

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**September 19, 2013**  
**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., September 19, 2013, in Room 1 of the Harris State Building, Oakland, California.

**ATTENDANCE****Board Members Present**

Dave Thomas  
Laura Stock  
Hank McDermott  
David Harrison  
Barbara Smisko  
Patty Quinlan

**Board Member Absent**

Bill Jackson

**Board Staff**

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

**Division of Occupational Safety and Health**

Deborah Gold, Deputy Chief of Health

**Others Present**

Marti Smith, California Nurses Association	Sandra Reding, Bakersfield Memorial Hospital
Martha Kuhl, CHO RN CNA	
Chris Kirkham, DOSH	Michael Crane, Atlas
Zenisa Quebral, CNA	Leesa Evans, KFH
Debbie Coughlin, Dignity Health	Pedora Kee, RN

Allison Miller, Long Beach Memorial Hospital	Kathy Donohue, OMC RN CNA
Aileen Delim, RN	Michael Strunk, IUOE Local Union 3
Elizabeth Treanor, PRR	Emogene Joiner, RN
Russ McCrary, IW Comp Program	Ken Clark, ASSE BB&T
Mark McGrath, AHF	Frank Noguchi, St. Joseph Health
Richard Negri, SEIU Local 121 RN	David Shiraishi, Fed OSHA
Hart Keeble, Ironworkers Local 416	Mike Horowitz, DOSH RSDU
Steve Derman, Medishare Environmental Health and Safety Services, and California Industrial Hygiene Council	James McGuire, IMPACT
Mark Stone, EPIC Insurance Brokers	Andrew Radcliffe, RN
Cathy Kennedy, CNA	Sharlene Peeke, UCSF
Katherine Lind Evelyn, CSAOHN	Diana Markosiah, CPIL at USD Law
Kevin Thompson, Cal-OSHA Reporter	Sharon Speeks, CNA UCI Medical Center
Alex Allan, CNA	Jy Nowlin, John Muir Health
Lucia Hwang, California Nurses Association	Charity Nicolas, Contra Costa County PASMA
Wendy Hess, CNA	Veda M. Jospheh-Cruickshank, CNA/NNU
Lataushia Hall, CNA	Steve Russell, CNA
Jacquelyn D. Evans, Sutter Alta Bates ICU	Shirley Toy, CNA
Steven Snitzer, Children's Hospital	Rhonda Watts, Arrowhead Regional Medical Center
Matt Antonucci, CSATF	Steve Rank, Ironworkers International Union
Brittany Howze, CAN UCSF	Michael Musser, California Teachers Association
Jason Barry, University of CA, Davis	Dorothy Ormsby, Harris Rebar
Katherine Hughes, SEIU 121 RN	Carol Griffin, Summit Medical Center
Anthony Donaldson, Kaiser Permanente	Grace Riley, Summit ICU
Darlene DeLancey, Community Hospital of the Monterey Peninsula	
Erin Carrera, UCSF CNA	

Mr. Thomas introduced Juliann Sum, the new Acting Chief for the Division. Ms. Sum then briefly addressed the Board.

**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.

**Steve Rank, Iron Workers International Union**, addressed the Board on his petition to amend Section 1712 pertaining to reinforcing steel and post tensioning activities. He stated that the current state standard is far more protective than the federal standard, but it does not reflect the hazards that occur with poured-in-place concrete. He said that the proposal he is presenting today was recently adopted as the national consensus standard by the ANSI committee that he served on. He stated that 99% of the 73 parties on the committee voted to adopt the standard. He also said that this proposal will save lives and serve as a springboard for other states' plans. The following individuals echoed Mr. Rank's comments:

- **Russell McCrary, Ironworkers Worker's Compensation Program**
- **James McGuire, IMPACT**
- **Dorothy Ormsby, Harris Rebar**
- **Hart Keeble, Ironworkers Local 416**

**Mark McGrath, AIDS Healthcare Foundation**, addressed the Board regarding Petition 513. He said that 5 HIV infections have occurred recently in adult film production, 4 of which are acute infections. He stated that the Division has been notified of these infections and they are following up on them. He said that these new cases will cost the state \$2.6 million for AIDS medication alone. He also stated that it is important that the Division not dawdle on this issue because it not only affects the health of adult performers; it also affects the public's health overall.

