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March 28, 2014

Steve Smith  
Amalia Neidhardt  
Cc: Deborah Gold  
Division of Occupational Safety and Health  
Cal-OSHA  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

Dear Mr. Smith and Ms. Neidhardt:

The Center for Public Interest Law (CPIL) respectfully submits the following preliminary comments on OSB's draft language in response to Petition 526, concerning an injury prevention program for housekeepers in the hotel and hospitality industry.

CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For 33 years, CPIL has studied and monitored California agencies that regulate business, professions, and trades, including Cal-OSHA's Occupational Safety and Health Standards Board (OSB). CPIL's expertise has long been relied upon by the Legislature, the executive branch, and the courts where the regulation of licensed professions is concerned. For example, after numerous reports of problems at the Medical Board of California's (MBC) enforcement program were published in 2002, the Director of the Department of Consumer Affairs appointed CPIL's administrative director to the position of MBC Enforcement Monitor. Over a two-year period, the Enforcement Monitor directed an in-depth investigation and review of MBC's enforcement and diversion programs. In two exhaustive reports,<sup>1</sup> we made 65 concrete recommendations to strengthen the Board's enforcement program. Several pieces of reform legislation (SB 231 in 2005, SB 1438 in 2006, AB 1127 in 2011) have been enacted, mirroring many of our recommendations. CPIL has worked in "enforcement monitor" positions at other California agencies, including the State Bar of California and the Contractors' State License Board.

After the advisory meeting on February 27, 2014, CPIL has reviewed the draft language, incorporated insightful and helpful comments made during the meeting, and has the following comments and recommendations:

1. Although the title of the safety program in (c) is "Housekeeping musculoskeletal injury prevention program," there does not appear to be a great emphasis on "prevention" in the draft language. The program is required to analyze potential hazards arising from common housekeeping activities, and then investigate injuries that occur to determine why they occurred. This draft rule should require employers to focus on preventing injuries before they occur. At the very least, CPIL suggests that (c)(4) be amended to read: "Methods and/or procedures for correcting hazards identified in the job hazard analysis *so as to prevent workplace injury.*"
2. There is little mention of injury prevention until *after* an employee has been injured. Other regulations require the use of equipment and procedures before an injury takes place. For example, OSB's regulations on fall protection, sections 1670 and 1671, require the use of certain

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<sup>1</sup> Julianne D'Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board Enforcement Program Monitor* (Nov. 1, 2004); Fellmeth and Papageorge, *Final Report of the Medical Board Enforcement*

safety harnesses or nets, and OSB's regulation on occupational noise, section 5098, requires that employers provide ear protection in certain conditions. At the minimum, CPIL believes that steps should be taken to prevent injuries from occurring in the first place. The original petition of UNITE HERE! contains several excellent recommendations. CPIL recommends including subsections addressing injury prevention through:

- a. Safe bed making practices, including the elimination of excessively heavy duvets and tight-fitting pillows.
  - b. Requiring safe cleaning practices for bathrooms and guestrooms, requiring the use of long handled and/or appropriate tools. CPIL recommends that the regulation require that tools must be provided by the employer, and specify the kinds of tools to be made available to the employee, including the length of the handle of the tools.
  - c. Safe workload and requirements for work pacing, including reasonable limits on the number of rooms to be cleaned in a single shift. These limits should recognize the difference in workload between "checkout rooms" and "stayover rooms," as described in the original petition.
  - d. Safe linen and supply carts, such as lightweight or motorized carts.
3. The draft language includes sections that are similar to the existing Injury and Illness Prevention Program, section 3203, and OSB's ergonomics regulation, section 5110. Duplication of these regulations may cause problems for the Office of Administrative Law when reviewing for necessity, duplication, and consistency. To justify this regulatory scheme, CPIL recommends including findings about the incidence of injuries to hotel housekeepers to justify the separate regulatory scheme. Sources for findings may be found in UNITE HERE!'s original petition, especially in the footnotes on page 17.
  4. Subsection (c)(2)(C) requires an employer to assess injury risks related to specified factors. CPIL submits that other factors should be considered: (1) the weight of the equipment or materials being handled; (2) the number of rooms cleaned per shift; (3) the distance traveled; and (4) the temperature of the workplace.
  5. Subsection (c)(3) outlines the process of investigating injuries to housekeepers, including several specified tasks. CPIL believes that an employer should also be required to analyze and identify whether other housekeepers have been injured while performing the same task.
  6. Subsection (b) contains only two definitions. This is much less than other regulations of a similar nature, such as the proposed Safe Patient Handling Standards, new section 5120, which includes sixteen definitions, or the Heat Illness Prevention Regulation, section 3396, which includes eight definitions. CPIL suggests that more specific definitions be included. Terms that should also be defined include: "musculoskeletal injury"; "Injury and Illness Prevention Program"; "acute trauma"; and "tools".
  7. The definition of "musculoskeletal injury" should include trauma related to slips and falls.
  8. The committee mentioned in subsections (c)(2)(A), (c)(4)(A), (c)(6), and (c)(7) should have at least an equal number of affected employees (that is, hotel housekeepers or room attendants) as hotel management, because neither this section, nor section 3203(a)(3), nor section 3203(c)

