

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Fremont District Office
39141 Civic Center Drive, Suite 310
Fremont, CA 94538
Phone: (510) 794-2521 Fax: (510) 794-3889

Inspection #: 1476073
Inspection Dates: 05/22/2020 - 11/23/2020
Issuance Date: 11/23/2020
CSHO ID: T8256
Optional Report #: 012-20



Citation and Notification of Penalty

Company Name: Kaiser Foundation Hospital
Establishment DBA: Kaiser San Jose Medical Center
and its successors
Inspection Site: 250 Hospital Parkway
San Jose, CA 95119

Citation 1 Item 1 Type of Violation: **Regulatory**

Title 8 CCR §342. Reporting Work-Connected Fatalities and Serious Injuries.

(a) Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment. The report shall be made by the telephone or through a specified online mechanism established by the Division for this purpose. Until the division has made such a mechanism available, the report may be made by telephone or email.

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.

Violation:

Employer failed to immediately report to the Division the serious illness suffered by an employee who was hospitalized with COVID-19 for about 7 days starting on March 26, 2020.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$5000.00

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Citation 1 Item 2 Type of Violation: **Regulatory**

Title 8 CCR §5199. Aerosol Transmissible Diseases (j)(4)(C):

(j)Recordkeeping.

(4) Availability.

(C) Employee medical records required by this subsection shall be provided upon request to the subject employee, anyone having the written consent of the subject employee, the local health officer, and to the Chief and NIOSH in accordance with Section 3204 of these orders, Access to Employee Exposure and Medical Records, for examination and copying.

Violation:

Prior to and during the course of the inspection, including, but not limited to May 22, 2020, the employer failed to provide the Medical and Exposure records for an employee who potentially contracted COVID-19 at the work place during the month of March 2020, in response to the request of a representative of the Chief of the Division in accordance with Section 3204 of these safety orders access to.

Date By Which Violation Must be Abated: December 23, 2020
Proposed Penalty: \$375.00

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**Citation and Notification of Penalty**

Company Name: Kaiser Foundation Hospital
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San Jose, CA 95119

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

Title 8 CCR §5199. Aerosol Transmissible Diseases 5199(g)(1)-(2):**(g) Respiratory Protection.**

(1) Respirators provided for compliance with this section shall be approved by NIOSH for the purpose for which they are used.

(2) Each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described in subsection (g)(4) shall establish, implement and maintain an effective written respiratory protection program that meets the requirements of Section 5144 of these orders, except as provided in subsections (g)(5) and (g)(6).

Ref: 5144(h)(1) Maintenance and care of respirators. This subsection requires the employer to provide for the cleaning and disinfecting, storage, inspection, and repair of respirators used by employees. Cleaning and disinfecting. The employer shall provide each respirator user with a respirator that is clean, sanitary, and in good working order.

Violation:

Prior to and during the course of the investigation, including but not limited to May 22, 2020, the employer provided devices, such as N95s, for respiratory protection in compliance with requirements in Section 5199(g), for employees in the Emergency Department with occupational exposure to confirmed or suspected cases of COVID-19. The employer failed to comply with the requirements of this section in the following instances:

Instance 1: Although the furnished devices, were initially approved as N95 respirators by NIOSH, the devices had been subject to processing with a chemical agent after initial use. This processing was not part of the NIOSH approval. The employer issued employees these non-approved devices for protection against inhalation of aerosols potentially containing SARS-CoV-2, the virus that causes COVID-19, an airborne infectious disease; [5199(g)(1), Ref 5144(h)(1)]

Instance 2: During the period of June 15, 2020 through July 10, 2020, the employer re-processed the devices and provided them to employees in the Emergency Department when in areas where respirator use was required for protection against potentially infectious aerosols. The employer did not ensure such devices were in good working order, and that they were at least as effective as a N95 filtering face piece respirator. [5199(g)(2), Ref 5144(h)(1)]

Date By Which Violation Must be Abated:

