

**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



**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
August 18, 2016
Walnut Creek, 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., August 18, 2016, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

ATTENDANCE

Board Members Present

Dave Thomas
David Harrison
Patty Quinlan
Barbara Smisko
Laura Stock

Board Member Absent

Dr. Robert Blink

Board Staff

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

Division of Occupational Safety and Health

Eric Berg, Deputy Chief of Health

Others Present

Michael Musser, CA Teachers Association	Adam Cohen, AIDS Healthcare Foundation
Cameron Adams, AIDS Healthcare Foundation	Joshua Rodgers, AIDS Healthcare Foundation
Rachel Bernard, AIDS Healthcare Foundation	Whitney Engeran-Cordova, AIDS Healthcare Foundation
Vanessa Blake, AIDS Healthcare Foundation	Jennifer Ketcham, AIDS Healthcare Foundation
Michael Strunk, IUOE Local Union No. 3	Cindy Sato, CEA
Lisa Cantrell, KALW	Geoffrey Albrecht, United Airlines
Yolanda Barron, Unite Here Local 2850	Kevin B. Quintero, Treasure Island Media

Matt Mason, Treasure Island Media	Bruce Wick, CALPASC
Vince Hundley, AGC – San Diego	Trina Caton, Keenan
Steve Derman, Medishare EH&S	Karen Tynan
Tony Rios, AVN Media Network	Marcelo Gerab, FSC/APAC
Jason Taylor	David Diamanti, Morley Builders
Julie Trost, Mason Contractors Association of California	William D. Callahan, Associated Roofing Contractors of the Bay Area Counties
Steve Johnson, Alliance Roofing Company	Don Parret, Xbiz.com
Bill Benham, Bill Benham Consulting, LLC	Elizabeth Treanor, PRR
Patricia Gaydos and Amber Rose, Fed OSHA	Ted Pierce, Associated Roofing Contractors of the Bay Area Counties
Ron Nunley, Aera Energy	Brian K. Miller, Rudolph & Sletten
Joseph Vuglia, Hazard Mangement Services, Inc.	David Jones, AGC of CA
Roy Vlaovich Jr., Zurich Insurance	Francisca Carranza, Unite Here
Virginia Siegel, On-site Health & Safety	John Swartos, Aerotek
Doug Parker, Worksafe	Kevin Bland, Ogletree Deakins
Gail Blanchard-Saiger, CA Hospital Assoc.	Singer Blake
Jane Thomason, National Nurses United/California Nurses Association	Christopher Lee, United Contractors
Jiz Lee, Pink & White Productions	Dan Leacox, Leacox & Associates
Janice Griffith	Eric Paul Leue, FSC
Julia Tavella, Adult Industry Performer	Amber Novey, LiUna
Iona Grace, Adult Performer	Brock Doom, APAC
Ashleigh Yaya (Mimosa), Kink.com	Justin Wilson & Alyce, Adult Industry Performers
Joel Guth, IQ Power Tools	Michael D. Holland, Blach Construction
	Jeff Barber, John Jackson Masonry

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.

Ella Darling, Adult Performer Advocacy Committee (APAC), stated that she supports Petition 560 and asked that the Board send the petition to an advisory committee. She also asked that the Board exclude the AIDS Healthcare Foundation from the discussion because they do not care about adult film performers. She said that adult film performers are the true stakeholders in this case, and their voices need to be heard. **Marcelo, Adult Film Performer**, echoed Ms. Darling's comments.

Jiz Lee, Adult Film Performer, Pink and White Productions, stated that the current regulations make a mockery of safer sex. She said that all sex acts carry a certain level of risk, and performers know these risks and what is safest for them when it comes to protection. She stated that there has not been an on-set transmission of HIV in over 11 years because performers use safer sex tools, such as condoms and dental dams, and because performers get tested regularly for diseases. She said that she supports the comprehensive safety guidelines that are listed in Petition 560 because they are the most appropriate for performer privacy and

protection.

Karen Tynan, Free Speech Coalition (FSC), stated that she is appalled that the AHF is using the Board's process to further its own outside, non-stakeholder agenda. She said that the AHF issued a press release yesterday using citations that were issued by the Division and revealed specific information about a performer in an effort to politicize the Board's process.

Brock Doom, Adult Performer and APAC Member, stated that the proposed standards in Petitions 557 and 560 will affect the personal lives and health of adult film performers. He said that the adult film industry currently regulates itself, and those regulations may not be what some people would define as physical barriers to protect performers from disease, but they are barriers, and they do protect performers from disease. He stated that he has felt safer having sex with performers in the industry because they are tested for multiple sexually transmitted infections (STI's) on a regular basis.

