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Occupational Safety and Health Standards Board
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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 602)**

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on January 29, 2024, from Lorraine M. Martin, President and CEO of the National Safety Council (NSC, Petitioner). The Petition seeks changes to title 8,¹ section 1512 of the Construction Safety Orders and section 3400 of the General Industry Safety Orders. Both sections address emergency medical services and first aid kits.

Specifically, the Petitioner requests title 8 be amended to require that employers provide opioid overdose reversal medication (referred to throughout this decision as “opioid antagonist” or “Naloxone”) at all worksites. The Petitioner further requests the addition of provisions for training employees to safely administer the medication.

Labor Code (LC) section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health. It requires the Board to consider such proposals and render a decision no later than six months following receipt. Further, as required by LC section 147, any proposed occupational safety or health standard received by the Board from a source other than Cal/OSHA must be referred to the Cal/OSHA for evaluation. Cal/OSHA has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY OF PETITION

Petitioner NSC is self-described as America’s leading nonprofit safety advocate for 110 years. As a mission-based organization, NCS works to eliminate the leading causes of preventable death and injury, focusing efforts on the workplace and roadway. NCS creates a culture of safety to keep people safer in the workplace and beyond so they can live their fullest lives. According to Petitioner, NCS has more than 13,000 member companies and federal agencies, and they represent employees at nearly 41,000 U.S. worksites, including over 2,000 members in California.

Petitioner requests that opioid overdose reversal medications be required at all worksites, either by amending sections 1512 of the Construction Safety Orders (CSO) and 3400 of the

¹ Unless otherwise stated, all references are to title 8, California Code of Regulations.

General Industry Safety Orders (GISO) to require opioid overdose reversal medications in first-aid kits, or by adding new requirements to the regulations that would require opioid overdose reversal medications be provided “elsewhere” in the workplace. Petitioner also requests that employees be trained on when and how to use these medications. The Petitioner did not offer any regulatory text for this proposed change.

Petitioner asserts that because of the rising number of workplace overdose deaths, opioid overdose reversal medication is now an essential component of an adequate first-aid kit.

To support their position, Petitioner points to provisional data from the Centers for Disease Control and Prevention (CDC), which states that approximately 83,000 people died of an opioid overdose in 2022, including almost 7,000 deaths in California.²³ Petitioner further notes that no industry or occupation is immune to this crisis, and workplace overdose deaths have increased 536 percent since 2011.⁴ Petitioner points to data indicating that overdoses now account for nearly 1 in 11 worker deaths on the job across the country,⁵ and in California, over 18 percent of workplace fatalities in 2021 were due to an unintentional overdose.⁶

Petitioner also flags that the U.S. Food and Drug Administration (FDA) has approved two over-the-counter versions of opioid overdose reversal medications, making it easier to obtain by individuals. According to Petitioner, these medications temporarily reverse overdoses from prescription and illicit opioids, are non-habit forming and are not harmful to people when administered.⁷ Petitioner maintains that including these medications at worksites - either in a first aid kit or elsewhere - and training employees to use it is a critical component of emergency response to help save a life, and that anyone at a workplace, including workers, clients, customers and visitors, is at risk of overdosing if using opioids.⁸

For these reasons, Petitioner asserts that the inclusion of an opioid overdose reversal medication requirement in the regulations would help California combat the opioid crisis by ensuring worksites are appropriately equipped to respond to such an emergency.

RELEVANT STANDARDS

California Regulations

² <https://blogs.cdc.gov/nchs/2023/05/18/7365/>

³ <https://skylab.cdph.ca.gov/ODdash/?tab=Home>

⁴ <https://injuryfacts.nsc.org/work/safety-topics/overdose-deaths/>

⁵ Ibid.

⁶ <https://www.dir.ca.gov/dosh/cfoi/CFOL2021/Fatalities-Report-2013-2021.pdf>.

