

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

OSHSB PETITION FILE NO.: 563

Petitioner: California Conference of Local Health Officials

Submission Date: January 30, 2017

Board Decision Date: July 20, 2017

Disposition: Denial

On July 20, 2017, as duly noticed, the California Occupational Safety and Health Standards Board (Board) took up the question of a proposal to the Board having been submitted on January 30, 2017, by Kenneth Cutler, MD, on behalf of the California Conference of Local Health Officials (Petitioner), and designated OSHSB Petition File No. 563 (Petition).

Having taken up, on July 20, 2017, the question of the Petition, and duly noticed Proposed Decision of conditional grant, the Board duly took up and approved a motion denying in full the Petition, as stated by attached summary Petition File No. 563 Decision, so notated by the below named Executive Officer, to specify a Decision of denial, prior to signature of each and all present Board Members.

Date: July 28, 2017



Marley Hart, OSHSB Executive Officer

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, California 95833
(916) 274-5721

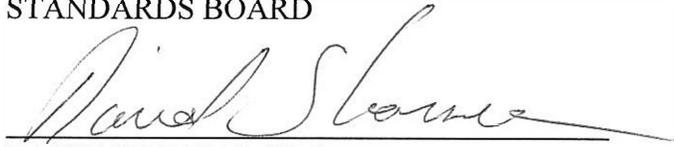
In the Matter of a Petition by:)
)
Ken Cutler, President) PETITION FILE NO. 563
) DECISION
California Conference of Local Health Officers)
)
1615 Capital Ave.,)
)
Sacramento, CA 95899)
)

Applicant.)

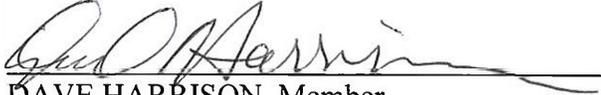
denies

The Occupational Safety and Health Standards Board hereby-adopts the attached PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD



DAVID THOMAS, Chairman

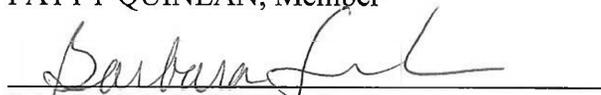


DAVE HARRISON, Member

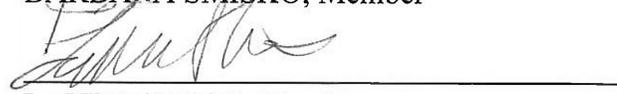


CHRIS LASZCZ-DÁVIS, Member

PATTY QUINLAN, Member



BARBARA SMISKO, Member



LAURA STOCK, Member

By: *Marley Hart*
Marley Hart, Executive Officer

DATE: July 20, 2017

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
REGARDING PETITION FILE NO. 563**Introduction

On January 30, 2017, the Occupational Safety and Health Standards Board (Board) received a submission on behalf of the California Conference of Local Health Officers (CCLHO, or Petitioner), requesting changes to Title 8, Section 5199, requirements concerning occupational exposure of health care workers to aerosol transmissible diseases. The submission was received by the Board pursuant to Labor Code Section 142.2 and designated OSHSB Petition 563 (Petition).

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt.

Summary

The petitioner requests that covered employers be allowed to make assessments for latent tuberculosis infection (LTBI) available to employees less frequently than the once a year. The petitioner recommends that facilities covered by Title 8 section 5199 be required to conduct a risk assessment for tuberculosis (TB) exposure and perform LTBI testing at the frequency outlined in the U.S. Centers for Disease Control publication, *Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Setting, 2005* (CDC Guidelines).

Pursuant to Section 5199, subpart (h)(3)(A), employers must offer annual assessment for LTBI to employees working within certain enumerated facility, service, or operation categories, presumed to have had "occupational exposure" to aerosol transmissible diseases. The presumption of risk is categorical, but some employees, such as those working within an office environment separated from patient care facilities, may be excluded for lack of occupational exposure.

Employees required to be offered annual assessment for latent tuberculosis infection, include those employed within any of the following health care facilities, services, or operations:

- Hospitals
- Skilled nursing facilities
- Clinics, medical offices, and other outpatient medical facilities

- Facilities where high hazard procedures, as defined in subsection (b), are performed
- Home health care
- Long term health care facilities and hospices
- Medical outreach services
- Paramedic and emergency medical services
- Medical transport

Petitioner takes particular issue with the following requirement set out in Subsection (h)(3)(A):

(h) Medical Services. ...

(3) The employer shall make assessment for latent tuberculosis infection (LTBI) available to all employees with occupational exposure. Assessment procedures shall be in accordance with applicable public health guidelines.

(A) TB tests and other forms of TB assessment shall be provided at least annually, and more frequently, if applicable public health guidelines or the local health officer recommends more frequent testing. Employees with baseline positive TB test shall have an annual symptom screen.

Petitioner cites various statistics in support of the contention that the majority of employees required to be offered annual assessment for possible tuberculosis infection, work within facilities posing a low occupational risk of TB infection. Also, in support of this contention Petitioner cites CDC Guidelines providing for exclusion, from the annual testing protocol, of health care workers employed within facilities having a relatively low incidence of identified active TB infections among its patients.