Janice Griffith, Adult Film Performer and APAC Member, stated that the Board's decision on Petitions 557 and 560 will affect the lives, bodies, and jobs of adult film performers. **Ariana Grace, Adult Film Performer, and Nicky Darling, Adult Film Performer**, echoed this comment. Ms. Griffith said that she and other adult film performers feel safe with the protocols that the industry has imposed on itself, and the industry does a good job of regulating itself because performers know their bodies the best. She stated that performers take care of each other and keep each other safe. She said that the AHF is pushing an insulting agenda against performers, and the Board's decision today could push the adult film industry underground or out of California. **Owen Gray, Adult Film Performer and APAC Member, Ariel X, Adult Film Performer, and Isabel Dressler, Adult Film Producer**, echoed this comment. Ms. Griffith asked the Board to consider the voices of the true stakeholders when making a decision on these petitions today.

Verna, Adult Film Performer, stated that adult film performers want to participate in the process to develop regulations that will keep them safe and that make sense for their industry. She asked the Board to consider accepting the regulatory language in Petition 560 as acceptable regulatory compliance with the federal OSHA regulations.

Kevin Quintero, Adult Film Performer and Director, stated that the adult film community has worked to regulate itself and keep its members safe so that they are not inclined to go underground. He said that the underground adult film industry has lots of people who do not care about performers and are unwilling to follow regulations. He stated that the verbiage in the current proposed language makes sense to people outside the industry, but it is full of rhetoric and very scary for performers who will be affected by it. He asked the Board to work with the industry to come up with regulations that will work best for the industry.

Dr. Hernando Chavez, Professor and Sex Educator, stated that he supports Petition 560 because it gives performers a voice regarding this issue that affects their livelihood. He said that focusing solely on condoms and other barrier protection methods, and excluding other protection methods such as PREP, is irresponsible and not the most effective way to address this issue. He also stated that condoms and other physical barrier methods provide a level of protection that is 10-20% lower than the level of protection that PREP provides. He asked the Board to adopt Petition 560 and invite adult film performers to participate in the process.

Julia Ann, Adult Film Performer, stated that the adult film industry is a much broader spectrum than it used to be, and thanks to the internet, husbands and wives have been able to work together and make adult films out of the privacy of their homes. She asked the Board to consider the fact that when it adopts regulations pertaining to the adult film industry, those regulations will affect these small operations, in addition to the large production companies. **Justin Wilson and Alice, Adult Film Performers**, echoed this comment. Ms. Ann said that if Proposition 60 is passed, and the Board also adopts regulations similar to those that have been proposed by the AHF, it could result in a shakedown of the industry, which would be terrifying for performers.

Aribel Rafael, Adult Film Performer, stated that adult film performers are a marginalized group and usually do not get to have a voice when laws are created that affect them. She said that there are many ways that the adult film industry can be improved, but the current proposal will not help. She stated that it will hurt performers by taking away their choice of whether or not to use condoms on set. She said that it is important that performers have the choice of whether or not to use condoms, and if they choose to use condoms, adult film companies should provide them. She stated that she also shoots adult films with her husband in the privacy of their home, and if this proposal is passed, it will take away the choice of whether or not to use a condom with her husband, which is ridiculous. She also said that the films will not sell. She stated that the AHF does not want to talk to performers, and their attacks on performers make performers not want to talk about issues that arise in the industry. She said that the AHF uses these issues to shut down the adult film industry and make things more dangerous for performers, rather than to help make things better.

Nicky Darling, Adult Film Performer, stated that Petition 560 was written by adult film performers and for adult film performers. She said that it protects the identities and autonomy of adult film performers and provides a safe space for them to help create regulations that will affect them. She also stated that the AHF will not listen to performers and help create regulations that best suit performers' needs. She urged the Board to move Petition 560 forward.

Mona Wales, Adult Film Performer and APAC Member, stated that adult film performers know what is best for them when it comes to safe sex because their lives and livelihoods depend on it. She said that she believes a multi-pronged approach to safe sex is best, especially if it includes, but is not limited to, condoms, testing, barriers, PREP, and post-exposure treatment. She stated that the "barrier only" approach is antiquated and puts her health at risk. She urged the Board to move Petition 560 forward.

Pamela Dorey (Mr. Pam), Adult Film Director and Producer, stated that she works in the gay porn industry and has always shot condom porn, but condoms are not the future of the adult film industry. She said that protection methods such as PREP and testing are the future of the adult film industry. She stated that she supports Petition 560 because the FSC has given adult film performers a voice in it. She also said that in gay porn, there are a lot of HIV positive performers, and to protect performers, they are matched up with other performers based on their HIV status and whether or not they are taking their PREP medication. She stated that she hopes Petition 560 will be moved forward to an advisory committee because she wants to help create regulations that will help protect adult film workers from bloodborne pathogens.

