

State of California

Department of Industrial Relations
 Division of Occupational Safety and Health
 Bakersfield District Office
 7718 Meany Avenue
 Bakersfield, CA 93308
 Phone: (661) 588-6400 Fax: (661) 588-6428

Inspection #: 1478155
Inspection Dates: 06/09/2020 –
 10/15/2020
Issuance Date: 10/16/2020
CSHO ID: N1738
Optional Report #: 021-20

**Citation and Notification of Penalty**

Company Name: Kingston Healthcare Center, LLC
Establishment DBA:
 and its successors
Inspection Site: 329 N. Real Road
 Bakersfield, CA 93309

Citation 1 Item 1 Type of Violation: **Regulatory**

CCR, Title 8, Regulations of the Division of Occupational Safety and Health Section 342. Reporting Work-Connected Fatalities and Serious Injuries.

(a) Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment. The report shall be made by the telephone or through a specified online mechanism established by the Division for this purpose. Until the division has made such a mechanism available, the report may be made by telephone or email.

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.

Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.

Alleged Violation Description (AVD):

Employer failed to report to the Division serious illnesses suffered by employees including, but not limited to, the following:

- (1) Employee admitted to a hospital for a COVID-19 related illness on or about April 23, 2020.
- (2) Employee admitted to a hospital for a COVID-19 related illness on or about May 9, 2020.
- (3) Employee admitted to a hospital for a COVID-19 related illness on or about May 11, 2020.
- (4) Employee admitted to a hospital for a COVID-19 related illness on or about May 13, 2020.

Date By Which Violation Must be Abated:

November 10, 2020

Proposed Penalty:

\$5,000.00

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Citation 1 Item 2 Type of Violation: **Regulatory**

CCR, Title 8, Occupational Injury or Illness Reports and Records 14300.40. Providing Records to Government Representatives.

(a) Basic requirement. When an authorized government representative asks for the records you keep under the provisions of this article, you must provide within four (4) business hours, access to the original recordkeeping documents requested as well as, if requested, one set of copies free of charge.

Alleged Violation Description (AVD):

Prior to and during the course of the inspection, including, but not limited to, on June 9, 2020, the Division requested the Employers Cal/OSHA Form 300 Log for 2020 YTD be provided within (4) business hours and the Employer did not provide the requested Log to the Division until June 15, 2020.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$375.00**

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**Citation and Notification of Penalty**

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Citation 1 Item 3 Type of Violation: **Regulatory**

CCR, Title 8, Occupational Injury or Illness Reports and Records, Section 14300.29. Forms

(a) Basic requirement. You must use Cal/OSHA 300, 300A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The Cal/OSHA Form 300 is called the Log of Work-Related Injuries and Illnesses, the Cal/OSHA Form 300A is called the Summary of Work-Related Injuries and Illnesses, and the Cal/OSHA Form 301 is called the Injury and Illness Incident Report. Appendices A through C give samples of the Cal/OSHA forms. Appendices D through F provide elements for development of equivalent forms consistent with Section 14300.29(b)(4) requirements. Appendix G is a worksheet to assist in completing the Cal/OSHA Form 300A.

REFERENCE**CCR, Title 8, Occupational Injury or Illness Reports and Records, Section 14300.5. Determination of Work-Relatedness.**

(a) Basic requirement. You must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Section 14300.5(b)(2) specifically applies.

Alleged Violation Description (AVD):

Prior to and during the course of the inspection, including, but not limited to, on June 9, 2020, the employer did not fully complete the 2020 Cal/OSHA Form 300. The employer had not recorded COVID-19 related employee illnesses on the 2020 Cal/OSHA Form 300 where employees had days away from work and/or inpatient hospitalizations.

Date By Which Violation Must be Abated:

November 10, 2020

Proposed Penalty:

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Citation 1 Item 4 Type of Violation: **Regulatory**

CCR, Title 8, Section 5199 Aerosol Transmissible Disease

(j) Recordkeeping.

