

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
March 19, 2015
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 10:05 a.m., March 19, 2015, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

Dave Thomas
David Harrison
Bill Jackson
Laura Stock

Board Member Absent

Barbara Smisko
Patty Quinlan

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

David Jones, AGC of CA
German Kenslea, AIDS Healthcare
Foundation

Elizabeth Treanor, Phylmar Regulatory
Roundtable

Katherine Hughes, SEIU 121 RN
Veronica Pardo, CRRS
Sergio Fuente, AIDS Healthcare Foundation
Debra Smith, AIDS Healthcare Foundation
Jose Carmona, AIDS Healthcare Foundation
Annando Questeue, AIDS Healthcare
Foundation

Sarah Springer, SEIU
Cesar Yuriar, CPIL
Dan Leacox, Greenberg Traurig
Jeronimo Parago, AIDS Healthcare
Foundation
Juan Contreras, AIDS Healthcare
Foundation

Ramon Valenzuela, AIDS Healthcare Foundation
Terry Iluant, JWCH
John McDaniels, AH
Be Ba Marzett, APEB
David Shiraishi, Fed OSHA
Michael Musser, CA Teachers Association
Ava Aguado, AIDS Healthcare Foundation
Richard Negri, SEIU 121 RN
Richard Thompson, NCCCO
Jay A. Weir, AT&T
Luis Thompson, AIDS Healthcare Foundation
Sharon Wilson, AIDS Healthcare Foundation
Gregory J. Austin, Sr., AIDS Healthcare Foundation
Rosetta Taylor, AIDS Healthcare Foundation
Amir L. Marto, AZA

Paul Vasconez, AIDS Healthcare Foundation
Loretta Patterson, AIDS Healthcare Foundation
Alfredo Lozada, AIDS Healthcare Foundation
Kevin Thompson, Cal-OSHA Reporter
James Dufour, Attorney
Adam Cohen, AIDS Healthcare Foundation
Miki Jackson, AIDS Healthcare Foundation
Larry Wong, University of CA, Office of the President
Michael Thompson, AIDS Healthcare Foundation
Ruby Anderson, AIDS Healthcare Foundation

B. OPENING COMMENTS

Richard Negri, SEIU Local 121 RN, stated that there is exciting momentum happening in the advisory committee process for Petitions 538 and 539. He said that although workplace violence in healthcare settings is a complex hazard because it cannot be entirely eliminated, the participants in the advisory committee process are working to identify ways of controlling this hazard. He stated that the advisory committee process has afforded everyone the opportunity to listen and learn all of the points of view that people have about how to control this hazard. He said that they are looking forward to continuing to work together on this project at their next meeting on April 1.

Miki Jackson, AIDS Healthcare Foundation, stated that condoms are the best solution for addressing the bloodborne pathogens hazard in the adult film industry. She said that the advisory committee process has been robust, but has dragged on for 5½ years, and during that time, preventable illnesses have continued to occur for employees in the adult film industry. She stated everyone will benefit from this process being moved along.

Ava Guado, AIDS Healthcare Foundation, stated that she is disappointed to hear that the public hearing for the bloodborne pathogen standard has been delayed again. She said that her organization is now seeing more cases of syphilis, drug-resistant strains of gonorrhea, and the adult film industry is not taking these illnesses seriously. She stated that if the Board is really concerned about this issue, then the Board will put the bloodborne pathogen standard on the agenda for next month before adjourning today.

Gregory Austin, AIDS Healthcare Foundation, stated that 5½ years is a long time to make decisions regarding a proposal that is as important as the proposal regarding bloodborne pathogen protection in the adult film industry. He stated that condoms are much cheaper than medication for HIV and AIDS, and workers in the adult film industry deserve the same protections that are given to workers in other industries. He asked the Board to move the bloodborne pathogen protection standard forward and to require employees in the adult film

industry to use condoms.

Sharon Wilson, AIDS Healthcare Foundation, stated that she has been living with HIV for the last 20 years and has experienced a lot of stigma regarding HIV that no one should have to go through. She asked the Board to take action on the bloodborne pathogen protection standard to protect workers in the adult film industry so that they do not have to experience the same stigma. **Rosie, AIDS Healthcare Foundation**, echoed Ms. Wilson's comments.

