

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
Sacramento, California 95833
(916) 274-5751
FAX (916) 274-5785

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APR 13 2011

OSH Appeals Board

APPEAL FORM

Inspection No. 300752581

2011-R | D5 -0938

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

1. You have only 15 working days from receipt of a citation to appeal.
2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

Address:

1600 NINTH STREET
SACRAMENTO, CA 95814

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

- CITATION NO(s) 1 Item No.(s) All items are appealed
- NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____
- SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

- The safety order was not violated.
- The classification (i.e., serious, willful, repeat) is incorrect.
- The abatement requirements are unreasonable.
 - Required changes Time allowed to complete changes
- The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

APR 13 2011

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

4.



(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

April 12, 2011

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

State of California
Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



Citation and Notification of Penalty

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APR 13 2011

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

OSH Appeals Board

Citation 1 Item 1 Type of Violation: General

T8 CCR 3203(a)(1) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Identify the person or persons with authority and responsibility for implementing the Program.

On or before 10/25/10, the employer's Injury and Illness Prevention Program was ineffective in that it did not correctly identify the person or persons with authority and responsibility for implementing the Program. Program Directors/Department Heads have authority and total responsibility for maintaining safe and healthful working conditions for employees within their jurisdiction; however, the health and safety of employees is subordinated to the treatment requirements of individuals as dictated by clinical personnel.

Date By Which Violation Must Be Abated	10/25/2011
Proposed Penalty	\$ 33,000

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
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Citation and Notification of Penalty

RECEIVED

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

APR 13 2011

OSH Appeals Board

Citation 1 Item 2 Type of Violation: General

T8 CCR 3203(a)(2) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

On or before the inspection on 10/25/10, the employer's Injury and Illness Prevention Program was not effectively implemented in that employer does not ensure that employees who escort individuals comply with safety procedures and policies.

Date By Which Violation Must Be Abated: 05/15/2011
Proposed Penalty: \$ 355.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California
Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



Citation and Notification of Penalty

RECEIVED

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

APR 13 2011

Citation 1 Item 3 Type of Violation: General

OSH Appeals Board

T8 CCR 3203(a)(5) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Include a procedure to investigate occupational injury or occupational illness.

On or before inspection on 10/25/10, the employer's Injury and Illness Prevention Program was ineffective in that the employer's procedure to investigate occupational injury and illness was not implemented and maintained. Many of employer's Supervisor's Report of Occupational Injury or Illness forms pertaining to assaults showed that investigations lacked analyses of the cause and thus were ineffective in preventing further occurrences.

Date By Which Violation Must Be Abated	05/15/2011
Proposed Penalty	\$ 1,250.00

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State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
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Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



Citation and Notification of Penalty

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

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APR 13 2011

Citation 1 Item 4 Type of Violation: **General**

OSH Appeals Board

T8 CCR 3203 (a)(7) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Provide training and instruction:

- (A) When the program is first established;
- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;
- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

On or about the time of inspection on 10/25/10, the employer's Injury and Illness Prevention Program was ineffective with respect to employee training and instruction in that:

1. TSI training given to employees was not applicable to the type of assaultive situations that an employees experience from unsupervised individuals on the grounds in the Secure Treatment Area.
2. The employer's program did not train employees in how to recognize stalking behavior by individuals on the grounds of the Secure Treatment Area, nor how employees were to be protected from this behavior.

Date By Which Violation Must be Abated:	05/15/2011
Proposed Penalty:	\$ 2,850.00

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APR 13 2011

OSH Appeals Board

APPEAL FORM

Inspection No. 300752581

2011-R 1 D5 -0939

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

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SACRAMENTO, CA 95814

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1. This is an Appeal from:

- CITATION NO(s) 2 Item No.(s) All items are appealed
- NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____
- SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

- The safety order was not violated.
- The classification (i.e., serious, willful, repeat) is incorrect.
- The abatement requirements are unreasonable.
 - Required changes Time allowed to complete changes
- The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

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OSH Appeals Board

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California
Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



Citation and Notification of Penalty

RECEIVED

APR 13 2011

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

OSH Appeals Board

Citation 2 Item 1 Type of Violation: Serious

T8 CCR 3203(a)(3) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

On or before the time of the inspection on 10/25/10, the employer's Injury and Illness Prevention Program was ineffective with respect to the employer's communication system on health & safety matters in that:

1. Employer required all employees to confront unsupervised individuals engaged in prohibited behavior. Employer's procedures did not provide for communication to the employees the history and behavioral triggers of the hundreds of unsupervised individuals that they were expected to confront.
2. Employees had no effective, available means of communicating threatening behavior by individuals to the employer.
3. Employer's communication system used during assaults introduces delay or the potential for failed communications.

Date By Which Violation Must be Abated	04/25/2011
Proposed Penalty	\$ 200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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APR 13 2011

OSH Appeals Board

APPEAL FORM

Inspection No. 300752581

2011-R | D5 -0940

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

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FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[X] CITATION NO(s) 3 Item No.(s) All items are appealed

[] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

[] SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e., serious, willful, repeat) is incorrect.

