

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
June 15, 2017
Sacramento, 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., June 15, 2017, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

Dave Thomas
David Harrison
Chris Laszcz-Davis
Barbara Smisko
Laura Stock

Board Member Absent

Patty Quinlan

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

Mitchel Kettle, Ironworkers Local 377	Daniel Salgado, Unite Here
Cynthia L. Rice, CRLA Foundation	Jamie Carlile, SCE
Anne Katten, CRLA Foundation	Hart Keeble, Ironworkers Local 416
Cindy Sato, CEA	Peter Melton, DIR
Amalia Neidhardt, DOSH	Michael W. Strunk, IUOE Local 3
Jay Weir, AT&T	Emma Wilson, CDPR
Trina Caton, Keenan	Len Welsh
Karl Pineo, Ironworkers Local 118	Dan Leacox, Leacox & Associates
Marti Fisher, CalChamber	Karen Tynan, Free Speech Coalition
Jane Thomason, CNA/NNU	Kevin Bland, Ogletree Deakins
Mark Schacht, CRLAF	Timothy Shadix, Worksafe
Michael Musser, CA Teachers Association	Adam Cohen, AHF

Mitch Seaman, CA Labor Federation
Sarah Smith, BOE
Greg McClelland, Western Steel Council
Elizabeth Treanor, PRR

Bob Ford EPMI, Cal-EPA/DPR
Steve Rank, Ironworkers Int'l. Union
Gail Blanchard-Saiger, CHA
Saskia Kim, CNA/NNU

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.

Daniel Salgado, Unite Here Local 49 Sacramento, stated that his organization supports the hotel housekeeping proposal as it is written, with a few minor, but important, changes that Unite Here suggested in the letter that it sent to the Board last month. He said that this proposal will make a significant improvement in protecting hotel housekeepers from injury. He asked the Division to respond to comments as quickly as possible so that a vote on the proposal can take place soon, and to not make any changes to the proposal that could weaken it. **Maria Garcia, Hotel Housekeeper, Unite Here Local 49 Sacramento**, echoed Mr. Salgado's comments.

Mark Schacht, CA Rural Legal Assistance Foundation, stated that his organization is opposed to Petition 562 because there is legislation working its way through the process that will accomplish the same goal of giving employees the right to access their employer's IIPP. He said that the legislative process is much quicker than the administrative process, and that the bill making its way through the process could be on the Governor's desk by mid-September and acted on before October 15. He stated that the bill is currently in the Senate Labor Committee, and his organization is having discussions with employers and opposing parties to come up with ways to address their concerns. He asked the Board to deny the petition. **Mitch Seaman, CA Labor Federation**, echoed this comment.

Timothy Shadix, Worksafe, stated that his organization supports employees having access to their employer's injury and illness prevention plan (IIPP), but Petition 562 is not the right way to go about it. He said that there are legislative negotiations and discussions going on between advocates and employers regarding AB 978, which deals with how access to the IIPP can be determined, and this is the best way to handle this issue. He stated that if Petition 562 is passed, it will complicate matters and will not be a good use of the Board and Division staff's time and resources. He asked the Board to deny Petition 562. **Mitch Seaman, CA Labor Federation**, echoed this comment.

Dan Leacox, Leacox & Associates, stated that approving Petition 562 today will not affect or delay any ongoing legislation. He said that the Board's decision today will simply determine whether or not an advisory committee will be convened to review existing rules regarding employee access to an employer's IIPP to determine if these rules need further clarification. He asked the Board to approve Petition 562.

Marti Fisher, CA Chamber of Commerce, stated that her organization supports Petition 562, as well as the Board staff's decision to convene an advisory committee and maintain the integrity of the petition process by recommending that the scope of the advisory committee be

limited to the scope of the petition. She said that providing employees access to an employer's IIPP is appropriate, and if both Petition 562 and the similar legislation that is currently in process do not pass, there will be no mechanism to advance this issue forward. She stated that convening an advisory committee of stakeholders will help determine what the best course of action will be so that this issue can continue moving forward.

