

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD RECEIVED

2520 Venture Oaks Way, Suite 300
Sacramento, California 95833
(916) 274-5751
FAX (916) 274-5785

JUN 14 2011

OSH Appeals Board

APPEAL FORM

Inspection No. 300752722

2011-R | D 5 -1527

Employer:

CA DEPT OF MENTAL HEALTH
NAPA STATE HOSPITAL

Address:

2100 NAPA - VALLEJO HWY
NAPA, CA 94558

1. You have only 15 working days from receipt of a citation to appeal.
2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION**

1. This is an Appeal from:

- CITATION NO(s) 1 Item No.(s) All items are appealed.
- NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____
- SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

- The safety order was not violated.
- The classification (i.e., serious, willful, repeat) is incorrect.
- The abatement requirements are unreasonable.
- Required changes Time allowed to complete changes
- The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

4.

(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

(Address) {Address where all communications from the Appeals Board will be sent}

(City)

(State)

(ZIP Code)

(Telephone)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

ATTACHMENT TO APPEAL

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3. State any other reasons for appeal or issues to be raised on appeal.

OSH Appeals Board

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950615; 4016)
1221 Farmers Lane, Suite 300
Santa Rosa, CA 95405

Inspection Number: 300752722
Inspection Dates: 12/13/2010 -
Issuance Date: 06/01/2011
CSHO ID: N7538
Optional Inspection Nbr: 16-11



Citation and Notification of Penalty

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JUN 14 2011

Company Name: CA Dept of Mental Health Napa State Hospital
Inspection Site: 2100 Napa-Vallejo Hwy, Napa, CA 94558

OSH Appeals Board

Citation 1 Item 1 Type of Violation: General

T8 CCR 3203(a)(2) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices

On or before 12/11/10, the employer's Injury and Illness Prevention Program was not effectively implemented in that employer did not ensure that employees who escort individuals comply with safety procedures and policies. On 12/11/10, an employee escorting an individual was seriously injured.

Date By Which Violation Must be Abated:	Abated
Proposed Penalty:	\$ 675.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities

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APPEAL FORM

Inspection No. 300752722

2011-R 1 D5 -1528

Employer:

CA DEPT OF MENTAL HEALTH
NAPA STATE HOSPITAL

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Address:

2100 NAPA - VALLEJO HWY
NAPA, CA 94558

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
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1. This is an Appeal from:

CITATION NO(s) 2 Item No.(s) All items are appealed.

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

The safety order was not violated.

The classification (i.e., serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

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3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

State of California

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Cal/OSHA District Office (0950615; 4016)
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Citation and Notification of Penalty

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Company Name: CA Dept of Mental Health Napa State Hospital
Inspection Site: 2100 Napa-Vallejo Hwy, Napa, CA 94558

OSH Appeals Board

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

T8 CCR 3203(a)(6) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program) The Program shall be in writing and, shall, at a minimum include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard.

On or about 12/11/10, Employer's Program was not effective with respect to correction of unsafe work practices in a timely manner, in that the hazard of impulsive and violent attack on employees by individuals was not corrected in a timely manner.

Employer was aware that individuals with a history of escalating impulsive violent behavior toward staff could result in serious injury. The employer allowed an employee to take such an individual out of the ward on a walk without implementing new written safe escort procedures on 12/11/10. The individual assaulted and seriously injured the employee.

Date By Which Violation Must be Abated:	Abated
Proposed Penalty:	\$ 8100.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities

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APPEAL FORM

Inspection No. 300752722

2011-R 1 D5 -1529

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CA DEPT OF MENTAL HEALTH
NAPA STATE HOSPITAL

Address:

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NAPA, CA 94558

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CITATION NO(s) 3 Item No.(s) All items are appealed.

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: (Check all that apply)

The safety order was not violated.

The classification (i.e., serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes

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12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
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OSH Appeals Board

Citation and Notification of Penalty

Company Name: CA Dept of Mental Health Napa State Hospital
Inspection Site: 2100 Napa-Vallejo Hwy, Napa, CA 94558

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

18 CCR 3220(c)(1) The employer shall establish an employee alarm system which complies with Article 165.

On or about 12/11/10, the employer had not established an employee alarm system which complied with Article 165, Section 6184 as follows:

- a. The screamers issued to employees on the grounds did not give adequate warning because there was no way to tell from which direction the emergency alarm was coming.
- b. The screamers issued to employees were not able to be perceived by emergency responders
[Ref 6184(b)(3)]
- c. The screamers issued to employees on the grounds could not provide warning for necessary emergency response because they could not be activated in all emergencies
[Ref 6184(b)(2)]

As a result, an employee was assaulted and seriously injured by an individual because the employee was not able to summon emergency aid

Date By Which Violation Must be Abated:	06/11/2011
Proposed Penalty:	\$ 8100.00

Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities