

**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
June 19, 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 10:00 a.m., June 19, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

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

Board Staff

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

Board Member Absent

Division of Occupational Safety and Health
Deborah Gold, Deputy Chief of Health

Others Present

Max Carbuccia, UNAC/UHCP
Cory Cordova, SEIU 121 RN
Everly Canaia, SEIU 121 RN
Adam Cohen, AIDS Healthcare Foundation
Elsa Monroe, SEIU 1000 BU 17 DLC 752
Cristina Barolet Garcia, CIR
Grace Corse, Nurse Alliance SEIU 721

Effie Horning, Tri City Hospital
Carol Kinser, Mercy General Hospital
C. Busch, RN
Meg Ahirega – Amaichigh, St. John's
Health Center
Melvida Cruz, SEIU 121 RN
Tricia Hunter, ANA/C

Julius Loyola, Nurse Alliance SEIU 121 RN
Amalia Neidhardt, DOSH
David Shiraishi, OSHA
Amber Novey, LIUNA
Virginia Anders-Ellmore, SEIU 121 RN
Thea Weintraub, SEIU 721
Jorge Cabrera, So. Cal. COSH
Sandra Carranza, SEIU Local 721
Ana Cahagrost, Olive View UCLA
Shawn McCoy, Sharp Mesa Vista UNAC
Dorothy Wigmore, Worksafe
Janet Kinney, Kaiser RN
Karen Boxley, MSJMC
Renee Altaffer, SRMC
Jodi Ramos, UCDMC
Karen Elwood, CNA
Carolyn Bourdin, CNA
Starr Cunningham, CNA
Leesa Evans, KWC
Ben Elliott, CNA
Christina Ouyang, CNA
Michael Strunk, IUOE Local Union No. 3
Lataushia Wilson Hall, St. Bernadine
Medical Center
Dan Leacox, Greenberg Traurig
Matt Antonnucci, CSATF
Richard Pan, State Assembly
Zuma Michaca, Senator Padilla
Armindia Sands, SEIU ULTCW
Maria R. Rodriguez, SEIU
Eric Berg, DOSH
Kim Rosenberger, SEIU

Mercal Vivier, SEIU 121 RN
Rachel Johnson, CIR
Michael Musser, CA Teachers Association
Christy McConnell, UNAC/UHCP
Sheri Hinkle, SEIU
Kimberly Cowart, SEIU Local 1000
Larry McCune, DOSH
Joy Pumar, UNAC
Kief Wolkie, UNAC
Daniel Dawns, Senate
Suzi Goldmacher, Worksafe
Denise Duncan, UNAC/UHCP
Irma Alcantar, OVMC
Elizabeth Hawkins, UNAC/UHCP
Irineo Pennardo, CNA
Matthew Elliott, CNA
Gayle Batiste, SEIU 121 RN
Carolyn Cords, UCDMC
Cassandra Morales, CNA
Judith Pilling, CNA/NNU
Katherine Hughes, SEIU 121 RN
Maureen Dugan, CNA
Kevin Bland, Esq., Ogletree, Deakins,
Nash, Smoak & Stewart
Sue Robbis, CNA
Hector Alvarez, Alvarez Associates
Keo Pedora, CNA
Susan Koller, CNA
Patricia Joubert, CNA
Robert Nakamura, DOSH
Gail Blanchard Saiger, CA Hospital Assoc.

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.

Adam Cohen, AIDS Healthcare Foundation, stated that he is excited that there will be discussion at the July meeting on the rulemaking regarding bloodborne pathogens in the adult film industry. **Ms. Hart** stated that the Division will be providing an update on this rulemaking at the July meeting in its quarterly update on rulemaking projects, and she is not sure if there will be any Board discussion on it.

Richard Negri, SEIU Local 121 RN, asked the Board to send petition 538 to advisory committee, as stated in the petition decision, to put together a workplace violence standard to protect workers in the healthcare industry.

Gail Batiste, SEIU Local 121 RN, stated that there are many nuances and loopholes in the current workplace violence standard that need to be fixed. She said that predictability and preventability of workplace violence against healthcare workers has been proven, and it is time to hold administrators accountable for following the law.

Kimberly Rosenberger, SEIU State Council, read a letter from Mary Kay Henry, International President of SEIU, in support of the decision to send petitions 538 and 539 to an advisory committee.

Mercal Vivier, SEIU Local 121 RN, stated that the facility where she works does its best to eliminate and prevent workplace violence. She said that all facilities should work hard to prevent workplace violence against healthcare workers.