Elizabeth Treanor, Phylmar Regulatory Roundtable, stated that the IIPP can be a very large document because it includes all of the procedures necessary to comply with various rules, and some IIPP's can be thousands of pages long. She said that her organization believes that it is more important for employees to understand how employers identify and mitigate hazards, rather than requiring employers to provide copies of the entire IIPP to employees upon request, which would be expensive for employers and not helpful to employees. She stated that having a simple provision requiring employers to provide employees access to the IIPP is sufficient. She asked the Board to move Petition 562 forward so that employees can have access to the IIPP, regardless of the outcome of the current legislation.

Cynthia Rice, CA Rural Legal Assistance Foundation, stated that Petition 562 should be denied because the legislature has experience with creating rules that define when employees should have access to mandatory records that are kept by an employer, and therefore, it is better to handle the issue of employee access to an IIPP through legislation. She said that shifting this issue to the rulemaking process will result in greater delays in getting employees access to an employer's IIPP. She stated that it is best to wait and see what the outcome of the legislative process will be, and then take regulatory action if necessary.

Kevin Bland, representing the CFCA, RCA, and Western Steel Council, stated that his organizations support the adoption of Petition 562. He said that he is surprised to hear the opposition ask the Board to wait and see what the outcome will be with the legislation regarding employee access to an employer's IIPP because multiple proposals have been through this same process in the past. He stated that many issues have gone through the petition and/or rulemaking process while simultaneously going through the legislative process, and by doing this, it allows the Board staff and Division to be ahead of the game by bringing stakeholders together through the advisory committee process to put together an effective rule that can be complied with. He asked the Board to vote "aye" on Petition 562.

Karen Tynan, Free Speech Coalition, stated that her organization is awaiting further word from the Division as to whether or not more advisory committee meetings will be held regarding Petitions 557 and 560 for bloodborne pathogen protection in the adult film industry. She said that her organization would like to see an advisory committee held in southern California so that adult film workers in that area can participate, and so that an industry-appropriate regulation can be developed by 2017. **Verta, Adult Performer Advocacy Committee**, echoed Ms. Tynan's comments.

Adam Cohen, AIDS Healthcare Foundation, stated that his organization would like an update on what has been happening with Petitions 557 and 560 since the January 31, 2017 advisory committee meeting. He said that studies show that 25% of adult film performers are infected with a sexually transmitted infection, but the adult film industry believes that any performer who becomes infected with an STI was infected by someone outside the industry. He stated that adult film studios do not always follow the industry's current 14-day testing protocol. He said that some studios accept 30-day testing instead, and some do not require any

testing at all. He also stated that medical and public health professionals recommend that performers undergo anatomical site-specific testing, including throat and rectal swabs, to test for chlamydia and gonorrhea. He said that testing a performer's urine for these diseases does not detect them in the throat or the rectum, and the industry only performs anatomical site-specific tests when it determines that a performer is "at risk". He stated that performers who engage in oral and rectal sex without a condom, and who do not necessarily need to have these anatomical site-specific tests done, can be cleared to work by the industry's own standards without receiving those tests. He also said that the industry does not have control over production of adult films. He stated that the industry only implements a moratorium on production when there is a possible HIV positive test, or when there is a "cluster" of other infections, which requires a 10% increase in the number of performers that are infected over the usual. He asked the Division to address this issue quickly, since December 2019 will be the 10-year anniversary of when the AHF filed its initial petition to address this issue.

Kevin Bland, representing the Free Speech Coalition, stated that the advisory committee process is very important to his organization, and the issue regarding bloodborne pathogen protection in the adult film industry should be discussed in that forum, not during the Board's monthly meetings. He said that his organization is committed to the rulemaking and advisory committee processes to develop a safe regulation that protects adult film workers from sexually transmitted infections.

