

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

PUBLIC MEETING AND BUSINESS MEETING

In the Matter of:)
October 21, 2021 OSH)
Standards Board Meeting)
_____)

TELECONFERENCE

PLEASE NOTE: The physical meeting location has been cancelled. In accordance with section 11133 of the Government Code, this Board Meeting will be conducted via teleconference.

THURSDAY, OCTOBER 21, 2021

10:00 A.M.

Reported by:
M. Nelson

APPEARANCES

BOARD MEMBERS:

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

BOARD STAFF PRESENT AT OSHSB OFFICE IN SACRAMENTO:

Christina Shupe, Executive Officer
Autumn Gonzalez, Chief Counsel
Sarah Money, Executive Assistant
Michael Nelmidia, Senior Safety Engineer

BOARD STAFF PRESENT VIA TELECONFERENCE AND/OR WEBEX:

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

ALSO PRESENT:

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

TKO STAFF:

Brian Monroe
John Roensch
Maya Morsi
Erik Kuether

SPANISH INTERPRETERS:

Anabella Tidona
Estela Moll

APPEARANCES (Cont.)

PUBLIC COMMENT:

Amber Baur, UFCW Western States Council
Margaret Reeves, Pesticide Action Network North America
Bambi Marien, UFCW Local 5
Paz Aguilar, Fight for \$15 and a Union Campaign
Katie Kelsch, California Tuberculosis Controllers Association
Stephen Knight, Worksafe
Victoria Bermudez, California Nurses Association
Kathryn Donahue, California Nurses Association,
National Nurses United
Saskia Kim, California Nurses Association
Christine Wu, California Tuberculosis Controller Association
Maggie Robbins, Worksafe
Helen Cleary, Phylmar Regulatory Roundtable
Mark Ramos, UFCW Local 1428
Mitch Steiger, California Labor Federation
Michael Miiller, California Association of Winegrape Growers
Bryan Little, California Farm Bureau
Katherine Hughes, SEIU Nurses Alliance of California
Anne Katten, California Rural Legal Assistance Foundation
Matthew Allen, Western Growers Association
Eddie Sanchez, Southern California Coalition for Occupational Safety and Health
(SoCalCOSH)
Bruce Wick, Housing Contractors of California
Pete Maturino, UFCW Local 5
Angie Santos, UFCW Local 1167
Kevin Bland, Ogletree Deakins
Rand Martin, AIDS Healthcare Foundation
Rob Moutrie, California Chamber Of Commerce
Curtis Lang, California Nurses Association, National Nurses United, AFL-CIO
Jane Thomason, National Nurses United

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1 PROCEEDINGS

2 OCTOBER 21, 2021

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 am Dave Thomas, Chairman. And
5 the other Board Members present today are Ms. Barbara Burgel, Occupational Health
6 Representative; Ms. Kathleen Crawford, Management Representative; Ms. Nola
7 Kennedy, Public Member; Ms. Chris Laszcz-Davis, Management Representative; and Ms.
8 Laura Stock, Occupational Safety Representative.

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

13 Supporting the meeting remotely are Mr. Michael Manieri, Principal
14 Safety Engineer; Ms. Lara Paskins, Staff Services Manager; Mr. David Kernazitkas, Senior
15 Safety Engineer; Ms. Jennifer White, Regulatory Analyst; Ms. Cathy Deitrich, Regulatory
16 Analyst; and Ms. Amalia Neidhardt, Senior Safety Engineer who is providing translation
17 services for our commenters who are native Spanish speakers.

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

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

22 In accordance with section 11133 of the Government Code, today's
23 Board meeting is being conducted via teleconference, with an optional video
24 component.

25 This meeting is also being live broadcast via video and audio stream in

1 both English and Spanish. Links to these non-interactive live broadcasts can be
2 accessed via the "What's New" section at the top of the main page of our OSHSB
3 website.

4 We have limited capabilities for managing participation during the public
5 meeting comment period, so we are asking everyone who is not speaking to place their
6 phones on mute and wait to unmute until they are called to speak. Those who are
7 unable to do so will be removed from the meeting to avoid disrupting the proceedings.

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

15 Please listen for your name and an invitation to speak. When it's your
16 turn to address the Board please be sure to unmute yourself if you're using WebEx, or
17 dial *6 on your phone to unmute yourself if you are using the teleconference line.
18 Please be sure to speak slowly and clearly when addressing the Board and please
19 remember to mute your phone or computer after commenting.

20 Today's public meeting will be limited to two minutes per speaker, give or
21 take. And the public comment portion of the meeting will extend for up to two hours,
22 so that the Board may hear from many members of the public as is feasible. The
23 individual speaker and total public comment time limits may be extended by the Board
24 Chair, if practicable.

25 Board staff can be contacted by email at oshsb@dir.ca.gov or via phone

1 at 916-274-5721 to be placed in the comment queue. If you experience a busy signal
2 or are routed to voicemail, please hang up and call again.

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

8 We will now proceed with the public meeting. Anyone who wishes to
9 address the Board regarding matters pertaining to occupational safety and health is
10 invited to comment, except however, the Board does not entertain comments regarding
11 variance decisions. The Board's variance hearings are administrative hearings where
12 procedural due process rights are carefully preserved; therefore, we will not grant
13 requests to address the Board on variance matters. At this time, anyone who would like
14 to comment on any matters concerning occupational safety and health will have an
15 opportunity to speak.

16 For our commenters who are native Spanish speakers we are working
17 with Ms. Amalia Neidhardt to provide translation of their statements into English for the
18 Board.

19 At this time, Ms. Neidhardt, will you provide instruction to the Spanish-
20 speaking commenters so that they are aware of the public comment process for today's
21 meeting.

22 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH] Public Comment
23 Instructions.

24 "Good morning, and thank you for participating in today's Occupational
25 Safety and Health Standards Board public meeting. Board members present are Mr.

1 Dave Thomas, Labor Representative and Chairman; Ms. Barbara Burgel, Occupational
2 Health Representative; Ms. Kathleen Crawford, Management Representative; Mr. Dave
3 Harrison, Labor Representative; Ms. Nola Kennedy, Public Member; Ms. Chris Laszcz-
4 Davis, Management Representative and Ms. Laura Stock, Occupational Safety
5 Representative.

6 "As reflected on the agenda, today's meeting consists of two parts. First,
7 we will hold a public meeting to receive public comments or proposals on occupational
8 safety and health matters. Second, after the public meeting has concluded, we will hold
9 a business meeting to act on those items listed on the business meeting agenda.

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

14 "This meeting is also being live broadcast via video and audio stream in
15 both English and Spanish. Links to these non-interactive live broadcasts can be accessed
16 via the "what's new" section at the top of the main page of the OSHSB website.

17 "Please listen for your name to be called for comment. If you have not
18 provided a written statement, please allow natural breaks after every two sentences so
19 that we may follow each statement with an English translation. Today's public
20 comment will be limited to two minutes per speaker, and the public comment portion
21 of the meeting will extend for up to two hours, so that the Board may hear from as
22 many members of the public as is feasible. Gracias"

23 CHAIR THOMAS: Thank you, Ms. Neidhardt.

24 Erik, do we have any commenters in the queue?

25 MR. KUETHER: Yes, our first three commenters are Anthony Brown,

1 Victoria Bermudez, and Amber Baur, with first up Anthony Brown representing himself.

2 CHAIR THOMAS: Anthony, are you with us? Anthony are you there? (No
3 audible response.)

4 MR. KUETHER: Mr. Brown, if you can unmute yourself by pushing *6 if
5 you're on the phone. If you're on WebEx just push the unmute icon.

6 CHAIR THOMAS: Anthony? It seems we've lost Anthony, let's go on to
7 the next one, Erik.

8 MR. KUETHER: Next up will be Victoria Bermudez representing the
9 California Nurses Association.

10 CHAIR THOMAS: Victoria, can you hear us? Remember to unmute
11 yourself. See if we can — are you there Victoria? (No audible response.)

12 MR. KUETHER: If you're on the phone, Victoria, please push *6 to
13 unmute yourself. (No audio.)

14 CHAIR THOMAS: It seems like we're having either some technical
15 difficulties or our callers are having some difficulties.

16 MS. SHUPE: We can circle back to Victoria and our first invited speaker,
17 Anthony.

18 CHAIR THOMAS: Let's try the next one and see if we can get somebody
19 on the line.

20 MR. KUETHER: Amber Baur is next and she's representing the UFCW
21 Western States Council. Amber, go ahead.

22 MS. SHUPE: I can see that Amber is with us.

23 MR. KUETHER: I just sent Amber a request to unmute herself.

24 CHAIR THOMAS: Please remember to unmute yourself. Amber, are you
25 there? Amber, can you hear us? (No audible response.)

1 MR. KUETHER: I sent the request.

2 MS. BAUR: I think I --

3 MR. KUETHER: Yes, there we go.

4 MS. BAUR: I'm so sorry about that.

5 Hi, my name is Amber Baur. I am the Executive Director for UFCW
6 Western States Council. I am calling commenting today to just urge Cal/OSHA to really
7 consider and reinstate exclusion pay language in the COVID-19 ETS.

8 This has been critical to ensure that our co-workers can stay home when
9 they're exposed to COVID-19. As someone with two children who are not yet eligible to
10 be vaccinated, I understand firsthand how important, incredibly important, our workers
11 have access to paid sick leave, which they generally have in our contract. But this
12 exclusion pay is incredibly important.

13 So, you know, our workers are facing challenges in many ways as the
14 eviction moratorium and supplemental paid sick leave has run out. And we often are
15 seeing workers who are forced to go into work even though they're not feeling well and
16 we still are having breakthrough infections in the food retail store. So again, I just
17 wanted to highlight the importance of exclusion pay to our members and those that are
18 not represented by unions within food retail, drug retail, cannabis, food manufacturing,
19 and agriculture. Thank you.

20 CHAIR THOMAS: Thank you, Amber, appreciate your comments.

21 Who do we have next, Erik?

22 MR. KUETHER: The next three commenters we have are Margaret
23 Reeves, Bambi Marien and Pete Maturino. Next up is Margaret Reeves. Go ahead, Ms.
24 Reeves.

25 MS. REEVES: Thank you. Can you hear me?

1 CHAIR THOMAS: Yes, go ahead Margaret.

2 MS. REEVES: Great, thank you very much. My name is Margaret Reeves.
3 I am a senior scientist at the Pesticide Action Network based in the Bay Area, but we
4 work on behalf of farmworkers all throughout the state so that's the constituency on
5 whose behalf I am speaking to.

6 To start off just I say look at the papers, listen to the news. COVID's very
7 much alive and well. And, of course, it's impacting essential workers in the food system
8 including farm workers. So I'm just commenting today to echo what Amber said to urge
9 Cal/OSHA to reinstate the exclusion pay language in the COVID-19 ETS. It's critical to
10 ensure that workers can stay home when they're exposed to or infected with COVID.
11 Without the exclusion pay workers have to make real hard decisions about whether to
12 go to work while sick or staying home without pay; a real tough decision.

13 With the expiration of the supplemental sick leave, the eviction
14 moratorium, utility shutoffs, workers will have no choice but to go to work while sick.
15 And that of course is not going to help us overcome this pandemic, so I just urge you
16 again to add the exclusion pay to the proposed ETS and I thank you very much for your
17 time.

18 CHAIR THOMAS: Thank you, Margaret, appreciate it.

19 Who do we have next, Erik?

20 MR. KUETHER: Next up is Bambi Marien representing the UFCW Local 5.

21 MS. MARIEN: Hi, thank you Board Members. I'm Bambi Marien and I'm a
22 worker advocate with UFCW Local 5 and I'm also calling in today to urge Cal/OSHA to
23 reinstate the exclusion pay.

24 So the workers I represent work primarily in the grocery stores. And with
25 the extreme exposure to the public, not to mention that these workers work in small

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1 and close outer departments, those departments tend to get crowded. Without being
2 able to control the public's decision to get vaccinated or to wear a mask, our members
3 are trying their best to control and limit the spread of COVID.

4 If they have to choose between receiving a paycheck or staying home we
5 know that they're going to have to go and get their paychecks. So again, we fear that
6 COVID will continue to spread and that's why we're asking you guys to please reinstate.
7 And I urge Cal/OSHA please, please consider the exclusion pay to the proposed COVID-
8 19. Thank you.

9 CHAIR THOMAS: Thank you, Bambi, appreciate it.

10 Who do we have next, Erik?

11 MR. KUETHER: Next up is Pete Maturino representing the UFCW Local 5

12 CHAIR THOMAS: Pete, are you with us? Remember to unmute yourself,
13 Pete. Pete are you there? (No audible response.) I guess not, we'll come back to Pete.
14 Can we go to the next person, Erik?

15 MR. KUETHER: Okay. Next up is Angie Santos representing the UFCW
16 1167.

17 CHAIR THOMAS: Angie, remember to unmute yourself. And are you
18 there? Or press *6 if you're on the phone.

19 Angie Santos, we see you. Is she muted? I think she's muted.

20 MR. KUETHER: I'm trying to find her on the list.

21 CHAIR THOMAS: Yeah, I see her. Angie, can you unmute yourself if
22 you're there? I guess not. We'll come back.

23 Who's next, Erik?

24 MR. KUETHER: Next up is Paz Aguilar and she speaks on behalf of the
25 Fight for \$15 and a Union Campaign.

1 CHAIR THOMAS: Hello, are you with us?

2 NIOUSHA: Hi, this is Niousha. I'm getting Paz on the call if you could give
3 me one second.

4 CHAIR THOMAS: Yeah, we can hear you.

5 NIOUSHA: Okay, let me get Paz Aguilar on the call. Give me one
6 moment, thank you.

7 MR. KUETHER: Paz will be making her comment in Spanish.

8 MS. SHUPE: Ms. Neidhardt, are you prepared to translate if needed?

9 MS. NEIDHARDT: Yes, I am.

10 MS. SHUPE: Thank you.

11 NIOUSHA: She will be speaking now.

12 CHAIR THOMAS: Go ahead, caller.

13 NIOUSHA: Paz, go ahead.

14 CHAIR THOMAS: Por favor?

15 NIOUSHA: Sorry, give me one moment.

16 MS. AGUILAR: (Through Interpreter Neidhardt.) Good afternoon, my
17 name is Paz Aguilar and I'm a fast-food worker from Oakland, California. I have worked
18 20 years in fast food most recently at Taco Bell, Jack in the Box, and at KFC. I am calling
19 today to underscore the importance of preserving exclusion pay as part of the
20 Emergency Standards.

21 The pandemic is not over and many communities of color still face lower
22 than average vaccination rates. California workers and employers need this important
23 provision to stay in place.

24 I know firsthand the consequences of workers coming in sick, because
25 they can't afford to miss one shift without pay. I caught COVID-19 at work, because our

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1 managers failed to follow basic safety precautions like social distancing. They also
2 created an environment in which my co-workers felt pressure to work even with
3 symptoms. As a result, seven of my co-workers including myself tested positive for the
4 COVID.

5 Not only that I continue to suffer the effects of COVID-19. I suffered a
6 stroke that has left me partially paralyzed and I'm dealing with other serious health
7 issues that my doctors traced back to my COVID-19 diagnosis. I want to help prevent
8 even just one worker from experiencing what I'm going through. That is why I'm
9 speaking up today. Please keep these key emergency protections in place until we are
10 clearly out of this crisis. Thank you.

11 CHAIR THOMAS: Thank you.

12 NIOUSHA: Thank you so much.

13 CHAIR THOMAS: Do we have any further comment?

14 MR. KUETHER: We do. The next three commenters are Katie Kelsch,
15 Stephen Knight and Curtis Lang. The first up is Katie Kelsch representing the California
16 TB Controllers Association.

17 CHAIR THOMAS: Katie, can you hear us?

18 MS. KELSCH: Yes, I can. Can you hear me?

19 CHAIR THOMAS: Yeah, go right ahead.

20 MS. KELSCH: Thank you. Thank you, Board Members, for your time
21 today. My name is Katie Kelsch and I am here as a Senior Public Health Nurse
22 representing the California TB Controllers Association to request a review and update of
23 the ATD standard specifically around protecting healthcare workers against TB. TB is
24 often thought of as an ancient disease that does not change much, however our
25 knowledge, science, understanding, and approach continues to evolve.

1 As a nurse, and especially a public health nurse, patient quality of care
2 and safety is always forefront. Sometimes nurses are my patients, but nurses are always
3 my colleagues, mentors, friends and family. Because of this, I closely follow guidance
4 document updates especially when they relate to my work in TB.

