

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
October 15, 2020 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

*PLEASE NOTE: In accordance with Executive Order N-29-20, and Executive Order N-33-20, the
PHYSICAL meeting location has been cancelled for October.*

THURSDAY, OCTOBER 15, 2020

10:00 A.M.

Reported by:
Elise Hicks

APPEARANCES

BOARD MEMBERS:

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

BOARD STAFF:

Christina Shupe, Executive Officer
Sarah Money, Executive Assistant
Michael Nelmidia, Senior Safety Engineer
Michael Manieri, Principal Safety Engineer
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Jennifer White, Associate Governmental Program Analyst

DIVISION STAFF:

Eric Berg, Deputy Chief of Health, Division of Occupational Safety and Health

TECHNICAL SUPPORT:

John Gotcher, TKO
John Roensch, TKO
Maya Morsi, TKO
Michael Howard, TKO

INTERPRETERS:

Susana Haikalis
Julie Drucker
Dean Mcconkey

PUBLIC COMMENT:

Elizabeth Treanor, Phylmar Regulatory Roundtable (PRR)
Guadalupe Garcia De Solis, Unite Here
Oralia Summers, Unite Here
Eric Frumin, Change To Win

APPEARANCES (Cont.)

PUBLIC COMMENT: (Cont.)

Janette Bell, Unite Here

Bruce Wick, CALPASC

Sarah Wiltfong, Los Angeles County Business Federation

Brian Heramb, San Diego Gas & Electric

Rob Moutrie, CA Chamber of Commerce (also read a comment into the record from Len Welsh)

Bryan Little, California Farm Bureau Federation

Dan Leacox, Self

Michael Müller, California Association of Winegrape Growers

Margaret (Maggie) Robbins, Worksafe

Cassie Hilaski, Nibbi Brothers General Contractors

Mike Donlon, Construction Employers' Association

Michael Holland, Clarke Construction Group/Carpenters Local 405 in San Jose

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1 PROCEEDINGS

2 OCTOBER 15, 2020

10:01 a.m.

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

9 Also present from our staff for today's meeting are Ms. Christina Shupe,
10 Executive Officer; Ms. Sarah Money, Executive Assistant; and Mr. Michael Nelmidia,
11 Senior Safety Engineer who is providing technical support.

12 Supporting the meeting remotely today are Mr. Michael Manieri,
13 Principal Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr. David
14 Kernazitskas, Senior Safety Engineer and Ms. Jennifer White, Staff Services Analyst.

15 Via teleconference we are joined today by Mr. Eric Berg, Deputy Chief of
16 Health, representing the Division of Occupational Safety and Health.

17 If you have not already done so, we ask that you email oshsb@dir.ca.gov
18 to provide your name and contact information, which will become part of the official
19 record of today's proceedings.

20 Today's agenda and the other materials related to today's proceedings
21 are posted online at dir.ca.gov/oshsb/mtgsch.html.

22 In accordance with Executive Order N-29-20, the physical meeting
23 location for today has been cancelled. Today's meeting is being held exclusively via
24 teleconference with an optional video component. This meeting is also being broadcast
25 live via webcast and audio in both English and Spanish.

1 Links to these non-interactive live broadcasts can be accessed via the
2 "What's New" section at the top of the main page of the OSHSB website at
3 dir.ca.gov/oshsb/oshsb.html.

4 We are living in unprecedented times and the Board is committed to
5 taking the steps necessary to protect not only the health and safety of our participants,
6 but also to expand access as we improve our remote meeting platform. We have
7 limited capabilities for managing participation during public comment periods. So we're
8 asking everyone who is not speaking to place their phones and computers on mute and
9 wait to unmute until they are called on to speak.

10 As reflected on the agenda, today's meeting consists of two parts. First,
11 we will hold a public meeting to receive public comments or proposals on occupational
12 safety and health matters. Anyone who would like to address any occupational safety
13 and health issues, including any of the items on our business meeting agenda may do so
14 at this time. Members of the public who have contacted staff either by email or phone
15 and asked to be placed in the public comment queue will be called on in turn.

16 Additionally, those joining via WebEx may ask to join the queue via the
17 chat function. The WebEx chat function is monitored exclusively by staff and only
18 available to send requests to join the public comment queue. It is not a method for
19 providing public comments to Board Members. Board Members will not consider or
20 respond to any messages delivered via the chat function, nor will such comments
21 become part of the official rulemaking record.

22 Please listen for your name and an invitation to speak before addressing
23 the Board. And please remember to mute your phone or computer after commenting.

24 After everyone in the queue is provided an opportunity to speak, we will
25 then open public comment to anyone on the call who was not able to enter the queue.

1 If you wish to speak more than once, please contact staff and have your name placed
2 back in the queue. During the meeting, Board staff can be contacted by email at
3 oshsb@dir.ca.gov or via phone at 916-274-5721. If you experience a busy signal or are
4 re-routed to voicemail, please hang up and call again.

5 After the public meeting, we will conduct a second part of our meeting,
6 which is the business meeting to act on those items listed on the business meeting
7 agenda. The Board does not accept public comment during its business meeting unless
8 a member of the Board specifically requests public input.

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

15 At this time, anyone who would like to comment on any matters
16 concerning occupational safety and health will have an opportunity to speak. For our
17 commenters who are native Spanish speakers, we are working with an interpreter,
18 Susana Haikalis, to provide a translation of their statements into English for the Board.

19 At this time, Ms. Haikalis will provide instruction to the Spanish-speaking
20 commenters so that they are aware of the public comment process during this remote
21 meeting.

22 Ms. Haikalis, are you giving instruction now?

23 MS. SHUPE: One moment, please, while we connect to Ms. Haikalis.

24 MR. GOTCHER: Hi, Ms. Haikalis. You are live. Can you hear us?

25 INTERPRETER HAIKALIS: Thank you. Yes.

1 [READS THE FOLLOWING IN SPANISH] Public Comment Instructions.

2 "Good morning, and thank you for participating in today's Occupational
3 Safety and Health Standards Board public meeting. Board Members present are Mr.
4 Dave Thomas, Labor Representative and Chairman; Ms. Barbara Burgel, Occupational
5 Health Representative; Mr. Dave Harrison, Labor Representative; Ms. Nola Kennedy,
6 Public Member; Ms. Chris Laszcz-Davis, Management Representative and Ms. Laura
7 Stock, Occupational Safety Representative.

8 "We have limited capabilities for managing participation during the public
9 comment period. We are asking everyone to keep their phones and WebEx audio on
10 mute until your name is called to address the Board. Please remember to mute again
11 after you have finished commenting.

12 "Please note that the WebEx chat function is not a method for providing
13 public comments to Board Members. Board Members will not consider or respond to
14 any messages delivered via the chat function, nor will such comments become part of
15 the official rulemaking record.

16 "This meeting is also being live broadcast via webcast and audio in both
17 English and Spanish. Links to these non-interactive live broadcasts can be accessed via
18 the "What's New" section at the top of the main page of the OSHSB website at
19 dir.ca.gov/oshsb/oshsb.html.

20 "Please listen for your name to be called for comment. If you have not
21 provided a written statement, please allow natural breaks after every two sentences, so
22 that we may follow each statement with an English translation."

23 CHAIR THOMAS: Thank you, Ms. Haikalis.

24 Mr. Gotcher, do we have any commenters in the queue?

25 MR. GOTCHER: We do. Stand by. Our first commenter is going to be

1 Elizabeth Treanor who is joining us on WebEx. She's from Phylmar Regulatory
2 Roundtable-OSH Forum.

3 MS. TREANOR: Good morning, Chair Thomas, Members of the Board,
4 staff and Division staff. Thank you for your service. My name is Elizabeth Treanor. I'm
5 Director of the Phylmar Regulatory Roundtable, known as PRR. Our members employ
6 about 850,000 people and are committed to improving workplace safety and health.

7 First, the Board and stakeholders have been discussing a COVID-19
8 emergency regulation since the petition was filed in May. Since then, labor
9 representatives have said that the regulatory language they provided is an example. In
10 August, a Board Member said that it was a starting point and that further discussion
11 with stakeholders is needed. Still, the petition language is all we have seen. And no
12 dialogue has taken place.

13 I've testified before this Board since 1989. And in my years of
14 experience, this lack of transparency is unexpected and without justification. Employers
15 have no indication as to what the regulation will require, yet it is they who must comply
16 and operationalize the new rules. This is a process problem.

17 On the present record, it appears that the Board has transferred its
18 authority to the Division and that the Board is likely to adopt any regulation that the
19 Division places before it. We urge the Board to request the Division to release a draft of
20 the emergency regulation as soon as possible.

21 Second, it does not seem that employer perspectives or
22 recommendations are being considered by either the Board or the Division. PRR
23 members are willing to share their experiences implementing effective COVID-19
24 mitigation procedures at their workplaces across the counties and throughout the state.

25 Our members are diverse and include manufacturing, high tech, retail,

1 communications, utilities. They've been on the forefront of successfully incorporating
2 federal, county, state guidance into their programs. It could be said that they are the
3 experts on what works in the occupational setting. They could bring valuable insights.

4 PRR agrees we are facing an emergency. However, the Board and the
5 Division have demonstrated that they can do a better job on process. Last year, the
6 Division held an advisory committee and provided stakeholders an opportunity to
7 present written comments prior to the Board vote on their emergency reg, which
8 became effective 12 days after the Board vote. Stakeholders were actively involved
9 with multiple drafts being shared and revised. This all happened within seven months.

10 Today marks almost six months since the Petition 583 was filed. No
11 discussion has occurred among stakeholders.

12 Third, the anecdotal examples of the appalling employer actions that are
13 already illegal do not represent all California employers, most of which are working day
14 and night to maintain safe workplaces. We appreciate the acknowledgement made by
15 Board Members at the last meeting that the employer advocates present are not the
16 reason the petition was being granted, but they will be subject to the regulation
17 nonetheless.

18 Fourth, last month PRR presented to the Board and to the Division an
19 alternative draft for a performance-based standard. We provided reasons why a
20 performance-based regulation would be more effective in protecting workers. We also
21 submitted comments detailing our concerns with the specification approach submitted
22 by the petitioners.

23 We earnestly ask Board Members to review the PRR alternative draft and
24 encourage the Division to use it as a model. It will be effective and enforceable. Please
25 do not tie employer hands with stringent requirements that may quickly become

1 outdated.

2 This is a call to action. It is time for the Board to show its leadership by
3 assuring that their emergency regulation will both protect workers and allow flexibility
4 for evolving scientific information to be included in employer programs. Thank you.

5 CHAIR THOMAS: Thank you, Ms. Treanor.

6 Mr. Gotcher, do we have another person in the queue?

7 MR. GOTCHER: We do. Stand by. Our next commenter is Guadalupe
8 Garcia De Solis, from UNITE HERE. She is joining by phone and this is a translated
9 comment.

10 MS. GARCIA DE SOLIS: (Through Interpreter Haikalis.)

11 My name is Guadalupe Garcia de Solis. And I have worked 10 years as a
12 housekeeper at the Crown Plaza Hotel Concord. Since COVID-19 began I (inaudible)
13 here and I have not felt secure.

14 I feel that the hotel has not been doing enough things to make me feel
15 safe. One of the supervisors wears her mask when she's around guests at the hotel, but
16 not when she's around the workers at the office.

17 And guests are not wearing masks either. Many times guests have
18 approached me without a mask asking me for towels or coffee and they were not
19 wearing a mask. I told my supervisor what was going on and she didn't do anything
20 about it.

21 I have also told my supervisor several times that I do not want to clean a
22 room when the guest is inside of the room. And once this past summer they pressured
23 me to clean a room and there were four guests inside of it. So I refused, and I was
24 suspended because I did not do it.

25 And now I am working at home.

1 CHAIR THOMAS: Any other comment?

2 MS. GARCIA DE SOLIS: (Through Interpreter Haikalis.)

3 No. I think that is all that I wanted to say.

4 CHAIR THOMAS: Well, thank you very much. We appreciate that.

5 Mr. Gotcher, do we have any more commenters in the queue?

6 MR. GOTCHER: Yes, we do. Stand by. Our next caller is Oralia Summers
7 of UNITE HERE. If you would just please introduce yourself.

8 MS. SUMMERS: My name is Oralia Summers. I work in the Island Palms
9 Hotel. I've worked here for 15 years.

10 MR. GOTCHER: Thank you, Ms. Summers. Whenever you are ready to
11 make your comment, you are live right now.

12 MS. SUMMERS: For my comments?

13 MR. GOTCHER: Yes, please. Yeah, you are live.

14 MS. SUMMERS: Okay. We need more protection from COVID at work,
15 because always I wear a mask in my company, because my company says I have to. But
16 about 50 percent of the guests don't wear a mask outside of their rooms. And all the
17 time the guests are walking around the hallways without masks on them.

18 And then when I see these guests I have to run and hide in my room. And
19 sometimes all the guests even walk without masks and they ask me for towels or coffee.
20 And I don't like it. I never say anything because I don't want to get in trouble. But my
21 company doesn't make sure that all of the guests wear a mask.

22 We need stronger protection in my job. And thank you for listening.

23 CHAIR THOMAS: Thank you very much. We appreciate your comments.

24 Mr. Gotcher?

25 MR. GOTCHER: Yes, next in queue is Eric Frumin, Change to Win. He's

1 joining us by WebEx. Mr. Frumin, if you would introduce yourself quickly.

2 MR. FRUMIN: Hi. My name is Eric Frumin. I'm with the labor union
3 federation Change to Win and I want to say two things. Well, I just want to thank the
4 Board again for your sense of urgency about the need to act on the petition, your
5 willingness to consider it under these extraordinary circumstances and to do that
6 quickly.

7 I wanted to make two points. One is about the importance of assuming
8 going forward, as I think you have done given the process you've laid out, that we face
9 the threat of a second wave, or third wave, or a resurgence of the virus. And so it's
10 important to maintain vigilance not only generally, but in the structure of rulemaking so
11 that we avoid the mistake that unfortunately I think the employer group has made, of
12 considering that a performance standard will be sufficient, given the behavior of some
13 number of employers thus far.