⁷ Wermeling, D.P., *Review of naloxone safety for opioid overdose: practical considerations for new technology and expanded public access*. Therapeutic Advances in Drug Safety, 2015. 6(1): p. 20-31.

⁸ <https://www.cdc.gov/niosh/docs/2019-101/pdfs/2019-101.pdf?id=10.26616/NIOSH PUB2019101>

CSO section 1512 Emergency Medical Services includes requirements for first-aid kits. Similarly, GISO section 3400 Medical Services and First Aid includes requirements for first-aid kits. However, these sections do not contain requirements to provide opioid antagonists at workplaces.

Section 1512 “Emergency Medical Services” requires employers in the construction industry to provide at least one first-aid kit. The kit must be inspected to ensure that expended items are promptly replaced and arranged so items in the kit can be found quickly and remain sanitary.

Section 1512 contains a list of supplies required to be present in the kit, depending on the number of employees at the worksite. Subsections 1512(c)(2) – (3) address the inclusion of items not specifically listed in the regulation as follows:

1512(c)(2) Other supplies and equipment, when provided, shall be in accordance with the documented recommendations of an employer-authorized, licensed physician upon consideration of the extent and type of emergency care to be given based upon the anticipated incidence and nature of injuries and illnesses and availability of transportation to medical care.

(3) Drugs, antiseptics, eye irrigation solutions, inhalants, medicines, or proprietary preparations shall not be included in first-aid kits unless specifically approved, in writing, by an employer-authorized, licensed physician.

Section 3400 “Medical Services and First Aid” requires first aid materials as follows:

3400(c) There shall be adequate first-aid materials, approved by the consulting physician, readily available for employees on every job. Such materials shall be kept in a sanitary and usable condition. A frequent inspection shall be made of all first-aid materials, which shall be replenished as necessary.

Health and Safety Code article 2.5 “Requirements for Licensees” section 11834.26(f)(1) requires that a licensee (i.e., alcohol or other drug abuse recovery and treatment programs) maintain at least two unexpired doses of naloxone on the premises. The text also exempts trained staff members from liability for administration of the medicine.⁹

Opioid antagonists are currently not included in future rulemaking planned to make sections 1512 and 3400 consistent with the national consensus standard – American National Standards Institute Z308.1-2021 Minimum Requirements for Workplace First Aid Kits and Supplies.

Federal Regulations

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https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=10.5.&chapter=7.5.&part=2.&lawCode=HSC&article=2.5. Accessed 2/22/2024.

Federal OSHA regulations related to medical services and first aid are in Title 29, Code of Federal Regulations (CFR), Safety and Health Regulations for Construction section 1926.50 and in the Safety and Health Regulations for General Industry section 1910.151. There are no Federal OSHA regulations that require opioid antagonists in workplaces.

Paragraph (b) of CFR 1910.151 “Medical services and first aid” for general industry employers requires that “Adequate first aid supplies shall be readily available.” Non-mandatory Appendix A to CFR 1910.151 states:

[E]mployers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 300 log, OSHA 301 log, or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

Paragraph (d) of 1926.50 “Medical services and first aid” for construction employers contains requirements for first aid kits as follows:

1926.50(d)(1) First aid supplies shall be easily accessible when required.

1926.50(d)(2) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

Applicable Consensus Standards

There are no applicable consensus standards regarding opioid antagonists.

ANSI/ISEA Z308.1-2021 “American National Standard - Minimum Requirements for Workplace First Aid Kits and Supplies” establishes minimum performance requirements for first aid kits and their supplies that are intended for use in various work environments. Classification of first aid kits, designating the assortment of items and quantity of each item is based on the complexity of the work environment and level of hazards. First aid kit containers are classified by portability, ability to be mounted, resistance to water and corrosion and impact resistance.¹⁰

Applicable Guidance Documents

¹⁰ <https://webstore.ansi.org/standards/isea/ansiiseaz3082021>. Accessed 2/13/2024.

