

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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



**SUMMARY  
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING  
December 18, 2014  
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., December 18, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

**ATTENDANCE**

**Board Members Present**

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

**Board Member Absent**

**Board Staff**

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

**Division of Occupational Safety and Health**  
Steve Smith, Principal Safety Engineer

**Others Present**

Kevin Bland, Esq., Ogletree, Deakins, Nash, Smoak & Stewart	Steven Johnson, Condon, Johnson, and Associates
Michael Musser, CA Teachers Association	Elizabeth Treanor, Phylmar Regulatory Roundtable
Sarah Springer, SEIU 121 RN	Dan Leacox, Greenberg Traurig
Katherine Hughes, SEIU 121 RN	Rachel Taylor, APAC
Adam Cohen, AIDS Healthcare Foundation	John L. Bobis, Aerojet Rocketdyne
Mark Stone, EPIC Insurance Brokers	

Sam Frankel, AFT  
Stephanie Baker, UTR/CTA  
Meleah Hall  
Sofia Delgado, AIDS Healthcare Foundation  
Ingela Dahlgren, SEIU Nurse Alliance of CA  
Tristan Brown, CA School Employees Assoc.  
David Jones, AGC of California

Mitch Seaman, CA Labor Federation  
Kevin Thompson, Cal-OSHA Reporter  
Richard Negri, SEIU 121 RN  
Al Santana, CA Federation of Teachers  
Bryan Sevilla, APAC  
Bruce Wick, CALPASC

B. OPENING COMMENTS

**Mitch Seaman, CA Labor Federation**, stated that it does not make sense to combine Petition 542 with Petitions 538 and 539, which are already moving forward in the advisory committee process. He stated that the issues of workplace violence prevention in healthcare and education are both very important, and both of them deserve a thorough review in order to develop standards to address them. He asked the Board to move Petition 542 forward in a way that makes the most sense, and separate from Petitions 538 and 539. **Tristan Brown, CA School Employees Association**, echoed Mr. Seaman's comments.

**Al Santana, CA Federation of Teachers**, stated that his organization supports Petition 542 and wants to participate as a stakeholder in the process as it moves forward. He said that the process for Petition 542 can get started right away and run parallel to the process that Petitions 538 and 539 are currently in. **Tristan Brown, CA School Employees Association**, echoed Mr. Santana's comments.

**Michael Musser, CA Teachers Association**, stated that it is time for the Board to address workplace violence prevention for all workers in California. He said that many of the situations that employees in healthcare and education experience also occur in other occupations, so a standard that protects all California workers from workplace violence is necessary. He also stated that in order for these new regulations to be effective, there needs to be stiff penalties for those who do not comply. He asked the Board to adopt language addressing workplace violence prevention that is broad in scope, has inclusive guidelines, and is sensitive to the rights of all California Workers.

**Sam Franklin, retired teacher**, asked the Board to move Petition 542 forward and develop a standard that protects all workers from workplace violence. He said that a reporting system is also necessary to make employers pay attention to the violence that is occurring at the workplace.

**Meleah Hall, author of Petition 542**, stated that employers in education are not required to report workplace violence incidents, and as a result, there is no data available about how prevalent workplace violence is in education. She said that the Board's decision today on her petition will affect not only employees in education, but students as well. She said that many things can be learned from the advisory committee process that is currently underway to address workplace violence in healthcare, but each industry has different environments with different concerns that need to be reviewed and considered separately.

**Richard Negri, SEIU Local 121 RN**, stated that the Board staff did not contact stakeholders that are participating in the advisory committee process for Petitions 538 and 539 and inform

them of their decision to add Petition 542 to the advisory committee and expand the scope of the advisory committee to include workers in education. He said that combining them abandons logic and does not address the specific needs that employees in education have. He said that workers in education deserve the same specific thinking regarding workplace violence prevention in education that healthcare workers are getting regarding workplace violence prevention in the healthcare industry. He stated that the June 2016 deadline stated in SB 1299 is approaching very quickly, and adding Petition 542 to the advisory committee process that is currently underway for Petitions 538 and 539 will slow down the process.

**Ingela Dahlgren, SEIU Nurse Alliance of California**, stated that merging Petition 542 with Petitions 538 and 539 will cause significant delays and setbacks in the process, and it may also result in not getting a workplace violence prevention standard in place for healthcare workers before the June 2016 deadline. She said that the timeline is tight and the process for Petitions 538 and 539 has already been expedited. She also stated that adding Petition 542 to the process will result in the creation of a standard that is overly broad and will not adequately address the specific needs of either industry. She said that she strongly supports the Division's suggestion to strengthen and enforce the regulations that are currently in place for workplace violence in education. She also asked the Board to hear Petition 542 in January so that affected parties can come speak to the Board about it.

