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STANDARDS BOARD

State of California
Department of Industrial Relations

Memorandum

To: Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Date: April 23, 2014

From: Juliann Sum, Acting Chief
Division of Occupational Safety and Health

Subject: Division Evaluation of Petition 539[1] from Bonnie Castillo, Director of Government Relations, California Nurses Association (CNA)

This memorandum is written in response to your request for a Division review of Petition 539 dated February 20, 2014 submitted by Bonnie Castillo, Director of Governmental Relations for the California Nurses Association (CNA) that requests the Board to amend the General Industry Safety Orders by adopting a new standard to provide health care workers protections against work place violence.

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, 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 must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

The Division has prepared this memorandum as an evaluation of the petition.

Actions Requested by the Petitioner

In Petition 539, CNA states that violence in health care settings has been an area of concern for them for many years, presenting a serious occupational hazard for registered nurses (RNs) and other health care workers. Acts of assault, battery and aggression routinely occur in health care settings and demonstrate the increasing violence faced by health care workers in California and throughout the country. The petitioner states that U.S. Bureau of Labor Statistics (BLS) data indicates that a worker in health care and social assistance is nearly 5 times more likely to be the victim of a nonfatal assault or violent act by another person than the average worker in all other major industries combined, and in 2011, the incidence rate of violence and other injuries by persons in the private health and social assistance sector was more than triple the overall rate for all of private industry. ("Non fatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2011" U.S. Bureau of Labor Statistics, November 8, 2012 (http://www.bls.gov/news.release/osh2.toc.htm). The petitioner also cites a report from the National Institute for Occupational Safety and Health

[1] Petition 538, on a similar topic was received by the Board on February 10 from Richard Negri, Health and Safety Director, Service Employees International Union, and Kathy Hughes, Liaison, SEIU Nurse Alliance of California. This petition is the subject of a separate evaluation dated April 10, 2014.

(NIOSH) from 2002, "Violence: Occupational Hazards in Hospitals" that states that violence may occur anywhere in the hospital, but is most frequent in psychiatric wards, emergency rooms, waiting rooms, and geriatric units. NIOSH recommended training for all workers to recognize and manage assaults, resolve conflicts, and maintain hazard awareness. This continuing concern was intensified in October 2010 when a registered nurse, a member of CNA, working at Contra Costa County's Martinez Correctional facility was assaulted by an inmate and died several days later. The petitioner has sponsored several legislative reforms to address the overall and specific problems that exist in hospital security programs.

There is currently no Cal/OSHA standard that establishes specific steps for an employer to take to protect health care workers from the various sources of violent incidents that occur in health care settings. The petitioner requests the promulgation of a new workplace violence (WPV) prevention standard built upon a framework that includes subsections for:

- Scope and application that includes all health care workers employed by general acute care hospitals including all inpatient and outpatient units and clinics on the hospital's license.
- A definition of workplace violence or violent incident that includes the use of physical force against a hospital employee by a patient or person accompanying a patient resulting or having a high likelihood of resulting in injury, psychological trauma, or stress, regardless of whether the employee sustains an injury, and an incident involving the use of a firearm or other dangerous weapon regardless of whether the employee sustains an injury.
- A WPV prevention plan.
- Personnel education and training.
- Hazard prevention, control and incident response.
- Protection of employee rights.
- Employee and union participation.
- Documentation and recordkeeping of any violent incident.
- Reporting violent incidents to the Division within timeframes based on the severity of the incident such as the use of a firearm or other weapon, as compared to emergent threats to the safety of hospital personnel.

The petition requests developing these components into a full standard with an advisory committee process including the petitioner and other stakeholders. Petition 538, from the Service Employees International Union and the SEIU Nurse Alliance was submitted on February 10, and requested that the Board develop a regulation addressing workplace violence in all health care settings. The Division submitted an evaluation of Petition 538on April 10, 2014.