The California Department of Public Health (CDPH) Substance and Addiction Prevention Branch provides guidance on opioid overdose reversal medication on its website, including information on how to acquire and use Naloxone.¹¹ The CDC provides similar information on its website, “Stop Overdose.”¹²

The Substance Abuse and Mental Health Services Administration (SAMHSA) publication SAMHSA Overdose Prevention and Response Toolkit (2023)¹³ provides guidance for a broad audience on overdose causes, risks, and signs, as well as the steps to take when witnessing and responding to an overdose. It provides clear, accessible information on opioid overdose reversal medications, such as naloxone.

The White House’s “Challenge to Save Lives from Overdose” is an effort from the federal government to encourage stakeholders across all sectors to commit to saving lives by increasing training on and access to opioid overdose reversal medications. The White House is requesting employers and organizations commit to train employees on opioid overdose reversal medications, keep the medications in first-aid kits, and distribute medications to employees and customers so they might save a life at home, work, or in their communities.¹⁴ Several employers and employer organizations have agreed to have opioid overdose reversal medications at their worksites and to train employees on when and how to use the medications.¹⁵

Cal/OSHA EVALUATION

Cal/OSHA’s evaluation report dated April 2, 2024, supports the Petitioner’s proposed changes. Cal/OSHA specifically recommends that Petition file No. 602 be granted to the extent that Cal/OSHA is requested to propose a necessary amendment to the regulations, separate from sections 1512 and 3400, that would require employers to provide employees ready access to opioid antagonists, and to train employees on their safe use.

According to Cal/OSHA, requiring opioid overdose reversal medications to be available and readily accessible at worksites and requiring employee training on their use would lead to a

¹¹ [Naloxone \(ca.gov\)](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Naloxone.aspx)

¹² <https://www.cdc.gov/stop-overdose/naloxone-faq/index.html>

¹³ Substance Abuse and Mental Health Services Administration. SAMHSA Overdose Prevention and Response Toolkit. Publication No. PEP23-03-00-001. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2023. Accessed February 9, 2024. <https://store.samhsa.gov/sites/default/files/overdose-prevention-response-kit-pep23-03-00-001.pdf>

¹⁴ The White House. Save Lives from Overdose. Accessed on March 14, 2024. <https://www.whitehouse.gov/savelivesfromoverdose/>

¹⁵The White House. Fact Sheet: Biden-Harris Administration Launches the White House Challenge to Save Lives from Overdose. Accessed March 14, 2024. <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/13/fact-sheet-biden-harris-administration-launches-the-white-house-challenge-to-save-lives-from-overdose/>

significant reduction in opioid-related deaths in California. Cal/OSHA builds on and updates the data provided by Petitioner as the basis for the amendments to the regulations.

Most notably, Cal/OSHA highlights that workplace overdose deaths have increased 619 percent since 2011.¹⁶ In California, 23 percent of workplace fatalities in 2022 were due to an unintentional overdose.¹⁷ Further, in California, between 2018 and 2022, the number of fatal occupational injuries due to unintentional overdoses that occurred at work rose from 23 to 117.¹⁸ In addition, the proportion of overall fatalities in California from unintentional overdoses within the scope of Census of Fatal Occupational Injuries (CFOI) has increased rapidly. From 2014 to 2022, unintentional overdoses in California workplaces rose from 4% to 23% of all fatalities within the scope of CFOI.¹⁹ The majority of these unintentional overdoses are due to opioid overdoses.²⁰

Opioids can cause a person's breathing to slow down or stop. Opioid overdose reversal medications block opioids' effects, restore breathing, and often save lives.²¹

Cal/OSHA reiterates Petitioner's position that the U.S. Food and Drug Administration (FDA) has approved two over-the-counter versions of opioid overdose reversal medications, making it easier to obtain them. These medications quickly and temporarily reverse overdoses from prescription and illicit opioids, can be administered by people without medical training, are non-habit forming, and are not harmful to people when administered.²² Both are available to use as a nasal spray.²³ Including these medications at worksites, either in a first aid kit or elsewhere, and training employees to use them will save many lives. Anyone at a workplace, including workers, clients, customers, and visitors, is at risk of overdosing if using opioids.²⁴

¹⁶ National Safety Council (NSC). Safety Topics: Overdose Deaths. 2023. Accessed March 14, 2024.