requires that composition. Additionally, committees should be required to meet the provisions set forth in Section 3203(c).

9. Section (c)(2)(E) does not include a timeframe for the first job hazard analysis. CPIL recommends that the first job hazard analysis be completed within 90 days of the effective date of the regulation.
10. The draft regulation contains a “Non-Mandatory Appendix.” CPIL has monitored 27 other agencies’ rulemaking process for 33 years, and has never seen this. The OSB memo *Personal Protective Devices—Hazard Assessment and Equipment Selection—HORCHER* (2010) suggests that a non-mandatory appendix “is intended to provide compliance assistance for employers and employees.” CPIL suggests that this be defined within the language of the regulation.
11. Other OSB regulations, for example, section 3395, link to comprehensible posters and brochures aimed at educating employees about their rights and responsibilities. CPIL suggests that the regulation contain a “Mandatory Appendix” that links to a poster and brochure, and that employers be required to both post the poster within the workplace and provide brochures to employees.

Thank you for your consideration of these comments. Please see the attached Appendix for an example of these changes incorporated into the language of the regulation.

Sincerely,



Andrew Hamilton  
CPIL Intern

## Appendix

1. **Scope and Application.** This Section shall apply in all hotels, motels and other lodging establishments when employees are performing housekeeping activities.

NOTE to subsection (a): This section does not preclude the application of other sections of Title 8, including but not limited to Sections 3203 and 5110, to housekeeping activities in lodging establishments.

2. **Definitions.**

- (A) **Housekeeping** means cleaning, tidying, stocking, and preparation tasks or activities such as changing linen, making beds, dusting, vacuuming, cleaning bathrooms, mirrors, floors and other surfaces, moving furniture, using linen carts or cleaning tools (e.g. mops, scrubbing tools) and disposing of trash.
- (B) **Lodging establishment** means an establishment that contains sleeping room accommodations that are rented or otherwise provided to the public, such as hotels, motels, resorts, and bed and breakfast inns. Lodging for the purposes of this regulation does not include long term and licensed accommodations such as hospitals, nursing homes, prisons, jails, homeless shelters, boarding schools, worker housing and single family dwellings.
- (C) **Musculoskeletal injury** means injury or disorder of the muscles, tendons, ligaments, joints, nerves, blood vessels or related soft tissue including a sprain, strain and inflammation, that may be caused or aggravated by work or slips or falls.<sup>1</sup>
- (D) **Acute trauma** means injury or wound to a living body caused by a sudden, one-time application of force or violence.<sup>2</sup>
- (E) **Safe housekeeping practices** means processes that use a combination of hazard controls such as engineering and administrative controls including, but not limited to, safe housekeeping equipment; safe work practices; safe work loads; and work organization methods to reduce musculoskeletal and other injuries as a result of hotel room cleaning.<sup>3</sup>
- (F) **Safe housekeeping equipment** includes adjustable long-handled cleaning tools such as mops, scrubbers and dusters; fitted sheets; laundry hampers on wheels; motorized carts; carts with adjustable-height shelves in carts; ergonomically-designed vacuum cleaners and other equipment that reduces awkward postures, forceful lifting, forceful exertions, and extended reaches.
- (G) **Housekeeping employees** means employees whose assigned tasks includes cleaning guest rooms, or assisting those who clean guest rooms, and includes such job titles as housekeepers, maids, room attendants, guest services attendants, runners, housemen, inspectors and inspectresses.
- (H) **Safe bedmaking practices** means bed making practices that allow for the application and removal of bed linens through the use of neutral body postures by the housekeeping employee or which reduce the need for forceful exertions and extended, awkward postures of the upper and lower extremities, shoulder and/or trunk to perform these actions.
- (I) **Checkout room** means rooms in which the guest staying the prior night has departed or will depart, and which must be cleaned for a new incoming guest.

