

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**November 16, 2017**  
**Oakland, California**

**I. PUBLIC MEETING****A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:07 a.m., November 16, 2017, in the Auditorium of the Harris State Building, Oakland, California.

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

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

**Board Member Absent****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**

Jamie Carlile, SCE  
Eric Paul Leue, Free Speech Coalition  
Dan Leacox, Leacox & Associates  
Quinton Silket, Unite Here Local 2  
Elvia Angulo, Unite Here Local 2850  
Maria Arce, Unite Here Local 2850  
Delmy Servano, Unite Here Local 2850  
Elizabeth Treanor, PRR  
Jane Thomason, CNA/NNU  
Antonio Arenas, Unite Here Local 2  
Yulisa Elenes, Unite Here Local 2850

Michael Strunk, IUOE Local No. 3  
Nicole Marquez, Worksafe  
Alejandro Negrete, Unite Here Local 2  
Kevin Bland, Ogletree Deakins  
Irma Perez, Unite Here Local 2850  
Claudia Ibarra, Unite Here Local 2850  
Bruce Wick, CALPASC  
Michael Musser, CA Teachers Association  
Mark Schacht, CRLAF  
Maria G Cardenes, Unite Here Local 2850  
Jackeline Gonzalez, Unite Here Local 2850

Cecelia Gonzalez, Unite Here Local 2850  
Vinda Segania, Unite Here Local 2850  
Socorro Ayala De Espanzes, Unite Here  
Local 2850

Carmen Rojas, Unite Here Local 2850  
Rami Hdez, Unite Here Local 2850  
Francisca Carranza, Unite Here Local 2850  
Adam Cohen, AIDS Healthcare Foundation

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.

**Alejandro Negrete, Unite Here Local 2 San Francisco**, thanked the Board and Division staff for their work on the hotel housekeeping proposal. He asked for a status update on the proposal, and that the status update include information on the following:

- When will a vote be taken on this proposal, and where?
- What changes, if any, have been made to the proposal?
- Will hotel housekeepers be allowed to comment on that day before the Board votes?

He said that this proposal has been 6 years in the making, and he hopes that when the proposal is voted on, all Board Members will be present and vote "aye".

The following individuals echoed Mr. Negrete's comments:

- **Yulisa Elenes, Unite Here Local 2850**
- **Irma Perez, Unite Here Local 2850**
- **Nicole Marquez, Worksafe**

**Mark Schacht, CA Rural Legal Assistance Foundation**, stated that his organization is disappointed that AB 978 was vetoed by the Governor. He said that it would have provided a reasonable path for the Board and the Governor to follow to provide employees access to their employer's injury and illness prevention plan. He stated that it was very straightforward and gave authorized workers and representatives the right to receive a free copy of their employer's IIPP within 10 business days, and it also adopted features from other right-to-know statutes designed to make employers feel more comfortable providing this document. He said that his organization supports the letter written by Assemblymember Monique Limòn requesting information about how the Board's process will work to address this issue. [Please see the file copy of the Board packet to view this letter] He also stated that his organization feels that the text from AB 978 addressing employer concerns should be included in a proposal to address this issue. He asked the Board staff to work quickly to get this process underway. **Nicole Marquez, Worksafe**, echoed Mr. Schacht's comments.

**Ms. Stock** stated that she feels that the advisory committee process regarding this undermined the legislative process for AB 978. She said that she would like to add a future agenda item to allow the Board to discuss how the advisory committee process can be expedited in this case.

**Michael Musser, CA Teachers Association**, called for a moment of silence to honor the victims killed in the Rancho Tehama shooting on Tuesday, November 14, 2017. After the moment of silence, he said that the staff at Rancho Tehama Elementary School were trained in lockdown procedures to prepare for these kinds of incidents, and as a result, they protected themselves and their students from becoming victims of workplace violence. He asked the Board and Division staff to expedite the rulemaking process to come up with a standard that will address workplace violence in general industry so that all California workers may be protected from workplace violence.