5 When CDC first revised our guidance in 2005 around TB screening,
6 testing, and treatment for healthcare workers, CTCA resisted the change for California.
7 In 2016, CTCA was confident that in California healthcare workers in general are not at
8 greater risk than the public for TB exposure. That risk is dependent on where healthcare
9 workers work, and their specific job duties.

10 There is a better way of protecting healthcare workers from TB. And I
11 agree with CTCA that focusing on treatment as prevention not only works towards the
12 goal of TB elimination, but also works to ultimately prevent deaths, complications, and
13 further spread of disease as well as the need to update our practices.

14 After the challenges, trauma, and struggles of the last 22 months of our
15 healthcare workers serving through the COVID pandemic, I feel that it's time that we
16 owe it to our healthcare community more than ever to provide them with the highest
17 standard of protection against TB. And in this case I respectfully ask that Cal/OSHA
18 review the ADT standard and bring it up to date with the most current guidance from
19 our subject matter experts such as the CDC and the American College of Occupational
20 and Environmental Medicine, ACOEM. Thank you very much for your time today.

21 CHAIR THOMAS: Thank you, Katie.

22 Who do we have next, Erik?

23 MR. KUETHER: Next up is Stephen Knight representing Worksafe.

24 CHAIR THOMAS: Stephen are you with us?

25 MR. KNIGHT: Yes, hi. Good morning and thank you Board Members.

1 Stephen Knight with Worksafe, we were a lead petitioner for the creation of a strong
2 Emergency Temporary Standard for COVID-19. And today we urge you to maintain a
3 strong standard to provide workers with the tools they need to protect themselves from
4 COVID-19 hazards on the job.

5 California's frontline workers, disproportionately people of color and
6 women as we've already heard here today, are facing devastating losses in the COVID-
7 19 pandemic. The latest proposed workplace ETS for into 2022 does away with
8 exclusion pay at while the same time preserving the requirement that employers
9 exclude any COVID-19 case. This means anyone testing positive are ordered to
10 quarantine, would be required to stay home, but employers would not have to pay that
11 work. Sending essential workers home without pay for weeks is an outcome, excuse
12 me, that few can absorb. And the result would be that contagious workers would stay
13 quietly on the job infecting other employees and members of the public.

14 We have a petition at Worksafe.org with over 140 signatures demanding
15 that this Board keep exclusion pay. And here's one comment made by a signer. "I am a
16 contact tracer for a local health department. Ordering people to stay home without pay
17 is tantamount to requiring them not to report their symptoms and close contacts. It
18 punishes people for infectious workplace hazards their work has exposed them to. It
19 forces people to work while sick and exposes their co-workers and customers. This
20 makes no sense."

21 More generally, the draft implicitly relies on vaccinations as a key control
22 measure. However, beyond that it relies mainly on case IDs and exclusion, close contact
23 ID and exclusion, and outbreak response, all reactive measures. And then it undermines
24 all three by removing exclusion pay protection.

25 So the broader set of control options to reduce close contacts such as

1 physical distance, moving work outdoors, changing schedules, or even reference to
2 categories of controls have disappeared. Employers should be expected to continue
3 these precautions and mentioning them in the main provisions of this standard is
4 important to increase understanding of this expectation and enable enforcement.
5 Thank you for your time.

6 CHAIR THOMAS: Thank you, Stephen.

7 Who do we have up next, Erik?

8 MR. KUETHER: Next up is Victoria Bermudez representing the California
9 Nurses Association.

10 CHAIR THOMAS: Victoria, can you hear us?

11 MS. BERMUDEZ: Yes, can you hear me?

12 CHAIR THOMAS: Yeah. A little louder please, but I can hear you.

13 MS. BERMUDEZ: Good morning, my name is Victoria Bermudez and I am
14 a Registered Nurse. I'm also a member of the California Nurses Association. Thank you
15 for fitting me in this morning and for the opportunity to comment on Petition 590,
16 which proposes to modify the ATD standards on the work tuberculosis testing
17 requirements for occupationally exposed healthcare workers. As you know, CNA
18 opposes this petition, because it isn't offering annual testing to exposed care workers as
19 an important, protective element of TB control.

20 The Standards Board staff evaluated and cites the CDC 2019 updated
21 guidelines for healthcare personnel, but these guidelines are based on faulty
22 assumptions.

23 First, the CDC assumes historical, recorded incidents of TB is predictive of
24 signs and future incidents (indiscernible), but there is no data provided to demonstrate
25 that this assumption is accurate. In fact, immigrants, travelers and migrant workers may

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1 move throughout California with undetected TB infections, potentially introducing an
2 occupational exposure to any hospitals or other hospice facilities in the state.

3 Second, the CDC assumes that a hospital knows the actual incidents of TB
4 in their workplace. But we know that TB diagnosis is often delayed, and that patients
5 average multiple visits to healthcare providers with respiratory symptoms prior to
6 receiving a TB diagnosis.

7 Third, the CDC assumes that a facility will be able to determine if the
8 symptoms of unrecognized TB (indiscernible). But without a comprehensive, contact
9 investigation that involves contacting the patient's prior to medical facilities that did not
10 diagnose TB, they never learn that there was a TB case in the work setting.

11 And finally, the CDC assumes that reported TB cases among residents at a
12 local jurisdiction are predictive of TB cases that will be seen in that particular facility in
13 that jurisdiction. But patients do not always receive care in the county in which they
14 reside.

15 For all these reasons CNA asks that you reject the CDC guidance and
16 prioritize occupational health protection for healthcare workers by denying Petition 590
17 as projected in the proposed decision. And we also urge you to reject any changes in
18 the standard itself or any promotion of a variance (indiscernible). Thank you very much.

19 CHAIR THOMAS: Thank you.

20 Who do we have next, Erik?

21 MR. KUETHER: Next up is Curtis Lane who has ceded their time to Kathy
22 Donohue representing the California Nurses Association and National Nurses United.
23 Go ahead Kathy Donohue.

24 MS. DONOHUE: Hi, and good morning. My name is Kathryn Donohue
25 and I'm a registered nurse. I'm also a retired Board Member of the California Nurses

1 Association. Thank you for the opportunity to comment on Petition 590. The petition
2 proposes to modify the ATD standard's annual tuberculosis testing requirements for
3 occupationally exposed healthcare workers.

4 As we had explained at previous Board meetings CNA opposes this
5 petition, because we believe offering annual testing to exposed healthcare workers is an
6 important, protective element of TB control. The risk for developing active TB, TB is
7 highest during the two-year period after infection. Early TB detection allow for effective
8 treatment that reduces the risk of developing active TB disease.

9 Early detection also allows for an accurate exposure investigation and
10 identifying the source patient and the TB strain, including any drug resistance. If a
11 healthcare worker's most recent LTBI test was several years ago that becomes much
12 harder to determine if an infection is linked to an exposure. And of course detection
13 prevents further spread of the disease.

14 TB continues to be a threat to me and my fellow healthcare workers. The
15 most recent reported data shows that the TB rate in California is almost twice the
16 national average. And 23 percent of the 8,916 total TB cases reported in the U.S. in 2019
17 were reported in California. This is actually an increase since the last time a similar
18 petition was before you in 2017. Among U.S. born individuals California's TB rate is
19 almost 2 and 1/2 times the national target rate.

20 The most significant change since the Board's 2017 decision on this issue
21 is the impact the COVID-19 pandemic has had on TB cases, diagnosis, and treatment.
22 For example, the economic disruption before from the COVID-19 pandemic has resulted
23 in an increase in populations vulnerable to TB.

24 In January HUD reported that California has the largest increase of any
25 state in homelessness, a recognized risk factor for TB. We cannot rely on the 2020 TB

1 case numbers cited by CDPH. The pandemic likely delayed diagnosis of TB, increasing
2 the potential for community transmission, and the threat to occupationally exposed
3 healthcare workers. In fact, the CDC and CDPH noted a steep, unexpected decline in the
4 number of TB cases reported in 2020. And the CDC warned that the magnitude and
5 breadth of the decrease suggested potentially missed or delayed TB diagnosis.

6 Also, Cal/OSHA allowed employers to delay TB testing until after the
7 COVID-19 crisis had subsided and is another reason we cannot trust the 2020 case
8 numbers. Missed TB cases lead to more transmission. CDC estimates in a single year an
9 individual with TB disease can infect up to 10 to 15 others with whom they are in close
10 contact.

11 Both the CDC and the California Department of Public Health also note
12 decreased immigration, because of travel restrictions as another potential pandemic-
13 related reason for being lower TB numbers. Beginning November 8th however, the
14 international travel ban will no longer be in place when the U.S. lifts its ban, which
15 would cause or could cause TB case numbers to increase

16 Since recent data released from the Stop TB Partnership indicates the
17 pandemic's 2021 impact on TB diagnosis and treatment is nearly as bad as it was in
18 2020. And just last week the World Health Organization announced that worldwide TB
19 deaths rose for the first time in more than a decade.

20 But even before the pandemic recent research demonstrated that TB
21 diagnosis is often delayed. In fact, TB patients experience an average of 3.89 healthcare
22 visits prior to receiving a TB diagnosis. This means that the RNs like me may be exposed
23 during those visits where the patient with TB has not yet been diagnosed.

24 Research also found that potentially misdiagnoses were greater and
25 hospitals, which diagnosed TB less frequently.

1 Annual TB testing is also important for me to access Workers
2 Compensation' for work-related TB. This testing establishes a window during which
3 infection may have occurred. That means that an investigation can either confirm or
4 deny that an exposure occurred. As a result, because of annual testing they can help
5 identify the timeframe of infection and source of the disease, and it can reduce
6 Workers' Compensation litigation.

7 One of the reasons that the ATD standard's annual TB testing provisions
8 are so protective is because they recognize patients are coming in to healthcare
9 settings, because they are sick and they don't know why. Because of this, a proactive
10 approach to protecting employees with any occupational exposure to aerosol
11 transmissible pathogens is necessary.

12 A patient presenting with a bloody cough and fever could have COVID-19,
13 TB, COPD, lung cancer or other conditions. The healthcare worker caring for that patient
14 needs to be protected from possible aerosol transmissible pathogens and therefore
15 need annual TB testing.

16 In sum, CNA asks that you prioritize occupational health protections for
17 healthcare workers by denying Petition 590 as suggested in the proposed decision. And
18 we also urge you to reject any changes in the standard itself or any promotion of the
19 variance process to circumvent equal protections in the form of annual TB testing for
20 occupationally exposed healthcare workers. Thank you so much for your time.

21 CHAIR THOMAS: Thank you.

22 Erik, who do we have up next?

23 MR. KUETHER: Next up is Jane Thomason who has ceded their time to
24 time to Saskia Kim representing the National Nurses United. Go ahead, Saskia Kim.

25 CHAIR THOMAS: Can you hear us? Remember to unmute yourself.

1 MS. KIM: Hi, can you hear me okay?

2 CHAIR THOMAS: We can hear you now, yes. Go right ahead.

3 MS. KIM: Thank you so much. I apologize for that.

4 Good morning, Saskia Kim with the California Nurses Association. Thank
5 you for the opportunity to comment on Petition 590. The Board heard a substantially
6 similar petition just four years ago and at that time the Board made the decision to deny
7 that petition, because it was unnecessary. And further chose not to entertain an
8 advisory committee, because it was so clear that changes were not necessary.

9 The development since then especially because of the pandemic -- some
10 of which you've heard Kathryn touch upon -- the WHO estimates 4.1 million
11 undiagnosed TB cases. The steep, unexpected decline in the number of 2020 TB cases,
12 which both CDC and CDPH note reflect likely missed or delayed diagnoses, we simply
13 cannot rely on TB numbers from 2020 as cited by CDPH in its letter on the petition. The
14 decline in the number of TB patients receiving treatment, the reopening of international
15 travel, all of this underscores how important it is to retain occupational TB protection
16 for healthcare workers.

17 As you've heard us testify in public comments at last month's meeting
18 this is a cost-motivated consideration more than anything. We detailed in our July
19 letter that cost-saving efforts have resulted in an increase in false positives, which are
20 now being called a problem that must be solved by relaxing protections for healthcare
21 workers. But the issue is not annual TB testing of occupationally exposed healthcare
22 workers. Instead, it's the reliability of the results. The Petitioner himself cited the study
23 found that IGRAs have a higher rate of false positive compared to TST.

24 I would like to also note our appreciation that the proposed decision
25 recommends denial of Petition 590 and does not include a recommendation to convene

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1 an advisory committee. CNA supports this section of the proposed decision. We do
2 have some concerns however about the sections of the decision, which direct Board
3 staff to review section 5199 for non-substantive amendments, including an amendment
4 that changes the standard to a post-exposure-only testing requirement that would only
5 offer protection to employees with a known occupational exposure to TB.

6 In addition, it's our understanding that under the Labor Code health-
7 related issues are more appropriately within the jurisdiction of the Division. And we
8 also (indiscernible) direction of the Board staff, in our view, inappropriately encourage
9 employers to use the permanent variance process to circumvent critical health
10 requirements. Our concerns on these two points are detailed in my most recent letter.

11 Also, if there is employer confusion about the requirements of section
12 5199 and the CDPH licensing requirements under Title 22, as noted in the Board staff
13 evaluation, the Board could consider an education project as a better approach to
14 improving employer understanding rather than relaxing healthcare worker protections.

15 And the CDC's 2019 guidelines are based on faulty assumptions that
16 threaten healthcare workers as Victoria Bermudez stated. I apologize if she was hard to
17 hear. So very quickly, first the CDC assumes historical recorded incidents of TB is
18 predictive of current and future incidents in the facility, but there's no data to provide
19 that that assumption is accurate. And in addition people move throughout the state of
20 California and can introduce occupational exposure to any hospital or other healthcare
21 facility in the state.

22 The CDC also assumes that a hospital knows the actual incidents of TB in
23 their workplace, but we heard that TB diagnosis is often delayed. The CDC also assumes
24 that a facility will be able to determine if persons with unrecognized TB were
25 encountered. But if you don't do a comprehensive contact investigation that involves

1 contacting the patient's prior medical providers the facility that didn't diagnose the TB
2 may never learn there was a TB case in the work setting.

3 And finally, the CDC assumes that reported TB cases among residents of a
4 local jurisdiction are predictive of cases that will be seen in that facility.

5 Finally, I just want to note that CDPH's letter on Petition 590 I think
6 illuminates the different priorities of public health and occupational health. As was
7 noted in 2017 public health is focused on directing resources to reduce illness in the
8 general population, whereas occupational health is --

9 MR. KUETHER: Saskia, you have 20 seconds left, please wrap up.

10 MS. KIM: -- is focused on detecting early signs of infection or disease, so
11 that quick action can avoid more serious health outcomes for individual workers.

12 And with that I would ask that you Deny Petition 590 as recommended in
13 the decision and reject the sections of the decision, which direct Board staff to make
14 changes to section 5199 and inappropriately encourage employers to use the variance
15 process to circumvent critical protection. Thank you.

16 CHAIR THOMAS: Thank you.

17 Erik, who's up next?

18 MR. KUETHER: Next up we have Christine Wu from California TB
19 Controllers Association.

20 CHAIR THOMAS: Go ahead caller. Can you hear us?

21 MS. WU: Yes. Can you hear me?

22 CHAIR THOMAS: Yes, go right ahead.

23 MS. WU: Okay. So good morning, my name is Christine Wu. I am the TB
24 Controller for Solano County and Deputy Health Officer. I'm here today to speak in
25 support of the California TB Controller Association submitted written testimony to

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1 review and update the ATD standard.

2 As a TB Controller in a medium-sized jurisdiction with a high immigrant
3 population this year, I saw the fourth case of infective TB in a healthcare worker who
4 was previously only identified to have a positive tuberculin skin test. Often they are
5 surprised because they were just being evaluated for like a cough or other minor
6 symptom. These cases often lead to large contact investigations in prisons and hospitals
7 and out in the community.

8 And medication tolerance is very common. And so my latest case, a
9 healthcare worker case, had to be put on medication desensitization regimen in order to
10 start her treatment. Her young children had to be placed on isoniazid window
11 prophylaxis.

12 Now, I wonder what can we do to better educate and protect our
13 healthcare workforce. After reviewing the latest data and national guidelines from the
14 CDC, I developed recommendations for my local county risk management to consider
15 implementing targeted screening and testing for Solano County employees. We now
16 provide extensive education on TB risk, continuing to allow for annual TB testing as an
17 option.

18 We do TB testing as part of all contact investigations and we recommend
19 the use of more specific blood tests, the IGRA, to differentiate exposure from prior BCG
20 vaccination as well as strongly recommend treatment for those diagnosed with latent TB
21 infection as an occupational health preventive measure.