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<sup>1</sup> Taken from WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA, PREVENTING MUSCULOSKELETAL INJURY (MSI): A GUIDE FOR EMPLOYERS AND JOINT COMMITTEES, at 1 (2009).

<sup>2</sup> Taken from CENTER FOR DISEASE CONTROL AND PREVENTION, *TRAUMATIC INJURY*, <http://www.cdc.gov/niosh/programs/ti/> (last visited Mar. 27, 2014).

<sup>3</sup> Section 3(E-M) is borrowed from Co-petitioner's Peterse/Vossenas UNITE HERE! Proposed Standard January 2012 (Petition 526).

- (J) **Stayover room** means rooms in which the guest staying the prior night has not departed or will not depart during the ensuing day.
  - (K) **High hazard room** means rooms that due to the size and purpose of the room contain additional hazards than a standard guest room with a king-size bed, e.g. a room with two double beds or suites that include additional furniture such as sofa beds or additional square footage that contains kitchens, extra bathrooms, floor space or patios all of which require extra work.
  - (L) **Unsafe bedmaking practices** means the use of forceful exertions and extended, awkward postures of the upper and lower extremities, shoulder and/or trunk to remove or apply bed linens to beds. It also includes stylistic practices that result in the aforementioned hazards such as tucking duvets beneath the mattress instead of allowing them to hang freely off the bed.
  - (M) **Safe Vacuuming Practice** means that housekeepers will have sufficient time to clean a room that allows them to move furniture first and then vacuum so as to prevent unsafe straining and postures as a result of combining furniture moving tasks with vacuuming tasks. Housekeepers will be trained in the correct postures for use with vacuums and as needed, vacuum models that are ergonomically-designed will be the preferred safe equipment purchased for this task.
3. **Housekeeping musculoskeletal injury prevention program.** In accordance with Section 3203, each employer covered by this section shall establish, implement and maintain an effective, written, musculoskeletal injury prevention program (Program) that addresses hazards specific to housekeeping. The Program may be incorporated into an existing Injury and Illness Prevention Program or may be maintained as a separate program. The Program shall include, at a minimum, all of the following:
- (A) The names and/or job titles of the persons with authority and responsibility for implementing the Program at each individual worksite.
  - (B) Effective procedures for conducting a job hazard analysis for the purpose of identifying and evaluating housekeeping hazards.
    - i. The procedures shall include an effective means of involving housekeepers and/or their representatives in the job hazard analysis. This shall be in the form of a labor/management safety and health committee which must meet the requirements of Section 3203(c), and must include at least as many housekeeping employees as management.
    - ii. The analysis shall address, at a minimum, hazards related to the design, material handling and performance of tasks related to the following housekeeping activities:
      - 1. Bed Making
      - 2. Cleaning, scrubbing and polishing of floors, bathroom and bedroom fixtures and surfaces
      - 3. Supply cart
      - 4. Vacuuming
      - 5. Trash Collection
    - iii. At a minimum, the analysis shall assess injury risk related to the following factors: acute trauma related to slips, trips and falls; prolonged or awkward static postures; extreme reaches and repetitive reaches above shoulder height, torso bending, lifting, kneeling or squatting; forceful pushing and pulling; over-exertion or fatigue related to workload imbalance or inadequate physical (musculoskeletal) recovery between tasks; the weight of the equipment or

materials being handled; the number of rooms cleaned per shift; the distance traveled; and the temperature of the workplace.

- iv. Housekeepers shall be notified of the results of the job hazard analysis in writing.
- v. The job hazard analysis shall be reviewed annually, and updated as necessary. The analysis shall also be reviewed and updated:
  - 1. Whenever the employer becomes aware of a new or previously unrecognized hazard.
  - 2. Whenever new processes, procedures, or equipment are introduced that may increase the hazards identified in subsection (c)(2)(B).
  - 3. Based on an evaluation of the activities, tasks or other workplace factors that have contributed to workplace injuries and illnesses.
- vi. The first job hazard analysis shall be completed within ninety (90) days of the adoption of this regulation.

NOTE to subsection (c)(2): Additional information regarding job hazard analysis can be found in publications listed in Appendixes A and B.

(C) Procedures to investigate musculoskeletal injuries to housekeepers, including all of the following:

- i. The procedures or tasks that were involved in the injury and whether any identified control measures were available and in use.
- ii. If required tools or other control measures were not used, a determination of why those measures were not used, or were not used appropriately.
- iii. The employee's and supervisor's opinions regarding whether any other control measure, procedure, or tool would have prevented the injury.

