

**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 #:** 1479549  
**Inspection Dates:** 06/18/2020 - 12/31/2020  
**Issuance Date:** 01/04/2021  
**CSHO ID:** N3190  
**Optional Report #:** 027-20



**Citation and Notification of Penalty**

**Company Name:** Kaiser Foundation Hospitals  
**Establishment DBA:** Kaiser Permanente San Leandro  
and its successors  
**Inspection Site:** 2500 Merced St.  
San Leandro, CA 94577

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

**Title 8 CCR §14300.40(a): Employer Records of Occupational Injury or Illness.**

**Basic requirement. When an authorized government representative asks for the records you keep under the provisions of this article, you must provide within four (4) business hours, access to the original recordkeeping documents requested as well as, if requested, one set of copies free of charge.**

**Alleged Violative Condition**

Prior to and during the course of the inspection, including but not limited to June 26, 2020, the employer failed to provide the Cal OSHA Form 300, the records maintained as the Log of Work Related injuries and Illnesses under the provisions of Article 2 Title 8 CCR § 14300, neither within four hours nor within the three days upon the document request from the Division on June 23, 2020.

<b>Date By Which Violation Must be Abated:</b>	<b>Corrected During Inspection</b>
<b>Proposed Penalty:</b>	<b>\$450.00</b>

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

**Title 8 CCR § 5199(g)(2) Aerosol Transmissible Diseases.**

**(g) Respiratory Protection.**

**(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)]**

**(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.**

**Alleged Violative Condition**

Prior to and during the course of the inspection, the employer failed to establish, implement and maintain an effective respiratory protection program meeting the requirements of 5199(g) and 5144(c) and (h).

Instance 1) The employer failed to effectively establish and implement written procedures to ensure that filtering facepiece respirators were in good working order. The employer failed to limit reuse of N95s, as recommended by the CDC and NIOSH in order to ensure the respirator continued to provide the required protection. Employees were required to take N95 filtering facepiece respirators on and off an unlimited number of times during a shift, or in some cases during more than one shift. Employees working in areas including but not limited to 2nd floor ICU, 5W and 5E, used respirators that had been donned and doffed more than five times during their shift to enter airborne infection isolation rooms and other areas in which COVID-19 patients were located to perform services and procedures.

Instance 2) The employer required employees in the Emergency department and the Medical Surgical Telemetry Unit 4West to use powered air purifying respirators (PAPRs) with defective face shields, cracked helmets and parts that were being held together by tape and as a result:

(a) The unauthorized repairs to the respirator voided NIOSH approval, (ref 5199(g)(1) and

(b) The respirators were not in good working order. [§5199(g)(1)] (Reference section 5144 (c) and (h))

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

**January 29, 2021**

**Proposed Penalty:**

**\$16875.00**

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Citation 3 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;**

**Alleged Violative Condition**

The employer failed to ensure that employees used respirators selected in accordance with 5199(g)(3)(B) when performing high hazard procedures on cases and suspected cases of COVID-19, an airborne infectious disease. Prior to and during the course of the inspection, from May 2020 through the present, the employer failed to ensure that employees on the 2nd and 5th floors used powered air purifying respirators, or respirators providing equivalent or greater protection, when performing high hazard procedures, including, but not limited to, suctioning, aerosolized administration of medications, BiPAP and CPAP adjustments on COVID-19 cases and suspected cases. [Reference section 5199(g)(3)(B)]

**Date By Which Violation Must be Abated:** **January 29, 2021**  
**Proposed Penalty:** **\$20250.00**

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Citation 4 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 several exposure incidents, to notify employees who had significant exposures to COVID-19 cases during the period May, 2020, through August, 2020, and to provide the employees with post-exposure medical services. In May, an employee was exposed to COVID-19 while working on 5W, a unit designed for COVID-19 patients. In early July, an employee was exposed to three COVID-19 cases in the ICU, specifically in rooms 2212, 2219 and 2210. In early July, an employee was exposed to COVID-19 while doing PT at a patients home. In early July, an employee was exposed to COVID-19 while working in the 2nd floor operating room. In August, an employee was exposed to COVID-19 while working on the 2nd floor ICU.

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)]

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

**January 29, 2021**

**Proposed Penalty:**

**\$13500.00**

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Citation 5 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;}**
- (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 which causes COVID-19.

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 employers droplet, contact and eye protection procedures for preventing exposure to 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, 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 to conduct a user seal check. [5199 (i)(4)(I); Reference Title 8 CCR § 5144(k)(1)(D)]

Instance 6) The employer failed to provide effective training to respirator users on how to immediately access required PPE when a manager is not available and the respirators including CAPR, PAPR or N95s are locked up or otherwise not available. [§5199 (i)(4)(I)&(L)]

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

**January 29, 2021**  
**\$16875.00**

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Citation 6 Item 1 Type of Violation: **Repeat Regulatory**

**Title 8 CCR §342(a) Reporting Work-Connected Fatalities and Serious Injuries**

**Every employer shall report immediately by telephone or telegraph to the nearest District Office of 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. 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.**

Alleged Violative Condition

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 four days starting on or about May 24th, 2020.

REPEAT: The employer was previously cited for the same violation on several different cases.  
Inspection #1402967, issued on 10/23/19, and affirmed as a final order on 11/18/19.  
Inspection #1421265, issued on 11/26/19 and the citation was affirmed as a final order on 12/01/20.  
Inspection #1287799, issued on 2/01/18, and the citation was affirmed as a final order on 04/26/18.  
Inspection #1132148, issued on 8/22/16 and the citation was affirmed as a final order on 7/08/17.  
Inspection #1159088, issued on 9/02/16 and was affirmed as a final order on 3/28/18.

**Date By Which Violation Must be Abated:** **Corrected During Inspection**  
**Proposed Penalty:** **\$20000.00**

*Charles Rachlis*

Charles Rachlis Wendy Hogle-Lui  
Compliance Officer / District Manager