[X] The abatement requirements are unreasonable.

[X] Required changes

[X] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

APR 13 2011

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California
Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



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APR 13 2011

OSH Appeals Board

Citation and Notification of Penalty

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

Citation 3 Item 1 Type of Violation: **Serious**

T8 CCR 3203(a)(4) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards, whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard.

On or before the time of inspection on 10/25/10, the employer's procedures for identifying and evaluating hazards were ineffective in that, as the employer's forensic individual population increased, the employer failed to identify the hazards posed to employees by increasingly threatening and felonious assaultive behavior by individuals. As a result, on 10/23/10, an employee suffered a fatal injury by an individual.

Date By Which Violation Must be Abated	04/25/2011
Proposed Penalty	\$ 200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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APR 13 2011

OSH Appeals Board

APPEAL FORM

Inspection No. 300752581

2011-R 1 D6 -0941 —

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

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[X] CITATION NO(s) 4 Item No.(s) All items are appealed

[] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

[] SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e., serious, willful, repeat) is incorrect.

[X] The abatement requirements are unreasonable.

[X] Required changes

[X] Time allowed to complete changes

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12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
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OSH Appeals Board

Citation and Notification of Penalty

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

Citation 4 Item 1 Type of Violation: **Serious**

T8 CCR 6184(a)(6) The employer shall establish procedures for sounding emergency alarms in the workplace.

On or before the time of inspection on 10/25/10, the employer had not established procedures for sounding emergency alarms outside of the units for employees engaged in traversing the grounds to and from work, or when escorting individuals. As a result, on 10/23/10, an employee who had no means of sounding an emergency alarm was fatally injured by an unsupervised individual who was out on grounds at the same time as the employee.

Date by Which Violation Must be Abated: 04/25/2011
Proposed Penalty: \$ 7200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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APPEAL FORM

OSH Appeals Board

Inspection No. 300752581

2011-R | D5 -0942 —

Employer:

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- CITATION NO(s) 5 Item No.(s) All items are appealed
- NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
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- SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

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12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752581

Inspection Dates: 10/25/2010 -

Issuance Date: 04/12/2011

CSHO ID: N7538

Optional Inspection Nbr: 14-11



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APR 13 2011

OSH Appeals Board

Citation and Notification of Penalty

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

Citation 5 Item 1 Type of Violation: Serious

T8 CCR 6184(b)(2) The employee alarm system shall provide warning for necessary emergency action as called for in the emergency action plan, or for reaction time for safe escape of employees from the workplace or the immediate work area, or both.

On or before the time of the inspection on 10/25/10, the employee alarm system established by the employer did not allow for sufficient reaction time for safe escape of employees when assaulted by individuals in that police/emergency responders were delayed by existing procedures.

Date By Which Violation Must Be Abated	04/25/2011
Proposed Penalty	\$ 700.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
Sacramento, California 95833
(916) 274-5751
FAX (916) 274-5785

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OSH Appeals Board

APPEAL FORM

Inspection No. 300752581

2011-R | D5 -0943 -

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

1. You have only 15 working days from receipt of a citation to appeal.

Address:

1600 NINTH STREET
SACRAMENTO, CA 95814

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[X] CITATION NO(s) 6 Item No.(s) All items are appealed

[] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

[] SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e., serious, willful, repeat) is incorrect.

[X] The abatement requirements are unreasonable.

[X] Required changes

[X] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

APR 13 2011

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California
Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
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Inspection Number: 300752581
Inspection Dates: 10/25/2010 -
Issuance Date: 04/12/2011
CSHO ID: N7538
Optional Inspection Nbr: 14-11



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APR 13 2011

Citation and Notification of Penalty

Company Name: CA Dept. of Mental Health Napa State Hospital
Inspection Site: 2100 Napa Vallejo Hwy., Napa, CA 94558

OSH Appeals Board

Citation 6 Item 1 Type of Violation: **Willful**

T8 CCR 3203(a)(6) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Include methods or procedures for correcting unsafe conditions, work practices and work procedures in a timely manner based on the severity of the hazard.

On or about 10/23/10, Employer's Program was not effective with respect to correction of hazards, in that the methods and procedures for correcting the hazards posed by violent individuals to employees were not implemented:

1. Employer, through its Safety & Security Committee Meetings, was made aware of the felonious and threatening behavior exhibited by individuals allowed outside on the grounds of the Secure Treatment Area. However, it failed to address the hazard, as it did not implement the requirements of its own Policy in restricting and/or issuing grounds passes to individuals, based on their previous behavior and history of violations of the rules.

2. Employer was aware of the hazard posed by one of these individuals because of his recent history of aggressive behavior, illegal drug usage, and stalking, and made no reasonable effort to protect the employees against the hazard by allowing this individual to maintain his grounds pass without restriction, with no supervision, in a totally unstructured environment. As a result, on 10/23/10, an employee was killed by this individual out on the grounds.

Date By Which Violation Must be Abated: 04/25/2011
Proposed Penalty: \$ 7000.00

Terese Kathy Turner

Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.