

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
February 20, 2014
Sacramento, California**

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman Dave Thomas called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:05 a.m., February 20, 2014, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE**Board Members Present**

Dave Thomas
Laura Stock
Bill Jackson
Hank McDermott
David Harrison
Barbara Smisko
Patty Quinlan

Board Member Absent**Board Staff**

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
David Beales, Legal Counsel
David Kernazitskas,
Senior Safety Engineer
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health

Others Present

Brian K. Miller, Rudolph & Sleiten	Mark Antonucci, CSATF
George Hauptman, OSHSB	Larry Pena, So. CA. Edison
Gail Blanchard-Saiger, CA Hospital Assoc.	Kevin Bland, Esq., Ogletree, Deakins, Nash, Smoak & Stewart
Steve Johnson, Assoc. Roofing Contractors	La Chanta Brown, Harbor UCLA
Ingela Dahlgren, SEIU Nurse Alliance of CA	Patrick Corcoran, DOSH
Amalia Neidhardt, DOSH	

Anne Katten, CRLAF
Kelly Green, CNA
Diane McClure, CNA
Bobbi Meyer, UNAC
Cindy Sato, CEA
Mike Donlon, DWR
Dan Leacox, Greenberg Traurig
Joel Sherman, Grimmway Farms
Amber Novey, LIUNA
Jon Masteri, Philanthropist
Dorothy Wigmore, Worksafe
Donald Zampa, Iron Workers Union
Jack Kastorff, ASSE
Elizabeth Treanor, PRR
Del Garner, IUEC Local No. 8
Melita Charles-Singh, SEIU Nurse Alliance
of CA
Melvi De La Cruz, SEIU 121 RN
Andrew Perry
Richard Parenti
Peter Sidhu, VMAC
Kef Workie, UNAC/UHCP
Dorothy Ormsby, Harris Rebar
Kimberly Rosenberger, SEIU State Council
Jenniefer D. Barller-Tillen, CNA
Mitch Seaman, CA Labor Federation
Richard Pan, Assembly Member

Gayle Batiste, SEIU 121 RN
Millicent Borland, CNA
Khadijah Kabba, CNA
Denise Duncan, UNAC/UHCP
Sheri Hinkle, SEIU
Mark Stone, EPIC
Marti Fisher, Cal Chamber
Christina Hwee, Dr. Pan
Tina Kulinovich, Fed OSHA
Carol Kinser, CNA RN
Michael Strunk, IUOE Local Union No. 3
Robert Alexander, Ironworkers Union 416
Bruce Wick, CALPASC
Larry McCune, Cal/OSHA
Maribel Castillon, SEIU Nurse Alliance of CA
Thea Weintraub, Harbor SEIU Nurse
Katherine Hughes, SEIU 121 RN
Shirley Toy, UCDMC
Kelcie Vilain
Donna Scobee, Sutter Roseville Medical Center
Scott Byington, UNAC/UHCP
Richard A. Negri, SEIU Local 121 RN
Kimberly Cowart, SEIU 1000
Michael Musser, CA Teachers Association
Kate Smiley, AGC
Salena Pryor-Dansby, SEIU 1000

B. OPENING COMMENTS

Mr. Thomas indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2.

Don Zampa, Iron Workers International, stated that his organization supports the decision for Petition 537 to go to an advisory committee and would like to participate in the advisory committee process.

The following individuals echoed Mr. Zampa's comments:

- **Bryan Miller, CEA**
- **Robert Alexander, Reinforcing Steel Iron Workers Local 416**

Kevin Bland, representing the Western Steel Council, the Residential Contractors Association, and the California Framing Contractors Association, echoed Mr. Zampa's comments and stated that the organizations he is representing today support the petition decision. He stated that the Residential Contractors Association and the California Framing

Contractors Association would like the Board to address issues regarding protrusion hazards and custody control of hazards during the advisory committee process.

Richard Negri, SEIU Local 121 RN, stated that his organization supports Petition 538, and that it will be a comprehensive standard that healthcare workers need. He said that healthcare and social assistance workers are at the highest risk in the nation for workplace violence. He stated that workplace violence for these workers comes in many forms and affects more people than just the victim, and workplace violence incidents cost employers more time and money than workplace violence prevention programs. He also said that there is no federal OSHA standard in place to address workplace violence, and though California has Section 3203 in the Labor Code to address workplace violence, a standard is needed to protect healthcare workers because this section does not address the specific elements needed to prevent workplace violence in the healthcare industry. It also does not provide specific guidance to address complex factors that must be in place to protect healthcare workers.

Katherine Hughes, SEIU Local 121 RN, stated that healthcare workers are facing situations where inadequate staffing, safety training, alarms, and security systems put them at risk for workplace violence. She said that employers do not follow the laws that are currently in place to protect healthcare workers from workplace violence, and that is why a standard such as Petition 538 is needed.

