will continue to be involved in the process, including presenting testimony at the public hearing when it is held.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:30 a.m.

II. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:30 a.m., March 17, 2011, in the Auditorium of the Van Nuys State Building, Van Nuys, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 2
Section 3209
Standard Guardrails
(Heard at the February 17, 2011, Public Hearing)

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. Thomas and seconded by Mr. McDermott that the Board adopt the proposal.

Mr. Jackson expressed continuing concern that Federal OSHA maintains that “at least as effective as” means “the same as,” and that changing the standard for this reason does not meet the necessity requirement for modifying standards. He further stated that it appears that Federal OSHA is approving the guardrails that are already in place, so the argument that California’s standard is not at least as effective as the Federal standard is disingenuous.

Mr. Prescott agreed with Mr. Jackson. At the same time, however, it would cost more time, more staff effort, and more money to attempt to prove Federal OSHA wrong versus the fact that they have grandfathered in all of the existing guardrails, and there is not going to be a major cost to stakeholders.

Mr. McDermott asked whether the standard applies to guardrails used in the construction industry that are moved from place to place while construction is ongoing. Mr. Manieri responded in the negative, stating that the proposal applies only to general industry and references only permanent guardrails.

Mr. Manieri further stated that the debate between “at least as effective as” versus “identical to” has been ongoing for at least a decade. Originally, Federal OSHA was being extremely unyielding in that they wanted no grandfathering in the proposal, and it was through discussions with them that Mr. Manieri was able open an avenue to allow grandfathering the existing guardrails.

Mr. Kastorff stated that it is difficult to understand how a guardrail that is 2” x 2”x 1/4” can provide equivalent safety today but not tomorrow. Nevertheless, this is what the Feds want, so it appears the Board does not have a choice.

Chairman MacLeod stated that he agrees with the other Board members’ comments. This has been an ongoing issue for a very long time. It seems that Federal OSHA changes its definition of “at least as effective as” frequently. He stated that the rulemaking record duly notes the Board’s position on this issue. He expressed certainty that the Board would be having this discussion again.

A roll call was taken, and all members voted “aye,” with the exception of Mr. Jackson, who voted no. The motion passed.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 10
Section 3380
**Personal Protective Devices—Hazard Assessment and
Equipment Selection (Horcher)**
(Heard at the January 20, 2011, Public Hearing)

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. Jackson and seconded by Mr. Thomas that the Board adopt the proposal.

Mr. Jackson thanked staff for their work on the standard.

Mr. Washington asked whether the non-mandatory appendix is consistent with other standards. Mr. Manieri responded affirmatively.

Mr. Washington then asked whether the Division could enforce the appendix. Mr. Manieri responded in the negative, stating that the appendix is strictly for employer guidance and is not enforceable.

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

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 25
Section 3657
Elevating Employees with Lift Trucks
(Heard at the November 18, 2010, Public Hearing)

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. Prescott and seconded by Mr. Kastorff that the Board adopt the proposal.

Mr. Jackson thanked Board staff for their work on the standard.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Laura Hammes
Judge, Retired
Petition File No. 518

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the proposed petition decision denying the petition.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. McDermott that the Board adopt the petition decision as proposed.

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

2. Ricardo Beas
Safety Consultant
Petition File No. 519

Ms. Hart reviewed the history and purpose of the petition, and she asked that the Board adopt the proposed petition decision directing that an advisory committee be convened.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Washington that the Board adopt the petition decision as proposed.

Mr. Prescott expressed concern that there was an almost identical petition just a couple of years ago, and there was consensus between industry and labor not to move forward on that petition. He expressed concern about taking on the issue again at this time, and the decision as proposed is extremely broad, directing that the standard be reviewed and revised as necessary with no limitations.

A roll call was taken, and all members voted “aye,” with the exception of Mr. Prescott, who voted “no.” The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that the hearing panel at the pre-Board Meeting variance hearing recommended granting all of the variances shown as “grant or deny” on the consent calendar. Mr. Beales requested that Variance File No. 09-V-141 be

removed from the consent calendar and sent back to the hearing panel for possible modification and that all of the other items on the consent calendar be granted.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff to remove Variance File No. 09-V-141 from the consent calendar and send it back to the hearing panel for possible modification and to grant the remainder of the variance applications on the consent calendar.

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

D. OTHER

1. Status Update—Petition 513

Ms. Gold stated that at the Board meeting on March 18, 2010, the Division was asked to convene an advisory committee to discuss issues raised by the petitioner and others regarding control of health hazards in the adult film industry.