**Dr. Jeffrey Klausner** also addressed the Board regarding Petition 513. He said that adult film workers are at 8 to 15 times greater risk of contracting a sexually transmitted infection and that there are over 30 different types of STD's, 2 of which can cause cancer. He stated that the current testing procedures for adult film workers only test for HIV, syphilis, gonorrhea, and chlamydia, and that they do not test at the relevant anatomic sites of exposure, such as the throat and rectum. He said that this makes the testing woefully inadequate to protect workers. He stated that a comprehensive exposure control plan, education, barrier protections such as condoms and vaccinations, continued and expanded testing, and employer-paid testing and protections against these infections is needed. He asked the Board to act expeditiously in addressing this and to get input from the Department of Public Health on this in the process.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:24 a.m.

**II. PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:25 a.m., September 19, 2013, in Room 1 of the Harris State Building, Oakland, California.

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

1. **TITLE 8:**      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 106, New Section 5120  
**Safe Patient Handling**

Ms. Gold 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.

**Margie Keenan, Long Beach Memorial Hospital and California Nurses Association,** stated that the proposal will give the Division the enforcement authority it needs to keep hospitals accountable to their patients and workers. She said that despite AB 1136, hospitals continue to have inadequate staffing and safe patient handling procedures, and the Division continues to cite them for patient handling violations. She said that strong and comprehensive regulations are needed to spell out the terms of AB 1136 and ensure that hospitals follow the law. She stated that the proposal includes almost everything that is needed to implement AB 1136. She is very pleased about the provision that requires employee involvement in plan review, evaluation, and decisions regarding equipment needed, as well as the training requirements in the proposed standard.

However, she is concerned about the fact that the standard does not reference language in 1136 that explicitly protects direct patient care assignments. She stated that, in response to AB 1136, employers give their employees very basic training in using lifts, and when lifts are used, RN's are required to leave their assigned patient to assist, which increases risks to patients and staff. She said that the language in AB 1136 clearly protects direct care patient assignments and needs to be included in the standard to ensure its enforcement and to provide a safe environment for workers and patients.

She is also concerned about the language that refers to the means by which the professional judgments of designated healthcare workers in disciplines outside of nursing would be incorporated into a patient's mobility assessment. She said that the proposed standard does not provide parameters as to situations or circumstances in which a designated healthcare worker could incorporate their judgment into a patient's mobility assessment, and this appears to undermine the position and authority of the RN as the coordinator of care. She stated that this language needs to be changed to preserve the RN as the coordinator of care and specify the circumstances under which designated healthcare workers may incorporate their judgment into a patient's mobility assessment.

**Jacquelyn Evans, Sutter Alta Bates ICU,** urged the Board to remove exception #2 in the proposed standard regarding facilities within a hospital that are separately licensed. She stated that patients in skilled nursing facilities in a hospital or that are in recovery rooms that are separately licensed are usually incapacitated and have a lot of trouble moving, and nurses in those facilities also need to be protected.

**Deborah Amore, Seton Medical Center**, stated that having to assist with lifts leaves patients unattended, putting them and staff at risk. She said that having a provision that requires lift equipment to be available at all times in all units would really help because some units are adequately equipped with this type of equipment, but others are not. She stated that having provisions requiring annual hands-on training for lifts, question and answer periods after the training, and opportunities to submit input to management regarding concerns with patient handling procedures would also help.

**Charlene Peek, UCSF Medical Center**, stated that her hospital does have lifts, but there has only been one training session on how to use it. She stated that training needs to be ongoing. She also stated that the lift equipment requires more than one person to safely move a patient, and when the hospital got their lifts, they reduced the number of patient care assistants who are responsible for assisting with moving patients. This has resulted in nurses having to leave their patients in order to help with the lift.