Eric Paul Leue, FSC, stated that Petition 560 does not require adult film performers to take antibiotics before going to work. He said that PREP is based on retroantiviral medication as a form of prevention of HIV transmission, not antibiotics as the AHF claims. He stated that AHF is the only organization worldwide that opposes the use of retroantiviral medication as a form of prevention of HIV transmission. He said that there are many ways to reduce the risk of contracting an STI or HIV other than barrier protection, and his organization is looking forward to sharing these positive control experiences, as well as engineering and administrative controls that are currently in place in the industry, with the Division and the Board. He stated that the AHF is using the Board to further its political agenda. He said that performers are concerned that if they attend the Division's advisory committee, they may be harassed and intimidated by the AHF, and they are also concerned that the Division is prejudicial to them and their privacy. He stated that they are concerned that the Division might leak some of their personal information to the AHF, just like it recently did when it leaked an unredacted citation to the AHF containing a performer's name and home address. He said that adult film workers need to be able to participate in the process to develop regulations that affect them, and they need to be protected from harassment during the process. He asked the Board to dismiss Petition 557 and move forward with Petition 560.

Kevin Bland, FSC, stated that the Board should dismiss Petition 557 and move forward with Petition 560. He stated that he hopes that adult film performers will be given a fair opportunity to provide input, and he hopes that the Division will analyze data that is provided by the industry as equally as it does for other advisory committees and stakeholder processes, without marginalizing performers. He said that the current bloodborne pathogen protection standard mirrors the federal standard, and there is no mention or indication, in either the state standard or the federal standard, that the bloodborne pathogen protection standard applies to adult film performers. He stated that Petition 560 contains methods of STD prevention that are at least as effective as, if not more so than, the federal standard. He said that if the Division comes together with performers and both parties work together, an effective standard can be developed that will work for everyone and will result in a better, more enforceable regulation.

The following individuals also commented in support of Petition 560:

- **Owen Gray, Adult Film Performer and APAC Member**
- **Ariel X, Adult Film Performer**
- **Justin Wilson and Alice, Adult Film Performers**
- **Ariana Grace, Adult Film Performer**
- **Isabel Dressler, Adult Film Producer**
- **Mimosa, Adult Film Performer**

Whitney Engeran-Cordova, AIDS Healthcare Foundation (AHF), urged the Board to move Petition 557 forward. He said that the federal regulations require adult film performers to use barrier protection. He stated that discussing the use of pre-exposure prophylaxis is not an issue. He said that it could be useful and helpful, but it does not meet the standard for being barrier protection. He stated that the Board staff's evaluation for Petition 560 says that the amendments requested by the petitioner would render the California standard less effective than the federal standard. He asked the Board to protect adult film workers in the way that is necessary and best for them.

Cameron Adams, Retired Adult Film Performer, stated that she was diagnosed as HIV positive in 2013 while working in the adult film industry. She said that when she asked to use condoms on set, none were offered to her, and therefore, she was not protected. She stated that she supports Petition 557 because it specifically addresses condoms as a form of barrier protection. She also said that Petition 557 meets the federal standards that require producers to provide condoms to performers on set. She stated that Petition 560 does not meet the federal standard, and therefore, cannot be enacted. She also said that Proposition 60 is already a law, and Petition 557 will help close loopholes so that producers are required to follow it.

Joshua Rogers, Retired Adult Film Performer, stated that he became HIV positive in 2013 while working in the adult film industry. He said that he supports Petition 557 because it requires adult film performers to use condoms, and it meets the federal standard which requires producers to provide condoms on set. He stated that Petition 560 does not meet the federal standard, and the folks who support Petition 560 seem to be more concerned about making money than worker safety.

Adam Cohen, AHF, stated that the Division published 3 press releases in the past 6 months stating that the existing bloodborne pathogen standard requires condoms to be used in the adult film industry. He said that the Board also stated this back in February, but the FSC is working to keep people from hearing that message. He stated that Petition 560 culminates false and misleading scientific claims in order to avoid the basic level of protection that is afforded to the adult film industry. He also said that Petition 560 does not meet the federal standard, and therefore, cannot be adopted. He asked the Board to send Petition 557 to an advisory committee, but to also be cautious about sending Petition 560 to an advisory committee because it recommends providing antibiotics to performers before they go to work.

