

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
www.dir.ca.gov/oshsb



**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 603)**

I. INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on March 11, 2024, from Ricardo Beas, Safety Professional (Petitioner). The Petitioner requests the Board to rescind title 8, California Code of Regulations, sections 3205 through 3205.2, the non-emergency COVID-19 regulations.

According to the Petitioner, this request is based on new information provided by confirmed scientific studies and federal health authorities. The Petitioner contends that recent findings by the federal Centers for Disease Control (CDC) and other scientific authorities have reduced the recommendations for COVID-19 protection. Therefore, the current title 8 standards for COVID-19 are no longer needed.

The Petitioner asserts the COVID-19 non-emergency regulations pose an inconvenient, time consuming, costly, and unnecessary burden on employers in the state of California. One concern raised by the Petitioner is that the regulations refer to the recommendations of the California Department of Public Health, which have continued to vary and are burdensome for employers to continuously monitor. The Petitioner further contends that all other states have rescinded similar regulations pertaining to COVID-19 and requests the Board do the same.

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 render a decision no later than six months following receipt. Furthermore, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Cal/OSHA) must be referred to Cal/OSHA for evaluation, and Cal/OSHA has 60 days after receipt to submit an evaluation regarding the proposal.

II. SUMMARY

The Petitioner requests the Board rescind the COVID-19 non-emergency regulations on the basis that the COVID-19 non-emergency regulations pose an inconvenient, time

consuming, costly, and unnecessary burden on employers in the state of California. Petitioner contends these regulations are tied to California Department of Public Health (CDPH) declarations on how to treat COVID-19, which have varied since the non-emergency COVID regulations have been established, while requiring employers to respond accordingly.

Petitioner believes it is time to follow other states that have rescinded similar regulations pertaining to COVID-19. The Petitioner asserts:

1. The CDC has recently declared the SARS-CoV-2/COVID-19 virus to be, and to be treated as, nothing more than a typical flu.¹ Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Disease, and Dr. Robert Redfield, former CDC Director, co-authored a paper (March 26, 2020), at the beginning of the pandemic noting that, “the overall clinical consequences of Covid-19 may ultimately be more akin to those of a severe seasonal influenza.”²
2. Natural immunity, as has been known for hundreds of years, is the best way to be immunized from COVID-19,³ and natural immunity last much longer than the COVID-19 vaccines.⁴
3. It has been proven that COVID-19 vaccines do not stop a person from getting COVID-19 as well as proven not to stop transmission to others.⁵
4. Masks have proven to be worthless in trying to stop the transmission of a virus, including COVID-19.⁶
5. Dr. Fauci recently confirmed, in a congressional meeting that the 6-foot distancing policy, encouraged to avoid transmission, has no scientific basis in helping stop the transmission of COVID-19.⁷

¹ Covid in 2024: Treat it More Like the Flu, New CDC Guidance Suggests - WSJ
<https://www.wsj.com/health/wellness/covid-guidelines-2024-cdc-symptoms-contagious-cdefb6b8>

² Covid-19 — Navigating the Uncharted | New England Journal of Medicine (nejm.org)
<https://www.nejm.org/doi/full/10.1056/NEJMe2002387> ;
<https://www.bitchute.com/video/2TJNKJDpeoel/>
<https://www.bitchute.com/video/R4fSywyxBDT5/>

³ Natural and vaccine-induced immunity are equivalent for the protection against SARS-CoV-2 infection - PMC (nih.gov)
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10198735/#:~:text=Real%2Dlife%20evidence%20has%20consistently,SARS%2DCoV%2D2%20infection>

⁴ <https://www.nebraskamed.com/COVID/covid-19-studies-natural-immunity-versus-vaccination#:~:text=%E2%80%9CRecent%20data%20analyses%20indicate%20that,from%20severe%20illness%20and%20death.%E2%80%9D>

⁵ <https://www.bitchute.com/video/RUAIrKMMCK7e/>

⁶ <https://www.youtube.com/watch?v=qjBUe8F-l5s>
<https://www.youtube.com/watch?v=l7XPxM9l6Mc>
<https://www.bitchute.com/video/8OQG3vpehJJG/>

