

**State of California**

Department of Industrial Relations  
Division of Occupational Safety and Health  
Oakland District Office  
1515 Clay Street, Suite 1303  
Oakland, CA 94612  
Phone: (510) 622-2916 Fax: (510) 622-2908

**Inspection #:** 1485894  
**Inspection Dates:** 07/30/2020 - 03/23/2021  
**Issuance Date:** 03/24/2021  
**CSHO ID:** N3190  
**Optional Report #:** 003-21



**Citation and Notification of Penalty**

**Company Name:** Sutter Health  
**Establishment DBA:** Alta Bates Summit Medical Center-Berkeley  
and its successors  
**Inspection Site:** 2450 Ashby Avenue  
Berkeley, CA 94705

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

**Title 8 CCR § 5199(d)(1). Aerosol Transmissible Diseases.**

**(d) Aerosol Transmissible Diseases Exposure Control Plan.**

**(1) The employer shall establish, implement, and maintain an effective, written ATD Exposure Control Plan (Plan) which is specific to the work place or operation(s), and which contains all of the elements in subsection (d)(2).**

**Reference: (d)(2) The Plan shall contain all of the following elements:**

**(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.**

**Alleged Violative Condition**

Prior to and during the course of the inspection, from July 2020 through the present, the employer failed to implement and maintain its Aerosol Transmissible Disease (ATD) Exposure Control Plan when it did not effectively implement its work practice controls in identifying suspect or confirmed COVID-19 cases, and then temporarily isolate, and refer or transfer those cases to airborne infection isolation rooms or areas (AIIR), while not applying methods to limit employee exposure to these cases during periods when they are not in an AIIR, in the following instances:

- Instance 1) From June 20-June 23 on ICU 6W bed #6 area.
- Instance 2) In the NICU on July 12 and 13.

<b>Date By Which Violation Must be Abated:</b>	<b>April 08, 2021</b>
<b>Proposed Penalty:</b>	<b>\$16875.00</b>

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

**Title 8 CCR § 5199(e)(1). Aerosol Transmissible Diseases**

**(e) Engineering and Work Practice Controls, and Personal Protective Equipment.**

**(1) General. Employers shall use feasible engineering and work practice controls to minimize employee exposures to ATPs. Where engineering and work practice controls do not provide sufficient protection (e.g., when an employee enters an All room or area) the employer shall provide, and ensure that employees use, personal protective equipment, and shall provide respiratory protection in accordance with subsection (g) to control exposures to AirIPs.**

Alleged Violative Condition

Prior to and during the course of the inspection, the employer failed to establish specific control measures to include use of feasible engineering and work practice controls to minimize employee exposures to SARS-CoV-2, the virus that causes COVID-19, when employees, who are not wearing respirators, are providing care to or are in close proximity to asymptomatic or suspected COVID-19 patients, in the following instances:

- 1) On ICU 6th floor West from June 19 - 23, 2020
- 2) In the NICU on July 13 and 14, 2020.
- 3) In the breakroom on ICU 6th floor on October 17 & 18, 2020.
- 4) On ICU 6 West on December 27, 2020.

<b>Date By Which Violation Must be Abated:</b>	<b>April 08, 2021</b>
<b>Proposed Penalty:</b>	<b>\$20250.00</b>

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

**Title 8 CCR § 5199 (e)(5)(B) Aerosol Transmissible Diseases.**

**(e) Engineering and Work Practice Controls, and Personal Protective Equipment. (2) The Plan shall contain all of the following elements:**

**(5) AirID cases or suspected cases shall be identified, and except in field operations and in settings where home health care or home-based hospice care is being provided, these individuals shall be:**  
**(B) Placed in an All room or area or transferred to a facility with All rooms or areas. The employer shall ensure that this placement or transfer is effected in a timely manner.**

**1. Transfers within facility. Transfers to airborne infection isolation rooms or areas within the facility shall occur within 5 hours of identification. If there is no All room or area available within this time, the employer shall transfer the individual to another suitable facility in accordance with subsection (e)(5)(B)2.**

**2. Transfers to other facilities. Transfers to other facilities shall occur within 5 hours of identification, unless the employer documents, at the end of the 5-hour period, and at least every 24 hours thereafter, each of the following:**

- a. The employer has contacted the local health officer.**
- b. There is no All room or area available within that jurisdiction.**
- c. Reasonable efforts have been made to contact establishments outside of that jurisdiction, as provided in the Plan.**
- d. All applicable measures recommended by the local health officer or the Infection Control PLHCP have been implemented.**
- e. All employees who enter the room or area housing the individual are provided with, and use, appropriate personal protective equipment and respiratory protection in accordance with subsection (g) and Section 5144, Respiratory Protection of these orders.**

Alleged Violative Condition

Prior to and during the course of the inspection, including but not limited to, between June 20, 2020

and October 6, 2020, the employer failed to place cases of COVID-19, an airborne infectious disease caused by the novel pathogen SARS-CoV-2, in airborne infection isolation (All) rooms or areas, or transfer them to other facilities with All room or areas in a timely manner.