22 As a clinician, I think of this early diagnosis and treatment as akin to that
23 of early identification and treatment of HIV. We now know that starting antiretroviral
24 medications early on allows the individual to live a long life and protect their loved ones
25 and the community. Likewise, treating TB infection before it progresses to active TB is

1 protecting the individual, their family, and the community.

2 I urge the Board to consider updating the ATD standard to align with the
3 best practices. Thank you.

4 CHAIR THOMAS: Thank you, Christine.

5 Erik, who do we have next?

6 MR. KUETHER: Next up is Maggie Robbins representing Worksafe.

7 MS. ROBBINS: Hi.

8 CHAIR THOMAS: Maggie, can you hear us?

9 MS. ROBBINS: Hello?

10 CHAIR THOMAS: Maggie, go ahead.

11 MS. ROBBINS: All right. Hi, this is Maggie Robbins. I'm with Worksafe
12 and we just have a few comments related to Petition 590. A lot of my comments
13 actually are very similar to what you've heard, so I won't reiterate them I will just make
14 a few points.

15 Due to the fact that the rate of TB infection within California is high, and
16 that there is a whole collection of counties representing over half of the population of
17 the state that have rates that are high and then sometimes very significantly higher than
18 the statewide average, so it is still a problem in the state. And still needs to be paid
19 attention to in the ATD standard and to prevent transmission among the people, the
20 employees in facilities covered by the ATD standard

21 So like I say rather than reiterating what has already been said quite
22 eloquently by my colleagues I will not do that, but I would say that Worksafe supports
23 the rejection of the petition. And encourages that for the confusion that would seem
24 pretty apparent in the petition, that Cal/OSHA consider doing a Frequently Asked
25 Question Document to be more clear about how to interpret the standard. And around

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1 these particular points of confusion about who needs to be tested and the actions that
2 should be taken after testing.

3 So anyway, thank you. We support a rejection of this proposal. Thank
4 you.

5 CHAIR THOMAS: Thank you, Maggie.

6 Erik, who do we have up next?

7 MR. KUETHER: Next up we have Helen Cleary from the Phylmar
8 Regulatory Round Table

9 CHAIR THOMAS: Helen, are you there? Remember to unmute yourself
10 please, Helen.

11 MS. CLEARY: Okay, is that better?

12 CHAIR THOMAS: You got it.

13 MS. CLEARY: Okay.

14 CHAIR THOMAS: And you might just want to speak a little bit louder too.
15 Thank you.

16 MS. CLEARY: Okay. Good morning, Chair Thomas and Board Members.
17 I'm Helen Cleary, the Director of the Phylmar Regulatory Round Table. Thank you for
18 the opportunity to speak today.

19 First, I just want to thank the Division for sending an email notification
20 about the new proposed text for the COVID-19 ETS yesterday. We reviewed it last night
21 and immediately anticipate having more specific comments and feedback for the
22 Division and the Board soon, but I would like to address a few high-level concerns and
23 call attention to a couple things and ask a question regarding the changes.

24 So specifically regarding the changes related to close contacts, the new
25 text has essentially eliminated consideration for fully vaccinated individuals, greatly

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1 reduced applicability of natural immunity, and reinstated physical distancing
2 requirements. And we fully understand these changes follow the recently updated
3 guidance from the CDPH, but once again these are prescriptive requirements that
4 highlight the inability for the ETS to keep up and will potentially restrict the ETS from
5 future alignment with CDPH.

6 For example CDPH issued this new guidance, they're not orders, on
7 October 19th I believe. If readopted the proposed text won't go into effect until January
8 14th and remain in effect until April. As you know, there will be no opportunity to
9 revise it again. So I just want to raise the question what happens when there's new data
10 on vaccines, immunity, antiviral treatments, transmissibility, breakthrough infections,
11 and CDPH once again updates the new guidance?

12 MR. KUETHER: You have about 30 seconds left, Helen.

13 MS. CLEARY: (Indiscernible).

14 CHAIR THOMAS: I think you are off there a little bit.

15 Go ahead, Helen.

16 MS. CLEARY: Okay, thanks.

17 CHAIR THOMAS: You bet.

18 MS. CLEARY: The continued approach from the Division to draft more
19 prescriptive requirements in the ETS based on guidance begs the question how will the
20 proposed changes affect the draft for the permanent rule? It's extremely important the
21 permanent rule remains flexible as the discussion draft has it now, and we don't include
22 yesterday's proposed text in the permanent rule.

23 In response to those concerns, we request another advisory committee
24 meeting to convene to discuss the next draft of the permanent COVID-19 standard prior
25 to be proposed to the Board. The advisory committee meeting held last month was

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1 productive. We'd like to ensure the resulting revised text reflects those discussions of
2 recommendation made by the stakeholders.

3 MR. KUETHER: We are past the two-minute mark.

4 MS. CLEARY: I'll wrap up in just a second.

5 In the past we have been surprised by some additions to final versions of
6 the proposed text of the ETS that are not in alignment, and so we want continued
7 transparency with the permanent rule.

8 Real quick I want to clarify the proposed text for the ETS maintains
9 exclusion pay. And if it's readopted will be in effect until April, which will give the
10 Legislature time to address the issue.

11 And finally I just want to say best of luck to Chief Doug Parker in his
12 Senate confirmation hearing. We hope it's a smooth and positive experience for him
13 and his family. So thank you for the time today, apologies for going over.

14 CHAIR THOMAS: I'm not sure that you did, Helen. That seemed like a
15 quick clock to me, man but --

16 MS. CLEARY: I was speeding at the end, so apologies to the translator.

17 CHAIR THOMAS: That's all right, thank you. Thank you for your
18 comments.

19 And I don't think we need to give a two-minute warning, everybody is
20 being pretty concise. So thank you. Let's move on to the next, Erik.

21 Thank you very much, Helen.

22 MR. KUETHER: Next up is Mark Ramos from the UFCW Local 1428.

23 MR. RAMOS: Okay, good morning. Good morning, hopefully you can
24 hear me.

25 CHAIR THOMAS: We can.

1 MR. RAMOS: So first off I want to thank you for letting me speak today.
2 I wanted to speak to the COVID-19 Emergency Temporary Standards. I'm speaking
3 today to urge you to reinstate the exclusion pay. Governmental agencies and
4 policymaking bodies have a very hard job during regular times, and these are not regular
5 times. And you guys have done an extraordinary job.

6 But exclusion pay is extremely important and that I represent workers
7 who work in grocery stores, healthcare facilities, and cannabis dispensaries. And our
8 members, they literally work in a petri dish every day. That sometimes policies are
9 made as we just saw up in San Francisco with the In-N-Out Burger or in the City of Los
10 Angeles where vaccination requirements are in place, but it ends up being the workers
11 who end up being on the front line. It's the workers who are coughed on, spit on,
12 assaulted.

13 And someone having to be quarantined or excluded from work and
14 having to risk not being paid and having to risk being, whether evicted or not, being able
15 to meet their bills is just cruel. This policy needs to be in place to protect the workers.
16 Because at the end of the day policy is great, but please don't ever disconnect it from
17 the real-world effect that it has on people who work in these facilities.

18 Our members see everybody. When somebody is sick with COVID, our
19 members see them before they go to the hospital. When somebody is sick with COVID,
20 they are going to Rite Aid to buy DayQuil or NyQuil, because they think they have the flu
21 or a cold. Our members are the ones who are on the front line, the retail workers. This
22 exclusion pay is really, really important. The holidays are coming. There's no capacity
23 limits in stores anymore. That means crowds in stores. And the transmission rate, as
24 we know, is extremely -- this is really easy to transmit from folks.

25 So please, I'm urging you to reinstate the exclusion pay in the COVID-19

1 Emergency Temporary Standards. These are temporary standards. Let's err on the
2 side of caution and make sure that if someone is told they can't come to work that they
3 are compensated for something. Because at the end of the day someone just going to
4 work to take care of themselves, and take care of their families, and then being told that
5 you can't come to work is just wrong. So please reinstate the language.

6 I urge you and I really thank you for your time today. Again, my name is
7 Mark Ramos. I'm President of the United Commercial Workers Local 1428. We
8 represent the east end of L.A. County and the west end of San Bernardino County, two
9 counties with very different philosophies on how COVID-19 is being approached, so
10 please. You all do a wonderful job, please reinstate this language and thank you very
11 much for your time.

12 CHAIR THOMAS: Thank you, Mark.

13 Erik, who do we have up next?

14 MR. KUETHER: Next up is Mitch Steiger from the California Labor
15 Federation.

16 MR. STEIGER: Thank you, Chair Thomas and members. Mitch Steiger
17 with the California Labor Federation, I appreciate the opportunity to testify today. Just
18 wanted to briefly touch on both the ETS and Petition 590. I'll start with the ETS.

19 We'd like to join the chorus of workers and worker representatives here
20 today to argue for returning exclusion pay to the ETS. And I think it really makes sense
21 to focus for a second on what this will mean in practice if we take exclusion pay out of
22 this. It will put workers in the situation of realizing that if their employer finds out
23 they've been exposed or tested positive they will be at home for a pretty long period of
24 time without pay. And what that will mean in reality is that workers will be forced to
25 hide their symptoms, stay at work as long as they can earn as much money as they can.

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1 We think this proposal really ignores the financial insecurity and frankly desperation
2 that most workers feel out there, and what life is really like for them. And if you put
3 them in this position they're going to do what they have to, to take care of their families
4 whatever the risks are.

5 And not only will the risks to them be very significant, up to and including
6 contracting a fatal illness, but it will also very much lead to growing the pandemic rising
7 case numbers, exactly the things that we don't want. We would point out that we are
8 just now climbing ourselves out of the second worst surge since the start of this
9 pandemic. And this is a year and a half in when vaccines were widely available. There is
10 no reason to assume with any reliability that this is going to be a whole lot better next
11 April. Things could be better, things could be worse. They can always get worse from
12 wherever they are. We think this proposal would very much make things worse and we
13 strongly urge that exclusion pay be returned to the version for final adoption.

14 This draft version that was just released yesterday, we're still vetting, but
15 I think it does speak to conceptually the fact that exclusion pay can be tweaked where
16 necessary to help make it more appropriate to changing circumstances. We don't need
17 to throw the whole thing out. But there are all sorts of ways that we can include that
18 concept in there in a way that works for workers. And we look forward to exploring
19 those ways in the near future.

20 And then on Petition 590, we just want to echo the comments of the
21 California Nurses Association and other worker advocates on that one, and urge that
22 everyone support this planned rejection of the petition. We don't think that it makes
23 sense and we were very much agree that there are a lot of different ways to deal with
24 an employer struggling to comply with an existing standard. Cal/OSHA has a
25 consultation unit. There are -- we did all sorts of COVID-19 related outreach early on in

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1 the pandemic. We don't need to either get rid of the standard, make significant
2 changes to it, or encourage employers to apply for permanent variances. There are all
3 sorts of better ways to help employers comply while keeping workers safe. We strongly
4 encourage that we explore those ways and reject that petition. Thank you.

5 CHAIR THOMAS: Thank you, Mitch.

6 Who do we have up next, Erik?

7 MR. KUETHER: Next up is Michael Miiller from the California Association
8 of Winegrape Growers.

9 CHAIR THOMAS: Michael.

10 MR. MIILLER: Good morning, can you hear me?

11 CHAIR THOMAS: I can hear you. Go right ahead.

12 MR. MIILLER: Great, thank you very much. Thank you Chair Thomas,
13 Board Members and staff. I'm Michael Miiller with the California Association of
14 Winegrape Growers. I'd like to comment briefly on the draft proposed readoption of
15 the ETS, which came out yesterday. And we also align ourselves with the comments
16 from Helen Cleary.

17 First, I'd like to respectfully request and suggest that the draft be taken
18 up by the subcommittee in a public meeting before the Board takes it up in December.
19 Well, the subcommittee was created for this purpose and the subcommittee discussing
20 it would allow for public comment on the draft more thoroughly. And what's important
21 it would allow you Board Members an opportunity to provide your input to the Division
22 on how you would believe the readoption should proceed.

23 Second, there are quite a few proposed substantive changes, which
24 create new workplace requirements. Under Section 52 of the California Code of
25 Regulations, the readoption would need to include quote "an update of finding of

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1 emergency required by Government Code section 11346.1, subdivision (b), to reflect
2 circumstances that have changed since the initial adoption of prior or prior re-adoption.”
3 This updated finding an emergency should address why the new requirements are
4 needed in light of current circumstances.

5 Third, I would ask that the discussion, any discussion of new
6 requirements include specific data relative to those requirements. That data needs to
7 be focused on the workplace and how those requirements will provide safety for
8 workers that's not otherwise being provided.

9 Just yesterday, NPR reported on the rarity of breakthrough cases and
10 highlighted the efficacy of vaccines. These facts should be considered throughout the
11 process, as our primary goal should be to get employees vaccinated. Again, thank you
12 for your time, your public service and your efforts on this important issue. Have a good
13 day.

14 CHAIR THOMAS: Thank you, Michael.

15 Erik, who do we have next?

16 MR. KUETHER: Next up is Bryan Little with the California Farm Bureau.

17 CHAIR THOMAS: Bryan. Are you there Bryan? You might want to
18 unmute yourself if you can. Now we are going to do it for you.

19 MR. LITTLE: How about now?

20 CHAIR THOMAS: Oh, I heard you.

21 MR. LITTLE: Okay, sorry for the delay there.

22 MS. SHUPE: A little louder, Mr. Little.

23 CHAIR THOMAS: Please.

24 MR. LITTLE: A little louder? Let me try and -- hang on a second, let me
25 try something else. (Adjusting audio.) See if this works.

1 CHAIR THOMAS: Go ahead, Bryan.

2 MR. LITTLE: Okay, can you hear me better now?

3 CHAIR THOMAS: Yeah, go ahead.

4 MR. LITTLE: Excellent, thank you. Sorry about that. Good morning,
5 Bryan Little with California Farm Bureau. Thanks for the opportunity to offer a few
6 comments on a variety of different things that seem to be happening all at the same
7 time. With the release of the language for the readoption, the second readoption of the
8 Emergency Temporary Standard yesterday, like everyone else I'm still reading it and
9 trying to figure out exactly what's in there.

10 I would point out that this draft seems to require a significant amount of
11 testing, additional testing that's not required under the current version of the ETS. I
12 have been talking to employers were having difficulty getting testing right now, sourcing
13 testing, getting testing through public health agencies. So we might want to give some
14 careful consideration to whether additional testing is simply, as required in the
15 readoption of the ETS, simply going to create supply chain problems or exacerbate
16 supply chain problems that we already have in terms of getting testing.

17 Similarly with the what appears to be a significant increase in the
18 requirement for the use of HEPA filtration systems that, again I am told by people are
19 difficult to obtain and just not commonly found in stock in stores and things like that.
20 And that increased use of HEPA filtration could also be problematic in terms of just
21 people being able to be in compliance by being able to obtain the equipment they
22 would need in order to do that.

23 I'd reiterate something that Helen said, which was that the readoption of
24 the ETS draft retains the paid sick leave requirements that are in the ETS now. And it
25 seems possible that the Legislature could elect an act on that if appropriate come

1 January.

2 I guess let me wrap up with a couple of things, first of all to wish Doug
3 Parker the best of luck in his confirmation to be the Assistant Secretary for Occupational
4 Safety and Health.

5 And also to thank Mike Manieri for his many, many years of service with
6 the Standards Board. I worked with Mike a little bit over the years and found him to be
7 fantastic to work with. And he's going to leave a big hole behind but I'm sure the good
8 folks at the Standards Board will be able to figure out a way to take up where Mike has
9 left off. So thank you very much.

10 CHAIR THOMAS: Thank you, Bryan.

11 Erik, who do we have on the line?

12 MR. KUETHER: Next up is Katherine Hughes from the SEIU Nurses [sic]
13 Alliance of California.

14 CHAIR THOMAS: Can you hear us caller?

15 MS. HUGHES: I can. Can you hear me?

16 CHAIR THOMAS: Yeah, go right ahead.

17 MS. HUGHES: Hi, I'm Katherine Hughes and I'm with SEIU Nurse Alliance
18 of California. Thank you for having and giving us the opportunity to make comments
19 today.

20 So we would like to talk about Petition 590, the TB testing requirements.
21 A petition like this one was rejected in 2017. We supported that decision then just like
22 we support the DOSH recommendations today. Decreased rates of TB show that the
23 use of standard/universal precautions, testing, or early detection and medical follow-up
24 for latent TB infection are effective. Early detection makes it easier for treatment,
25 easier to identify the source, and determine if that TB is drug-resistant or not.