(D) Include methods and/or procedures for correcting hazards identified in the job hazard analysis. This shall also include procedures for assessing whether identified corrective measures are used appropriately. These procedures shall include:

- i. The procedures shall include an effective means of involving housekeepers and/or their representatives in the job hazard analysis. This shall be in the form of a labor/management safety and health committee which must meet the requirements of Section 3203(c), and must include at least as many housekeeping employees as management.
- ii. The means by which housekeeping tools or other appropriate equipment will be identified evaluated and implemented.
- iii. How sufficient and appropriate housecleaning equipment and tools will be made available to each housekeeper. This shall include procedures for procurement, inspection, maintenance, repair, and replacement of appropriate housecleaning tools and equipment;

(E) Procedures to ensure that supervisory and non-supervisory employees comply with the Program, follow the employer safe workplace housecleaning practices, and use the housekeeping tools or equipment deemed appropriate for each cleaning task.

(F) 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. A labor/management safety and health committee meeting the requirements of Section 3203(c) may be used for this purpose.

(G) Procedures for reviewing, at least annually, the program at each worksite, to determine its effectiveness and make any corrections when necessary. The program shall include an effective procedure for obtaining the active involvement of employees in reviewing and

updating the program. A labor/management safety and health committee meeting the requirements of Section 3203(c) may be used for this purpose.

4. **Injury Prevention.** Notwithstanding subsection (c), the employer shall, at a minimum, comply with the following standards:<sup>5</sup>
- (A) Housekeepers shall not be required to regularly clean more than 5,000 square footage of room space in an eight-hour workday. Square footage refers to the entire square footage of the room, including areas beneath beds and furniture, as measured by the perimeter dimensions of the room. For any room cleaner working less than eight full hours per day, this maximum floor space shall be prorated evenly according to the actual number of hours worked. When a room cleaner is assigned in an eight-hour workday to clean any combination of seven or more checkout rooms or rooms with additional beds such as cots or rollaways, this maximum floorspace shall be reduced by 500 square feet for each such checkout or additional bedroom over six.
  - (B) Housekeepers shall not be required to clean bathroom floors, toilets, walls and other bathroom surfaces in a stooped, kneeling, extended reach, or other awkward body position. Appropriately designed safe housekeeping equipment shall be available for use at all times.
  - (C) Housekeepers shall not be required to stand on any uneven surface to perform cleaning tasks, including tub rims, sink tops or toilets. Appropriately designed safe housekeeping equipment shall be available for use at all times.
  - (D) Housekeepers shall not be required to clean guest room walls, mirrors, headboards, and other surfaces in a stooped, kneeling, extended reach, or other awkward body position. Appropriately designed safe housekeeping equipment shall be available for use at all times. Safe vacuuming practices will be applied at all times.
  - (E) Housekeepers shall not be required to lift bed mattresses in a trunk-twisted or other awkward body position. Adequate clearance between the side of the bed and other surfaces such as walls and furniture shall be maintained to eliminate such practice.
  - (F) A fitted sheet shall be used in lieu of a flat sheet as the bottom sheet on all mattresses.
  - (G) Housekeepers shall not be required to use unsafe bedmaking practices in order to complete their room quota. Unsafe bedmaking practices include the use of forceful exertions and extended, awkward postures of the upper and lower extremities, shoulder and/or trunk to remove or apply bed linens to beds. It shall be the sole responsibility of the hotel employer and its managers, supervisors, and housekeeping supervisors to ensure that safe bedmaking practices are in use. A safe bedmaking practice includes that bed linens should be regularly laid on the bed and pulled towards the edge of the bed rather than regularly shaken out using hands and arms. Bed linens should be removed in a similar process by having the linens removed from one side of the bed by worker standing at same side of the bed, then walk to the opposite side of the bed and remove the linens and finish by standing at the foot of the bed to gather up the linens in a bundle while maintaining neutral postures. This prevents the unsafe practice of standing at one side of the bed and over reaching by the trunk and arms using forceful movements to tug the sheets off the bed.
  - (H) Duvets and comforters (or similar top covering) shall not be shaken out but shall be placed on the bed and unfolded. Duvets, comforters (or similar top covering) and top sheets shall be allowed to hang off the sides of beds and shall not be tucked beneath the mattress

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<sup>5</sup> Section 4(A-K) is borrowed from Co-petitioner's Peterse/Vossenas UNITE HERE! Proposed Standard January 2012 (Petition 526).