Regulations, Laws, and Other Standards

Existing Title 8 Regulations

- Section 342(a) requires all employers to immediately[2] report to the local district office of the Division of Occupational Safety and Health any serious injury or illness. This excludes Penal Code violations.
- Section 3203 Injury and Illness Prevention Plan requires employers to identify and evaluate workplace hazards, to investigate occupational injuries and illnesses, to implement corrective measures in a

[2] 8 CCR 342 states, "Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

timely manner, to provide employee and supervisor training, to develop a system for ensuring compliance with workplace health and safety measures, and to establish a system of communication with employees regarding safety and health matters.

- Section 3220 Emergency Action Plan establishes general requirements for the elements that need to be in an emergency action plan.
- Section 6184 Employee Alarm Systems establishes general requirements for maintaining alarm systems.
- Chapter 7, Subchapter 1, Occupational Injury or Illness Reports and Records (Sections 14300 et seq) requires employers to record workplace injuries and illnesses and file reports with the Department of Industrial Relations.

Labor Code

Labor Code Section 6332, adopted in 2000 (SB 1272), and amended in 2012 (SB 1038, Chapter 46 section 107), requires every employer of health care workers who provide health care related services to clients in home settings to keep a record of any violence committed against such a worker and file a copy of the report with the Department of Industrial Relations.

Health and Safety Code

Health and Safety Code (HSC), Section 1257.7 requires certain hospitals to establish a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. This Section requires that covered hospitals perform a security and safety assessment that examines trends of aggressive or violent behavior at the facility. As amended in 2009, this Section requires hospitals to track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature. The plan is required to include security considerations relating to all of the following: (1) Physical layout, (2) Staffing, (3) Security personnel availability, (4) Policy and training related to appropriate responses to violent acts, and (5) Efforts to cooperate with local law enforcement regarding violent acts in the facility. Covered hospitals are required to have sufficient personnel to provide security pursuant to the security plan. Persons regularly assigned to provide security in a hospital setting are to be trained regarding the role of security in hospital operations, including the identification of aggressive and violent predicting factors and management of violent disturbances. Any act of assault that results in injury or involves the use of a firearm or other dangerous weapon, against any on- duty hospital personnel is to be reported to the local law enforcement agency within 72 hours of the incident.

This requirement of the 2009 amendments have been addressed by the California Department of Public Health Center of Health Care Quality by directive in an All Facilities Letter, AFL 09-49 addressed to all California general acute care hospitals, acute psychiatric care hospitals, and special hospitals dated November 19, 2009.

HSC Section 1257.8 establishes training requirements for emergency department personnel and personnel of other departments covered by the safety and security plan, for hospitals covered by HSC Section 1257.7. The AFL and HSC 1257.7 and 1257.8 are consistent with guidelines published by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Welfare and Institutions Code

In 2012, Section 4141 was added to the Welfare and Institutions Code to address employee safety in California's state mental hospitals. The law requires the state hospitals to update their injury and illness prevention programs at least annually. The programs are required to address the following: control of physical access throughout the hospital and grounds, alarm systems, presence of security personnel, training, buddy systems, and communication and emergency response. In addition, the state hospitals are required to establish injury and illness prevention committees comprised of management and non-management personnel, and to establish an incident reporting procedure.

Federal OSHA Regulations and Other Standards

There is no Federal Occupational Safety and Health Administration (OSHA) regulation that specifically applies to workplace violence.

Other guidelines and relevant documents

Workplace Violence OSHA Safety and Health Topics https://www.osha.gov/SLTC/workplaceviolence/

Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers
U.S. Department of Labor Occupational Safety and Health Administration OSHA 3148-01R 2004

OSHA Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents CPL 02-01-052 09/08/2011

Workplace Violence Prevention for Nurses, CDC Course No. WB1865 - NIOSH Pub. No. 2013-155

Preventing violence in the health care setting, Sentinel Event Alert Issue 45: June 3, 2010, Joint Commission on Accreditation of Healthcare Organizations.

