

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 10, Section 3400
of the General Industry Safety Orders

Medical Services and First Aid**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING
FROM THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons.

Summary and Responses to Written and Oral Comments:**I. Written Comments**

Joel Cohen, President, The Cohen Group, by letter dated January 30, 2009.

Comment # JC1: Section 3400, subsections (d) and (e) are not shown in the proposed version of the regulation. It is not clear if these subsections have been deleted or not.

Response: For proposed changes to existing regulations, the Board reprints in the public notice only those subsections that are proposed for alteration, plus any other subsection necessary for clarity. Typically, most of a regulation's subsections that are not proposed for revision are omitted from the public notice for purposes of conserving space. The still extant, but omitted subsections, are indicated in the public notice by starred ellipses (*****), as was done in the public notice for this rulemaking. Subsections (d) and (e), therefore, continue to exist.

Comment # JC2: This rulemaking involves the requirements of employers to prepare for medical emergencies, what most call "first aid", which by definition primarily involves stabilization of a victim for subsequent medical care. First aid is not considered regular medical services, so subsection (f) is confusing in its use of the term "prompt medical treatment".

Response: Considered in its entirety and, as its title indicates [Medical Services and First Aid], Section 3400 has always addressed these two related issues—the provision of first aid for minor injuries and the mechanism for ensuring that more serious injuries receive appropriate medical attention beyond first aid. Subsection (f) in its current form addresses the latter need, but

restricts the application to “isolated locations.” Existing subsection (f) states “provisions must be made in advance for prompt medical attention.” The consensus of the advisory committee was that “medical treatment” was more modern terminology, conveying the meaning of the requirement better than the term “medical attention,” but the concept of arranging for the delivery of medical care beyond first aid clearly resides in the current language of the subsection. Extending this obligation to *all* employers is the central aspect of the proposed change. Since subsection (f) already contains the idea of prompt provision beyond first aid medical treatment, the Board does not agree that the proposal is confusing.

Comment # JC3: Proposed subsection (f) is confusing and conflicts with Section 3400 subsection (a), which implies the need for medical care, and subsection (b), which offers options for how that medical care may be rendered (e.g., clinic, hospital, etc), by stating the employer must provide for “medical treatment.” It is unclear if the options for arranging for such medical treatment are, or are not in addition to those advanced in subsection (b).

Response: Neither the current wording of subsection (f) nor proposed changes to subsection (f) conflict with the provisions of subsection (a) or subsection (b). The proposed changes extend to every employer the necessity of advance planning currently required only of employers with work sites at isolated locations. At present, the regulation gives employers with isolated locations a number of options to ensure appropriate medical care will be delivered *in the event a serious injury occurs*. The proposed changes extend the very same options to all employers. Although, providing a medical clinic at the location is one option available to an employer, employers are by no means required to choose this alternative. Other options provide mechanisms for ensuring the delivery of care, such as the 911 system, that are more commonly utilized by employers. The proposed changes do nothing to change this practice.

Comment # JC 4: Section 3400 already contains undefined and confusing terms, such as the phrase, “near proximity” found in subsection (b). The proposal adds another nebulous term, “prompt” used in defining the speed that medical treatment (not first aid) is to be rendered. Mr. Cohen encourages deleting the term “prompt” wherever used.

Response: As noted in the response to comment # JC2, the term “prompt” currently exists in subsection (f), so it can not be said that a new term is being proposed. While it is true that the precise meaning of the term in the existing regulation is often contested or subject to differing interpretations, delivery of medical services in the working world is far too complex to be amenable to specification of a particular time limitation that applies to all circumstances and all types of injury. Yet deleting the word “prompt” as the commenter suggests, would be an error, because speedy delivery of medical care is crucial to the successful treatment of many serious injuries. This being the case, inclusion of “prompt” in the language provides important guidance to employers. The Advisory Committee considered the potential for differing interpretations of this word, and decided to add the word “effective” as a modifier. Under the proposal, satisfactory “promptness” of delivery of medical treatment would be assessed by a consideration of its effectiveness for the types of injury and circumstances that are reasonable to anticipate for a particular work site. The Board therefore declines to make the recommended change to the proposal.