Stanley Chapman, AIDS Healthcare Foundation, stated that he has been living with HIV for the last 6 years. He said that there is new medication and advanced treatment for HIV, but even with this, he has had to endure numerous hospitalizations and surgeries because of HIV. He said that it is important to protect workers in the adult film industry from sexually transmitted infections by requiring them to use condoms, and he asked the Board to move the bloodborne pathogen protection proposal forward.

Jed Kensla, AIDS Healthcare Foundation, stated that on March 17, 2011, at the Standards Board meeting, Deborah Gold stated that the proposal regarding bloodborne pathogen protection in the adult film industry would be ready for public hearing in June 2011. He said that since then, three new cases of HIV infection have occurred. He said that the current financial cost for lifetime medical care is \$338,000, and for those three new cases together, it will cost more than \$1 million. He stated that the current cost for one condom is 6 cents. He also stated that adult film performers who test positive for HIV are often fired or let go and then become wards of the state for medical care. He asked the Board to put the bloodborne pathogen protection standard on the agenda for public hearing as soon as possible.

Adam Cohen, AIDS Healthcare Foundation, stated that he is frustrated that the bloodborne pathogen protection standard keeps getting delayed. He said that 2,000 cases of sexually transmitted infections and illnesses have occurred that could have been prevented if this proposal had moved forward faster. He asked for an explanation regarding what is holding up the process. He asked the Board to place the bloodborne pathogen protection standard on the April agenda for public hearing, and if that is not possible, then put it on the May agenda.

Sofia Delgado, AIDS Healthcare Foundation, stated that when she worked in the adult film industry in 2013, she was confident with the adult film industry's testing for sexually transmitted infections. However, she was later diagnosed with HIV. She said that testing for sexually transmitted infections is helpful, but it is not prevention. She also stated that performers who request to use condoms are intimidated, hassled, and charged by adult film producers. She said that the use of condoms in the adult film industry needs to be required.

Ms. Hart stated that the bloodborne pathogen protection standard cannot be put on the April agenda. She said that there is a 45-day requirement for noticing items for public hearing, and there is not enough time to do that for the April meeting. She said that the documents for the proposal are going through the approval process to get noticed for public hearing, and the Board staff is waiting for the final approvals. She stated that the documents must be approved, and the proposal must be ready for noticing, by Tuesday, March 24, 2015, in order for the proposal to be put on the May agenda. She said that once the proposal is noticed for hearing, there is a 45-day comment period prior to the meeting date, and after the proposal is heard at the public hearing, the Board has one year to take action on the proposal.

Ms. Stock stated that it is outrageous that it has taken so long to get the bloodborne pathogen protection proposal to public hearing and everyone needs to learn from it. She asked Ms. Hart for information on the approval process required prior to noticing. **Ms. Hart** stated that the package for this proposal is currently being reviewed at the Labor and Workforce Development Agency. She said that this proposal is associated with the bloodborne pathogen standard, but it creates a whole new section because it regulates sexually transmitted infections, which is more than bloodborne pathogens, and as a result, there are other requirements embodied in this new regulation. She said that there is a lot of review being done on this regulation regarding the economic and fiscal impact, and all of the documentation associated with that must be approved as well. She stated that the Division has approved the necessary paperwork to bring this rulemaking package to public hearing, and it is now at the Labor and Workforce Development Agency for their approval, and LWDA is aware of the timeframe by which this rulemaking must be approved in order to be put on the May agenda. **Ms. Stock** asked if there is anything that the Board members can do to urge the LWDA to get to work right away on approving this proposal. **Ms. Hart** stated that she will notify her contact at the LWDA and inform him of the Board's feelings. She also stated that they are aware of the sensitivity regarding this issue.

Mr. Thomas stated that the bloodborne pathogen protection standard should have been brought to public hearing a long time ago. He said that promises continue to be made that this proposal will be brought up for public hearing at certain meeting dates, but nothing happens. He stated that he feels it is disrespectful to the Board to continue to promise that this proposal will come to public hearing on a certain date and not follow through, and based on this, he is not sure that it will be ready by next Tuesday to be put on the May agenda for public hearing. He stated that if this proposal is delayed again and will not be on the May agenda for public hearing, he will resign. He said that he will not tolerate any more disrespect like this, especially since similar proposals have moved forward much quicker.

