BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of: **CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION - SUBSTANCE ABUSE TREATMENT FACILITY, CORCORAN STATE PRISON dba SATF** **900 QUEBEC AVENUE** **CORCORAN, CA 93212** **Employer**	Inspection No. **1573582** **DECISION**

Statement of the Case

California Department of Corrections & Rehabilitation – Substance Abuse Treatment Facility, Corcoran State Prison (Employer) is a California State Prison. On February 17, 2022, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Michael Burgess, commenced a complaint-based inspection of Employer's facility located at 900 Quebec Avenue in Corcoran, California (jobsite).

On June 9, 2022, the Division cited Employer for three alleged safety violations. Employer filed timely appeals of each citation. At the hearing, the parties stipulated that the Division would withdraw Citation 1 and issue a Notice in Lieu of Citation. The parties further stipulated that the alleged violation description (AVD) for Citation 1 shall be amended to the following:

> Prior to and during the course of the inspection, including, but not limited to, on February 17, 2022, there was water accumulation in unit E in the gymnasium.

Citations 2 and 3 remain at issue and they allege: (1) Employer failed to correct unsafe conditions in accordance with its safety program; and (2) Employer failed to provide training and instruction to employees in accordance with its safety program.

Employer's grounds for appeal for Citations 2 and 3 contest the existence of the violations, the classifications of the citations, the reasonableness of abatement, and the reasonableness of the proposed penalties. Employer also asserted unspecified affirmative defenses.[1] On August 26, 2024, the Division indicated by email that abatement had been resolved for the alleged serious violations. The matter was removed from expedited status by order issued on that date. Accordingly, the reasonableness of abatement is no longer at issue and not addressed further herein.

This matter was heard by Christopher Jessup (Jessup), Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (Appeals Board). ALJ Jessup conducted the hearing from Sacramento, California, with the parties and witnesses appearing remotely via the Zoom video platform on February 7, 2023, November 7, 8, and 9, 2023, June 4, 2024, and August 28 and 29, 2024. Sean Paisan and Joshua Henderson, attorneys with Jackson Lewis P.C., represented Employer. Kathryn Tanner, Staff Counsel, represented the Division. The matter was submitted for decision on September 10, 2025.

Issues

1. Did Employer fail to correct unsafe conditions in accordance with its safety program?

2. Did Employer fail to provide training and instruction to employees in accordance with its safety program?

3. Did the Division establish a rebuttable presumption that Citations 2 and 3 were properly classified as Serious?

4. Did Employer rebut the presumption that the violations cited in Citation 2 and 3 were Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violations?

5. Are the proposed penalties reasonable?

Findings of Fact

1. Employer had a written Injury and Illness Prevention Program (IIPP) that required it to correct unsafe conditions as quickly as possible after discovery of a hazard based on the severity of the hazard.

2. Employer's IIPP included supervisor responsibilities to promptly correct hazards.

[1] Except where discussed in this Decision, Employer did not present evidence in support of other affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.,* Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

3. Employer’s IIPP identified workplace violence as a hazard and identified various sources of workplace violence.

4. Employer’s In-Service Training on its IIPP identified inmates as one potential source of workplace violence.

5. Employer’s Chief of Mental Health, Doctor Andrew Myers (Myers), and Associate Warden overseeing healthcare operations, Jerry Ourique (Ourique), supervisors for Employer, were aware of hazards associated with working with inmates.

6. Employer had mental healthcare staff, including Jamie Villa (Villa) and Jessica Camacho (Camacho), meet with inmates at Employer’s jobsite in the Delta Yard area.

7. Delta Yard was designated as a level four yard, which requires “gun coverage” as part of the security precautions.

8. Villa and Camacho provided mental healthcare to inmates in Delta Yard and their appointments with inmates were typically in a one-on-one setting where they were isolated from other staff.

9. Villa and Camacho were provided with a whistle and an alarm to use if they were attacked by an inmate while on the jobsite.

10. While Villa and Camacho were in appointments with inmates, the inmates were typically unrestrained and there was not a security presence in the room or in an adjacent room.

11. The training provided by Employer to mental health clinicians focused on obtaining and using alarms and whistles. The training also went over details about the Employer’s programs and facility. Employer’s training did not include methods to avoid exposure to workplace violence.