Division Evaluation

Pursuant to Labor Code Section 147, the Board shall refer to the Division of Occupational Safety and Health for evaluation any proposed occupational safety or health standard or variance from adopted standards received by the board from sources other than the division. By means of written evaluation, dated May 22, 2017, the Division of Occupational Safety and Health (Division) has recommended to the Board that Petition 563 be denied.

Among factors informing its recommendation against the requested changes to Section 5199, the Division, points out that Section 5199, subpart (h)(3)(A) requires employers to offer, and provide at no cost, assessments, tests, and follow-up for occupational LTBI. As such, it does not require testing.

Concerning Petitioner cited CDC Guidelines, the Division points out arguable inconsistencies, and overlooked epidemiologic factors, which bring into question the CDC Guidelines' adequacy in determining occupational exposure risk. In addition, questions are raised about the weight

assigned a facility's recent history of infectious TB patients, given a Division cited study indicating that the typical active TB infected patient makes more than one health care facility visit before being diagnosed, and that the percentage of missed diagnoses is greater in hospitals which log fewer active TB diagnoses.

Board Staff Evaluation

The June 26, 2017, evaluation of Board Staff, recommends that Petition 563 be granted to the extent that the Division be requested to convene an advisory committee to discuss amending Section 5199 to bring its annual health care worker TB screening requirement into closer alignment with federal guidelines. In recommending conditional grant of the Petition, Board staff assigns considerable significance to the "California Tuberculosis Elimination Plan 2016–2020" (5-Year Action Plan) published in July 2016, by the California Tuberculosis Elimination Advisory Committee (CTEAC).

Board staff finds significant a stated goal of the 5-Year Action Plan being to "[b]ring the CalOSHA annual screening regulations for health care workers into alignment with federal guidance on preventing TB transmission in health care facilities"—the implication being that the offering to employees of annual TB testing is out of alignment.

Also found by Board staff to be significant, is that a key 2007 document relied upon by Division in arguing for adoption, in 2009, of the subject Section 5199(h)(3)(A) provision, does not reflect the present policy position of its source, the Occupational Health Branch of the CDPH.

Discussion

According to the Centers for Disease Control, approximately one-third of the world's population has LTBI. And while the level of infection with the United States is significantly lower, TB infection still poses a public health threat to all Californians, 2.4 million of which are estimated to have LTBI. Although LTBI is not itself an infectious condition, most people do not even know that they have LTBI, and approximately 10% eventually will progress from latency. Upon progression, the TB bacteria multiplies and spreads within the bodies, creating an infectious form of the condition, referred to as "TB disease" or "active TB." If left untreated, active TB disease is life-threatening and remains the leading killer among infectious diseases worldwide.

The Board takes seriously the threat posed by TB to health care workers, and to the public health of all Californians. Adding to the challenge of addressing the threat to occupational health posed by TB, are fundamental duties of an employer to its employees, and realities of the workplace, which may necessitate inclusion within occupational health regulations, certain requirements beyond those necessary to safeguard public health. For example, an employee having to initiate a request to his or her superiors, to be tested for TB infection, may have fears of stigmatization within the workplace, or loss of health condition privacy, which would be less likely to arise if the offer of testing were periodically initiated by management. In addition, employers have a fundamental duty to safeguard all employees from occupational hazards—a duty which may not be among factors considered by public health officials when recommending allocation of limited resources to public health urgencies.

Another key justification for making available to health care workers, at least annual, employer provided assessment for LTBI, is that doing so attributes due value to the first-hand knowledge of each employee of his or her actual cumulative workplace exposure to particular patients exhibiting observable symptoms of both diagnosed and yet to be diagnosed disease.

Section 5199 does not require employees to participate in LTBI testing. The employer is required to train employees regarding the employer's tuberculosis surveillance procedures and may include information regarding individual risk factors for developing tuberculosis disease, as well as the information that immune-compromised individuals may have false negative results. The employer may also include information regarding tuberculosis incidence in the local area as well as the number of tuberculosis cases diagnosed in the facility. Employees may then choose, without disclosing their personal medical information, whether to participate in periodic testing.

While not finding a sufficiently clear basis for presently proposed amendment of Section 5199, given the collective subject area knowledge of Petitioner's membership, the Board believes that the concerns of Petitioner should be given further careful consideration by the Division, and Board staff.

DECISION

Having carefully considered the proposed revisions to Title 8, Section 5199, and the above cited evaluations of Division, and Board staff, the Board conditionally grants Petition 563, such that the Division is requested to convene, within one year of this Decision, a committee composed of experts in the subject area of occupational exposure to tuberculosis disease, in order to give further consideration to Petitioner's concerns about occupational assessment of employees for latent tuberculosis infection (LTBI). Petitioner should be extended an invitation to participate in the advisory committee deliberations. If the Division is unable to convene the committee as requested above, then Board staff is directed to convene the specified committee. Included among points of discussion by the committee should be the question of what percentage of the subject health care workers presently accept an offer of annual LTBI assessment, and what information is being provided to assist them in making an informed choice.