14 We can't be lax. We have to take seriously that this problem is going to
15 require a lot of vigilance for a long time. And I'm afraid that giving Cal/OSHA a
16 performance standard to enforce for those employers who are not vigilant would be a
17 very serious error. I encourage you to look very carefully at the need for strong
18 specifications, and to think about how important those are in industries which involve a
19 lot of people, a lot of exposure, but may not have been fully opened yet. We really
20 haven't seen the effect of the virus as schools reopening. We've seen some. We've
21 seen whole schools close down in a hurry.

22 But we certainly have a sense that these are serious risks that we need to
23 take seriously, and performance standards don't do that. And employers and the
24 industries, which service industries that are reopening, need to be held to a very high
25 standard of conduct.

1 So we'll see how DOSH structures that when they send you the
2 proposal. But I think as a general rule, we need to maintain not only the sense of
3 urgency, which you've already displayed, but a clear understanding of the need for
4 vigilance by DOSH, by the employers, by workers, everybody involved.

5 And then last, I just want to close by urging you to provide or release a
6 copy the proposal from DOSH in a timely way that allows for the kind of public
7 participation before you vote that you have highlighted already. You've done a
8 wonderful job of encouraging public participation up until now. You've structured your
9 response to the petition ongoing to require a high degree of public participation going
10 forward.

11 Of course, this is an emergency situation, so there's limits about how long
12 you can do that before you vote. But whatever you can do feasibly to allow public
13 comment on the proposal would be good, but again I don't want to rush you
14 unnecessarily. I know you need to take your process with DOSH very seriously so that
15 you know what you're voting on. So whenever it's convenient for you to let the rest of
16 us in on it, that would be a good thing.

17 So again, thank you very much for your sense of urgency, for your
18 commitment to involving the public in this process. And I look forward to next month's
19 meeting and the steps that get you from here to there. Thank you very much.

20 CHAIR THOMAS: Thank you.

21 Mr. Gotcher?

22 MR. GOTCHER: Our next speaker is Janette Bell from UNITE HERE. She's
23 joining us by phone today.

24 Ms. Bell, would you take a moment to introduce yourself please?

25 MS. BELL: Yes, good morning. My name is Janette Bell.

1 CHAIR THOMAS: Good morning. You may go ahead and make your
2 comments now.

3 MS. BELL: Okay. I've been a housekeeper for 16 years at Oakland
4 Marriott in downtown Oakland. I have some COVID concerns. At my hotel, in July,
5 management told us that one of my coworkers was infected with COVID, but they didn't
6 tell us what department they worked in or if we came in contact with the person.

7 And I had asked for training at the hotel for how we were going to clean
8 rooms, I am a housekeeper, how to clean rooms. To let me, you know, if there was
9 extra needed precaution, because of COVID. And they told me they have videos to
10 show us on how to do it, but the only thing they showed me was videos on how much
11 COVID had hurt the company financially.

12 And there was a big piece of paper on the wall at my hotel, in the
13 housekeeping department, that showed and said things like wipe down the large
14 surface. And but there haven't been no discussions on how to clean the room during
15 COVID.

16 In terms of masks, guests would come up to my cart and ask for supplies
17 and towels and things like that and they don't have masks on. We're supposed to tell
18 the guests that they're supposed to have masks on, but I don't feel comfortable telling
19 them that. I think management should be able or security to be able to tell them that.

20 I also worry about the PPE. We are -- I would like have like a cover to go
21 in to clean out the dirty in the room, you know, that's disposable. And I could take it off
22 after I take the dirty out of the room and have something clean, something different to
23 put on, when I go to clean the room differently so as not to get infected.

24 And another thing I have is the laundry. I have noticed that they only
25 have one person during the week working in laundry and on the weekend they only

1 have one person working in laundry. And they're handling the dirty and they're
2 handling the clean that goes out into the laundry that goes out.

3 Thank you so much for listening.

4 CHAIR THOMAS: Thank you for your comments.

5 Mr. Gotcher?

6 MR. GOTCHER: Our next commenter is Bruce Wick from CALPASC. He's
7 joining us by WebEx today.

8 Mr. Wick, if you would introduce yourself please.

9 MR. WICK: Thank you, Bruce Wick with CALPASC,
10 Specialty Contractor Association. Thank you, Chair Thomas, Board Members, staff, for
11 the opportunity.

12 CHAIR THOMAS: Good morning.

13 MR. WICK: I can't figure out if I'm more frustrated or sad by where we
14 are, because those of us who train the trainer for safety end up in dealing with those
15 people who therefore have to translate any regulation into actual job site safety where
16 supervisors and employees together agree, "Yeah, this is what we ought to do. This
17 keeps us safe. Let's all work together on this." We need good regulations for that.

18 We're going to wind up, it looks like, with a regulation that, even if we
19 have a chance to give a couple days of public comment, won't be changed by the time
20 you vote on it in November. And here's what happens when we do something like that
21 and what is likely to happen. That's why I'm sad with this. And I'm going to give
22 construction as an example.

23 We have been working since March with COVID responses. And we're
24 doing, I believe, an excellent job. The Workers' Comp Rating Bureau has analyzed the
25 workers comp cases. And they've revised the numbers down twice. And they have

1 given their numbers for 2021, which they think are similar for 2020. And again, this reg
2 would take effect a month before 2021 hits in all industries.

3 There's a (indiscernible) 4 percent (indiscernible) for COVID for workers
4 comp. That's with a rebuttable presumption from March through July 5th for any
5 employee who leaves home, a rebuttable presumption, presumed if they got COVID it
6 was from the workplace. And I can tell you from talking with our members, every
7 employee they know that has tested positive for COVID, they've come out and said it's
8 from home. It's from a family party. It's never been, with any of my members, from
9 exposure on the jobsite, but it's a rebuttable presumption.

10 That presumption continues from July 6 with SB 1159 for all healthcare
11 workers, treaters, and first responders, and all other industries where's there's been an
12 outbreak. And so a 4 percent load of workers compensation, 96 percent of your
13 workers comp premiums go to non-COVID issues, going forward.

14 So we know COVID is a public health situation, but we took on the
15 emergency in March and April. And so if a regulation passes and it doesn't fit closely to
16 what people are already doing, then your safety coordinators, your supervisors, have to
17 go to the job site and say, "We've been doing an excellent job. We've been working well
18 together. Somebody said we have to change the rules."

19 And then you have people -- the reaction is not good. "Why? We know
20 things are safe. We know we've done well. And the statistics from the Rating Bureau
21 support us."

22 Construction's COVID load, going forward is 1 percent of the workers'
23 comp premium, 1 percent. So if there's a need to change some regs for certain
24 industries, you know, let's focus on those. DOSH should give us that. Are there certain
25 industries that are having certain problems? We have guidance and all kinds of

1 information for all industries, general industry. If we need something, let's focus on
2 where the problems are.

3 I would much rather this Board say we would be much more productive if
4 we said we're going to come up with a reg in November and we're going to spend a
5 month or two, because again, by that time, we are nine months -- eight or nine months
6 into having effectively dealt with COVID exposures on our job sites.

7 Yeah, let's take a month or two. Let's get all the input, not -- you know,
8 an emergency we have to vote on this today and, you know, we'll figure it out down the
9 road. Let's get it right the first time, focus where the problems are. And it should mirror
10 a lot of what we are already doing. We'd be much better off.

11 Otherwise, there will be no change here in the new regulation. You
12 know, and those employers who are flaunting the rules, we all know, a regulatory
13 change will not make them change. They need enforcement. Let's focus on that. And I
14 really wish the Board would change course here and say we're (indiscernible) to
15 November. Let's take 30 or 60 days, work it together, labor and management, fine tune
16 it and make it support those who are doing a great job and focus on the areas where
17 you need specific help. Thank you.

18 CHAIR THOMAS: Thank you, Mr. Wick.

19 Mr. Gotcher, our next commenter?

20 MR. GOTCHER: Our next commenter is Sarah Wiltfong from the Los
21 Angeles County Business Federation. Ms. Wiltfong, if you would please introduce
22 yourself?

23 MS. WILTFONG: Thank you. My name is Sarah Wiltfong and I am with
24 the Los Angeles County Business Federation, also known as BizFed. We are an alliance
25 of over 200 business organizations who represent 400,000 employers with 4.5 million

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1 employees in Los Angeles County.

2 We would like to thank the Cal/OSHA Board for allowing us the chance to
3 speak with you today. And we are joining you to express our concerns regarding the
4 draft emergency regulation on COVID-19 resulting from petition 583.

5 First, we want to emphasize that we understand and respect the
6 seriousness of COVID-19 and how important it is for businesses to follow proper safety
7 protocols in order to protect themselves, their workers, and their patrons. Businesses,
8 small and large, have invested a considerable amount of income to be able to comply
9 and adapt to this pandemic, and to also try to abide by a myriad of compliance
10 standards set by the state and local governments.

11 Our concerns with Petition 583 are the following: one, an exceptionally
12 quick timeline to draft something of this magnitude; two, a clear lack of stakeholder
13 input who will be impacted by this regulation; three, creating a one-size-fits-all model
14 without taking into account the numerous types and sizes of businesses throughout the
15 state; and four, creating a regulation that makes it difficult to change or adapt to our
16 ever-changing times.

17 We'll be working with Cal/OSHA to the best our abilities, submitting
18 comments (indiscernible) and more details, our members concerns. However, we do
19 ask the Board consider allowing more time and more input from stakeholders to make
20 the necessary adjustments after the draft regulation has been released. We don't
21 believe two weeks is enough time.

22 Again, thank you very much for your consideration of our comments.

23 Thank you.

24 CHAIR THOMAS: Thank you, Ms. Wiltfong.

25 Mr. Gotcher, our next commenter?

1 MR. GOTCHER: Our next commenter is Brian Heramb of San Diego Gas
2 and Electric. Please introduce yourself.

3 MR. HERAMB: Good morning, Chairman Thomas, and other Members of
4 the Board. Thank you for your service to California. I am Brian Heramb representing
5 San Diego Gas and Electric, an investor-owned utility with 4,500 employees serving over
6 3 million customers in Southern California.

7 We try to make safety the first consideration in all of our operations. And
8 SDG&E supports efforts to protect and promote employee health and safety.

9 Over the past seven months, SDG&E has significantly adjusted our
10 policies, procedures and protective measures to protect employees, contractors and the
11 public from exposure to the Corona virus and also respond to employee cases of
12 employee illness.

13 SDG&E has used Cal/OSHA guidance and other resources, including the
14 CDC, to meet this challenge. We believe that a new emergency temporary standard for
15 prevention of COVID-19 should reflect current approaches and be performance-
16 oriented, allowing experience gained over the past months to be used to guide
17 Cal/OSHA and employers.

18 SDG&E supports the comments of PRR's Elizabeth Treanor regarding the
19 process recommended for adopting the new emergency standard. The rulemaking
20 process should be transparent and enable stakeholders to review and provide
21 comment, before the Board votes on adoption, to address significant issues needing
22 correction before implementation.

23 Having been involved with worker protection standard implementation in
24 California since the 1980s, I don't recall a similar case where employers did not have an
25 opportunity to provide a proposed standard, or review a proposed standard, before

1 enforcement.

2 Our recommendation is the Board vote on adoption after the Division has
3 publically provided their standard, as soon as possible before the next board meeting,
4 so employers can review and prepare any comments to assist the Board's decision
5 making.

6 Establishing an advisory committee to correct the standard after the
7 standard is implemented --

8 MS. SHUPE: Sir?

9 MR. HERAMB: Yes?

10 MS. SHUPE: I'm sorry to interrupt you, I apologize. But we have a
11 request from interpreters that if you could just slow down a bit, that would be very
12 helpful.

13 MR. HERAMB: Thank you.

14 Establishing an advisory committee to correct the standard after it is
15 implemented may allow potential exposures to not be adequately addressed, or
16 employers may be improperly cited for perceived non-compliance.

17 So we urge the Board to consider having the Division immediately, or as
18 soon as possible before the next board meeting, share their draft standard. SDG&E
19 would be glad to participate in a standard review or participate as a member of an
20 advisory committee whenever it is created.

21 We sincerely appreciate the opportunity to participate in these
22 proceedings and we look forward to continuing improvement in all workers' protection.
23 Thank you.

24 CHAIR THOMAS: Thank you.

25 Mr. Gotcher, who's the next commenter that we have in the queue?

1 MR. GOTCHER: Our next commenter is Rob Moutrie of the California
2 Chamber of Commerce.

3 Mr. Moutrie, if you would please introduce yourself.

4 MR. MOUTRIE: Thank you, Mr. Gotcher.

5 Good morning, Board Members.

6 CHAIR THOMAS: Good morning.

7 MR. MOUTRIE: Thank you for the opportunity to speak today. As was
8 aptly announced, my name is Robert Moutrie and I'm speaking on behalf of the
9 California Chamber of Commerce.

10 So, let me start off by thanking the Board and the Division for their hard
11 work. You know, I know you've been working around the clock. And I think we all, and I
12 speak for the entire community on all sides, we appreciate your work there. Though we
13 may all disagree and wish to have input and raise concerns, we can certainly respect the
14 time you've spent and the work.

15 With that in mind, I'd like to echo the points made by a few of my
16 colleagues. Ms. Treanor from the PRR, Mr. Frumin from Change to Win on this respect
17 actually, and the gentleman from San Diego Gas and Electric whose name I didn't quite
18 catch, my apologies, regarding the need for transparency and the importance of some
19 stakeholder input for the success of the resulting regulation.

20 As these speakers who are far senior to me have pointed out, having no
21 stakeholder input is unprecedented. And more importantly, I think, as Mr. Wick said at
22 the prior meeting, stakeholder input is key to making the regulation more effective and
23 workable.