Discussion

It is important to recognize that the sources of the violence occurring in hospitals can be internal and external to its normal operations, and these acts can be directed at health care workers, patients and/or visitors. Currently, researchers use four general categories of violent acts, defined in terms of the relationship of the perpetrator of the act to the victim, to classify an act of violence. This scheme is used in the OSHA compliance directive CPL 02-01-052[3]:

- Type 1—Criminal Intent: Violent acts by people who enter the workplace to commit a robbery or other crime—or current or former employees who enter the workplace with the intent to commit a crime.
- Type 2—Customer/Client/Patients: Violence directed at employees by customers, clients, patients, students, inmates or any others to whom the employer provides a service.
- Type 3—Co-worker: Violence against co-workers, supervisors, or managers by a current or former employee, supervisor, or manager.
- Type 4—Personal: Violence in the workplace by someone who does not work there, but who is known

[3] Occupational Safety and Health Administration, U.S. Department of Labor, "Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents," Directive Number CPL 02-01-052, September 8, 2011.

to, or has a personal relationship with, an employee.

The following data sources show that violent incidents of all types are a significant occupational hazard in health care at the national level and in California:

The American Nurses Association has compiled data that shows that health care has 45% of all nonfatal assaults against workers resulting in lost work days in the U.S. From 1993 to 1999 approximately 765,000 assaults occurred against healthcare workers resulting in days away from work. From 2003 to 2009, 8 registered nurses were fatally injured at work, including four fatal gunshot wounds. In 2009 there were 2,050 assaults and violent acts reported by RNs, requiring an average of 4 days away from work. Of the 2,050 non-fatal assaults and violent acts: 1,830 were inflicted with injuries by patients or residents, 80 were inflicted by visitors or people other than patients, 520 RNs were hit, kicked, or beaten, 130 RNs were squeezed, pinched or scratched requiring days away from work, and 30 were bitten. In 2009, the Emergency Nurses Association reported that more than 50% of emergency center (EC) nurses had experienced violence by patients on the job and 25% of EC nurses had experienced 20 or more violent incidents in the past three years[4].

According to federal OSHA[5], "The Bureau of Labor Statistics (BLS) reports that there were 69 homicides in the health services from 1996 to 2000. Although workplace homicides may attract more attention, the vast majority of workplace violence consists of non-fatal assaults. BLS data shows that in 2000, 48 percent of all non-fatal injuries from occupational assaults and violent acts occurred in health care and social services. Most of these occurred in hospitals, nursing and personal care facilities, and residential care services. Nurses, aides, orderlies and attendants suffered the most non-fatal assaults resulting in injury."

In California, a survey conducted under a NIOSH grant in 2007, "Evaluation of Safety and Security Programs to Reduce Violence in Health Care Settings" January 2007[6] provides WPV data on a representative sample of general acute care hospitals (GACHs), emergency departments, psychiatric units, and psychiatric facilities. The data shows that California has a significant rate of WPV. For example in emergency departments, 92% of surveyed employees reported verbal abuse, threats were reported by 49%, over one-third reported being assaulted in the previous year, and 72% of those who were assaulted verbally or physically did not report the event.

DIR Research Unit data

For an indication of the current extent of the problem in California, DIR's Research Unit extracted total numbers of WPV-related workers' compensation claims in health care environments for the years from 2010 through 2012. Since there is no specific classification for these events in the reporting forms, the researchers extracted the events by searching for key words in the injury description such as "violent, violence, assault, strangled strangling, agitated, aggressive, combative, threaten, abuse, or abusive" and other key phrases, including "crime". A total of 4,884 claims were identified for health care workers. The search excluded state hospitals and state prisons, including prison health care operations. The table below summarizes the results of this extraction.

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[4] Reported in American Nurses Association, Nursing World, 2012, online at: http://www.nursingworld.org/workplaceviolence
[5] Occupational Safety and Health Administraion. Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers. https://www.osha.gov/Publications/OSHA3148/osha3148.html
[6] Evaluation of Safety and Security Programs to Reduce Violence in Health Care Settings Final Report, Peek-Asa, Corinne, et al January 2007 NIOSH Contract 200-2001-08014 and NIOSH R01-OH007934

Table 1: Industry for Reported Claims of Workplace Violence among Health Care Workers, 2010-2012[7].

Category	Frequency	Percent
Hospitals	1629	33.35
Skilled Nursing and Intermediate Care Facilities	866	17.73
Government[8]	583	11.94
Residential and Intellectual Development Disability Facilities	303	6.2
Residential Care Facility – Elderly	276	5.65
Psychiatric and Substance abuse and Specialty Hospitals	200	4.1
Home Health Services	188	3.85
Child and Youth Services	162	3.32
Ambulance and Ambulatory Care Services	154	3.15
Physician Offices	129	2.64
Schools	60	1.23
Outpatient Care Centers	59	1.21
Other Individual and Family Services	46	0.94
Social Services	25	0.51
Medical Laboratories	16	0.33
Services for Elderly and Persons with Disability	3	0.06
Temp Shelters	2	0.04
UNKNOWN	183	3.75

It should be noted that these numbers are not likely to reflect the actual total number of violent incidents since these are actual claims that were made for insurance. The number of similar incidents causing less severe injuries that do not rise to the threshold of this category is likely to be significant. Many sources report that it is part of the "professional culture" of health care workers to think that incidents of violence from patients are part of the job, and they have no incentive to report them, and there is probably no employer process for recording them. This is supported by the California survey showing that 72% of emergency department staff who were verbally or physically assaulted did not report the event, as noted above.

Division experience

In 1993, the Division published one of the first guidelines in the nation to address workplace violence, "Guidelines for Security and Safety of Health Care and Community Service Workers," which was prepared by Joyce Simonowitz of the Cal/OSHA Medical Unit. This publication, as updated in 1995 is still available on the DOSH website. As resources permitted, the Division maintained a workplace violence task force throughout the 1990s, and held meetings and reviewed enforcement cases on this issue in many different environments.

[7] The search excluded state mental hospitals and prisons, including prison health from this search

[8] Due to the nature of data collected through the Workers Compensation Information System, the category "government" could not be further broken down into type of facility.

In recent years, the Division has conducted inspections in response to complaints and reports of serious injuries (including fatalities) in hospitals, long-term care facilities, jails, and psychiatric facilities. The Division's review of the employers' injury records and interviews with managers and staff indicate that there are a number of hazard identification, evaluation, and correction measures that are not implemented that could reduce the number and severity of injuries to employees. The Division has found that employers may not have effective procedures for identifying and evaluating workplace violence hazards, both in terms of facilities and patients, may not have procedures for correcting those hazards, may not have effective procedures for alerting other employees to the need for assistance, may not have effective procedures for responding to alarms, and may not have effective procedures for post-incident follow-up. Employees who are exposed to workplace violence hazards, or who are expected to respond, may not have had adequate training. The Division has also found serious workplace violence injuries that were not reported to the Division.

Without a specific regulation, the Division has applied the sections noted above to require employers to develop and implement procedures to prevent or minimize the severity of workplace violence incidents. However, Section 3203 provides limited guidance for how employers can address the specific hazards of workplace violence. Other sections do not specifically address the use of employee alarm systems or emergency action plans for response to workplace violence incidents, although some general provisions have been cited in these investigations. For almost 20 years, the Division has issued special orders to establish specific requirements in certain facilities, most recently in the Department of State Hospitals (formerly the psychiatric hospitals of the Department of Mental Health). However, special orders address only single establishments, and are not an effective means for proactively addressing industry-wide hazards. The process of developing these special orders, in collaboration with the Cal/OSHA Medical Unit, employers, employees, occupational safety and health professionals, and researchers has provided a useful background for the Division in evaluating this petition and the Division believes will be helpful in developing a regulation.

Assessment of the proposed standard

The Division believes that the components incorporated by the petition are appropriate for consideration in an advisory process. The Division has found that complex issues such as workplace violence require employee involvement and management commitment, specific hazard identification and correction procedures, written programs, training, and regular review including review by employees and their representatives. In addition, provisions would need to be included to encourage reporting of injuries, near misses, and warning signals of workplace violence. Similarly, accurate recordkeeping that includes critical information such as the location and type of incident, precipitating factors and type and effectiveness of response, is necessary to evaluate and improve the effectiveness of the program.