Elsa Monroe, SEIU Local 1000 Bargaining Unit 17, stated that SB 1299 is well-intended to protect healthcare workers from workplace violence, but it excludes state employees from that protection. She said that healthcare and social assistance workers account for nearly 60% of the violent assaults that occur in the workplace. She stated that healthcare workers cannot take care of their patients properly if they themselves are not also protected against workplace violence. She asked the Board to move petition 538 forward to an advisory committee.

Sheri Hinkle, Napa State Hospital, stated that she supports petition 538 because the population has changed and assaults have increased while she has worked there. She said that while the physical wounds from workplace violence heal, the emotional ones do not, making it hard for staff to return to their jobs without being in constant fear for their safety. She also said that she is concerned about petition 539 because it excludes state employees from workplace violence protection.

Jorge Cabrera, Southern California Coalition for Occupational Safety and Health, stated that there is an epidemic of workplace violence in America, and the healthcare industry is very vulnerable to workplace violence. He stated that there are three contributing factors to workplace violence in the healthcare industry:

- A reactive mentality that responds after the workplace violence has already happened.
- Little or no worker input is received as to how to establish or improve a workplace violence policy.
- The current standard regarding workplace violence is outdated and inadequate.

He said that petition 538 addresses these factors by establishing a more current standard that requires mandatory workplace violence prevention procedures be created and maintained with input from workers, thereby proactively addressing the issue of workplace violence.

Karen Fossen, Mercy San Juan Medical Center, stated that healthcare workers are five times more likely to be victims of violent acts than workers in all other major industries combined, and nurses are the most frequent targets. She said that at her facility, the security staff has a no-touch policy. Therefore, they are not able to help protect the healthcare workers from physical attacks. She stated that workers have not been trained on how to de-escalate these types of situations, or how to avoid injury. They are also not involved in creating or improving security policies. She said that petition 539 will help create a framework for a standard that comprehensively addresses these situations. It will require interactive training for employees and involving them in creating workplace safety and violence prevention policies. It will also contain mandatory reporting and record keeping policies, and will protect the workers' right to involve law enforcement when necessary.

Marti Smith, California Nurses Association – Government Relations, stated that she supports petition 539 and that nothing in it or in SB 1299 will prevent the Division from extending the protections in them to all healthcare workers.

Hector Alvarez, a security professional, stated that he has worked with hospitals and other facilities on workplace violence prevention plans. He said that management does not understand how preventable workplace violence is, and how easy it is to create and implement a workplace violence prevention plan. He said that employers need motivation to move them to create and implement workplace violence prevention programs, and creating a standard that requires them to do that will provide that motivation. **Suzi Goldmacher, Worksafe**, echoed Mr. Alvarez's comments.

Dorothy Wigmore, Worksafe, stated that she is concerned regarding a statement in the Board staff's evaluation of petition 538 that says: "Countless incidents are senseless and unpredictable and cannot be prevented by regulation". She said that this is not true, and that workplace violence is a recognized hazard that can, and should, be controlled. She stated that the advisory committee should take the broadest point of view possible on this issue because it occurs across a broad spectrum.

The following individuals commented in support of the decision to send petitions 538 and 539 to an advisory committee:

- **Dan Runson, Senator Hanna Beth Jackson's Office**
- **Dr. Barolet Garcia, L.A. USC Medical Center**
- **Cory Cordova, SEIU 121 RN**
- **Julius Loyola, College Hospital**
- **Everly Canaia, Providence St. Joseph Medical Center**

- **Melvi De La Cruz, SEIU 121 RN**
- **Kimberly Cowart, SEIU Local 1000 Bargaining Unit 17**
- **Dr. Richard Pan, Assemblymember**
- **Sandra Carranza, SEIU Local 721**
- **Ana Cahagrost, Olive View UCLA Medical Center**
- **Irma Alcantar, Olive View UCLA Medical Center**
- **Thea Weintraub, Harbor UCLA**
- **Jeanette Andrisomar, Harbor UCLA**
- **Zuma Michaca, Senator Padilla's Office**
- **Denise Duncan, UNAC/UHCP**
- **Elizabeth Hawkins, UNAC/UHCP**
- **Shawn McCoy, Sharp Mesa Vista UNAC**
- **Joy Pumar, UNAC**
- **Kief Wolkie, UNAC**
- **Tricia Hunter, American Nurses Association – California**
- **Hamida Sanchez, Homecare Support Services**
- **Maria Rodriguez, SEIU**
- **Katherine Hughes, SEIU Local 121 RN and Nurse Alliance**
- **Jennifer Barker Tilly, Sutter Roseville Medical Center**
- **Mitch Seaman, California Labor Federation**
- **Gail Blanchard Saiger, California Hospital Association**

Mr. Thomas called for a break at 11:30 a.m. and reconvened the meeting at 11:40 A.M.