24 An example, which I -- though I am nowhere near those esteemed
25 speakers, I can relate to, is just I would say six weeks ago, or about two months ago,

1 actually, I had a call regarding standards to deal with an N95 shortage and alternative
2 ways to comply given the N95 shortage. And on just a few hours' notice a number of
3 business representatives including myself, were able to hop on that call to provide
4 comments.

5 And at the conclusion, Division staff thanked us for that input and for
6 improving what they were working on and making a more feasible solution. And I think
7 that's important that stakeholders can help catch potential unanticipated issues if we
8 are given that voice, if we have a chance to. And that's what we would hope to do here.

9 But absolutely understanding and appreciating the emergency and the
10 urgency of COVID-19, we still think the lack of input is going to lead to a less effective
11 standard.

12 I'd also like to acknowledge another issue, raised by Ms. Treanor, that the
13 anecdotal examples provided by many callers, though they're absolutely troubling, are
14 not evidence that a new standard is needed. They're evidence that enforcement of
15 existing standards is needed. I believe it was Janelle, again, apologies, Janelle, if you're
16 still on the line, I didn't catch her last name -- raised a concern about --

17 MS. SHUPE: Mr. Moutrie?

18 MR. MOUTRIE: Yes. I'll slow down.

19 MS. SHUPE: Thank you very much.

20 MR. MOUTRIE: Apologies. Again, Janelle, from the hotel industry raised
21 a concern about notice of exposure in that context.

22 First, notice of exposure is already covered by a pending -- or excuse me,
23 a piece of legislation, AB 685, which has been signed and will be going into effect in
24 January. All right, so that's not actually a legal hole. That has a legal standard.

25 A concern was also raised about cleaning rooms when guests are present.

1 That is also already addressed under the existing guidance for hotel and lodging.
2 "Housekeeping must only service rooms when guest are not present." That's the
3 bottom of page 7.

4 There is also a concern raised about facial coverings be provided for
5 guests. The standard already -- excuse me -- the guidance document already requires
6 facial coverings be provided.

7 So as we look to this new standard, and as Board Members, as you
8 review it, when you see it as we all review it, I hope you can keep in mind that what this
9 standard should address is a legal hole. Enforcement holes are a different issue.

10 The next point I'd like to touch on is a couple or few specific examples.
11 And these are not the same examples I raised last month. I wouldn't want to just
12 (indiscernible) you with the repetition. But these are a couple of examples of additional
13 issues with the Worksafe and National Lawyers Guild draft text, which continuing to
14 review it and talk to businesses around the state about it, I became aware of recent
15 (indiscernible) ends. And so I would love to provide that input about it, if we could.

16 An example is, regarding the competent person requirement in Section, I
17 believe, (A)(1), which has been much discussed. I had an additional point raised to me
18 that I think I'd never heard just recently, which was that the Governor's playbook only
19 requires a similar position, a workplace infection coordinator, but does not require the
20 same expertise standard of a competent person, which many in the business community
21 have raised as problematic.

22 To the extent that we are going to create a new standard here, we would
23 just ask that the Division and the Board keep an eye towards consistency with what is
24 already out there so it is possible for these employers to comply with all of these things.

25 Another consistency concern I'd like to raise that we had not raised at the

1 last meeting. AB 685, of course, Reyes's bill, is important to consider, but also
2 consistency with the Consumer Privacy Act and the pending Proposition 24. Any
3 provisions about notice and contact tracing are going to have potential overlap and
4 conflict on those fronts as well.

5 And that again leads to --

6 MS. SHUPE: Mr. Moutrie?

7 MR. MOUTRIE: I'm sorry.

8 MS. SHUPE: I apologize for interrupting you again, but if you could slow
9 down?

10 MR. MOUTRIE: Yes, and I'll briefly pause to allow time for the translator
11 to catch up if that's helpful.

12 CHAIR THOMAS: It is.

13 MS. SHUPE: Thank you.

14 MR. MOUTRIE: Regarding the Consumer Privacy Act and Prop 24, they
15 both have provisions about how employers can collect, maintain and share data. They
16 both have issues concerning contact tracing and concerning notice. And they provide
17 another example of why the more prescriptive the standard, the more likely you are to
18 fall into a pitfall of conflict with the web of existing laws here. And I know we want to
19 move quickly, but we can't create legal conflicts in doing so. And that's another reason
20 that a performance standard has got to be workable and still accomplish the goals.

21 And the last concern is regarding feasibility. I think it was raised by two
22 of the prior speakers. Given the short timeline it appears we're going to use, from
23 visibility to in effect on this regulation, it has to be something all employers of all sizes
24 can implement in weeks. And for that goal as well, I'd urge the Division and the Board,
25 when you review this standard, to keep an eye towards the feasibility of putting it into

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1 place in that very short timeline.

2 Lastly, I need to relay a comment for Len Welsh. If you know Len, he has
3 a much longer pedigree here than I do. But because he wasn't able to be here, he asked
4 me to make a brief comment on his behalf.

5 Len urged that you keep in mind that the regulation should be simple. He
6 asked me to call out the outdoor heat standard of the recent past as an example. A
7 similar emergency regulation that moved quickly. And there, what was effective was
8 despite a very short timeline, stakeholders were given input and conversations with
9 staff. And the resulting regulation was simple and clear. Shade, water, rest -- nothing
10 complicated. But that was what it took for it to be quickly implementable and be
11 effective.

12 And so that was his request to you that I would convey. With that, I
13 thank you all for your time and I wish you luck.

14 CHAIR THOMAS: Thank you.

15 Mr. Gotcher, who do we have in the queue now?

16 MR. GOTCHER: Our next commenter is Bryan Little of the California Farm
17 Bureau Federation.

18 Mr. Little, would you please introduce yourself?

19 MR. LITTLE: Good morning. Thank you Mr. Chairman, Members of the
20 Standards Board, Standards Board staff and Cal/OSHA staff. I appreciate the
21 opportunity to be able to comment this morning.

22 The California Farm Bureau is the largest membership organization for
23 farmers and ranchers in California. And as such, we represent folks who grow anything
24 from avocados to zucchini and everything in between. A great many of those people are
25 agricultural employers who employ a substantial labor force during peak periods. We're

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1 employing about 650,000 people in a given month during peak harvest seasons.

2 Next month, it's my understanding that the Board will be considering an
3 emergency COVID-19 standard. CFBF urges the Board to engage employer stakeholders
4 constructively per comments by some of the other employer stakeholders that have
5 spoken before me. This unfortunately is something that has not yet happened. And yet
6 the Board seems to be on a path to adopt a standard very quickly. And I'm concerned
7 that that standard might not have received adequate consideration or adequate
8 comment from employer stakeholders.

9 I'm trying to speak slowly, by the way. Christina, if I am going too fast, I
10 know you'll let me know that I am.

11 Per the Board's staff analysis of Petition 583, there's no evidence that
12 California employers are not already in compliance with guidance for COVID-19
13 employee protection, including guidance promulgated by CAL/OSHA. And a variety of
14 federal and state agencies and even private parties; California Department of Food and
15 Agriculture and the National Milk Producers Federation.

16 Cal/OSHA is already enforcing its guidance through the injury and illness
17 prevention program standard; in particular, the guidance for agricultural employers.
18 CFBF has repeatedly promulgated this guidance to agricultural employers, informed
19 them of CAL/OSHA's enforcement posture, and offered coaching and resources to any
20 of the ag employers in implementing Cal/OSHA's directives.

21 However, an employer can only offer protection to employees when
22 they're actually working. I've personally spoken to several farm employers who've
23 experienced employees falling ill after attending non-work time social events. In one
24 instance, an employer of a small wholesale nursery, whose operator I've spoken with
25 several times, fell ill after attending a family social function at a relative's home with 250

1 guests.

2 Farm employers can and do urge employees to curb such behavior. CFBF
3 funded a series of radio ads on Spanish language media this summer urging listeners to
4 avoid such gatherings and to practice masking and social distancing (indiscernible) even
5 when they're on their personal time.

6 As noted in the October 2020 "Rural Migration News", agricultural
7 production overall appears to have been little affected by COVID-19, with shipments of
8 fresh fruits and vegetables being comparable in 2020 and in 2019. The October 2020
9 "Rural Migration News" also notes that some studies seem to indicate that farm workers
10 who have contracted COVID-19 were more likely to do so away from work than at work.

11 Cal/OSHA has issued citations to agricultural employers, mostly alleging
12 that ag employers failed to provide shade as required by the heat illness prevention
13 standard, that allowed sufficient space for social distancing. This suggests that ag
14 employers that the agency has inspected were largely following masking, sanitation,
15 distancing guidance, at least when employees were working rather than taking shade or
16 meal breaks.

17 Just a matter of fact to go in a slightly different direction, CFBF, and I
18 think employer representatives in general, have not been meaningfully consulted in the
19 emergency regulation process. And I think that's because of the haste with which it is
20 unfolding.

21 When the agency recently issued regulatory guidance trying to
22 deal with a shortage of N95 respirators required by the wildfire smoke respiratory
23 protection emergency standard, the agency consulted representatives of impacted
24 employers and later acknowledged the value of having done so.

25 However, because the current wildfire smoke regulation was adopted
hastily as an emergency regulation, the stakeholders and the agency didn't have enough

1 time to contemplate the possibility that N95s, which have always been readily
2 available, might not always be readily available, leaving employers in a position where
3 compliance was not possible when the wildfire season intersected with unprecedented
4 N95 demand from users with higher priority than many of those who were trying to
5 comply with the wildfire smoke regulation.

6 This is an illustration of the pitfalls of the emergency regulation process
7 and an illustration of why a regulation that will be as far reaching as a COVID-19
8 standard should be undertaken through a normal regulatory process.

9 Thank you for your time, for allowing me to comment. And I appreciate
10 all the work that you do. Thank you.

11 CHAIR THOMAS: Thank you.

12 Mr. Gotcher, who do we have next?

13 MR. GOTCHER: Our next commenter is Dan Leacox of Leacox and
14 Associates.

15 Would you please take a moment to introduce yourself?

16 MR. LEACOX: Yes, I will. Am I being heard?

17 CHAIR THOMAS: You are.

18 MR. LEACOX: Okay. Good morning Board Members, staff and
19 stakeholders. My name is Dan Leacox. I am here today as a citizen and a human being.
20 I am not representing anyone except those who might agree with me.

21 I have enjoyed a rather long and productive association with this Board.
22 I'm proud to say I have petitioned for two rules passed by this Board, worked to defeat
23 one or two rules rejected by this Board, and made other rules better by my engagement
24 in the process. I think that is a fair assessment.

25 It is a bit shocking to me the degree to which the voice of those being

1 regulated has been ignored in this rulemaking process. It has been said, as a
2 justification for deaf ears, that employers always oppose, always say the same thing.
3 While it is true there are themes to employers' comments of course, such is true for all
4 parties.

5 Employer representatives have often stood before this Board and
6 supported a rule more often than not, I dare say. This is particularly true when they
7 have been engaged in the making of that rule in a real way that deals with their
8 concerns. Such engagement is the democratic way.

9 It is also the scientific way. Employers observe closely what is and is not
10 real in the workplace. Observation is the foundation of science. Ignoring their
11 observations to stand by a principle is unscientific. The scientific method is looking to
12 disprove a theory, not to prove it.

13 To take a scientific approach to rulemaking, one must look hard for data
14 that disproves the proposition. I don't see that happening. Instead, I see a lot of what I
15 call "science says." It's like the children's game, Simon Says, only instead of being told
16 what to do we are told what to think. In "science says", opinion is based on other
17 opinions and truth is judged by who says it. Even if the person who says might be
18 scientific, that does not make it science for you. And an opinion is not made true by
19 repeating it. That is public relations, not science.

20 Today, I would presume to ask each of you, as individuals, to step back
21 from the process of this rule and look at the bigger picture of what we are doing and
22 where we are going. I ask you to look for a moment outside the box of health and
23 safety. I believe that is part of your job as members of a policy board. That is why law
24 requires you to look at all the impacts of a regulation, not just the health and safety
25 benefits.

1 It is natural for regulators tasked with a single purpose like safety to
2 skew their proposals to that purpose at the expense of other purposes. It isn't ill will. It
3 is inevitable. So a good regulation depends on someone with final say, taking a broader
4 view, and assessing that proposal in the context of people's lives.

5 I have, in the past, expressed it this way. People practice safety to live.
6 They don't live to practice safety. For example, there's a long history of people braving
7 bullets in the name of liberty. They are practically worshiped.

8 For example, people ski and sky dive and do many things less safe than
9 sitting at home. They aren't crazy. They are living.

10 So when you consider a rule that would save lives, you also need to
11 consider what it does to their reason for living. Jobs give people a reason to live. For
12 many it is their primary contribution to others and their source of self-worth. It isn't
13 surprising that many people hurry up and die once they retire. We see job loss and
14 isolation as drivers of suicide, so the value of a job as a personal contribution to others
15 needs to be respected and preserved.

16 And please consider this. When you turn to police powers to solve every
17 problem, you eventually live in a police state. I think the vast majority of people, when
18 they envision their ideal society, they see free people who take care of one another.
19 They see good people who don't need laws, not a mass of robots living in social
20 straightjackets. So when we do write laws, we need to write them with great care for
21 the good of the people, for that is most of us.

22 I have often said that the good people of earth have two enemies. Those
23 who would take away their liberties and those who make an excuse to do it. Both are
24 errors. Author C.S. Elliot made a relevant recommendation on this point. Using the
25 Devil as a symbol for evil he said, "He, the Devil, always sends errors into the world in

1 pairs-pairs of opposites. He relies on your extra dislike for one to draw you gradually
2 into the opposite one. But do not let us be fooled. We have to keep our eyes on the
3 goal and go straight through between both errors."

4 By all reports, we the people are around 90 percent, in the neighborhood
5 of 90 percent compliant with common sense guidelines to impede the spread of COVID-
6 19. That is a remarkable number. We, the people, are pretty good. The reported
7 compliance numbers are compelling evidence that the actions needed are the ones
8 already being taken. The Board should demand compelling evidence that another
9 straightjacket will improve that number.

