

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 #: 1481502
Inspection Dates: 06/30/2020 - 01/13/2021
Issuance Date: 01/14/2021
CSHO ID: C8043
Optional Report #: 037-20



Citation and Notification of Penalty

Company Name: Fremont Healthcare Operating Co., LP
Establishment DBA: Fremont Healthcare Center
and its successors
Inspection Site: 39022 Presidio Way
Fremont, CA 94538

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

Title 8 CCR §342(a). 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.

The Employer failed to immediately report to the Division of Occupational Safety and Health the serious illness suffered by an employee who was hospitalized with COVID-19 for about seven days starting on or about May 19, 2020.

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

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

T8 CCR Section 5199(c)(3). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(3) The employer shall establish, implement, and maintain effective written procedures for the screening and referral of cases and suspected cases of AirIDs to appropriate facilities.

Prior to and during the course of the inspection, including up to June 4, 2020, the employer housed cases or suspected cases of COVID-19, an airborne infectious disease caused by the novel pathogen SARs-CoV-2, without meeting the conditions of either exception to section 5199(e)(5)(B).

Date By Which Violation Must be Abated: February 04, 2021
Proposed Penalty: \$13500.00

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

Title Section 5199(c)(5). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(5) The employer shall establish, implement and maintain effective written procedures to reduce the risk of transmission of aerosol transmissible disease, to the extent feasible, during the period the person requiring referral is in the facility or is in contact with employees. In addition to source control measures, these procedures shall include, to the extent feasible:

- (A) placement of the person requiring referral in a separate room or area;**
- (B) provision of separate ventilation or filtration in the room or area; and**
- (C) employee use of respiratory protection when entering the room or area in which the person requiring referral is located, if that person is not compliant with source control measures. Respirator use shall meet the requirements of subsection (g) and Section 5144, Respiratory Protection, of these orders.**

ref. T8 CCR Section 5199(g). Aerosol Transmissible Diseases.

(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).

(3) Respirator selection.

(A) Where respirator use is required for protection against potentially infectious aerosols and is not required to meet the requirements of subsections (g)(3)(B) or (g)(3)(C), the employer shall provide a respirator that is at least as effective as an N95 filtering facepiece respirator, unless the employer's evaluation of respiratory hazards determines that a more protective respirator is necessary, in which case the more protective respirator shall be provided.

(B) Effective September 1, 2010, the employer shall provide a powered air purifying respirator (PAPR) with a High Efficiency Particulate Air (HEPA) filter(s), or a respirator providing equivalent or greater protection, to employees who perform high hazard procedures on AirID cases or suspected cases and to employees who perform high hazard procedures on cadavers potentially infected with ATPs, unless the employer determines that this use would interfere with the successful performance of the required task or tasks. This determination shall be documented in accordance with the ATD Plan and shall be reviewed by the employer and employees at least annually in accordance with subsection (d)(3).

(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:

(A) Enters an All room or area in use for All;

(B) Is present during the performance of procedures or services for an AirID case or suspected case;

(C) Repairs, replaces, or maintains air systems or equipment that may contain or generate aerosolized pathogens;

(D) Is working in an area occupied by an AirID case or suspected case, during decontamination procedures after the person has left the area and as required by subsection (e)(5)(D)9;

(E) Is working in a residence where an AirID case or suspected case is known to be present;

(F) Is present during the performance of aerosol generating procedures on cadavers that are suspected of, or confirmed as, being infected with aerosol transmissible pathogens;

(G) Is performing a task for which the Biosafety Plan or Exposure Control Plan requires the use of respirators; or

(H) Transports an AirID case or suspected case within the facility or in an enclosed vehicle (e.g., van, car, ambulance or helicopter) when the patient is not masked.

(5) Medical evaluation: The employer shall provide a medical evaluation, in accordance with Section 5144(e) of these orders, to determine the employee's ability to use a respirator before the employee is fit tested or required to use the respirator. For employees who use respirators solely for compliance with subsections (g)(3)(A) and (g)(3)(B), the alternate questionnaire in Appendix B may be used.

(6) Fit testing.

(A) The employer shall perform either quantitative or qualitative fit tests in accordance with the

procedures outlined in Appendix A of Section 5144, Respiratory Protection, of these orders. The fit test shall be performed on the same size, make, model and style of respirator as the employee will use. When quantitative fit testing is performed, the employer shall not permit an employee to wear a filtering facepiece respirator or other half-facepiece respirator, unless a minimum fit factor of one hundred (100) is obtained. When fit testing single use respirators, a new respirator shall be used for each employee.

(B) The employer shall ensure that each employee who is assigned to use a filtering facepiece or other tight-fitting respirator passes a fit test:

- 1. At the time of initial fitting;**
- 2. When a different size, make, model or style of respirator is used; and**
- 3. At least annually thereafter.**

(C) The employer shall conduct an additional fit test when the employee reports, or the employer, PLHCP, supervisor, or program administrator makes visual observations of changes in the employee's physical condition that could affect respirator fit. Such conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight.

(D) If, after passing a fit test, the employee subsequently notifies the employer, program administrator, supervisor, or PLHCP that the fit of the respirator is unacceptable, the employee shall be given a reasonable opportunity to select a different respirator facepiece and to be retested.