⁷ <https://www.bitchute.com/video/8OQG3vpehJJG/>

6. Both Dr. Fauci and the World Health Organization have confirmed that alleged infected and asymptomatic carriers of the COVID-19 virus rarely transmit and are not the drivers of transmission of viruses to others, making it unnecessary to exclude from the job site any person that might test positive for COVID-19 without symptoms.⁸
7. Polymerase chain reaction, (PCR) tests, have been proven not to detect the COVID-19 virus specifically and to give inaccurate and often false results as to whether a person is infected or not.⁹

Lastly, the Petition claims that “[a]t this stage of the potential threat of the COVID-19 virus, failure to rescind these regulations would be arbitrary and capricious, and an abuse of discretion.”

III. RELEVANT STANDARDS

California Labor Code, section 142.3(a)(1)

The Board, by an affirmative vote of at least four members, may adopt, amend or repeal occupational safety and health standards and orders.

California Government Code, section 11349(a)

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

California Code of Regulations, title 8, section 3205. COVID-19 Prevention

- Section (a)(1). This section shall apply until February 3, 2025, except for the recordkeeping subsection 3205(j), which shall apply until February 3, 2026.
- Section (c)(2). When determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, employers shall review applicable orders and guidance related to COVID-19 from the State of California and the local health department with jurisdiction over the workplace and shall treat COVID-19 as an airborne infectious disease.

⁸ <https://www.bitchute.com/video/rLJqG4N8LAcf/>

<https://www.youtube.com/watch?v=lf3IBGkS03E>

⁹ <https://www.youtube.com/watch?v=esNQZXu17U8&t=1s>

<https://www.bitchute.com/video/bR5HF0hNzZvI/>

<https://justthenews.com/politics-policy/coronavirus/newly-surfaced-video-july-fauci-tests-dead-virus>

<https://www.bitchute.com/video/bR5HF0hNzZvI/>

<https://www.newstarget.com/2023-03-17-unearthed-emails-prove-covid-pcr-test-scam.html>

https://needtoknow.news/2020/09/oxford-university-says-pcr-swab-tests-for-covid-19-return-false-positive-results/?utm_source=rss&utm_medium=rss&utm_campaign=oxford-university-says-pcr-swab-tests-for-covid-19-return-false-positive-results

<https://www.bitchute.com/video/Cd6YCT3xc4Y4/>

IV. CAL/OSHA'S EVALUATION

Cal/OSHA's evaluation report, dated June 18, 2024, does not support the Petitioner's request to rescind the COVID-19 Prevention Non-Emergency Regulations sections 3205, 3205.1, 3205.2 and 3205.3.

The evaluation evaluates the Petitioner's assertions and provides direct data, citations to reputable studies and reliable sources (e.g., CDC and CDPH) that refute the broad claims proffered.

While the Petitioner cited a *Wall Street Journal* article, which cannot be read without a paid subscription, Cal/OSHA provided numerous credible sources to show that COVID and Long COVID can be distinguished from the flu. Additionally, unlike the flu, negative long-term health outcomes, such as chronic illness and disabilities, are common after recovering from COVID-19.

- Cal/OSHA's Source: CDC¹⁰
 - SARS-CoV-2 spreads more easily than influenza.
 - SARS-CoV-2 has the potential to cause more severe illness in some people, may take longer to show symptoms and may have a longer contagious period.
 - SARS-CoV-2 can cause more severe symptoms, including blood clots in the veins and arteries of the brain, heart and lungs. Multisystem Inflammatory Syndrome in Children (MIS-C) and in Adults (MIS-A) is also a risk.
 - Anyone who has had SARS-CoV-2, even with mild or no symptoms, is at risk for post-COVID conditions. Post-COVID conditions can appear weeks after infection and the symptoms can last weeks or months after first being infected with SARS-CoV-2.
- Cal/OSHA's Source: CDC information on Long COVID¹¹
 - As it pertains to Post-COVID conditions, also known as Long COVID, the CDC has determined that Long COVID can result in chronic conditions and, in some cases, disability.
- Cal/OSHA's Source: Study on long-term neurological outcomes of COVID-19¹²
 - Results of a comprehensive evaluation of COVID-19 long-term outcomes conducted by Xu et al. determined there is an increased