Jenny Ketcham, Retired Adult Film Performer and Director, stated that during the time she spent working in the adult film industry, she was disconnected from the policies that impacted her, and therefore, she was not aware of the bloodborne pathogen protection regulation that was passed in 2004 or Petition 513. She said that workers at the bottom of the ladder cannot challenge the status quo in the adult film industry. She stated that when she worked in the industry, she was considered replaceable and had an openly-acknowledged short shelf life, and she was trained to believe that all performers were clean until proven otherwise. She said that Petition 560 proposes this mythology regarding testing. She stated that if she requested to use condoms on set, it created an additional barrier to her being able to meet her financial needs. She said that she now works in healthcare and is an advocate for patients. She said that adult film workers and healthcare workers deserve the same access to personal protective equipment that employees in all other industries enjoy. She stated that in healthcare, when employers are notified of a possible exposure, they take immediate action to protect the health and well-being of the employee. However, when she tested positive for an STI while working in the adult film industry, she did not have that option. She said that if an employer in the healthcare industry fails to protect workers, and someone gets sick due to their negligence, the employer will face serious consequences. However, this accountability does not exist in the adult film industry, and the responsibility of navigating the industry's system of protecting oneself from bloodborne pathogens falls on the performer. She stated that testing and PREP are not sufficient to protect performers from STI's. She said that adult film workers deserve better protection than what they currently have. She asked the Board to add condoms to the current bloodborne pathogen protection standard and to move forward with

Petition 557 instead of Petition 560.

Vanessa Blake, Retired Adult Film Performer, stated that taking PREP can have long term effects on a performer's body, including effects on the kidneys and bone density. She said that taking antibiotics before work increases resistance to them, making them ineffective and unable to help a performer if a performer does get sick. She stated that it is important to make sure that condoms are used by adult film performers on set.

Doug Parker, Worksafe, asked the Division to continue moving the hotel housekeeping standard forward. He also stated that his organization has some concerns about the current version of the standard for workplace violence prevention in healthcare. He said that it is not the most protective and feasible standard that could be promulgated for the following reasons:

- The training provisions need to be the most robust training provisions available. He said that the current proposal relies too much on web-based training, and web-based training sends a message that the training is not very important. He stated that people learn best in a robust and interactive training environment.
- The standard should include temporary workers, especially when it comes to training, because they do not know how to protect themselves as well as permanent employees do.
- Language needs to be returned to the standard that will allow employee representatives to access the workplace violence prevention plan.
- Employees need to be allowed to have full participation in filling out the violent incident log so that their voices are heard and stories of what happened during a violent incident are accurately told.
- The standard needs to include adequate retaliation protections.
- The definitions of workplace violence and threat of violence that are in the current version of the proposal are too narrow. He said that violence happens on a continuum and builds up. He stated that the proposal should be about preventing workplace violence, not just reacting to it after it occurs.
- The language that allows ancillary healthcare operations to be included in the standard should be restored.

Cynthia Correz, Unite Here Local 483, asked the Division to complete its review of the hotel housekeeping proposal in a timely fashion so that the Board staff can submit the rulemaking package to DIR and the Labor Workforce Development Agency for noticing, and so that a public hearing notice can be issued before the end of 2016. She said that hotel housekeepers continue to suffer injury daily, some of which require surgery or leave the hotel housekeeper permanently disabled. She stated that many of these injuries are preventable, and the people who are most affected when hotel housekeepers are injured are their families.

Yolanda Barron, Housekeeper, Hyatt House Emeryville, echoed Ms. Correz's comments.

Gail Blanchard-Saiger, California Hospital Association, thanked the Division and Board staff for their hard work on the proposal for workplace violence prevention. She said that the 15-day notice comment period closed yesterday, and the proposal will probably be scheduled for adoption in September or October. She stated that her organization is still concerned about the definition of workplace violence that is being proposed. She said that the definition does not distinguish between things that are preventable and things that cannot be predicted. She stated that this permeates through the record keeping and disciplinary action provisions in the proposal.

Steve Derman, Medishare Environmental Health and Safety Services, thanked the Board for the work that it continues to do to develop regulations to keep workers safe.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:17 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 11:32 p.m., August 18, 2016, in the Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

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

1. TITLE 8: **CONSTRUCTION AND GENERAL INDUSTRY SAFETY ORDERS**
New Sections 1532.3, 5204, and Existing Section 5155
Respirable Crystalline Silica (Horcher)

Mr. Kernazitskas 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.

Bruce Wick, CALPASC, stated that his organization submitted a coalition letter earlier this week [Please see the file copy of the Board packet to view this letter]. **Rickie Leinenweaver, Petersen Dean Roofing and Solar**, also supports the coalition letter. Mr. Wick said that the coalition feels that the current California standard regarding silica is clear, concise, workable, and effective. He stated that an advisory committee should be convened to discuss the differences between the current California standard and the new federal standard. He said that an advisory committee has plenty of time to come up with a consensus standard that blends both the current state standard with the federal standard because the federal standard will not take effect until June of 2017. He also stated that there is a large, unresolved group lawsuit that has been filed against the federal regulation because people have issues with Table 1 in the standard, and as a result, it may be revised. He said that the coalition has several key issues with the federal standard, including the following:

- The current state standard allows the use of both wet and vacuum dry cutting methods. The coalition feels it would be better to work in a dry environment in order to avoid slips and falls, as well as water run-off issues.
- The regulation needs to balance the potential for chronic exposure of someone making part-time cuts on a roof with the acute exposure to slips and falls, as well as injury from falling off the roof.