**Katherine Hughes, SEIU Local 121 RN**, stated that adding Petition 542 to the process that Petitions 538 and 539 are currently going through will result in broad and overarching regulatory language that will be difficult to enforce, making it less effective and causing workers to remain at risk. She said that both education and healthcare need and deserve the same level of attention, dedication, and commitment to protect workers from workplace violence. She asked the Board to keep Petition 542 separate and give it the attention that it deserves.

**Dan Leacox, Greenberg Traurig**, thanked the Board for its hard work and dedication this year. **Elizabeth Treanor, Phylmar Regulatory Roundtable**, echoed Mr. Leacox's comments.

**Adam Cohen, AIDS Healthcare Foundation**, stated that Measure V, which requires that condoms be used on porn sets, was passed by the Los Angeles 9<sup>th</sup> Circuit Court, has now become law, and is enforceable. He said that it is time for the Division to come on board and bring forward a proposal that will require the same thing throughout all of California.

**Sofia Delgado, former adult film performer**, stated that she performed in adult films for 2 months in 2013, and during that time, felt comforted by the voluntary medical testing that was in place. She said that shortly after that, she was diagnosed with HIV. She stated that medical testing is helpful, but it is not prevention; condoms are prevention. She also stated that when adult film performers request to use condoms while performing, producers often hassle or intimidate them, charge them fees, or even fire them for doing so. She said that she strongly supports a proposal requiring that condoms be used in the adult film industry.

**Stephanie Baker, UTR/CTA**, stated that it is important to consider the teachers and school staff when it comes to workplace violence in education, but it is also important to consider how workplace violence in education also affects students. She said that when teachers are

injured and have to be out for an extended period of time, that can have an irreparable impact on their students' education.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:38 a.m.

**II. PUBLIC HEARING**

A. PUBLIC HEARING ITEMS

Mr. Thomas called the Public Hearing of the Board to order at 10:38 a.m., December 18, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

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

1. TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
                         Section 5530, 5568, 5572, 5574, 5575 and 5621  
                         **ELECTRICAL SAFETY ORDERS**  
                         Section 2540.7 and 2540.8  
                         **Electrical Equipment in Hazardous (Classified) Locations**

Mr. Manieri 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.

There were no public comments on this proposal.

B. ADJOURNMENT

Mr. Thomas adjourned the Public Hearing at 10:44 a.m.

**III. BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:44 a.m., December 18, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED PETITION DECISION FOR ADOPTION

Meleah Hall  
**Petition File No. 542**

Petitioner requests that the Board amend Title 8 workplace safety standards to reduce injuries in the educational setting.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt

the petition decision to convene an advisory committee.

**Ms. Stock** stated that she feels Section 3203 does not address workplace violence in any workplace, and therefore, further regulation is needed. She said that the advisory committee process that is currently underway for Petitions 538 and 539 is very positive and should not be undermined in any way. She stated that her goal is to find a way to grant the petition to give the same attention to workplace violence in education that has been given to workplace violence in healthcare. She said that she understands the challenge of having too many vertical standards and believes that an advisory committee would be needed to address specificity.

### MOTION

A motion was made by Ms. Stock to grant Petition 542 to the extent that an advisory committee is convened to explore developing a standard regarding workplace violence prevention for all workers in California, but especially those in education. She said that the timeline for the advisory committee should be created in a way that will allow for the process to benefit from what is learned from the advisory committee process that is currently underway for Petitions 538 and 539. She also requested that the Division provide a report to the Board by June 1, 2015, stating what their proposals are for this standard. After this report is received, the new advisory committee will be convened, and with the knowledge gained from the Division's report, the advisory committee will explore the issues regarding workplace violence in education and other industries.

**Ms. Hart** suggested that the report from the Division be a written report. **Ms. Stock** agreed. **Mr. McDermott** stated that the written report should lay out all of the options being considered and should be written in a format that allows the Board to give direction when determining how to proceed from there.

**Mr. Harrison** stated that he supports Ms. Stock's comments.

**Ms. Smisko** stated that the direction that Petition 542 takes needs to provide a pathway for creating a standard that protects all workers in California and is specific and meaningful. She also stated that the process that Petitions 538 and 539 are currently undergoing should remain separate from Petition 542 because it has already started and is on a good path that needs to be finished out.