10 Thank you for your time and attention.

11 CHAIR THOMAS: Thank you.

12 Mr. Gotcher, who do we have in the queue?

13 MR. GOTCHER: Our next commenter is Michael Miiller of California
14 Winegrape Growers.

15 Mr. Miiller, would you please introduce yourself?

16 MR. MIILLER: Hi, good morning. Can you hear me?

17 CHAIR THOMAS: Good morning. Yes, we can.

18 MR. MIILLER: Thank you so much for your time. I really appreciate all the
19 Board is doing today. I know that you have a lot on your plate and this is a very
20 important regulation process. I just want to comment a little bit about the COVID-19
21 proposed emergency standard.

22 Whenever I speak with the Board, I always try to express my appreciation
23 for your public service. And I hope that you appreciate and understand that for the
24 Board Members, the Board staff, Cal/OSHA, everybody else, the depth that comes from
25 a place of genuine appreciation. You are public servants. You're not highly paid to do

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1 this job to give your time, your resources in service of the people of California. And
2 you do so through an open and public process involving meetings like this.

3 But I also have to say that, much like Bruce and others, I'm very
4 disappointed and frustrated at the process so far relative to the COVID-19 emergency
5 regulation. I'm very concerned about two issues. One is the public comment is being
6 ignored and we have no input into the drafting of this regulation.

7 The second concern is that adopting a standard would be a direct
8 violation of the Administrative Procedure Act. In solving the problem, I want to express
9 sympathies for those who have provided comments having workplace problems. Many
10 of those situations sounded just awful. And I encourage stringent enforcement action
11 against bad actors. As we have all said before, the situation they described will not be
12 corrected by this standard.

13 Relative to the process, at the last meeting of this Board, you heard five
14 hours of public testimony where dozens of issues were raised. At the end of the public
15 testimony, with great expediency, the Board moved forward with the process to adopt a
16 regulation. Not one issue that was raised was addressed or discussed by the Board
17 Members, which begs the question of why are we even holding these meetings. Is the
18 allowance of public comments just to check the box?

19 The process has been so obscured and opaque that I cannot even speak
20 at all to the proposed regulation, the contents of it, the policy of it, as there's not been a
21 draft provided, no stakeholder meetings, nothing. The ag coalition formally requested a
22 meeting with Cal/OSHA staff to discuss potential unintended consequences. And they,
23 and we have not yet been afforded such a meeting. As some groups have testified
24 today and expressed appreciation for the public involvement in the process, this gives
25 the impression that some groups have been privy to the process, but other groups are

1 being shut out.

2 This is probably the most significant action this Board will take. The
3 public deserves to be part of the conversation in drafting this regulation. To me that
4 does not seem too big of a request.

5 Relative to the Administrative Procedure Act, there are specific
6 requirements that must be met prior to the promulgation of an emergency regulation.
7 Moving forward with a COVID-19 emergency regulation in no way meets those
8 requirements. There's no question about this. In short, the emergency regulation is to
9 be used only when there's no other way to achieve the policy change needed.

10 There's no question as to this issue. There are already several
11 alternatives, and indeed those alternatives are already in place. I want to remind the
12 Board of staff Board evaluation that states the following: "Eric Berg, Deputy Chief of
13 Health for Cal/OSHA, has recently testified to the Board that Cal/OSHA is enforcing
14 existing COVID-19 protections and providing consultive outreach to employers that
15 expose employees. Board staff is unable to find evidence of the vast majority of
16 California workplaces are not already in compliance with the COVID-19 requirements
17 and guidelines."

18 Additionally, the Governor has broad authority to deal with this via
19 executive order and guidelines and indeed has already done so. That occurred in
20 consultation with all stakeholders. We always want more notice and such, but there's
21 no doubt that staff tried to consider stakeholders as we are all in this together. COVID-
22 19 does not distinguish between employers and employees. We are all in this together.

23 If you were watching the Supreme Court hearings this week, you saw
24 discussion of a U.S. District Court decision where the court ruled that governors have
25 such broad authority relative to the pandemic that the governor can deny the First

1 Amendment right of expression of religious faith. The court made it clear. The
2 Governor can act on this and has done so.

3 I have one final and serious request. At the end of this public comment
4 period today, can the Board attempt to address some of the dozens of issues we have
5 raised again? Please forgive my frustration, but this is a critically important issue that
6 demands a thorough and complete public vetting.

7 Thank you again for your time and for your public service. I greatly
8 appreciate it.

9 CHAIR THOMAS: Thank you.

10 Mr. Gotcher, who's next in the queue?

11 MR. GOTCHER: Our next commenter is Maggie Robbins of Worksafe.

12 Ms. Robbins, if you would please introduce yourself.

13 MS. ROBBINS: Hi, this is Maggie Robbins. I'm with Worksafe and I'll keep
14 my comments really brief. I just wanted to speak to two points that were raised earlier.

15 One of them is about simplicity for a standard, yet also there being
16 comments about we need a performance standard. And I would argue that those are a
17 little bit in competition. What made the outdoor heat standard so effective is it pointed
18 directly to specific types of controls that need to be in place: shade, water and rest. I'm
19 not simply saying you need a heat control plan or you need a plan to react, so I agree
20 with the general sentiment that simplicity is very important in any rule, not just this
21 rule.

22 But I also think that one related to COVID also needs to get to some of
23 the actual mitigations that need to be in place to address the hazard that's being
24 addressed. So that would get to, for example, distancing, environmental cleaning, hand
25 washing, masks and such. So I think it's a fairly simple set of things that we could have a

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1 rule that would address those.

2 So I agree with the point about simplicity --

3 MS. SHUPE: Ms. Robbins?

4 MS. ROBBINS: Yes, sorry.

5 MS. SHUPE: We just want to make sure that everybody is heard, so if you
6 could just slow down a bit? Thank you.

7 MS. ROBBINS: My apologies, it's tough to change how you speak.

8 So that was my first point as I do agree with that sentiment, but it is
9 different than a performance standard. It does get into some specific mitigations that
10 are needed.

11 The other comment about time, there's been comments over the last
12 several months saying that the wildfire standard was an example of how rushed
13 rulemaking creates a fiasco, essentially. I would not agree that it was such a problem. I
14 think taking another year to have come up with the wildfire standard wouldn't have
15 addressed the fact that we didn't know a COVID crisis was coming that might consume
16 N95s. So more time, I don't think, would adjusted the standard a heck of a lot
17 compared to what was adopted.

18 And in that event, Cal/OSHA has, as has been pointed out, developed
19 guidance for how to handle the fact that there is a shortage, because this could happen
20 with any standard that there becomes a shortage. So I think we need to move with
21 urgency.

22 I would second many people's comment that seeing the draft sooner
23 would be better. But I urge the Board to continue with the process of trying to adopt
24 the best rule that they can. Thank you.

25 CHAIR THOMAS: Thank you.

1 Mr. Gotcher, who do we have next?

2 MR. GOTCHER: Our next commenter is Cassie Hilaski of Nibbi Brothers
3 General Contractors.

4 Ms. Hilaski, would you please introduce yourself?

5 MS. HILASKI: Yes, so Cassie Hilaski with Nibbi Brothers. I'm their Safety
6 Director. I assume you can all hear me, correct?

7 CHAIR THOMAS: We can, and just make sure that you try and -- I know
8 it's hard -- speak slowly, like, take a sip of something between each sentence. But thank
9 you, yes, go ahead.

10 MS. HILASKI: No worries. As always, I want to thank the Board for your
11 time and attention and your service. I'm going to keep this brief.

12 So first of all, I definitely agree with Rob Moutrie's comments. I think he shared
13 many of our sentiments and was very clear and eloquent on his points, so I won't
14 belabor them. I think it's clear that we are going to have a regulation. And while I may
15 not agree with that need, I can certainly accept that reality. And that is fine.

16 My biggest ask to the Board is that you at least take the time to engage
17 all stakeholders to ensure that the regulations really make sense. And as Len Welsh
18 pointed out, it should be simple and consistent with what is already in place.

19 In my own experience, the more input I receive from people in my
20 company when we're considering a new policy change, a way to improve safety in the
21 company, the better the policy is in the end. So as an example, I may start with an idea
22 that I think is great. And then I share it with my team, and they announce downfalls
23 that I hadn't thought of. So then we modify it and then we take it to our operations
24 teams, the superintendents and project managers. And we think it's great, hey we're
25 going to do this. This'll make the work even safer. And then they point out unintended

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1 consequences. And we're like oh, we hadn't about that. Thank you so much.

2 And we massage it some more, so that finally what our workers get is an
3 upgrade in safety that makes sense , that doesn't create another hazard that we hadn't
4 thought about. So in the same spirit, I just really ask that you take into consideration all
5 the feedback we've already provided. And to allow us some time to look over whatever
6 draft you are going to put out so that we can help you make sure that the end result
7 doesn't create problems that you didn't anticipate.

8 So with that, again, thank you for your time and I'm just urging you to
9 listen to all stakeholders. Thank you very much.

10 CHAIR THOMAS: Thank you very much, Ms. Hilaski. You did very good,
11 nice and easy.

12 Mr. Gotcher, who do we have next in the queue?

13 MR. GOTCHER: Our next commenter is Robert Moutrie of the California
14 Chamber of Commerce. Would like to make an additional comment.

15 CHAIR THOMAS: Go right ahead.

16 MR. MOUTRIE: Thank you. And I will endeavor to not be too quick this
17 time, following Cassie's better example.

18 I want to quickly return to one point. And for the record, Robert Moutrie,
19 for the California Chamber of Commerce. In my prior comment, I left out one critical
20 new point, which is I would urge the Board and the Division to be careful about the
21 scope of Cal/OSHA's regulatory authority.

22 There's a couple of provisions in the Worksafe draft regarding rest breaks
23 and sick leave, which I believe would fall more under the Labor Commissioner's
24 authority as the proper venue for that type of guidance. So I would ask that you be
25 mindful on that scope.

1 Related to that, there are a few pieces of legislation that I'd like to
2 mention in the record for consideration for consistency. Notably, AB 1867, regarding
3 COVID-19-specific sick leave; AB 1383, which also touches on sick leave; and SB 1159
4 related to workers compensation coverage related to COVID-19.

5 I mention these, so that when we consider consistency with the existing
6 regulatory and legislative framework, hopefully, what we can come out with next
7 month, and what we'll be dealing with then on a short timeline, will be as close to
8 perfect as it can be.

9 Thank you. And I will try not to come back again.

10 CHAIR THOMAS: Thank you.

11 Mr. Gotcher, who do we have next?

12 MR. GOTCHER: At this time, we have no further public commenters in
13 the queue.

14 CHAIR THOMAS: Thank you.

15 MS. SHUPE: At this time, I'd like to ask if we have anyone participating
16 via teleconference or via WebEx who has not had an opportunity to join the queue.
17 Now would be an opportunity to unmute yourself and let us know.

18 MR. DONLON: Yes, this is Mike Donlon, representing Construction
19 Employers' Association. I would just want to say the Construction Employers'
20 Association represents some of the premiere union contractors in the state, and they've
21 worked very hard on this issue. And they would love to help the Division and the Board
22 in drafting a workable regulation that protects people, that does not conflict with the
23 various health department regulations that are out there, and that we can do on a
24 construction site.

25 I also want to put in a chime for a performance-based standard.

1 Performance-based standards work because this is a regulation that applies to every
2 employer in California. How many different industries does that cover? I have no idea,
3 but they're all different, and that's where, if you put something in that's too
4 prescriptive, it just doesn't work for anyone.

5 So it's just a matter of, you know, I forget, I think it was Ms. Robbins said
6 heat illness. Well, yeah the regulation tells you, you have to supply water. It doesn't tell
7 you how to supply water, and so that is a performance standard in that sense. Yeah,
8 there's some basics you have to do, but it doesn't dictate how to do them.

9 I think if you make a complex, unusable standard, it will not help the
10 situation. I also think that enforcement using existing standards can be done right now
11 and is probably preferable, because it will happen immediately, to drafting a new
12 standard. There's no reason to think that the existing regulations aren't working. Eric
13 Berg said it would be easier to cite with another regulation. That that's, you know, ease
14 of citing isn't necessarily a necessity argument. But our employers at Construction
15 Employers Association would really like to work with the Division and the Board on this.

16 And I do want to thank the Board for this last few months. You've
17 really earned your \$100 a month after the last few months. So don't spend it all in one
18 place. Thank you.

19 CHAIR THOMAS: Thank you.

20 Do we have any other commenters at this time?

21 MR. GOTCHER: Yes, there's one more that's been added to our queue,
22 Michael Holland.

23 If you would please introduce yourself, Mr. Holland?

24 MR. HOLLAND: Yes, can you hear me?

25 CHAIR THOMAS: Yes, Mr. Holland. Go right ahead. We can hear you.

1 MR. HOLLAND: Yes, so my name is Michael Holland. I represent Clarke
2 Construction Group as well as the carpenters that I am a fellow member with, of 405 in
3 San Jose.

4 So my goal when I became a safety professional is to bring the thoughts
5 of our craft into the safety professional mindset. I have been a little bit disappointed in
6 how often the Standards Board's recommendations are heard by the Division in making
7 a regulation.

8 I was highly involved in the silica standard and believe that an advisory
9 committee is the very best way to get a standard that does address the concerns for the
10 COVID-19. And we can anticipate future virus outbreaks.

11 What I would like to emphasize is that I believe that the health
12 department has done a pretty good job providing guidances that we in the construction
13 world have abided by, and, as I am told by our partners in San Francisco County Health
14 Department, have largely prevented the spread on our projects by following those
15 health department regs. So I ask you please to provide the opportunity for an advisory
16 committee, so that we don't have a too prescriptive and industry-specific guideline in
17 the standard that is adopted.