(7) The employer shall ensure that each respirator user is provided with initial and annual training in accordance with Section 5144, Respiratory Protection of these orders.

Prior to and during the course of the inspection, including but not limited to, on June 30, 2020 the employer failed to establish, implement and maintain effective procedures to reduce the risk of transmission of aerosol transmissible diseases, specifically exposure to SARS-CoV-2, the virus that causes COVID-19, in the following instances:

Instance 1:

The employer failed to establish, implement, and maintain an effective written respiratory protection program with work site specific procedures for regularly evaluating the effectiveness of the program. [Ref. T8 CCR 5144(c)(1); T8 CCR 5199(g)(2)]

Instance 2: The employer failed to provide medical evaluations, in accordance with Title 8 CCR Section 5144(e), to determine the employee's ability to use a respirator before each employee is fit tested or required to use a respirator. [Ref. T8 CCR 5199(g)(5)]

Instance 3:

The employer failed to perform either quantitative or qualitative fit tests in accordance with the procedures outlined in Appendix A of Title 8 CCR Section 5144, Respiratory Protection. [Ref. T8 CCR 5199(g)(6)(A)]

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

T8 CCR Section 5199(c)(6)(B). Aerosol Transmissible Diseases.

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(6) The employer shall establish a system of medical services for employees which meets the following requirements:

(B) The employer shall develop, implement, and maintain effective written procedures for exposure incidents in accordance with subsections (h)(6) through (h)(9).

ref. 5199(h)(6). Aerosol Transmissible Diseases.

(h) Medical Services.

(6) Exposure Incidents.

(A) A health care provider, or the employer of a health care provider who determines that a person is an RATD case or suspected case shall report, or ensure that the health care provider reports, the case to the local health officer, in accordance with Title 17.

(B) In addition to the report required in subsection (h)(6)(A), the employer in the facility, service or operation that originates the report shall determine, to the extent that the information is available in the employer's records, whether the employee(s) of any other employer(s) may have had contact with the case or suspected case while performing activities within the scope of this section. The employer shall notify the other employer(s) within a timeframe that will both provide reasonable assurance that there will be adequate time for the employee to receive effective medical intervention to prevent disease or mitigate the disease course, and will also permit the prompt

initiation of an investigation to identify exposed employees. In no case, shall the notification be longer than 72 hours after the report to the local health officer. The notification shall include the date, time, and nature of the potential exposure, and provide any other information that is necessary for the other employer(s) to evaluate the potential exposure of his or her employees. The notifying employer shall not provide the identity of the source patient to the other employers.

(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.**

Prior to and during the course of the inspection, on June 30, 2020, the employer failed to establish and implement effective procedures for medical services and exposure incidents in accordance with (h)(6), in the following instances:

Instance 1: The employer failed to conduct an exposure analysis, including the determination of which employees had a significant exposure, including but not limited to at least 8 confirmed COVID-19 cases. [Ref. T8 5199(c)(6)(B); Ref. 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. [Ref. T8 5199(c)(6)(B); T8 5199 (h)(6)(2).]

Date By Which Violation Must be Abated:
Proposed Penalty:

February 04, 2021
\$13500.00

(G) The employer's medical services procedures in accordance with subsection (h), the methods of reporting exposure incidents, and the employer's procedures for providing employees with post-exposure evaluation;

(H) Information on vaccines the employer will make available, including the seasonal influenza vaccine. For each vaccine, this information shall include the efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;

(I) How employees can access the employer's written procedures and how employees can participate in reviewing the effectiveness of the employer's procedures in accordance with subsection (c)(8); and

(J) An opportunity for interactive questions and answers with a person who is knowledgeable in the subject matter as it relates to the workplace that the training addresses and who is also knowledgeable in the employer's infection control procedures. Training not given in person shall provide for interactive questions to be answered within 24 hours by a knowledgeable person.

Prior to and during the course of the inspection, including but not limited to June 30, 2020, the employer failed to provide training to employees with occupational exposure to aerosol transmissible pathogens (ATP), as required by this subsection, in the following instances:

Instance 1: The employer failed to ensure that employees participate in a training program as required by this subsection, both at the time of initial assignment to tasks where occupational exposure to ATPs may take place and at least annually thereafter. [§5199(c)(7).]

Instance 2: On or about June 30, 2020, and thereafter, the employer failed to provide additional training to employees with occupational exposure to SARs-CoV2, the novel pathogen which causes COVID-19, including but not limited to the following:

- a. The employer failed to provide a general explanation of SARs-CoV-2, including how it is transmitted through the inhalation of aerosols [§5199(c)(7)(A).]
- b. The employer failed to train employees on the employer's source control measures and how these measures would prevent transmission of SARs-CoV-2. [§5199(c)(7)(B).]
- c. The employer failed to train employees on the appropriate respiratory protection to be used while caring for patients with COVID-19 in accordance with subsection (g) [§5199(c)(7)(F) ref. 5199(g).]
- d. The employer failed to train employees in accordance with subsection (h), the methods for reporting exposure incidents to SARs-CoV-2, and the employer's procedures for providing employees with post-exposure evaluation. [§5199(c)(7)(G).]

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Kelly Tatum
Compliance Officer / District Manager