

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
February 17, 2022 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

*PLEASE NOTE: In accordance with section 11133 of the
Government Code, this Board Meeting will be conducted via
teleconference.*

THURSDAY, FEBRUARY 17, 2022

10:00 A.M.

Reported by:
E. Hicks

APPEARANCES

BOARD MEMBERS:

Dave Thomas, Chairman
Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
David Harrison, Labor Representative
Nola Kennedy, Public Member
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Michael Nelmidia, Sr. Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Lara Paskins, Staff Services Manager
David Kernazitskas, Sr. Safety Engineer
Jennifer White, Regulatory Analyst
Cathy Dietrich, Regulatory Analyst
Amalia Neidhardt, Senior Safety Engineer

TKO STAFF:

Brian Monroe
Erik Kuether
Maya Morsi
John Roensch

ALSO PRESENT:

Eric Berg, Deputy Chief of Health, Division of Occupational Safety and Health (Cal/OSHA)

SPANISH INTERPRETERS:

Patricia Hyatt
Estela Moll

APPEARANCES (Cont.)

PUBLIC COMMENT:

Stephen Knight, Worksafe
Thomas Kohlenberg, International Union of Operating
Engineers Local 3
Helen Cleary, Phylmar Regulatory Roundtable
Saskia Kim, California Nurses Association
Jose Ramirez, Fight for \$15 and a Union
Michael Strunk, International Union of Operating
Engineers Local 3
Robert S. Moutrie, California Chamber of Commerce
Mitch Steiger, California Labor Federation
Elysa Valentino, Self
Anne Katten, California Rural Legal Assistance Foundation
Pamela Murcell, California Industrial Hygiene Council
Bethany Miner, Miner's Ace Hardware
Cassie Hilaski, Nibbi Brothers
Eddie Sanchez, Southern California Coalition for
Occupational Safety and Health (SoCalCOSH)
Bryan Little, California Farm Bureau
Paula Vlaming, Crane Owners Association, and Mobile Crane
Operators Group
Bruce Wick, Housing Contractors of America

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during the meeting that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code sections 11125 & 11125.7(a).).

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2. WSPA v. OSHSB, et al., County of Sacramento, CA Superior Court Case No. 34-2019-00260210
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Next Meeting: March 17, 2022
 Teleconference and Video-conference
 (In accordance with section 11133 of the Government Code)
 10:00 a.m.

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P R O C E E D I N G S

FEBRUARY 17, 2022 10:02 A.M.

CHAIR THOMAS: Good morning. This meeting of the Occupational Safety and Health Standards Board is now called to order. I am Dave Thomas, Chairman. And the other Board members present today are Ms. Barbara Burgel, Occupational Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. David Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; and Ms. Nola -- oh, I'm sorry, Ms. Laura Stock, Occupational Safety Representative.

Also present from our staff for today's meeting are Ms. Christina Shupe, Executive Officer; Mr. Steve Smith, Principal Safety Engineer; Ms. Autumn Gonzalez, Chief Counsel; Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmda, Senior Safety Engineer who is providing technical support.

Supporting the meeting remotely are Ms. Lara Paskins, the Staff Services Manager; Mr. David Kernazitskas, Senior Safety Engineer; Ms. Jennifer White, Regulatory Analyst; Ms. Cathy Dietrich, Regulatory Analyst; and Ms. Amalia Neidhardt, Senior Safety Engineer who is providing translation services for our commenters who are

1 native Spanish speakers.

2 Via teleconference, we are joined today by Mr.
3 Eric Berg, Deputy Chief of Health, representing Cal/OSHA.

4 Today's agenda and other materials related to
5 today's proceedings are posted on the OSHSB website.

6 In accordance with section 11133 of the
7 Government Code, today's Board meeting is being conducted
8 by way of teleconference with an optional video component.
9 Executive Order N-1-22 has suspended the sunset date of
10 Government Code section 11133 until March 31st, 2022.

11 This meeting is also being live broadcast via
12 video and audio stream in both English and Spanish. Links
13 to these non-interactive live broadcasts can be accessed
14 via the "Standards Board's Updates" section of the main
15 page of the OSHSB website.

16 We have limited capabilities for managing
17 participation during the public comment period, so we're
18 asking everyone who is not speaking to place their phones
19 on mute and wait to unmute until they are called to speak.
20 Those who aren't able to do so will be removed from the
21 meeting to avoid disrupting the proceedings.

22 As reflected on the agenda, today's meeting
23 consists of two parts. First, we will hold a public
24 hearing to receive public comments or proposals on
25 occupational safety and health matters. Anyone who would

1 like to address any occupational safety and health issues,
2 including any of the items on our business meeting agenda,
3 may do so at that time. Members of the public who have
4 submitted requests to be placed in the public comment queue
5 via the online form or automated voicemail system will be
6 called on in order.

7 The instructions for the joining the public
8 comment queue can be found on the agenda for today's
9 meeting. You may join by clicking the public comment queue
10 link in the "Standards Board's Updates" section at the top
11 of the main page of the OSHSB website or by calling 510-
12 868-2730 to access the automated public comment queue
13 voicemail. Please be sure to provide your name as you
14 would like it to be listed, your affiliation or
15 organization, if any, and the topic you would like to
16 comment on.

17 When public comment begins, please listen for
18 your name and an invitation to speak. When it is your turn
19 to address the Board, please be sure to unmute yourself if
20 you're using WebEx or dial star six on your phone to unmute
21 yourself if you're using the teleconference line. Please
22 be sure to speak slowly and clearly when addressing the
23 Board and please remember to mute your phone or computer
24 after commenting.

25 Today's public comment will be limited to two

1 minutes per speaker, give or take. And the public comment
2 portion of the meeting will be extended for up to two hours
3 so that the Board may hear from as many members of the
4 public as is feasible. The individual speaker and total
5 public comment time limits may be extended by the Board
6 Chair if practicable.

7 After the public meeting has concluded we will
8 hold a business meeting to act on those items listed on the
9 business meeting agenda. The Board does not accept public
10 comment during its business meeting unless a member of the
11 Board specifically requests public comment or public input.

12 Public meeting. We will now proceed with the
13 public meeting. Anyone who wishes to address the Board
14 regarding matters pertaining to occupational safety and
15 health is invited to comment except, however, the Board
16 does not entertain comments regarding variance decisions.
17 The Board's variance hearings are administrative hearings
18 where procedural and due process rights are carefully
19 preserved. Therefore, we will not grant requests to
20 address the Board on variance matters.

21 At this time anyone who would like to comment on
22 matters concerning occupational safety and health will have
23 the opportunity to speak.

24 For our commenters who are native Spanish
25 speakers, we are working with Ms. Amalia Neidhardt to

1 provide a translation of their statements into English for
2 the Board. At this time Ms. Neidhardt will provide
3 instruction to the Spanish-speaking commenters so they are
4 aware of the public comment process for today's meeting.

5 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]
6 Public Comment Instructions.

7 "Good morning. This meeting of the Occupational
8 Safety and Health Standards Board is now called to order.
9 I am Dave Thomas, Chairman. And the other Board members
10 present today are Ms. Barbara Burgel, Occupational Health
11 Representative; Ms. Kathleen Crawford, Management
12 Representative; Mr. David Harrison, Labor Representative;
13 Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-Davis,
14 Management Representative; and Ms. Nola -- oh, I'm sorry,
15 Ms. Laura Stock, Occupational Safety Representative.

16 "As reflected on the agenda, today's meeting
17 consists of two parts. First, we will hold a public
18 hearing to receive public comments or proposals on
19 occupational safety and health matters.

20 "After the public meeting has concluded, we will
21 hold a business meeting to act on those items listed on the
22 business meeting agenda. The Board does not accept public
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24 Board specifically requests public input.

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11 queue can be found on the agenda for today’s meeting. You
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14 page of the OSHSB website or by calling 510-868-2730 to
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16 be sure to provide your name as you would like it to be
17 listed, your affiliation or organization, if any, and the
18 topic you would like to comment on.

19 “Please listen for your name to be called for
20 comment. When it is your turn to address the Board, please
21 be sure to unmute yourself if you’re using WebEx or dial
22 star six on your phone to unmute yourself if you’re using
23 the teleconference line. Please be sure to speak slowly and
24 clearly when addressing the Board and please remember to
25 mute your phone or computer after commenting. If you have

1 not provided a written statement, please allow natural
2 breaks after every two sentences so that we may follow each
3 statement with an English translation.

4 Today's public comment will be limited to four
5 minutes for speakers utilizing translation, and the public
6 comment portion of the meeting will extend for up to two
7 hours, so that the Board may hear from as many members of
8 the public as is feasible. The individual speaker and total
9 public comment time limits may be extended by the board
10 chair, if practicable "Thank you."

11 CHAIR THOMAS: Thank you, Ms. Neidhardt.

12 Maya, do we have any commenters in the queue?

13 MS. MORSI: Yes, we do.

14 First up is Julian Hisgin, followed by Stephen
15 and Thomas.

16 Julian Hisgin?

17 CHAIR THOMAS: Hey. Can you hear us? Is it
18 Julie? Julie?

19 MS. MORSI: Julian, you may need to press star
20 six to unmute yourself if you're on the phone.

21 CHAIR THOMAS: It seems like we always have this
22 problem with the first caller.

23 Maya, let's move on to the next and see if we can
24 get them up.

25 MS. MORSI: No problem.

1 Next up is Stephen Knight with Worksafe.

2 CHAIR THOMAS: Stephen, are you with us?

3 MR. KNIGHT: Yes. Hello and good morning.

4 CHAIR THOMAS: Good morning. Go ahead.

5 MR. KNIGHT: So I want to say that Worksafe
6 supports the position of CRLAF with respect to serious
7 concerns about the substance and process relating to
8 autonomous tractors.

9 Secondly, this Board has done lots of work to
10 respond to a pandemic that has now killed almost a million
11 Americans and over 82,000 Californians. Cal/OSHA and the
12 Standards Board can be proud of their efforts that have
13 saved workers' lives and made California businesses safe.

14 Last June, Board Members faced a barrage of
15 criticism from businesses and individuals, assuming the
16 pandemic was wrapping up and that measures, like masks,
17 don't work. They were wrong. And protections should not
18 have been relaxed since the Delta variant then quickly
19 spread through our communities and our workplaces.

20 Meetings since have seen a drumbeat of
21 frustration aimed at the Board that should instead be
22 directed at the virus, not at efforts to save people from
23 catching it. This Board should stay the course until the
24 COVID-19 Emergency Temporary Standard -- until the path
25 forward is clear, and right now it is not.

1 Brand new data I've seen this morning on the
2 curve of mortality in California continues to demonstrate
3 the outsized impact of sickness and death on essential
4 workers in agriculture, at warehousing, and the life.

5 As Mitch Steiger with the Labor Fed noted last
6 month, the Omicron variant came quickly out of nowhere, and
7 we don't know what's coming next. Exclusion pay should
8 continue, especially given that the supplemental sick pay
9 leaves out so many workers.

10 We all want to be optimistic about the coming
11 months but hope is not a cure. Imagine if it were wildfire
12 smoke or toxics or baking hot temperatures, that it somehow
13 killed a million Americans in less than two years, would we
14 be rushing to do away with the workplace protections? I
15 don't think so.