18 I appreciate all of your all effort. Thank you for your Standards Board
19 participation. And please think of the workers that want to be protected by a regulation
20 that's written for their protection, not for the opportunity of an attorney to file a lawsuit
21 or someone to find a compliance violation that costs money and doesn't improve the
22 life and the quality of the workers' health and safety. Thank you very much.

23 CHAIR THOMAS: Thank you.

24 Mr. Gotcher, any further commenters?

25 MR. GOTCHER: There are no further commenters in the official public

1 queue. If anyone is on the line that would like to unmute themselves and comment,
2 now is your chance.

3 MS. SHUPE: Hearing none.

4 CHAIR THOMAS: All right, I don't see any. So thank you very much. The
5 Board appreciates your testimony. The public meeting is adjourned and the record is
6 closed.

7 We will now proceed with the business meeting. The purpose of the
8 business meeting is to allow the Board to vote on the matters before it and to receive
9 briefing from staff regarding the issues listed on the business meeting agenda.

10 Proposed Petition Decisions for Adoption, 1. Pamela S., Petition File
11 Number 579. The petitioner requests to amend various sections of Title 8 to address
12 water damaged building, mold investigation and remediation methodologies aimed at
13 preventing chronic respiratory illness syndrome attributable to mold.

14 Ms. Shupe, will you please brief the Board?

15 MS. SHUPE: Thank you, Chair Thomas. The petitioner requests the Board
16 incorporate guidelines from a document entitled "Indoor Environmental Professionals
17 Panel of Surviving Mold Consensus Statement," hereafter referred to as "Statement,"
18 into a new regulation within Title 8 to aid in the investigation of a water-damaged
19 building whose occupants exhibit symptoms of potential illness from mold exposure.

20 The petition requests that the Board adopt first in the nation prescriptive
21 standards, as identified in a consensus statement prepared by a panel of doctors who
22 provide consultation services specializing in resolving concerns of mold exposure.

23 The Division's evaluation report, dated July 30th, 2020, states the Division
24 agrees with the petitioner that water intrusion, leakage from interior water sources, or
25 other accumulation of water inside a building, if not corrected, can cause the growth of

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1 mold.

2 Similarly, the Division concurs that the presence in buildings of visible
3 water damage, damp building materials, visible mold, or mold odor is unhealthy and can
4 increase the risk of workers suffering a respiratory illness. Particularly if exposure to the
5 damp building is not recognized and corrected and the exposure continues indefinitely.

6 The Division opines that Section 3362 is unnecessarily limited in scope
7 and could be expanded to include controlled water intrusion, high humidity
8 environments, and mold growth removal.

9 The Division does not, however, agree that the quantitative methods that
10 petitioner seeks to incorporate in Title 8 should be required or used to determine mold
11 or other microbial levels in buildings.

12 The Centers for Disease Control and Prevention, National Institute of
13 Occupational Safety and Health, World Health Organization and California Department
14 of Public Health recommend against measuring indoor microorganisms or using the
15 presence of specific microorganisms to determine the level of health hazards.

16 The Division recommends the petition be granted to the limited extent
17 that an advisory committee be convened to consider appropriate changes to subsection
18 3362(g) to address deficiencies in subsection as noted in the analysis of the Division's
19 evaluation.

20 Board staff also thoroughly evaluated the petition and similarly found
21 that the prescriptive changes the petitioner seeks are in conflict with CDPH guidance
22 and at odds with CDC guidance.

23 Board staff notes that Labor Code Section 6400(a) requires those who
24 suffer from hypersensitivity to mold be provided with a workplace that is safe and
25 healthful to the employees therein.

1 Additionally, the performance-based standards of Section 3203, Injury
2 and Illness Prevention Program; and Section 5141, Control of Harmful Exposure to
3 Employees, require employers to take steps to protect employees from on-site hazards.

4 Division's concurrence with some of the petitioner's assertions regarding
5 the hazards of unabated mold is not sufficient basis alone for a grant, in whole or in
6 part, of the subject petition, which seeks specific prescriptive amendments to Title 8.
7 The Division is provided with wide latitude to propose health standards to the Board,
8 independent of a petition or grant, and is encouraged to advance changes to Section
9 3362 through the established rulemaking process as it sees fit.

10 Consistent with the analysis of the prescriptive changes proposed by the
11 petitioner, the decision before you today proposes denying petition 579. The decision is
12 now ready for your consideration.

13 CHAIR THOMAS: Thank you, Ms. Shupe.

14 Do I have a motion to adopt the petition decision, which is to deny?

15 BOARD MEMBER HARRISON: Motion to adopt.

16 BOARD MEMBER LASZCZ-DAVIS: Second.

17 CHAIR THOMAS: I have a second, I have a motion and a second. Is there
18 anything on the question?

19 BOARD MEMBER STOCK: Yes, this is Laura Stock. I do have a question.
20 So particularly, I'm always concerned when there is a difference of opinion between the
21 Division and the Board staff. And as I read it, it seemed -- so I'm just a little bit confused
22 and I'm hoping that Eric is on the line and can speak to this a little bit.

23 It sounds like the Division is acknowledging that there's a problem and
24 recommends the granting in part of the mechanism to potentially strengthen the
25 existing rules that they acknowledge could benefit from strengthening.

1 It sounds like the Board is saying that they're not disagreeing with that
2 idea, but suggesting that potentially the Division initiate that through a different
3 process, which is to have their own -- initiate a petition on our part where they use their
4 own process to present that to the Board.

5 So this is not unusual that we would get a petition and then we accept it
6 in part in order to initiate that discussion. So I'm a little bit confused why we wouldn't
7 be directing the Division to do it in a different way.

8 It seems like this way, which is to accept the petition in part the way the
9 Division is recommending, is just the mechanism to the exact same end of taking a look
10 at those regulations and making sure they adequately address the problem.

11 So I'm wondering if Eric Berg -- I think I saw that he's the representative
12 from the Division -- and if he's able to comment on their recommendation, and why
13 they believe that it should be accepted, and if he's there, could we hear him speak to
14 that?

15 MR. BERG: Yes, this is Eric speaking.

16 BOARD MEMBER STOCK: Hi, Eric.

17 CHAIR THOMAS: Go ahead, Eric.

18 MR. BERG: Yes, we did recommend moving to an advisory committee to
19 address strengthening the requirements of regulation regarding mold. The Standards
20 Board is also correct that we can do this without a petition. I think both are correct. So
21 we could do this without the petition in the future when the resources are available to
22 annotate this with or without the petition.

23 We just were saying that we are with the petition, that these things
24 needed to be looked at.

25 CHAIR THOMAS: I don't know if that answers your question, Laura, but

1 Dave Harrison has a question.

2 BOARD MEMBER STOCK: Let me let Dave -- go ahead, Dave.

3 BOARD MEMBER HARRISON: I was just going to say that if we do pass
4 the petition as presented, maybe we can ask to put this on a future agenda item and
5 keep that on the calendar until this is addressed?

6 BOARD MEMBER BURGEL: But in contrast -- this is Barbara -- my concern
7 is that it's going to get lost in the process if we don't pass a specific support for the
8 petition in part, with the establishment of an advisory committee process so that we
9 don't lose sight of it.

10 BOARD MEMBER STOCK: This is Laura again. Yes, it seems -- so it sounds
11 like Eric is -- it seems like what I'm hearing from the Division is that they believe further
12 attention to this matter is warranted. And it sounds also like the Board staff is not
13 disputing that idea, though they have a different approach to it. And so I'm also inclined
14 to consider accepting the petition, that we keep it on the agenda.

15 And I'm interested, Dave, if you could explain a little bit more your idea.
16 Are you saying that we would accept it, but recognizing resources, give them longer
17 time to respond, or could you explain a little bit your idea, Dave?

18 BOARD MEMBER HARRISON: My idea was that we'd just add this to
19 future agenda items and keep it on the docket as a discussion piece moving forward. I
20 don't have a problem withdrawing my motion and substituting it with an alternate
21 motion. But I understand the process as it was explained is just as effective. But I was
22 just trying to move forward with the motion as presented, knowing that we were going
23 to take it up in the future.

24 MS. SHUPE: Can I address the Board for a moment please?

25 CHAIR THOMAS: Sure, go ahead.

1 MS. SHUPE: I'd like to explain the thought process behind the proposed
2 decision that's before you today.

3 Mr. Berg is correct in that they have identified issues that they would like
4 to address in Section 3362. The main concern, and this was noted in both the Division
5 evaluation and in the Board staff evaluation, is that the petitioner asks for specific,
6 prescriptive remediation that is in conflict with the World Health Organization, the CDC,
7 the California Department of Public Health. And that is what we seek to avoid in setting
8 a precedent for by accepting this petition.

9 I would strongly advise the Board to think about those issues before they
10 move forward with a grant.

11 CHAIR THOMAS: Can I just add one thing? Eric, if you're there, which I
12 assume you are, did you say that you were going to have an advisory committee on --

13 MR. BERG: Yeah.

14 CHAIR THOMAS: -- this particular issue?

15 MR. BERG: In the future, when we have time and resources, that would
16 be something we would like to do. Now, we don't need this petition, and Christina is
17 correct, the bulk of the content of the petition we don't agree with. There's some
18 general ideas we do agree with, but a lot of the content we do not agree with.

19 CHAIR THOMAS: So I would say, and this is just me speaking out loud,
20 that we probably need to deny the petition, but we can urge that the Division hold an
21 advisory committee as soon as it can regarding the issues that they think there are
22 concerns over because it sounds like there are many issues that are in conflict in this
23 particular petition, that we should deny it.

24 MS. SHUPE: So I can say that the Board can also direct staff to add to a
25 future agenda, as Board Member Harrison has suggested, that we ask the Division for an

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1 update, say, somewhere in three to six months, and add that to a future agenda.

2 BOARD MEMBER STOCK: And so this is Laura --

3 CHAIR THOMAS: Laura?

4 BOARD MEMBER STOCK: Oh sorry, was somebody else trying to say
5 something?

6 CHAIR THOMAS: Oh no, go ahead. I was saying yeah, go ahead.

7 BOARD MEMBER STOCK: So first of all, Christina, in response to your
8 comment in which I definitely hear what you were saying and agree with what you're
9 saying. And it seems like the Division also agrees with what you're saying is that there is
10 a lot in the petition that neither the Board nor the Division agree with. And my
11 understanding is that was why they said, "grant in part," where that mechanism of
12 granting in part can allow the process to go forward in very particular directive ways.
13 So, for example, it could go forward saying, "Not this, but let's look at that." So that
14 could be an option.

15 It seems like another option is what you are describing is that we
16 specifically ask it to be put on an agenda and ask the Division to come forward with a
17 process that they would recommend.

18 My concern -- and so, again, Eric, please weigh in on this -- my concern is
19 that there was a petitioner, she raised an issue, both the Division and the Board
20 acknowledge that there is a gap there and there is a need to strengthen it. And I'm
21 worried, I don't want to lose that momentum.

22 And so, Eric, if you could comment? If we were to deny this petition,
23 what steps would the Division take in order to move forward to initiate this process in a
24 more limited way? In other words, excluding the things that you haven't agreed with.
25 So, Eric, could you say what steps the Division would take if this petition, at this point,

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1 was denied?

2 MR. BERG: Well, we'd put it on -- we have a list of projects that we want
3 to work on in the future, and it would be added to that list. So, we have other petitions
4 that haven't been approved that we still haven't completed an advisory process. So it
5 would go on that list after those projects are completed.

6 BOARD MEMBER STOCK: And, but you on the other hand, you
7 recommended that it be granted "in part." So can you just clarify what your
8 recommendation would be at this point?

9 MR. BERG: Well, I would recommend that the Division hold advisory
10 meetings with our stakeholders on what the proposal to improve the regulation would
11 consist of in the future.

12 BOARD MEMBER STOCK: And you're saying you would be committed to
13 doing that whether or not we deny or grant this petition. Is that what I'm hearing?

14 MR. BERG: Yes.

15 CHAIR THOMAS: Well, what's your pleasure, Board?

16 BOARD MEMBER STOCK: I guess, well, I'm interested in what other Board
17 Members think. I guess I'm looking for a solution that allows us to acknowledge that
18 this is an important issue and not get it put aside, because I heard both Division and the
19 Board thinking that it was important.

20 If we can specifically -- but if there is some feeling -- and it sounds like the
21 Board staff feels this way, that it would be counterproductive to approve the petition as
22 presented to us and preferable to have the Division initiate a process that they could
23 define the scope of more carefully, that seems like a reasonable strategy. If we can be
24 sure that it is therefore put on some schedule, and if we could be requesting as maybe,
25 Dave, that was you were suggesting, that, like, if two months from now, they report to

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1 us on their steps to initiate that advisory process.

2 If we could make that proposal to the Division, that sounds like it might
3 be the way to go.

4 CHAIR THOMAS: Why don't we have Dave amend his motion to include
5 that we deny the petition, but that we will have an advisory committee to study the
6 issues that can be corrected apart from those that are against the World Health
7 Organization and the other things that Christine said, at a future time. Is that --

8 MS. SHUPE: Can I interject?

9 CHAIR THOMAS: Sure.

10 MS. SHUPE: And I apologize, just because I want to keep these two issues
11 very distinct and that was the purpose of the proposed decision.

12 My recommendation to the Board is that you adopt the proposed
13 decision and then take a separate action to address what you would like to see from the
14 Division in terms of putting this on a future Board Meeting agenda.

15 CHAIR THOMAS: Okay.

16 MS. SHUPE: But keep those two separate.

17 CHAIR THOMAS: Let's do that motion that you originally did, Dave, and
18 then we'll do another motion for an advisory committee.

19 BOARD MEMBER HARRISON: All right, so the motion's on the Board with
20 us has already been made and there's a second. (indiscernible)

21 CHAIR THOMAS: All right. We have a motion and second. Is there
22 anything else on that question? To deny --

23 BOARD MEMBER STOCK: Okay, so I'm sorry. Just to clarify, when we
24 vote, if we all vote now, for example, to deny the petition, we will then immediately
25 proceed to another recommendation that we would be then be able to vote on that

1 would set up that advisory committee at a later time?

