

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address: www.dir.ca.gov/oshsb

**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 518)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on October 12, 2010, from Laura Hammes, Retired Judge (Petitioner). The Petitioner requests the Board to adopt a new regulation limiting intern and resident physician work hours in California as follows: 1) A limit of 60 hours of work in each and every week, without averaging; and 2) A limit of 12 consecutive hours worked in one shift for all resident physicians and subspecialty resident physicians.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

SUMMARY

The Petitioner is a retired Superior Court Judge who says she has contact with resident doctors that have confirmed her own research regarding extensive working hours in hospitals which she refers to as "abusive." The Petitioner stated that resident doctors work grueling hours under constant stress for 24 to 30 hours at a stretch, on their feet, up to 120 hours per week. Too many residents are depressed and between patients and paperwork, do not have time for personal care such as taking showers, brushing their teeth, or changing of clothes. The Petitioner further notes that residents are unable to give sufficient time or care to their families and pregnant residents are subject to low weight babies resulting from extensive hours worked. The Petitioner stated that repeated studies have shown that exhausted residents pose a serious danger to themselves as well as other drivers on the road from motor vehicle accidents related to sleep deprivation.

The Petitioner noted that on September 2, 2010, a coalition of advocacy groups¹ petitioned federal OSHA for a new regulation limiting the hours required of resident physicians. This Petition to federal OSHA sought limitations on resident duty hours that were somewhat different from those suggested by Ms. Hammes.

¹ One of those groups, Public Citizen, a consumer and health advocacy group, has posted a copy of its September 2, 2010, 43 page petition to federal OSHA on its website at <http://www.citizen.org/documents/1917.pdf>.

DIVISION'S EVALUATION

The Division's evaluation report dated January 13, 2011, states that sleep deprivation is a huge issue for many more work activities than those of medical interns and residents. It is not an area that the US Department of Labor, Occupational Safety and Health Administration (OSHA) has traditionally addressed, and whether and how it gets addressed as an occupational safety and health issue should be approached very carefully. There are other significant regulatory entities that can address and are addressing this issue, primarily because of the close connection between the impact on workplace safety and health and on the general public. What role the Division and other OSH agencies should play is something that should be the subject of further discussion before any action is taken to bring OSH rulemaking into the mix.

The research on sleep deprivation of medical residents shows that there are potential adverse effects on their and their patients' health and safety when they reach a significant state of sleep deprivation. This effect has not been sufficiently researched to provide clear evidence on how to define acceptable limits of sleep deprivation or measures to mitigate it.

There has been sufficient public concern over the issue to result in congressional investigation and a response from the Institute of Medicine (IOM) that acknowledges the issue and recommends guidelines intended to mitigate the effects of long shifts and reduced sleep. The Accreditation Council for Graduate Medical Education (ACGME) has made significant changes to the standards they promulgated in 2003 and will be implementing those changes in July of 2011.

The fact that ACGME has not fully adopted the recommendations of the IOM is an issue that should be monitored by the IOM and others with oversight of medical training and practice. Since these guidelines and requirements have not been implemented, their impact cannot be assessed yet. The petition seeks restrictions significantly exceeding the limits that would be imposed by the ACGME requirements. The petitioner did not provide specific evidence as to how the proposed limits were derived or in what ways they would be more protective other than the obvious effect of allowing residents and interns to have more rest.

In conclusion, there does not appear to be any independent basis to address sleep deprivation in the context of medical interns and residents as an occupational issue separate and distinct from the patient care issue, which will likely continue to draw significant review. Absent such an independent basis, the Board should deny the petition without prejudice and revisit it only if OSHA initiates rulemaking or if the Division's interactions with stakeholders lead to discussions that identify a compelling reason to take up the issue as a matter of rulemaking.

STAFF'S EVALUATION

Board staff prepared an evaluation dated January 18, 2011, which states that current work standards adopted by ACGME include 1) an 80-hour work week averaged over 4 weeks, including in-house calls and 2) a maximum onsite work shift of 24 hours with up to 6 additional hours of educational or patient transfer related activities, which has been interpreted as a 30-hour duty shift.

