

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY  
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING  
November 20, 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., November 20, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

Dave Thomas  
David Harrison  
Bill Jackson  
Barbara Smisko  
Laura Stock

Board Member Absent

Hank McDermott  
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

Eric Berg, Acting Principal Engineer

Others Present

Kevin Bland, Esq., Ogletree, Deakins, Nash, Smoak & Stewart	Brett Campbell, Sr. Est., WAISH/SHEA Corridor Constructors
Michael Musser, CA Teachers Association	Roselle Taylor, AIDS Healthcare Foundation
Dave Gueth, AIDS Healthcare Foundation	Eddie Velasquez
Be Be Marzett	Jesse B., AIDS Healthcare Foundation
Adam Cohen, AIDS Healthcare Foundation	Tommy Matt
Mark Stone, EPIC Insurance Brokers	Gail Blanchard-Saiger, California Hospital Association
Marcus Oliphant, AIDS Healthcare Foundation	Kevin Thompson, Cal-OSHA Reporter
Anne Katten, CRLAF	

F. Hilliard  
Michael Strunk, IUOE Local Union No. 3  
T. Riley, AIDS Healthcare Foundation  
Andre Redwood

Bob Hornauer, NCCCO  
Chris Mejia, AIDS Healthcare Foundation  
Lemar RH, AIDS Healthcare Foundation

B. OPENING COMMENTS

**Adam Cohen, AIDS Healthcare Foundation**, stated that he is glad to see that the Board recognizes that the process for developing a standard to protect workers in the adult film industry against bloodborne pathogens has taken too long, but he is concerned that the Board still does not recognize the severity of the consequences that occur daily in the adult film industry. He said that 30 – 40 adult films are made every day in Los Angeles alone, and producers continue to expose their employees to bloodborne pathogens and infectious diseases by not using condoms and not following the current standard. He stated that this process has gone on through three Division chiefs and needs to be addressed.

The following individuals echoed Mr. Cohen's comments:

- **Jesse Brooks, AIDS Healthcare Foundation**
- **Roselle Taylor, AIDS Healthcare Foundation**
- **Be Be Marzett**
- **Fred Hilliard**
- **Dave Gueth, AIDS Healthcare Foundation**
- **Eddie Velasquez**
- **Andre Redwood**

C. ADJOURNMENT

Mr. Thomas adjourned the public meeting at 10:08 a.m.

**II. BUSINESS MEETING**

Mr. Thomas called the Business Meeting of the Board to order at 10:08 a.m., November 20, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Ms. Hart stated that two variance decisions need to be removed from the consent calendar and be voted on separately:

- OSHSB File No. 14-V-252 needs to be voted on separately because Ms. Stock will recuse herself from voting on that decision.
- OSHSB File No. 14-V-277T needs to be voted on separately because the Board staff received a request from the applicant to submit further information to the Board

regarding this case prior to the Board's consideration of the proposed decision. Ms. Hart stated that Mr. Healy will brief the Board further on this case at the appropriate time.

With those changes, Ms. Hart recommended adopting the consent calendar as modified.

MOTION

A motion was made by Mr. Harrison and seconded by Mr. Jackson to adopt the proposed decision for OSHSB File No. 14-V-252.

A roll call was taken, Ms. Stock abstained from voting, and all other members present voted "aye." The motion passed.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Harrison to adopt the consent calendar as modified with OSHSB File Nos. 14-V-252 and 14-V-277T removed from the consent calendar and voted on separately.

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

Mr. Healy stated that on Monday, November 17, the counsel for the appellant, California Rural Legal Assistance Foundation, regarding OSHSB File No. 14-V-277T submitted a letter to Ms. Hart requesting an opportunity to provide additional information to the Board on this case prior to the Board adopting the proposed decision. He said that the appellant wants to have additional conditions added to the proposed decision. He stated that since this request was received on short notice, it raises due process concerns because not all of the parties involved have been given an opportunity to weigh in on whether or not it is appropriate for the Board to consider these additional arguments prior to adopting the proposed decision. He said that the Board may want to refer the case back to the hearing panel and have them decide if it is appropriate to consider the new arguments. He stated that after that decision is made, the hearing panel can decide whether or not to revise the proposed decision.

**Mr. Thomas** stated that since Mr. Harrison and Ms. Stock were on the hearing panel for this case, he is deferring to them.

**Mr. Harrison** stated that there is a temporary experimental variance currently in place that benefits the employer. He stated that the CRLAF has also submitted comments requesting more time, so he feels that it is appropriate to delay making a decision in this case. **Ms. Stock** agreed with Mr. Harrison's comments.

MOTION

A motion was made by Mr. Harrison and seconded by Ms. Stock to send OSHSB File Nos. 14-V-277T back to the previously assigned hearing panel so that the panel may decide

whether or not to accept additional information, and then if it decides to accept additional information, whether or not to modify the proposed decision.

**Mr. Jackson** asked **Mr. Healy** if an affirmative vote by the Board will affect the temporary variance that is currently in place until the panel decides whether or not to consider additional evidence. **Mr. Healy** stated that the temporary variance can stay the same until the panel sends a proposed decision back to the Board for adoption. **Ms. Stock** asked the Board staff to get the process going within the next month.

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

B. OTHER

1. Legislative Update

Ms. Hart stated that there is no Legislative Update today.

2. Executive Officer’s Report

Ms. Hart stated that there have been some Board staffing changes. She said that David Beales retired on November 4, and Peter Healy’s first day was November 17. She also said that Michael Nelmda will be starting with the Board staff as a Senior Safety Engineer on December 1, and George Hauptman will be retiring on December 19.

Ms. Hart also stated that she received, and responded to, a letter from Michael Weinstein of the AIDS Healthcare Foundation asking that the proposal regarding bloodborne pathogen protection in the adult film industry be expedited to the Board for public hearing. She said that the Division has committed to getting the final regulatory language for the proposal back to the Board staff by the end of December. At that time, it will be reviewed and processed for noticing. She estimates that it will be heard at the public hearing in March or April of 2015.

Ms. Hart stated that 2015 meeting schedule was included with the Board packet. The meetings will continue to be on the third Thursday of the month in locations throughout the state, and one or two additional meetings in southern California have been added.

Ms. Hart also stated that the 15-day notice regarding heat illness prevention was mailed out to approximately 150 people yesterday and is also posted on the Board’s website. She said that the deadline for receiving comments is December 8.

**Ms. Stock** stated that the length of time that it is taking to get the standard for bloodborne pathogen protection in the adult film industry before the Board for public hearing is very frustrating and is an egregious example of how long it takes to get proposals through the process. She said that it is unfortunate that even though the Board staff might receive the necessary documents for the bloodborne pathogen protection proposal by the end of December, it will not come before the Board for public hearing until March or April. She thanked the individuals that came today and expressed their frustration on this issue. **Mr. Harrison** also thanked them. **Ms. Hart** stated that Mr. Berg is representing the Division at today’s meeting, and he will take the Board’s request to expedite the bloodborne pathogen

protection proposal back to the Division for consideration.

**Mr. Thomas** stated that he is glad to hear that there is a light at the end of the tunnel regarding the bloodborne pathogen protection proposal. He also stated that the proposed language in the 15-day notice regarding heat illness prevention is much more reasonable and acceptable to people and will make it easier for employers to follow.

3. Future Agenda Items

No future agenda items were mentioned.

C. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 10:25 a.m.