2 BOARD MEMBER HARRISON: Correct.

3 BOARD MEMBER STOCK: Okay.

4 CHAIR THOMAS: Correct. All right. So Ms. Money will you please call the
5 roll?

6 MS. MONEY: Ms. Burgel?

7 BOARD MEMBER BURGEL: Aye.

8 MS. MONEY: Mr. Harrison?

9 BOARD MEMBER HARRISON: Aye.

10 MS. MONEY: Ms. Kennedy? (Silence on the line.) Miss Kennedy?

11 CHAIR THOMAS: Did we lose Nola? She is there. She is saying "yes," I
12 can see her thumb is up.

13 BOARD MEMBER KENNEDY: (Confirmation visually by Chair Thomas.)

14 MS. MONEY: Ms. Laszcz-Davis?

15 BOARD MEMBER LASZCZ-DAVIS: Aye.

16 MS. MONEY: Ms. Stock?

17 BOARD MEMBER STOCK: Aye.

18 MS. MONEY: Chairman Thomas?

19 CHAIR THOMAS: Aye. That motion passes to deny the petition.

20 Dave, would you like -- or Laura, would you like to make a motion?

21 BOARD MEMBER STOCK: Dave, you want to go ahead? And then I can --

22 BOARD MEMBER HARRISON: I can wait later until we get to future
23 agenda items and I'll address it there.

24 BOARD MEMBER STOCK: Okay, so can I just suggest a modification or an
25 expansion on that? Could we go so far as to say that we would recommend that they

1 convene an advisory committee to look at this issue?

2 CHAIR THOMAS: Yes. Let's just make that motion now so we don't --

3 MS. SHUPE: Can we just -- I'm sorry. Because we need to keep this all
4 clear, and the motion as a Board action, I'm going to slow you down a little bit. And so
5 we won't be modifying the previous motion because that has already passed.

6 BOARD MEMBER STOCK: Oh, yes, yes.

7 MS. SHUPE: What we will do is move forward, if the Board Members
8 would like to, propose to add a review of Section 3362 to a future Board meeting
9 agenda. Or -- and this up to the Board Members to decide -- to request that the
10 Division convene an advisory committee to review Section 3362.

11 CHAIR THOMAS: What's your pleasure, Laura?

12 BOARD MEMBER STOCK: So I think the latter that Christina is suggesting
13 would be my preference too. To request the Board to --

14 CHAIR THOMAS: And that would be?

15 BOARD MEMBER STOCK: -- convene an advisory committee to look at
16 that regulation and see if it needs to be strengthened.

17 CHAIR THOMAS: Okay.

18 MS. SHUPE: I'm going to take a moment to write this out so Dave can
19 read it.

20 BOARD MEMBER BURGEL: The Division recommended also that 5141,
21 "Control of Harmful Exposure to Employees," and then also looking at the performance-
22 based standard Sections of 3203, the "Injury and Illness Prevention Program," so there
23 were two additional pieces of the Division recommendation.

24 BOARD MEMBER STOCK: So maybe I --

25 BOARD MEMBER BURGEL: So I don't want to limit it just to 3362.

1 BOARD MEMBER STOCK: You're right. Maybe we could modify just to
2 say, "This advisory committee would be convened to look at existing regulations that
3 address mold and identify whether further regulatory action is needed."

4 CHAIR THOMAS: Dave?

5 BOARD MEMBER HARRISON: We could simplify it by saying, "An advisory
6 committee that would address the issues raised in petition 579." I think that would be
7 simple.

8 CHAIR THOMAS: Did you just make that motion?

9 BOARD MEMBER BURGEL: Yes. I think that's good, because it honors the
10 work of the petitioner as well.

11 BOARD MEMBER HARRISON: That's right.

12 CHAIR THOMAS: So we have a motion.

13 BOARD MEMBER HARRISON: Yes, we have a motion.

14 CHAIR THOMAS: Do I have a second?

15 BOARD MEMBER STOCK: Second.

16 CHAIR THOMAS: Okay, so I have a motion and second. And we have this
17 recorded, so we know what the motion is.

18 Ms. Money, can you please call the roll?

19 Sorry, we're trying to get this all down.

20 MS. SHUPE: I think it's important before you vote to just go ahead and
21 read it back.

22 CHAIR THOMAS: Yeah, go ahead. Go right ahead.

23 MS. SHUPE: So the motion on the floor is to request the Division convene
24 an advisory committee to review the issues raised in petition 579.

25 CHAIR THOMAS: Sufficient? Okay, I'm getting thumbs up, so that's good.

1 Ms. Money can you please call the roll?

2 BOARD MEMBER BURGEL: Hey, Dave? It looks like Nola is disconnected.

3 She's having some internet issues.

4 CHAIR THOMAS: Yeah, I don't even see her now.

5 BOARD MEMBER BURGEL: No, so I don't know whether we --

6 MS. SHUPE: We might need to take a five-minute pause while we try to

7 get that Board Member reconnected.

8 CHAIR THOMAS: Yeah.

9 (Overlapping colloquy.)

10 MR. GOTCHER: It looks like -- you mean Nola Kennedy? She's still with

11 the meeting, but she is muted.

12 CHAIR THOMAS: Nola, if you can hear us can you unmute so we can --

13 hello, Nola?

14 BOARD MEMBER BURGEL: So she's unmuted. Can you hear us Nola?

15 Can we hear you?

16 BOARD MEMBER KENNEDY: I can hear you. Can you hear me?

17 CHAIR THOMAS: Yes.

18 BOARD MEMBER BURGEL: Perfect, we can see you now.

19 CHAIR THOMAS: We are going to call it. Don't move, Nola, we are going

20 to call the roll now for this motion.

21 BOARD MEMBER BURGEL: Yeah. Does Nola need the motion repeated?

22 You heard that?

23 BOARD MEMBER KENNEDY: No, I heard it.

24 BOARD MEMBER BURGEL: Okay, perfect.

25 CHAIR THOMAS: Thank you. Go ahead Sarah.

1 MS. MONEY: Ms. Burgel?

2 BOARD MEMBER BURGEL: Aye.

3 MS. MONEY: Mr. Harrison?

4 BOARD MEMBER HARRISON: Aye.

5 MS. MONEY: Ms. Kennedy?

6 BOARD MEMBER KENNEDY: Aye.

7 MS. MONEY: Ms. Laszcz-Davis?

8 BOARD MEMBER LASZCZ-DAVIS: Aye.

9 MS. MONEY: Ms. Stock?

10 BOARD MEMBER STOCK: Aye.

11 MS. MONEY: Chairman Thomas?

12 CHAIR THOMAS: Aye. And the motion passes.

13 Okay, onward. Proposed variance decisions for adoption are listed on the
14 consent calendar. Ms. Shupe, can you please brief the Board?

15 MS. SHUPE: Thank you, Chair Thomas. On your Consent Calendar today
16 there are 11 proposed variance decisions, Items A through K. I'd like to note one small
17 clerical correction for Item K, KONE Monospace 500. On the first page of the decision,
18 the "PD5" in the footer was a clerical error. PD5 is a reference to the review draft
19 proposed decisions and should have been removed before the file was finalized and
20 distributed.

21 After incorporating this clerical change, I am aware of no unresolved
22 procedural matters regarding the proposed decisions for Items A through K and believe
23 they are ready for your consideration and vote.

24 CHAIR THOMAS: Thank you, Ms. Shupe.

25 Are there any questions for Ms. Shupe? Hearing none, a motion would

1 be in order.

2 BOARD MEMBER LASZCZ-DAVIS: I so move.

3 BOARD MEMBER STOCK: Second.

4 CHAIR THOMAS: I have a motion and second that the variance decisions

5 A through K with the --

6 MS. SHUPE: -- that the consent calendar be adopted --

7 CHAIR THOMAS: Yeah, consent calendar be adopted.

8 MS. SHUPE: -- as amended.

9 CHAIR THOMAS: -- as amended. That's what I was looking for.

10 Ms. Money, can you please call the roll?

11 MS. MONEY: Ms. Burgel?

12 BOARD MEMBER BURGEL: Aye.

13 MS. MONEY: Mr. Harrison?

14 BOARD MEMBER HARRISON: Aye.

15 MS. MONEY: Ms. Kennedy?

16 BOARD MEMBER KENNEDY: Aye.

17 MS. MONEY: Ms. Laszcz-Davis?

18 BOARD MEMBER LASZCZ-DAVIS: Aye.

19 MS. MONEY: Ms. Stock?

20 BOARD MEMBER STOCK: Aye.

21 MS. MONEY: Chairman Thomas?

22 CHAIR THOMAS: Aye. And the motion passes.

23 All right, Emergency Regulation Process-Overview.

24 Ms. Shupe, will you please brief the Board?

25 MS. SHUPE: Thank you, Chair Thomas. So today's item is an overview of

1 the emergency rulemaking process. This was a request from one of our Board
2 Members and will just familiarize you with the process as we move forward with the
3 COVID-19 emergency temporary standard that the Board will be considering shortly.

4 The item that we'll be primarily be working off of today is the emergency
5 standards rulemaking process flow chart. And so if you will all bear with me for a
6 moment, I'm going to go ahead and share that document with our WebEx audience.
7 Okay, and I believe you should all be able to see this document now.

8 First and foremost, I'd like to remind the Board that emergency standards
9 rulemakings are very rare. Prior to the wildfire smoke exposure rulemaking last year the
10 Board hadn't considered an emergency standard in nearly ten years prior. And there
11 are very specific rules that must be followed for emergency standards.

12 And so the first thing I'd like to point your attention to is that, "A finding
13 of emergency based only upon expediency, convenience, best interest, general public
14 need, or speculation, shall not be adequate or demonstrate the existence of an
15 emergency." This is important to note because this is a really high threshold that we
16 have to cross in order to have rulemakings accepted via the Office of Administrative Law
17 and in accordance with the Administrative Procedure Act.

18 The first step, which we've already accomplished, is identifying an
19 emergency either by Standards Board or staff or DOSH. And you'll notice that, you
20 know, you all approved Petition 583 that identified the emergency, we are in a state of
21 emergency, so we've definitely got that covered.

22 What's occurring right now is the research and development of the
23 proposal. The Division is taking the lead on that. They are looking at the studies,
24 reported incidents and available corrective measures. They are also, to my knowledge,
25 working with the California Department of Public Health. And at this time, we do not

1 have regulatory text from them. But it's a very involved process, and I cannot
2 overstate how big this is.

3 Some of the things that need to go into that proposal; it's not just the
4 regulatory text that's required. The Division also has to develop a Finding of Emergency,
5 which lays out the legal justifications that meet the threshold for Government Code
6 11346.1(b)(2).

7 They have the proposed regulatory text, a statement of facts
8 demonstrating the emergency. So that while we may all feel that we know that COVID-
9 19 is an emergency, they have to lay out the legal framework and arguments showing
10 that.

11 They have to provide authority and reference citations. There are
12 studies, reports or similar relied upon docs. These would be guidance from the CDC,
13 California Department of Public Health, incident data. All of that needs to be pulled
14 together and provides a basis of the rulemaking file.

15 There also is a side-by-side code comparison that needs to be drafted to
16 address our responsibility to federal OSHA. And then finally, the economic and fiscal
17 impact statement has to be drafted. That's your STD 399.

18 Now, with the emergency standards, those do not go to the Department
19 of Finance for approval, but they do still have to be drafted, they have to be complete,
20 and they do have to go through a regular review process for either the Labor Agency
21 Secretary or her designee. That's the process that we're in right now.

22 Once all of those items have been pulled together and drafted, it
23 represents a tremendous amount of work when it comes to the Standards Board staff.
24 It's our responsibility to review it, and when we review it, we're looking for very specific
25 things that are required by the Office of Administrative Law. And so I think that a lot of

1 times, there is not a clear understanding of what the Standards Board staff does when
2 we review regulatory proposals from the Division.

3 Some of the things that we're looking for, and these are all required by
4 OAL and laid out in their guidelines documents, the proposed emergency regulation text
5 and a standard Form 400, seven copies. These have to be in compliance with
6 Government Code 11346.1 (b)(2), Title 1, California Code of Regulations Section 6.

7 We look at the finding of emergency. We look at the agency statement
8 of specific facts. And then we also look at the authority and reference citations in the
9 Informative Digest, specific agency statutory requirements, local mandate
10 determinations, and the fiscal impact estimates.

11 We also look at the technical, theoretical, and empirical studies, reports
12 or similar documents, which are included and make sure that those are properly
13 referenced and available. And we look at the facts explaining the failure to address the
14 situation through non-emergency regulations.

15 So we look for those six main requirements that all regulations have to
16 have: the clarity, the non-duplicative, basically everything that OAL is going to be
17 looking for. And we do this because when that regulation, when that rulemaking is
18 approved by the Board and it goes to OAL, OAL will then be looking at it, and if we don't
19 do our job well, the Standards Board rulemakings will be rejected. I think this Board
20 knows that that is not something that this Board has had happen very often, and it's
21 because your staff work so hard and does such an excellent job at reviewing these files
22 before they come through.

23 Once we finish our review, it will go to the Labor Agency. They will do a
24 similar review, but much more truncated. They're primarily looking at legal authority
25 and fiscal impacts.

1 And then it comes to the Board. This is something I'm going to go ahead
2 and take this screen down for a moment, so I can address you, see if I can figure out
3 how.

4 BOARD MEMBER BURGEL: Is this the appropriate time to ask a question
5 or do you want us to hold?

6 MS. SHUPE: No, please go ahead.

7 BOARD MEMBER BURGEL: I just wanted to find out -- you said we're at
8 that, as far as the Labor review, the Labor (indiscernible) facts. Has the language been
9 put forth for the emergency standard?

10 MS. SHUPE: No, so we're up in that second box right now where the
11 Division is conducting research and developing their proposal.