- (I) Pillows shall not be encased in tight-fitting pillow cases where more than minimal force is required to remove the pillow from the case or to insert the pillow into the case. Pillow cases shall be sized so that pillows are easily removed and inserted into the case.
  - (J) Motorized or self-propelled linen carts shall be provided. Linen carts shall be kept in good working condition to ensure that wheels function properly with adjustments made for traversing carpeting. Linen carts shall include adjustable shelves.
  - (K) Housekeepers shall not be required to move heavy furniture by oneself such as armoires, sofa beds; instead teams of two shall perform the move and where possible, safe lifting techniques and appropriate moving equipment such as dollies and/or addition of coasters or rolling wheels placed on bottom of furniture shall be utilized with proper training provided before use.
5. **Training.** The employer shall provide training to housekeeping employees and their supervisors, in a language easily understood by employees.
- (A) Frequency of training. Housekeeping employees and their supervisors shall be trained on the topics covered in subsection (d) (2) as follows:
    - i. Initial training shall be provided when the program is first established; to all new employees and supervisors, and to all employees given new job assignments for which training has not been previously received;
    - ii. At least annually thereafter.
    - iii. Employers shall provide additional training when new equipment or work practices are introduced. The additional training may be limited to addressing the new equipment or work practices.
  - (B) Training shall include at least the following elements as applicable to the employee's assignment:
    - i. The elements of the employer's program and how the written program will be made available to employees.
    - ii. The process for reporting concerns regarding equipment availability, condition, storage, and maintenance.
    - iii. Body mechanics and safe practices including: identified hazards at the work place, how those hazards are controlled during each task, the appropriate use of cleaning tools and equipment, the importance of using these practices in order to prevent injuries, and the importance of reporting symptoms and injuries to the employer.
    - iv. In addition to the training described above, managers and supervisors shall be trained on how to identify hazards, the employer's hazard correction procedures, how defective equipment can be identified and replaced, how to obtain additional equipment, how to observe housekeepers' practices and how to effectively communicate with housekeepers regarding any problems needing correction.
6. **Records.**
- (A) Any measurements made in the course of the job hazard analysis shall be recorded. Those records shall be maintained and made available as employee exposure records in accordance with Section 3204.
  - (B) Records of the steps taken to implement and maintain the Program shall be created, maintained and made available in accordance with Section 3203(b).
  - (C) Records required by Division 1, Chapter 7, Subchapter 1, Occupational Injury or Illness Reports and Records, of these orders shall be created and maintained in accordance with those orders.
  - (D) A copy of the Program shall be available at the worksite for review and/or copying by employees and their representatives in accordance with Section 3204(e)(1)(A).

(E) All records shall be made available to the Chief or designee within 72 hours of request.

**Appendix A (Mandatory) Reference Materials to be Posted**

1. Every employer shall keep the following documents posted next to the IWC Industry or Occupation Order or, if impossible or impracticable, in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions makes these locations impractical, every employer shall keep a copy of this order and make it available to every employee upon request. Posters must be made available in English and Spanish.<sup>7</sup>
  - a. A copy of the following poster:
    - i. English: [https://www.osha.gov/dte/grant\\_materials/fy10/sh-20998-10/Housekeeper\\_Ergo\\_Handout-English.pdf](https://www.osha.gov/dte/grant_materials/fy10/sh-20998-10/Housekeeper_Ergo_Handout-English.pdf).
    - ii. Spanish: [https://www.osha.gov/dte/grant\\_materials/fy10/sh-20998-10/Housekeeper\\_Ergon\\_Handout\\_Spanish.pdf](https://www.osha.gov/dte/grant_materials/fy10/sh-20998-10/Housekeeper_Ergon_Handout_Spanish.pdf).
  - b. The same poster shall be made available as brochures or handouts, with a number equal to one copy for every covered employee.

**Appendix B (Non-Mandatory) Reference Materials for Job Hazard Analysis**

1. The following are examples of materials that can be used in performing a job hazard analysis for housekeeping.
2. Ohio State University, Ergonomic Resources for Housekeeping, [https://www.osha.gov/dte/grant\\_materials/fy10/sh-20998-10.html](https://www.osha.gov/dte/grant_materials/fy10/sh-20998-10.html).
3. State Fund, Tips for Hotel Room Attendants, <http://www.statefundca.com/safety/ErgoMatters/RoomAttendants.asp>.
4. Department of Industrial Relations, Working Safer and Easier for Janitors, Custodians and Housekeepers, 2005, [www.dir.ca.gov/dosh/dosh\\_publications/janitors.pdf](http://www.dir.ca.gov/dosh/dosh_publications/janitors.pdf).

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<sup>7</sup> Taken from the Industrial Wage Orders and Minimum Wage Orders of the Industrial Wage Commission.