Mr. Thomas called for a break at 10:55 a.m. and reconvened the meeting at 11:02 a.m.

Veronica Pardo, CA Refuse Recycler Council, stated that the ANSI 245 standard pertaining to occupational restraints was misinterpreted in the Final Statement of Reasons for the Stationary and Mobile Compaction Equipment and Balers standard that is up for adoption today. She said that the industry uses restraints in transit, not during collection. She said that since the ANSI standard was misinterpreted, related assumptions made in the Final Statement of Reasons regarding the economic impact of the proposal and the impact that this proposal will have on the efficiency of collection is incorrect. She stated that this proposal will reduce collection efficiency, will result in 25% longer route times, and may cause repetitive strain injuries. She also stated that the longer route times will lead to more greenhouse emissions from the collection trucks, as well as more costly operations for employers. She stated that the industry's current use of restraints only during transit has not resulted in a significant number of injuries. **Josh Walters, Waste Management**, echoed Ms. Pardo's comments.

Jose Carrillo commented in support of Petition 543 and demonstrated how to use the fall arrest system product that he came designed.

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 11:18 a.m.

II. **BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 11:18 a.m., March 19, 2015, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Section 1618.1(e)
**Cranes and Derricks in Construction, Operator Certification
Effective Dates and Phase-In (Federal Time Extension)**

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 Mr. Harrison 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**
Sections 4345, 4351, 4352, and 4354
Stationary and Mobile Compaction Equipment and Balers

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. Stock 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

Manny Carrillo
Petition File No. 543

Petitioner requests that the Board amend Title 8, Construction Safety Orders, Section 1670(b)(17) regarding personal fall arrest systems.

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.

Mr. Jackson stated that many petitions have come before the Board to request or require the use of a new product that the petitioner has a vested interest in, and the Board has historically shied away from doing that. He said that there is a variance process that petitioners can go through to allow their new products to be developed and tested for specific installations. He stated that the Board should not change its path to allow or mandate new products in the workplace that have not been vetted in the real world. **Ms. Hart** stated that if the petitioner wishes to get information about the temporary/experimental variance process, the petitioner can speak with her after today's meeting.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Healy stated that file numbers 14-V-245M1 and 14-V-348 should be removed from the consent calendar and voted on separately because Mr. Harrison and Ms. Stock may wish to recuse themselves from voting on those two cases. With those two cases removed, he sees no issues that could prevent the Board from adopting the rest of the consent calendar.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Harrison to remove file numbers 14-V-245M1 and 14-V-348 from the consent calendar and then adopt the consent calendar as modified. There was not a quorum to vote on file numbers 14-V-245M1 and 14-V-348, so both cases will be brought to a vote at next month's meeting.

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

D. OTHER

1. Executive Officer's Report

Ms. Hart stated that there are two upcoming advisory committees:

- Conrad Tolson is working on combining the CDAC into the General Industry Safety Orders. A two-day advisory committee for this will be held on March 25-26 in Sacramento.
- An advisory committee is scheduled for March 27 in Sacramento regarding nighttime illumination in agriculture.

Ms. Hart also stated that the Board staff has hired Nai Saechao to fill the vacant Office Technician position, and as a result, the Board staff is now fully staffed.

Ms. Hart also stated that the proposal for heat illness prevention is currently being reviewed by the Office of Administrative Law. She said that they have until the first week of April to approve or deny the proposal. She also stated that a May 1 effective date has been requested for that proposal.

Mr. Thomas asked Ms. Hart if she has heard any word from the Governor's office about filling the open positions on the Board. **Ms. Hart** stated that she has not heard anything.

Mr. Thomas stated that he does not want to resign, but he does not see any other way to put pressure on the folks that are holding up the bloodborne pathogen protection standard from getting to public hearing. He said that no one has explained why this proposal keeps getting delayed.

2. Future Agenda Items

No future agenda items were mentioned.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 11:18 a.m.