State of California

Memorandum

To : Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95814

Date: December 31, 2010

From : Department of Industrial Relations
Division of Occupational Safety and Health
Len Welsh, Chief

Subject : Division evaluation report on Petition No. 519 regarding Section 3400(c) physician input into selection of first aid supplies.

INTRODUCTION

Labor Code section 142.2 [LC 142.2] permits interested persons to propose new or revised regulations appropriate for adoption concerning occupational safety and health and requires the Occupational Safety and Health Standards Board (the Board) to render its decision no later than six months following the receipt of such proposals. LC 147 requires the Board to forward such petitions to the Division of Occupational Safety and Health (the Division) for evaluation within 60 days of the Division's receipt of the Petition.

PETITIONER'S REQUEST

The Board received petition 519 on November 3, 2010 from Ricardo Beas (the petitioner) and sent a copy of the petition to the Division for evaluation where it was received on November 12, 2010. The petitioner, a safety consultant, seeks to have the Board make a substantive changes governing physician input into the employer's selection of first aid supplies required in Section 3400 of the General Industry Safety Orders (GISO). The petitioner primarily requested that the current requirement for physician approval of first aid supplies be changed to allow the employer the option to rely on other sources of advice to inform their selection of appropriate first aid kit contents. The petitioner suggested that such options might include:

1. Use of a table of specified minimum first aid supplies similar to the table in Construction Orders Section 1512(c)(1),

2. Use of first aid kits meeting the requirements of ANSI Z308.1-2003 which also provides a specified, but limited list of supplies.

3. Use of sources other then a physician to determine an employer's particular needs for first aid supplies.

DIVISION EVALUATION

Petitioner's proposals described above would make section 3400 physician approval of the content of first aid kits optional and would allow alternatives to this consultative requirement by providing materials compliant with the ANSI standard, or by referencing a table of minimum supplies not yet existing in Title 8, or by allowing consultation with other, unnamed sources.

These changes would substantively alter a requirement with a very long history. California formerly had an additional standard that impacted the required contents of first aid kits. In 1946, Cal/OSHA's predecessor, the Division of Industrial Safety, adopted a standard that required about 200 hazardous chemicals be labeled with specific warning and first aid information, including antidotes generally recognized as necessary by first responders, physicians and poison centers. When Cal/OSHA came into being in 1971, this labeling standard became Section 5228.

In November 1983, Federal OSHA adopted the Hazard Communication Standard; this standard includes basic labeling provisions. In 1984 California adopted a Hazard Communication standard incorporating these provisions pursuant to the Standards Board's obligation under Labor Code 142.3. In 1985, the California legislature passed AB-1111 which required review of existing regulations for, among other things, non-duplication. Consequently the Division initiated a proposed-rulemaking, which recommended repealing Section 5228 as duplicative, as the Hazard Communication Standard had a labeling subsection, Section 5194(f). An advisory committee on GISO Article 112 (which includes Section 5228) was established and met in March of 1985. One commenter at the meeting stated the federal hazard communication labeling requirements were inadequate because they did not include first aid procedures. Several written comments were received that also expressed the view that antidote information and first aid information should be retained in the labeling requirement. The Standards Board conducted a public hearing on the proposed changes to Article 112 on February 27, 1986. Several speakers representing unions opposed the removal of first aid information from the labeling requirement; additional written comments along similar lines were also submitted from unions. Written comments from some other public sectors supported repeal of Section 5228. There existing no consensus on this issue, the Standards Board returned it to advisory committee. This committee never met, however, due to the executive order of then Governor Deukmejian disengaging the Cal/OSHA program.

After reengagement of Cal/OSHA, the Division initiated a new advisory committee in 1995 in order to resume the interrupted process of reviewing Article 112. The advisory committee resolved the earlier lack of consensus and recommended repeal of Section 5228. The Initial Statement of Reasons prepared by the Standards Board stated it could take this action because other standards duplicated those parts of Section 5228 that were not superceded by the hazard

communication standard: *"Regarding first aid requirements...Section 3400 requires that there shall be suitable first aid materials approved by the consulting physician..."*

Thus, the Standards Board felt justified in removing specific first aid requirements (for example antidotes to cyanide poisoning and hydrofluoric acid burns) from the regulations because a physician's input was preserved in Section 3400. Petitioner's proposal removes this protection without providing equivalent protection; one suggested alternative, the ANSI Z308.1-2003 standard, is a non-specific and generic document; it includes a required list of only 8 items along with minimum quantities of those items that include bandage types, adhesive tapes, compresses, and antiseptic and burn salves but does not include specific first aid antidotes. With respect to the current petitioner's suggestion that a table of minimum requirements be adopted, the Division notes that the ANSI list includes some items not on the table in Subsection 1512(c), but it omits several of the items that are on the table and even the optional list of substances recommended by ANSI do not include some of the items listed in Section 1512.

