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:	)	
	)	PETITION FILE NO. 538 and 539
SEIU Local 121RN	)	DECISION
SEIU Nurse Alliance of California	)	
California Nurses Association	)	
	)	
	)	
Applicant.	)	

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

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVID THOMAS, Chairman

DAVE HARRISON, Member

WILLIAM JACKSON, Member

HANK MCDERMOTT, Member

PATTY QUINLAN, Member

BARBARA SMISKO, Member

LAURA STOCK, Member

By: Marley Hart
Marley Hart, Executive Officer

DATE: 6/19/2014
Attachments

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS Edmund G. Brown Jr., *Governor*

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REVISED PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITIONS 538 AND 539)

DISCUSSION

On February 11, 2014, the Occupational Safety and Health Standards Board (Board) received Petition 538 from SEIU Local 121RN and the SEIU Nurse Alliance of California. On February 20, 2014, the Board received Petition 539 from the California Nurses Association. The organizations submitting both petitions are collectively referred to hereinafter as "Petitioners." Both petitions request that rulemaking be undertaken with the object of protecting healthcare workers from workplace violence.

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. Labor Code section 147 states that any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation. The Division evaluation is due no later than 60 days after the Division receives the proposed standard.

Evaluations regarding both petitions have been received from the Division and from Board staff. Relevant facts gleaned from the petitions and from those evaluations are as follows:

- Violence directed against healthcare workers is a serious and on-going problem.

- Existing statutes, regulations and guidelines address that problem to some extent. Some of those provisions are Health and Safety Code Section 1257.7, which requires certain hospitals to conduct security and safety assessments; California Code of Regulations, Title 8, Section 3203, which requires employers to develop and implement Injury and Illness Prevention Programs, and guidelines for healthcare worker safety developed by the Division. The Division evaluation of Petition 538 notes these additional statutes: Labor Code Section 6332, which requires that records be kept of violence against community healthcare workers, and Welfare and Institutions Code Section 4141, which concerns employee safety in State Hospitals. The violence of concern to the Petitioners has persisted in spite of the existence of the provisions referred to in this bullet point, but whether additional provisions would actually provide additional safety is an unanswered question. For instance, according to the Board staff evaluation regarding these petitions, the Division

successfully cited at least one health care employer for violations of Section 3203 based on patient-on-staff assaults that were alleged to have occurred during 2011 and 2012.

- No Federal OSHA standard or national consensus standard directly addresses workplace violence protection.

- At least two workplace violence petitions have been denied by the Board. Petition 331 was denied in 1993. That petition concerned violence in healthcare settings. According to the Board staff evaluation of Petition 538:

  > "Both Board staff and the Division...recommended denying the petition [Petition 331] for a variety of reasons, including jurisdictional uncertainties of the Board and Division, philosophical challenges of requiring employers to address hazards traditionally handled by law enforcement, duplication of requirements already requiring employers to address workplace hazards through the injury and illness prevention program..., and the infeasibility of legislating absolute safety. Although the Division did not feel it was necessary to develop a workplace violence standard at the time, it did develop a 1993 guidance document for addressing workplace violence ("Guidelines for Security and Safety of Health Care and Community Service Workers"), which is currently accessible on the Division's website."

  The other previous petition, Petition 361, was denied in 1995. That petition focused on violence directed at graveyard-shift workers. According to the Board staff evaluation of Petition 538:

  > "Board staff and the Division...recommended that the petition [Petition 361] be denied, using arguments similar to those used for Petition...331. Board staff recommended that the petitioner participate in the Division's Workplace Security Advisory Committee, which was working on updates to 'Cal/OSHA Guidelines for Workplace Security.' The workplace security guidelines were last updated in August, 1995."

- The Division and Board staff both recommend that Petitions 538 and 539 be referred to a Division-convened advisory committee. This issue is a safety issue and not a health issue, and safety issues ordinarily are referred to Board-staff-convened advisory committees. The Division's evaluations of Petitions 538 and 539 indicate, however, that the Division has significant knowledge and experience regarding violence directed at healthcare workers. In light of that Division knowledge and experience and in light of the Division's and Board staff's recommendations, allowing the Division to take the lead in this matter seems reasonable.

CONCLUSION AND ORDER

The Board has considered the Petitions and the evaluations submitted by the Division and Board staff. Based on those documents and the discussion in this proposed petition decision, the Standards Board has determined that the necessity for improved workplace violence protection standards has been established. Petitions 538 and 539 are hereby GRANTED as follows:

1. Using the advisory committee process, the Division is requested to develop a consensus rulemaking proposal addressing workplace violence protection standards for consideration by the public and the Board. The Petitioners should be invited to participate in this advisory committee, as should representatives of other stakeholders (including, but not limited to, employers), the Board staff and, as the Division deems appropriate, subject matter experts.

2. The Division is requested to convene the initial advisory committee meeting no later than 6 months following the granting of these Petitions. In addition, the Board requests that after the initial advisory committee meeting has been convened, the Division provide quarterly updates to the full Board on the status of the rulemaking process.

3. In addition to convening this advisory committee, the Division is requested to consider updating its "Guidelines for Workplace Security", "Guidelines for Security & Safety of Health Care and Community Service Workers" and "Model Injury & Illness Prevention Program for Workplace Security" sample programs to ensure that they contain up-to-date best practices for assisting employers in developing their 21st century workplace violence prevention programs.