The Board thanks Mr. Cohen for his comments and participation in the rulemaking process.

Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, Region IX, by letter dated February 20, 2009.

Comment # KNA1: Federal OSHA indicated it had reviewed the proposed changes and updates for the requirements for medical services and first-aid. It concluded that the proposed changes provide protection at least as effective as the federal standard.

Response: The Board thanks Mr. Nishiyama Atha and Federal OSHA for their input and for their participation in the rulemaking process.

Sheehan Gillis, EMT-P, EMS Coordinator, Oakland Fire Department, by letter dated March 15, 2009, and by email dated May 6, 2009, correcting the reference of 3395 to 3400.

Comment # SH1: Mr. Gillis supports the suggested revisions to Title 8.

Response: The Board thanks Mr. Gillis for his support and participation in the rulemaking process.

Comment # SH2: Mr. Gillis had three suggested revisions to Section 3400: 1) that on-site medical treatment facilities be subject to approval by the Local EMS Authority, 2) that appropriate means to transport injured or ill employees to a medical treatment facility be subject to approval by the Local EMS Authority, and 3) that a communication system to summon off-site medical services involve no more than two links in the chain of communication and a delay of no more than one minute in accessing the dispatcher(s) of off-site medical service (911).

Response: The Board lacks the regulatory authority to establish new duties for Local EMS Authorities, which come under the jurisdiction of the state Emergency Medical Services Authority. Additionally, although some employers may find it practical, useful, or in some cases even necessary, to have their advance emergency medical services plan reviewed by the Local EMS Authority, it would not be practical for every employer in the state to request such a review. Most employers should be able to establish effective plans with minimal reliance on outside approval systems. Subsection 3400(f) is structured as a performance standard, in which each employer's compliance must be judged in its own context. One part of the commenter's third suggestion would transform the subsection into a specification standard that limits the time for accessing dispatchers to one minute. While this timeframe may be a fine goal for the reasons stated by the commenter, and a possible metric for determining "effectiveness" it may not always be a measure to apply to all circumstances. The other part of the commenter's third suggestion is not a necessary addition. No example of an emergency medical services contacting system involving more than two steps was brought forward by the Advisory Committee or the commenter, and in any case, such a system could be adequately evaluated via the performance orientation of this subsection. Therefore the Board declines to adopt the suggested changes.

Richard Harris, President, Residential Contractors Association, (RCA) and Kevin Bland, California Framing Contractors Association (CFCA), and Bo Bradley of the Associated General Contractors of California(AGC) by identical letters dated March 17, 2009.

Comment # RHKBBB1: The RCA, CFCA and AGC support the proposed changes to Section 3400(b), the substitution of “its employees” for “workmen” in subsection (c) and the revisions proposed for subsection (f). The commentors propose the following amendment to subsection (c), indicated by double strike out and bold:

(c)There shall be adequate first-aid materials, **as recommended in ANSI Z308.1**
~~approved by the consulting physician,~~ readily available for ~~workmen~~ its employees on every job...

All organizations feel that referring to ANSI, rather than requiring a consulting physician, better meets the safety needs, requirements and intent of the standard.

Response: Amendment of Section 3400(c) by substituting the ANZI for the “consulting physician” provision is beyond the scope of this rulemaking. The Board requested that this issue be further considered by the Division, and a future rulemaking proposal addressing this issue might be submitted to the Board for consideration.

The Board thanks the RCA, CFCA and AGC for their support and participation in the rulemaking process.

II. Oral Comments:

Oral comments received at the March 19, 2009, Public Hearing in Costa Mesa, California.

Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable.

Comment # ET1: Ms. Treanor suggested the inclusion of a training requirement in subsection (f).