16 Thank you for your time.

17 CHAIR THOMAS: Thank you, Mr. Knight.

18 Who do we have next, Maya?

19 MS. MORSI: We have, next, Thomas Kohlenberg with
20 International Union of Operating Engineers Local Number 3.

21 CHAIR THOMAS: Thomas, are you with us?

22 MR. KOHLENBERG: Can you hear me okay?

23 CHAIR THOMAS: Yeah. Go right ahead.

24 MR. KOHLENBERG: All right. Members of the
25 Board, my name is Thomas Kohlenberg and I am with the

1 Operating Engineers Local Union Number 3. I would like to
2 thank all of you for putting in the effort and the work to
3 get cranes and derricks into construction and consolidated
4 into General Industry Safety Orders Group 13. We believe
5 this will create a safer environment for our many members,
6 as well as the entire crane industry.

7 We also agree with the letter sent to you by the
8 NCCCO addressing three concerns still in the language being
9 consolidated. Specifically, number one, physical
10 qualifications, number two, substance abuse, and number
11 three, recertification. Your consideration addressing
12 these issues as timely as you can will be greatly
13 appreciated.

14 That concludes my comment and I thank you for
15 your time.

16 CHAIR THOMAS: Thank you, Thomas.

17 Who do we have next, Maya?

18 MS. MORSI: We have, next, Bruce Wick with
19 Housing Contractors of California.

20 CHAIR THOMAS: Bruce, can you hear us? Remember
21 to unmute yourself. Bruce?

22 MS. MORSI: It looks like Bruce is not on.

23 MR. MOUTRIE: I'm sorry. Bruce told me had
24 another call, which he hoped to be off soon, if you could
25 put him at the end of the queue? I know he intends to

1 speak. I just think he had conflicting meetings.

2 CHAIR THOMAS: Tell Bruce he's banned for this
3 session. He can't come back in. No. We'll wait.

4 Maya, who do we have next?

5 MS. MORSI: Okay. We have, next, Helen Cleary
6 with Phylmar Regulatory Roundtable, PRR OSH Forum.

7 CHAIR THOMAS: Hi Helen.

8 MS. CLEARY: Good morning everybody. Thank you.
9 Hello, Chair Thomas, Board Members, I'm Helen Cleary,
10 Director of PRR. A few things today. Our comments are
11 similar to the ones we made at the last Board meeting.

12 Number one, there's still a lack of clarity and
13 confusion regarding the isolation and quarantine updates.
14 And two, we have not seen the proposed text for the next
15 draft of the ETS and we're increasingly concerned about
16 what's been added to it.

17 These continuing issues leave us feeling like our
18 concerns are not being heard and there's a lack of
19 transparency. We absolutely appreciate and understand the
20 workload and the pressure that the Division must be under.
21 We also understand that it's not just the Division involved
22 and responsible for the updates and the revisions.

23 But stakeholders are an integral part of this
24 equation and we feel as if we're being left in the dark.
25 It's the employers who are responsible for implementation

17

1 and compliance, a responsibility that is negatively
2 impacted by the rulemaking process and this full review
3 process by all the multiple authorities.

4 We cannot stress enough how imperative it is that
5 information regarding the current expectation and the
6 coming requirements needs to be forthcoming and
7 transparent. At the January Board meeting, many
8 stakeholders expressed confusion and requested clarity.
9 Board Members did so, as well. The Division stated it's
10 continuously working to improve the FAQs. We know the
11 Division is tirelessly working and we're optimistic we will
12 get the answers that we seek.

13 But it has to be pointed out that we asked for
14 clarity over a month ago. We encouraged the decisionmakers
15 to ensure the Division has the resources to provide the
16 needed support to all stakeholders. And we asked for
17 transparency and urgency from everyone making the decisions
18 that employers will be responsible to follow. Because, in
19 the end, we are the ones accountable, despite any confusion
20 created by governing agencies.

21 Regarding the next draft of the ETS, based on
22 comments made at the last Board meeting and the fact that
23 we have not seen a draft, we have some concerns and would
24 stress that the proposed text be similar to what we had
25 seen and discussed in September. One, in order to avoid

1 the challenges we continue to experience, it needs to be
2 performance based. Two, now that the legislature has
3 passed a supplemental paid sick leave, exclusion pay does
4 not need to be included. And finally, we do not believe
5 that mandatory testing and vaccinations should be included.

6 PRR members have had effective COVID-19
7 prevention programs in place for almost two years. Some
8 members have made the decision to implement mandatory
9 testing and vaccination policies and some have not. Any
10 major additional requirements or changes from what's been
11 in place runs the risk of causing continuity issues and
12 will again place responsibility for a community health
13 crisis on the regulated community. This is a particular
14 concern because the vote is in March, the effective date is
15 in April, and we simply cannot plan for requirements that
16 we do not know about and should not be expected to
17 implement cascading requirements in such a very short time
18 frame.

19 I thank you for your time and your consideration
20 of our concerns today.

21 CHAIR THOMAS: Thank you.

22 Who do we have next, Maya?

23 MS. MORSI: We have, next, Saskia Kim with
24 California Nurses Association.

25 CHAIR THOMAS: Can you hear us?

1 MS. KIM: Yes. Can you hear me okay?

2 CHAIR THOMAS: Yeah. Go ahead, please.

3 MS. KIM: Good morning. Thank you. Saskia Kim
4 with the California Nurses Association. Thank you for the
5 opportunity to speak. I just want to briefly share with
6 you concerns CNA has expressed to CDPH regarding the
7 expiration of universal indoor masking requirements this
8 week. I've also sent our letter on this to Board staff and
9 requested that it be shared with you.

10 CNA opposes the recent decision to end
11 requirements for universal indoor masking. As you've heard
12 me say before, CNA believes a multiple-measures approach to
13 infection control is necessary to prevent the spread of
14 COVID-19 and its variants. Proper infection control means
15 using an approach that includes vaccination with a booster
16 shot, testing, isolation after infection, quarantine after
17 exposure, and the simple and effective measure of masking.

18 Now is not the time to roll back protections that
19 help us keep each other safe. Although California's COVID-
20 19 numbers may be declining, they still remain well above
21 pre-Omicron levels. Test positivity and case rates as of
22 Tuesday were roughly three and four times higher,
23 respectively, than on December 15th.

24 In California only 38 percent of vaccinated
25 Californians have gotten a booster shot. And booster

1 uptake varies widely by region and demographic. In some
2 counties, including Mariposa, Calusa and Merced, as few as
3 23 percent have gotten a booster.

4 Also, the BA.2 sublineage of the Omicron variant
5 is beginning to spread across California. Already, six
6 California counties have reported cases of BA.2, which is
7 more transmissible and has been spreading widely in other
8 countries. And the CDC study also found that the
9 proportion of COVID-19 hospitalizations from un-fully
10 vaccinated patients was higher during the period of Omicron
11 dominance compared to when Delta was dominate.

12 Endemic does not mean a virus is necessarily
13 harmless. Viruses do not evolve over time to become less
14 virulent. For example, Alpha and Delta were both more
15 transmissible and more virulent than the wild-type strain.

16 And long-term health consequences are a serious
17 concern across all age groups. Reports indicate that
18 COVID-19 may result in long-term heart problems. Study
19 results were true for people who have never had heart
20 issues and included people with mild COVID-19 infections,
21 as well as those hospitalized with severe disease.

22 So for all of these reasons, CNA believes a
23 multilayered approach is needed to combat the pandemic.

24 Thank you, again, for the time today.

25 CHAIR THOMAS: Thank you.

1 Maya, who do we have up next?

2 MS. MORSI: Up next will be Jose Ramirez with
3 Fight for \$15.00 and a union.

4 CHAIR THOMAS: Hello. Can you hear us? Press
5 star six if you're on a phone. Make sure -- you've got to
6 unmute yourself.

7 MS. NEIDHARDT: Chairman, if I may, I can read
8 this person's request in Spanish. Let me just explain in
9 Spanish. [READS INSTRUCTIONS IN SPANISH]

10 CHAIR THOMAS: I don't think we have him there.

11 MR. RAMIREZ: (Speaking Spanish.)

12 CHAIR THOMAS: Oh, there we go.

13 MS. NEIDHARDT: Yes, we hear you. (Speaking
14 Spanish).

15 MR. RAMIREZ: (Speaking Spanish.)

16 MS. NEIDHARDT: Okay. One minute. (Speaking
17 Spanish.)

18 MR. RAMIREZ: (Via Interpreter.) My name is Jose
19 Ramirez. I have ten years working in the food industry and
20 I have -- I'm a father of three children.

21 MS. NEIDHARDT: Continua.

22 MR. RAMIREZ: (Via Interpreter.) And 2020,
23 January 2020, he got sick and he wasn't able to work, and
24 he didn't get paid.

25 MS. NEIDHARDT: Continua.

1 MR. RAMIREZ: (Via Interpreter.)
2 MS. NEIDHARDT: Okay. Un momento.
3 MR. RAMIREZ: (Via Interpreter.) He was sick for
4 two weeks and he had -- even now, he's just been able to go
5 back to work.
6 MS. NEIDHARDT: Continua, por favor.
7 MR. RAMIREZ: (Via Interpreter.) Okay. Because
8 he wasn't -- he didn't have pay, sick pay, he wasn't able
9 to pay his bills or his rent.
10 MS. NEIDHARDT: Continua.
11 MR. RAMIREZ: (Via Interpreter.) Okay. It's
12 very important to have sick pay because that way the
13 workers wouldn't be forced to go to work sick and will be
14 able to pay their bills.
15 MS. NEIDHARDT: Continua.
16 MR. RAMIREZ: (Via Interpreter.) Okay. He's
17 saying that we need -- they need a permanent regulation
18 that will protect all workers in general against COVID
19 before the end of the year.
20 Thank you.
21 CHAIR THOMAS: Thank you.
22 Who do we have next, Maya?
23 MS. MORSI: Up next is Mike, excuse me,
24 Mastrangelo or Mastrangelo. Sorry about that. Mike
25 Mastrangelo.

1 CHAIR THOMAS: Mike, are you with us? Hello?
2 Mike? We're not getting Mike, so we'll go on to the next.

3 MS. MORSI: Okay. The next will be Anna.

4 CHAIR THOMAS: Anna, are you with us? Remember
5 to unmute your computer or star six on your phone. Are you
6 with us, Anna? Anna?

7 Let's move on to the next, Maya.

8 MS. MORSI: Okay. Next will be Michael Strunk,
9 who is Director of Safety, IUOE, Local Union Number 3.

10 CHAIR THOMAS: Michael, are you with us?

11 MR. STRUNK: Thank you, Chair Thomas. I am.
12 Thank you.

13 CHAIR THOMAS: Go right ahead.

14 MR. STRUNK: Thank you, Chair Thomas and Board
15 Members. My name is Michael Strunk. I'm the Director of
16 Safety for the International Union of Operating Engineers
17 Local Union Number 3. I am here to speak to you today
18 about Petition 596, which is the autonomous vehicle
19 variance, experimental variance, that I noticed in the
20 Cal/OSHA newsletter in January.

21 We believe that Petition 596 seeks to add
22 language to Title 8 section 3441(b) allowing driver-
23 optional tractors once certain conditions have been met.
24 While we appreciate the proponents effort --

25 CHAIR THOMAS: Oh, I think we've lost you.

1 MR. STRUNK: -- (indiscernible) insurmountable
2 and strongly believe that this petition must be rejected.

3 Additionally, we see that this issue has been
4 addressed by the Board in Petition 571 as early as 2019.
5 And we feel this is, essentially, the same issue that's
6 come back around to see us. And we strongly urge that when
7 this is in front of the Board, we request you reject it.