1 Cal/OSHA allowed delays in TB testing during the pandemic and many
2 people did not seek medical treatment while much of the state was shut down.
3 Facilities might have been testing people with TB symptoms, which are much like COVID
4 symptoms, and might have been testing them for COVID but not TB. There was a
5 decrease in travel during the pandemic. Public health diverted much of the TB
6 resources to COVID during the pandemic. There are any number of reasons why our
7 numbers are down, none of which justify decreased testing of healthcare workers.

8 Employees who have been determined at higher risk for exposure must
9 be offered testing. The tests, according to Cal/OSHA, the test is not mandatory. And
10 while Title 22 mandates testing, CDPH can grant program flexibility to employers. And
11 although we can believe this can become problematic when they are blanket waivers
12 that remain in place indefinitely, which is why SEIU sponsored a bill that was recently
13 signed by the Governor to address the issue that allows two reviews of quote “program
14 flexibility waivers.”

15 Cal/OSHA and the Standards Board are charged with protecting workers
16 in California. Is it really our job to let employers know when they can apply for
17 permanent variances that allows them to not follow current regs and standards? And if
18 we encourage them to do so then why have any rules in place to protect workers? And
19 that really isn't our goal.

20 Regarding medical surveillance, whenever we seek information from our
21 employers we are often told that, “We can't give you that information because it's a
22 HIPAA violation.” Our employers have no business knowing our health information.
23 There is a reason our nurse went by the name Jane Doe in the fight for safety needles
24 and blood-borne pathogen legislation during the AIDS epidemic in the '80s and that
25 holds true today. It's none of their business whether I have cancer and am receiving

1 treatment for any other immunocompromised condition, whether I smoke or have
2 some other lung disease or whether I am diabetic. Tell me what my risk factors are, so I
3 can seek treatment for my primary care physician or my licensed healthcare
4 professional that isn't connected to my employer.

5 We believe the 2005 CDC recommendations for referral to determine
6 whether latent TB infection treatment is indicated is appropriate. According to the 2019
7 CDC recommendations, they encourage treatment for latent TB that should be done by
8 employers -- the employees' primary care, not the employer. Oh I'm so sorry I already
9 did that one, nervous.

10 Annual testing post-known exposure, our employers are still not
11 informing their employers of known or potential exposure. The employees often find
12 out by word of mouth only. Our patients are often discharge before TB results are
13 available. Employers often don't place suspected TB patients in negative pressure
14 rooms sometimes during -- due to availability. That's the reason why annual TB testing
15 is so important. It might catch an infection that no one is expecting.

16 Without the use of adequate TB, without the adequate PPE, in the 2019
17 CDC recommendations it is interesting because we saw rationing, locking up, and
18 general not-readily-available PPE during the pandemic. Our nurse Celia Marcos died as
19 a result of responding to a Code Blue for a patient with COVID-19, because the
20 respirators were locked up. And as a nurse her first priority was to help save a life, not
21 track down the manager with the key or sign out for an N95. And this could apply for
22 tuberculosis as well. If the PPE is not readily available, and is not being used and we're
23 not being tested and we don't know that we've been exposed, then that's a problem.

24 So we join our allies in respectfully requesting that you deny Petition 590
25 and not accept the Board's proposed changes to 5199. Thank you.

1 CHAIR THOMAS: Thank you.

2 At this time, we have reached a one-hour mark for public comment, so
3 we're going to take a 15-minute break and let everybody relax for a minute. And we will
4 be back at 11:25. So go ahead and take a break and we will be back with you at 11:25,
5 thank you.

6 (Off the record at 11:10 a.m.)

7 (On the record at 11:26 A.M.)

8 CHAIR THOMAS: We're back and we're still on comments. Erik, who do
9 we have up next?

10 MR. KUETHER: Next up we have Anne Katten from the California Rural
11 Legal Assistance Foundation.

12 CHAIR THOMAS: Anne, can you hear us?

13 MS. KATTEN: Hi, good morning. I'm Anne Katten from California Rural
14 Legal Assistance Foundation. And with regard to the more permanent COVID-19
15 regulation under development, to be put in place next April, we join previous speakers
16 in urging the reinstatement of exclusion pay, both to protect the health and the
17 livelihood of workers.

18 We also think it's critical to retain COVID-specific hazard ID response and
19 training requirements in that more permanent regulation, and to expand the definition
20 of "exposed group" to include employees in employer-provided housing and
21 transportation. And we provided more specific written comments.

22 For the shorter term we are very relieved to see that the proposed
23 second revision of the COVID ETS released yesterday retains exclusion pay until April.
24 And also that it include some modest, but very key revisions that recognize the need to
25 control spread of breakthrough infections in fully vaccinated employees.

1 These positive changes include requirements for testing and isolating of
2 sick or exposed residents of employer-provided housing even if all residents are fully
3 vaccinated, which is needed because of breakthrough infections happen. And also
4 where feasible requires placement of HEPA filtration units in all bedrooms if there are
5 any residents who aren't fully vaccinated. This is crucial added protection, because
6 bunk beds are now allowed to be allowed, and they can be put as close as four feet
7 apart, so it's a very crowded situation.

8 Also in employer-provided transportation, face coverings will again be
9 provided to and worn by all employees regardless of vaccination status. And this is
10 highly appropriate for in such small, enclosed work spaces.

11 Anyway, thank you for your attention to this.

12 CHAIR THOMAS: Thank you, Anne.

13 Erik, who do we have up next?

14 MR. KUETHER: Next up is Matthew Allen from the State Government
15 Affairs.

16 CHAIR THOMAS: Matthew.

17 MR. ALLEN: Good morning, Mr. Chair, members of the Standard's Board.
18 I'm Matthew Allen with Western Growers Association. I appreciate the time this
19 morning. To just be brief I will align most of my comments with those made by Michael
20 Miiller with the Association of Winegrape Growers. There were substantial changes
21 made in the proposed readoption of the emergency ETS. And we believe that those
22 should be further reviewed and discussed at the subcommittee level to look through
23 those. They are substantive enough that we believe it also necessitates an updated
24 finding of emergency. And I will just leave my comments there. Thank you.

25 CHAIR THOMAS: Thank you.

1 Erik, who do we have up next?

2 MR. KUETHER: Next up we have Eddie Sanchez from the Southern
3 California Coalition for Occupational Safety and Health.

4 CHAIR THOMAS: Eddie, are you there? Be sure to unmute yourself. Or if
5 you are on a phone hit *6.

6 MR. SANCHEZ: Present, sorry. Was I called?

7 CHAIR THOMAS: There you go.

8 MR. KUETHER: Yes.

9 MR. SANCHEZ: I apologize. Hello, everyone. My name is Eddie Sanchez
10 with the Southern California Coalition for Occupational Safety and Health, SoCalCOSH.
11 We're here in continued support of strengthening the COVID-19 Emergency Temporary
12 Standard and eventually a permanent standard for COVID.

13 I want to first thank Chair Thomas, the Board, and staff for your hard
14 work on this process and for considering our comments today. I also want to take a
15 moment to recognize Maggie Robbins who gave comment earlier for her diligence and
16 commitment to worker safety by from Worksafe, so thank you Maggie.

17 I appreciate the comments that were made before me to reinstate and
18 retain the exclusion pay within the ETS. SoCalCOSH is calling on the Board to take action
19 in reinstating the exclusion pay in a permanent fashion. Without exclusion pay the
20 Emergency Temporary Standard undermines itself, being excluded without the benefits
21 transitions to pay -- exclusion, excuse me -- into a painful process for workers. Retaining
22 exclusion pay beyond the April adoption is very key.

23 We also want to say that we support the California nurses stance on 590.
24 We thank you again Board and staff for your time, consideration and work on this effort.
25 We know that you'll make the best decision to protect workers and working-class

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1 families. Thank you.

2 CHAIR THOMAS: Thank you, Eddie, appreciate it.

3 Erik, who do we have up next?

4 MR. KUETHER: Next up is Bruce Wick from the Housing Contractors of
5 California.

6 CHAIR THOMAS: Bruce, can you hear us?

7 MR. WICK: Yes, sir. Thanks Chair Thomas, Board Members, I want to just
8 offer a couple of comments.

9 First, to talk about Michael Manieri. The man leaves a legacy with all of
10 us on how to make regulations effective. There are a lot of regulations that look good
11 on paper, but they don't really protect workers the way they need to. And Michael, his
12 history is taking the time and effort to work through the issues with everybody, so that
13 employers buy into regulations and good employers say, "We'll follow them." And
14 those few employers that don't, enforcement can show up and very clearly issue
15 citations and get them into abatement and we truly protect workers. So I just want to
16 thank Michael for his years and the legacy he leaves of protecting workers in a really
17 great way, so thank you, Michael.

18 I do also obviously want to thank Chief Parker. And I was at his
19 installation. My gosh, who knew within a couple of months we'd be facing this
20 pandemic. And he's done an amazing job of trying to get to walk us through it all and
21 provide us solid, stable leadership.

22 I am still frustrated that Cal/OSHA though is operating in such a
23 uncoordinated fashion between this Board, the Appeals Board, Enforcement there
24 seems to be very little effective communication. This Board and its audience, 150
25 people on this meeting, should be able to hear every month from Enforcement how

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1 they are doing, what they are focusing on. As the overall statistics on COVID go down
2 Cal/OSHA should be able to focus more and more on who's not doing the job right and
3 how effectively they are enforcing on that. We should all know that.

4 The Appeals Board information as of October 6, 119 employers had
5 settled citations mostly under the ATD or IIPP, a few now under the ETS. Not one of
6 them has appealed beyond the hearing or settlement to the Board itself. So the
7 regulations are having an effect and nobody is saying, "You can't cite me under this or
8 that or the other thing," at least to this point. We should have that information in this
9 Board and to its audience monthly. That would really help us. I

10 It's very sad for me to hear workers on this meeting, with Zoom, WebEx,
11 say they still have employers who are not complying with COVID regulations.
12 Enforcement should know about that. Enforcement needs to focus, target those people
13 and get them on board. So I really hope the Board or a Member would say we really
14 need someone from enforcement to be on these meetings monthly, communicating
15 back and forth with all of us how effective we are or what areas or issues need to be
16 addressed further. Thank you.

17 CHAIR THOMAS: Thank you, Bruce.

18 Erik, who do we have up next?

19 MR. KUETHER: At this time I would like to go back to the original
20 beginning of the list for the callers that was unable to originally make a comment, so
21 let's begin with Anthony Brown representing himself.

22 CHAIR THOMAS: Anthony, can you hear us? We're going to try and
23 unmute you, Anthony, if we can find you on here.

24 MS. SHUPE: Mr. Brown, if you're listening in you can press *6 to unmute
25 yourself.

1 MR. KUETHER: If you're on WebEx please hit the mute/ unmute icon.

2 CHAIR THOMAS: Anthony? (No audible response.) I think we're going to
3 have to go to the next, we'll try again later.

4 MR. KUETHER: Up next, we have Pete Maturino from the UFCW Local 5.

5 CHAIR THOMAS: Pete, can you hear us?

6 MR. MATURINO: Can you hear me?

7 CHAIR THOMAS: Yeah, go right ahead.

8 MR. MATURINO: My name is Pete Maturino and I'm with the UFCW
9 Local 5. I am the Agricultural Division Director and I am here to speak regarding
10 employees in the Ag Division and agriculture workers in general.

11 The proposed draft eliminates protection for agricultural workers,
12 whether they be union or non-union and puts an economic hardship on workers who
13 are living paycheck-to-paycheck, because of exposure to COVID-19 and the 14-day
14 quarantine with no pay. And that kind of sets the workers' mindset that, "How am I
15 going to pay my next bill? Or how am I, who provide food for America, will buy food for
16 my family?"

17 You know, the State of California has supported employers in a way that
18 from when the pandemic started when everybody was at shelter-at-home these
19 employees, whether they be workers from farm workers, salad processing workers, or
20 shipping employees shipping products to the stores like Safeway, they had to work.
21 They were considered essential workers and they were required to go to work.

22 And unfortunately some of those essential employees -- because ag has a
23 higher percentage of exposure of contracting COVID -- because of having to work in
24 close proximity to each other since the farm equipment and the processing equipment
25 that were fabricated, they were done not to take into account social distancing, so a lot

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1 of these employees were exposed to COVID. But luckily what happened was that they
2 were able to -- the employee was paying some of their wages that they would normally
3 earn, about 100 percent of the hourly wage anyway. And so they wouldn't have to miss
4 any pay.

5 And so that's one of the reasons and the main reason that I think that this
6 draft that they did -- and I know it's going up to April and stuff -- but that should be
7 permanent, because the exclusion pay is needed very much by these employees. If
8 they're considered by the State of California as essential then the State of California or
9 the employers should provide the pay for workers who are exposed and required to go
10 to quarantine. It's the state and the employers have that responsibility.

11 So once again, I urge the Standards Board to include this key provision in
12 the draft. And like I said I know it's up to April, but it should be a permanent draft until
13 this pandemic is over. And I want to thank you for allowing me to speak. Thank you.

14 CHAIR THOMAS: Thank you.

15 Who do we have up next, Erik?

16 MR. KUETHER: Up next, we have Angie Santos from the UFCW 1167.

17 MS. SANTOS: Hi, good morning. Can you guys hear me?

18 CHAIR THOMAS: Yes, go right ahead, Angie.

19 MS. SANTOS: Hi. Hello, Standards Board Members. My name is Angie
20 Santos. I'm actually a grocery worker and a member of United Food and Commercial
21 Workers Union Local 1167. I am commenting today to urge Cal/OSHA to reinstate
22 exclusion pay language in the COVID-19 ETS. Exclusion pay is critical to ensure that my
23 co-workers and I can stay home when we are exposed or infected with COVID-19 virus.

24 Without exclusion pay workers have to make a tough decision on going to
25 work while they're sick or staying home without pay. When I worked through the

1 pandemic, I had co-workers who had to stay home due to their children getting
2 infected with COVID-19. As a mother I could not imagine what that would be like if my
3 son contracted the virus. To have to choose from either getting a paycheck or taking
4 care of my son is not a fair choice to have to make, especially as an essential worker
5 who had no choice, but to work through the pandemic.

6 Exclusion pay will not only benefit workers, but also families who cannot
7 afford to miss a paycheck. With the expiration of the supplement paid sick leave,
8 eviction moratorium and utility shutoff workers will have no choice, but to work while
9 sick, risking spreading their virus to co-workers and the general public.

10 I urge Cal/OSHA to add exclusion pay to the proposed COVID-19 ETS.
11 Thank you for your time and consideration.

12 CHAIR THOMAS: Thank you, Angie.

13 Erik, who do we have up next?

14 MR. KUETHER: Next up is Andrew Sommer from Conn Maciel Carey, LLP.

15 CHAIR THOMAS: Andrew. Can you hear us, Andrew? Remember to
16 unmute yourself. Was it Andrew Miller or Sommer?

17 MR. KUETHER: It was Andrew Sommer.

18 CHAIR THOMAS: Okay, I don't -- and we're not getting anything, let's
19 move on.

20 MR. KUETHER: Next up is Kevin Bland from Ogletree.

21 CHAIR THOMAS: Kevin, a pleasure always.

22 MR. BLAND: Yeah, good morning, Chair Thomas and Board Members
23 (indiscernible).

24 CHAIR THOMAS: We (indiscernible) that.

25 MR. BLAND: Did I (indiscernible) felt it had a different name on it, I

1 stuttered.

2 CHAIR THOMAS: Go ahead, sorry.

3 MR. BLAND: I'm just going to go with Chairman.

4 CHAIR THOMAS: Thank you. Thank you, Kevin.

5 MR. BLAND: I'm representing the Western Steel Council, Residential
6 Contractors Association and the California Framing Contractors Association. I'll be brief,
7 I'm not going to reiterate the things that my colleagues pointed out regarding the ETS
8 proposal on the permanent reg. I'll incorporate Helen Cleary's statements, Bryan
9 Little's, Michael Miiller's, and Bruce Wicks.

10 But I do want to take this opportunity to thank Michael Manieri for his
11 many, many years of service. I actually, I think I started working with Michael at the
12 Standard's Board on crane issues before I even went to law school back in my crane
13 days and on some of the regulatory issues. And Michael has an incredible ability to be
14 able to drill down into the issues, come up with something that -- and I think Bruce
15 alluded to this -- that's enforceable and that you can comply with. And bring the parties
16 together to solve some of these regulatory issues and with the stakeholders, whether
17 it's labor or management or the Division or all, everyone. And that's a talent that just is
18 going to be very difficult to replace.