Response: While the Board agrees that employees must be trained in how to summon emergency medical treatment, inserting a training requirement in Section 3400(f) is unnecessarily duplicative. Section 3203(a)(7) requires employee training on all important safety matters such as summoning emergency services. Additionally, there is Section 9880 of Title 8, a Workers Compensation requirement that written notice be given to new employees on how to get emergency medical treatment.

The Board thanks Ms. Treanor for her comments and participation in the rulemaking process.

Dr. Jonathan Frisch, Board Member

Comment #1: Dr. Frisch asked why the discussion at the Advisory Committee about posting of alternative emergency communication methods from dialing 911 is not reflected in the proposal

before the Board. He expressed concern that if 911 is blocked on an employer's phone, instructions for use of an alternate method of summoning emergency assistance should be posted.

Response: Posting of alternative emergency communication methods was not part of the written petition that had been submitted. At a subsequent time, the petitioner had discussed the subject of posting this information in a phone conversation with a member of the Board staff. At the Advisory Committee meeting in November, 2006, when the issue of posting of alternative communication methods was raised, the Division reminded the body of the Board's August 17, 2006 instruction to limit the scope of the advisory body to the issues presented in the petition. Therefore, the Advisory Committee did not further pursue the issue of posting of information, pursuant to the Board's direction. Additionally posting of this type of information is already a requirement of Title 8, Section 9881, a workers compensation provision. Furthermore, the requirement in the proposal that the employer measures must be *effective* presupposes that employees are adequately informed of the employer's procedures either by posting or other equally effective means. Also, see the response to comment # ET1.

Comment #2: Dr. Frisch stated that the proposal contains terms that are open to interpretation, such as "prompt medical transport" and "avoiding unnecessary delay." Dr. Frisch asked whether there was a clear, general understanding of the definitions of those terms. He asked whether it was the intention of the standard to hold the employer to a higher standard than that provided by 911 services.

Response: It is not the intention of the standard to hold the employer to a higher standard. The terms mentioned are existing terms of art that have been in both the California standard and the federal standard for some time, and the terms are understood and accepted by regulated public, as shown by the Advisory Committee's acceptance of such language.

Comment #3: Dr. Frisch asked for an explanation of the three to four-minute response time issue and expressed concern about unintended consequences, as it is his belief that the proposal could be interpreted to be broadening the standard to all locations, rather than just isolated locations. The response time question had been tangentially mentioned by the Division during the Advisory Committee meeting, but was not a part of the petition.

Response: As the Initial Statement of Reasons states, the proposal *does* extend to all employees the requirement to make *effective advance* preparations for medical emergencies. However, the proposal does *not* require typical urban employers to make the same kind of advance arrangements that are often necessary for an employer at an isolated location outside the range of service of existing emergency medical response agencies or organizations. The proposal requires that every employer select one or a combination of the specified methods that will effectively deliver emergency medical services to the job site. There was complete advisory committee agreement that it was a reasonable expectation for all employers to meet this obligation.

As to the specific question of three or four-minute response time, this proposal does not address it any differently than does the existing language. This timeframe aspect of the employer

obligation is not addressed directly in any Cal/OSHA regulation. When the heart has stopped as a result of severe injury or electric shock, CPR can prevent brain injury and death until emergency medical service arrives. This course of action is what is addressed by the popularly designated “three or four minute rule,” which is a guideline popularized by the medical and first aid communities, not an actual regulation.

Comment #4: Dr. Frisch stated that the proposed language seems to apply to the response time rather than the phone call.

Response: The term “effective provision shall be made” is a reference to 911 services or the equivalent. Rather than focusing on response time, the proposal shifts the focus to the effectiveness of the whole system for providing emergency medical services.

Comment #5: Dr. Frisch asked if the employer has to provide other emergency care if 911 cannot provide a three to five-minute response time.

Response: An alternate, equally effective method of summoning emergency care is one of the two remaining alternatives that the employer must utilize if the employee was unable to dial 911 from the work location.

Comment #6: Dr. Frisch indicated that more attention should be given to Petition File No. 483 while, sufficient consideration had been given to Petition File No 481.