Ingela Dahlgren, SEIU Nurse Alliance of CA, stated that healthcare workers have gotten so used to the workplace violence that occurs that they do not report incidents of that violence unless it has resulted in injury that is too severe for the worker to return to their duties. Therefore, incidents of workplace violence to healthcare workers are under-reported. She stated that her organization is looking forward to working with the Board further to address this issue.

Dr. Richard Pan, Assemblymember, stated that he has had experiences with challenging patients that put his own health and safety at risk. He urged the Board to move forward on Petition 538.

Others speaking in support of Petition 538 were:

- **Kimberly Rosenberger, SEIU State Council**
- **Gail Batiste, SEIU Local 121 RN**
- **Melvi De La Cruz, SEIU Local 121**
- **Thea Weintraub, Harbor UCLA**
- **Candy Brown, Harbor UCLA**
- **Melita Charles-Singh, SEIU Local 121 RN**
- **Bobbi Meyer, UNAC/UHCP**
- **Kimberly Cowart, Napa State Hospital and SEIU Local 1000**
- **Shari Hinkle, Napa State Hospital, and Maribel Castillo, SEIU CA Nurse Alliance**
- **Denise Duncan, United Nurses Association**
- **Peter Sidhu, UNAC/UHCP**
- **Scott Byington, UNAC/UHCP**
- **Kaf Crolorkie, UNAC/UHCP**

Kelly Green, California Nurses Association, submitted an additional petition to the Board regarding workplace violence against healthcare workers. She stated that her organization has fought on a political level to address workplace violence, and they helped pass SB 718 to improve hospital security statutes. She said that SB 718 amends the Labor Code and puts the issue of workplace violence against healthcare workers under Cal/OSHA's jurisdiction. She said that a strong framework is necessary to create a standard that will address workplace violence against healthcare workers. She also stated that the following elements are necessary to make the standard most effective:

- The standard should apply to all inpatient and outpatient clinics and settings.
- Personnel training and education should be interactive and taught by someone who is knowledgeable in workplace violence and prevention planning. It should also have a question and answer period for employees to ask questions.
- Employees should be allowed to contact law enforcement for assistance if they feel they need it.
- Employees should be allowed to participate, and be represented, in the development of workplace violence prevention programs.
- Hospitals should be required to document and keep good records of all incidents of workplace violence. These records should be available for employees to review.
- Hospitals should be required to report all incidents of workplace violence to the state. This will help quantify the frequency and prevalence of workplace violence.

Millicent Borland, Alta Bates Summit Hospital, echoed Ms. Green's comments.

Mitch Seaman, California Labor Federation, stated that the current standards regarding workplace violence against healthcare workers create a gap in protection that needs to be addressed. He said that there are also several external factors, such as prison overcrowding and lack of access to mental health treatment, that highlight the need to address this issue. He encouraged the Board to consider input from both of the groups that filed petitions as this process moves forward.

Dorothy Wigmore, Worksafe, stated that workplace violence is a general workplace issue that has been going on for many years, and California is way behind in protecting all workers from it. She said that Worksafe supports Petition 538 to protect healthcare workers from workplace violence, but it also supports creating a standard to protect all workers from workplace violence.

Gail Blanchard-Saiger, CA Hospital Association, stated that her organization has worked with SEIU in the past to create legislation to address workplace violence in the healthcare industry, but it only applies to acute care hospitals. She also stated that there are some very good workplace violence prevention plans in place in some hospitals. She asked the Board to consider how properly to address patient care and healthcare needs while developing the

standard to address workplace violence. She also stated that there are external factors that hospitals cannot control, such as police procedures and closures of other facilities.

Mr. Harrison stated that he would like to see all of the groups involved with both petitions work together to create a joint petition on the matter of workplace violence in the healthcare industry.

Ms. Wigmore also spoke about issues that her organization has had with the Board staff regarding evidence, transparency, and fairness. She stated that evidence that her organization brought forward regarding the proposal for strap-on foot protectors demonstrating that the proposal is not needed was ignored by the Board staff. She said that she spoke to the ASTM after that and discovered that ASTM was not aware of the proposal, nor did they agree with it. She said that the Board staff should have contacted the ASTM and checked to ensure it was alright with them prior to proposing the regulation. She also stated that the Board staff has different evidence standards for public health and worker advocates compared to employers, which she feels is unacceptable and not transparent or fair. She said that when issues were raised regarding this in December of 2013, the Board staff blew her off by saying that the issues she raised were outside the scope of the rulemaking. She felt that was unhelpful and disrespectful. She asked the Board to do the following to address these issues:

- Talk to public health and worker advocacy groups to find out how to make the rulemaking process more transparent.
- Determine the best way to ensure that Board Members have a say about the Board staff's priorities, the need for them to devote time to research and background work, and the criteria for evidence from commenters that will be accepted or rejected.
- Pursue changes in the law with the appropriate entities so that comments, and responses to them, must be included in any formal proposal, not just in the final statement of reasons.
- Investigate how a lack of staff with the appropriate knowledge and experience affects the Board's and Cal/OSHA's ability to do their jobs in a timely way. If there are problems, they should be addressed in the appropriate manner.