19 And I don't think it can be replaced, Michael. You are one of a kind and
20 just an amazing person as an individual. And also in the profession that you chose you
21 define the word "professional." And you're going to be really missed. So thank you for
22 all the years of service and it's been such a pleasure working with you. So thank you for
23 that. And good luck in your future. I hope you get to do everything that you've been
24 wanting to do for years and haven't had time to do so.

25 So I also want to take a moment to thank Doug Parker for his service here

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1 and working. I know he -- boy, talk about inheriting something at the wrong time. He
2 has been through the wringer with this. I would have hated to have had his job. But he
3 rolled his sleeves up and has been trying to do the best that he can with the situation
4 that's been at hand. And I want to congratulate him on his appointment at the federal
5 level and wish Doug luck.

6 And I know he'll probably be working with some of my colleagues out of
7 our DC office and across the country. And maybe I will get an opportunity again to do
8 some do some stuff. If California slows down and we don't do anything for a while
9 maybe I'll do some fed stuff, but I doubt that's going to happen. But anyway good luck
10 Doug Parker.

11 And thank you Board Members and Chairman, I appreciate the
12 opportunity. Thank you.

13 CHAIR THOMAS: Thanks, Kevin.

14 Who do we have up next, Erik?

15 MR. KUETHER: Next up is Rand Martin from the AIDS Healthcare
16 Foundation.

17 CHAIR THOMAS: Mr. Martin, are you with us?

18 MR. MARTIN: I am. Can you hear me?

19 CHAIR THOMAS: Yes, go right ahead.

20 MR. MARTIN: Great, thank you. Rand Martin, on behalf of the AIDS
21 Healthcare Foundation.

22 First, I would like to say that we appreciate the focus of the Cal/OSHA's
23 Standards Board is on the workers in the workplace. But we would like to remind you
24 that, especially in the healthcare world, that what standards are there for workers have
25 a direct impact, consequential impact on people that they serve in those healthcare

1 settings, in particular people with HIV.

2 We've had remarkable success over the last few years in corralling this
3 epidemic. We have made remarkable progress on getting viral loads reduced and
4 keeping people healthy and productive and working in many different workplaces.
5 However, we're not there yet. We have a lot of work to do and we do not want to take
6 steps backwards.

7 Our biggest concern with Petition Number 590 is a change in policy that
8 could have a consequential impact on people with HIV in the healthcare setting. The
9 Centers for Disease Control and Prevention has made it clear that people with HIV are
10 far more compromised by tuberculosis than a person with a normal immune system.
11 And so we have to be very mindful of any policy change in hospitals and other
12 healthcare settings that might impact those people who are not currently suffering from
13 an opportunistic infection like tuberculosis, who could be if they are exposed
14 unwittingly, unnecessarily to somebody who has not been assessed.

15 We appreciate the good faith behind the petition's intent, but we think it
16 comes from a very narrow perspective that does not look at the impact on the people
17 that those healthcare workers are serving.

18 So with that, and briefly, we would ask for you to reject this petition,
19 reject the staff recommendation as well. We have outlined on further arguments that
20 are consistent with what I just said in the letter that we submitted to the Board a few
21 days ago. And we appreciate your time. Thank you.

22 CHAIR THOMAS: Thank you, Rand.

23 Erik, who do we have up next?

24 MR. KUETHER: Next up we have Rob Moutrie from the California
25 Chamber of Commerce.

1 CHAIR THOMAS: Rob.

2 MR. MOUTRIE: Good morning, Chairman Thomas --

3 CHAIR THOMAS: Thank you. Thank you, I appreciate that.

4 MR. MOUTRIE: -- and everyone else. Let me just briefly start by echoing
5 the thanks to Chief Parker, really going from crisis to crisis and doing so while having a
6 child, I can't imagine what that's been like. But all I can say is we wish you the best in DC
7 and certainly know you'll do well there.

8 Turning to the substance coming for the rest of us while we remain here,
9 to briefly touch on the draft renewal document that was released yesterday. Overall
10 we're glad to see the consistency, much of the consistency with the present situation. I
11 want to highlight two concerns that we will flesh out more fully in written comments.

12 I think first and most importantly, we're really concerned about the
13 return to this idea of social distancing even amongst vaccinated individuals. And the
14 concern here is that it comes from a place of practicality.

15 Unlike, for example, masking or in some places temporary ventilation,
16 social distancing is not something you can create with an off/on switch in many
17 workplaces. Workplaces are constrained by walls, solid objects, situations where you
18 cannot just create six feet of social distancing on a flip switch if there is an exposure,
19 right? And that is a feasibility concern we have with this proposed change where
20 certain other mechanisms like masking and others can be put into place more quickly
21 and more easily. But social distancing is not one that we can kind of move quickly in and
22 out of. And the idea of adding that for a three-month period, it seems to us not it's
23 necessarily productive and has real feasibility concerns. So that's the most important
24 part we'd flag there.

25 We also have concerns about the testing volume as Mr. Little flagged.

1 Some of our members have reported difficulty acquiring tests and are concerned that
2 demand is only going to increase as we learn more about the federal mandate, which
3 should be out in more detail next week for the 100-plus employer situation.

4 I also want to briefly respond to a comment. I think there some
5 comments earlier related to the fact that we don't know where this is going and we're
6 not sure what's happening about COVID. And while I certainly would agree, and I think
7 we can all agree that we're not out of this, I think the math shows that we really are
8 doing -- we're heading in the right direction here. And we need to acknowledge that
9 and acknowledge the pieces that have gotten us there. Vaccination is at the highest
10 ever now, it's 72.3 percent of the state, of the population who can. Federally, we're
11 ready to hand it out to children 5 to 11, assuming that approval comes through.

12 And we see case and hospitalization data falling after a spike, which we
13 talked about like it was unexpected, but the spike, but it seems from my reading was
14 largely caused by the reopening of schools, which led to a great increase of sharing
15 amongst unvaccinated populations, i.e. children. So that was to be expected and was
16 not really workplace-related as that increase goes.

17 So I think that in looking at that data we can see that we actually are
18 heading in a good direction, now obviously not out of COVID-19 yet and certainly not
19 something to ignore. But I think that we need to keep that context in mind, because
20 often I think we'd get lost in individual anecdotes. And the macro data is important
21 here.

22 And to Mr. Manieri, I did not get to work with you long, but it did seem
23 like you are professional in your place and I appreciate the service. Thank you.

24 CHAIR THOMAS: Thank you, Rob.

25 Erik, who do we have up next?

1 MR. KUETHER: We have reached the end of our list. However, I would
2 like to give Andrew Sommer one last chance to make a comment from the Conn Maciel
3 Carey Group.

4 CHAIR THOMAS: Did you just say Andrew --

5 MS. SHUPE: Sommer.

6 MR. KUETHER: Andrew Sommer.

7 CHAIR THOMAS: If you're there Andrew --

8 MR. MOUTRIE: I'm sorry, if I may, I believe Andrew had to step off for a
9 litigation matter he's involved in, apologies.

10 CHAIR THOMAS: Okay. Well thank you.

11 So that's all the callers we have, Erik?

12 MR. KUETHER: One last commenter that has not been given the
13 opportunity to make a comment is Anthony Brown representing himself.

14 CHAIR THOMAS: Anthony, can you hear us? Anthony unmute yourself if
15 you haven't or press 1-6 if you're on a phone. (No audible response.) Yeah, I don't think
16 he's here, Erik.

17 MR. KUETHER: At this time there are currently no other names on the
18 commenter list.

19 CHAIR THOMAS: All right. Let's see, since there are no other
20 commenters we thank you for your comments. The Board appreciates your testimony.
21 The public meeting is adjourned and the record is closed. Thank you.

22 We'll now proceed with the business meeting. The purpose of the
23 business meeting is to allow the Board to vote on the matters before it and to receive
24 briefings from staff regarding the issues listed on the business meeting agenda. Public
25 comment is not accepted during the business meeting agenda unless a member of the

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1 Board specifically requests public input.

2 So we have Proposed Petition Decisions for Adoption. Michael Miller,
3 President and Director, Original Sixteen to One Mine Inc., Petition File No. 588.

4 Petitioner requests to amend Title 8, CCR, section 462 of the Unfired Pressure Vessel
5 Safety Orders to permit the use of polyethylene pipe to convey compressed air in
6 California mine.

7 Mr. Nelmida, will you please brief the Board.

8 MR. NELMIDA: Thank you, Chair Thomas. Can you hear me?

9 CHAIR THOMAS: We can, go right ahead.

10 MR. NELMIDA: Okay. Chair Thomas and Members of the Board, the
11 Standards Board received a petition on January 5th, 2021, from Michael M. Miller,
12 President of Sixteen to One Mine. The petition seeks updates to the Unfired Pressure
13 Vessel Safety Orders, Title 8, section 462(m), which pertains to plastic pipe used to
14 convey compressed air.

15 While the petition does not propose any specific changes, the Petitioner
16 raises that the polyethylene pipe installed at their facility cannot be used unless
17 relabeled by the manufacturer. A step, the Petitioner argues, the manufacture is
18 unwilling to entertain.

19 The Division contends that the Petitioner provides no basis for any
20 specific amendments to section 462(m). The Division points the Petitioner to the
21 Board's variance process to address concerns raised. The Division recommends denial
22 of the petition.

23 The Board staff --

24 CHAIR THOMAS: Thank you Mr. -- oh, go ahead.

25 MR. NELMIDA: The Board staff recommends granting the petition. Staff

1 acknowledges the quandary the Petitioner faces. Under the current regulations
2 certifications for plastic piping may only be supplied by the manufacturer themselves.
3 Board staff opines that this may place an undue burden upon the regulated public.
4 Allowing third-party certifications performed by a nationally recognized testing
5 laboratory is included in similar regulatory requirements. The Board staff recommends
6 that such provisions should be discussed by an advisory committee.

7 Additionally, a review of the regulatory text by the Board staff identified
8 references to consensus standards that are not included in specific -- that include a
9 specific code year or edition. Since the references themselves are not specified by
10 statute, which would exempt a code year reference, a code year reference or revision
11 designation would be appropriate to improve clarity.

12 Where the committee had then focused on the -- oh, I'm sorry -- Board
13 staff recommends that an advisory committee be convened to discuss the need to
14 reference the entirety of ANSI B31.1 and B31.3 standards in section 462(m)(1). More
15 specifically, reconsider the inclusion of the entirety of those consensus standards.

16 Where the committee can focus on the most relevant information by
17 isolating specific requirements from the consensus standards, such requirements should
18 be referenced directly or incorporated into the regulatory text. Should the committee
19 decide that references to the consensus standards are necessary, identify and
20 incorporate a specific edition year into the regulation.

21 For these reasons, it is recommended that Petition 588 be granted.

22 CHAIR THOMAS: Okay, so your recommendation is that Petition 588 be
23 granted?

24 MR. NELMIDA: Yes.

25 CHAIR THOMAS: And that there be an advisory committee?

1 MR. NELMIDA: Yes.

2 CHAIR THOMAS: Yes and yes?

3 MR. NELMIDA: Yes.

4 CHAIR THOMAS: Okay, thank you.

5 So do I have a motion to adopt the petition decision?

6 BOARD MEMBER LASZCZ-DAVIS: I so move.

7 BOARD MEMBER CRAWFORD: I move.

8 CHAIR THOMAS: Can I get a second from one of -- thank you.

9 BOARD MEMBER CRAWFORD: I'll second it.

10 CHAIR THOMAS: I have a second, a motion and second. It's been moved

11 and seconded that the Board adopt petition. Does the Board have any points for

12 discussion with Mr. Nelmida? Hearing none, Ms. Money, will you please call the roll?

13 MS. MONEY: Ms. Burgel? You're muted, Barbara.

14 BOARD MEMBER BURGEL: (Gives a thumbs-up on video.)

15 CHAIR THOMAS: She said aye, right? Yeah, she's got a thumbs-up so that

16 means aye. She's having trouble with her --

17 MS. MONEY: Ms. Crawford?

18 BOARD MEMBER CRAWFORD: Aye.

19 MS. MONEY: Ms. Kennedy? (No audible response.) Did Ms. Kennedy

20 disappear?

21 BOARD MEMBER LASZCZ-DAVIS: She did.

22 MS. MONEY: Oh, there she is.

23 BOARD MEMBER KENNEDY: Aye.

24 MS. MONEY: Ms. Laszcz-Davis?

25 BOARD MEMBER LASZCZ-DAVIS: Aye.

1 MS. MONEY: Ms. Stock?

2 BOARD MEMBER STOCK: Aye.

3 MS. MONEY: Chairman Thomas?

4 CHAIR THOMAS: Aye, and the motion passes.

5 Thank you, Board. I know we have technical difficulties, so we'll try and
6 work through them.

7 Number 2, Ronald High, Ronald High Elevator Advocate, Petition File No.
8 589.

9 Petitioner requests to amend and update the Title 8, Construction Safety
10 Orders, Article 14, Construction Hoists Standards currently derived from ANSI and ASSE
11 A10.4-1973 Safety Requirements for Personnel Hoists, to address specific issues covered
12 within ANSI and ASSE A10.4-2016 Safety Requirements for Personnel Hoists, Employee
13 Elevators on Construction and Demolition Sites that include, but are not limited to, fall
14 protection, overhead protection, counterweights and car top railings.

15 Mr. Manieri, will you please brief the Board.

16 MR. MANIERI: Yes, Chairman Thomas, thank you, and Members of the
17 Board. Can you all hear me well? Good.

18 All right, the Standards Board received this petition, File No. 589, on
19 March 15, 2021 from Mr. Ronald High to amend Title 8 Construction Safety Order
20 standards to update the currently referenced ANSI/ASSE A10.4 consensus standard,
21 which governs the installation, use, maintenance of construction personnel hoists, or
22 CPHs as they are commonly referred to, from the 1973 edition to the more recent 2016
23 edition, which addresses safety issues and enhancements not addressed by the 1973
24 edition.

25 In the course of the Board and Division staff's evaluation of the

1 Petitioner's request, the 1973 and 2016 editions of the ANSI/ASSE A10.4 standard were
2 compared and it was found clearly that issues such as, but not limited to: fall protection,
3 qualifications for hoist personnel, counterweighting, fire retardant car enclosures, car
4 top lighting, overload detections devices, chain drive prohibition, and periodic tests and
5 inspections just to name a few, are not addressed by the 1973 editions. These are
6 critical, potential safety issues.

7 Also, it was noted that the 2016 edition defines terms and phrases such
8 as well what constitutes a general constructor negligence? What is the equipment
9 manufacturers and individuals, who are they? Who are responsible for ensuring safety
10 in the workplace where the CPH is in use?

11 Board staff believes that terms such as this should not be left to chance
12 and interpretation, but should be clearly defined whenever the opportunity presents
13 itself. And work on this petition through the advisory committee process will provide
14 that opportunity.

15 It was further determined by the Division in their report that while some
16 of the requirements of the 2016 edition appear to be either duplicative of existing Title
17 8 standards, some, in fact perhaps don't even necessarily represent an enhancement in
18 the level of safety provided under the 1973 edition.

19 Board staff wishes to remind the Board that in the matter of the
20 December 2018 Petition File No. 574, by the Construction Elevator Contractors
21 Association, it also called into play the ANSI/ASSE A10.4, 2016 standard. And in that
22 petition it was talking about tie-in spacing requirements for CPHs. And the Board's
23 reason was that well, "Successive editions of the code don't necessarily provide greater
24 protections than the superseded code." Each individual new provision needs to be
25 thoughtfully and considerately evaluated by a team of subject matter experts.

1 For this reason, as recommended by the Board and Division staffs in
2 their respective evaluations, it's recommended that the ANSI/ASSE A10.4, 2016 -- or
3 latest edition, it may have been superseded -- be reviewed against existing Title 8
4 Construction Safety Orders Article 14 standards, or CPHs, by an advisory committee
5 made up subject matter experts and persons with expertise in this particular area.

6 Board staff believes that this review should be comprehensive in nature.
7 And through, again, considerate and deliberative evaluative advisory committee process
8 conducted by Board staff, the committee should review the ANSI/ASSE A10.4
9 requirements in total for inclusion, possible inclusion into Title 8.

10 In terms of those consensus standards that while they may be different,
11 effectively addressing the issue in a different manner, at a minimum will provide
12 equivalent to what is currently required, what is current, and what the current standard
13 provides.

14 With that in mind, the Board staff therefore recommends that the Board
15 adopt the proposed decision for Petition File 589. Thank you.

16 CHAIR THOMAS: All right. And, Mr. Manieri, does that mean adopted
17 with an advisory committee or adopted and an advisory committee?