He also stated that the current state standard has some important exceptions and limitations that should also be considered.

David Jones, Associated General Contractors of California, stated that his organization signed on to the coalition letter and is opposed to the Horcher adoption of the crystalline silica standard. He said that the current state standard was developed through the advisory committee process 8 years ago and has served the state well. He stated that his organization feels that convening an advisory committee to develop and issue best practices for the construction industry would be ideal.

Michael Holland, Blach Construction, stated that the California silica standard is much better written and easier to train employees on than the federal standard. He said that the federal standard and Table 1 are very confusing because they do not cover several procedures. He also stated that water should not be used as the first option. He said that using water creates an additional hazard that the California standard does a great job at eliminating. He urged the Board to convene an advisory committee to develop things more thoroughly.

Vince Hundley, San Diego Association of General Contractors, asked the Board to be cautious about adopting the federal rule and asked that an advisory committee be convened. He said that his organization appreciates the difference between the state and federal standard, and in some ways, the state standard is more stringent than the federal standard. He stated that it would be a mistake to let federal OSHA dictate what the California standard for silica should be for the following reasons:

- The federal standard has not been tested yet.
- The federal standard currently has lawsuits pending against it, which could hold it back or cause it to be changed.
- The effective date is less than a year away.
- Table 1 is confusing, not all-inclusive, and will become antiquated quickly due to workarounds or manipulations of the system.

He said that although the effective date is less than a year away, that gives stakeholders an opportunity to get involved, and through the advisory committee process, a more concrete standard could be developed that has consensus.

Dr. William Callahan, Associated Roofing Contractors of the Bay Area Counties, stated that his organization has signed on to the coalition letter. His organization opposes the use of the Horcher process for the following reasons:

- As a matter of principle, the Horcher process should not be invoked when a similar California standard already exists.
- Wholesale replacement of Section 1530.1 is wasteful, inappropriate, and disrespectful to the advisory committee process and the stakeholders who helped develop the existing state standard that has protected workers for the last 8 years.
- There are significant differences between the current California standard and the federal standard that need to be reconciled, and the Horcher process does not do that.

He also stated that his organization has concerns about using wet methods in the roofing industry. He said that this proposal will introduce the use of wet methods to sloped roof surfaces, where slip and fall hazards are created. He stated that the current state standard has an exception that addresses this. He also said that federal OSHA has expressed concerns about using wet methods on sloped roofs, but decided to mandate the use of wet methods anyway because fall protection is being used where wet methods are employed. He said that California does not have a fall protection regulation yet. He stated that adopting the federal silica standard will create a serious safety dilemma because it will promote the use of wet methods on roofs, which will ensure that workers are protected from long term exposure to crystalline silica, but at the same time, it will expose them to slips and falls, and they will be left totally unprotected from those slips and falls because fall protection is not currently required to be used in California where heights are less than 15 – 20 feet. He said that it makes no sense to adopt a standard that protects workers from a long term hazard, but at the same time exposes them to the immediate risk of serious injury or death. He asked the Board to reject the Horcher proposal for silica and hold an advisory committee to discuss this issue.

Julie Trost, Mason Contractors Association of California, stated that the current state standard is straightforward and has clear action steps that employers can take to control silica dust on a construction site, and therefore, California does not need to adopt the federal silica standard through the Horcher process. She said that the federal standard offers some additional guidelines that can be incorporated to augment the current state standard. She asked the Board to convene an advisory committee to work on a regulation that is enforceable in the field.

Jeff Barber, John Jackson Masonry, stated that he does not support adopting the federal standard because the federal standard does not embrace or utilize the current technologies available that employees need. He said that he does support convening an advisory committee to compare the current state standard with the federal standard and combining the good parts of both standards to develop a new state standard that is safe, practical, and feasible.

Ray Whitmore, Pacific Bay Masonry, stated that the current silica standard in California is sensible, workable, and understandable. He said that he is concerned about the provision in the federal standard that mandates using wet cutting systems because that would be very difficult to do, and there are very effective dry vacuum systems available that could be used instead.

He stated that if the mandated wet cutting provision is adopted in California, employees will have to go back to using gas-powered handheld saws because electric handheld saws cannot be used with water. He also said that there are challenges with using gas-powered handheld saws that don't exist when using vacuum systems, including handling of gas, the fumes, and the exhaust that it creates. He urged the Board to do further research on this before adopting this proposal.