December 23, 2020

Proposed Penalty:

\$1000.00

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Company Name: Kaiser Foundation Hospital
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San Jose, CA 95119

Citation 2 Item 1 Type of Violation: **Serious**

Title 8 CCR §5199. Aerosol Transmissible Diseases 5199(d)(2):

(d) Aerosol Transmissible Diseases Exposure Control Plan.
(2) The Plan shall contain all of the following elements:

- (A) The name(s) or title(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.**
- (B) A list of all job classifications in which employees have occupational exposure.**
- (C) A list of all high hazard procedures performed in the facility, service or operation, and the job classifications and operations in which employees are exposed to those procedures.**
- (D) A list of all assignments or tasks requiring personal or respiratory protection.**
- (E) The methods of implementation of subsections (e), (g), (h), (i) and (j) as they apply to that facility, service or work operation. Specific control measures shall be listed for each operation or work area in which occupational exposure occurs. These measures shall include applicable engineering and work practice controls, cleaning and decontamination procedures, and personal protective equipment and respiratory protection. In establishments where the Plan pertains to laboratory operations, it also shall contain the methods of implementation for subsection (f), unless those operations are included in a Biosafety Plan.**
- (F) A description of the source control measures to be implemented in the facility, service or operation, and the method of informing people entering the work setting of the source control measures.**
- (G) The procedures the employer will use to identify, temporarily isolate, and refer or transfer AirID cases or suspected cases to All rooms, areas or facilities. These procedures shall include the methods the employer will use to limit employee exposure to these persons during periods when they are not in airborne infection isolation rooms or areas. These procedures shall also include the methods the employer will use to document medical decisions not to transfer patients in need of All in accordance with subsection (e)(5)(B).**
- (H) The procedures the employer will use to provide medical services, including recommended vaccinations and follow-up, as required in subsection (h). This shall include the procedures the**

employer will use to document the lack of availability of a recommended vaccine.

(I) The procedures for employees and supervisors to follow in the event of an exposure incident, including how the employer will determine which employees had a significant exposure, in accordance with subsections (h)(6) through (h)(9).

(J) The procedures the employer will use to evaluate each exposure incident, to determine the cause, and to revise existing procedures to prevent future incidents.

(K) The procedures the employer will use to communicate with its employees and other employers regarding the suspected or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties, in accordance with subsection (h).

(L) The procedures the employer will use to communicate with other employers regarding exposure incidents, including procedures for providing or receiving notification to and from health care providers about the disease status of referred or transferred patients, in accordance with subsection (h).

(M) The procedures the employer will use to ensure that there is an adequate supply of personal protective equipment and other equipment necessary to minimize employee exposure to ATPs, in normal operations and in foreseeable emergencies.

(N) The procedures the employer will use to provide initial and annual training in accordance with subsection (i) to employees in job categories identified in subsection (d)(2)(B).

(O) The procedures the employer will use for recordkeeping, in accordance with subsection (j).

(P) An effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed in their respective work areas or departments in accordance with subsection (d)(3).

(Q) Surge procedures. Employers of employees who are designated to provide services in surge conditions, and employers of employees who are designated to provide services to persons who have been contaminated as the result of a release of a biological agent as described in subsection (a)(1)(B), shall include procedures for these activities in the plan. The plan shall include work practices, decontamination facilities, and appropriate personal protective equipment and respiratory protection for such events. The procedures shall include how respiratory and personal protective equipment will be stockpiled, accessed or procured, and how the facility or operation will interact with the local and regional emergency plan.