(2) Training records.

(A) Training records shall include the following information:

1. The date(s) of the training session(s);
2. The contents or a summary of the training session(s);
3. The names and qualifications of persons conducting the training or who are designated to respond to interactive questions; and
4. The names and job titles of all persons attending the training sessions.

(B) Training records shall be maintained for 3 years from the date on which the training occurred.

Alleged Violation Description (AVD):

Prior to and during the course of the investigation, including, but not limited to, June 9, 2020, the employer did not ensure that aerosol transmissible disease related training records included all the required information, including: date of training, contents of training session, name of person conducting the training, and names and job titles of persons attending the training.

Date By Which Violation Must be Abated:

November 10, 2020

Proposed Penalty:

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**Citation and Notification of Penalty**

Company Name: Kingston Healthcare Center, LLC

Establishment DBA:

and its successors

Inspection Site: 329 N. Real Road
Bakersfield, CA 93309

Citation 2 Item 1 Type of Violation: **Serious Accident-Related**

CCR, Title 8, Section 5199 Aerosol Transmissible Disease

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(1) ...

(2) The employer shall establish, implement, and maintain effective written source control procedures. For fixed health care and correctional facilities, and in other facilities, services, and operations to the extent reasonably practicable, these procedures shall incorporate the recommendations contained in the Respiratory Hygiene/Cough Etiquette in Health Care Settings. These procedures shall include the method of informing persons with whom employees will have contact of the employer's source control measures.

Alleged Violation Description (AVD):

Prior to and during the course of the investigation, including, but not limited to, between April 8, 2020 and July 27, 2020, the employer did not establish, implement, and maintain effective written source control procedures. Source control procedures not established, implemented, and maintained include, but not limited to:

(1) Informing employees at the facility of COVID-19 cases or suspected cases, and its source control procedures after Certified Nursing Assistants (CNAs) showed signs and symptoms of suspected COVID-19 illnesses.

(2) Implementing effective procedures to ensure during the timeframe of COVID-19 cases or suspected cases that individuals wore a face covering as a source control when interacting with employees.

(3) Implementing effective procedures to ensure each individual in the facility that was in close contact with employees, or being transported by employees, effectively wore a face covering as a source control during the timeframe of COVID-19 cases or suspected cases.

(4) Establishing and implementing effective source control procedures to ensure delivery of food to rooms housing individuals with COVID-19 cases or suspected cases did not transfer the virus that causes COVID-19 to rooms where individuals without COVID-19 were housed.

(5) Informing a pest control contractor that individuals with COVID-19 cases or suspected cases were housed at the facility and informing the contractor of the employers source control measures before requesting an on-site service visit from the contractor.

As a result, on or about and between April 22, 2020 and May 13, 2020, multiple employees suffered serious COVID-19 illnesses in a skilled nursing facility in which the employer did not establish, implement and maintain effective source control procedures to protect employees against COVID-19.

Date By Which Violation Must be Abated:	October 30, 2020
Proposed Penalty:	\$25,000.00

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**Citation and Notification of Penalty**

Company Name: Kingston Healthcare Center, LLC

Establishment DBA:

and its successors

Inspection Site: 329 N. Real Road
Bakersfield, CA 93309

Citation 3 Item 1 Type of Violation: **Serious Accident-Related**

CCR, Title 8, Section 5199 Aerosol Transmissible Disease

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(5) The employer shall establish, implement and maintain effective written procedures to reduce the risk of transmission of aerosol transmissible disease, to the extent feasible, during the period the person requiring referral is in the facility or is in contact with employees. In addition to source control measures, these procedures shall include, to the extent feasible:

- (A) placement of the person requiring referral in a separate room or area;
- (B) provision of separate ventilation or filtration in the room or area; and
- (C) employee use of respiratory protection when entering the room or area in which the person requiring referral is located, if that person is not compliant with source control measures. Respirator use shall meet the requirements of subsection (g) and Section 5144, Respiratory Protection, of these orders.