18 MR. MANIERI: Adopted with an advisory committee.

19 CHAIR THOMAS: Thank you.

20 MR. MANIERI: Yes, sir. You're welcome.

21 CHAIR THOMAS: Do I have a motion to adopt the petition decision?

22 BOARD MEMBER CRAWFORD: So moved.

23 BOARD MEMBER LASZCZ-DAVIS: Second.

24 CHAIR THOMAS: I have a motion and a second. Is there anything on
25 the question?

1 CHAIR THOMAS: Hearing none --

2 BOARD MEMBER BURGEL: I have a question, Dave.

3 CHAIR THOMAS: Oh, go ahead.

4 BOARD MEMBER BURGEL: I have a question. Just to clarify, Mike, parts
5 of the petition were denied, recommend denied and then -- right? I mean, there is a
6 whole list of those parts of that petition that were denied and then there was an
7 advisory committee recommendation. So just to clarify that is what we are approving,
8 correct?

9 MR. MANIERI: Yes. The Division opined that there sections of this newer
10 standard that appeared to be a duplicate of things that were already in Title 8 or it
11 might not represent an enhancement in safety. The Board staff is saying let's look at all
12 of it. Let's let an advisory committee make that decision and that call.

13 BOARD MEMBER BURGEL: All right, thank you for clarifying. I'm ready for
14 the vote, Chair Thomas.

15 CHAIR THOMAS: Okay, thank you.

16 Ms. Money, can you please call the roll if there are no other questions?

17 MS. MONEY: Ms. Burgel?

18 BOARD MEMBER BURGEL: Aye.

19 MS. MONEY: Ms. Crawford?

20 BOARD MEMBER CRAWFORD: Aye.

21 MS. MONEY: Ms. Kennedy?

22 BOARD MEMBER KENNEDY: Aye.

23 MS. MONEY: Ms. Laszcz-Davis?

24 BOARD MEMBER LASZCZ-DAVIS: Aye.

25 MS. MONEY: Ms. Stock?

1 BOARD MEMBER STOCK: Aye.

2 MS. MONEY: Chairman Thomas?

3 CHAIR THOMAS: Aye. And the motion passes.

4 Continuing on, Kevin Schwanz, RD, Petition File No. 590. Petitioner
5 requests to amend Title 8, General Industry Safety Orders, section 5199(h)(3)(A) to
6 repeal or amend the requirement for annual Tuberculosis testing in healthcare workers.

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

8 MS. GONZALEZ: Thank you, Chair Thomas. Kevin Schwanz has petitioned
9 the Board, seeking changes to Title 8, section 5199 the Aerosol Transmissible Diseases,
10 or ATD standard that requires certain covered employers to provide tuberculosis tests
11 and other forms of TB assessment at least once a year.

12 Specifically, the Petitioner has requested changes to the tuberculosis
13 testing provisions of the regulation, which are found at subsection (h)(3)(a). Petitioner
14 is also requesting that the Board create a rule that bars employers from requiring
15 annual TB testing.

16 The petition has been thoroughly evaluated by Board staff. Board staff
17 disagree with several of Petitioner's assertions. For instance, section 5199 does not
18 mandate TB testing, but only requires that testing be offered to certain employees.
19 Board staff recommend only a limited grant of the petition for the purpose of convening
20 an Advisory Committee and considering possible updates to the regulation.

21 Staff also notes that there are other regulatory regimes that mandate TB
22 testing, including those found in Title 22, and that the Board does not have the authority
23 to make changes to those regulations.

24 Board staff also finds more clarity could be brought to section 5199
25 through simple, non-substantive -- a term meaning changes that -- a term meaning no

1 changes to the underlying regs and duties, obligations that are created by the
2 regulation -- non-substantive amendments to the language, and recommends that such
3 changes be considered by the Board.

4 So Board staff is recommending a limited grant of the petition to the
5 extent that an advisory committee be convened to review the regulatory language and
6 explore possible changes to section 5199 to update TB testing requirements for
7 healthcare workers, where permitted by Title 22 and as recommended by federal
8 guidance, while still providing for annual testing of healthcare workers at higher risk for
9 TB.

10 The evaluation also recommends educating stakeholders on the
11 existence of the variance process. That process allows for an alternative method of
12 meeting the requirements of a standard, so long as is equal or superior safety is
13 demonstrated.

14 The Division recommends declining the petition in its entirety. For that
15 reason, the proposed decision before you today recommends a grant in part of the
16 petition to the extent that it directs Board staffs to consider possible, non-substantive
17 changes in the language of the regulation, in order to improve clarity to those workers
18 and employers covered by the ATD standard. The decision is now ready for your
19 consideration.

20 CHAIR THOMAS: Thank you, Autumn. So I just want to make sure that
21 you're saying that we are declining the petition, that we look at the non-substantive
22 language that may need to be changed, and that this would include an advisory
23 committee?

24 MS. GONZALEZ: No, this wouldn't need to include an advisory committee
25 since it would just be looking at some tweaks to the language to make it clearer and

1 easier to understand, not actually changing the intent of the regulation itself.

2 CHAIR THOMAS: Thank you.

3 MS. SHUPE: I think it should also be clear to the Board Members that
4 while the Board staff evaluation recommends, several steps those are not included in
5 the proposed conclusion and order.

6 CHAIR THOMAS: Thank you, Christina.

7 Do I have a motion to adopt a petition decision?

8 BOARD MEMBER LASZCZ-DAVIS: Can I ask a question, Dave, before we
9 get started?

10 CHAIR THOMAS: No, no questions. (Laughter.) No, go right ahead. Go
11 ahead. Go ahead.

12 BOARD MEMBER LASZCZ-DAVIS: I'm afraid I need a clarification as to
13 what the proposal is. What's on the table?

14 CHAIR THOMAS: Autumn, do you want to clarify?

15 MS. GONZALEZ: Sure, and I apologize for speaking really quickly. So the
16 proposal here is a grant in part just to allow Board staff to consider, take a look at, and
17 see if it's possible that some non-substantive changes to the language could make the
18 regulation more clear. So that's all we're proposing, all that's proposed here

19 CHAIR THOMAS: Is that what you want?

20 BOARD MEMBER STOCK: I have some comments on this, but I don't
21 know whether the process is at first we just move to accept it and then we discuss? Or
22 should we discuss now? I'm a little confused.

23 CHAIR THOMAS: Why don't we go ahead and let you make your
24 comments and then we'll see where that goes?

25 MS. SHUPE: We can leave it up to the Chair's discretion.

1 CHAIR THOMAS: At the Chair's discretion, so you can ask the question.

2 BOARD MEMBER STOCK: Thank you, so I have a couple comments. I
3 support the idea of denying this petition. And I would actually like to recommend that
4 we -- and just to say that I got clarity on what the order was by looking at our written
5 documents that had the conclusion and order if people want to refer to that, which is on
6 Page 4 of the documents that we got. And I see two paragraphs that we're voting on.
7 One is to deny the petition. And then a second paragraph includes language that is
8 consistent with what we've just been told, that would direct the Board to consider non-
9 substantive, potential changes. And also would direct the Board to communicate about
10 the purpose and benefit of the permanent variance application process.

11 So I would like to recommend that we strike that second paragraph,
12 because I think that the key message here is to deny the petition. And the provisions in
13 that second paragraph seem to me, create a lot of confusion as evidenced by some of
14 the testimony that we've heard today.

15 On the first one the idea of needing to affirmatively say let's look at non-
16 substantive changes, I don't see any -- I haven't seen any convincing reason to do that.
17 And the discussion included to provide some justification to do that included suggested
18 changes, which are clearly non-substantive that are actually quite significant.

19 So there was not really any explanation of where there were non-
20 substantive changes to be considered. And that could be in any petition that we grant
21 to look at an existing regulation. So I really don't see the purpose of that. And it's very
22 vague, it doesn't define what those are and who would approve them, so I recommend
23 striking that.

24 And I also recommend striking the sentence about reviewing that, to
25 direct people to discuss the purpose and benefit of the permanent variance application.

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1 I think that it's clear that the regulation has some areas that require -- that may be
2 confusing to the regulated public, which is true in almost every regulation that gets
3 passed. And it seems to me that the solution for that is not to change the regulatory
4 language or not to encourage people to take a particular action, but to provide the
5 regulated public with greater education and outreach about what the provisions are.

6 And I think we've heard a couple of very particular suggestions, which I
7 think makes sense, that it would be helpful if the Division created an FAQ that could
8 really define when each of -- when you do a waiver, when you do a variance, or any
9 questions that people have. And so I again would not want to put forward anything that
10 is part of a petition decision. I just want to acknowledge that if there is confusion, just
11 like in many regulations, let's educate people so that people become clearer.

12 So I guess what I would like to propose, if it's possible to tweak what
13 we're voting on, a vote to deny the petition and a striking of the second paragraph in
14 the conclusion and order that we were provided.

15 CHAIR THOMAS: The Chair agrees. We will just decline, deny this
16 petition. There will be no other order. and that'll be the -- I'll entertainment that
17 motion.

18 BOARD MEMBER STOCK: I so move.

19 CHAIR THOMAS: Do I have a second?

20 BOARD MEMBER BURGEL: Second.

21 CHAIR THOMAS: So I have a motion and second. Is there anything on the
22 question?

23 BOARD MEMBER BURGEL: Just to clarify that if we vote yes that we are
24 denying Petition 590, correct?

25 CHAIR THOMAS: Denial, yes.

1 MS. SHUPE: To have it completely on the record if the Board votes yes,
2 you'll be accepting the proposed order and conclusions, first paragraph only.

3 CHAIR THOMAS: Correct. All right, any other questions Board may have?
4 Hearing none, Ms. Money, will you please call the roll?

5 MS. MONEY: I have Ms. Stock as the motion and who was the second?

6 BOARD MEMBER BURGEL: Sorry, me, Barbara.

7 CHAIR THOMAS: Oh, Barbara.

8 MS. MONEY: Okay. Ms. Burgel?

9 BOARD MEMBER BURGEL: Aye.

10 MS. MONEY: Ms. Crawford?

11 BOARD MEMBER CRAWFORD: Aye.

12 MS. MONEY: Ms. Kennedy?

13 BOARD MEMBER KENNEDY: Aye.

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, and the motion passes.

20 Proposed variance decisions for adoption: proposed variance decisions
21 for adoption are listed on the Consent Calendar. Ms. Gonzalez, will you please brief the
22 Board?

23 MS. GONZALEZ: Thank you, Chair Thomas. Items A. through S. are on
24 your Consent Calendar and ready for your possible consideration -- your consideration
25 and your possible adoption of Items A. through S.

1 CHAIR THOMAS: Items A. through S. Is there a motion to adopt the
2 Consent Calendar?
3 BOARD MEMBER LASZCZ-DAVIS: I so move.
4 CHAIR THOMAS: That's Chris. Do I have a second?
5 BOARD MEMBER STOCK: Second, Laura.
6 CHAIR THOMAS: Second from Laura. Any questions?
7 Ms. Money, will you please call the roll?
8 MS. MONEY: Ms. Burgel?
9 BOARD MEMBER BURGEL: Aye.
10 MS. MONEY: Ms. Crawford?
11 BOARD MEMBER CRAWFORD: Aye.
12 MS. MONEY: Ms. Kennedy?
13 BOARD MEMBER KENNEDY: Aye.
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, the motion passes.
20 All right, Division Update. Mr. Berg, are you there and will you please
21 brief the Board.
22 MR. BERG: Thank you very much, Chairman Thomas. (Indiscernible)
23 update on Cal/OSHA (indiscernible).
24 BOARD MEMBER STOCK: Can you speak louder, Eric, please?
25 CHAIR THOMAS: A little bit please.

1 MR. BERG: Oh, is my microphone not connected?

2 BOARD MEMBER STOCK: (Overlapping colloquy.) You're very faint.

3 MR. BERG: oh shoot, that means the microphone is not working fully.

4 (Overlapping colloquy.)

5 MS. SHUPE: I think it's connected, you may just want to speak up a little

6 louder.

7 CHAIR THOMAS: Go ahead.

8 MR. BERG: Can you hear me?

9 CHAIR THOMAS: Yeah.

10 BOARD MEMBER STOCK: Yeah, that's great.

11 BOARD MEMBER LASZCZ-DAVIS: That is great.

12 MR. BERG: Okay, I guess the microphone was off. Sorry about that.

13 There is two separate microphones; one works good, one works bad.

14 Okay first, Aerosol Transmissible Diseases, or Title 8, section 5199.

15 Cal/OSHA held an advisory committee just this past October 14th to discuss rulemaking

16 to clarify requirements in section 5199 regarding COVID-19 and also to include COVID-

17 19 vaccinations and also vaccinations offered to workers with occupational exposure.

18 So the proposed changes to section 5199 are posted on our website. And

19 please send any written comments, anyone can provide written comments on the

20 proposed changes. And we would like those before November 1st, if possible.

21 Next we have the COVID-19 Prevention Emergency Temporary

22 Regulations. So as you know the Board adopted the first readoption on June 17th, so

23 we posted draft changes for a second readoption, a proposed second readoption. We

24 sent that email blast out yesterday to everyone on that email list.

25 And so this second adoption, if approved, would take effect January 14th

1 and be in effect for 90 days until April 14th. The changes were very limited, just to
2 address the latest science on the Delta variant. And it includes the latest
3 recommendations from the California Department of Public Health. So it's completely
4 consistent with the California Department of Public Health conditions and their latest
5 recommendations and the Delta variant.

6 And then we have this drafting, which is posted on our website and you
7 can also send written comments on that.

8 Next, we have the COVID-19 Permanent Regulation. We had just
9 discussed the emergency one, so this is the proposal to make the emergency regulations
10 permanent, so this is different language than the second readoption. And so we have
11 that posted and we held an advisory committee on September 23rd, 2021. We have
12 lots of good comments we're going through and discussing and making updates to that
13 draft.

14 And then next we have indoor heat. SRIA completed and Cal/OSHA staff
15 has offered to (indiscernible) the rulemaking documents, so we're working to get that
16 get all to the Standards Board staff and working together with them to get that ready
17 for rulemaking.

18 And that's all the recent updates we have for now. Thank you.

19 CHAIR THOMAS: Thank you, Mr. Berg. Are there any questions for Mr.
20 Berg from the Board? Barbara, I see.

21 BOARD MEMBER BURGEL: Yes, great. Thanks, Dave.

22 Thank you, Eric, for all your work. Definitely, the committee hearing or
23 meeting on September 23rd was quite active. I'm wondering if a second committee
24 meeting is going to be scheduled, number one? And number two, when will the
25 revisions to the draft permanent language be posted? So two questions.

1 And then the third question would be just to respond to some of the
2 comments made today, and maybe either you or Christina Shupe could respond about.
3 I didn't think that was the emergency language that was posted yesterday. I did not
4 think that those changes were substantial or would need to -- that we would need to re-
5 establish the need for an emergency or would need -- I think, it may be helpful for the
6 subcommittee that currently is existing to discuss the language. But I think it's pretty
7 straightforward and minor changes that way. And so that whole issue of do we have to
8 reclassify this as an emergency, I would like either you or Christina to respond to that
9 question.

10 MR. BERG: Yeah, I can respond to that. So when we did the first
11 readoption and we do the second readoption we do have to also include in the
12 rulemaking package the finding of emergency (indiscernible), so it will include that
13 updated finding of emergency rulemaking document. But that's always included in
14 readoption, regardless.

15 BOARD MEMBER BURGEL: Okay, thank you.

16 MR. BERG: So that's how we do a readoption, so it's a standard
17 rulemaking package for a readoption of emergency regulations.

18 BOARD MEMBER BURGEL: Okay.

19 MR. BERG: And the other two questions?

20 BOARD MEMBER BURGEL: Regarding the permanent language in this
21 revision.

22 MR. BERG: Yeah, I mean, I don't know. I mean, because when it's
23 finished then it goes through the approval process. And also with the California
24 Department of Public Health, get their comments and changes to it, then once that's all
25 completed then it can be posted.

1 And I don't know about -- you asked about a second advisory
2 committee?

3 BOARD MEMBER BURGEL: Right.

4 MR. BERG: Yeah, I don't know about that either.

5 BOARD MEMBER BURGEL: Okay.

6 MR. BERG: I'll have to consult with the Chief and others about that.

7 BOARD MEMBER BURGEL: If indeed we wanted the readoption language,
8 the emergency adoption language that was posted yesterday to be reviewed and
9 discussed at the next subcommittee meeting, is that something that we can direct or
10 will happen automatically or if maybe we'll talk about that with the subcommittee
11 report?