Violation:

Prior to and during the course of the inspection, including, but not limited to May 22, 2020, the employer's Aerosol Transmissible Disease Exposure Control Plan (Plan) failed to contain the following elements:

Instance 1) The employer's Plan failed to list all high hazard procedures conducted at the hospital, including but not limited to CPR (Cardiac Pulmonary Resuscitation); [(d)(2)(C)]

Instance 2) The employer's Plan failed to have effective procedures to ensure an adequate supply of personal protective equipment and other equipment necessary to minimize employee exposure to aerosol transmissible pathogens (ATPs), in normal operations and in foreseeable emergencies; [(d)(2)(M)]

Instance 3) The employer's Plan failed to include an effective procedure obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed in their respective work areas or departments in accordance with subsection (d)(3); [(d)(2)(P)]

Instance 4) The employer's Plan failed to have a procedure for an employee to obtain a medical evaluation from an alternative medical provider after an exposure incident. [(d)(2)(I), (h)(1)]

Date By Which Violation Must be Abated:

November 30, 2020

Proposed Penalty:

\$18000.00

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

Title 8 CCR §5199. Aerosol Transmissible Diseases. 5199(g)(4)(B):

(g)Respiratory Protection.

(4) The employer shall provide, and ensure that employees use, a respirator selected in accordance with subsection (g)(3) and Section 5144 when the employee:
(B) is present during the performance of procedures or services for an AirID case or suspected case.

Ref 5199(e)(5)(C): High-hazard procedures shall be conducted in All rooms or areas, such as a ventilated booth or tent. Persons not performing the procedures shall be excluded from the area, unless they use the respiratory and personal protective equipment required for employees performing these procedures.

Violation:

Prior to and during the course of the inspection, including, but not limited to March 26, 2020, the employer failed to provide PAPRs to employees exposed to hazards presented by aerosol-generating activities in the Emergency Department on and around the following dates:

- a) Performance of Cardiopulmonary Resuscitation (CPR) on a suspected COVID-19 patient between March 13 -17; 2020;
- b) Assisting in the intubation of a confirmed COVID-19 patients on March 11th, March 23rd, March 24th, March 30th, April 15th, April 18th, April 30th, May 7th, May 15th, June 1st , July 1st, July 12th, July 16th, July 29th, and August 22nd, 2020;
- c) Assisting in the provision of oxygen/vapotherm on a confirmed COVID-19 patient on March 26th, 2020; and
- d) Assisting in the use of a continuous positive airway pressure (CPAP) with a COVID-19 Patient on October 18th and October 20th, 2020.

Date By Which Violation Must be Abated:	November 30, 2020
Proposed Penalty:	\$25000.00

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

Title 8 CCR §5199. Aerosol Transmissible Diseases. 5199(h)(6)(C):

(h)Medical Services.

(6) Exposure Incidents.

(C) Each employer who becomes aware that his or her employees may have been exposed to an RATD case or suspected case, or to an exposure incident involving an ATP-L shall do all of the following:

- 1. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours following, as applicable, the employer's report to the local health officer or the receipt of notification from another employer or the local health officer, conduct an analysis of the exposure scenario to determine which employees had significant exposures. This analysis shall be conducted by an individual knowledgeable in the mechanisms of exposure to ATPs or ATPs-L, and shall record the names and any other employee identifier used in the workplace of persons who were included in the analysis. The analysis shall also record the basis for any determination that an employee need not be included in post-exposure follow-up because the employee did not have a significant exposure or because a PLHCP determined that the employee is immune to the infection in accordance with applicable public health guidelines. The exposure analysis shall be made available to the local health officer upon request. The name of the person making the determination, and the identity of any PLHCP or local health officer consulted in making the determination shall be recorded.**
- 2. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 96 hours of becoming aware of the potential exposure, notify employees who had significant exposures of the date, time, and nature of the exposure.**
- 3. As soon as feasible, provide post-exposure medical evaluation to all employees who had a significant exposure. The evaluation shall be conducted by a PLHCP knowledgeable about the specific disease, including appropriate vaccination, prophylaxis and treatment. For M. tuberculosis, and for other pathogens where recommended by applicable public health guidelines, this shall include testing of the isolate from the source individual or material for drug susceptibility, unless the PLHCP determines that it is not feasible.**

4. Obtain from the PLHCP a recommendation regarding precautionary removal in accordance with subsection (h)(8), and a written opinion in accordance with subsection (h)(9).
5. Determine, to the extent that the information is available in the employer's records, whether employees of any other employers may have been exposed to the case or material. The employer shall notify these other employers within a time frame that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours of becoming aware of the exposure incident of the nature, date, and time of the exposure, and shall provide the contact information for the diagnosing PLHCP. The notifying employer shall not provide the identity of the source patient to other employers.