<https://injuryfacts.nsc.org/work/safety-topics/overdose-deaths/>

¹⁷ California Department of Industrial Relations, Division of Occupational Safety and Health, Census of Fatal Occupational Injuries (CFOI) Program. Fatal Occupational Injuries in California, 2013 – 2022. April 2024. Accessed May 23, 2024.

<https://www.dir.ca.gov/dosh/CFOI/California-Occupational-Fatalities.pdf>

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Tanniru, N, Demeter, NE, Pinsker, EA. Opioid-Related Overdose Deaths in California, 2021, Sacramento, CA; California Department of Public Health, October 2023. Accessed May 31, 2024.

<https://www.cdph.ca.gov/Programs/CCDPHP/sapb/CDPH%20Document%20Library/MortalityDataBriefFinalADA.pdf>

²¹ Wermeling, D.P., Review of naloxone safety for opioid overdose: practical considerations for new technology and expanded public access. Therapeutic Advances in Drug Safety, 2015. 6(1): p. 20-31. Accessed February 9, 2024.

<https://doi.org/10.1177/2042098614564776>

²² Ibid.

²³ Substance Abuse and Mental Health Services Administration. SAMHSA Overdose Prevention and Response Toolkit. Publication No. PEP23-03-00-001. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2023. Accessed February 9, 2024.

<https://store.samhsa.gov/sites/default/files/overdose-prevention-response-kit-pep23-03-00-001.pdf>

²⁴ CDC National Institute for Occupational Safety and Health (NIOSH). Using Naloxone to Reverse Opioid Overdose in the Workplace: Information for Employers and Workers. October 2018. Accessed February 28, 2024.

<https://www.cdc.gov/niosh/docs/2019-101/pdfs/2019-101.pdf?id=10.26616/NIOSH PUB2019101>

According to Cal/OSHA, opioid overdose reversal medication requirements should be separate from first aid kit requirements. The goal of planned rulemaking for first-aid kits is to make sections 1512 and 3400 consistent with the ANSI national consensus standard. Adding additional items to sections 1512 and 3400 that are not in the ANSI Standard would conflict with the goal of consistency with national standards to make purchasing title 8 compliant first-aid kits as simple as possible for employers.

OSHSB STAFF EVALUATION

OSHSB staff (“Board staff” or “Staff”) prepared an evaluation dated April 10, 2024, which recommends that the Board deny this petition.

As Board Staff note in its evaluation, although the CDC and California Department of Public Health (CDPH) recommend that opioid users and their families and friends carry naloxone,^{25,26} requiring the medicine in every first aid kit in a California workplace could pose challenges to employers. The “Opioids at Work, Employer Toolkit” developed by the NSC (the Petitioner’s organization), warns employers to consider “liability and other legal issues” before implementing a workplace naloxone program. To address legal and liability concerns, the NSC suggests program development in partnership with an organization’s legal advisors.

Furthermore, according to Board staff, the NSC alerts employers that the program must ensure employee confidentiality, compliance with federal, state and local regulations, including but not limited to OSHA, the Americans with Disabilities Act (ADA), Mental Health Parity Act and HIPAA, and comply with union and industry regulations. Therefore, a significant number of California businesses may lack access to the necessary resources to properly implement an onsite naloxone program, as recommended by NSC.

As described above, the CDPH states that in 2021 there were 7,175 opioid overdose deaths in California. The April 2023 *Fatal Occupational Injuries in California 2013-2021* report from Cal/OSHA says that in 2021 there were 85 work-related fatalities due to drug or alcohol overdoses; however, the report does not specify how many were related to opioid use. About 1% of the more than 7,000 opioid deaths in California are potentially work related.