¹⁰ Similarities and Differences between Flu and COVID-19. <https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm>

¹¹ Long COVID or post-COVID Conditions. <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>

¹² Long-term neurologic outcomes of COVID-19. <https://www.nature.com/articles/s41591-022-02001-z>

risk of neurologic disorders in the post-acute phase of COVID-19 illness. The study found an increased risk of conditions, such as ischemic and hemorrhagic stroke, peripheral nervous system disorders, Guillain-Barré syndrome, and encephalitis or encephalopathy, following COVID-19 illness.

With respect to masking, the Petitioner refers the Board to YouTube videos with various clips containing no preceding context to support his claim that masks do not work. Similarly, the videos are not dated, which lacks reference to when during the pandemic timeline they refer to.

In comparison, Cal/OSHA's contain complete data and information without any edits.

- Cal/OSHA's Source: CDC¹³
 - Masking is a critical tool for preventing the spread of SARS-CoV-2 where any type of mask is better than no mask.
- Cal/OSHA's Source: CDC¹⁴
 - When masks are worn by an individual with an infection, they reduce viral spread to others. Some masks also can protect the wearer from breathing in larger infectious particles, acting as a filter to reduce the number of germs inhaled.
- Cal/OSHA's Source: National Institute for Occupational Safety and Health¹⁵
 - Masks of all kinds, despite their design differences, effectiveness, and functions, will reduce the overall risk of SARS-CoV-2 infection.

Notably, the evaluation focuses on the novel effects of COVID including Long COVID symptoms that remain after an infection. Cal/OSHA emphasizes that although COVID-19 is no longer a public health emergency of international concern, the hazard has not been eliminated. According to the interim director of the World Health Organization's (WHO) Department of Epidemic and Pandemic Preparedness and Prevention, "The virus is here. It's evolving. It's killing. It's causing Post-COVID conditions also called Long COVID. And we don't know the long-term effects. It's a virus that is here to stay." ¹⁶

¹³ CDC updates consumer mask website to emphasize protection, fit, and comfort <https://www.cdc.gov/media/releases/2022/s-0114-mask-protection-fit.html>

¹⁴ An additional strategy to further protect yourself and others. https://www.cdc.gov/respiratory-viruses/prevention/masks.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprevent-getting-sick%2Fmasks.html

¹⁵ Community Respirators and Masks. <https://www.cdc.gov/niosh/topics/publicppe/community-ppe.html>

¹⁶ Scientific American. Interview with Maria Van Kerkhove. Rampant COVID Poses New Challenges in the Fifth Year of the Pandemic | Scientific American. February 6, 2024. Accessed April 24, 2024.

The evaluation concludes that because there remains a need for long-term management of COVID-19, the Board should not rescind the COVID-19 non-emergency regulations.

V. BOARD STAFF'S EVALUATION

Board staff prepared an evaluation dated May 30, 2024, which concurs with Cal/OSHA that the petition has no merit.

According to Board staff, the Petitioner is relying primarily on information generated at the beginning of the pandemic (2020-2021). Among the list of sources that support his claims, the Petitioner shared online videos from a platform dedicated to peer-to-peer content sharing. Information shared on this site is not required to be factual¹⁷. Additionally, several sound bites do not provide any context for the viewer. For example, the Petitioner provided an interview clip that only showed the answer to a question, but the preceding question was cut out of the video clip. Another clip was in Italian, with no subtitles or translation, so there was no way to tell if the proffered position supported what was in the video.