**Adam Cohen, AIDS Healthcare Foundation**, stated that the Division cited an adult film studio in July 2016 for not providing condoms on set. He said that the studio appealed the citation, but the judge upheld the citation. He stated that the judge's decision noted the following:

- Section 5193 does apply to the adult film industry, even though the adult film industry is not specifically mentioned there.
- Producers must provide condoms on set because employers are responsible for the working conditions at their facility, and they are obligated to provide a safe working environment.
- Testing is not the same as condoms. Although the employees at the studio have not contracted an illness while doing their work, that does not negate the fact that the hazard exists.

He stated that his organization is looking forward to developing the appropriate messages to protect workers in the adult film industry.

**Ms. Hart** stated that the final documents for the hotel housekeeping proposal are almost done, and the analysis and fiscal impact assessments have been sent to the Department of Finance for their review and approval. She said that if all of the necessary approvals are received in time, she anticipates that this proposal will be voted on during the business meeting portion of the Board meeting on January 18, 2018 in Oakland. She stated that members of the public are welcome to attend the meeting and to make comments during the public meeting portion of the meeting, but the business meeting portion is closed, and only Board members discussion will be allowed at that time. She said that no changes have been made to the text that was proposed during the public hearing in May.

**Mr. Thomas** stated that an anonymous letter was received by the Board staff addressed to him and describing an issue of occupational health concern in the adult film industry. He said that out of occupational health and medical privacy issues concerning performers in the adult film industry, anonymity was granted, and he asked Ms. Hart to read the letter into the record. [Please see the file copy of the Board packet to view this letter] The following opinions expressed in the letter, were solely those of its anonymous author. The letter stated that many voices in the adult film industry have been silenced in hopes that the industry can prove to the Division that its self-regulation has been successful over the last 12 years. The person who wrote the letter believed in the PASS system for a long time, but has now discovered that believing in that system was a mistake. The letter said that many performers in the adult film industry have complained about repeatedly contracting gonorrhea and chlamydia on set, but

the industry sees this as being inevitable. It said that these infections can be easily cured, but many strains are becoming antibiotic-resistant. The letter stated that the conversation about testing seems to always revolve around HIV, and that it is true that there has not been an on-set transmission of HIV in over 10 years on a PASS-regulated set. The letter said that PASS does use the most sensitive form of RNA testing available to spot acute HIV infection, but the industry uses a qualitative assay instead of a quantitative assay because the quantitative assay is more expensive. It said that a qualitative assay is incredibly sensitive and can detect an HIV viral load (over 30 copies) in a blood sample, and it will pick up acute HIV infections, but a person can have HIV and still test negative using this test. The letter said that performers have the right to know the true HIV status of their partners, and though it is a minefield to navigate this in the straight side of the adult film industry due to stigma, performers have a right to their sexual health and safety. The letter also stated that there is no real official protocol for notifying partners when a performer tests positive for any infection. It said that it is left to the performers to notify everyone that they have been sexually active with in the last month about their test results, and if the performer does not remember who they worked with or slept with, then that person may not be notified, given the lack of a central database or system to keep track of who has performed shoots on which sets. The letter said that the PASS system is an honor system, and to trust an honor system to monitor whether or not someone contracted HIV while on set is not the most reliable method.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:33 a.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:33 a.m., November 16, 2017, in the Auditorium of the Harris State Building, Oakland, California.

A. PROPOSED PETITION DECISIONS FOR ADOPTION

1. Mark Sale  
**Petition File No. 566**

Petitioner requests the Board amend Title 8, Ergonomic Standards to add specific requirements for the use of two handled, large capacity (33-60 gallon) trash bags and training in their use throughout the industry to reduce musculoskeletal stress when lifting.

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 Mr. Harrison and seconded by Ms. Quinlan that the Board deny the petition.