**Mr. Jackson** stated that Petition 542 should be granted in some way, and that all workers in California should be protected from workplace violence. He said that the process that Petitions 538 and 539 are currently going through should not be slowed down, but creating standards for each individual industry or occupation will create an insurmountable problem. He stated that it is important to create a standard that outlines what employers must do to reduce the impact of workplace violence on their employee and gives them the tools to help prevent it. He also stated that workplace violence is a law enforcement issue.

**Ms. Quinlan** stated that a lot of things will be learned from the process that Petitions 538 and 539 are going through, and some of them may apply to all industries. She said that Section 3203 does not address issues pertaining to workplace violence. She also stated that even though this is a law enforcement issue, there are things that employers are not currently doing, but can do to protect their employees from workplace violence, rather than telling their employees that this is a law enforcement issue.

### MOTION

A motion was made by Ms. Stock to grant Petition 542 by creating a new advisory committee to address workplace violence prevention in all California workplaces, but most definitely inclusive of educational workplaces. This advisory committee will be initiated at a time that will allow it to benefit from what is learned from the current advisory committee that is taking place regarding workplace violence prevention in the healthcare industry. The Board requests that the Division provide a written report to the Board summarizing their recommendations, as well as a draft proposal for addressing workplace violence in healthcare so that the new advisory committee for Petition 542 can incorporate, and learn from, that new information. This report will be provided to the Board staff by June 1, 2015 for further consideration and direction by the Board at the June meeting.

**Ms. Hart** asked the Board to consider which entity will carry out the advisory committee process. She said that it is possible for the Board to decide that at the June meeting, if they wish.

**Mr. Jackson** stated that it is better to direct the Board staff to convene the advisory committee because it gives the Board more access to what's happening and allows the Board more opportunities to give input on the proposal that is later brought back to the Board for consideration. He recommended granting Petition 542 to the extent that the Board direct the Board staff to convene an advisory committee subsequent to the release of the report from the Division to consider workplace violence prevention in all California workplaces.

**Ms. Quinlan** stated that the amount of access that the Board has to what's happening in the advisory committee process, as well as opportunities to give input during the process, is about the same, regardless of whether the process is handled by the Division or the Board staff. She said that since the Division has done all of the work on workplace violence, the new advisory committee for Petition 542 should be done by the Division.

**Ms. Stock** echoed Ms. Quinlan's comments.

**Mr. Harrison** stated that after the process that the bloodborne pathogen standard has taken with the Division in charge, he is afraid to give the responsibility of this advisory committee to them. He said that the decision regarding which entity will carry out this task can be decided at a later date.

**Ms. Stock** stated that the Division has expertise on this issue and will gain a lot more from the advisory committee that is currently underway for Petitions 538 and 539, and using the entity that has the most expertise in the area will move Petition 542 through the process the quickest.

**Mr. McDermott** asked to amend Ms. Stock's motion by directing the Board staff to prepare the written report, instead of the Division staff. He said that the Division's workload is large and the information on this issue is transferable to the Board staff. He also stated that the written report should include an analysis of where subsequent work should be done, and at the June meeting, the Board should discuss this information and decide on how to move forward.

**Mr. Harrison** stated that he is not opposed to either one, but he is concerned about the process taking a long time due to turnover of key staff people at the Division and, unlike Petitions 538 and 539, there is not a deadline date to meet that will keep the process moving forward.

**Ms. Stock** clarified her motion by saying that the Division will provide the written report to the Board by June 1, and that report will contain a summary of the Division's draft proposal, as well as provide recommendations on how to proceed with the advisory committee. She said that the Board will review this report, and at the June Board meeting, the Board will provide further direction for the advisory committee.

**Ms. Smisko** stated that by doing that, the Board is assuming that the report will contain that information, but in the end, it may not be there. She asked Ms. Hart for her opinion about which entity the Board would be better off having prepare the written report. **Ms. Hart** stated that for gathering information, it would be better to have the Division give the information to the Board staff, and then the Board staff would review that information to see if they agree. **Ms. Smisko** asked what might happen if the Division does not have that information in the report. **Ms. Hart** stated that the Division has offered to provide the information, but they have not offered to provide a timeline. She said that if they cannot provide that information to the Board by June 1, they will probably request more time at a future Board meeting.

**Ms. Stock** recommended that the Board put forth its request to the Division for this information, and hopefully, by doing that, it will get the Division to work on it right away.

#### MOTION

A motion was made by Ms. Stock to grant Petition 542 by creating a new advisory committee to address workplace violence prevention in all California workplaces, but most definitely inclusive of educational workplaces. The advisory committee will commence after the Board receives a written report from the Division summarizing its draft proposal and providing recommendations to the Board on how to proceed with the advisory committee. The Board requested to receive this report from the Division by June 1, 2015, at which time the Board staff will review it. The Board will discuss this

information at its June meeting and receive recommendations from the Board staff on how to proceed with the advisory committee process.