REFERENCE:**CCR, Title 8, Section 5199 (g) Respiratory Protection.**

(4) The employer shall provide, and ensure that employees use, a respirator selected in accordance with subsection (g)(3) and Section 5144 when the employee:

- (A) Enters an All room or area in use for All;
- (B) Is present during the performance of procedures or services for an AirID case or suspected case;
- (C) Repairs, replaces, or maintains air systems or equipment that may contain or generate aerosolized pathogens;
- (D) Is working in an area occupied by an AirID case or suspected case, during decontamination procedures after the person has left the area and as required by subsection (e)(5)(D)9;
- (E) Is working in a residence where an AirID case or suspected case is known to be present;
- (F) Is present during the performance of aerosol generating procedures on cadavers that are suspected of, or confirmed as, being infected with aerosol transmissible pathogens;
- (G) Is performing a task for which the Biosafety Plan or Exposure Control Plan requires the use of respirators; or

(H) Transports an AirID case or suspected case within the facility or in an enclosed vehicle (e.g., van, car, ambulance or helicopter) when the patient is not masked.

(5) Medical evaluation: The employer shall provide a medical evaluation, in accordance with Section 5144(e) of these orders, to determine the employee's ability to use a respirator before the employee is fit tested or required to use the respirator. For employees who use respirators solely for compliance with subsections (g)(3)(A) and (g)(3)(B), the alternate questionnaire in Appendix B may be used.

(6) Fit testing.

(A) The employer shall perform either quantitative or qualitative fit tests in accordance with the procedures outlined in Appendix A of Section 5144, Respiratory Protection, of these orders. The fit test shall be performed on the same size, make, model and style of respirator as the employee will use. When quantitative fit testing is performed, the employer shall not permit an employee to wear a filtering facepiece respirator or other half-facepiece respirator, unless a minimum fit factor of one hundred (100) is obtained. When fit testing single use respirators, a new respirator shall be used for each employee.

(B) The employer shall ensure that each employee who is assigned to use a filtering facepiece or other tight-fitting respirator passes a fit test:

1. At the time of initial fitting;
2. When a different size, make, model or style of respirator is used; and
3. At least annually thereafter.

(C) The employer shall conduct an additional fit test when the employee reports, or the employer, PLHCP, supervisor, or program administrator makes visual observations of changes in the employee's physical condition that could affect respirator fit. Such conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight.

(D) If, after passing a fit test, the employee subsequently notifies the employer, program administrator, supervisor, or PLHCP that the fit of the respirator is unacceptable, the employee shall be given a reasonable opportunity to select a different respirator facepiece and to be retested.

(7) The employer shall ensure that each respirator user is provided with initial and annual training in accordance with Section 5144, Respiratory Protection of these orders.

REFERENCE:

CCR, Title 8, Section 5144 Respiratory Protection.

(k) Training and information. This subsection requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary. This subsection also requires the employer to provide the basic information on respirators in Appendix D to employees who wear respirators when not required by this section or by the employer to do so.

(1) The employer shall ensure that each employee can demonstrate knowledge of at least the following:

- (A) Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator;
- (B) What the limitations and capabilities of the respirator are;
- (C) How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions;
- (D) How to inspect, put on and remove, use, and check the seals of the respirator;
- (E) What the procedures are for maintenance and storage of the respirator;

(F) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and

(G) The general requirements of this section.

(2) The training shall be conducted in a manner that is understandable to the employee.

(3) The employer shall provide the training prior to requiring the employee to use a respirator in the workplace.

(4) An employer who is able to demonstrate that a new employee has received training within the last 12 months that addresses the elements specified in subsection (k)(1)(A) through (G) is not required to repeat such training provided that, as required by subsection (k)(1), the employee can demonstrate knowledge of those element(s). Previous training not repeated initially by the employer must be provided no later than 12 months from the date of the previous training.

