

## OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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### SUMMARY PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING March 17, 2016 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 10:02 a.m., March 17, 2016, in the Auditorium of the State Resources Building, Sacramento, California.

##### ATTENDANCE

##### Board Members Present

Dave Thomas  
Dr. Robert Blink  
David Harrison  
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

David Shiraishi, FedOSHA	Kevin Bland, Ogletree Deakins
David Jones, AGC of CA	Dan Leacox, Greenberg Traurig
Steve Johnson, CJA	Amber Novey, LIUNA
Juanita Namiq, Local 49 Thunder Valley	Larry Wong, UC office of the President
Roxana Tapig, Unite Here	Aamir Deen, Unite Here
Reshua Shosna, Unite Here	Bryan Little, CFBP
Justin Henry, DME Innovations, Inc.	Isela Martinez, Unite Here Local 49
Adam Cohen AIDS Healthcare Foundation	Eric Paul Leue, Free Speech Coalition
Michael Musser, CA Teachers Association	Marti Fisher, CalChamber
Kevin Thompson, Cal/OSHA Reporter	Elizabeth Treanor, PRR

Jenny Amaya, Sheraton  
Angelina Garcia, Sheraton

Julia Gonzalez, Sheraton  
Anton Simson, DME Innovations, Inc.

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.

**Anton Simson** showed a video demonstrating the use of a self-transfer sling device that he invented. He said that this device is designed to lift and transfer patients from a bed to a wheelchair or gurney and will help to reduce the number of injuries that nurses and caregivers sustain from lifting patients. He stated that AB 1136 requires that new mechanical devices are to be used in hospitals and institutions to lift patients, and this device will help caregivers to comply. He said that patients can use this device to lift themselves with minimal or no assistance from a caregiver because it replaces the cloth sling with a self-installed mechanism that is easy to operate. He stated that there are two sets of controls on this device, one for the patient and one for the caregiver, so that either of them can easily perform the transfer. He said that it uses a commercial overhead hoist to lift the patient, and the device locks in such a way that the patient will not be able to fall out.

**Isela Martinez, Unite Here Local 49**, thanked the Division for the revised draft of the hotel housekeeping proposal that it released in February. She asked the Division to finalize the proposal and regulatory rulemaking package and submit it to DIR staff by April 1 for review so that it can remain on course to be submitted to the Board staff by June 1 for noticing, and then for public hearing in 2016. She also asked the Board to add an item to its monthly meeting agenda to receive an update from the Division on this proposal so the public will know whether or not progress is being made.

**Adam Cohen, AIDS Healthcare Foundation**, stated that his organization is disappointed with last month's discussion and decision on the proposed Section 5193.1 regarding sexually transmitted infections in the adult film industry. He said that the industry's testing scheme is not comprehensive because it does not test for oral or rectal forms of gonorrhea and chlamydia, and does not test for all types of viruses, such as HPV, which is a known carcinogen. He also stated that the industry's testing scheme is not implemented across the board. He said that some studios test every 30 days, while others test every 14 days, and others do not test at all. He stated that condoms are not optional. He stated that if a performer gets HIV, it will cost \$300,000 for a lifetime of treatment, and the treatment will be paid for by taxpayers. He said that if the Division removes the parts of 5193.1 that the FSC does not like, it will not meet the minimum standards that are required by federal OSHA. He asked the Board to consider the new petition that AHF filed and to provide a timeline on it as it moves forward.

**Kevin Bland, representing the Free Speech Coalition**, thanked the Board for listening to the stakeholders who have a real vested interest in occupational safety and health for adult film workers. He said that his organization appreciates the time and consideration that the Board gave regarding the proposal for sexually transmitted infections in the adult film industry. **Eric**

**Leue, Free Speech Coalition, and Marti Fisher, CalChamber,** echoed Mr. Bland's comments.

**Eric Leue, Free Speech Coalition,** stated that his organization submitted a letter to Juliann Sum in the beginning of March requesting a meeting to discuss the next steps following last month's decision to restart the rulemaking process for sexually transmitted infections in the adult film industry. He said that his organization suggested 3 meeting dates and listed a phone number, email address, and mailing address for the Division to get in touch with them, but the Division has not responded. He stated that his organization is hopeful that the Division will respond soon and include adult film workers in the process.

**Jenny Amaya, Housekeeper, Sheraton Grand Hotel,** thanked the Division for adding important language to the recent version of the hotel housekeeping proposal, such as adding "forceful exertion" to the list of risk factors. She asked the Division to define what "control measures" means and name the tools that hotels should consider using to prevent housekeeper injuries. She said that these tools include, but are not limited to, mops, long-handled tools, fitted sheets, and lightweight or motorized carts. She stated that many hotels don't know about these tools, so it is important to name them in the proposal.

## II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 10:34 a.m., March 17, 2016, in the Auditorium of the State Resources Building, Sacramento, California.