**Mr. McDermott** stated that he would prefer to have the Board staff prepare the report. He stated that the Division has a large workload, and placing more work on them that could be done by the Board staff does not make sense. He said that the Board staff who are involved with this issue can come up with a framework for the Board to consider and put that in the report. He also stated that there is a better chance of receiving the report by June 1 if the Board staff does it.

**Mr. Thomas** stated that he has no problem with that, but he wanted to ask Mr. Smith and Mr. Manieri about what they believe can be achieved by June 1, 2015. He asked Mr. Smith if he thinks there will be a sufficient amount of information gained from the advisory committee process that is currently underway for Petitions 538 and 539 to submit to the Board staff by that time. **Mr. Smith** stated that the June 1 deadline for the Division to submit the written report seems reasonable. He stated that 3 advisory committee meetings for Petitions 538 and 539 have already occurred, two more are planned for early 2015, and the Division hopes to bring a completed rulemaking package for that to the Board in May of 2015. He said that from those meetings, the Division is trying to get information that applies to all industries, and that information can be fashioned into some type of a written report stating what the Division has learned.

**Ms. Smisko** asked Ms. Hart what the Board could do if the Division's report does not materialize in the way that the Board wants it to. **Ms. Hart** stated that there is Board staff at the advisory committee meetings, but no Board staff is present during the writing that occurs after the meetings, so the Board staff would only be able to come up with a framework based on the information that they receive at the meetings. She also stated that the Board staff could look at the Division's workplace violence guidelines, but they probably won't be updated by then. **Mr. Thomas** stated that the Board could decide on June 1 how to proceed based on whether or not the written report is available at that time and whether or not it contains the information that the Board is looking for. **Ms. Hart** stated that from there, if the Board feels that it would be better for the Board staff to do the report, it could direct the Board staff to do it.

**Mr. Smith** suggested as a compromise that the Board ask for written reports from both entities on this matter similar to how both entities provided the Board with an evaluation of the petition. He said that both entities could update their petition evaluations and put them in a report format stating what they learned from the process that is underway for Petitions 538 and 539. **Ms. Hart** stated that that is true, but the Board staff's knowledge is only limited to the hours in the advisory committee meetings, not the hours spent digesting the information.

**Mr. Thomas** stated that Mr. Smith's suggestion is a good idea. He stated that if things do not work out with the written report in the way that the Board wants it to work out, the Board can decide in June what to do from there to get what it wants. He said that he wants the process for Petitions 538 and 539 to continue moving forward separate from Petition

542.

**Mr. Manieri** stated that the Board staff's action on this is subsequent to the Division completing and providing the necessary information, and regulatory text is needed to begin the Board staff's work. He said that the issue of feasibility and necessity needs to be put before the advisory committee. He stated that the Board staff does have room in its 2015 work plan to do this if it receives the necessary information from the Division.

#### MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison to grant Petition 542 by sending it to an advisory committee to address the issue of workplace violence prevention in all California workplaces, and most definitely inclusive of educational workplaces. The Board requests the Division to provide a written report to the Board by June 1, 2015 that states the benefits of what it has learned from the healthcare advisory committee proceedings that relates to potential regulatory language that might be generally applicable to workplace violence prevention in all workplaces. The Board directs the Board staff to review the Division's report and, at the June meeting, to provide the Board with guidance about the best way to commence the advisory committee process, including what manner and by whom.

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 all the items on the consent calendar would be held over for action at a future board meeting. No action was taken at today's meeting.

#### C. OTHER

##### 1. Executive Officer's Report

Ms. Hart stated that there have been some Board staffing changes. She said that Michael Nelmidia is the Board staff's new Senior Engineer. He is replacing George Hauptman, whose last day is tomorrow. She also stated that Rebecca Estrella has moved on to a promotional position with the Department of Transportation.

Ms. Hart said that a second 15-day notice regarding Heat Illness Prevention will be issued tomorrow. She also said that the final proposal regarding bloodborne pathogens in the adult film industry was received from the Division last week, and the documents that are required for noticing it for public hearing have been submitted to the Department of Industrial Relations and the Labor and Workforce Development Agency for their approval. She said that if all of the paperwork is signed and submitted by the Office of Administrative Law's publication deadline, it will be heard at the March 2015 public hearing. Ms. Hart also thanked the Board and staff for their hard work and dedication over the last year.

2. Future Agenda Items

No future agenda items were mentioned.

D. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:32 a.m.