**Tina Guliamati, Los Alamedos Medical Center**, echoed the comments of Ms. Keenan and Ms. Amore.

**Rhonda Watts, Arrowhead Medical Center**, stated that her hospital is following AB 1136 because she and other RN's demanded that the hospital follow the law. They also went before the County Board of Supervisors to ask for the money to buy lift equipment. As a result, the hospital now has lift equipment available throughout the facility, and the number of injuries has been greatly reduced, but there is not enough staff available to assist with the lift and not impact patient care in the process. She said that having lift equipment available at all units at all times will greatly reduce injuries. She also stated that the RN's at her hospital are the coordinators of care for the patients, and that really helps.

**Lataushia Hall, Dignity Health St. Bernadine's Medical Center**, stated that requiring hospitals to have both properly trained lift teams and lift equipment available would greatly help with handling patients safely. She stated that requiring hospitals to have adequate staffing to handle patients without making nurses leave their assigned patients is also necessary. She also said that it is not always possible to get the lift equipment right away, especially in an emergency situation; so lift teams are essential. **Margaret McManis, Alta Bates Medical Center**, echoed Ms. Hall's comments.

**Anthony Barceros, Alta Bates Medical Center - Berkeley**, stated that oftentimes, when there is not enough lift equipment and staff available to move a patient, nurses do not use it. Also, when staff is not adequately trained in how to use the equipment, it may be used incorrectly. Because of this, he would like to see requirements for hands-on initial and refresher training. He also said that when injuries happen to staff, hospital management places the blame on the staff member and does not take further steps to help prevent the situation from happening in the future. He would like to see RN's continue to be the coordinator of care and to allow them to voice their opinions regarding patient care procedures.

**Leesa Evans, Kaiser Walnut Creek**, stated that she would like to see the regulation require adequate staffing at all times for patient handling and increased staffing when the patient population is high. **Betty Android, Alta Bates Medical Center**, echoed Ms. Evans's comments.

Mr. Thomas called for a break at 11:25 a.m. and reconvened the meeting at 11:30 a.m.

**Katherine Hughes, SEIU 121 RN**, stated that exception #2 is a bad idea. She said that she helped to write the specific language in AB 1136 that includes all units that are licensed under general acute care hospitals, and that exception #2 would exclude nurses working in nursing homes, which are the 4<sup>th</sup> largest group in the nation to have occupational injuries. She also echoed the comments of the previous speakers regarding the lack of equipment and training available for patient handling. She stated that the clause on page 3 regarding insurance of availability of equipment is very vague. She recommended putting the clause from page 7 regarding availability of equipment on page 3 also in order to make it clear that the equipment is required to be available at all times on all units covered by the plan. She also stated that a mechanism for tracking and locating equipment needs to be added to the proposed regulations, as well as a provision to require that the equipment needs to be appropriate for the space available in the unit.

**Ingela Dahlgren, SEIU Nurse Alliance of California**, thanked the Board staff for their work on this proposal and echoed several of the previous comments.

**Richard Negri, SEIU 121 RN**, echoed the comments of Ms. Hughes regarding the need for a way to track the location of equipment and several other comments regarding the need for proper training.

**David Brown, California Hospital Association**, stated that he supports the proposed regulation, but feels that it will only be successful if it is truly a collaborative effort that is coordinated between all designated healthcare delivery workers, including nurses.

**Steve Derman, Medishare Environmental Health and Safety Services and the California Industrial Hygiene Council**, stated that he supports having a good safety and health program that uses engineering controls and administrative support to help eliminate injuries. He stated that clarification is needed regarding the exceptions listed in the proposed regulation, including the exceptions for acute care facilities and the exceptions that exclude long-term care facilities from following it.

**Mr. Harrison** thanked everyone for their comments and asked the Board staff to address the issues that were brought up today, especially regarding hands-on training and availability of equipment.

**Ms. Smisko** stated that she is glad that this regulation has come together to help both workers and patients. She asked the Board staff to clarify the role of the RN as the coordinator of care, as well as the situations where other healthcare workers can help with that.