8 Thank you.

9 CHAIR THOMAS: Thank you.

10 BOARD MEMBER KENNEDY: Can I --

11 CHAIR THOMAS: Who do we have up next, Maya?

12 BOARD MEMBER KENNEDY: Excuse me, Dave, this is
13 Nola.

14 CHAIR THOMAS: Yeah, Nola?

15 BOARD MEMBER KENNEDY: Can we get the last
16 speaker, if there was anything substantive in the first
17 couple sentences of this comment repeated? Because it cut
18 out for me. I don't know if it did for anyone else.

19 CHAIR THOMAS: Maya, do we still have that -- was
20 it Michael?

21 MS. SHUPE: Michael Strunk.

22 CHAIR THOMAS: Do we still have him on the line?

23 MS. MORSI: I'm not quite sure.

24 MR. STRUNK: Yes, I'm here.

25 MS. MORSI: Okay.

1 CHAIR THOMAS: Why don't you repeat? Just start
2 from the beginning again because you were cutting in and
3 out a little bit and some of the Members couldn't hear you.

4 MR. STRUNK: My apology.

5 CHAIR THOMAS: Go ahead.

6 MR. STRUNK: We feel that Petition 596 is
7 sufficiently similar to Petition 571 and we urge the Board
8 to reject it when it comes before them.

9 CHAIR THOMAS: I think that was succinct enough.
10 Thank you.

11 Maya, who do we have next?

12 MS. MORSI: Up next is Robert S. Moutrie with
13 Chamber -- California Chamber of Commerce.

14 CHAIR THOMAS: Rob, can you hear us?

15 MR. MOUTRIE: Yes, I can, Chair and Members.
16 Hopefully you can hear me.

17 CHAIR THOMAS: We can. Go right ahead.

18 MR. MOUTRIE: Perfect. And I'd like to thank the
19 announcer for including my middle name. That's the first
20 time I think it's been referenced and it was very, very
21 nice.

22 MS. MORSI: Thank you.

23 MR. MOUTRIE: So a couple of points on the data,
24 and then a couple of points going forward for the --
25 related to the COVID-19 regulation. I think there were

1 some comments earlier about the state of our present kind
2 of situation I'd like to flag.

3 On the Chamber side, we're happy to see that
4 daily case rates are down 75 percent over the last 14 days.
5 We're happy the holiday surge is looking like it's moving
6 towards its end though, obviously, we're not at the June
7 rates yet; right? We're still above there. So with that
8 in mind, I want to touch on two legislative pieces that I
9 think interact with the Board's upcoming March vote that I
10 think the Board may not be aware of and I want to just flag
11 for Board Members awareness.

12 First, on the vaccine mandate, I think there was
13 some discussion about vaccine mandates and the recent
14 Supreme Court ruling, which I won't share my personal
15 thoughts on.

16 But on that point, I do want to flag, there's
17 actually legislation moving on the vaccine mandate topic
18 that was introduced just recently, AB 1993, Wicks, which is
19 actually a hard vaccine mandate that's moving through the
20 legislative process now, so I want to flag that for Board
21 Members to be aware of. And obviously, Cal Chamber
22 supports vaccination, we have from the beginning, and urge
23 everyone on the call who is not speaking up to get their
24 vaccination and boosters.

25 The other touch is, as stated by Helen Cleary,

1 we're eager to see the March draft so we can talk to
2 members to get the clarity on it, try to understand what it
3 means, and also to, you know, start looking and getting
4 into compliance. As Helen noted, depending on the changes,
5 you know, it takes time, so we're looking forward to seeing
6 that. I know the Division is working very hard, as is
7 Standards Board staff, but looking forward to seeing that.

8 One note of substance I should flag is the
9 exclusion pay issue. The legislature also just did pass
10 COVID-19 supplemental sick leave which provides 80 hours of
11 sick leave and, also, includes some purposes beyond what
12 the regulation's exclusion pay does, including time to seek
13 vaccination or care for family members.

14 So I think that's an important point to make in
15 reference to, you know, guaranteeing ongoing solution pay
16 because my recollection from almost two years ago now,
17 right, was that exclusion pay was really discussed to fill
18 a hole, that we didn't have additional sick leave kind of
19 lined up. The legislature has now stepped into that space,
20 which I think is something for the Board and staff to
21 consider as we look to March.

22 With that, thank you for your time, and hope you
23 all have stayed healthy and safe through the last month.

24 CHAIR THOMAS: Thank you, Rob.

25 Who do we have next, Maya?

1 MS. MORSI: Up next is Mitch Steiger with
2 California Labor Federation.

3 CHAIR THOMAS: Mitch, are you with us?

4 MR. STEIGER: Yes. Thank you, Chair Thomas and
5 Members. Mitch Steiger with the California Labor
6 Federation. I appreciate the opportunity to testify today.
7 Just wanted to briefly touch on Petition 596, as well as
8 the ETS.

9 Regarding Petition 596, the one related to
10 autonomous tractors, we would like to echo some of the
11 previous concerns raised. I know it's not on the agenda
12 today but did just want to flag it. And also, we'll try
13 not to rehash our written comments that we submitted.

14 But, fundamentally, we do think that the concept
15 of an autonomous tractor really does run contrary to the
16 concept of worker safety but, also, to clarify that in no
17 way do we oppose technology. We completely support making
18 tractors or any other kind of machinery more safe.
19 Anything that improves visibility or adds new ways for
20 operators to know if there are other workers nearby or adds
21 ways for workers to know that a tractor is nearby, we
22 support all of that kind of thing.

23 But it's a big leap from that to removing the
24 operator from the tractor and putting all of our faith in
25 the technology to not make any mistakes, to never

1 malfunction, to never have a glitch. It could cause some
2 pretty disastrous results.

3 And so we think the best of both worlds is to
4 have improvements in technology and the operator there on
5 the vehicle so that their training and more experience can
6 best be used to keep workers safe. I assume everybody who
7 operates one of these things has all sorts of stories of
8 when their knowledge and their background in the industry
9 has allowed them to save the life of a coworker, avoid
10 serious injury from a coworker. And with moving entirely
11 to an autonomous system we eliminate all of that skill and
12 all of that experience and we think the results could be
13 pretty scary.

14 And so it's a conflict that we don't really think
15 can be resolved and we would urge rejection of that
16 petition when it comes before you, whenever that is.

17 And regarding the COVID-19 ETS, we would also
18 echo the points raised by Worksafe and CNA. Things are
19 better than they were a few weeks ago but they're still
20 pretty bad.

21 I just checked where I live in Sacramento County.
22 We're averaging about 65 new cases per 100,000 residents.
23 That is roughly eight times worse than what would have put
24 us in the purple tier when we had a color-coded tier system
25 under which most indoor businesses would be closed.

1 We still have two-and-a-half million Californians
2 too young to be vaccinated, many more immunocompromised.
3 I'm starting to be a broken record on all of these things
4 but we are still in a pretty bad place with this pandemic,
5 better than we were a few weeks ago but still in a very
6 concerning place.

7 And we would strongly urge the Board to readopt
8 something at least as strong as what we have now, wherever
9 we are in March or April, that we've seen this go up and
10 down and up and down and it can suddenly get worse. And
11 leaving us with nothing -- without something that's at
12 least as strong as what we have right now also comes with a
13 pretty serious potential for disaster.

14 So we would just urge the Board to consider the
15 unpredictable nature of this virus but, also, that we are
16 now getting used to the standard that we've got and we hope
17 that whatever is adopted is at least as strong as what
18 we've got now.

19 Thank you.

20 CHAIR THOMAS: Thank you, Mitch.

21 Who do we have up next, Maya?

22 MS. MORSI: Up next is Elysa Valentino, small
23 businessowner and resident.

24 CHAIR THOMAS: Elysa, I can see you. Can you
25 hear us?

1 MS. VALENTINO: Good morning. I can hear you
2 just fine.

3 CHAIR THOMAS: Good morning.

4 MS. VALENTINO: All right. Thank you for hearing
5 me today.

6 Yesterday, I was out to lunch with friends.
7 There were not a lot of other people in the restaurant, yet
8 the service was incredibly slow throughout the entire
9 process. This seems to be the new normal. And much of it
10 is due to your workplace restrictions.

11 Last month, Steve H. Hank, professor and founder
12 at the Johns Hopkins Institute of Applied Economics,
13 released a metanalysis of the medical and economic impact
14 of compulsory nonpharmaceutical interventions, or NPIs.
15 It's important to note that while our economy is supposedly
16 open, we still practice these NPIs they studied, including
17 practices like masking, social distancing, contact tracing,
18 quarantining, and routine testing. I now quote the
19 conclusion from the abstract.

20 "An analysis of each of these groups support the
21 conclusion that NPIs have little to no effect on COVID
22 mortality. Stringency index studies find that
23 lockdowns in Europe and the United States only reduced
24 COVID mortality by 0.2 percent on average. Shelter-
25 in-place orders were also ineffective, only reducing

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1 mortality b 2.9 percent on average. Specific NPI
2 studies also find no broad-based evidence of
3 noticeable effects on COVID-19 mortality.”

4 “While this metanalysis concludes that NPIs have
5 little to no public health effects, they have
6 imposed enormous economic and social costs where they
7 have been adopted. In consequence, NPI policies are
8 ill founded and should be rejected as a pandemic
9 policy instrument.”

10 In short, the cost-benefit ratio of
11 nonpharmaceutical interventions are devastating our economy
12 but has done nothing to save lives. Two years into this we
13 have clear data. We know that cloth and surgical masks are
14 ineffective against COVID-19, yet they remain a key
15 component of your emergency temporary standards. We know
16 from Delta and Omicron that transmission is the same
17 amongst the fully vaccinated and unvaccinated, yet you
18 still have discriminating policies in place for
19 unvaccinated workers. Your temporary standards were
20 supposed to be just that, temporary.

21 We also knew that emergency implies you were
22 doing the best that you could without solid data. We are
23 well past that point. By keeping these unfounded emergency
24 standards in place, you are severely neglecting your duty.

25 I plead with you to drop emergency standards that

1 are killing businesses and, essentially, have no impact on
2 COVID-19 mitigation.

3 Thank you for your time.

4 CHAIR THOMAS: Thank you.

5 Maya, who do we have up next?

6 MS. MORSI: Up next is Anne Katten with
7 California Rural Legal Assistance Foundation.

8 CHAIR THOMAS: Anne?

9 MS. KATTEN: Good morning. Hi. Good morning.
10 This is Anne Katten and I'm speaking today on behalf of
11 California Rural Legal Assistance Foundation and for my
12 first topic, also, for Jassy Grewal of UFCW.

13 We join previous speakers asking you to deny
14 Petition 596, which seeks to change the tractor operation
15 regulations to allow for autonomous tractor use. As has
16 been pointed out, this is very similar to a petition that
17 the Board denied in 2019 after concluding that driverless
18 operation is an emerging technology without a proven track
19 record. This is still the case.

20 The petitioner states that they've operated under
21 an experimental variance since last August without mishap.
22 But they fail to add that during the first full year of the
23 variance a trained operator must remain on the vehicle, as
24 we think should always be the case.