This industry is very complex, with different organizations’ work practices based on geography, types of activity, and control measures in use. There is also a geographic division between Northern and Southern California regarding the types of medical services that are available.

Peter Riley and Ms. Gold have coordinated a series of advisory meetings on this subject; there have been five meetings. There was one general meeting each in Los Angeles and in Oakland, a subcommittee specifically convened to discuss the control measures available in the industry, and two meetings to discuss continuing medical issues. At this time the Division plans to hold one more meeting in Los Angeles, which will be a general meeting.

The Division has been very fortunate to have the assistance and participation of producers and performers from various sectors of the industry, state and local health departments, NIOSH and the Centers for Disease Control and Prevention, several non-profit groups, and industry and performer organizations. Those interested parties have also convened meetings for their constituents and reported back to the Division the results of those meetings. There is reluctance from some people in this industry to participate publicly in this process, but all of the meetings held by the Division have been open to the public.

During the advisory committee meetings, bloodborne pathogens and other infectious disease hazards have been discussed. These other infections, not specifically bloodborne, include chlamydia, gonorrhea, and human papillomavirus, which has been associated with cancer. While the barrier methods required by

Section 5193 reduce the risk of transmission depending on the specific disease, they may not completely control the risk. Therefore, additional routine and post disclosure medical services may need to be adopted to reduce these risks.

Over the next two months, the Division will be working on a draft proposal that will specifically address the hazards in this industry, and the plan is to have that draft ready for discussion at a June 7 advisory meeting that is planned for Los Angeles. Depending on the results of that discussion, the Division will then start moving forward on a rulemaking package.

Mr. Kastorff stated that, as he understands the Board's function, the Cal OSHA regulations are to protect the employees, and part of the task is to identify who is the employee and who is the employer. He asked whether those issues have been clarified. Ms. Gold responded that the Division makes that determination in every inspection, not only in the adult film industry but in every industry, but there are court decisions that have found that the employees in this industry are the employees of specific producers or production companies. In addition, the Division has found enough evidence in its investigations to move forward against individual companies on the basis that these performers are employees.

Mr. Washington asked whether other DIR staff have been participating in the advisory meetings, primarily because these are still workplace issues. Ms. Gold responded that members of the Labor Standards Division and enforcement staff have been invited, and they are participating by attending meetings, consulting with the Division, and informing their management.

2. Legislative Update

Mr. Beales stated that he had nothing to add to the written update in the Board packet.

3. Executive Officer's Report

Ms. Hart stated that the November meeting site has been changed from Van Nuys to Costa Mesa.

Ms. Hart assured the Board that the door has been opened with Federal OSHA for discussion on the "at least as effective as," "commensurate," and how they define those requirements and the need to look at the entirety of the California standards versus the Federal standards. Ms. Hart has attended two meetings with Federal OSHA, and Mike Manieri accompanied her at one of those meetings. They are very receptive to hearing what the Board staff has to say, and they are definitely interested in the Board's views, and they (inaudible).

Ms. Hart went on to state that Marty Morgenstern was appointed as the Secretary of the Labor and Workforce Development Agency, replacing Vicky Bradshaw. He was confirmed by the Senate on March 9, and at his confirmation hearing, he mentioned possible restructuring of the Department of Industrial Relations, but he did not indicate which parts needed to be restructured. John Duncan, the DIR director, has made a commitment to pass information along as soon as it is available, and Ms. Hart, in turn, will share the information as it becomes available. There is no indication that the Standards Board is impacted at this time; however, as Governor Brown has stated, everything does remain on the table.

Governor Brown has issued several Executive Orders that impact State government. He has requested a 50% elimination of all cell phones and smart phones and a reduction of state vehicles and home storage permits, and he has instituted a hard hiring freeze. The Board and Board staff have not been severely impacted by these Executive Orders; we returned the single cell phone we had, and we do not have state vehicles. Currently, we are not dealing with vacant positions, but in the future we may face this issue.

Ms. Hart noted the article regarding the Triangle Shirtwaist Factory Fire, and stated that March 25 is the 100th anniversary of that fire. That fire led to legislation requiring improved factory safety standards and helped modernize safety laws. This is a reminder of the importance of the Standards Board's mission and the important work we all do to protect the safety and health of California workers.

4. Future Agenda Items

None identified.

E. CLOSED SESSSION

The Closed Session was cancelled.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:14 a.m.