Ms. Hart stated that the Board and staff are required to follow the requirements of the Administrative Procedures Act, and many of the issues that Ms. Wigmore discussed pertain to that. She stated that for 15-day notices, Board staff is not required to respond to comments until the Final Statement of Reasons comes out. She said that the Board staff usually does provide a response to comments prior to that as a courtesy to stakeholders and to be transparent and fair.

Ms. Stock stated that the response to comments is really essential for the Board Members to do their work and for providing the public with the information that they need, regardless of whether or not it is required, and she hopes that the Board staff will always provide them in the future.

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Ms. Stock and seconded by Mr. Harrison that the Board adopt the proposal.

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

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 61, Section 4355
Operating Rules for Compaction Equipment

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Ms. Quinlan and seconded by Ms. Smisko that the Board adopt the proposal.

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

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Walter H. Wise, General President
International Association of Bridge, Structural, Ornamental,
and Reinforcing Iron Workers
Petition File No. 537

Petitioner requests that the Board make recommended changes to Title 8, Construction Safety Orders, Section 1712 regarding reinforcing steel and post-tensioning activities.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the petition decision to convene an advisory committee.

MOTION

A motion was made by Mr. Jackson and seconded by Ms. Stock that the Board adopt the proposed decision to convene an advisory committee.

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

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that items A-G were heard at the variance hearing that was conducted today before the meeting. The panel recommended granting the proposed decisions in those cases. Mr. Beales recommended adopting the proposed decisions for those items, as well as the decision for item H. He also stated that item I needs to be modified in the following ways:

- Variance decision numbers 12-V-073 and 13-V-256 need to be removed from the consent calendar because the decisions are not done yet.
- The variance decision in OSHSB File No. 11-V-152 should be voted on separately because a Board Member may want to be excused from discussing and voting on that decision.

He also recommended adopting the proposed decisions for variance decision numbers 13-V-108, 13-V-153, and 13-V-154.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Harrison to adopt the consent calendar as modified.

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

Ms. Smisko left the room while the Board discussed and voted on OSHSB File No. 11-V-152.

Mr. Beales recommended granting the variance decision for 11-V-152.

MOTION

A motion was made by Mr. McDermott and seconded by Ms. Stock to adopt the proposed decision.

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

Ms. Smisko returned to the room.

D. OTHER

1. Legislative Update

Mr. Beales stated that the written update contained an error regarding the date that AB 326 was amended. AB 326 was amended on January 6. He also mentioned 3 other bills:

- AB 1711 was introduced on February 13 by Assemblymember Cooley and requires that an Economic Impact Analysis be placed in the Initial Statement of Reasons in rulemakings.
- AB 1634 was introduced on February 10 by Assemblymember Skinner and involves

changing the law regarding stays of abatement during appeals of citations.

- AB 1803 was introduced on February 18 by Skinner and makes a slight wording change in Labor Code Section 142.7, which is one of the Board statutes.

2. Executive Officer's Report

Ms. Hart stated that a petition request was received from CRLAF regarding illumination for nighttime agricultural work, which deals with a Form 9 that the Division and Board staff have already agreed to do a rulemaking and advisory committee for. She said that the advisory committee is being assembled and will take place in April or May. Because of this, Ms. Hart spoke with CRLAF and the Division, and they all agreed to combine CRLAF's petition with the advisory committee instead of docketing it as a separate petition. She also said that the Form 9 has been widely distributed and wanted to let people know that CRLAF's petition will be added to it.

Ms. Hart also talked about the 2013 Year in Review that was included in the Board Packets which summarizes the activities of the Board staff in 2011, 2012, and 2013. She said that the numbers of petitions, noticed rulemakings, and adoptions stayed the same, but the number of variances rose substantially to 491. Of those 491 variances, 479 pertained to elevators. She stated that the Division is updating the Elevator Safety Orders and should have a draft proposal soon, which will hopefully eliminate a large number of those variances.

Ms. Smisko asked Ms. Hart about the status of the Safe Patient Handling rulemaking. **Ms. Hart** stated that a 15-day notice will be issued sometime in March or April, and that the Board staff will receive the necessary documents from the Division on March 4 for review.

Ms. Quinlan asked Ms. Hart when the Board will be voting on the GHS proposals. **Ms. Hart** stated that both the GHS Health and GHS Safety proposals will be voted on at the March meeting.

3. Future Agenda Items

No future agenda items were discussed.

A moment of silence was held in honor of Pat Bell, Principal Safety Engineer, who passed away.

E. ADJOURNMENT

Mr. Thomas adjourned the Business Meeting at 12:10 p.m.