More importantly, the links to articles and videos provided by the Petitioner did not include any recently published data or supporting evidence based on scientific research. Board staff pointed out that the Petitioner's cited updated information from the CDC is no longer the most up-to-date information. On March 1, 2024, the CDC released updated recommendations for how people can protect themselves and their communities from respiratory viruses, including COVID-19¹⁸. The recommendations bring a unified approach to addressing risks from common viral illnesses. The recommendations provide core prevention steps and strategies, including:

- Staying up to date with vaccination to protect people against serious illness, hospitalization and death. This includes flu, COVID-19 and RSV, if eligible.
- Staying home and away from others when respiratory virus symptoms are present and returning to normal activities once symptoms are better overall and fever-free for at least 24 hours.¹⁹

These updates contradict the Petitioner's statements regarding mask and social distancing being ineffective. The CDC continues to encourage additional prevention

<https://www.scientificamerican.com/article/rampant-covid-poses-new-challenges-in-the-fifth-year-of-the-pandemic/>

¹⁷ The owner of the website, Bitcute, states that "The right to freedom of expression does not just apply to information and ideas generally considered to be useful or correct. It also applies to any kind of fact or opinion that can be communicated. The UN Human Rights Committee (UNHRC) has stressed that 'expression' is broad and not confined to political, cultural or artistic expression. It also includes controversial. <https://support.bitchute.com/policy/our-commitment/>

¹⁸CDPH <https://www.cdc.gov/respiratory-viruses/guidance/respiratory-virus-guidance.html>. Updated March 1, 2024

¹⁹ <https://www.cdc.gov/respiratory-viruses/prevention/precautions-when-sick.html>. Updated March 1, 2024

strategies to curb the spread of the disease, such as wearing well-fitting masks, keeping distance from others and/or getting tested for respiratory viruses²⁰.

Lastly, Board staff noted that there has been a recent uptick in new COVID-19 cases as new variants, JM.1 and KP.2 (JN.1.11.1.2), have increased in the United States. As of the week of May 14, 2024, CDC Now projections estimate variant KP.2 to account for nearly 30% of new COVID-19 illnesses in the United States. In fact, COVID-19 cases attributed to variant KP.2 rose from 3.9% to 28.2% from the end of March 2024 to almost mid-May 2024²¹.

Board staff concludes that because COVID-19 variants continue to be a health threat and the Petitioner failed to provide evidence to the contrary, Petition 603 should be denied.

VI. ANALYSIS

The Standards Board voted to adopt non-emergency COVID-19 prevention regulations that took effect on February 3, 2023. These non-emergency regulations are to remain in effect until February 3, 2025, except for the recordkeeping subsections that will remain in effect until February 3, 2026.

A. The Non-Emergency Covid-19 Regulations are Still Necessary.

When the Office of Administrative Law (OAL) reviews regulations, it looks to provisions of California's Administrative Procedures Act (APA). To be in compliance with the APA, a regulation must be necessary. Government Code section 11349(a) defines necessity as substantial evidence of the need for the regulation, taking into account the totality of the record. Additionally, evidence includes facts, studies and expert opinion.

The Petitioner claims the current title 8 standards are no longer needed based on recent recommendations for lesser protections. The evidence cited to prove lack of necessity does not point to relevant facts, studies or expert opinion. Many of the citations are not accessible and/or not dated, therefore, a determination cannot be made as to their currentness.

In contrast, as both Cal/OSHA and Board staff point out, although masks are no longer required, they are still needed.²² Both evaluations cite credible sources, such as the CDC the CDPH, and numerous reputable studies.

Because the regulations are based on science and approved by OAL (pursuant to the Administrative Procedural Act), they are not arbitrary, capricious or an abuse of power.

²⁰ <https://www.cdc.gov/media/releases/2024/p0301-respiratory-virus.html> Updated March 1, 2024

²¹ ID Society Covid-19 Real-Time Learning Network https://www.idsociety.org/covid-19-real-time-learning-network/diagnostics/covid-19-variant-update/#/+0/publishedDate_na_dt/desc/

²² Section 3205(f)(1). The non-emergency regulations do not require masks but note that when they are required by a DCPH regulation or order, employers must provide the face coverings and ensure that they are worn.