12 BOARD MEMBER BURGEL: Okay. Thank you.

13 MS. SHUPE: Yeah. So at this time, the Standards Board doesn't have it.
14 We don't have the regulatory text, we don't have any of the supporting documentation,
15 and we haven't been able to begin our review. And this is important because we need
16 that time in order to do so, and the Labor Agency will also need time in order to do their
17 review.

18 And I really want to (indiscernible) -- I'm sorry, go ahead.

19 BOARD MEMBER BURGEL: (Overlapping colloquy.) No, I was just going to
20 respond to, obviously, the comments we've heard, the concern that all the public
21 comments that we've received to date haven't been integrated into the process, and
22 whether an advisory committee is going to be established, given our short timeline. So I
23 also assumed that there was going to be an advisory committee process set up like we
24 did for the wildfire, emergency standard for wildfire smoke.

25 BOARD MEMBER STOCK: Yeah, and this is Laura, if I can just jump in?

1 And so my understanding was that there is not going to be an advisory committee
2 process that is typically held because of the emergency nature and the need to act
3 quickly. And that is why, at least in the petition decisions that we saw, they were
4 careful to include a process that would allow some review after, if something were
5 substantially different in the science or something came up, there would be an
6 opportunity to address it.

7 And so that's how I understood what the petition decision we voted on is
8 that there was an urgency. That we were persuaded that it was something that
9 required really quick action, and that this was the process that would bring us to a quick
10 action, the best, but that we would build that in after.

11 But I might add also just a question. You can clarify that, Christina, but I
12 feel like you're clearly explaining why how much time it takes, both on the Division and
13 on the Board staff, and why that the time is needed in order to develop all those things
14 before it goes to public. We also know that the public is extremely interested on both
15 sides of this issue in seeing that.

16 And so I wonder if -- I know you've said before that statutorily, it has to
17 be released to the public at least five days before the Board Meeting vote. And I guess
18 one question that I would just add is, do you anticipate that it might be possible to
19 release it sooner than that or the draft sooner than that?

20 MS. SHUPE: And so I'm going to just sidebar for a second, Laura, because
21 you are very quick speaker and apparently I am as well. (Laughter.)

22 BOARD MEMBER STOCK: Sorry.

23 MS. SHUPE: So we have multiple requests from the translators in the
24 queue here that I'm seeing that we both slow down.

25 BOARD MEMBER STOCK: Okay, I apologize. I am a very fast talker. I will

1 try to be careful.

2 MS. SHUPE: I'm sorry, Chair Thomas, did you want me to --

3 CHAIR THOMAS: No, go ahead. Go ahead.

4 MS. SHUPE: So I'd like to address the timeframe and the release of the
5 regulatory text to the public. The timeline that we worked out with the Division prior to
6 the development of the proposed decision assumed that the Board staff would have
7 received the complete regulatory proposal by last Monday. We do not have it at this
8 time. And I really want to commend the Division because I know that they are working
9 around the clock to make this happen. It's not ready. They're working with the
10 California Department of Public Health.

11 And Laura is correct, there is no provision in the proposed decision that
12 the Board adopted last month for an advisory committee prior to the development of
13 this regulatory proposal. The advisory committee that was in the Board's decision
14 would occur after the emergency regulation is adopted and then would come through
15 and review it.

16 As far as releasing that regulatory text for stakeholder review, legally,
17 with emergency regulations, five days. Now, if we can do it in advance of that,
18 absolutely. I think this Board knows that when we released the proposed decision, we
19 did that. We guaranteed that we would have it at a minimum of ten days in advance
20 and we would release it as soon as it was available. We would do the same with this. At
21 this time it's not available, we don't even have it.

22 And I really want to caution the Board, because we have not met our
23 timeline, which was very aggressive, it's very possible that we will not be able to notice
24 this five days prior to the November meeting, and it may have to go to December.

25 BOARD MEMBER STOCK: So I'm wondering if Eric Berg, who hopefully is

1 still on the line, has anything he could add about when that draft might be ready for
2 the Board. I mean, obviously if it can't be done to meet the statutory deadline, that's
3 the reality that we face. And I'm just very conscious that the decision we made last
4 month was really acknowledging the emergency, the need to act quickly, so I don't want
5 to undermine that discussion and decision that we have already made.

6 But so Eric, can you comment on the timeframe (indiscernible) to the
7 Division and when you might expect that that package would get to the Board for
8 review?

9 MR. BERG: Well, we're working on it.

10 BOARD MEMBER STOCK: I'm sorry?

11 MR. BERG: We're working on it as quickly as possible and as much as
12 possible. I mean, we're working day and night, but there's also other parties involved as
13 Christina said, like CDPH, so it's not completely under our control. But we are doing the
14 best we can. I can't provide a specific date, no.

15 BOARD MEMBER STOCK: Are you feeling hopeful that it's going to be
16 able to get to the Board in time for us to be able to meet the November deadline?

17 MR. BERG: Yeah, we're hopeful that can be done.

18 CHAIR THOMAS: We're hoping, but there's no way to know. Chris?

19 BOARD MEMBER LASZCZ-DAVIS: Yeah, I've got a couple of comments.
20 Today's public comments, as well as our discussion, leaves me troubled. COVID is a
21 public health issue and very much like the wildfire smoke issue was. So it's just not
22 workplace issues. We are dealing with community issues, which makes it very complex
23 on a number of fronts.

24 I know that we as a Board endorsed an advisory committee after the
25 November vote. The truth is, as I listened to the comments, I'm sitting here thinking,

1 "Now, why did we allow that to happen?" The truth is, I think this is complex enough
2 that an advisory committee needs to be established, and a robust stakeholder exchange
3 occur, before the Board gets a chance to vote.

4 I mean, I think there is this implicit feeling that I get that nothing is being
5 done out there, short before we have a regulation on the books. The truth is, a lot of
6 good work is being done in the name of COVID out in the workforce. Granted, sure
7 we've got our problem employers and problem situations, but I think that is a process
8 for focus and stringent enforcement action. I don't think that the Board can and should
9 take action on this unless it's had an advisory committee, a robust exchange with the
10 stakeholders, and more time than November. I mean, this just does not make sense at
11 all. And shame on us if we allow this to move full speed because we have a calendar to
12 meet.

13 BOARD MEMBER BURGEL: Well, I hear you, Chris. And I also heard many
14 of the comments today were concerned. I somehow in my mind thought we were going
15 to have an advisory committee. I did not realize we had not built that into our process.
16 And I apologize, that was a gap or a miss on my part.

17 I heard at the prior meetings the concern around do we employ a 100%
18 performance-based versus a prescriptive standard? I heard from our petitioners that
19 they were really, as commented today, that it was the proposed language that was
20 willing to be -- they were willing to amend it based on the changing science. And again,
21 cross-walking between a prescriptive and a performance-based standard, I thought
22 that's where we were headed.

23 And we have been, all this past year, especially in response to the wildfire
24 emergency regulation, hearing for more dialogue between the Board and the Division
25 and our stakeholders. And so, I agree with you Chris. I think that it would, you know, --

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1 I am also in agreeance that we are in an emergency and I want to speed this up as well,
2 but I also don't want to not hear or integrate some of the suggestions that have been
3 made.

4 BOARD MEMBER STOCK: So I think my understanding of the discussion
5 that we had last month is that, at least how I arrived at my decision, is for a number of
6 reasons, that it was an emergency, a critical emergency, that people are dying and are
7 at risk. And we heard many, many -- a lot more testimony to that effect last month.
8 (inaudible) I think that's when many of those organizations that have been advocating
9 for a standard kind of stepped forward to bring their voices to that meeting.

10 And so, to me, I'm very cognizant of the emergency nature. And also of
11 the community impact because, I agree, this is what happens in the workplace impacts
12 the community. And, in fact, there's been recent studies that have shown that
13 workplace outbreaks -- this was just reported somewhere, I don't have the reference --
14 but there was a review of the way workers have made complaints about outbreaks, and
15 shortly thereafter, there was a spike in incidents and deaths in a particular community.
16 So I think there's increasing evidence that what's happening in the workplace is directly
17 impacting what's happening in the community, and that the way to deal with it is
18 through addressing workplace outbreaks.

19 And we have heard, and we heard last month more specifically, about
20 many workplace outbreaks that are occurring now in California in a lot of big employers.
21 So for me, I have been very cognizant how urgent this is.

22 And I also understand how long it can take a typical regulatory process,
23 years, and that we all know that an advisory committee process is not a month, but
24 several months, if not more. It has to be convened, there has to be discussions. So I
25 think that we were faced with that situation that there's either act quickly or do

1 something more in a typical way that could add months.

2 My hope was that there are other ways to get input outside of the
3 advisory committee process. I'm in favor of that generally. Again, I'm speaking because
4 of the current emergency that we are facing.

5 CHAIR THOMAS: Can we just slow --

6 BOARD MEMBER STOCK: Oh, sorry.

7 CHAIR THOMAS: -- okay, slow down just a bit?

8 BOARD MEMBER STOCK: No, sorry. Thank you, thank you.

9 CHAIR THOMAS: Much slower, much slower.

10 BOARD MEMBER STOCK: Much slower, yes.

11 So there is, what my hope has been, I am now hearing the problems with
12 that, is that if a draft is released, there is an opportunity at that point for people to
13 comment. So I do want to say that when a number of commenters today expressed
14 their frustration that their voices have not been heard, we have been hearing testimony
15 for the last four or five months, and their voices on both sides of the issues have been
16 presented and heard.

17 I know I have listened carefully. I know my fellow Board Members have
18 as well. So I don't want to minimize the public input benefit of the hearing that we had
19 today and that we have had for several months in a row. So I would dispute that we
20 have not been able to have public comment or input. We have, we have heard it, and
21 hopefully, those inputs are being -- guiding the actions by the Division now and will be
22 guiding our decision when we get a draft in front of us.

23 We will have heard everything that people have said and that will inform
24 our decision. So there is a public process, even when an advisory committee is not
25 convened. So I just wanted to say that.

1 I see you, Chris, I'm almost finished. My concern is that if there is not
2 sufficient time when we get that released to the public, will there be sufficient time for
3 stakeholders to be able to respond by submitting comments? And that, I think, is the
4 question. But I just want to caution us about the months that having an advisory
5 committee would add to this process.

6 CHAIR THOMAS: Chris, you had a question?

7 BOARD MEMBER LASZCZ-DAVIS: Yes and maybe just a comment real
8 quickly. I hear what you're saying, Laura. I don't necessarily agree that a public
9 comment period is the same as having an opportunity for a stakeholder forum where
10 you're exchanging and cobbling out practices that are the best practices, but that are
11 workable and simple.

12 I don't equate those two. They are two different processes. And I don't
13 think, given the timeline that we've heard quite frankly, that anybody is going to have
14 time to provide input that makes sense for us to vote on anything reasonably in
15 November. I mean, as I listened to the dialogue today, that's where I land.

16 BOARD MEMBER STOCK: And just to clarify, Chris, I'm not disputing what
17 you say. I don't disagree that there is a difference. I'm just saying it may not have the
18 same purpose, but it would be wrong, I think, to say that it's not a form of public input.
19 And that when you're dealing with an emergency, then you are trying to figure out a
20 way to move things quickly. And that is the circumstances under which you may make
21 some choices that, in a non-emergency, you wouldn't make. So I just want to clarify my
22 comments.

23 BOARD MEMBER BURGEL: Is there enough time to look at another
24 process though? And maybe, again, I'm not saying an advisory board or committee
25 process that has been traditionally been used, but some kind of opportunity to look at a

1 first draft, turn around a second draft, again, engage in either small groups. And I don't
2 know if Worksafe and the Labor Federation meeting with some of the employer
3 representative groups and really trying to crosswalk their two documents. But I know
4 we have --

5 CHAIR THOMAS: Christina, has a comment to yours, Barbara.

6 BOARD MEMBER BURGEL: All right, thank you.

7 CHAIR THOMAS: Go ahead.

8 MS. SHUPE: Hi, and I hope you can hear me. I want to make sure,
9 because there was a question that came through. The Board should really embrace and
10 understand your authority here. When the proposal comes to you, if you are unhappy
11 or dissatisfied with the proposal, as the Board, you absolutely have the right and the
12 authority to vote it down and ask the Division to come back with changes. This is not
13 unprecedented.

14 The Board has done this in the past. And you absolutely have that
15 authority and right to do so in this round.

16 CHAIR THOMAS: Thank you, Christina. And I agree that we haven't seen
17 a draft yet. Once we see a draft, I think we will have a really good idea of either the
18 strengths or weaknesses of that.

19 But I was going to say I agree with all of you in part, there is an
20 emergency. This thing is getting worse, it's not getting better. And there is no
21 leadership. There is no leadership out there to tell -- I mean, we all know what to do,
22 but at the highest level, they don't practice it. So we know there's a problem.

23 And we do need -- I mean, I feel like we have to have a regulation to tell
24 people and employers, employees, what they need to do. But we have a guy advising
25 the President that thinks herd immunity is the answer. And if that's the answer, that's 2

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1 million to 6 million people that are going to die. So I don't want that to happen, but
2 that's what we have against us right now.

3 But we don't have to make a decision right now, until we see the draft,
4 how long this process is going to take. It could be shortened. It could be lengthened.
5 But let's not get into a box where we think that we have to pass this in November or
6 December. Let's do the best job we can do based on what we see when we actually get
7 a draft and then go forward as we see fit.

8 We had a few deficiencies in the wildfire, basically related to COVID. But
9 I think we have a little more time than we think we do, but it is still urgent. As Laura
10 said, this is an emergency. There is no question about that. It's not ending, it's not
11 getting better. It's getting worse, and we know that.