Kathy Dennis commented on the Safe Patient Handling proposal. She stated that AB 1136 has been in effect since January of 2012, but some hospitals still have inadequate safe patient handling policies, which has resulted in workers continuing to be hurt when handling patients. She said that the Division has cited many hospitals for not following the provisions in AB 1136. She stated that a strong and comprehensive regulation regarding safe patient handling is necessary to get hospitals to follow the law and will give the Division the enforcement authority that it needs to keep hospitals accountable for safety to their staff and patients. She said that the proposed Safe Patient Handling standard will help to enforce AB 1136 by doing the following:

- It establishes the role of the RN as coordinator of care.
- It sets forth training requirements for staff and supervisors.
- It enacts record keeping requirements that will allow the Division and workers to hold hospitals accountable for establishing and following safe patient handling policies.
- It requires hospitals to allow employee involvement and input on safe patient handling policies and equipment needs.

- It protects direct patient care assignments.
- It establishes a means by which the professional judgment of designated healthcare workers outside of nursing would be incorporated into a patient's mobility assessment.

She said that with the appropriate staff, training, and equipment, many healthcare workers will avoid injury when handling patients, which will result in safer care for patients, preservation of the healthcare workforce, and cost savings to hospitals.

Ms. Hughes echoed Ms. Dennis's comments. She asked the Board to adopt the Safe Patient Handling proposal, but also had two concerns regarding it that she would like to see addressed in the future:

- 1.) In Section 6, regarding procedures for investigating musculoskeletal injuries related to safe patient handling, there is a phrase that says: "to the extent that relevant information is available." Ms. Hughes stated that employers are often the ones who determine if information is relevant and available. She said that they have the ability to gain all pertinent information when an employee is injured, but injury logs seldom contain this information. She stated that there needs to be some accountability in the record keeping process to make sure that employers put this information in their records, and it also needs to be made clear in the standard what relevant information is.
- 2.) In Section 7B, regarding sharing equipment, Ms. Hughes is concerned about the fact that equipment needs will only be done during the annual evaluation. She said that this may result in employees manually mobilizing patients because equipment is not readily available or easily accessible for them to use.

Ms. Wigmore stated that the proposal is not perfect, but asked the Board to adopt the proposal and then evaluate it in the future to make recommended changes. **Ms. Blanchard Saiger** echoed Ms. Wigmore's comments.

The following individuals also commented in support of adopting the Safe Patient Handling rulemaking:

- **Deborah Ervin, Kaiser Santa Rosa**
- **Michelle Bueller, CNA**
- **Leesa Evans, Kaiser Walnut Creek**
- **Lataushia Wilson Hall, St. Bernadine Medical Center**

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 12:10 p.m.

II. BUSINESS MEETING

Mr. Thomas called the Business Meeting of the Board to order at 12:10 p.m., June 19, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Section 4542
 Guarding of Vertical Food Mixers

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. Jackson and seconded by Ms. Quinlan that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7, Article 106, New Section 5120
 Safe Patient Handling

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

Ms. Stock thanked the Board and Division staff for their work on this standard and asked the other Board members to vote "aye".

Ms. Smisko stated that this is an historic moment and thanked the Board and Division staff for the great job they did in balancing the needs and interests of various groups statewide that this standard will affect. She said that the proposal will help provide safety for employees and allow the employer to continue providing safe and affordable healthcare.

Mr. Thomas echoed Ms. Stock's and Ms. Smisko's comments.

MOTION

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

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

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Richard Negri, Health & Safety Director
Katherine Hughes, RN, SEIU Liaison
SEIU Local 121 RN
Petition File No. 538

Bonnie Castillo, Director of Government Relations
California Nurses Association
Petition File No. 539

Both petitioners request that the Board make recommended changes to Title 8, General Industry Safety Orders, regarding promulgating a comprehensive workplace violence prevention standard for healthcare workers.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to convene an advisory committee.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison that the Board adopt the proposed decision to convene an advisory committee.

Ms. Stock proposed alternative language to be used in the petition decision [Please see the Board's file copy to view this alternative language]. She stated that the testimony and process that these petitions have gone through already prove that necessity has been established. She said that having an advisory committee to determine if there is necessity to create a regulation regarding workplace violence against healthcare workers would be an unnecessary extra step that could further delay groups getting together to discuss how to address this issue.

Mr. Beales asked Ms. Stock if she is moving to replace the wording on page 3 of the proposed petition decision with the alternative language that she is proposing. **Ms. Stock** said yes. **Mr. Beales** then recommended that Mr. Thomas ask for a Board Member to second Ms. Stock's motion.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison that the Board amend the proposed petition decision by replacing the wording on page 3 of the proposed petition decision with the alternative language proposed by Ms. Stock and then adopt the petition decision as amended.