In 2008, IOM issued a report entitled "Resident Duty Hours; Enhancing Sleep, Supervision and Safety." The IOM report was the product of a year-long review by a panel of experts charged with examining the existing system of medical training, fatigue, resident physicians and patient safety. The IOM study recommended no change with respect to the 80-hour work week, averaged over 4 weeks. However, the study recommended a maximum shift length of 16 hours. If a training program continued with 30-hour shifts, it must provide a mandatory 5-hour protected sleep period between 10 p.m. and 8 a.m. with no new patients admitted after 16 hours.

On September 28, 2010, ACGME published its final revised standards regarding duty hours to become effective in July, 2011, which are the result of a comprehensive review of duty hour standards and resident supervision and safety performed by an ACGME Task Force. ACGME's new standards will make no change to the existing resident doctor 80-hour work week, averaged over 4 weeks; however, duty periods for first year (intern) resident doctors must not exceed 16 hours. Duty periods for program year two and above resident doctors will permit a maximum of 24-hours of continuous duty in the hospital with an additional 4-hour period to provide for education and patient transition care.

In Petition No. 518, the Petitioner recommends a limit of 60 hours of work each week, without averaging, and a limit of 12 consecutive hours worked in one shift for all resident physicians. These recommendations are more stringent than those recommended in the current federal OSHA petition, the IOM study and the new standards to be implemented by ACGME in 2011. However, Petition No. 518 does not provide justification or data as to why California should be substantially more stringent than what other medical agencies and organizations have recommended.

The issue of defining appropriate limits for work duty hours of resident doctors has long been debated within the medical industry, and achieving medical industry consensus on this issue has been an ongoing challenge. Most studies conclude that long, extensive hours worked without sufficient rest and sleep periods can result in fatigue, lack of concentration and poor performance. Comments and concerns expressed by the Petitioners to federal OSHA and by Ms. Hammes related to Petition No. 518 warrant ACGME's continued monitoring of the effectiveness of its programs and standards.

ACGME indicates it conducts regular site visits and monitoring of accredited agency programs and can shorten accreditation cycles or revoke a residency program's accreditation. ACGME states it is initiating a new program effective in July of 2011 to include unannounced site visits to review the effectiveness in integrating resident education, supervision, fatigue management and duty hours. ACGME not only establishes and monitors limits for resident doctor duty hours; its accreditation standards also relate to educational curriculum and goals, supervision and faculty oversight of care, and assessment of resident competence. It is Board staff's opinion that ACGME is best suited to establish, enforce and monitor resident doctor duty hours as part of its overall accreditation program and is better positioned than Cal/OSHA to solicit and evaluate medical industry comments and opinions that may warrant change or modifications to established standards.

Furthermore, for California, the Industrial Welfare Commission (IWC) is likely the more appropriate agency to evaluate, investigate and/or establish limitations related to working hours for specific occupations in consideration of the health, safety and welfare of those employees. Such Labor Code provisions as Section 1178 pertain to the IWC's responsibilities and authority related to wages, hours and working conditions.

In summary, Petition No. 518 does not provide justification or data as to why California provisions should be substantially more stringent from what other medical agencies and organizations have researched, recommended or established. ACGME has existing standards that address resident doctor work duty hours and is providing revised standards effective in 2011. ACGME is initiating a new program in 2011 to better monitor and review institutional effectiveness in areas that include fatigue management and duty hours. Lastly, the Labor Code indicates that the IWC is an appropriate venue for addressing the health, safety, and welfare of employees for issues related to the hours of employment. For these reasons, Board staff recommends that the Occupational Safety and Health Standards Board take no further action related to this petition and that the petition be denied.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Laura Hammes, Retired Judge regarding intern and resident physician work hours in California. The Board has also considered the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the Petition is hereby DENIED.