25 We are especially concerned that the petition

1 envisions use of autonomous tractors to move equipment
2 around in vineyards where employees are working, both
3 during daytime and nighttime operations, and to travel in
4 autonomous mode on farm roads. Safe operation of these
5 tractors in autonomous mode relies heavily on safety
6 guardrails that are programmed to deploy when a human is
7 within seven feet of the moving tractor. But of course, if
8 this technology fails it will put a worker who steps or
9 falls into a tractors path, such as when they're loading or
10 unloading a bin or crossing a farm road, at risk of serious
11 injury or death.

12 We urge you to deny this petition when it comes
13 to a vote.

14 Switching to the COVID regulation needs, we join
15 the concerns expressed by Worksafe, CNA, and the Labor
16 Federation. We're very concerned that the state's mask
17 mandate rollback eliminates a simple and effective means of
18 protection for many indoor workplaces, especially
19 considering that only 38 percent of Californians have
20 gotten booster shots, and in light of the higher infections
21 rates and lower vaccination rates in many rural areas where
22 produce and meat packing operations are located and work
23 conditions are very crowded.

24 California needs to retain strong COVID workplace
25 protections and renewal of the ETS in drafting a more

1 permanent regulation, including, also, exclusion pay
2 because, as has been mentioned, the renewed supplemental
3 paid sick leave requirement excludes employees of smaller
4 operations.

5 It's also important to retain enhanced
6 ventilation and air filtration requirements for workplaces
7 in employer-provided housing.

8 Thank you for your hard work in these difficult
9 times.

10 CHAIR THOMAS: Thank you, Anne.

11 Maya, who do we have up next?

12 MS. MORSI: Up next is Pamela Murcell with
13 California Industrial Hygiene Council.

14 CHAIR THOMAS: Pamela, can you hear us?

15 MS. MURCELL: I can.

16 CHAIR THOMAS: Go right ahead.

17 MS. MURCELL: Good morning everyone. Thank you,
18 Chair Thomas and Board Members, also the Standards Board
19 staff and the DOSH staff. This is Pamela Murcell on behalf
20 of the California Industrial Hygiene Council. And we do
21 want to echo our appreciation and thanks for all of the
22 continuing hard work in these very extraordinary times. We
23 understand the importance of addressing protections for
24 California workers related to COVID-19 exposures and what
25 we can do as best practices to try to minimize the impact

1 of the disease on California's workers.

2 But we also have a lot of concern about the time
3 and the resources and all of the efforts that have been
4 used to address COVID-19 protections but have not been
5 available to address other, also very important, health and
6 safety protections for California's workers. We really
7 believe it's time to pay attention to some languishing
8 issues and to move forward expeditiously with action on
9 COVID-19 and the infection disease regulations.

10 But again, we really do need to be paying
11 attention to some additional health and safety concerns.
12 Some of those would include things like the lead standard
13 that has been a long time on the backburner, the heat
14 illness prevention proposed regulations, the impact that
15 will have on indoor work environments, and it's just time
16 to move these proposed regulations and changes forward.

17 There's a languishing advisory committee on the
18 backburner for asbestos and construction regulation
19 changes. That's coming up on about five years of no
20 activity at all, not even a first advisory committee
21 meeting.

22 We have a wildfire smoke protection regulation
23 that was adopted to be a permanent regulation but,
24 essentially, is the emergency regulation language with the
25 intent that there would be an advisory committee convened,

1 my understanding, it would done fairly expeditiously to
2 address the wildfire smoke protection regulation and to
3 make modifications for a permanent regulation. That's now
4 going on three years.

5 So again, there's a very long list of other
6 activities that we really, really do need to have some
7 attention paid to. I understand the constraints. I
8 understand the staffing issues. I understand that there
9 are roadblocks or things that need to be overcome to move
10 forward on some of these issues but they really, really do
11 need to be addressed.

12 And these challenges are not going to go away.
13 The challenges for addressing the other regulations, the
14 other things that we need to do related to COVID and
15 infectious diseases in general, you know, it's not going to
16 go away, and we understand that. But we cannot have all of
17 our resources from the Cal/OSHA Program focused on,
18 essentially, one regulatory effort at this point.

19 I read daily of accidents from things that are
20 happening that will continue to happen that we really do
21 need to pay attention to, exposures that are occurring that
22 we really do need to pay attention to.

23 So with that, I just want to say, again,
24 appreciation for all of the hard work, but what can we do
25 to get things moving on other fronts?

1 I thank you all for your efforts and appreciate
2 your time.

3 CHAIR THOMAS: Thank you, Pamela.

4 Maya, who do we have up next?

5 MS. MORSI: Up next is Bethany Miner with Miner's
6 Ace Hardware.

7 CHAIR THOMAS: Bethany, can you hear us?

8 MS. MINER: I can. Thank you. Can you hear me?

9 CHAIR THOMAS: Yeah. Go right ahead.

10 MS. MINER: Okay. Thank you very much for
11 allowing me the time to speak today. My name is Bethany
12 Miner. I'm an H.R. professional. I'll make my comments
13 very brief today.

14 I would like to see a draft of the new ETS as
15 soon as possible. As an employer with over 300 employees,
16 I've very invested in keeping updated on all upcoming
17 changes to regulations. As you can imagine, that has been
18 a challenge over the past two years.

19 I agree with all the points that Helen Cleary
20 raised today and hope that you are able to address those
21 concerns. Please do not add any vaccination mandate to the
22 ETS.

23 And I also wanted to note that I agree with those
24 who have mentioned exclusion pay is redundant now that
25 supplemental sick pay is mandated from the state.

1 Thank you very much for your time.

2 CHAIR THOMAS: Thank you.

3 Maya, who do we have next?

4 MS. MORSI: Up next is Cassie Hilaski with Nibbi
5 Brothers.

6 CHAIR THOMAS: Cassie?

7 MS. HILASKI: Hello. Can you hear me?

8 CHAIR THOMAS: Yeah. Go right ahead.

9 MS. HILASKI: Good. As usual, thank you to the
10 Board for all of your hard work, and to the Division for
11 their hard work.

12 First of all, I agree with Helen Cleary and Rob
13 Moutrie's comments.

14 Secondly, I wanted to talk about the new orders
15 that have been issued relaxing face mask requirements. I'd
16 simply like some clarification about how that effects
17 workplaces.

18 So Cal/OSHA's ETS states that CDPH guidelines are
19 to be followed concerning face coverings. CDPH guidelines
20 currently direct employers to the ETS. This leads me to
21 believe that the intent is for the ETS minimum standards to
22 be followed which states that only unvaccinated individuals
23 need to wear masks indoors. Fully vaccinated individuals
24 do not need to wear masks and the ETS defines that term as
25 anyone with at least two shots of the mRNA vaccines or one

1 shot of J&J.

2 So I just want to clarify that employers are not
3 to follow the definitions for fully vaccinated and
4 partially vaccinated that are currently used by CDPH when
5 applied to isolation and quarantine guidelines. This
6 clarification would be greatly appreciated to make sure
7 that we are doing what you actually want us to do.

8 And then, finally, I'd also like to second Board
9 Member Laura's request at the last meeting, that the
10 Cal/OSHA website make more of an effort to hold all
11 information in one place rather than requiring the user to
12 bounce around multiple locations to sort out the answers to
13 our questions.

14 Thank you very much for your time.

15 CHAIR THOMAS: Thank you.

16 Who do we have up next, Maya?

17 MS. MORSI: Up next is Eddie Sanchez with
18 Southern California Coalition for Occupational Safety and
19 Health, aka SoCalCOSH.

20 CHAIR THOMAS: Hello. Are you with us?

21 MR. SANCHEZ: Hello. Can you hear me?

22 CHAIR THOMAS: Yeah. Go right ahead.

23 MR. SANCHEZ: Awesome. I just want to thank the
24 Board and staff for your hard work and consideration of our
25 comments today. My name is Eddie Sanchez with SoCalCOSH,

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1 it's Southern California Occupational Safety and Health --
2 excuse me, Southern California Coalition for Occupational
3 Safety and Health. Our organization was founded that
4 workplace deaths and injuries are preventable. I'm here
5 today to comment on the proposed standard for workplace
6 protections of ETS.

7 We want to continue advocating for a strong ETS
8 that retains PPE requirements, that retains exclusion pay,
9 and that is rooted in the reality that there's going to be
10 more COVID surges.

11 We also want to ask that the Board take steps to
12 ensure that the process toward the permanent standard is
13 paved to avoid technical road bumps.

14 We thank you again, Board staff and Division, for
15 your time and consideration and work on this effort. We
16 know you'll make the best decision to protect working
17 families.

18 Thank you.

19 CHAIR THOMAS: Thank you.

20 Who do we have up next, Maya?

21 MS. MORSI: Up next is Bryan Little with
22 California Farm Bureau.

23 CHAIR THOMAS: Bryan, can you hear us?

24 MR. LITTLE: Good morning. Can you hear me?

25 CHAIR THOMAS: Yeah. Go right ahead, Bryan.

1 MR. LITTLE: Thank you very much for the
2 opportunity. I'm Bryan Little with California Farm Bureau
3 Federation, California's largest organization, general
4 interest organization for agricultural producers.

5 I just wanted to align myself with comments
6 offered by Helen Cleary and Robert S. Moutrie. I don't
7 know what the S stands for. I'd love to know one of these
8 days.

9 And also wanted to echo the comments that both of
10 them made to the effect that we would like to see a draft
11 of the March -- the March draft of the standard as soon as
12 possible because we're going to be working on trying to
13 help the agricultural employees understand and comply with
14 it going forward once we expect that the Board would adopt
15 that.

16 Also that there is -- given that the legislature
17 is dealing with or has dealt with these issues, there would
18 be no need for any vaccination mandate in that, nor for
19 exclusion pay, given that the legislature had just dealt
20 with that issue with SB 114. We'd urge the Standards Board
21 and the Agency to make sure that that standard is
22 performance based and easy to understand, or as easy to
23 understand as possible, and would look forward to working
24 with all of you to try to accomplish those goals.

25 I appreciate all that you guys are doing to try

1 to keep up with a rapidly evolving and changing situation
2 and thank you for your time.

3 CHAIR THOMAS: Thank you, Bryan.

4 Maya, who do we have up next?

5 MS. MORSI: Up next is Paula Vlaming with Crane
6 Owners Association and Mobile Crane Operators Group.

7 CHAIR THOMAS: Paula? Was it Paula?

8 MS. MORSI: It's Paula Vlaming.

9 CHAIR THOMAS: Hello. Can you hear us?

10 MS. SHUPE: Paula, if you're -- if you can hear
11 us, you can begin your comments to the Board. You appear
12 to be muted. If you're joining us via phone, please press
13 star six. If you're joining us via WebEx, please ensure
14 that the mute is turned off on your computer. Thank you.