(5) Retraining shall be administered annually, and when the following situations occur:

(A) Changes in the workplace or the type of respirator render previous training obsolete;

(B) Inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill; or

(C) Any other situation arises in which retraining appears necessary to ensure safe respirator use.

(6) The basic advisory information on respirators, as presented in Appendix D, shall be provided by the employer in any written or oral format, to employees who wear respirators when such use is not required by this section or by the employer.

Alleged Violation Description (AVD):

Prior to and during the course of the investigation, including, but not limited to, between April 8, 2020 and July 27, 2020, the employer did not establish, implement and maintain effective written procedures to reduce the risk of transmission of aerosol transmissible disease. Aerosol transmissible disease control elements not addressed by the employer include, but not limited to:

(1) Development of a written aerosol transmissible disease procedures during the period when individuals with COVID-19 cases or suspected cases were housed at the facility and employees closely interacting with the individuals.

(2) Implementation of effective procedures to reduce the risk of transmission of aerosol transmissible diseases, when the employer allowed employees to work where individuals with COVID-19 cases or suspected cases were housed and later the same employees were allowed to work in an area where individuals without COVID-19 were housed.

(3) Providing goggles for eye protection to employees that requested goggles when interacting with individuals with COVID-19 cases or suspected cases.

(4) Establishing and implementing effective procedures to ensure the donning and doffing of COVID-19 personal protective equipment occurred only in appropriate areas.

(5) Establishing and implementing effective procedures to ensure delivery of food to rooms housing individuals with COVID-19 cases or suspected cases did not transfer the virus that causes COVID-19 to rooms where individuals without COVID-19 were housed.

(6) Providing N95 respiratory protection to all Certified Nursing Assistants (CNAs) prior to, on or about May 2, 2020, during the period of time when individuals with COVID-19 cases or suspected cases were housed at the facility and employees were required to work within patient rooms closely interacting with individuals. [Ref: Section 5199(g)(4)]

(7) Medical evaluation, prior to respirator usage, commencing on or about May 2, 2020, at which time the employer required employees wear N95 filtering facepiece or other tight-fitting respirators for airborne disease control. [Ref: Section 5199 (g)(5)]

(8) Respirator fit testing, prior to respirator usage, commencing on or about May 2, 2020, at which time the employer required employees to wear N95 filtering facepiece or other tight-fitting respirators for airborne disease control. [Ref: Section 5199 (g)(6)]

(9) Providing initial training, prior to respirator usage, in accordance with Section 5144, Respiratory Protection, on or about May 2, 2020, at which time employer required employees wear N95 filtering facepiece or other tight-fitting respirators. [Ref: Section 5199 (g)(7)]

As a result, on or about, and between April 22, 2020 and May 13, 2020, multiple employees suffered serious COVID-19 related illnesses in which the employer did not establish, implement and maintain procedures to reduce the risk of transmission of aerosol transmissible disease during the period persons requiring referral were in the facility or in contact with employees.

Date By Which Violation Must be Abated:

October 30, 2020

Proposed Penalty:

\$25,000.00

State of California

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Inspection Site: 329 N. Real Road
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Citation 4 Item 1 Type of Violation: **Serious**

CCR, Title 8, Section 5199 Aerosol Transmissible Disease

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(6) The employer shall establish a system of medical services for employees which meets the following requirements:

(A) The employer shall make available to all health care workers with occupational exposure all vaccinations recommended by the CDPH as listed in Appendix E in accordance with subsection (h). These vaccinations shall be provided by a PLHCP at a reasonable time and place for the employee.

(B) The employer shall develop, implement, and maintain effective written procedures for exposure incidents in accordance with subsections (h)(6) through (h)(9).

(C) The employer shall establish, implement, and maintain an effective surveillance program for LTBI in accordance with subsections (h)(3) and (h)(4).