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 items O and P, OSHSB File Nos. 16-V-399 and 16-V-420, need to be removed from the consent calendar because the proposed decisions for those cases are not ready for the Board to consider at this time. Mr. Healy said that he is aware of no unresolved legal issues regarding items A-N on the consent calendar, and he believes that those items are ready for the Board's decision on the question of adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Laszcz-Davis to adopt the consent calendar as modified to comprise items A through N.

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

C. OTHER

1. Executive Officer's Report

Ms. Hart stated that the Division is working with the AIDS Healthcare Foundation and the Free Speech Coalition to develop educational materials, as well as language for the Division's adult film information website, to address issues related to bloodborne pathogen protection in the adult film industry. She said that both groups seemed to be satisfied with taking this approach instead of undergoing another round of rulemaking, and the educational materials and website language should be available soon.

Ms. Hart stated that the Board staff has been working on developing a proposal for quite some time to address the inadequate standards regarding outdoor lighting for nighttime agricultural work. She said that the Board staff has drafted a standard to address this, but the staff is finding it challenging to access the cost and economic impact, and they have yet to be successful in getting the information that they are seeking. To help with this, the Board staff has worked with the DIR Communications Office and developed a questionnaire survey designed to gather this information, and they have sent the survey out to agricultural workers, groups, and stakeholders to complete. She stated that the link to this survey is available on both the Division's website and the Standards Board's website. The survey was published on November 3, and the Board staff has asked that those who wish to participate in the survey submit their responses by November 30. She said that this information will help the Board staff with developing a proposed rule and estimating the cost associated with that rule.

Ms. Hart stated that the Board staff is finalizing the schedule for the 2018 Board Meetings. She said that the meetings will continue to be held on the third Thursday of each month. She stated that it is getting more difficult to have the schedule finalized by the November meeting due to the fact that many locations do not release their calendars for the upcoming year until mid-November. She stated that the 2018 schedule will be finalized before the December meeting, and that the January meeting is already scheduled for Oakland.

Ms. Hart stated that on Monday, Mr. Manieri attended a Division orientation and training for 35 Division enforcement staff members. She said that the Board staff was invited to participate in the training to give the enforcement staff an overview of the Standards Board's mission, projects, rulemaking procedures, and other functions. She stated that according to the attendees' comments, the presentation was well-received, and she hopes that the Board staff will be able to participate in future events like this.

Ms. Hart stated that she has been in communication with Mr. Berg about providing an update to the Board on the HEAC/FAC process. She said that Garrett Keating will be doing a presentation for the Board at the January meeting. She stated that she has provided Garrett with the questions that the Board has raised regarding this issue so that he can address them in his presentation.

Ms. Hart stated that the Board staff is working on putting together the advisory committee to discuss access to employers' IIPP's, and the Board staff is also putting together language for the advisory committee to discuss. She said that the Board staff anticipates holding the advisory committee meeting in early 2018.

Ms. Hart stated that plans are being made regarding the Board's annual holiday luncheon following the December Board Meeting, and details will be emailed to the Board Members shortly. She also said that Steve Smith, Principal Safety Engineer for the Division, is retiring at the end of this year, and the Division is putting on a luncheon for him next month. She thanked him for his years of service with the Board staff and the Division.

**Ms. Stock** stated that she hopes the advisory committee process to address employee access to an employer's IIPP will not take several years to complete like others have. She also hopes that the language in the letter from Senator Limòn will be considered and discussed at the advisory committee. **Ms. Hart** stated that there will be some proposed language to provide a starting point for the advisory committee's discussion, and that language will include input from all sides. She said that the language proposed by Senator Limòn may not be inclusive of input from all sides, but advisory committees are open to the public, so members of the legislative staff and other interested parties are welcome to participate.

## 2. Future Agenda Items

**Ms. Stock** stated that she would like a more specific and detailed update regarding the status of the rulemaking project to address workplace violence prevention in general industry. **Ms. Hart** stated that the Division will provide its quarterly update on rulemakings and advisory committees at the next month's meeting, and she asked Mr. Berg to provide a more extensive update on workplace violence prevention in general industry at that time.

## D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:45 a.m.