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**\$20250.00**

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

**Title 8 CCR § 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).**

**Reference Title 8 CCR § 5144(c, d, h)**

**(c) Respiratory protection program. This subsection requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator.**

**(1) In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions, as applicable: [Subparagraphs (A-H)]**  
**(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and . . .**

**(d) Selection of respirators. This subsection requires the employer to evaluate respiratory hazard(s) in the workplace, identify relevant workplace and user factors, and base respirator selection on these factors. The subsection also specifies appropriately protective respirators for use in IDLH atmospheres,**

and limits the selection and use of air-purifying respirators.

(1) General requirements.

(A) The employer shall select and provide an appropriate respirator based on the respiratory hazard(s) to which the worker is exposed and workplace and user factors that affect respirator performance and reliability.

(B) The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification.

(h) 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.

(1) Cleaning and disinfecting. The employer shall provide each respirator user with a respirator that is clean, sanitary, and in good working order. The employer shall ensure that respirators are cleaned and disinfected using the procedures in Appendix B-2, or procedures recommended by the respirator manufacturer, provided that such procedures are of equivalent effectiveness. The respirators shall be cleaned and disinfected at the following intervals:

(A) Respirators issued for the exclusive use of an employee shall be cleaned and disinfected as often as necessary to be maintained in a sanitary condition;

(B) Respirators issued to more than one employee shall be cleaned and disinfected before being worn by different individuals;

(C) Respirators maintained for emergency use shall be cleaned and disinfected after each use; and

(D) Respirators used in fit testing and training shall be cleaned and disinfected after each use.

#### Alleged Violative Condition

Prior to and during the course of the inspection, the employer failed to comply with respiratory protection in accordance with this section in the following instances:

Instance 1: The employer failed to maintain NIOSH approval for filtering facepiece N95 respirators provided for employees. The use of unapproved cleaning methods and/or extended use of filtering facepiece respirators voided NIOSH approval. [5199(g)(1)]

Instance 2: The employer failed to establish, implement and maintain an effective respiratory protection program meeting the requirements of Title 8 CCR § 5144 in that it did not train employees on the proper use of N95 respirators, including any limitations on their use, and their maintenance. [5199(g)(2)]

**Date By Which Violation Must be Abated:**

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**Proposed Penalty:**

**\$13500.00**

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

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

**[Reference T8 §CCR 5199 (g)(3)(B)**

**(g) Respiratory Protection.****(3) Respirator selection.**

**(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).]**

**Alleged Violative Condition**

Prior to and during the course of the inspection, from July 2020 through the present, the employer failed to provide, and to ensure that employees used, a respirator selected in accordance with subsection (g)(3) and Section 5144 when employees were present during the performance of procedures or services, and/or working in areas, including but not limited to the ICU 6 West, with case(s) of person(s) infected with SARS-CoV-2, the novel pathogen which causes COVID-19, in the following instances:

Instance 1) The employer failed to ensure that employees used powered air purifying respirators, or respirators providing equivalent or greater protection, when performing an intubation, a high hazard procedure, at ICU 6 West in June 2020 to a patient who was subsequently discovered to have been COVID-19 positive.

Instance 2) The employer failed to ensure that employees used N95 respirator, a powered air purifying respirators, or respirators providing equivalent or greater protection, during an endotracheal tube disconnection event which created an ATD airborne exposure event on ICU 6 West in June 2020 to a patient who was subsequently discovered to have been COVID-19 positive.

Instance 3) The employer failed to ensure that employees used N95 filtering facepiece respirators, or respirators providing equivalent or greater protection, while providing care and services on ICU 6 West in June 2020 to a patient who was subsequently discovered to have been COVID-19 positive.

Instance 4) The employer failed to ensure that employees used N95 filtering facepiece respirators, or respirators providing equivalent or greater protection, while caring for patients in June and July 2020 whom the employer had not placed under droplet or airborne precautions who subsequently tested positive for COVID-19 on ICU 6 West. [Reference section 5199(g)(3)(B)]

**Date By Which Violation Must be Abated:**

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**Proposed Penalty:**

**\$20250.00**



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Citation 6 Item 1 Type of Violation: **Serious**

**Title 8 CCR § 5199(g)(6)(B). Aerosol Transmissible Diseases.**

**(g) Respiratory Protection.**

**(6) Fit testing.**

**(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.**

**Alleged Violative Condition**

Prior to and during the course of the inspection, the employer failed to ensure that each employee in the ICU 6 West who was required to use an N95 filtering facepiece respirator passed a fit test on the make and model of the respirator that the employee used from June 2020 until December 2020.