Existing Cal/OSHA regulations regarding first aid kits do not prohibit employers from stocking naloxone if the employer obtains physician approval prior to providing such protection. Maintaining a supply of naloxone onsite may be easier for some employers than others. As Board Staff note, the CDPH suggests that naloxone be kept in its box until ready for use, protected from light, stored at room temperature below 77 degrees Fahrenheit (°F) or as

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https://www.cdc.gov/opioids/naloxone/factsheets/pdf/Naloxone_FactSheet_FamilyandCaregivers_WhatYouNeedToKnow.pdf. Accessed 2/21/2024.

²⁶ <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Naloxone.aspx#tag6>. Accessed 2/21/2024.

directed by the manufacturer, and care must be taken to prevent freezing or exposure to heat above 104°F.²⁷

Based on these requirements, Board staff flag that a mobile work crew with a first aid kit located in a vehicle, for example, may have more difficulty keeping the medicine at the recommended storage temperature than an office-based employer. Further, privacy (employee confidentiality, ADA, Mental Health Parity Act, HIPAA, etc.), training availability and comprehension and other concerns can also be expected to impact different workplaces unequally.

Within the Non-mandatory Appendix A to CFR 1910.151, Federal OSHA suggests that employers refer to “the OSHA 300 log, OSHA 301 log, or other reports to identify” the need for adding items to their first aid kit. Board staff opines that the decision on whether or not to stock opioid reversal medication in a first aid kit should be left up to the employer’s evaluation of workplace hazards. Although some workplaces could decide that having opioid reversal medication available in their first aid kits is protective of employee safety and health, mandating its presence in all workplace first aid kits could prove unnecessarily burdensome to many employers.

DISCUSSION

Worker safety would be enhanced by the Petitioner’s proposed amendment to the regulations to require that employers provide opioid overdose reversal medication (opioid antagonist, e.g. Naloxone) at all worksites, as well as training for employees to safely administer the medication.

A. Opioid Overdose Reversal Medication is Safe and Easy to Administer, Affordable, and Has a Long Shelf Life

As noted in both evaluations, the FDA has approved two over-the-counter versions of opioid overdose reversal medications. These medications quickly and temporarily reverse overdoses from prescription and illicit opioids, can be administered by people without medical training, are non-habit forming, and are not harmful to people when administered. Both are available to use as a nasal spray with little to no assembly.

According to the CDC, “Naloxone can be given safely to people of all ages, from infants to older adults.”²⁸ According to the CDPH, “Naloxone has very few negative effects, and has no effect if opioids are not in a person’s system.”²⁹

²⁷ <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Naloxone.aspx#tag6>. Accessed 2/21/2024.

²⁸ <https://www.cdc.gov/overdose-prevention/reversing-overdose/about-naloxone.html#:~:text=Naloxone%20is%20safe,have%20unintentionally%20taken%20an%20opioid>. Accessed 5/20/2024.

²⁹ https://www.cdph.ca.gov/Programs/CCDPHP/sapb/CDPH%20Document%20Library/NSO_FAQ_june_2023_ADA.pdf. Accessed 5/20/2024.

Further, Board staff surveyed various pharmacies (Walgreens, CVS, Target) in the Sacramento area and found that a two-pack of Narcan nasal spray (4 mg single dose) costs \$44.99 at each of the stores. On January 17, 2024, the FDA announced that the shelf life of the Narcan nasal spray (4 mg single dose) was extended to four years from the date of manufacture.³⁰ The California Department of Health Care Services (DHCS) now distributes, by request, no cost naloxone product utilizing funding from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) to eligible entities like first responders, schools, and other local city agencies.³¹

Therefore, the financial burden on employers and/or workers administering opioid reversal medication and the general risks of using such medication are minimal.