Cindy Sato, Construction Employers Association, stated that her organization has concerns regarding the proposal for reinforcing steel and post-tensioning operations that the Board will be voting on today. She said that the vague information that was provided regarding 14 accidents related to reinforcing steel and post-tensioning operations makes it difficult to evaluate whether or not the proposed rule could have prevented these accidents. She stated that the proposal needs to be consistent with other safety standards by not being overly burdensome to the controlling employer through the prescriptive detailing of the controlling employer's responsibilities, while at the same time eliminating responsibilities from the creating and/or exposing employer, thereby shifting risk from the reinforcing steel contractor to the controlling contractor. She said that her organization is disappointed to see that all of the controlling contractor requirements have remained in the proposal, and they are concerned that the two systems for guide bracing and supports are not required to be designed by a licensed engineer. She said that a professional engineer meets the definition of a qualified person as required in the proposal, but a foreman or project engineer does not meet the definition of a professional engineer. She stated that a professional engineer should design systems for guiding and bracing supports because a professional engineer can do the proper calculations. She also said that regardless of the exceptions listed in the proposal, CA Code of Regulations Section 1712(i) still requires ironworkers to wear full fall protection up to 24 feet, and no other line of work has this exception.

Len Welsh, representing Ironworkers International and the Western Steel Council, stated that his organizations support the proposal for reinforcing steel and post-tensioning operations because it is long overdue and mirrors what was done to Section 1710 regarding steel erection. He said that this proposal will make reinforcing steel and post-tensioning operation requirements consistent with the requirements for steel erection, which is very similar and equally dangerous. He stated that this proposal modernizes the requirements for reinforcing steel and post-tensioning operations and improves the work flow and worker safety by identifying the roles that each contractor is responsible for. He asked the Board to

vote “aye” on this proposal.

Hart Keeble, Ironworkers Local 416, stated that many workers have died or been injured doing reinforcing steel and post-tensioning operations, and this proposal will go a long way in protecting workers and keeping them safe. He asked the Board to vote “aye” on this proposal. **Kevin Bland, representing the CFCA, RCA, and Western Steel Council**, echoed this comment.

Greg McClelland, Western Steel Council, stated that during the process for the reinforcing steel and post-tensioning operations rulemaking, time was given for everyone to voice their opinions and concerns, and those concerns were addressed. He said that this proposal will not remove the responsibility of providing a safe working environment for ironworkers, and it has strong support from employers. He stated that ironworkers wear many hats and are skilled in many trades, and this proposal will make sure that all of them are covered.

Steve Rank, Ironworkers International Union, stated that his organization supports the proposal for reinforcing steel and post-tensioning operations because ironworkers spend 50% or more of their time doing reinforcing steel and post-tensioning work, and this proposal addresses several issues that affect them, such as:

- Hoisting and rigging rebar assemblies
- Impalement issues
- Formwork stability
- Written notification that the formwork is structurally sound
- Training requirements

Mr. Rank said that when ironworkers arrive on the job site, they feel like second-class ironworkers because they are not informed about site conditions. He said that in some cases, the site conditions are similar to a mud hole, so they are not able to set up their equipment safely. He stated that giving ironworkers information regarding the site conditions protects ironworkers and all trades that are working on the job site. He said that steel erection controlling contractors have not had a problem being responsible for site conditions, controlling access to the job site, and controlling the safe delivery of materials to the job site. He stated that this has actually expedited the work schedule, as well as increased productivity and safety, so ironworkers deserve to have the same protections. He said that this standard updates the antiquated standard from the 1970’s and does not overreach. He stated that the reason there is no accident data available is because it is misclassified by the people doing investigations, but there is data to support the fact that there have been fatalities and serious injuries. He also said that the ANSI A10 has reviewed and almost unanimously accepted this proposal, and during the advisory committee process, there was no opposition to this proposal. He asked the Board to vote “aye” on the proposal for reinforcing steel and post-tensioning operations.