Response: See the responses to comments # JAS1 and JAS2.

Mr. Willie Washington, Board Member

Comment #1: Mr. Washington asked if having an alternate method of summoning emergency care would in any way relieve the employer of having an employee trained in first aid on site.

Response: The trained employee requirement is in a different subsection from the 911 or equivalent requirement; so it would not override the requirement to have a first aid kit and somebody trained to render first aid.

Mr. John MacLeod, Board Chairman

Comment #1: Mr. MacLeod asked whether the proposal would create any overlap or duplication with existing standards.

Response: While there are other first aid standards that might apply to specific industries such as construction and agriculture, the proposal would not overlap or duplicate those standards.

Comment #2: Mr. MacLeod asked whether the practice of blocking 911 was a common practice among employers.

Response: Employers that have operational reasons for blocking 911, such as prisons and schools, have alternative means of accessing 911.

Comment #3: Mr. MacLeod stated that the cited examples of prisons and schools are institutional, and asked whether there are places of employment outside of institutions where 911 is blocked.

Response: There are employers that deliberately modify their telephone system, such as a large campus, to ensure that their security department is between the caller and 911.

J. Alan Schumann.

Comment # JAS1: Mr. Schumann, the author of Petition File No. 481, stated that the decision to close Petition No. 481 is premature, and the provision of first aid instructional materials should receive further consideration.

Response: Petition No. 481 regarding instructional materials in first aid kits is beyond the scope of this rulemaking. The Board notes that there is nothing in the existing standard to preclude an employer from including instructional materials in their first aid kits.

Comment # JAS2: Mr. Schumann stated that the decision to close Petition No. 483 is premature. Physician approval of first aid kits should receive further consideration.

Response: Petition No. 483 regarding physician approval of first aid kits is beyond the scope of this rulemaking. The Board requested sending this issue back to the advisory committee for further review.

The Board thanks Mr. Schumann for his comments and participation in the Board's rulemaking process.

Kevin Bland, representing the California Framing Contractor's Association, Residential Contractors Association, and on behalf of Bo Bradley of the Associated General Contractors of California.

Comment # KB1: Mr. Bland spoke in support of mandated compliance with the ANSI Z308.1, Minimum Standards for Workplace First Aid Kits, (ANSI Z308.1) as opposed to physician-approved supply lists.

Response: Amendment of Section 3400(c) by substituting the ANZI for the "consulting physician" provision is beyond the scope of this rulemaking. At the Board's request, this issue will be further considered by the Division and if appropriate, submitted to the Board for consideration in the future.

The Board thanks Mr. Bland for his comment and participation in the Board's rulemaking process.

Bruce Wick, Director of Risk Management for the California Professional Association of Specialty Contractors; Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable; and Steve Johnson, Director of Safety and Compliance Services for the Associated Roofing Contractors of the Bay Area Counties, Inc.

Comment # BWETSJ1: These commenters stated they supported Mr. Bland's remarks.

Response: See response to comment #KB1.

The Board acknowledges Mr. Wick's, Ms. Treanor's and Mr. Johnson's support for Mr. Bland's oral comments and appreciates their participation in the Board's rulemaking process.

Steve Johnson, Director of Safety and Compliance Services for the Associated Roofing Contractors of the Bay Area Counties, Inc.

Comment # SJ2: Mr. Johnson suggested that basing the supplies required on the number of employees is impractical and confusing.

Response: Mr. Johnson's comment is based on Petition 483. This matter is beyond the scope of this rulemaking. At the Board's request, this issue will be further considered by the Division and if appropriate, submitted to the Board for consideration in the future.

Mr. Jack Kastorff, Board Member

Comment # JK1: Mr. Kastorff asked why the supplies required in a first aid kit vary by the number of employees. He stated that varying requirements are confusing and that it is difficult for employers to know what is supposed to be in the first aid kit.

Response: This matter is beyond the scope of this rulemaking. At the Board's request, this issue will be further considered by the Division and if appropriate, submitted to the Board for consideration in the future.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.