B. California's Good Samaritan Law Limits Personal Liability to Anyone Administering Opioid Overdose Reversal Medication Properly

California's Good Samaritan law protects those giving emergency medical care at the scene of a medical emergency, including giving opioid reversal medication. According to Health and Safety Code Section 1799.102(b)(2), "No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct."

Given that the medication has very few negative effects, and has no effect if opioids are not in a person's system, there is little to no chance of harm in administering opioid reversal medication. So long as a person administering the medication is not a medical professional and intends to assist someone with a suspected overdose, the Good Samaritan law would protect them from liability in the unlikely event that harm does occur. A non-medical professional employer or employee is also likely shielded from any liability, including Workers' Compensation liability, if administering first-aid in good faith to an employee who is using a controlled substance like opioids.³²³³ Therefore, concerns about liability for those persons administering opioid reversal medication are unnecessary.

C. Worker Training Can Address Proper Administration and Storage of Opioid Overdose Reversal Medication and Medical Privacy Concerns

³⁰ <https://www.fda.gov/drugs/drug-safety-and-availability/fda-announces-shelf-life-extension-naloxone-nasal-spray>. Accessed 2/13/2024.

³¹ [Naloxone Distribution Project \(ca.gov\)](#). Accessed 5/20/2024.

³² See *Jimenez v. Mrs. Gooch's Nat. Food Markets, Inc.*, 95 Cal. App. 5th 645, 655 (2023) (finding that employer providing first aid was not subject to liability for negligence outside of the workers' compensation scheme).

³³ See Cal. Lab. Code § 3600(a)(4) (an employee is not entitled to workers' compensation if the injury was caused by the employee's intoxication from alcohol or the unlawful use of a controlled substance).

Training on administering opioid reversal medication is readily available and given by reputable providers like the CDC, the CDPH and SAMHSA. Training formats include videos on YouTube in English and Spanish. These trainings teach, among other things: 1) how to recognize an opioid overdose, 2) how to store and administer the opioid reversal medication, 3) how to administer rescue breathing and place the subject in the recovery position, and 4) how to provide post-overdose care.

In addition to training on administration and storage, employers can also train workers on the importance of medical privacy to ensure employee confidentiality and compliance with related federal, state and local regulations, including but not limited to the Americans with ADA, Mental Health Parity Act and HIPAA, and compliance with union and industry regulations. To address these legal and liability concerns, the NSC suggests program development in partnership with an organization's legal advisors. Even without legal advisors, there are resources available to employers on similar issues concerning other kinds of workers' medical records and anti-discrimination laws. In a situation where it is apparent that an individual is experiencing a possible opioid overdose and requires medical intervention, their drug use has become a public matter. While an individual's medical privacy is of utmost importance, it is even more important that lives are protected.

D. Any Proposed Regulations Requiring Opioid Overdose Reversal Medication at All Worksites Can Include an Exception for Infeasibility

Where it is not feasible for an employer to provide adequate training, administration or storage of opioid reversal medication, an exception can be included in the proposed regulations exempting the employer from this requirement. That way, worker safety would be increased as a whole, and it would not be overly burdensome on those employers who can demonstrate infeasibility.

For all of these reasons, Petitioner's proposed amendments to the regulations in order to require that employers provide opioid overdose reversal medication at all worksites, as well as training for employees to safely administer the medication, would increase worker safety with little to no additional risk.

CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Lorraine M. Martin, President and CEO of the National Safety Council, to make recommended changes to the regulations in order to require that employers provide opioid overdose reversal medication (opioid antagonist, e.g. Naloxone) at all worksites, as well as training for employees to safely administer the medication.

For reasons stated in the preceding discussion and considering testimony received today, Petition 602 is hereby GRANTED to the extent that Cal/OSHA is requested to propose a necessary amendment to the regulations, separate from sections 1512 and 3400, that would

require employers to provide ready access by employees to opioid antagonists, and to train employees on their safe use, where not infeasible.