**Ms. Stock** thanked everyone for their comments and stated that she looks forward to working with the Board staff on this regulation and addressing the issues that were brought up today, especially the issues regarding staffing.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 11:57 a.m.

**III. BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 12:07 p.m., September 19, 2013, in Room 1 of the Harris State Building, Oakland, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales recommended that all of the variance requests be granted and that all of the decisions listed in the Board packet be adopted. He said that the variances that were heard this morning contain one modification: Ms. Stock served as the sole member of the hearing panel, because Mr. Jackson is absent today.

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.

B. OTHER

1. Legislative Update

Mr. Beales stated that there are three things to add to the written materials listed in the Board packets:

- Assembly Bill 1202, which requires the Board to adopt regulations regarding certain types of drugs, passed the Legislature and is awaiting the approval of the Governor.
- Senate Bill 435, which pertains to employers respecting heat illness rest periods, passed the Legislature.
- Assembly Bill 1165, which pertains to the Division’s enforcement actions, passed both the Assembly and Senate on November 11, 2012, but has not been enrolled.

There is no indication that a super majority is needed in this case, so this bill should be enrolled. There should be more information on this next month.

**Ms. Quinlan** asked Mr. Beales how Assembly Bill 640 impacts the Division's forthcoming bloodborne pathogen standard. **Mr. Beales** stated that since AB 640 has not been passed yet, it has no impact on the forthcoming standard. The only thing that it shows is legislative support for certain approaches in dealing with that issue.

## 2. Division Update on Chemicals with HEAC and FAC Review

Ms. Gold provided a written update on the back of the Division's Projected DOSH Rulemaking Activities 2014 report regarding 6 substances. [Please see the Board packet to view this report]. She said that these substances went through the HEAC and received comments, but have not gone through the FAC yet because they do not have enough staff at the moment. She said that when they get more staff, they will hold another FAC to consider these substances and move forward with getting more substances through the HEAC and FAC process. She also stated that hydrogen chloride, wood dust/red cedar are not on the list because they have gone through the FAC, but have not yet been noticed by the Board. She said that the Division has been back and forth with Board staff regarding hydrogen chloride, and the Division plans to have a final version of the rulemaking on that to the Board staff in October.

**Ms. Stock** stated that as the FAC is reconstituted with new processes, she hopes that past comments about, and problems discovered in, the FAC process will be taken into consideration so that the process can be improved.

**Ms. Quinlan** asked Ms. Gold about the status of hiring or appointing more people to help with the PEL standards. **Ms. Gold** stated that they are in the process of doing that.

## 3. Division Update on Possible Rulemakings and Advisory Committees

**Ms. Gold** provided a written update titled "Projected DOSH Rulemaking Activities 2014" [Please see the Board packet to view this report] and also added the following comments:

- Process Safety Management: This was not included in the written report because it is being reviewed by a refinery task force that includes the Division and environmental agencies. She said that an inter-agency task for report was submitted to the Governor after the Chevron refinery and other incidents, and in that report, there was a recommendation that the Division's PSM and environmental standards be updated. The refinery task force is determining the best way to do that, and the Division will keep the Board posted on that.
- GHS: The permanent standard is scheduled for public hearing next month, as well as the readoption of the temporary standard to plug the gap until the permanent one is adopted. After the permanent standard is adopted, there are further standards that

will need to be addressed as a result of definition changes that will occur in Section 5194, such as the eye wash and safety shower standards.