Brian Miller, Rudolph and Sletten, asked the Board to halt the Horcher process and convene an advisory committee. He said that an advisory committee can come up with a more effective regulation in time to meet the December 2017 deadline. He also stated that water is a rare resource, and using wet methods uses up this resource and creates waste issues. He said that when wet methods are used on the job site, the water that is used gets mixed in with other hazardous waste and cannot be flushed down the drain. He stated that the water and waste must be dried back to a hard powder or hauled off the job site as hazardous waste, which are not easy tasks.

Roy Vlaovich, Zurich Insurance, stated that the federal standard needs to be further vetted before it is adopted. He said that there are too many unwise and impractical provisions in the federal standard that would not work in California. He asked the Board to convene an advisory committee to look into this issue further.

The following individuals also commented in opposition to the proposal and asked the Board to convene an advisory committee:

- **Cindy Sato, Construction Employer's Association**
- **Christopher Lee, representing United Contractors, Wall and Ceiling Alliance, and the Northern California Paint Finishing Contractors**

Kevin Bland, representing the Masonry Contractors Association of California, the Residential Contractors Association, and the California Framing Contractors Association, stated that the construction industry is ready to go to an advisory committee on this matter and help develop a regulation that will preserve the good things that are already in the current state standard. He said that there is enough time to do this before the December 2017 effective date. He stated that he would like to see the Board staff take the lead on this advisory committee because the Board staff will be more efficient and will expedite the process. He said that both labor and employer groups support sending this to an advisory committee for further discussion. He also stated that the current state standard recognizes the hazards associated with using wet cutting methods.

Joel Guth, IQ Power Tools, stated Table 1 is easy to use and understand and can easily be trained on, but it's not complete. He said that federal OSHA is currently working on adopting some additions to Table 1 that will include dry cutting options and vacuum systems. He stated that once that is complete, the Board should adopt the federal standard. He said that adopting the federal standard before that will create confusion for employers.

Doug Parker, Worksafe, stated that his organization feels that the Board is taking the right route by adopting the federal silica standard through the Horcher process. He said that 2 million construction workers are exposed to silica on the job, and 840,000 of them are

exposed to levels of silica that are in excess of the proposed permissible exposure limit (PEL) of 50 μ per cubic meter over an 9-hour time weighted average. He also stated that 300,000 workers in industries other than construction are exposed to silica, and 75,000 of them are exposed to levels of silica that are in excess of the proposed PEL. He stated that this rule will save 600 lives, and prevent 900 new cases of silica-related disease, every year, which will save \$8.5 million per year. He said that the PEL of 100 μ in the current state standard is not sufficient to protect workers. He stated that the preamble of the federal standard demonstrates that the rule is feasible because it gives employers two options to comply:

- Follow the contents of Table 1.
- Employers can adapt other methods and use better technology to comply with the 50 μ requirement.

He said that if the Board adopts a standard that deviates from the controls in Table 1, there will be consequences:

- The standard will not be substantially identical to the federal standard and will have to go through the regular rulemaking process. Because this is a health standard, it will have to go back to the Division for consideration of options.
- It is highly unlikely that federal OSHA will consider any deviations from Table 1 to be at least as effective as the federal standard.

He urged the Board to move this proposal forward.

Mr. Harrison stated that he supports the requests to convene an advisory committee on this issue, but he does not want to ignore what the Horcher process is trying to accomplish. He asked Ms. Hart to explain the Horcher process and the timeline associated with it. **Ms. Hart** stated that the Horcher process allows the Board to adopt a rulemaking within the 6-month timeframe that is mandated by federal OSHA, and the Board must adopt a rule that is at least as effective as the federal standard. She said that a standard regarding silica does exist in the Construction Safety Orders, but not in the General Industry Safety Orders, so a rulemaking is necessary to establish a standard for silica in general industry. She also stated that the silica standard in the Construction Safety Orders has places in it that will not be at least as effective as the federal standard, so rulemaking is needed to make them at least as effective as the federal standard. She said that if this proposal is adopted through the Horcher process, that will not be sufficient and additional follow-up rulemaking will be required, so the Board staff has been fully aware that an advisory committee will be needed. She stated that the Board must decide how it wants to proceed on this and direct the Board staff and Division accordingly.

Ms. Stock stated that she is in favor of continuing with the Horcher process because it has worked in the past and will expedite the process. She said that the PEL is different, which is significant and should be implemented immediately so that the state standard is at least as effective as the federal standard. She said that when the Board staff responds to comments, she would like clarification on whether or not the federal standard allows dry cutting.

Mr. Thomas asked Ms. Hart how long the Board has to take action on the Horcher proposal. **Ms. Hart** stated that action must be taken on the Horcher next month. **Mr. Thomas** asked Ms. Hart if the Board could also direct the Board staff to begin the process to convene an advisory committee because an advisory committee will be needed. **Ms. Hart** stated that the Board can direct the Board staff to begin putting together an advisory committee. She said that the Board staff will need to get in touch with federal OSHA to get some further insight and guidance from them. **Mr. Thomas** stated that he feels it is best to adopt the Horcher proposal and then convene an advisory committee to hear the comments and concerns of stakeholders so that the standard can be made better.