15 CHAIR THOMAS: Paula? I think we're going to
16 have move on to --

17 MS. SHUPE: Hang on just one second. We just had
18 somebody try to join from the lobby.

19 Paula, are you with us now? Press star six.

20 MS. VLAMING: This is Paula.

21 CHAIR THOMAS: Oh, there we go. Paula?

22 MS. VLAMING: Yes.

23 CHAIR THOMAS: Welcome.

24 MS. VLAMING: This is Paula Vlaming --

25 CHAIR THOMAS: Go right ahead.

1 MS. VLAMING: -- of the Crane Owners and Mobile
2 Crane Operators Group.

3 CHAIR THOMAS: Yeah. Go right ahead.

4 MS. VLAMING: Yes. Can you hear me?

5 CHAIR THOMAS: Yes.

6 MS. VLAMING: Okay. This is Paula Vlaming of the
7 Crane Owners Association and Mobile Crane Operators Group.
8 And I am commenting in support of the National Commission
9 for Certification of Crane Owners' comment letter. We
10 agree with their letter regarding the three items that
11 they --

12 CHAIR THOMAS: Oh.

13 MS. VLAMING: Hello?

14 CHAIR THOMAS: Oh, go ahead.

15 MS. VLAMING: Yes.

16 CHAIR THOMAS: We lost you for a second --

17 MS. VLAMING: Yes.

18 CHAIR THOMAS: -- but --

19 MS. VLAMING: Okay.

20 CHAIR THOMAS: -- start with the three items.

21 MS. VLAMING: Okay. Sorry about that. So the
22 three items listed in the National Commission for the
23 Certification of Crane Operators' letter of February 15th,
24 issue number one, the crane operator physical
25 qualifications. We also support issue number two, crane

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1 operator substance tests, and their comments regarding
2 issue number three, crane operator recertification.

3 So we respectfully request that you consider
4 those issues raised by the National Commission for
5 Certification of Crane Operators and take those into
6 consideration before making your adoption order this
7 afternoon.

8 CHAIR THOMAS: Thank you.

9 MS. VLAMING: Thank you.

10 CHAIR THOMAS: Maya, who do we have up next?

11 MS. MORSI: Up next is Robert C. Blink, MD, with
12 Worksite Partners Medical Group.

13 CHAIR THOMAS: Mr. Blink, are you with us?
14 Robert? Remember to unmute yourself or star six if you're
15 on a phone. Robert?

16 We're not getting anything, Maya, so let's go to
17 the next and see if you can get him for later.

18 MS. MORSI: Okay. So we're going to circle back.
19 The first one that we did not get to hear speak is Julian
20 Hisgin.

21 CHAIR THOMAS: Julian, can you hear us? Julian?
22 I hear a sound but can you tell if they're muted?

23 MS. MORSI: Let's see if Julian is in there.

24 CHAIR THOMAS: Who was that?

25 MS. MORSI: This is Maya. I don't see a Julian

1 in here.

2 MS. SHUPE: It doesn't look like --

3 CHAIR THOMAS: Okay.

4 MS. SHUPE: -- he's joined us.

5 CHAIR THOMAS: He must have -- who do we have
6 next?

7 MS. MORSI: Up next is Bruce Wick with Housing
8 Contractors of California.

9 CHAIR THOMAS: Bruce, can you hear us?

10 MR. WICK: Yes, sir. Thanks, Chair Thomas.

11 CHAIR THOMAS: Go right ahead.

12 MR. WICK: I appreciate the opportunity. We want
13 to talk about a couple of things.

14 One is, as has been expressed by others, the time
15 frame. The sooner we get a draft the sooner we can try and
16 respond to the -- you know, what's going to -- and at the
17 next meeting. I was late to this meeting because we're --
18 I was with my members trying to sort out the paid sick
19 leave. As of this morning, we don't have FAQs from the
20 Labor Commissioner on all kinds of very important issues
21 and this law takes effect Saturday morning, and we have no
22 answers for people for very important questions.

23 So we need to stop, as a state government,
24 putting people in, well, here's a new law and hope you can
25 comply in time. We need to give ourselves time to go

1 through things, get FAQs answered. Please, give us that
2 draft as soon as possible.

3 One of the things that I think we should consider
4 here, and construction is one, we're in competitive bid
5 situations. We have an underground economy we compete
6 with. We've just been given the new paid sick leave. And
7 while some tax credits were touted for it in construction,
8 with my members, those tax credits will cover, at best,
9 five percent of the total cost. This really helps the
10 underground economy.

11 Adding exclusion pay and all the administrative
12 issues between the two, if we continue that in the new
13 draft, it's going to be really problematic. I think the
14 legislature has spoken. They used the budget trailer bill
15 process, which is not a good way to do it but, okay, they
16 have spoken. Please, let's exclude exclusion pay going
17 forward and let paid sick leave -- it's going to be an
18 enormous burden on employers to go through that
19 administrative. Besides the cost of it, let's focus there,
20 doing that.

21 And I would like to go back to something Pam
22 Murcell said about all of the things that have been on hold
23 and not processed for a long time. We spent an enormous
24 amount of time between the Division, this Board, processing
25 the ETS. For construction, we can say, it made no real

1 difference. We had been in compliance with protecting
2 people from COVID, April 2020, and that hasn't changed, but
3 we spent all this time on a new reg. We've been going
4 through all these changes.

5 So for this reg coming up in April, please, let's
6 use the IIPP basis. Let's flex as COVID, you know, makes
7 its changes and as we go through that so that we don't
8 spend a ton of time and get some of these other issues
9 through this Board. Everybody's working really hard but
10 we've just let this one issue overtake us. And if we had
11 not done the ETS we would have had huge protection from
12 April of 2020 and we would have processed man of these
13 other issues that need to be addressed at some point.

14 So I hope we follow those two things, not forward
15 the exclusion pay, and follow the IIPP so we don't have --
16 so we can just adjust as things go with the reg that we put
17 into effect in April.

18 Thank you very much.

19 CHAIR THOMAS: Thank you, Bruce.

20 Maya, how many more callers do we have online
21 we're waiting for?

22 MS. MORSI: I plan on calling the three that were
23 not able to speak.

24 CHAIR THOMAS: All right. Let's see if we can
25 get them.

1 MS. MORSI: Okay. So up next is Mike, I'm going
2 to say the name properly this time, Mastroangelo.

3 Mike Mastroangelo?

4 CHAIR THOMAS: Mike, are you with us? Let's see
5 if we could --

6 MS. MORSI: He's not on the list either.

7 CHAIR THOMAS: Well, I'm not hearing anything, so
8 let's move on.

9 MS. MORSI: Okay. The next one is Anna.

10 CHAIR THOMAS: Anna, can you hear us? Remember
11 to unmute yourself. If you're on a phone, star six. Anna?

12 All right, let's go to the next.

13 MS. MORSI: And finally, Robert C. Blink, MD,
14 with Worksite Partners Medical Group.

15 CHAIR THOMAS: Robert, can you hear us? Robert?

16 I think this is our former Board Member; right?
17 I'm pretty sure.

18 Robert, are you there? Unmute yourself if you
19 can, star six if you're on a phone. It looks like we're
20 not going to hear from Robert. All right.

21 Do we have any other callers on the line, Maya?

22 MS. MORSI: We do not.

23 CHAIR THOMAS: All right. At this time, since we
24 have no other callers, we're going to move on to our next
25 order of business. We thank you and the Board appreciates

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1 your testimony, and the public meeting is adjourned and the
2 record is closed.

3 We will now proceed with the business meeting.
4 The purpose of the business meeting is to allow the Board
5 to vote on matters before it and to receive briefings from
6 staff regarding the issues listed on the business meeting
7 agenda. Public comment is not accepted during the business
8 meeting unless a member of the Board specifically requests
9 public input.

10 Today we have Title 8, various safety orders and
11 sections, as listed on today's agenda, for proposals to
12 consolidate Construction Safety Orders, Article 15, Cranes
13 and Derricks in Construction into General Industry Safety
14 Orders, Group 13, Cranes and Other Hoisting Equipment.

15 Mr. Smith, can you please brief the Board?

16 MR. SMITH: Chairman Thomas and Members of the
17 Board, the package before you today is a comprehensive
18 update and consolidation of all Title 8 Crane Standards
19 into the General Industry Safety Orders, or GISO. The
20 existing Construction Safety Order Standards for cranes and
21 derricks are primary based on the 2010 federal rules that
22 were later updated in 2018 for cranes and derricks used in
23 the construction industry nationwide.

24 Following -- moving the construction crane
25 standards into the GISO will maintain conformity with

1 corresponding federal standards and apply consistent
2 requirements to cranes and derricks used in both
3 construction and general industry.

4 The consolidation is expected to have minimal
5 regulatory impact on general industry as exceptions are
6 proposed for the limited cases where the updated standards
7 would impose new and unnecessary requirements on cranes
8 used solely in general industry. The proposed consolidated
9 state standards will be remain more protective than the
10 federal standards since most of the federal standards are
11 found only in subpart CC for construction and not in
12 federal standards for general industry.

13 The proposal was developed with the assistance of
14 industry stakeholders input during a number of advisory
15 committee meetings chaired by then Board staff Conrad
16 Tolson from 2014 to 2015. Staff from the Division and
17 federal OSHA also participated in the advisory process.

18 During the 45-day comment period and the May 2021
19 public hearing a few commenters provided comments that were
20 summarized and fully considered by Board staff. A 15-day
21 notice was issued in November 2021 for some minor
22 modifications to the proposal that resulted from the
23 comments received. Federal OSHA representatives provided
24 comments on the equivalency of the proposal to federal
25 standards and indicated the overall proposal appeared to be

1 commensurate with federal standards and, in some cases,
2 even more stringent. However, federal OSHA did provide a
3 few comments on some minor deficiencies that were addressed
4 during the 15-day process.

5 Finally, a few comments were provided on existing
6 requirements, such as the certification procedures that did
7 not result in modifications as they went beyond the intent
8 of this rulemaking to consolidate and update existing
9 requirements, those existing requirements that have been in
10 place for over ten years and would not change with the
11 adoption or rejection of this proposal.

12 Therefore, it is Board staff's opinion that the
13 substantive issues raised by the commenters on existing
14 requirements would best be addressed in a follow-up
15 advisory and rulemaking process.

16 Finally, Board would like to express our
17 gratitude to our former Board staff engineer and the
18 offerer of this package, Mr. Conrad Tolson, who even in
19 retirement displayed his willingness to provide assistance
20 to staff in getting this proposal through the rulemaking
21 process.

22 At this time, Board staff believes the proposal
23 is now ready for the Board's consideration and adoption.

24 CHAIR THOMAS: Thank you, Steve.

25 Are there any questions for Steve at this time

1 from Board Members?

2 BOARD MEMBER HARRISON: No, I just -- I've got a
3 few comments if I can, Dave?

4 CHAIR THOMAS: Yeah. Go ahead.

5 BOARD MEMBER HARRISON: So, Steve, thanks for the
6 brief. That summarized it pretty well. This is a long
7 time in the making. I've got a lot of folks to thank. I
8 feel like it's a Grammy awards. I want to thank my fans.
9 No, I'm kidding.

10 I truly, truly want to echo Steve's comments
11 about Conrad Tolson. He was the champion with this, along
12 with Mike Manieri, and who else? Steve Smith, your work to
13 kind of wrap this up has been great. You know, it started
14 under Marley Hart. And Christina's, again, able to wrap
15 this up. I think we've been working on this for about
16 eight years or so.

17 I do want to recognize the commenters, the
18 comments that were submitted in writing and verbally today,
19 and orally.

20 I think the benefits of this rulemaking far, far,
21 far outweigh the little bit of -- the few concerns from
22 stakeholders, however, I recognize those are legitimate
23 concerns. And I would support a future advisory or
24 petition to address those issues around the certification
25 process.