12 MS. SHUPE: I can take that one --

13 MR. BERG: Oh, go ahead Christina.

14 MS. SHUPE: -- if you don't mind, Eric.

15 So the Board can discuss a whole what their plans are for the
16 subcommittee going forward, and if you'd like to continue to hold meetings, what those
17 topics might include. And then participation by the Division is, of course, at their
18 discretion but the Board absolutely has the authority to request that they participate,
19 which they've actually done quite a lot. So thank you.

20 CHAIR THOMAS: Laura, a question?

21 BOARD MEMBER STOCK: Just one follow-up to that, and so I think I know
22 our next item on the agenda is the subcommittee. So we'll be having more of a
23 conversation about the purpose and future of that committee. But leaving that aside
24 momentarily if that subcommittee was not meeting for some reason I'm just trying to
25 understand the process a little bit more about comments on the proposed language for

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1 a vote in December, just to follow up on what Barbara was just asking.

2 So it sounds like everybody now sees it, written comments will be
3 accepted, I imagine that it's in November. I assume if there's no subcommittee meeting
4 and there's no advisory committee meeting scheduled then I imagine that at the
5 November meeting that would be the public's opportunity to comment on the language
6 that we would need to vote on in December.

7 So I guess my question is, is that if people are testifying about that in
8 November, is there going to be an -- will that leave sufficient time in order to do any
9 kind of potential tweaks by December? So I'm just wondering how that process gets us
10 to I know the December vote, which is the deadline that we have to meet.

11 MR. BERG: Yeah, I'm not sure if that's enough time. I'll have to talk with
12 Christina about that. I don't (indiscernible).

13 BOARD MEMBER STOCK: So it sounds like short of the potential of having
14 a subcommittee meeting, that the public would need to be submitting written
15 comments about that, the draft that got posted yesterday. And so I guess the question
16 is what would be the process of responding to those comments in any way? I'm just
17 curious how that works.

18 MS. SHUPE: So I think Eric would need to concur here, but my
19 recommendation to the public is that the draft language has been posted for the
20 purpose of collecting comments. So they should be submitting those comments directly
21 to the Division for review. It is possible that we may not have time for any additional
22 public meetings on that. And so I think I'll leave that up to Eric and his workload though.

23 CHAIR THOMAS: Eric?

24 MR. BERG: Yeah, I mean I would like to see written comments, that
25 would be great.

1 CHAIR THOMAS: So the quicker we get in the written comments, the
2 quicker you can take a look at them, see if any of them are substantive and should go in
3 the temporary regulation?

4 MR. BERG: Yeah, I mean, if the changes are very small or there's very few
5 changes then it's just to make it consistent with CDPH, so CDPH says.

6 BOARD MEMBER STOCK: (Overlapping colloquy) I can concur with
7 (indiscernible). Yeah, and I agree with Barbara that they seem very minor.

8 And the one other thing I just want to mention just because I felt there
9 was maybe a little bit confusion in the public testimony today -- and I think at least
10 Helen Cleary, I think, tried to clarify it. Just so that anybody who's listening know that
11 exclusion pay is continuing to be enforced. It is in the current regulation and it is also at
12 this point still in the December readoption, so I just want to clarify that the area where
13 the exclusion pay has been proposed to be eliminated is for the permanent readoption
14 version that would be voted on in April. So I just want to be sure that nobody is left
15 with the impression that they do not have that right currently, because workers do. So
16 that's just one comment I wanted to make in response to the testimony that we heard
17 this morning.

18 MR. BERG: Yeah, that's correct, but the second -- (indiscernible) I'm
19 sorry.

20 BOARD MEMBER BURGEL: No, go on Eric.

21 MR. BERG: The second readoption would take place January 14th, so the
22 exclusion pay would be continued to apply and then at second readoption if approved
23 would go through April 14th. So if the exclusion pay, assuming the Standards Board
24 Members, you all approve it all, then it would go as it is right now to April 14th.

25 CHAIR THOMAS: Thank you, Eric. Any other questions for Eric?

1 BOARD MEMBER BURGEL: My understanding, I have a question about
2 the exclusion pay though. My understanding is that if they have -- that employers must
3 exclude employees who have COVID symptoms and/or are not fully vaccinated, and
4 have had a close contact from the workplace, and if that close contact is work-related.
5 So it is fairly focused on the workplace, the exclusion pay, so that's currently what our
6 temporary emergency standard says. Is that correct, Eric? Is that your interpretation?

7 MR. BERG: Well, I mean when someone has tested positive for COVID
8 has to be excluded regardless of where it happened. But the exclusion pay, it doesn't
9 apply right if it's not work-related.

10 BOARD MEMBER BURGEL: Correct.

11 MR. BERG: But the exclusion (indiscernible) and the pay has some
12 specific exemptions.

13 BOARD MEMBER BURGEL: Right, so that still impacts low-wage workers
14 who don't have sick time. Who have a community-acquired COVID case and we're
15 counting on them to stay home. And they will be excluded, because they have tested
16 positive for COVID, but it may not have been a work-related case. So it's my
17 understanding is that they would not get exclusion pay; is that correct?

18 MR. BERG: Yeah, if the employer can demonstrate that it's not work-
19 related.

20 BOARD MEMBER BURGEL: Which is (indiscernible) --

21 MR. BERG: Which is employers --

22 CHAIR THOMAS: It's a difficult demonstration, I will say.

23 BOARD MEMBER BURGEL: Difficult.

24 CHAIR THOMAS: Difficult to prove.

25 BOARD MEMBER STOCK: And just to comment that there was a law that

1 provided extra sick leave that expired at the end of September to address that issue.
2 And that leaves many, many vulnerable workers who do not have the resources they
3 need to allow them to either care for family members or stay home when they've
4 gotten COVID in the community. So that that's really unfortunate situation, but it is
5 highlights even more the importance of at least including exclusion pay in the COVID
6 ETS, right.

7 CHAIR THOMAS: Any other comments or questions for Eric? Or, Eric, do
8 you have any comments?

9 MR. BERG: Nothing else for me, thanks.

10 CHAIR THOMAS: Anybody else?

11 BOARD MEMBER BURGEL: Thank you, Eric, very much.

12 CHAIR THOMAS: Yes, thank you Mr. Berg.

13 At this time Ms. Stock, will you please brief the Board on the COVID-19
14 Prevention ETS Subcommittee?

15 BOARD MEMBER STOCK: Actually, I'm going to turn it over to Chris,
16 who's going to provide that report.

17 BOARD MEMBER LASZCZ-DAVIS: All right, fair enough. Thank you, Laura.

18 Let me go back a bit and provide an overview as to why the
19 subcommittee was first enacted. I mean it's the first time that I'm aware of that of the
20 Standards Board actually had a subcommittee to vet the discussions and the data, to
21 provide input to the Standards Board. So in essence, we were building the plane as we
22 were flying it, so flawless it was not but it did provide a service.

23 The initial purpose, as it was identified to us, was an opportunity to mine
24 the data, get the public input, and begin to gather the information in a drill-down mode,
25 so that we in fact could inform the Standards Board and the public with better decisions

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1 and recommendations since the topic was so complex.

2 The roles, we were given an opportunity to volunteer to the
3 subcommittee. So Nola, Laura and I volunteered. Nola is the Divisional Liaison and both
4 Laura and I were the other two members. I functioned as the Chair. Laura more often
5 than not did the report-out from subcommittee to subcommittee and to the Standards
6 Board.

7 So again that the reason I want to ground it with that is to share the fact
8 that our mission initially was to gather information and provide an opportunity for a
9 drill-down. I think the hope over time was that we would provide enough information
10 that would coalesce in such a fashion that we could begin to engage with the Standards
11 Board and others as to how the standards, the ultimate regulations, ought to take
12 shape.

13 So what happened process-wise, we've had about two meetings a month
14 for the last several months in addition to the Standard's Board meeting. Our initial
15 focus was metrics. And I think we as a group decided that that's what we needed to
16 hear. There's a lot of metrics, there are a lot of metrics on COVID. There's the Appeals
17 Board, Workers' Comp, the CDPH had data. We had information that was
18 geographically dispersed that was helpful to us in terms of emphasis areas.

19 And the reason that we wanted case rates, hospital rates and others, but
20 the reason that we requested a focus on metrics is because we ultimately wanted to get
21 a better handle on how the data was being used, what data was available, what
22 decisions were being made, which data was most important in terms of policy and
23 required actions. And I think we were coming close to ending our discussion on metrics.
24 A lot of data available, I think more than most of us realized. There was quite a bit of
25 dialogue with CDPH and the Division, which I think was very, very positive.

1 And then we realized that while we were gathering all this information,
2 and in fact had additional questions like contact tracing, quarantines, practices in the
3 workplace, we were running parallel with a regulatory scheme, a trajectory that would
4 end up in a place where we had to make a decision, maybe not with enough
5 information. We recognized about, oh I would say about a month ago, six weeks ago,
6 that the second readoption would be coming up for a December Standards Board
7 meeting vote. And we needed to consider that to give us a little bit more time until
8 April, so it was pretty much a placeholder if you want to use that term.

9 There was a call for a permanent standard and that covered the gamut
10 from infectious disease standard to a permanent COVID standard to leveraging the IIPP
11 as a delivery system, with COVID being an appendix of sorts. So what we realized was
12 we're at a point now where we really have two trajectories in place. And I know we've
13 heard about it for the last hour or so, the one being the readoption of the ETS. And the
14 ETS was posted yesterday with some comments that we would be considering in
15 December, but recognize that that ETS if adopted by the Standards Board, would only
16 be a placeholder until April.

17 However, on the longer-term view Eric and the Division staff and others
18 have been working on what I would call a permanent standard, the delivery system
19 being the IIPP. And that would be something that the Board would consider. I'm not
20 sure what the timeframe on that is, but that would be considered for the longer haul.
21 And by then if that were adopted or some version of it the ETS would essentially
22 disappear.

23 And I think that the only other thing I'd have to say is the September 23rd
24 advisory committee meeting was really an opportunity to comment on the more
25 permanent standard. And I know it's been confusing many of us as to what data and

1 what discussions played into which of the two standards.

2 I realize there are a lot of questions with regard to provisions as it relates
3 to contact testing, tracing, quarantines, and what have you. But I think what's driving
4 the train now to some extent is the timeline that we know we need to meet and an
5 appreciation for how much more information we need to make the proper, recent
6 decisions when it comes time to place a vote.

7 I think everybody recognizes the importance of the September 23rd
8 advisory committee meeting. I think it was well run and I think a lot of good data was
9 accumulated. But I personally am of the opinion or maybe ride the question that
10 Barbara raised, if in fact you want to continue to provide to elicit the public comments
11 on a more permanent standard there needs to be an opportunity somewhere for a
12 pretty robust comment period. And I realize those are competing interests, there's only
13 so much staff, so much time, and we're on a fast timeline.

14 The other question that I know we've talked about is the purpose of the
15 subcommittee. We were put on hold, recognizing that the September 23rd advisory
16 committee meeting would take place. We didn't want to take away from the time that
17 Eric, staff and others had to assume for that, because even as we've held our
18 subcommittee meetings we ask a lot of the Division staff in terms of bringing together
19 data and people. That's on hold.

20 I've heard a couple of times during today's meeting about the fact that it
21 would be good to have the subcommittee review one item or another. The question I
22 think we'd all have is whether or not in fact the subcommittee should exist, and if so
23 what its purpose should be given the timeline and the trajectories that we have,

24 Laura, Nola, you guys want to add to this please.

25 BOARD MEMBER STOCK: Sure, I'll start and then interested to hear

1 Nola's comment also. Thanks Chris, I think that's a really good summary. And I do
2 think right now it's a time to really kind of reflect on the purpose and because it does
3 take resources from both the Division and the Board, and to really be sure that those
4 are essential to be used that way.

5 I definitely feel like the subcommittee, it was great. I really thank the
6 Division and the Board staff and others from CDPH who brought together quite a bit of
7 information, presented a lot of information on metrics that otherwise we didn't have
8 time to get. I think it was useful for us and it was useful for the public to be able to see
9 data on outbreaks and on enforcement and then all the various other things that we
10 asked for. And so and different states, I really thank Amalia for all the work that you did
11 to gather information about regulatory approaches in other states. That was really,
12 really helpful, so I think that was really, really useful.

13 The thing that I felt continued a little bit confused -- and it would be great
14 to clarify role-wise -- is that I think it was helpful to get that data. It provided another
15 opportunity for the public to testify, which is always helpful. But it wasn't clear sort of
16 as to what end, because I think it wasn't -- we weren't really being asked in that to
17 engage directly in terms of helping to develop or be more engaged in the development
18 of proposals. Those continued to be occurring within the Division or within the Board,
19 without direct Board involvement as far as I know.

20 I actually would be interested in asking Nola, if you could comment,
21 because I know you were the liaison to the Division. And I haven't really understood a
22 lot. I mean, if there's anything that you can clarify about whether that liaison role did
23 provide opportunities to be participating in the development of the draft that would be
24 really helpful to know. But otherwise it really felt like just more opportunities for
25 information-gathering.

1 And so going forward I guess I question again whether it's the best use
2 of resources. Is there a situation where there's a value of doing it in a subcommittee
3 versus in front of the full Board? Because I always did feel like there was a lot of
4 interesting information that we got that the full Board then didn't get except to the
5 extent that we could report. So I would like to understand, if we decide to continue, get
6 clearer on the purpose. But maybe before that, Nola, I would welcome any comments
7 you would make on your role as a liaison and what you think of that. And what sort of
8 you see the purpose of that or what that involved.

9 BOARD MEMBER KENNEDY: Okay, thank you. First I want to start by
10 thanking Amalia especially, she did a tremendous amount of work for the subcommittee
11 during the times that we were meeting. I also want to thank Eric and everybody else at
12 Cal/OSHA. You know, they were always willing to meet and answer questions and so it
13 made for a very good exchange.

14 I guess I saw my role really as, and the way I approached it was in trying
15 to facilitate communication between Cal/OSHA and the Board in terms of what the
16 Board's expectations were, what information we wanted. So I mean, really I would just
17 take comments and requests by the sub and you and Chris, and things that came up at
18 subcommittee meetings. And also to some extent the full Board meeting, and take
19 them back to Cal/OSHA to Eric and his group to say, "Can you address this when we
20 meet? We seem interested in this information," and to really sort of help focus that
21 effort. And also just provide some perspective about the Board and the Board's
22 approach to the process.

23 As far as direct input into any language for the regulation I would say I did
24 not influence that, and pretty intentionally. I see that as the work of Cal/OSHA and
25 Eric's group. And so I really did focus more on asking for clarity and I thought it was

1 good, the meetings were a good instrument for facilitating that communication. As far
2 as moving forward, I don't know if it's still needed. I mean I think Eric probably should
3 have a say in that question as well to see if it was useful to Cal/OSHA to get our
4 perspective.

5 I mean I do think as a Board Member I saw, before the subcommittee
6 effort I sometimes felt like I had just -- you know, proposed language was dropped on
7 me without knowing that it was coming, so I like this process has alleviated that. So I
8 find some value in it; whether there's any value moving forward I'm not sure.

9 I think if the Board, the full Board has questions that they don't have time
10 to deal with in the full meetings then I think the subcommittee can be useful still. But at
11 this point it's just in Cal/OSHA's hands to develop language and hold hopefully another
12 advisory committee meeting. And, you know, I don't know what our role would be.
13 Does that answer the questions? Did I babble too much?

14 BOARD MEMBER LASZCZ-DAVIS: That was helpful.

15 BOARD MEMBER KENNEDY: Okay.

16 MR. BERG: Yeah, and just to clarify that there will, for the permanent
17 regulation it will be a 45-day public comment period just like any other regulation. So
18 you will have a full (indiscernible) public comment period just like any other permanent
19 regulation.

20 BOARD MEMBER LASZCZ-DAVIS: You know, Eric --

21 MR. BERG: That's because a lot of times we are very short on time for
22 this.

23 BOARD MEMBER LASZCZ-DAVIS: Yeah.

24 BOARD MEMBER BURGEL: For the permanent standard.

25 MR. BERG: For the permanent one, right.

1 BOARD MEMBER BURGEL: And obviously if there is major changes after
2 that 45-day comment period there's an additional 45-day comment period, correct?

3 MR. BERG: Well, if we make any changes there is a 15-day comment
4 period on top of that.

5 BOARD MEMBER BURGEL: Fifteen, okay. Thank you.

6 MR. BERG: I mean, I guess if you make massive changes where you are
7 basically starting over then there would be another 45-day comment period. We don't
8 have time, we would run out of time. We'd meet way beyond April if we did that.