### A. 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 adopting the items on the consent calendar.

### 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. Executive Officer's Report

Ms. Hart stated that the monthly legislative update has been added again to the Board packet and will be added to the monthly agenda. She said that the legislature is back in full session, and there are several bills that pertain to the Standards Board, including the following:

- AB 1050: This bill pertains to permanent variances for conveyances that are covered under the Elevator Safety Orders. This bill will require the applicant to provide a copy of the hearing notice to the union that represents elevator workers and to the workers who will be performing the tasks pursuant to the proposed variance or their authorized representative. She said that a similar bill was submitted last year, but it did not pass.
- AB 2272: This bill will require the Board to adopt standards to protect healthcare workers and patients from plume.
- AB 2539: This bill will require the Board to adopt regulations specifying that models must undergo no fewer than 3 medical checkups per year and receive a good health certification. This bill will also require models to have a nutrition consultation with a healthcare professional prior to employment with a modeling agency.
- SB 1167: This bill pertains to indoor heat regulations and requires the Division present a proposal to the Board for adoption by July 1, 2017 that implements a heat illness and injury prevention standard for indoor workers. This bill requires this proposal to provide protection that is equal to, or greater than, the protection that is provided in the regulations for outdoor heat.

She said that these bills are in their infancy, and the Board staff will provide updates on them as they become available.

**Ms. Stock** asked if unions are already supposed to be notified when there is an elevator variance. **Ms. Hart** stated that for elevator variances, employers are obligated to notify their employees about a variance, but the rules for conveyances are different because the conveyance owner is the building owner, not the elevator employer. She said that this bill would give unions the right to be more involved in the system. She stated that the Board staff currently gives the unions notification of variance hearings as a courtesy, and this bill would shift the notification to the applicant.

**Ms. Hart** stated that the Board staff is moving expeditiously to follow the Board's direction to comply with federal OSHA's 6-foot fall protection trigger height for residential construction. She said that an advisory committee will be held on April 11 in Sacramento regarding this. She stated that the information regarding this advisory committee meeting has been distributed to the advisory committee members and will be available online later today. She said that federal OSHA has been invited to attend the meeting. She stated that the Board staff has decided to limit the focus to residential construction because the ground work for applying this to all of construction has not been laid. She said that the Board staff only became aware of the fact that this issue applies to all of construction back in January, and to apply it to all of construction will be a lengthy process. She stated that the Board staff has met with stakeholders and developed and

circulated a proposal to the advisory committee members that should satisfy federal OSHA's immediate concerns.

Ms. Hart stated that the Division will provide its quarterly update on rulemakings and other projects at next month's meeting. She said that the proposal for hotel housekeeping is on track to be submitted to the Board staff in June. She also stated that a 15-day notice will be issued regarding the proposal for workplace violence prevention in healthcare, and she is hopeful that the proposal will be adopted before the July 1, 2016 deadline that is noted in SB 1299.

Ms. Hart stated that the AIDS Healthcare Foundation filed a new petition regarding sexually transmitted infections in the adult film industry. She said that this petition will go through the normal petition process, even though it is similar to the first petition that initiated the rulemaking process for the proposal that was voted down last month. She stated that the Division has 60 days to review the petition request, and a petition decision will come before the Board within 6 months of the date that the petition was filed, hopefully early this summer. She said that the Division was requested by the Board last month to restart the rulemaking process on this and to involve all stakeholders in the process.

**Ms. Stock** asked the Division to give special consideration to the Board's motion last month to restart the process for developing a proposal to address sexually transmitted infections, and to please involve all stakeholders in the process. She said that she fears the process will take many years to complete, just like it did the first time. She encouraged the Division to start where it left off with the last proposal and address the concerns that were raised last month, most of which appear to be easy fixes. She also stated that she is concerned about the public's perception of what the current law states. She said that the current law does require adult film performers to use condoms, and she asked the Division if there is anything else that it can do to educate the public and clarify to the adult film industry what the law says. **Ms. Hart** stated that the Division will look into this further and provide more information at next month's meeting.

**Ms. Stock** asked about the timeline for developing a proposal to address workplace violence prevention in general industry. She said that she has asked about this several times over the last few months. She stated that the framework for the proposal to prevent workplace violence in healthcare has been laid, so it is time to begin setting up an advisory committee to develop a workplace violence prevention standard that covers all workplaces. **Ms. Hart** stated that the Division will provide an update on this next month as part of its quarterly update.

**Ms. Hart** stated that the Board staff has not been successful in filling the open Senior Safety Engineer and Associate Safety Engineer positions that have been vacant since Marty Tamayo and Conrad Tolson retired. She said that the Senior Safety Engineer position is being re-advertised due to a glitch in the personnel office that did not allow everyone who was eligible to be reached and considered with contact letters the first time

that it was advertised. She stated that the Board staff is looking to reach as many interested people as possible.

2. Future Agenda Items

**Ms. Hart** stated that the Division will do a presentation at next month's meeting to update the Board on Petition 549 regarding wood chippers. She said that the Division looked into whether or not there are suitable passive safety devices available that could be used with wood chippers, in addition to the device that was developed by the petitioner, and if it is worth regulating them.

**Mr. Harrison** stated that he would like to see an item added to the monthly agenda to update the Board on the progress of the rulemaking regarding hotel housekeeping.

C. CLOSED SESSION

The Board discussed only the closed session item listed on the Agenda, and no action was taken during the closed session.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:54 a.m.