1 But with all of that said, I think this package
2 is put together. Once again, it looks like California is
3 going to lead the way for the rest of the country. We're
4 getting phone calls from folks all over the country around
5 cranes and rules and stuff we're able to do in California.

6 So thanks again, Board staff, and anyone that had
7 anything to do with this rulemaking. I'm happy to still be
8 a Board Member and get to vote on its approval.

9 CHAIR THOMAS: Thanks Dave.

10 Any other Board Member comments at this time? I
11 don't see any, so I would entertain a motion?

12 BOARD MEMBER HARRISON: Motion to approve.

13 BOARD MEMBER LASZCZ-DAVIS: Second.

14 CHAIR THOMAS: I have a motion. Do I have a
15 second?

16 BOARD MEMBER LASZCZ-DAVIS: Second.

17 CHAIR THOMAS: I have a second. Are there any
18 other questions?

19 Hearing none, Ms. Money, will you please call the
20 role?

21 MS. MONEY: Ms. Burgel?

22 BOARD MEMBER BURGEL: Aye.

23 MS. MONEY: Ms. Crawford?

24 BOARD MEMBER CRAWFORD: Aye.

25 MS. MONEY: Mr. Harrison?

1 BOARD MEMBER HARRISON: Aye.

2 MS. MONEY: Ms. Kennedy?

3 BOARD MEMBER KENNEDY: Aye.

4 MS. MONEY: Ms. Laszcz-Davis?

5 BOARD MEMBER LASZCZ-DAVIS: Aye.

6 MS. MONEY: Ms. Stock?

7 BOARD MEMBER STOCK: Aye.

8 CHAIR THOMAS: Chairman Thomas?

9 CHAIR THOMAS: Aye. And the motion passes and we
10 thank you.

11 Now we will go to a proposed variance decisions
12 for adoption, and they're listed on the -- they are listed
13 on the consent calendar.

14 Ms. Gonzalez, can you please brief the Board?

15 MS. GONZALEZ: Sure. Thank you, Chair Thomas.
16 Good morning Board Members. We had a very busy hearing
17 schedule last month and we have decisions A, all the way
18 through DD ready for your consideration and possible
19 adoption.

20 CHAIR THOMAS: That was what, A through --

21 MS. GONZALEZ: DD.

22 CHAIR THOMAS: DD?

23 MS. GONZALEZ: Yeah.

24 CHAIR THOMAS: That's quite a few it seems like.
25 So are there any questions for Ms. Gonzales? All

1 right.

2 Hearing none, I'll entertain a motion.

3 BOARD MEMBER LASZCZ-DAVIS: I so move.

4 CHAIR THOMAS: All right. I have a motion from
5 Chris.

6 Do I have a second?

7 BOARD MEMBER KENNEDY: I second.

8 CHAIR THOMAS: I think that was Barbara; right?

9 BOARD MEMBER BURGEL: No, I think it's Nola.

10 BOARD MEMBER KENNEDY: Second.

11 CHAIR THOMAS: Oh, was it Nola?

12 BOARD MEMBER BURGEL: Yeah. Someone should.

13 BOARD MEMBER KENNEDY: Yeah.

14 CHAIR THOMAS: Okay. Somebody seconded it, so,
15 all right, so we have a motion and second. Are there any
16 other questions?

17 If not, then, Ms. Money, would you please call
18 the roll?

19 MS. MONEY: So just to clarify, I've got Ms.
20 Laszcz-Davis for motion and Ms. Kennedy for a second; is
21 that correct??

22 CHAIR THOMAS: Thank you, Nola. I didn't see
23 you. All right.

24 Call the roll.

25 MS. MONEY: Ms. Burgel?

1 BOARD MEMBER BURGEL: Aye.

2 MS. MONEY: Ms. Crawford?

3 BOARD MEMBER CRAWFORD: Aye.

4 MS. MONEY: Mr. Harrison?

5 BOARD MEMBER HARRISON: Aye.

6 MS. MONEY: Ms. Kennedy?

7 BOARD MEMBER KENNEDY: Aye.

8 MS. MONEY: Ms. Laszcz-Davis?

9 BOARD MEMBER LASZCZ-DAVIS: Aye.

10 MS. MONEY: Ms. Stock?

11 BOARD MEMBER STOCK: Aye.

12 MS. MONEY: Chairman Thomas?

13 CHAIR THOMAS: Aye. And the motion passes.

14 Thank you.

15 Let's see, Division Update.

16 Mr. Berg, can you please brief the Board?

17 MR. BERG: Yes. Thank you, Chairman Thomas. Can

18 you hear me okay?

19 CHAIR THOMAS: Yeah. Go right ahead, Eric.

20 MR. BERG: Oh, okay. So Cal/OSHA has completed

21 the rulemaking packages for indoor heat, lead in

22 construction, lead in general industry, and first aid, and

23 worked diligently on all these rulemaking packages during

24 the COVID-19 pandemic.

25 For workplace violence, I know that they were

1 asking -- Board Members asked for an update on that. So
2 we, as you know, we posted two previous drafts and received
3 a number of public comments, and those comments are very
4 helpful, so we've reviewed and reviewed all those comments
5 and have prepared another draft text that we will post as
6 soon as we're able to post that. So please look forward to
7 the further language to be posted on workplace violence.

8 And then we'd appreciate stakeholder and public
9 and interested parties to comment on that. So we're trying
10 to balance making it simple and easy to understand and
11 then, also, protective of employees. So we've been trying
12 to get those two issues correctly balanced as best as we
13 can. And so this back and forth with stakeholders and
14 posting language is very helpful in trying to refine that.

15 As far as the ETS, we'll get the text posted as
16 soon as we can, and we'll be working on that.

17 I'm trying to think of anything else. Any other
18 questions on other issues?

19 CHAIR THOMAS: Laura, then Dave.

20 BOARD MEMBER STOCK: Thank you. Thank you, Eric.

21 Yeah, I do have a number of questions.

22 So back to the ETS, so --

23 CHAIR THOMAS: Laura, your mike is not working
24 right.

25 BOARD MEMBER STOCK: Oh, okay. Can you not hear

1 me?

2 CHAIR THOMAS: No, it's not good.

3 BOARD MEMBER STOCK: I'm going to put in a
4 headphone.

5 CHAIR THOMAS: Okay. Unmute

6 BOARD MEMBER STOCK: Is that better? Can you
7 hear me now?

8 CHAIR THOMAS: Not much better but you can try.

9 BOARD MEMBER STOCK: Oh, I'm so sorry. Okay.
10 How about now? I'm getting even closer.

11 CHAIR THOMAS: Okay. Try that.

12 BOARD MEMBER STOCK: All right. Okay. Is that
13 any better right now?

14 CHAIR THOMAS: No, it's really not.

15 MS. SHUPE: There's some sort of interference,
16 Laura.

17 CHAIR THOMAS: Yeah. It's real fuzzy.

18 MS. SHUPE: It's not that you're not close
19 enough, it's that there's a lot of interference and status.

20 BOARD MEMBER STOCK: I'm going to get another
21 headset. So maybe other people can come in and then I'm
22 come back?

23 CHAIR THOMAS: Okay.

24 MS. SHUPE: Should we go to Dave?

25 CHAIR THOMAS: Let's go to Dave Harrison, and

1 then Barbara.

2 Dave?

3 BOARD MEMBER HARRISON: Yeah. So I want to talk
4 about, and I mentioned this last month, automated
5 equipment, and specifically the experimental variance,
6 temporary variance that was granted by the Division in
7 August of last year, and try to wrap my brain around. And
8 maybe, Eric, you can help me, and maybe come back next
9 month with a report.

10 So in 2019 there was a petition submitted for
11 automated equipment with the Association of Equipment
12 Manufactures. And if you look at the Division's evaluation
13 of that petition, the Division said, and I quote,

14 "Division reviewed the petitioner's proposed
15 changes to Title 8 3441(b). The review included
16 information provided in the petition's application,"
17 so on and so forth. "Field evaluations were also
18 conducted at two different locations that employed
19 technology relative to the use of autonomous
20 equipment. Based on the information gathered during
21 the evaluations the Division recommends the Standards
22 Board to deny the petition."

23 And fast forward to August of 2021, and now we've
24 got Monarch who applied for an experimental temporary
25 variance, and the Division did a complete flipflop and

1 granted this experimental variance and, in my opinion,
2 putting employees at risk. And I don't know, these are
3 substantively the same issues, the same petitions, the same
4 equipment.

5 And there was zero stakeholder involvement. I
6 didn't even find out about it until -- and I went to the
7 Division's website, I couldn't find anything on it. I had
8 to find out through the Cal-OSHA Reporter in January of
9 this year that this, such a variance, was even granted.

10 And so now we've got another petition before us,
11 so I'm not going to talk about 596. But I would ask the
12 Division, if you could come back next month and maybe
13 explain the difference between Petition 571 with AEM
14 (phonetic) and Monarch's temporary experimental variance,
15 and why the Division decided to have a change of opinion?
16 What are the substantive differences between the two
17 situations so that I can understand where we're going with
18 protecting workers around this autonomous equipment?

19 MR. BERG: Okay. Sure. I'll do that for next
20 month. I can give you a high-level overview now.

21 BOARD MEMBER HARRISON: That would be great.

22 MR. BERG: The temporary experimental variance
23 is --

24 MS. GONZALEZ: Before Eric goes any further, I
25 just want to caution that this is an open matter.

1 MR. BERG: Oh, okay.

2 MS. GONZALEZ: And an appeal has been filed, so
3 we should just be a little careful about what we discuss
4 here.

5 MR. BERG: Oh, okay. I can --

6 BOARD MEMBER HARRISON: If you want to wait --

7 MR. BERG: -- not talk about it.

8 BOARD MEMBER HARRISON: -- I'm fine. I just
9 wanted to ask the question. And we can forego any response
10 today. That's fine.

11 MR. BERG: Okay. I'll hold off on that since the
12 matter is under appeal.

13 CHAIR THOMAS: Thanks Dave. Thanks Eric.
14 Barbara?

15 BOARD MEMBER BURGEL: I wanted to just follow up,
16 and I don't know, Laura, if this was your point but, you
17 know, Cassie Hilaski and several others commented on the
18 recent guidance from the CDPH regarding masking and if
19 there is going to be some frequently asked questions or
20 some clarification from the Division about what indoor
21 employers, you know, employers should do for indoor
22 worksites? My understanding, when I interpret what we
23 should be doing, is that employers need to verify
24 vaccination status which, again, as Cassie pointed out is
25 the old definition as opposed to the new definition, or are

1 we adopting the CDPH definition of a booster with fully
2 vaccination? That's the first question.

3 And the second question is that employers still
4 have the option of not asking about vaccination but
5 requiring masking for all indoor workplaces.

6 So could you verify what's going to happen vis a
7 vis this recent masking CDPH policy?

8 MR. BERG: Yeah, well, in the ETS, there's
9 section 3205 does require face coverings indoors for -- and
10 in vehicles for employees who are not fully vaccinated.
11 And the definition of fully vaccinated is what's in 3205
12 right now, so it doesn't -- that hasn't changed. And also,
13 3205 requires face coverings be provided and ensured their
14 used when required by orders from CDPH. So CDPH changed
15 that order effective February 15th. So before, everybody,
16 regardless of vaccination status, had to use face coverings
17 indoors, at any indoor location, and so that applied.