(D) The employer shall establish, implement, and maintain effective procedures for providing vaccinations against seasonal influenza to all employees with occupational exposure, in accordance with subsection (h)(10).

REFERENCE Section 5199 (h) Medical Services.

(6) Exposure Incidents.

(A) A health care provider, or the employer of a health care provider who determines that a person is an RATD case or suspected case shall report, or ensure that the health care provider reports, the case to the local health officer, in accordance with Title 17.

(B) In addition to the report required in subsection (h)(6)(A), the employer in the facility, service or operation that originates the report shall determine, to the extent that the information is available in the employer's records, whether the employee(s) of any other employer(s) may have had contact with the case or suspected case while performing activities within the scope of this section. The employer shall notify the other employer(s) within a timeframe that will both provide reasonable assurance that there will be adequate time for the employee to receive effective medical intervention to prevent disease or mitigate the disease course, and will also permit the prompt initiation of an investigation to identify exposed employees. In no case, shall the notification be

longer than 72 hours after the report to the local health officer. The notification shall include the date, time, and nature of the potential exposure, and provide any other information that is necessary for the other employer(s) to evaluate the potential exposure of his or her employees. The notifying employer shall not provide the identity of the source patient to the other employers.

NOTE 1 to subsection (h)(6)(B): These employees may include, but are not limited to, paramedics, emergency medical technicians, emergency responders, home health care personnel, homeless shelter personnel, personnel at referring health care facilities or agencies, and corrections personnel.

NOTE 2 to subsection (h)(6)(B): Some diseases, such as meningococcal disease, require prompt prophylaxis of exposed individuals to prevent disease. Some diseases, such as varicella, have a limited window in which to administer vaccine to non-immune contacts. Exposure to some diseases may create a need to temporarily remove an employee from certain duties during a potential period of communicability. For other diseases such as tuberculosis there may not be a need for immediate medical intervention, however prompt follow up is important to the success of identifying exposed employees.

(C) Each employer who becomes aware that his or her employees may have been exposed to an RATD case or suspected case, or to an exposure incident involving an ATP-L shall do all of the following:

1. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours following, as applicable, the employer's report to the local health officer or the receipt of notification from another employer or the local health officer, conduct an analysis of the exposure scenario to determine which employees had significant exposures. This analysis shall be conducted by an individual knowledgeable in the mechanisms of exposure to ATPs or ATPs-L, and shall record the names and any other employee identifier used in the workplace of persons who were included in the analysis. The analysis shall also record the basis for any determination that an employee need not be included in post-exposure follow-up because the employee did not have a significant exposure or because a PLHCP determined that the employee is immune to the infection in accordance with applicable public health guidelines. The exposure analysis shall be made available to the local health officer upon request. The name of the person making the determination, and the identity of any PLHCP or local health officer consulted in making the determination shall be recorded.
2. Within a timeframe that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 96 hours of becoming aware of the potential exposure, notify employees who had significant exposures of the date, time, and nature of the exposure.
3. As soon as feasible, provide post-exposure medical evaluation to all employees who had a significant exposure. The evaluation shall be conducted by a PLHCP knowledgeable about the specific disease, including appropriate vaccination, prophylaxis and treatment. For *M. tuberculosis*, and for other pathogens where recommended by applicable public health guidelines, this shall include testing of the isolate from the source individual or material for drug susceptibility, unless the PLHCP determines that it is not feasible.
4. Obtain from the PLHCP a recommendation regarding precautionary removal in accordance with subsection (h)(8), and a written opinion in accordance with subsection (h)(9).
5. Determine, to the extent that the information is available in the employer's records, whether employees of any other employers may have been exposed to the case or material. The employer shall notify these other employers within a time frame that is reasonable for the specific disease, as described in subsection (h)(6)(B), but in no case later than 72 hours of becoming aware of the exposure incident of the nature, date, and time of the exposure, and shall provide the contact information for the diagnosing PLHCP. The notifying employer shall not provide the identity of the source patient to other employers.