The following individual also urged the Board to adopt the reinforcing steel and post-tensioning operations proposal:

- **Mitchel Kettle, Ironworkers Local 377 San Francisco**

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:04 a.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 11:04 a.m., June 15, 2017, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
 Sections 1711, 1712, 1713, 1717, and 1721
 **Reinforcing Steel Concrete Construction and Post-Tensioning
 Operations**

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

MOTION

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

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

2. TITLE 8 **GENERAL INDUSTRY SAFETY ORDERS**
 Section 3650(t)(17)
 Powered Industrial Truck Operation – Exception

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 Ms. Stock and seconded by Mr. Harrison that the Board adopt the proposal.

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

B. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Michael Gunlund, CHST
Kroeker, Inc.
Petition File No. 561

Petitioner requests the Board amend Title 8, Construction Safety Orders, Section 1735(v), to include an alternative design that will prevent mechanical equipment from running over the edge of a floor opening.

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

MOTION

A motion was made by Ms. Laszcz-Davis and seconded by Ms. Stock that the Board adopt the proposed decision denying the petition.

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

2. Dan Leacox
Leacox & Associates
Petition File No. 562

Petitioner requests the Board amend Title 8, General Industry Safety Orders, Section 3203, regarding the Injury and Illness Prevention Program (IIPP), to allow employee access to the employer’s IIPP program.

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

MOTION

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

Mr. Harrison stated that this petition was received in January. He asked how long the Board has to take action on it. **Ms. Hart** stated that according to the Labor Code, the Board has 6 months to take action following receipt of the petition request, so the Board could delay taking action until the July meeting. **Mr. Harrison** stated that he would much rather wait to see what the outcome is of the legislative process. He said that after the legislative process is complete, the Board can take further action at that time if necessary.

Ms. Stock stated that is it very good to hear that everyone agrees that employees should be able to access an employer’s IIPP, but this issue needs to be addressed in the most effective way possible, which is through the legislative process. She said that the regulatory process can take many years to complete, but the legislative process only takes a few months to complete, so the Board should wait until the legislative process concludes before taking any further action on this issue. She stated that if the Board moves this petition forward, it could derail the legislative process. She also said that it takes a lot of time and resources to plan and convene advisory committees, and to convene one at this time regarding this issue does not make sense.

Ms. Hart asked Mr. Berg if a regulation would still be needed in order for the Division to enforce the new Labor Code containing the updated language from the legislation if it passes, or can the Division cite employers and do enforcement based on the would-be Labor Code provision. **Mr. Berg** stated that the Division enforces Title 8, not the Labor Code. **Ms. Hart** stated that when the legislative process has concluded, if it passes, this issue would still need

to go through the regulatory rulemaking process in order for the Division to be able to enforce it.

Ms. Laszcz-Davis stated that she supports the petition because she has seen both the rulemaking process and the legislative process, and the legislative process is not any quicker than the rulemaking process. She said that California has a benchmark, thoughtful rulemaking process, and she believes that is the best way to go in this case.

Mr. Berg stated that Steve Smith informed him that when the Labor Code is copied identically, the proposal does not have to go through the regular rulemaking process. **Ms. Hart** stated that if the Labor Code language is written in such a way that it is enforceable by the Division, it could become a regulation through the Section 100 process, which is much quicker and simpler.

Ms. Stock stated that she still feels that the legislative process will be a quicker way to fix this very small gap in the law. **Mr. Harrison** echoed Ms. Stock's comment.

Mr. Thomas stated that he does not want to wait for the legislative process to conclude. He said that the legislature may decide to not do anything. He stated that adopting this petition will only establish an advisory committee to look into this issue, and if the legislation passes, then the Board will decide what to do at that time. He said that an advisory committee will need to be established at some point, so now is a good time, and doing so now might put pressure on the legislature to act.

Ms. Stock stated that when the legislative process concludes, if the legislation does not pass, a petition can be filed at that time, and an advisory committee can be convened then. That way, the Board and Division staff's time and resources will not be wasted.

A roll call was taken. Mr. Harrison and Ms. Stock voted "no", and all other members present voted "aye." The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that items A-O on the consent calendar are ready for consideration, and possible adoption, by the Board.