18 And that no longer is in effect, that order, so
19 that changes 3205 where it incorporates orders. CDPH still
20 does require face coverings in some unique settings,
21 transportation, some other industries, so that would still
22 be required, but exactly what's in the CDPH order.

23 So I don't know if that answers your question.

24 BOARD MEMBER BURGEL: Do you anticipate that the
25 CDPH is going to change their definition of fully

1 vaccinated and then comply? I mean, it's referring people
2 back to the ETS but we have an outdated definition of fully
3 vaccinated, so it's a little, I think, murky.

4 But, Laura, I'm sure you're probably going to ask
5 about this, as well, so --

6 BOARD MEMBER STOCK: Yeah. Can you hear me now?

7 CHAIR THOMAS: Hurry up before we lose you but go
8 ahead.

9 BOARD MEMBER STOCK: Okay. Yeah. It's funny, I
10 tested my sound when I first joined, but I'm going to go
11 ahead. Stop me if you stop being able to hear me.

12 So first, definitely, one question is it's
13 really, really urgent, as everybody has said, to get that
14 draft up as soon as possible. Because if we're going to be
15 voting on that very shortly, people need to have an
16 opportunity to respond, so I have a couple of questions.

17 But before I go to the next one, could you just
18 give us any more specificity about when that draft will be
19 even available to review?

20 MR. BERG: Yeah, I don't know an exact of when it
21 will be posted, but as soon as possible.

22 BOARD MEMBER STOCK: Okay. So I guess I'll just
23 join all the other stakeholders, I see some nods from my
24 fellow Board Members, in just recognizing how urgent it is
25 that it be put up there as soon as possible. I understand

65

1 the challenges but it's really, really important.

2 And then secondly, I just want to make a few
3 general comments in response to some of what we've heard
4 this morning. I share the concern that we are, once again,
5 CDPH and others are prematurely rolling back requirements
6 when we know that they work and that there is a need for
7 kind of, you know, multiple efforts.

8 And I'm concerned about the idea, even though
9 some mandates are being rolled back by CDPH, they are still
10 strongly encouraging masks wearing, which indicates that
11 they believe that it works, but it's leaving the choice to
12 individuals. And it's our job to remember that workers
13 don't have that choice. So it's, really, it's important
14 that we recognize that we have a different kind of charge
15 here. I'm not talking about the general public. I'm
16 talking about workers who are impacted by the choices of
17 others. So I join the hope that we're not going to be
18 moving backwards in our ETS.

19 I do think that there is a couple of things. I
20 think it's really important to clarify the definition of
21 vaccinated. And so a new reg does give us an opportunity
22 to recognize the importance of boosters, so I hope that
23 that can be incorporated.

24 And then I finally want to just comment on the
25 call for people to eliminate exclusion pay. It's really,

1 really important to keep reiterating that the new sick
2 leave law does not cover any places of employment that are
3 25 and under, and that is a huge percentage of California
4 workplaces. And we know that the most important way to
5 stop the spread is to allow sick people to be able to stay
6 home.

7 And we heard this morning from someone
8 representing a fast food worker who described for us the
9 impact of not having sick leave to stay -- when he stayed
10 home, he lost the ability to pay his rent, pay his bills,
11 and that's what people will be facing.

12 So it's very, very important in my mind to retain
13 that environment, recognizing that the sick leave law
14 leaves huge numbers of California workers unprotected. So
15 I'm hoping that that will be, as well, in the new law.

16 And then I just want to reiterate, and thank you,
17 Cassie, for referencing that, I hope it is still true, and
18 I've been looking lately, unless it's changed, that there's
19 a need to go to multiple places to understand where things
20 are. So I know that we're going to get another change.

21 And I'm hoping that once that happens, or possibly before,
22 there will be one link that takes you to all the
23 requirements that you need rather than, you know, this is
24 what's before, this is what CDPH says, these are the
25 isolation requirements. So I do recognize that that has

1 been very confusing.

2 Thank you.

3 CHAIR THOMAS: Thank you, Laura.

4 Any other questions for Mr. Berg?

5 I don't see any, so we'll do the Legislative
6 Update.

7 Ms. Gonzalez, can you please brief the Board?

8 MS. GONZALEZ: Sure. So I wanted to briefly
9 mention AB 1993. It's a new bill. It's not on your list
10 yet but it will be next month. And I think Rob briefly
11 discussed it, Rob Moutrie briefly discussed it, just the
12 vaccine requirement. It would require employees and
13 independent contractors to show proof of vaccination. And
14 there's exceptions involved in that bill, so that's AB
15 1993.

16 And I also just wanted to briefly update you on
17 AB 257, which is the fast food bill. That has passed the
18 assembly and it's now in the senate. And it creates a fast
19 food council that would, among other things, recommend new
20 safety regulations to the Standards Board.

21 CHAIR THOMAS: All right. Anything else?
22 Anything else, Ms. Gonzalez?

23 Any questions the Board has of Ms. Gonzalez?

24 CHAIR THOMAS: All right, hearing none, Executive
25 Officer's Report.

1 Christina?

2 MS. SHUPE: Just one moment. Thank you. Thank
3 you, Chair Thomas.

4 So I just want to let the Board know that the
5 Governor has appointed a new Cal/OSHA Chief. We'll be
6 welcoming Jeff Killip from Washington. He joins us from
7 the OSHA Program there. And as soon as we have a start
8 date for him, we will invite him to come and attend a Board
9 meeting.

10 Over the past month, I participated in a
11 presentation on February 8th at the 2022 Safety Forum
12 hosted by the Safety Center. This is an annual event that
13 Board staff participates in to share with safety
14 professionals the nuance and purpose and mission of the
15 Board and its activities.

16 And then looking forward, we have, over the next
17 month we'll, of course, have Board consideration of the
18 third COVID ETS readoption. I want to just say for
19 everyone that this is a very high priority, this is our top
20 priority, and as soon as we have everything ready to post
21 and provide that to the Board, we will.

22 We will also be considering a proposal for
23 applications for permanent variances. This is a
24 streamlining proposal that will help reduce paperwork
25 required for variance applications and let everyone apply

1 for variances via email.

2 And I want to take a moment to just pause and
3 really appreciate the team that is working on our variance
4 applications. It's primarily our Chief Counsel Autumn
5 Gonzalez, but it's also two very hardworking RA's that we
6 have, Jackie Kennedy and Linda Mehawk. And Jackie and
7 Linda have just been working tremendously hard.

8 The Board knows that we had over 700 variance
9 applications go through last year. This month alone there
10 are over 160 variance matters in your Board packet. It
11 just speaks to the incredible volume of work that they are
12 processing and they're running everything as streamlined as
13 they possibly can. And I just -- I'm in awe of what
14 they've been able to accomplish and very, very grateful for
15 the work they've been doing.

16 Looking forward to beyond next month, you know,
17 obviously, we're going to be submitting the CDAC (phonetic)
18 proposal that the Board just approved to OAL, but we're
19 also -- we have a 15-day comment period for a minor
20 editorial change to our Firefighter PPE. And we are
21 looking to bring that package to the Board for
22 consideration in April.

23 Are there any questions? Laura?

24 BOARD MEMBER STOCK: Well, I'll let Chris go
25 first because she hasn't spoken yet. I'll go after her.

1 BOARD MEMBER LASZCZ-DAVIS: Thank you, Laura.

2 You know, just real quickly, Christina, why do
3 you guys think we have this tremendous increase in
4 variances? What's the catalyst?

5 MS. SHUPE: So the vast majority of our variance
6 applications are for elevators and that is tied directly to
7 construction in the state. So every single one of these
8 variances that you look at, behind that variance is a
9 building, there's an owner, there's occupants. And they,
10 in order to start those businesses, to complete those
11 buildings, they need to have their elevators approved and
12 ready to go. And so that's one of the reasons we treat it
13 as such a high-priority project for the Board.

14 BOARD MEMBER LASZCZ-DAVIS: All righty. Thank
15 you.

16 CHAIR THOMAS: Laura? Laura?

17 BOARD MEMBER STOCK: Yeah. Hi, Christina, I
18 don't know if this is going to be a question you could
19 answer or whether (indiscernible), I just forgot to
20 mention. I have two questions about going forward.

21 One, the permanent reg that will now be voted on
22 later in the year, I'm wondering whether there's progress
23 on getting the SRIA started? Because I know that that's
24 one of the essential steps that's needed. And I, you know,
25 would hope that that, itself, would delay action. So I

1 guess that's my first question.

2 And my second question is I did just want to see
3 if there's any update on the process of beginning to
4 develop a permanent infectious disease regulation that is
5 broader than COVID? So I mean, I know, we've heard already
6 the tremendous workload from the variance, the tremendous
7 workload that the Division is under. So I second what
8 somebody said earlier that we need to be advocating for
9 sufficient resources for both the Board and the Division to
10 take on this tremendous workload. So if there's ever an
11 opportunity to add our voice to the call for more
12 resources, let us know.

13 But with that, if you could both let us know any
14 report on the SRIA process for a permanent COVID reg and on
15 the process of developing a general infectious disease
16 regulation?

17 MR. BERG: Yeah, I can speak to that. The SRIA
18 has been -- we've been working on that for months now. I'm
19 not sure exactly when we started but, many months, we've
20 been working on that. It's not complete yet but it's been
21 in the works for a long time, so I don't know exactly when
22 it will --

23 BOARD MEMBER STOCK: Okay.

24 MR. BERG: -- be completed.

25 BOARD MEMBER STOCK: Do you anticipate that it

1 will be done in time, in other words, that it won't delay
2 the ability to vote on the permanent reg when that deadline
3 comes up?

4 MR. BERG: Yeah, that's what we're working
5 towards, to have it -- so there's no gap in the coverage.

6 BOARD MEMBER STOCK: Great. Thank you. And
7 anything to say about the infectious disease?

8 And then I think I see Barbara's hand, too.

9 MR. BERG: Yeah. I mean, we don't have any
10 language to share at this time. We're slowly but surely
11 working on possible language that we could post but we're
12 not at that stage yet.

13 BOARD MEMBER STOCK: Barbara, were you -- did you
14 have something you wanted to add?

15 BOARD MEMBER BURGEL: I wanted to ask, not of
16 Eric but of Christina, just -- or maybe, Eric, you could
17 weigh in on this, as well, around the variances for
18 elevators, as we've been waiting and waiting and waiting
19 for the elevator, I think it's Group 5, changes to be
20 integrated. And is there any -- what's on the horizon vis
21 a vis the elevator standards upgrade?

22 MS. SHUPE: So, Eric, with your leave I can go
23 ahead and address that because I've been in communication
24 with the Elevator Unit, unless you'd like to.

25 MR. BERG: No. Go ahead. Thank you.

1 MS. SHUPE: Yeah. So this is actually an active
2 rulemaking. The Elevator Unit pulled it back and they have
3 been working with it. Dan Barker is the leader on that
4 team. He's part of the ASME committee, as well, that's
5 looking at regulations that are coming down the pike. They
6 originally wanted to incorporate 2019 standards, as well.
7 Their goal is to help alleviate the variance requests that
8 are coming through and to do so in a way that's really
9 effective for both management and employees.

10 My expectation from them is that they should have
11 language ready to -- draft language ready for us by the end
12 of this year.