12 Any other comments? (No audible response.)

13 Okay I forgot where was I at, where are we at?

14 MS. SHUPE: I was in the middle of talking about our emergency
15 temporary standard process.

16 CHAIR THOMAS: Go right ahead. Please continue.

17 MS. SHUPE: All right, let me get back to the video. Here, hold just one
18 second. There we are, thank you.

19 And I just want to pause at this moment to let everybody know who is
20 following via WebEx, that the document that I shared is also available on our website
21 under our "Emergency Regulation" tab. So that's publicly available and you're all
22 welcome to go visit and see what the process is.

23 So getting back on track, I let the Board know where we were. The
24 Division is currently working on the proposal. The next step would be for the Board staff
25 to review it under the guidelines we have. And then sending it to Labor Agency for their

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1 review. And then it will come to you.

2 Once we have a Board decision, I want to touch briefly on the public
3 comment because while the Board will accept comment, and they'll take that into their
4 consideration at their hearing before their vote, there is also an option for the public to
5 provide comment directly to the Office of Administrative Law. And there is no legal
6 requirement for the agency to respond.

7 And I flagged this, because that's different from a regular rulemaking
8 process. In the regular rulemaking process, we notice a rulemaking. The public has a
9 45-day comment window. We have a public hearing. And if we make any changes,
10 there's an additional 15-day comment period. And in every one of those stages, Board
11 staff or Division staff prepare a response to those comments.

12 For emergency regulations, Office of Administrative Law accepts those
13 comments, and they will forward them on to the agency, which would be us, but there
14 is no mechanism for response that is required there. And so it really kind of puts the
15 emphasis on our public meetings and the comments that you receive there.

16 Once the Board adopts the proposal it goes to OAL. OAL has 10 days to
17 review it. At that time, it goes to Secretary of State and it becomes effective. So if the
18 Board adopts a proposal in November or December, by the end of that same month,
19 they should expect to see it become effective.

20 Are there any questions about the process? (No audible response.)

21 CHAIR THOMAS: All right. Thank you, Christina.

22 Why don't we move on to our Legislative Update? Can you please brief
23 the Board?

24 MS. SHUPE: Okay, struggling with the mouse again. Thank you. As I told
25 the Board last month, we are continuing to watch the legislation that's been approved.

1 There are several pieces that have been signed by the Governor that impact the Board,
2 either directly or indirectly.

3 Most notably is AB 685, which provides specific definitions for COVID-19
4 and some notification requirements. It doesn't have an urgency statute, so it doesn't
5 become effective until the beginning of January of next year, but it will impact our
6 requirements. And so we're working with Division and the Office of Administrative Law
7 to identify what can be incorporated and what will have to be addressed after January 1
8 when it actually becomes law.

9 Part of that is an authority issue. The Legislature is allowed to adopt
10 definitions that exceed the authority of the Board. And until those actually become law,
11 we cannot incorporate them. So AB 685 is a big one.

12 We were watching AB 1512. That was approved. That's the security
13 officer rest periods. I don't really believe there's any overlap for the Board at this time.

14 AB 2043 was approved and does have an urgency statute. And so staff is
15 working with Division and we'll look if there is a need for any regulatory updates as they
16 are identified. And that's AB 2043 addresses agricultural employees and COVID-19
17 response.

18 We're still looking at AB 2092 for emergency ambulance employees,
19 safety devices and safeguards. That was enrolled but not yet signed.

20 And AB 2537, Personal Protective Equipment for Health Care Employees.
21 This one was approved. And as well staff will work with the Division to identify any
22 regulatory updates that may be needed as a result of that legislation.

23 Similarly, SB 275, Health Care Essential Workers Protection Act. This is
24 personal protective equipment that was approved. And I believe that one is our PPE
25 stockpile requirement.

1 And then SB 1257, Employment Safety Standards For Household
2 Domestic Services. This was enrolled, but to my knowledge, has not yet been signed.

3 And so we're continuing to watch those. And again, just continuing to
4 work with the Division to evaluate any regulatory needs that may come forth as a result
5 of this legislation. So quite a bit of movement, significantly more than we're used to.
6 And we're staying on top of all of it.

7 Are there any questions? (No audible response.)

8 CHAIR THOMAS: Thank you, Christina. Executive Officer's Report?

9 MS. SHUPE: I have thought a lot about the Executive Officer's Report for
10 this month, mostly in the morning before I've had my coffee. And I just want to take
11 this time -- I think everybody knows that we're operating very much like ducks in a
12 pond, very smooth on the top, feet are paddling very, very fast underneath the water --
13 and I want to take this opportunity to just really thank the Board staff. You have a
14 tremendous staff.

15 And I know I've said this before, but they are working under
16 tremendously stressful situations. We have had staff members who were displaced by
17 wildfires. We have had staff members who have been personally impacted by COVID-
18 19. Plus, we have staff members who are dealing with schooling issues, because of their
19 children aren't able to return to school. And through all of that, and even with our
20 historic vacancy rate right now, which the Board is aware of, your staff has just worked
21 tremendously hard to keep everything moving forward, and I want to acknowledge
22 every single one of them.

23 Mr. Nelmidia is our technical guru who keeps us moving forward. And
24 he's a Senior Safety Engineer, and yet he's in here showing me how to share documents.
25 Sarah Money, who is here all the time in the office making sure that our notices go out

1 and that the public stays informed. Jackie Lowe, who is our Variance Secretary, who, in
2 between juggling everything she's got going on, is keeping our variance process moving
3 forward, allowing builders to move forward with their elevators.

4 And the help that we've gotten from the Division has just been
5 invaluable. They have provided administrative and legal support.

6 And I just really wanted to take the opportunity to thank everybody for
7 everything they have done to keep us up and running.

8 CHAIR THOMAS: Thank you, Christina.

9 Any comments from the Board Members? Yes, Laura?

10 BOARD MEMBER STOCK: Yeah, thank you for saying that, Christina. And
11 I'm sure other Board Members may chime in and certainly agree with me to thank you
12 for all the hard work. I want to add you to that list as well, just to appreciate all the
13 work you've been doing in this extremely challenging time. So we appreciate it. Any
14 other support that would be helpful to make these months easier, please reach out.

15 I know, as we've talked about before, I've always been very concerned
16 about the lack of staffing. And I feel like the Board needs and deserves way more help
17 than you have. And so again, thank you so much for all of your work. And if at any
18 point there is any opportunity or a way that we could help, either to advocate for the
19 help that you need or in any other way, please don't hesitate to reach out or to mention
20 that to us.

21 BOARD MEMBER LASZCZ-DAVIS: And this is Chris. Ditto those
22 comments, Laura, thank you.

23 CHAIR THOMAS: Dave? (No audible response.) I think he said ditto too.

24 Any other comments from the Board?

25 All right, at this, time pursuant to Government Code Sections 11126(e)(1)

1 and 11126(a)(1), the Board shall now enter into a Closed Session to confer with counsel
2 regarding pending litigation matters listed on today's agenda and consideration of
3 personnel matters.

4 After the Closed Session is concluded, I will reconvene the meeting and
5 we will report on any Closed Session action.

6 We invite members of the public and staff to remain on the
7 teleconference until the Board resumes open session. I'm not sure how long this will be,
8 hopefully within a half hour.

9 MS. SHUPE: I'm guessing about a half hour.

10 CHAIR THOMAS: Okay, so thank you very much. We're going into closed
11 session. Hang on if you want to. Yes, Laura?

12 BOARD MEMBER STOCK: Can we have a 10-minute break before going
13 into Closed Session?

14 CHAIR THOMAS: Sure.

15 BOARD MEMBER STOCK: Or something (indiscernible).

16 CHAIR THOMAS: Let's do the Closed Session at 12:35, which will give us a
17 few extra minutes and then we'll do that. And then we'll probably come back at 1:00
18 o'clock or a little after for the general public, okay.

19 Thank you very much. We're going to go into closed session after 12:35.

20 Thanks.

21 (Off the record at 12:21 p.m.)

22 (On the record at 1:04 p.m.)

23 CHAIR THOMAS: All right we are back in session. In the Closed Session,
24 the Board took no action. So next, let me get to the next part here, so what, did you
25 want to say something?

1 MS. SHUPE: Yeah, so the only thing that we haven't covered so far is
2 Board Member comments and future agenda items.

3 CHAIR THOMAS: Oh, I thought we did that, okay. So any further Board
4 comments or questions about future agenda items of Christina? Board Members?

5 MS. SHUPE: Nola Kennedy.

6 CHAIR THOMAS: Oh, Nola? Unmute.

7 BOARD MEMBER KENNEDY: (Interference on the line.) Yeah, I just
8 wanted to make a comment that we see so many sort of impassioned opinions,
9 especially around the emergency standard or regulations that have been proposed or
10 petitioned. And I guess I appreciate passion and anecdotal information. I would really
11 like to see the Board be presented with some data. And I'd like to see us consider
12 evidence in decisions, so that's just a comment.

13 CHAIR THOMAS: Your mic is doing something where it sounds like it's in
14 the wind.

15 BOARD MEMBER KENNEDY: Oh hmm, let me see. Is that better?

16 CHAIR THOMAS: Yeah, that's much better.

17 BOARD MEMBER KENNEDY: My previous problems were because my
18 computer overheated, and so I had a fan on it.

19 CHAIR THOMAS: What were you saying? That you wanted the Board to
20 get more evidence, like legitimate, not just --?

21 BOARD MEMBER KENNEDY: Yeah, I mean I find that people's passion and
22 anecdotal stories and comments about good employers and not good employers is all
23 very interesting and enlightening. But I would also like to see the Board consider
24 evidence when (indiscernible), because I feel like often we are not presented with much
25 data.

1 CHAIR THOMAS: I don't disagree. But I think we get it on both sides.
2 We get it from employees, from employers --

3 BOARD MEMBER KENNEDY: Oh absolutely. I wasn't trying to point to
4 one side or another.

5 CHAIR THOMAS: But I do agree with you. Any time you have a
6 conversation like this about an issue like this, it's going to be emotional. I know I did, I
7 got a little emotional about it.

8 BOARD MEMBER KENNEDY: Oh absolutely, and I appreciate all of that. I
9 guess, I'm basically making a comment that I would like to see more data presented.

10 CHAIR THOMAS: Yeah, we'll take that into consideration because I think -
11 -. Go ahead.

12 BOARD MEMBER STOCK: This is Laura.

13 (Overlapping colloquy.)

14 CHAIR THOMAS: Laura?

15 BOARD MEMBER STOCK: Or Chris, could you --

16 CHAIR THOMAS: Or Chris? I'm sorry, let me -- Chris was first.

17 BOARD MEMBER STOCK: It's fine, I'll go after Chris.

18 CHAIR THOMAS: Go ahead, Chris.

19 BOARD MEMBER LASZCZ-DAVIS: I wonder if I might ask Nola what kind of
20 data would be helpful to you in the deliberations and the discussions we had today?
21 What would have been helpful for you?

22 BOARD MEMBER KENNEDY: Specific to today, nothing. But previously
23 we (indiscernible). Like, for example (indiscernible).

24 MS. SHUPE: Your fan is (indiscernible), Nola.

25 BOARD MEMBER KENNEDY: For example, we have asked the Division in

1 the past to provide information on what fraction or what portion of the investigations
2 they're doing were they unable to cite, or any new information like that? How many
3 citations are being made? How many complaints are being made?

4 CHAIR THOMAS: You know, we could do that. We can do that.

5 BOARD MEMBER KENNEDY: Because I don't think it's unreasonable to
6 have a sense of the magnitude to our problem.

7 BOARD MEMBER LASZCZ-DAVIS: That's a good point.

8 CHAIR THOMAS: I think so. I think we can come up with information from
9 the Division on citations, visits, those kinds of things. And maybe there is other
10 information that's public information out there that we can bring in that we may see at
11 home or on television or something like that, but would be appropriate to bring to this
12 forum too. Because we don't all watch the same thing.

13 BOARD MEMBER KENNEDY: I know there are newer studies about the
14 incidents of workplace outbreaks. You know, I don't have a sense of how many
15 workplaces, how many cases that's led to. Just some data is nice.

16 CHAIR THOMAS: We will venture to do that for the next meeting. All
17 right.

18 And yes, Laura?

19 BOARD MEMBER STOCK: Can I just jump in? So I appreciate your
20 comment, Nola. And I agree that more information of the kind that you are talking
21 about would be really helpful.

22 The only other thing I would say, the kind of information that I feel like
23 we really would like to have a better handle on is the incidents of workplace exposures
24 and information on outbreaks. And I know already that that is a challenge that I've been
25 hearing about.

1 In fact, I think a new piece of legislation that the Governor did sign was
2 actually going to be requiring better reporting and making clear what those criteria for
3 reporting could be. So I think it also just reflects a little bit of a problem with our data
4 collection. I think we can get the data you're talking about relative to Cal/OSHA for
5 sure.

6 I mean I was just mentioning earlier I saw, just somebody forwarded an
7 article in the L.A. Times about new increases in workplace outbreaks in L.A. County, for
8 example. So I feel like we've gotten a lot of some of that information from newspaper
9 reports. And I know that I think we heard some testimony a couple of months ago from
10 somebody from UCLA, they had been doing their own --

11 CHAIR THOMAS: Slow down just a little bit. Thank you.

12 BOARD MEMBER STOCK: Thank you, sorry. We heard some testimony
13 from UCLA a couple of months ago where I think UCLA has been doing its own work of
14 trying to track workplace outbreaks. So I feel like, in addition to what you say, I think
15 that there is a huge need for better data collection, not only about enforcement
16 activities, but also about workplace exposures. And so hopefully, with this new
17 legislation and other aspects, there are better reporting from the Department of Public
18 Health. We can gather some of that data too.

19 CHAIR THOMAS: Okay, that sounds reasonable. We'll see what we can
20 come up with.

21 Any other questions the Board has? (No audible response.) All right, I
22 don't see any.

23 So the next Standards Board regular meeting and hearing is scheduled for
24 November 19th, 2020, via teleconference and video conference. Please visit our
25 website and join our mailing list to receive the latest updates. We thank you for your

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IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2021.



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Myra Severtson
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