Specifically in regards to scope, the petition proposes that the standard should address workplace violence hazards in all general acute care hospitals, acute psychiatric hospitals, and special hospitals licensed in accordance with HSC Section 1250(a), (b), and (f), including all units on their licenses. It should be noted that Petition 538 proposes a broader scope including all health care settings. The information reviewed to date indicates that workplace violence is a hazard in many different types of healthcare environments. The Division believes that the advisory process should consider the scope and application. The advisory process should assist in

developing information regarding workplace violence hazards and their control in various settings, recognizing that control measures in an outpatient or homecare environment may be different from those in an acute care or long-term care setting.

The petitioner proposes a definition of workplace violence focusing on the use of physical force or weapons against a hospital employee. Federal OSHA has recently proposed a somewhat broader definition, which includes "any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide."[9] The Division believes that as the advisory process progresses, it is likely to be necessary to adopt an appropriate definition of workplace violence. Other definitions may be determined to be necessary during the process of standards development.

Effect of existing Health and Safety Code Provisions

As noted above, HSC Section 1257.7 and 1257.8 require certain hospitals to establish a safety and security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior in certain areas, and to provide training to the identified personnel. Expanded provisions of Section 1257.7 took effect in 2010. The application of provisions of these laws is evaluated by the Licensing and Certification Unit of CDPH during their periodic audits. Further, hospitals are required to report adverse events through a confidential reporting system.

The Division has conducted several investigations regarding workplace violence in general acute care hospitals and acute psychiatric hospitals that fall within the scope of these laws. The Division has in many cases found that employee protection has not been sufficiently addressed, and the data obtained by the DIR Research Unit reflects a continuing risk of recordable injuries in the facilities addressed by the Health and Safety Code provisions[10]. The Division does not have the authority to enforce the provisions of the Health and Safety Code to protect employees from WPV incidents.

Under Labor Code Section 142.3 the Board is the only state agency with the authority to adopt occupational safety and health standards. In the Division's experience, notably in the area of bloodborne pathogens and aerosol transmissible diseases, it is necessary to have occupational health and safety standards to protect employees in health care settings. These regulations may be more specific to occupational risks than the general mandates of the Health and Safety Code, and contain those provisions that are necessary for the protection of employees. Adoption of an enforceable regulation by the Board will provide an additional tool for employers, employees, and the Division to increase employee safety in those environments covered by HSC 1257.7 and 1257.8, and in other health care environments addressed by any new regulation. There are, however, other agencies which regulate some health care facilities, services and operations, and the Division believes that the advisory process must take into account these other laws and regulations in order to avoid a conflict in the codes, and in order to provide consistency for the regulated public.

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[9] Occupational Safety and Health Administration, Workplace Violence. https://www.osha.gov/SLTC/workplaceviolence/

[10] The extract for "hospitals" found 560 cases in 2010, 485 cases in 2011, and 584 cases in 2012. This data does not necessarily include all public hospitals and does not include state and prison hospitals.

Conclusion

The Division believes that a regulation that specifically addresses workplace violence hazards in health care environments would improve employee protection and can reduce the incidence and severity of injuries. There are many stakeholders and experts who could participate in an advisory process that also reviewed guidelines and recommendations issued by employer and employee organizations, OSHA, NIOSH, JCAHO, CDPH, and various research publications.

Therefore the Division recommends that the Board adopt the petition to the extent of requesting the Division to convene an advisory committee to address the issues raised in Petitions 538 and 539 and to consider regulations to address workplace violence hazards in health care settings. The committee should consist of representatives of the petitioners, other employers, employees, and their organizations, as well as occupational safety and health professionals, researchers, and Board staff. The Division would then provide periodic updates to the Board on the process.

cc: Deborah Gold
Robert Nakamura
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