13 BOARD MEMBER BURGEL: Oh, that's good. Thank
14 you.

15 CHAIR THOMAS: Any other questions for Christina?

16 MS. SHUPE: Chris?

17 BOARD MEMBER LASZCZ-DAVIS: You know, just real
18 quickly. Maybe I've missed something but have we made a
19 concerted -- has the Division made a concerted division
20 [sic] to actually craft an infectious disease standard? We
21 spent all of our time on a COVID standard. And has an
22 infectious disease standard hit the radar screen such that
23 there's actually work going to be crafted to post something
24 to the website?

25 MR. BERG: Yeah, I don't know when we'll have

1 something ready and approved to be posted as far as draft
2 language for comments. I don't know when that will be done
3 yet.

4 BOARD MEMBER LASZCZ-DAVIS: But Eric,
5 directionally, that is the plan; right?

6 MR. BERG: Yes, that's the plan. Correct.

7 BOARD MEMBER LASZCZ-DAVIS: All right. Thank
8 you.

9 CHAIR THOMAS: Thank you, Chris.

10 Any other questions? Barbara?

11 BOARD MEMBER BURGEL: On that same thought, is
12 there any expectation to have another advisory committee
13 for the ATD? When we're saying infectious disease I'm
14 thinking, you know, we've had -- Cal/OSHA hosted a
15 committee, you know, advisory committee meeting on the ATD
16 standard. Just to clarify, we're -- that's what we're
17 talking about when we say an expanded infectious disease or
18 are we talking about a different standard than changing the
19 ATD?

20 MR. BERG: Yeah, it would not be part of the ATD,
21 it would be a different standard.

22 BOARD MEMBER BURGEL: Oh, okay.

23 MR. BERG: But we did have an advisory committee
24 in ATD. And we hope to have that rulemaking process start
25 soon because it's a pretty small package. But the

1 infectious disease standard for general industry would not
2 be part of ATD.

3 BOARD MEMBER BURGEL: Okay. So it's not the
4 intention? I haven't looked at the committee summary from
5 that advisory committee for the ATD yet. But one of the
6 proposals was to expand the ATD standard as it currently
7 reads to general industry but that is not --

8 MR. BERG: That's a possibility. We haven't, you
9 know, 100 percent eliminated that but it's not the number
10 one idea right now.

11 BOARD MEMBER BURGEL: Okay. Thank you.

12 MR. BERG: Yeah. Because it's a pretty complex
13 standard. It might not be appropriate for many workplaces.
14 It's something we'd have to look at carefully.

15 BOARD MEMBER BURGEL: Okay. Thank you.

16 CHAIR THOMAS: Thank you, Barbara.

17 Anything else from the Board for Eric? All
18 right.

19 Moving along, we'll go to new business, future
20 agenda items. I think we've covered some of them.

21 Christina, do you have any?

22 MS. SHUPE: So that item is just if we -- if the
23 Board have any future agenda items they would like us to
24 address.

25 CHAIR THOMAS: Anything at this time?

1 BOARD MEMBER STOCK: Well, I mean, I guess, just
2 it maybe goes without saying that we continue to want to
3 hear updates on the promise of the permanent COVID reg, the
4 infectious disease reg and the other regulatory packages.
5 And Eric has been pretty consistently providing that but
6 make sure that that happens again.

7 CHAIR THOMAS: Sure.

8 BOARD MEMBER BURGEL: And I would like to bring
9 up and, in fact, we've talked about it and around it for
10 several meetings, and it's been brought up by some of our
11 stakeholders, as well, is just the whole process by which
12 the Board does not have as much input as one would think or
13 hope in looking at the this draft language prior to -- it's
14 sort of the horse is out of the cart -- or the horse is out
15 of the barn, excuse me, wrong metaphor, the horse is out of
16 the barn, or the horse is in front of the cart or behind
17 the cart, I don't know, but there seems to be an
18 opportunity to look at our processes so that there is a
19 little bit more opportunity to look at this language before
20 we have to vote on it.

21 You know, again, we get the comment letters. We
22 basically see the language at the same time that our
23 stakeholders see the language. And then, you know, we're
24 in a time crunch and we have to vote on, perhaps, something
25 that could have been modified and changed before we are,

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1 you know, at the last minute voting on these renewals or
2 adoptions. And I would like an opportunity to just look
3 at, take the time to do a continuous quality improvement
4 sort of deep dive around our processes to see if indeed,
5 you know, we piloted the subcommittee process with the
6 COVID ETS. That seemed to be sort of parallel to what was
7 happening with the CDPH and the Division.

8 And so I think there's opportunities to look at
9 our processes a little bit to see how best we could, again,
10 look at our stakeholder input -- the Board has a lot of
11 talent on it -- making sure we just sort of see this stuff
12 in a timely fashion and have a more active role from a
13 Board perspective. I don't know if other Members feel that
14 that would be helpful?

15 BOARD MEMBER LASZCZ-DAVIS: You know, Barbara,
16 I'd agree with you. I'd support that, as well.

17 MR. BERG: Okay. Yeah, I'll communicate that to
18 the Cal/OSHA leadership.

19 BOARD MEMBER BURGEL: And -- yeah. Thank you.

20 BOARD MEMBER HARRISON: I have a future agenda
21 item if I can?

22 CHAIR THOMAS: Dave, go ahead.

23 BOARD MEMBER HARRISON: Yeah. Now that the crane
24 rule has been passed, there were comments, written and oral
25 comments, about the three issues of concern specifically

1 around certification in regards to physical examination,
2 substance abuse testing, and the 1,000-hour exemption for
3 practical exams for recertification. I'd like to bring
4 that back to the Board for a separate rulemaking, or at
5 least an advisory committee, to discuss those issues

6 CHAIR THOMAS: I think that was already kind of
7 baked in this from the beginning but, yeah, it will happen.

8 BOARD MEMBER HARRISON: Perfect. Thank you.

9 CHAIR THOMAS: Nola?

10 BOARD MEMBER KENNEDY: Yeah. I just want to sort
11 of go back to -- can you hear me okay? -- Barbara's --

12 CHAIR THOMAS: Yes.

13 BOARD LASZCZ-DAVIS: Yes.

14 BOARD MEMBER KENNEDY: Okay. I just want to go
15 back to Barbara's comment a little bit and maybe expand on
16 it. And I don't think this is anything that's urgent. But
17 one of the things that I've become increasingly confused
18 about as a Board Member is why the Board staff writes
19 safety rules and the Division writes health rules. It
20 seems to me that this is -- you know, I don't understand
21 why it's not all under the purview of the Board staff. And
22 I'm sure there's some history there that can be explained.
23 It doesn't need to be done now. But you know, I kind of
24 think, to Barbara's point, if the Board staff was writing
25 the rules we might have quicker and easier access to the

1 language.

2 MR. BERG: Well, the Labor Code says DOSH does
3 the -- or Cal/OSHA does health regulations. And there's
4 also --

5 BOARD MEMBER KENNEDY: Yeah, and --

6 MR. BERG: -- an MOU between the Standards Board
7 and Cal/OSHA --

8 BOARD MEMBER KENNEDY: No, I -- and I --

9 MR. BERG: -- saying that we do the health. So,
10 by law, we have to -- we do the health regulation. That's
11 in the law.

12 BOARD MEMBER KENNEDY: Right, I understand that
13 it's codified, I'm just wondering what that history is that
14 brought it there? Because it doesn't necessarily make
15 sense to me.

16 Anyway, that's it. And like I said, it doesn't
17 have to be discussed now or thought about now but it
18 doesn't really make sense to me. I understand that it's
19 the law but it doesn't mean it makes sense.

20 CHAIR THOMAS: Well, Eric --

21 BOARD MEMBER KENNEDY: And that's it.

22 CHAIR THOMAS: -- you've got your homework now,
23 but for next meeting.

24 MR. BERG: Okay. I'll research --

25 BOARD MEMBER KENNEDY: No, that's --

1 MR. BERG: -- the history.

2 BOARD MEMBER KENNEDY: -- that's --

3 MR. BERG: I'll research the history of that
4 Labor Code section that's 40 years old --

5 CHAIR THOMAS: That's fine.

6 MR. BERG: -- or something, yeah.

7 BOARD MEMBER KENNEDY: Yeah. I mean, it -- and
8 it might be time to rethink it, so just throwing it out
9 there for people to chew on.

10 CHAIR THOMAS: Thank you, Nola.

11 BOARD MEMBER STOCK: I just want to make one
12 comment. I think the issue that Barbara is raising is, is
13 there an opportunity to have more input and more access? I
14 think that is, you know, that's a core issue. I don't know
15 whether that really -- you know, whether it's being
16 developed by the Board or the Division, it has to have an
17 impact on that. And I think there's potential to have
18 this, whatever we determine, if there's more access and
19 more involvement and it's determined that we're allowed to
20 have that, I don't know that it's impacted by which Staff
21 is developing it. I just want to -- kind of the core
22 issue, I think, is access.

23 But in any case, kind of here, you know, if
24 there's more history that is needed to explain why that
25 division, then we can hear that from Eric.

1 CHAIR THOMAS: All right. We'll try and have
2 some kind of information related to that at the next
3 meeting, hopefully, Eric, so -- and then we'll try and get
4 involved and see where that goes to on the -- on our side.

5 But anyway, are there any other questions at this
6 point? Okay.

7 Seeing that there are not, any -- we're going
8 into closed session.

9 So Christina, do you have directions? Do
10 they have the numbers and everything to get into that?

11 MS. SHUPE: Yeah. So the Board Members should
12 have received closed session information via email and you
13 can go ahead and use that to dial in. I believe we're
14 going to break now.

15 CHAIR THOMAS: Yeah. So we're going to break and
16 we're going to -- how long do you think; 12:30?

17 MS. SHUPE: No, no. I would say --

18 CHAIR THOMAS: No?

19 MS. SHUPE: -- we only need a five- to ten-minute
20 break and then go -- the Board will meet in closed session
21 and then --

22 CHAIR THOMAS: Right.

23 MS. SHUPE: -- we'll come back. I don't expect
24 that closed session will last very long, maybe 15 to 20
25 minutes.

1 CHAIR THOMAS: All right. So we're going to go
2 into closed session but we're going to give you guys ten
3 minutes to do whatever you need to do and then call in,
4 okay? I think will work.

5 BOARD MEMBER LASZCZ-DAVIS: Okay. Great. Thank
6 you.

7 CHAIR THOMAS: So at this time, we're going to
8 suspend the meeting to go into closed session in ten
9 minutes, so we'll see you around 11:55, all right? Thank
10 you.

11 (Whereupon the Board adjourned to closed session
12 from 11:42 a.m., until 12:11 p.m.)

13 CHAIR THOMAS: All right. We are back in
14 session. During the closed session the Board took no
15 action.

16 So the next Standards Board regulation meeting is
17 scheduled for March 17th, 2022 via teleconference and
18 videoconference. Please visit our website and join our
19 mailing list to receive the latest updates. We thank you
20 for your attendance today.

21 There being no further business, this meeting is
22 adjourned. Thank you so much. We'll see you next month.

23 (The Business Meeting adjourned at 12:11 a.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of March, 2022.



ELISE HICKS, IAPRT CERT**2176

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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

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I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



March 31, 2022

MARTHA L. NELSON, CERT**367