Ms. Smisko asked Ms. Hart to clarify whether or not dry cutting will be allowed between the time that the Horcher is adopted and the time that the advisory committee is convened. **Ms. Hart** stated that the effective date for the federal standard is June 23, 2017, and that date is also used in the Horcher. She said that employers may continue to use dry cutting methods until that date.

Ms. Quinlan stated that no one seems to be objecting to the proposed PEL in the Horcher, and general industry needs a silica standard, so Section 5155 could be Horchered. She said that the main issue seems to be whether or not dry cutting should be allowed, and even if the Board adopts the entire federal standard through the Horcher process, if an advisory committee is convened following that, it will primarily focus on that. **Ms. Smisko** asked if the Board can direct the advisory committee to focus on that. **Mr. Manieri** stated that the advisory committee would consider the comments received today and work expeditiously to address them. He said that it would be helpful if federal OSHA provided an update to the Board staff regarding the status of the litigation that has been filed against the federal rule before next month's meeting.

Ms. Stock stated that she would like clarification on whether or not the federal standard has any flexibility regarding the use of dry cutting and wet cutting methods. She said that some of the folks who testified today said that dry cutting is allowed in certain circumstances, but other said that it is not allowed.

Mr. Thomas asked for an advisory committee to be convened. **Ms. Smisko** stated that the health piece of this regulation has already been established with the PEL, so the safety piece needs to be fully considered. She said that she feels it would be best if the Board staff takes the lead on this advisory committee.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 12:50 p.m.

III. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 12:50 p.m., August 18, 2016, in The Council Chambers of the Walnut Creek City Hall, Walnut Creek, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Michael Weinstein
AIDS Healthcare Foundation
Petition File No. 557

Eric Paul Leue
Free Speech Coalition
Petition File No. 560

Each petitioner requests differing amendments to Title 8 occupational health standards potentially impacting the adult filmmaking industry— most particularly existing Section 5193.

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

MOTION

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

Mr. Harrison stated that the discussion of rhetoric and personal attacks that both sides have displayed are not helpful, and he would like to see those kept off the table as the process moves forward. **Ms. Quinlan** echoed this comment. Mr. Harrison said he would also like both sides to keep the discussion focused on the industry, rather than the general public. He said that he will not support the underground economy, or efforts to avoid regulation, such as delaying the release of an adult film to avoid a statute of limitations. He stated that he supports sending this issue to an advisory committee with both sides participating in the advisory committee process.

Ms. Quinlan stated that she supports sending this issue to an advisory committee, but regardless of whatever the committee decides, the resulting standard must still be at least as effective as the federal standard. She said that the federal standard requires that barrier protection be used when bloodborne pathogens are present, so even if other options are discussed during the advisory committee process, they cannot be substitutes for barrier protection.

Ms. Stock stated that a lot of work has already been done regarding this issue, and she is concerned that the advisory committee may spend time focusing on items that have already been discussed. She said that the advisory committee needs to exclude irrelevant or already-determined topics, such as the effectiveness of testing versus the effectiveness of condoms, so that it can move as expeditiously as possible to finalize this once and for all. She also stated that the advisory committee needs to keep in mind the fact that the proposal that they come up with must be at least as effective as the federal standard.

Mr. Harrison stated that action was taken back in February directing the Board staff and Division staff to re-initiate the advisory and rulemaking process regarding this issue, and because of that, he is hesitant to limit the topics of discussion that may come up during the advisory committee process if it means that the advisory committee could come up with a consensus standard.

Ms. Smisko stated that she would like all of the parties involved in the advisory committee process to be creative enough to find a solution that meets federal OSHA's requirements, yet also meets the needs of the stakeholders involved. She said that she is concerned about privacy surrounding an employee's medical information, so clear requirements need to be developed that protect an employee's personal health information. She also stated that in employment situations, employees are not allowed to decide what risks they are willing to take. She said that they must follow the health and safety code.

Mr. Thomas stated that regardless of what is said during the advisory committee, the federal rules require adult film performers to wear condoms while they are working.

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

2. Lew Barbe
Petition File No. 558

Petitioner requests the Board amend Title 8, General Industry Safety Orders, Section 3210, with regard to deleting exception 9.

Ms. Hart summarized the history and purpose of the petition, and stated that the proposed recommendation is to grant the petition request to the extent that the Board staff further investigate accident data related to employees falling off of mobile vehicles and equipment where practicable fall protection measures were available, but not used. Board staff will then review the findings and convene an advisory committee to discuss making amendments to Section 3210(b) or to exception 9, if warranted by the accident data.