The contents of first aid kits that the ANSI standard recommends may be adequate for some small non-industrial workplaces covered by section 3400, such as the typical office. However, the minimum ANSI list would not be appropriate for most workplaces covered by Section 3400.

The Division on its own initative did attempt to update all the first aid standards including section 3400 and 1512. The Division convened a separate advisory committee on first aid requirements that met at least six times in 1994 and 1995. During those meetings the issue of physician input was identified as a major stumbling block to reaching consensus on the committee and the committee was disbanded with no recommended changes made to the first aid standards.

The section 3400 requirement for consultation with a physician is substantially the same as the Federal OSHA first aid standard that also required physician approval from 1970 to 1998. In 1998 Federal OSHA amended its standard (29CFR 1910.151) to remove the consulting physician requirement and added a non-mandatory appendix that recommended the ANSI list along with employer evaluations. The Division and Board did evaluate the 1998 federal change and determined that retaining the physician approval in section 3400 was more effective and federal OSHA concurred with that response. So the Board did not make any changes to section 3400 in response to that 1998 federal final rule.

In 2006, the Board received petition No. 483 which, *inter alia*, requested nearly identical changes to Section 3400 as those requested by current petition No. 519. An advisory committee was held, resulting in some substantive and non-substantive changes to Section 3400, but leaving the requirements for physician consultation on first aid kit supplies unchanged. During the advisory committee and subsequent rulemaking on other aspects of the first aid regulation, significant frustration with the physician requirement was expressed by some stakeholders, but other stakeholders articulated substantive opposition to making the

changes now suggested. For example, it was noted that the ANSI list of materials is not readily available to the public because it must be purchased.

When the 2006 advisory committee supported changes to section 3400 were adopted at the July, 2009 Standards Board meeting, some Board members acknowledging the considerable continued interest of many stakeholders in clarifying and addressing the consulting physician requirement, requested that the Division give further attention to the issue in a future advisory process. The Division did agree to revisit the issue through the advisory process and noted that the advisory process would also consider Federal OSHA's recent guidance documents and publications on first aid recommend that, in order to decide on first aid kit contents beyond the minimum, a specific assessment be made of each workplace that reflects the kinds of injuries that occur there. Federal OSHA and many health and safety professionals point out that a consultation with local fire and rescue service or emergency medical professionals may be beneficial in deciding upon appropriate kit contents. This Federal OSHA recommendation is similar to one of petitioner's suggestions. The Division does not necessarily support this idea, however, as strong objections to the competency of such non-physician practitioners [for providing this specific advice only] was voiced by both physician and emergency response stakeholders participating in the 2006 advisory committee.

Therefore, although the Division does not necessarily concur with the petitioner's specific recommended changes to Section 3400(c), the Division sees benefit in convening a new advisory committee that is limited in scope to a thorough exploration of possible clarifications or alternatives to the current requirements for physician approval of first aid kit content. Additional benefits would also exist in a new advisory committee reviewing the list of first aid supplies specified in Section 1512, as this list was widely considered by 2006 advisory committee participants as being out of date.

CONCLUSION AND RECOMMENDATION

Based on the above rationale, the Division recommends that the Board **grant** the petition to the extent that an advisory committee be convened to attempt to resolve difficulties the regulated community may face in implementing Section 3400(c) of the General Industry Safety Orders. This advisory committee should review possible updates or changes to the physician consultation requirement in relationship to the protection provided to the workforce by the existing requirement. The Division also recommends that this advisory committee be simultaneously charged with reviewing and revising as necessary the table of minimum first aid supplies in Section 1512(c) of the Construction Safety Orders.

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