MOTION

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

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

D. OTHER

1. Board consideration of advisory committee findings and recommendations concerning question of need for industry-specific regulations related to the

activities of facilities issued a license pursuant to Chapter 3.5, of Division 8, of the Business and Professions Code (Medical Cannabis Regulation and Safety Act), pursuant to Labor Code Section 147.5.

Amalia Neidhardt, Senior Safety Engineer, stated that California Labor Code section 147.5, enacted by Assembly Bill 266 in 2015, required the Division to convene an advisory committee before January 1, 2017 to evaluate whether there is a need to develop industry-specific regulations related to the activities of medical cannabis facilities. She said that prior to convening the advisory committee, the Division coordinated with state agencies that are involved in licensing the cannabis industry and researched what other states and national agencies already recommend regarding worker safety in the cannabis industry. She stated that the Division reviewed the licensing regulations drafted by those agencies and will continue to track and monitor the rulemaking activities undertaken by these agencies to ensure that regulations that are developed regarding worker safety in the cannabis industry do not conflict with Title 8 regulations.

Ms. Neidhardt stated that on October 25, 2016, an advisory committee was convened, and approximately 100 stakeholders attended from a wide variety of aspects involved in the cannabis industry, many of whom provided comments. She said that the Division provided a memo dated June 2, 2017 to the Board Members that highlights the comments received, as well as the Division's response to those comments. [Please see the file copy of the Board packet to view this memo] She stated that although many of the comments indicated that many people in the industry lack awareness about the Cal/OSHA program, employer responsibilities, and worker rights, the health and safety hazards discussed during the advisory committee can be addressed through existing Title 8 regulations. She said that the industry could benefit from outreach and education efforts to raise awareness about their responsibilities and existing Title 8 regulations, but the advisory committee concluded that at this time, there is no need to develop industry-specific regulations related to the activities of the medical cannabis industry.

MOTION

The following motion was made by Mr. Thomas and seconded by Ms. Stock:

Having considered the Division reported findings and recommendation of the advisory committee convened pursuant to labor code section 147.5, it is the decision of the board that a need has not yet been established for adoption of industry-specific regulations related to the activities of facilities issued a license pursuant to chapter 3.5 of Division 8 of the business and professions code.

Ms. Smisko asked if it is possible for someone to bring a proposed regulation forward in the future if necessary. **Ms. Hart** stated that regulation can be brought forward in the future if needed. She said that the Division feels that at this time, the standards in Title 8 are adequate to address this industry. She said that since this industry is new, it will need guidance and support from the Division, and if necessary, regulations can be developed.

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

2. Legislative Update

Mr. Healy provided updates on the following bills:

- AB 402 pertains to medical plume. This bill has been referred to the Senate Labor and Industrial Relations Committee.
- AB 978 pertains to employees' right to access their workplace's injury and illness prevention program upon request. This bill has passed the Assembly and moved to the Senate, where it had its first reading in the Rules Committee before undergoing some amendments. A summary of those amendments is in the written Legislative Update that was included in the Board packet. One of those amendments includes extending the response time to 10 days.
- SB 772 exempts any occupational safety and health standard and order from the standardized regulatory impact analysis requirement of the Administrative Procedures Act that has the \$50 million threshold for extensive economic analysis. This bill has been referred to the Assembly Labor and Employment Committee.

3. Executive Officer's Report

Ms. Hart stated that the Board staff has hired Elisa Koski to the vacant Senior Safety Engineer position in the office, and she will start on July 17.

Ms. Stock asked Ms. Hart for an update regarding the hotel housekeeping proposal and bloodborne pathogen protection in the adult film industry. **Ms. Hart** stated that she is not aware of any further advisory committees taking place, or any other action occurring, regarding bloodborne pathogen protection in the adult film industry, but for hotel housekeeping, the Division is reviewing and responding to comments received during the 45-day comment period and at the public hearing. She said that once the Division finishes their review, they will determine what to do next.

4. Future Agenda Items

Ms. Stock asked the Division to provide an update at next month's meeting regarding bloodborne pathogen protection in the adult film industry.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:41 a.m.