<b>Date By Which Violation Must be Abated:</b>	<b>April 08, 2021</b>
<b>Proposed Penalty:</b>	<b>\$13500.00</b>

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Citation 7 Item 1 Type of Violation: **Serious**

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

Alleged Violative Condition

Prior to and during the course of the inspection, the employer failed to investigate the following exposure incidents to COVID-19 cases and suspected cases that occurred:

- a) When employees were caring for patients who were not under droplet or airborne precautions who subsequently tested positive for COVID-19 between June 19 and June 24, 2020, in ICU Critical Care West Bed #6.
- b) During day shifts on or about July 12 and 13, 2020, when nurses assisted a Respiratory Therapist who contracted COVID-19 were attending to babies being admitted to the NICU.
- c) In the ICU 6th floor break/lunch room on or about October 17th and/or October 18th, 2020, where employees subsequently were identified as COVID-19 case(s) had lunch with other employees.
- d) On or about December 27, 2020 on the critical care ICU 6 West, when a patient was being cared for by employee nurse(s) who were not using airborne or droplet precautions to attend a patient who subsequently tested positive for COVID-19.

After these exposure incidents the employer failed to conduct all of the requirements in subsection (h)(6)(C) in the following instances:

Instance 1) The employer failed to complete an analysis of the exposure scenario in accordance with this subsection and did not record the basis for any determination that an employee need not be included in post-exposure follow-up. [5199(h)(6)(C)(1)]

Instance 2) the employer failed to notify employees who had had a significant exposure to a COVID-19 case within 96 hours of becoming aware of the potential exposure. [5199(h)(6)(C)(2)]

Instance 3) the employer failed to provide post-exposure medical evaluation as soon as feasible to all employees who had a significant exposure. [5199(h)(6)(C)(3)]

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

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\$16875.00**

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Citation 8 Item 1 Type of Violation: **Serious**

**Title 8 CCR § 5199(i)(4) Aerosol Transmissible Diseases.****(i) Training**

**(4) The training program shall contain at a minimum the following elements:**

**(C) An explanation of the modes of transmission of ATPs or ATPs-L and applicable source control procedures.**

**(E) An explanation of the appropriate methods for recognizing tasks and other activities that may expose the employee to ATPs or ATPs-L.**

**(F) An explanation of the use and limitations of methods that will prevent or reduce exposure to ATPs or ATPs-L including appropriate engineering and work practice controls, decontamination and disinfection procedures, and personal and respiratory protective equipment.**

**(G) An explanation of the basis for selection of personal protective equipment, its uses and limitations, and the types, proper use, location, removal, handling, cleaning, decontamination and disposal of the items of personal protective equipment employees will use.**

**(I) Training meeting the requirements of Section 5144(k) of these orders for employees whose assignment includes the use of a respirator.**

**Reference 5144 (k) Training and information. This subsection requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary. This subsection also requires the employer to provide the basic information on respirators in Appendix D to employees who wear respirators when not required by this section or by the employer to do so. (1) The employer shall ensure that each employee can demonstrate knowledge of at least the following:**

**(A) Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator;**

**(B) What the limitations and capabilities of the respirator are;**

**(C) How to use the respirator effectively in emergency situations, including situations in which the**

respirator malfunctions;

(D) How to inspect, put on and remove, use, and check the seals of the respirator;

(E) What the procedures are for maintenance and storage of the respirator;}

(F) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and

(G) The general requirements of this section.

(L) Information on the employer's surge plan as it pertains to the duties that employees will perform.

As applicable, this training shall cover the plan for surge receiving and treatment of patients, patient isolation procedures, surge procedures for handling of specimens, including specimens from persons who may have been contaminated as the result of a release of a biological agent, how to access supplies needed for the response including personal protective equipment and respirators, decontamination facilities and procedures, and how to coordinate with emergency response personnel from other agencies.

#### Alleged Violative Condition

Prior to and during the course of the inspection, the employer failed to provide the required training in accordance with this subsection to employees with occupational exposure to aerosol transmissible pathogens (ATP), specifically the novel pathogen SARS-CoV-2, the virus that causes COVID-19, in the following instances:

Instance 1) The employer failed to train employees of all the modes of transmission of SARS-CoV-2, including aerosol transmission, 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 SARS-CoV-2. [5199 (i)(4)(E)]

Instance 3) The employer failed to train employees of the limitations of the employer's droplet, contact and eye protection procedures for preventing exposure to SARS-CoV-2 in that 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, who were required to use N95 respirators, on the recommended limits of extended and reuse practices for N95 respirators. [5199 (i)(4)(I) & (L)]

Instance 5) The employer failed to provide effective training to employees, who were required to use N95 respirators, annually, or more often as necessary, to ensure respirator users could demonstrate knowledge of how disinfecting the front of an N95 filtering facepiece respirator with wipes can compromise the protective effect of the respirator. [5199 (i)(4)(I); Reference Title 8 CCR § 5144(k)(1)(A)]

**Date By Which Violation Must be Abated:**

**April 08, 2021**

**Proposed Penalty:**

**\$20250.00**

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Charles Rachlis Wendy Hogle-Lui  
Compliance Officer / District Manager