9 BOARD MEMBER LASZCZ-DAVIS: Yeah. The only other thing I did want to
10 add was the overriding comment and the overriding concern we had, even within the
11 subcommittee, was the need for a standard ultimately that was fluid. This was -- and
12 there'll be others like this. I mean, we've dealt with them in the past with wildfire safety
13 as well. This is a hybrid community workplace standard, so it's not as formulaic as many
14 of the other standards that we've dealt with. So whatever we end up with there's got to
15 be fluidity. And it's so that it can shift and accommodate the changing public health
16 guidance should we have another hybrid situation.

17 MR. BERG: Yes --

18 BOARD MEMBER STOCK: And just one other question -- I'm sorry Eric,
19 did you want to respond to that? Go ahead. And then I have one other question for
20 you.

21 MR. BERG: Oh, that was the intent that the proposed permanent one,
22 we want to make it more flexible.

23 BOARD MEMBER STOCK: And, Eric, could you just clarify, because I know
24 that has also been on the table and in particularly even when the original petition was
25 adopted, about the desire to look at a long-term infectious disease regulation that

1 would apply to all industries not just health care. And to all infectious diseases and not
2 just COVID. So I know that that has been hanging out there as something that is also
3 necessary. And it was enfolded into the decisions that we voted on, an agreement that
4 that process would start. So I know we now have multiple train tracks. We've got the
5 December readoption, we have the permanent COVID reg. Can you tell us where does
6 the process of developing a broader infectious disease regulation sit?

7 MR. BERG: Well, that would be like a separate innovative that kind of
8 process, so we would develop draft language, post it online, get comments, hold an
9 advisory committee meetings. It would probably take a number of years to do that to
10 get all of the input in and refine it. That's going to be completely separate in the
11 process, that rulemaking. It takes some time.

12 BOARD MEMBER BURGEL: Do we need to obviously submit a petition or
13 to get that train track started?

14 MR. BERG: Well, we will work on it once we have the bandwidth
15 available, we don't have the bandwidth available to work with.

16 BOARD MEMBER BURGEL: I see.

17 MR. BERG: We have lead, indoor heat, antineoplastic drugs and the
18 COVID stuff. We have about more than 15 different rulemaking projects we're working
19 on right now --

20 BOARD MEMBER BURGEL: Right.

21 MR. BERG: -- with a very small number of employees, so we can only do
22 so much.

23 CHAIR THOMAS: I believe Christina has a comment. Christina?

24 MS. SHUPE: Just to answer your procedural question there Barbara the
25 Board doesn't need to take action. They've already adopted in the previous petition

1 decision from November of 2020, a request that the Division engage in that
2 rulemaking.

3 BOARD MEMBER BURGEL: Oh good, I didn't recall that we did that.
4 Thank you, Christina.

5 MR. BERG: Yes, that is something that we are planning on doing, and
6 some initial planning, but we just need to get more data in order to be able to do that.

7 BOARD MEMBER BURGEL: I hear you.

8 BOARD MEMBER STOCK: And hopefully, I mean we have the existing ATD
9 standard as a model. So one would hope that we're not starting from scratch, even
10 relative to the resources; not to minimize the resources that are needed from your staff
11 to make this happen.

12 But I mean it might be good, maybe we could begin to add an update on
13 that, as you give updates on the other regulatory efforts that you're engaged in. I just
14 think we want to keep track of that and see what we can do to kind of support that
15 moving forward. And, of course, like also support more resources for your staff,
16 because you have way more on your plate than you have the resources to accomplish.
17 That's for sure.

18 BOARD MEMBER BURGEL: I just wanted to also add one more comment,
19 that we might have another train track of using your analogy Laura, but with the federal
20 standard that maybe will happen soon for the healthcare workers. I mean that would
21 affect, I guess the ATD standard and whether there was any changes we'd to have to
22 bring up to a Horcher process to sort of meet Federal standards if they're different than
23 ours.

24 But I just wanted also to thank the subcommittee. Really, I was
25 impressed. The data was very helpful, it was great to have those materials accessible to

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1 review. And thank you, the three subcommittee members plus obviously Amalia, Eric,
2 Christina, the group. Thank you.

3 BOARD MEMBER LASZCZ-DAVIS: Yeah, thank you for that. But you know
4 what I did want to state, I don't want to misrepresent what I think I heard, but given the
5 question on the table as to whether or not there is continued value in the subcommittee
6 I'm not hearing a move-forward with another item for discussion or an initiative. So I'm
7 assuming that unless the Standards Board or somebody else directs us to convene we
8 are at a close. Is it a fair assumption? (Overlapping colloquy.)

9 BOARD MEMBER BURGEL: I would agree.

10 BOARD MEMBER CRAWFORD: Well, we did have some requests from
11 some of the stakeholders today for some additional information or to entertain some
12 additional conversations. So I wonder if it's premature to assume that there is no more
13 need to convene.

14 CHAIR THOMAS: Let me just -- can I just state I don't think there's any
15 reason at this point for there not to be a subcommittee. If it shows eventually that
16 there is not a need for it then we'll will take care of it at that time. But I don't know, we
17 haven't reached that point yet.

18 BOARD MEMBER LASZCZ-DAVIS: All right.

19 CHAIR THOMAS: We have to have a little ways to go in this little thing
20 called COVID-19 and this regulation that we thought was coming to a close back in May
21 and June. And it turned out that that isn't exactly what happened. And now we have
22 other concerns besides. We have the variant, we have a lot of people that are not
23 vaccinated so we have that to contend with, so we have a ways to go. And I wouldn't
24 think that there is any reason at this point to do anything with the subcommittee other
25 than let it stand. If there if there needs to be a meeting there will be.

1 BOARD MEMBER LASZCZ-DAVIS: Well, let me ask you this though Dave.
2 Typically, at the Standard's Board meeting we would begin to craft the agenda for the
3 next subcommittee meeting. Right now as of today, we don't have a subcommittee
4 meeting planned, so if we don't have one planned we won't have any agenda items. But
5 if there is a distinct agenda items we should consider now is not a bad time to raise
6 them, so that we can work towards a subcommittee meeting. But it's just a logistical
7 question on my part.

8 CHAIR THOMAS: Right.

9 MS. SHUPE: Chris, I think I can help with the logistical question there.
10 The Board can choose to leave the COVID-19 subcommittee as a standing committee.
11 And then when you identify, when and if you identify agenda items that you want the
12 committee to address you can then do that at a future meeting. So say that the Board
13 meets at some time and at that time the situation has changed, you want the
14 subcommittee to start meeting again, it's already a standing committee. You can go
15 ahead and set the agenda at that time.

16 BOARD MEMBER LASZCZ-DAVIS: All right, that helps. Thank you.

17 CHAIR THOMAS: We need to note the standing committee (indiscernible)
18 stand. You know, I'm so full of BS, I'm getting tired, I think. Anyway, any other
19 comments from the subcommittee?

20 And I want to thank you guys for your service (indiscernible), because I
21 know it's a lot to ask and it's been a trying time, so I want to thank you. And like I said
22 you're still standing, you're still there. And we'll see where the process takes us. We
23 don't really know right now, but I don't think it's a bad idea at all to have that.

24 So at this time thank you for that. And we'll go to our Legislative Update.
25 Ms. Gonzalez, can you update the Board please?

1 MS. GONZALEZ: Sure, thank you. So in your Board packets you have the
2 Legislative Report. We have a bunch of action on bills that we've been watching. For
3 instance, AB 73, which required training materials to be provided to agricultural
4 workers, either pictograms or in the language that they speak, passed.

5 And then we have AB 361, which is an open-meetings modification. And
6 it's going to allow us to continue to hold these meetings via teleconference virtually
7 through January 31st, 2022, so that does have an end date.

8 And then there are others, a lot of other details as well as passages in
9 your packets.

10 CHAIR THOMAS: Any questions from the Board for Ms. Gonzalez?

11 BOARD MEMBER BURGEL: No, but thank you, Autumn.

12 CHAIR THOMAS: Hearing none, then we'll move to the Executive
13 Officer's Report. Ms. Shupe, will you please brief the Board?

14 MS. SHUPE: Thank you Chair, Thomas.

15 Yesterday, October 20th, Amalia Neidhardt and I were keynote speakers
16 at the California Water Environmental Association's Northern Safety Day. It's also
17 known as CWEA. CWEA provides education and certification for California's
18 wastewater professionals who primarily work for local and county water and sewer
19 districts.

20 Our presentation covered the history, mission and purpose of the
21 Standard's Board, how to effectively engage, and a brief overview of regulatory projects
22 before the Board. And I'll say that Ms. Neidhardt did smashingly well. She was very well
23 received and ably represented the Board, so thank you Ms. Neidhardt

24 As noted in the Division's update the proposed language for the second
25 readoption for the temporary emergency standard was posted for public review. And

1 OSHSB will have the provided links to the Division's -- OSHSB staff are working to
2 provide links to the Division's posting on our home page under the "What's New"
3 section, so you should be able to see that, if not today then tomorrow. And the Board
4 will consider that language at it's -- the revised and final language at its December 16th
5 meeting. When it's posted it will be posted with the finding of emergency for official
6 notice.

7 Looking forward Board staff will issue a 15-day notice for the Firefighter
8 Personal Protective Equipment rulemaking in time for the Board to hear public
9 comments at its November 18th meeting. I want to thank Mary Rose Chan, the Board's
10 lead engineer on this project as well as Division staff, particularly Mr. Mike Wilson, and
11 the professional firefighters who have provided very valuable input on this complicated
12 and critical rulemaking. Well, this is a permanent rulemaking. We are also looking at an
13 additional follow-up rulemaking starting in 2022.

14 On a personal note -- I'm sorry, go ahead.

15 BOARD MEMBER STOCK: Oh, Christina, I'm sorry. I just had a question
16 about the firefighter regulation that you just mentioned, so it's just coming for a
17 hearing, not a vote?

18 MS. SHUPE: We're posting a 15-day notice, so you'll hear from the public
19 in November when the 15-day notice is up for public comment.

20 BOARD MEMBER STOCK: All right.

21 MS. SHUPE: So you're correct, hearing not a vote.

22 Are there any other questions? (No audible response.) Then I'm going to
23 add my congratulations to Mr. Parker on the advancement of his confirmation. I'd like
24 to say that during his tenure as the Cal/OSHA Chief, Mr. Parker has been a steady,
25 collaborative and accessible partner to the Board and its staff, and even during the

1 immense challenges of the pandemic. And we look forward to his leadership at Fed
2 OSHA where we also have wonderful relationships established.

3 Finally, I would like to note that I heard a lot of comments about Mike
4 Manieri that sounded like he was never coming back. Michael, I'll remind you that you
5 are committed to the November meeting as well, so we'll see you there. (Laughs.)

6 Thank you. Are there any questions at all?

7 CHAIR THOMAS: All right -- oh Barbara, do you have a question?

8 BOARD MEMBER BURGEL: I do. This is a thank you Christina for that
9 update. I just wondered where are the elevator safety standards in our universe? Are
10 we ever going to see -- I just want to acknowledge the work that Autumn, and your
11 team, Autumn, do with all the variances. I mean, a couple hundred pages of variance
12 documents, it's copious amounts of work. And I keep on holding out for the changes in
13 the updates in the elevator safety standards that would mitigate all those permanent
14 variances hopefully, or most of them I would hope. So what's the update or what's the
15 timeline?

16 MS. SHUPE: So at this time the elevator standards are back with the
17 Elevator Division back at the Cal/OSHA. They have looked at the recent releases and
18 ASME standards related to elevators, and have seen some opportunities there to bring
19 their proposal more in line with those standards, potentially where safety is preserved.
20 And so Dan Barker and his team over there are working on that proposal. When we
21 have that back we'll update the Board.

22 BOARD MEMBER BURGEL: Okay, thank you.

23 CHAIR THOMAS: Is there any other questions for Ms. Shupe at this time?

24 BOARD MEMBER LASZCZ-DAVIS: Not today.

25 CHAIR THOMAS: Great. Thank you, Christina.

1 New Business, any future agenda items?

2 MS. SHUPE: We have Closed Session.

3 CHAIR THOMAS: Okay, so we're going to have a Closed Session. But
4 before we do the Closed Session, because I know a lot of people won't be here when
5 we're done with the Closed Session, is I wanted to thank Mike Manieri for his steady
6 hand over all these years. I remember the first few meetings I went to I didn't know
7 how it worked. I mean, I'm a rookie. I go in there and sit in my chair and I don't know if
8 I'm going to have to explain all this in my vote. I didn't really know.

9 And then Mike gets on the microphone and explains everything, very
10 concise. And I thought, "Well this makes it really easy." Mike is pretty precise in his
11 language. He'll tell you exactly what's going on with the regulation and what it means
12 and what it does. And I really appreciated that, because when you first come in here
13 you don't know what you're getting into.

14 But I just wanted to say Mike has always been the voice of reason and
15 certainty and sanity in a really unstable, insane world right now. (Laughter.) Thanks for
16 all of your help. And just the way you handled yourself and your calmness throughout
17 your tenure here. And from the time I've known you, which I can't believe it's been, I
18 think, 11 or 12 years now. I don't know, I've lost track. But I just want to really thank
19 you for all your help. And I know you still going to be around still, so don't think you're
20 going to get away too quickly. But thank you very much, Mike, I really appreciate it.

21 MR. MANIERI: You're welcome, thank you.

22 BOARD MEMBER LASZCZ-DAVIS: We know how to get ahold of you.

23 MR. MANIERI: It's been a pleasure to serve. Yes, yes.

24 CHAIR THOMAS: All right, at this time thank you, Mike. And thank you
25 so much.

1 MR. MANIERI: You're welcome.

2 CHAIR THOMAS: We're going to adjourn now into Closed Session and I
3 think Board Members you have in your packet where to call. So we will start that in 5
4 minutes -- let's make it 10 -- 10 minutes, about 1:10.

5 BOARD MEMBER STOCK: And just to confirm Sarah sent out an updated
6 access email, so I'm using it. So I hope that we're all on the same page on that.

7 MS. MONEY: That is correct.

8 BOARD MEMBER STOCK: So a day or so ago. (Overlapping colloquy.)

9 BOARD MEMBER CRAWFORD: That came out just yesterday?
10 (Overlapping colloquy.)

11 BOARD MEMBER LASZCZ-DAVIS: Yeah, I picked it up this morning. Talk
12 to you shortly.

13 CHAIR THOMAS: We'll see you guys in a few minutes (indiscernible) after
14 that.

15 BOARD MEMBER LASZCZ-DAVIS: Ten minutes, is that what you said?

16 MS. STOCK: Ten minutes.

17 MS. SHUPE: And just a reminder to all of the Board members to mute
18 your microphones and turn off your video, thank you.

19 (Off the record at 1:10 p.m.)

20 (On the record at 1:32 p.m.)

21 CHAIR THOMAS: Thank you, Erik. We are back in session.

22 In the Closed Session, we took no action. Therefore, there is nothing to
23 report. The next Standard's Board regular meeting is scheduled for --

24 MS. SHUPE: Dave, before you move on I think Nola Kennedy has some
25 business to address?

1 CHAIR THOMAS: Oh. Come on.

2 BOARD MEMBER KENNEDY: And I'm sorry, It's just our closed sessions
3 are typically voice-only. And I was trying to gauge if other people are as interested as I
4 would be in having a video component to the Closed Session?

5 CHAIR THOMAS: So I think what we could do is just set up a Zoom
6 meeting.

7 MS. SHUPE: There are different platforms we can use, but yeah that's
8 definitely an option the staff can look into for the Board.

9 CHAIR THOMAS: Yeah, the Zoom is about all I can handle technically.
10 Other than that I might not be --

11 BOARD MEMBER KENNEDY: And I don't require it. I was just trying to
12 gauge if other Board Members are interested.

13 BOARD MEMBER STOCK: I think it's a good idea, Nola, if we can make it
14 work, so thanks for that.

15 BOARD MEMBER LASZCZ-DAVIS: I think that's a fantastic idea.

16 CHAIR THOMAS: You know what, we will work on that and we'll figure
17 out whether it's Team or Zoom or whatever it is, we'll try and do that for the next one.

18 BOARD MEMBER LASZCZ-DAVIS: Good.

19 BOARD MEMBER KENNEDY: Okay.

20 CHAIR THOMAS: So in that the next Standards Board regular meeting is
21 scheduled for November 18th, 2021, via teleconference and video conference. Please
22 visit our website and join our mailing list to receive the latest updates. We thank you
23 for your attendance today.

24 There being no further business to attend to this meeting is adjourned.

25 Thank you very much for your attendance and we will see you on the 18th of November.

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1 So go Giants, next year.

2 BOARD MEMBER LASZCZ-DAVIS: Thank you, everybody.

3 (The Business Meeting adjourned at 1:34 p.m.)

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

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