- Tunnel Safety Orders: This package has been back and forth between the Board staff and Division staff. It is currently with the Mining and Tunneling Unit and should be ready to move forward very soon.
- Tramway Safety Orders: The Division is working on a preliminary draft of this rulemaking and have requested additional resources from DIR to help move it forward. There is an additional rulemaking to add to this because of the way that the Labor Code is set up. The Labor Code states that it is the Division, not the Board, that is responsible for adopting regulations regarding training employees who operate tramways.
- Bloodborne Pathogen Protection in the Adult Film Industry: The Division has a rulemaking package that will be coming to the Board early next month that will address both bloodborne and contact-spread STD's that occur in the adult film industry. Ms. Gold also stated that AB 640 is a 2-year bill and that the current content of the bill is consistent with what the Division has been developing in its process.
- Blood Lead Levels: The CDPH website published a proposal to amend the lead standards to lower the blood lead medical removal protection level from 50 micrograms per deciliter to 20 micrograms per deciliter in 2 tests or 30 micrograms per deciliter in 1 test, which are more modern blood lead levels. The Division is waiting on toxicological support from OEHHA on how the airborne PEL and action level will relate to those blood lead levels, which should arrive next month. After the Division receives that report, a scientific symposium will be put on by COEH and CDPH in November, followed by Division advisory committees in early 2014. The Division plans to have this proposal come to the Board in 2014.
- Hotel Housekeeping: Amalia Neidhardt is the Division's lead staff member on this rulemaking, but had to be switched over to assist with the Bloodborne Pathogen Protection standard. As a result, there is not enough staff to work on this rulemaking at this time. Once the Bloodborne Pathogen Protection standard package gets sent to the Board, Amalia will get back to working on this rulemaking. The Division anticipates having another advisory committee on this by the end of this year, at which time it will have a discussion draft ready.
- AB 1202: Protection for Healthcare Workers Exposed to Anti-neoplastic Drugs: The Division anticipates having advisory committees on this in 2014, but does not anticipate bringing a rulemaking package to the Board before the end of 2014.
- Heat Illness: The Division held a stakeholder meeting on July 28 to find out how the standard is working, and comments were received. The Division does not have any further plans for a proposal on this, but it is possible that that could change.

**Ms. Hart** asked about the status of the Medical First Aid rulemaking, and noted that it has not been addressed in the Division's last two updates to the Board. **Ms. Gold** stated that a draft of the package is ready and should be coming to the Board in the next week or so.

**Ms. Quinlan** asked Ms. Gold if the Division plans to address both airborne and blood lead levels in its Blood Lead Levels proposal. **Ms. Gold** stated that the Division has to address airborne levels because medical removal protection requires it to be moved to a level below the action level. If the action level does not change, someone could potentially be exposed to a lead level which will not allow their blood lead level to go down. She also stated that blood lead levels are not required to be tested unless there is a situation where the blood lead level is above the action level. **Ms. Quinlan** stated that she is concerned about leaving it all to the airborne levels. **Ms. Gold** stated that there are a lot of issues surrounding this, and that the Division will have advisory committees to help sort out these issues.

**Ms. Quinlan** asked Ms. Gold if the Division's Bloodborne Pathogen Protection standard for the adult film industry will address the multitude of diseases discussed today, in addition to the original 6 bloodborne pathogens, or if they will be addressed in a different standard. **Ms. Gold** stated that the Division decided that the best way to handle this is by creating a separate subsection to Section 5193 that would specifically address the adult film industry. This way was chosen for several reasons:

- This will avoid confusion regarding federal equivalence issues that aren't issues at all.
- California has much more development of work on the hazards in the adult film industry than anywhere else in the country.
- This will allow the Division to address concerns regarding post-exposure and non-bloodborne pathogens that were not addressed by CDC recommendations for bloodborne pathogen post-exposure.

#### 4. Executive Officer's Report

Ms. Hart stated that she met with Ms. Sum yesterday and discussed ways that the Board and Division will continue collaborating and working on projects together.

#### 5. Future Agenda Items

**Mr. Harrison** stated that he hopes Petition 537 will come before the Board for a vote very soon, and he hopes that it will move forward since there appears to be a lot of consensus already. **Ms. Hart** stated that it will be voted on by the Board sometime in the next 6 months, and if the Board approves it, a decision will be made on how to move forward from there.

**Mr. Harrison** also stated that he was shocked to read the article in the Cal/OSHA Reporter regarding Ms. Widess's resignation, and that there were folks on the labor side that did not support her in her role as Chief of the Division. He stated that the labor representatives he knows supported Ms. Widess in her role, and they will support Ms. Sum in her role as Acting Chief.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:31 p.m.