1. Inconvenience Does Not Mean Unnecessary.

Ultimately, time-consuming requirements may pose an inconvenience to employers. However, inconvenience in and of itself does not make a regulation unnecessary. The Petitioner asserts that CDPH recommendations are continually evolving, thus, the regulated employer must keep up with these changes. This argument is no different from any other contagious airborne disease, such as measles, which has seen a recent uptick in cases.

As the COVID-19 virus mutates, variants will present new challenges to healthcare professionals. The non-emergency COVID-19 regulations are a floor, not a ceiling. The current regulations have built-in flexibility permitting local health departments to issue more protective or stringent state or local orders or guidelines.²³ To rescind this provision, the Petitioner must show a lack of necessity for local health departments to have their finger on the pulse of COVID-19, which he has failed to do.

2. The Regulations Should Expire at a Time That Makes Sense Seasonally.

The regulations were not contemplated to be enforced into perpetuity. In fact, they expire February 3, 2025, with recordkeeping requirements expiring on February 3, 2026.

The Petitioner submitted his petition on March 11, 2024, just 11 months shy of the regulation compliance time remaining. The Board has six months to render a decision. This petition will be voted on at the August 15, 2024 meeting. At that point, the regulation will only be in effect for a little over five months before it expires on its own.

During that time, new mutated variants could result in a devastating cold and flu season. Given the current COVID summer surge, as reported in the Board staff evaluation, and the upcoming fall and winter season shortly after, it is prudent to permit the regulations to expire on its anticipated deadline.

B. More than Half of The Petitioner's Basis to Rescind the Non-Emergency COVID-19 Regulations are Irrelevant as They Are Not Covered by the Regulations.

Five out of the seven of Petitioner's claims do not relate to the non-emergency COVID regulations.

²³ Section 3205(a)(3). Nothing in this section or sections 3205.1 through 3205.3 is intended to limit more protective or stringent state or local health department orders or guidance.

1. The Petitioner Argues that “Natural Immunity” has Been Known for Hundreds of Years to be Superior to COVID-19 Vaccines.

As Cal/OSHA’s evaluation correctly explains, because the COVID-19 virus is a new novel virus, the premise of this argument is flawed. Additionally, vaccines are not mandated as part of the current COVID-19 regulations.

2. The Petitioner States that COVID-19 Vaccines Have Been Proven to be Ineffective in Preventing COVID-19 or Stopping Transmission to Others.

Although Cal/OSHA pointed to a study that shows the opposite to be true, this exercise is not necessary. As previously stated, vaccines are not mandated as part of the current COVID-19 regulations. Further, the regulations do not require employers to document employee vaccine status.

3. The Petitioner Argues Against the 6-foot Distancing Policy Encouraged to Avoid Transmission.

The current COVID-19 regulations do not mandate a 6-foot distancing policy. The only reference to six feet involves the definition of “close contact.”²⁴

4. The Petitioner Disputes That Asymptomatic Positive Cases are Transmissible and Objects to the Exclusion of COVID Positive Persons From the Workplace.

The Petitioner mischaracterizes information contained in a video clip he provided. The video clip is undated and 44 minutes and 1 second in duration. The Petitioner states the video claims it is unnecessary to exclude asymptomatic persons who test positive from the workplace because it is historically rare for asymptomatic carriers of the virus to transmit the virus to others. At the 35-minute and 22-second mark, a WHO doctor states, “but from the data we have it still seems rare” with respect to transmission from an asymptomatic person who tests positive. There is no context for this statement. The data does not state it has taken place over time to show it was historical. It is unclear if the data obtained were from individuals who worked together or whether they were together indoors or outdoors. Nor do we know the sample size of the data.

The Cal/OSHA evaluation noted that according to the CDC, asymptomatic persons who test positive for COVID can still transmit the virus. However, the regulations do not address the exclusion of asymptomatic workers. Furthermore, for COVID-19 cases with no symptoms, there is no infectious period for the purpose of isolation or exclusion.