Alleged Violation Description (AVD):

Prior to and during the course of the investigation, including, but not limited to, June 9, 2020, the employer did not develop, implement, and maintain effective written procedures for exposure incidents in accordance with subsections (h)(6) through (h)(9) of the standard for employees with occupational exposure to aerosol transmissible disease. Exposure incident procedures not addressed by the employer include, but not limited to:

(1) Conducting an analysis of the exposure scenario to determine which employees had significant exposures to COVID-19 after the employer became aware that employees may have been exposed to individuals with COVID-19 cases or suspect cases.

(2) Making available exposure information to the local health officer upon request once the employer became aware that employees may have been exposed to individuals with COVID-19 cases or suspect cases.

(3) Notifying employees who may have had significant exposures of the nature of the exposure within 96 hours of becoming aware of the exposure after the employer became aware of significant employee exposure to the virus that causes COVID-19.

Date By Which Violation Must be Abated:

October 30, 2020

Proposed Penalty:

\$16,875.00

State of California

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Citation 5 Item 1 Type of Violation: **Serious**

CCR, Title 8, Section 5199 Aerosol Transmissible Disease

(c) Referring Employers. In facilities, services, or operations in which there is occupational exposure and which meet the criteria specified by (a)(3)(A), employers are only required to comply with the following provisions:

(7) Employers shall ensure that all employees with occupational exposure participate in a training program. Training shall be provided at the time of initial assignment to tasks where occupational exposure may take place and at least annually thereafter. Additional training shall be provided when there are changes in the workplace or when there are changes in procedures that could affect worker exposure to ATPs. The person conducting the training shall be knowledgeable in the subject matter covered by the training program as it relates to the workplace. Training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used. This training shall include:

- (A) A general explanation of ATDs including the signs and symptoms that require further medical evaluation;
- (B) Screening methods and criteria for persons who require referral;
- (C) The employer's source control measures and how these measures will be communicated to persons the employees contact;
- (D) The employer's procedures for making referrals in accordance with subsection (c)(3);
- (E) The employer's procedures for temporary risk reduction measures prior to transfer;
- (F) Training in accordance with subsection (g) and Section 5144 of these orders, when respiratory protection is used;
- (G) The employer's medical services procedures in accordance with subsection (h), the methods of reporting exposure incidents, and the employer's procedures for providing employees with post-exposure evaluation;
- (H) Information on vaccines the employer will make available, including the seasonal influenza vaccine. For each vaccine, this information shall include the efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;

(I) How employees can access the employer's written procedures and how employees can participate in reviewing the effectiveness of the employer's procedures in accordance with subsection (c)(8); and

(J) An opportunity for interactive questions and answers with a person who is knowledgeable in the subject matter as it relates to the workplace that the training addresses and who is also knowledgeable in the employer's infection control procedures. Training not given in person shall provide for interactive questions to be answered within 24 hours by a knowledgeable person.

Alleged Violation Description (AVD):

Prior to and during the course of the investigation, including, but not limited to, June 9, 2020, the employer did not ensure that all employees with occupational exposure to aerosol transmissible disease received training. Aerosol transmissible disease training elements not addressed by the employer include, but not limited to:

(1) Conducting training at the time of initial assignment to tasks where occupational exposure to an aerosol transmissible disease may take place.

(2) Conducting training annually thereafter to employees assigned to tasks where occupational exposure to an aerosol transmissible disease may take place.

(3) Conducting training when there are changes in the workplace or when there are changes in procedures that could affect worker exposure to an aerosol transmissible disease, such as the virus that causes COVID-19.

Date By Which Violation Must be Abated:

October 30, 2020

Proposed Penalty:

\$20,250.00

Efren Gomez
Compliance Officer / District Manager