Mr. Jackson stated that he is concerned about creating a regulation that moves the responsibility and accountability for criminal behavior from the people doing the criminal activities to the employer. He stated that the testimony that has been presented has only involved people committing criminal acts and that those people are usually out of the

employer's control. He also stated that if the decision is made to convene an advisory committee on this issue, it is imperative that people from law enforcement, district attorney's offices, and other individuals who are responsible for prosecuting and preventing these crimes are involved. He said that this will help ensure that employers have the intervention and prevention tools that they need to address this problem, and that they know what the limits of those tools are.

Ms. Quinlan stated that Ms. Stock's alternative language is simply stating that necessity has already been established, and that it does not specify who will be involved in the advisory committee because that will be determined during the advisory committee process. She said that she agrees with Ms. Stock that the testimony proves that necessity has been established, and she asked the other Board Members to vote "aye" on the amended petition decision.

Ms. Smisko stated that the advisory committee will be able to address a lot of concerns regarding workplace violence against healthcare workers. She said that one of the key components of this will be figuring out the role of security personnel in workplace violence prevention. She stated that the Division will not have control over what role employers give security personnel in their workplace violence prevention programs. She said that during the advisory committee process, the understanding of expectations as this moves forward is very important so that the pieces that can be addressed are addressed properly.

Mr. Harrison asked both parties to be realistic with their expectations for the outcome of the advisory committee process. He said that the Board cannot create staffing or funding for workplace violence prevention programs, but the Board will help as much as it can through the advisory committee process. He also believes that necessity has already been established.

Mr. Thomas stated that this advisory committee will not end all workplace violence against healthcare workers, but it will start to combat it. He said that employees need to be protected as much as possible, so an advisory committee needs to come together to address this as soon as possible.

Mr. McDermott asked that during the course of the advisory committee process, the Division define areas outside of Title 8 regulations that can be addressed through the rulemakings of other agencies or other legislation to fill in the gaps. **Mr. Thomas** echoed Mr. McDermott's comments.

Ms. Stock stated that she would like to add item number 2 from the original proposed petition decision and add it as number 3 to her alternative language.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison that the Board amend Ms. Stock's alternative language to include item number 2 from page 3 of the original

proposed petition decision, making it item number 3 on Ms. Stock's alternative language, and then adopt the petition decision as amended.

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

2. Larry Bornstein
Petition File No. 540

Petitioner requests that the Board make recommended changes to Title 8 regarding manual collection, pushing/pulling of shopping carts at retail facilities and establishments.

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

MOTION

A motion was made by Ms. Stock and seconded by Mr. Jackson that the Board adopt the proposed decision to deny the petition request.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that cases number 13-V-186 regarding Air Products and Chemicals, Inc., and 13-V-227 regarding Jett Harvest, Inc., need to come off the consent calendar. He recommended adopting all of the other proposed decisions and granting the variances.

MOTION

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

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

D. OTHER

1. Legislative Update

Mr. Beales stated that SB 1299 was amended on June 5, 2014 to change the deadline for creating a Board rulemaking to July 1, 2016.

Mr. Jackson asked if SB 1299 still exempts hospitals operated by the state. **Mr. Beales** said he believes it does.

Mr. Harrison asked if that prevents the Board from addressing that issue separately. **Mr. Beales** said that does not. For one thing, it is a bill, not the law.

Mr. Beales stated that AB 1340 is a bill that pertains to hospitals run by the Department of State Hospitals. Beginning July 1, 2015, it will allow these hospitals to authorize and maintain enhanced treatment programs, which are special facilities that provide especially attentive care to patients who are at high risk for dangerous behavior.

2. Executive Officer's Report

Ms. Hart stated that this is Deborah Gold's last meeting at which she will be representing the Division because she will be retiring at the end of the month. All Board Members present thanked Ms. Gold for her hard work and dedication.

Ms. Hart also stated that DIR has put together a team to develop new and amended standards for Process Safety Management in response to recommendations from the governor's interagency refinery task force. She said that the Board staff will be a part of this team and will participate in the advisory committee process on this.

Ms. Hart also stated that the Division submitted rulemaking documents for the revision of the heat illness standard. She said that she anticipates that this proposal will be heard at the September 18, 2014, Public Hearing, which will be held in San Diego, and the notice for it will be published on August 1. She also stated that June 30 is the end of the state's fiscal year and reminded the Board Members to submit their June TEC information to the office before then.

3. Future Agenda Items

Mr. Harrison stated that he would like to discuss the possibility of coming up with a rulemaking pertaining to workers working alone or in congested areas. **Ms. Hart** stated that Mr. Harrison will provide language and information for the Board to discuss at next month's meeting.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 1:05 p.m.