²⁴ Section 3205(b)(1)(B) In indoor spaced of greater than 400,000 cubic feet per floor, a close contact is defined as being within six feet of the COVID-19 case for a cumulative total of 15 minutes or more over a 24 hour-hour period during the COVID-19 case’s infectious period, as defined by this section, regardless of the use of face coverings.

5. The Petitioner States PCR Tests Have Been Proven to Be Inaccurate and Cannot Detect the COVID-19 Virus.

While the Cal/OSHA evaluation cites credible sources to show that PCR testing is reliable, it is not required by the regulations. Thus, this is a moot argument.

C. The Petitioner's Cited Reasons for Rescinding the Non-Emergency COVID-19 Regulations Are Unsupported

1. Petitioner's Claim and Sources About COVID-19 and the Flu Are Outdated and Unreliable.

Citing a *Wall Street Journal* article, the Petitioner asserts that "[t]he CDC has recently declared the SARS-CoV-2/COVID-19 virus to be, and to be treated as, nothing more than a typical flu." This article is not accessible because it requires a paid subscription.

However, as the Cal/OSHA and Board staff evaluations point out, COVID-19 is more transmissible than the flu and COVID-19 infection can have complicated long-term health outcomes.

The Petitioner also quoted Dr. Anthony Fauci as saying, "the overall clinical consequences of COVID-19 may ultimately be more akin to those of a severe seasonal influenza." The source of this quote is from a *New England Journal of Medicine* editorial dated February 28, 2020, and refers to *Clinical Characteristics of Coronavirus Disease 2019 in China*.²⁵ The study data was from 1099 patients with laboratory-confirmed COVID-19 from 552 hospitals in 30 provinces in mainland China through January 29, 2020. Because this study took place during the initial outbreak, the data relates to the first and novel COVID-19 virus, which, after numerous mutations, significantly differs from today's virus strains.

Additionally, this study is not scientifically reliable. The authors themselves admit to the limitations of the study, including incomplete data affecting estimates proffered. Dr. Fauci uses these estimates as a basis for his opinion in the article cited by the Petitioner.

2. The Petitioner Cites to Incomplete Information in Claiming that Masks Have Been "Proven" to be "Worthless" to Stop the Transmission of a Virus, Including COVID-19

The source of the claim that masks have been proven worthless to stop the transmission of a virus is based on a Fox News short clip where TV personality Tucker Carlson states he had accurate data from the CDC. Tucker claims that the CDC data showed 85% of people who tested positive in July reported wearing a mask always or often. The clip does not specify which year in July this anecdotal data was derived. The

²⁵ Clinical Characteristics of Coronavirus Disease 2019 in China | *New England Journal of Medicine* (nejm.org) <https://www.nejm.org/doi/10.1056/NEJMoa2002032>

Petitioner's reliance on anecdotal data instead of a peer-reviewed published study does not prove masks are worthless.

The clip also quotes the CDC as saying that in October, wearing a mask was not intended to protect the wearers. This statement is derided as ridiculous when another clip - one of the CDC director - is shown stating in September that he "might even go so far as to say" a mask is more protective than a vaccine. Again, we do not know the year these CDC statements were made. Nor do we know if a vaccine was commonly available in September or October of that unknown year.

In countries other than the United States, such as Japan, it is common for people who are sick to wear a mask so as not to infect others. It would not be a stretch for the CDC to take this approach to a novel virus. In the initial stages of the outbreak, various guidelines were provided and many of them changed as more information about the virus came to light. Moreover, the hedged statement given by the CDC director about masks does not provide any context about what question preceded the comment or if the statement was an opinion.

Even taken in its totality, none of the statements by the CDC are necessarily contradictory. However, even if they are contradictory, using these statements as a basis for proving that masks are worthless and do not stop the transmission of COVID-19 does not add up.

VII. CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Ricardo Beas, Safety Professional, to make recommended changes to title 8 sections 3205 through 3205.3 based on new information. The Board has also considered the recommendations of Cal/OSHA and Board staff. For reasons stated in the preceding discussion, the Petition is hereby DENIED.