Violation:

Prior to and during the course of the inspection, the employer failed to investigate exposure incidents where employee's were exposed to confirmed or suspected cases of COVID-19, and notify employees who had significant exposures to COVID-19 cases and suspect cases, and to provide post-exposure medical services to those employees:

Instance 1: The employer failed to conduct an exposure analysis, including the determination of which employees had a significant exposure to a confirmed or suspected COVID-19 case during the month of March 2020; [§5199 (h)(6)(C)(1)]

Instance 2: The employer failed to notify employees with significant exposures in a reasonable timeframe, in any case no longer than 96 hours after becoming aware of the potential exposure, of the date, time and nature of the exposure; [§5199 (h)(6)(C)2]

Instance 3: The employer failed to provide post-exposure medical evaluation to all employees who had a significant exposure; [§5199 (h)(6)(C)3]

Instance 4: The employer failed to obtain from the PLHCP a recommendation regarding precautionary removal in accordance with subsection (h)(8), and a written opinion in accordance with subsection (h)(9). [5199(h)(6)(C)(4)]

Date By Which Violation Must be Abated:
Proposed Penalty:

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\$18000.00

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Citation 5 Item 1 Type of Violation: **Serious**

Title 8 CCR §5199. Aerosol Transmissible Diseases. 5199(i)(2)(D):

(i) Training.

(2) Employers shall provide training as follows:

(D) When changes, such as introduction of new engineering or work practice controls, modification of tasks or procedures or institution of new tasks or procedures, affect the employee's occupational exposure or control measures. The additional training may be limited to addressing the new exposures or control measures.

Violation

Prior to and during the course of the inspection, including but not limited to May 22, 2020, the employer failed to ensure that the COVID-19 specific training addressed all the factors affecting the employees occupational exposure to SARs-CoV-2, the novel pathogen which causes COVID-19 for the following factors:

Instance 1: The employer failed to train employees of all the modes of transmission of the novel pathogen SARs-CoV-2, including transmission through the inhalation of aerosols, and the appropriate source controls for preventing COVID-19 as an airborne infectious disease; [§5199 (i)(4)(C)]

Instance 2: The employer failed to train employees of an effective method for recognizing the airborne hazards from specific tasks and other activities which generate exposure by inhalation of aerosols containing the novel pathogen SARs-CoV-2; [§5199 (i)(4)(E)]

Instance 3: The employer failed to train employees of the limitations of the employer's "droplet" precautions for preventing exposure to the novel pathogen SARs-CoV-2. Employees were not informed that medical (surgical) masks would not protect them against inhalation of infectious aerosols, and NIOSH certified respirators were necessary to protect against these exposures; [§5199 (i)(4)(F) &(G)]

Instance 4: The employer failed to train employees on the limitation of using a N95 respirator in place of PAPR; [5199(i)(2)(A), (i)(2)(D), (i)(4)(F), (i)(4)(G)]

Instance 5: The employer failed to train employees in the emergency department on how they can access respirators selected in accordance with subsection (g)(3) and section 5144 when required to conduct Cardio-Pulmonary Resuscitation (CPR) on patients;

Instance 6: The employer failed to train employees on the employer's procedures for obtaining a medical evaluation from an alternative medical provider after an exposure incident.

Date By Which Violation Must be Abated:

November 30, 2020

Proposed Penalty:

\$18000.00

Kelly Tatum
Compliance Officer / District Manager