MOTION

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

Mr. Harrison stated that the Division staff and the Board staff seem to have different opinions on what to do regarding this petition, and he is not sure which way to go. **Ms. Hart** stated that the decision at hand is whether or not to have the Board staff go back and review the accident data. She said that the Board staff does not yet know if there is a true problem to fix. She stated that the Board staff does not know who is taking advantage of the exception or how it is being applied, so reviewing the accident data is necessary to determine if a true problem exists. She said that the Board staff spoke to Tram (petitioner's contact person) regarding the costs of this possible change in the regulations, and the costs will be rather significant, so it is important to make sure that the change is necessary first. She stated that after the Board staff has completed its review of the accident data, it will report back to the

Board regarding whether or not an advisory committee will be convened.

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

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

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

MOTION

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

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

C. OTHER

1. Legislative Update

Mr. Healy stated that the following bills are currently under suspension and were unlikely to move forward before the end of the legislative session:

- AB 1050: This bill pertains to permanent variance procedures regarding conveyances.
- AB 2272: This bill pertains to plume hazards in medical settings.
- AB 2539: This bill pertains to working conditions in the modeling industry.
- SB 1167: This bill pertains to developing regulations regarding indoor heat illness prevention.

Mr. Healy stated that AB 2895, which pertains, in part, to injury and illness prevention plan accessibility for employees who speak languages other than English, is still active and might possibly be passed before the end of the legislative session.

Ms. Stock asked Mr. Healy for clarification on the suspension process. She asked if items that are placed under suspension are automatically brought up again later or if someone must bring them up. **Mr. Healy** stated that items placed under suspension can be brought up and reactivated at a later session, but he is not sure how long they can remain under suspension. **Ms. Hart** stated that the Board staff will provide more information for the Board regarding the suspension process. She said that if a bill is introduced during a 2-year legislative session, it can come back from suspension in the next year, but if a bill is still under suspension at the end of the 2-year session, it dies and must be reintroduced.

2. Executive Officer's Report

Ms. Hart stated that the Board staff submitted its comments on the latest version of the hotel housekeeping proposal to the Division on July 26. She said that the Board staff anticipates receiving the rulemaking package back from the Division with the revised documents by the end of September. She stated that when the Board staff receives those documents, it will finalize them and prepare them for submission to DIR and LWDA for their approvals before noticing it for public hearing.

Ms. Hart stated that a 15-day notice was issued regarding the proposal for workplace violence prevention in healthcare, and the comment period ended yesterday. She said that 9 comments were received, and they had a lot of substance to them. She stated that the Division will review and respond to those comments and make any necessary changes to the proposal. She said that the proposal should come up for adoption in either September or October. She said that action will need to be taken on it before the one-year clock runs out on October 30.

Ms. Hart stated that the Board staff is moving forward with residential fall protection. She said that federal OSHA is going to forward a letter to the Board staff to discuss the draft regulatory language that was provided to stakeholders at the advisory committee meetings. She stated that there will also be a teleconference with federal OSHA to discuss their findings and recommendations, and the Board staff will consider their suggestions and make changes as appropriate. She said that after that, the Board staff should be ready to move forward with proposed language. She stated that the rulemaking documents are ready, but the economic and fiscal impact analysis will be a bit difficult because the Board staff believes that the cost to implement these revisions will exceed \$50 million. She said that when the cost exceeds \$50 million, there is an additional process that must be gone through, and the Board staff has never been through it before. She stated that the Board staff has initiated discussions with UC Berkeley to do the Standardized Regulatory Impact Analysis (SRIA), and that UC Berkeley will get back to the Board staff in another week or so to tell them what they need, along with the scope and time frame for this service. She said that it is not a quick process and will probably take 6 to 9 months or more, and this proposal will be costly for both business owners and the Board staff to commission the report. She also stated that she has discussed the economic and fiscal impact needs with an economist at federal OSHA, as well as the California-specific requirements surrounding the required analysis. She said that the economist said that he would review cost estimates from 1994, which will take some time because they apply to all of construction, while the Board staff is focusing only on residential construction.

Ms. Hart stated that the Board staff has hired Shelby Kynaston to fill the Office Technician/Variance Secretary position that was recently vacated by Nai Saechao. She said that Shelby will start on August 29.

Ms. Stock asked about the status of setting up an advisory committee to begin working on a proposal to address workplace violence prevention in general industry. **Mr. Berg** stated that the Division is working on finishing up the process for workplace violence prevention

in healthcare, and then they will get to work on convening an advisory committee to begin working on workplace violence prevention in general industry. **Ms. Hart** stated that the Division will provide an update on all of its rulemaking projects at a meeting in the near future.

3. Future Agenda Items

No other future agenda items were suggested.

A. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:29 p.m.