12. Employer does not authorize mental health clinicians to use force or train them to use force to defend themselves.

13. Assault by an inmate poses a realistic possibility of resulting in death or permanent disfigurement of an employee.

14. Employer did not use preventative methods to protect against workplace violence for mental health staff.

15. The penalties for Citation 2 and Citation 3 were calculated in accordance with the Division's policies and procedures.

Analysis

1. Did Employer fail to correct unsafe conditions in accordance with its safety program?

California Code of Regulations, title 8, section 3203, subdivision (a)(6),[2] provides in relevant part:

> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: […]
>
> (6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:
>
> (A) When observed or discovered; and, […]

In Citation 2, Item 1, the Division alleges:

> Prior to and during the course of the inspection, including but not limited to 02/17/2022, the employer failed to establish, implement and maintain an effective program in that the employer did not effectively establish, implement and maintain procedures to correct the hazard of assault by inmates in the Unit D rooms 140, 142, 143 and 144 when used by healthcare workers, such as by ensuring correctional officers were in the immediate proximity; utilizing and arranging physical barriers (e.g. fixed shields and furniture) to separate the hazard and maximize employee access to safety systems such as paths of egress; and securing or removing loose objects that could be used as weapons.

[2] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

The Division has the burden of proving a violation by a preponderance of the evidence. (*Wal-Mart Stores, Inc. Store # 1692,* Cal/OSHA App. 1195264, Decision After Reconsideration (Nov. 4, 2019).) "'Preponderance of the evidence' is usually defined in terms of probability of truth, or of evidence that[,] when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence." (*Sacramento County Water Agency Department of Water Resources,* Cal/OSHA App. 1237932, Decision After Reconsideration (May 21, 2020).) Full consideration is to be given to the negative and affirmative inferences to be drawn from all the evidence. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483.)

While an employer may have a comprehensive IIPP, the Division may still demonstrate an IIPP violation by showing that the employer failed to implement that plan. (*DPR Construction, Inc., et al. dba DPR Construction*, Cal/OSHA App. 1206788, Decision After Reconsideration (Feb. 19, 2021).)

> Implementation of an IIPP is a question of fact. [Citation.] Proof of implementation requires evidence of actual responses to known or reported hazards. [Citation.] Further, the corrective action taken by the employer must be sufficient in magnitude and scope to address the particular hazard. [Citation.]

(*Papich Construction Company, Inc.*, Cal/OSHA App. 1236440, Decision After Reconsideration (Mar. 26, 2021).)

As an initial matter, the Division did not identify an issue with Employer's written IIPP with regard to its contents for correcting hazards. Employer's IIPP provides:

> Hazards discovered either as a result of a scheduled periodic inspection or during normal operations shall be corrected through cooperation between work area supervisor's [*sic*] or staff in that area. Supervisors of affected staff are expected to correct unsafe conditions as quickly as possible after discovery of a hazard, based on the severity of the hazard.
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> […]
>
> If a hazardous condition is discovered and cannot be immediately resolved, the supervisor or inspector shall use the "*Hazard Correction Report* (IIPP Form 4 [Attachment 4]) to document corrective actions, including projected and actual completion dates. […]

(Exh. 26, p. 14, emphasis in original.) Additionally, the IIPP states that it is included in supervisor responsibilities to promptly correct identified hazards. (Exh. 26, p. 6.) As no deficiency of the written IIPP was identified, and such a deficiency is not readily apparent, the next question is regarding implementation of the IIPP.

To consider implementation, we first turn to whether there was an unsafe practice at the jobsite. The Division alleges that an unsafe practice existed when Employer's mental healthcare staff met with inmates at Employer's jobsite in the Delta Yard area. Therefore, it is necessary to examine whether this was an unsafe work practice to which those employees were exposed.

Employer's IIPP identifies workplace violence as a concern and provides:

> Workplace Violence
>
> Title 8, CCR, Section 3203 (a), specifies employers are responsible to provide a safe workplace. The CDCR does not tolerate violence in the workplace. *Threat of workplace violence may come from a member of the public, a co-worker's friends or family, or a co-worker*. If an employee feels he/she is under immediate threat of violence from any source, they are to contact their immediate supervisor who will be responsible for relaying the information up the chain of command to the appropriate Division Head (DH).
>
> The DH will be responsible for reporting the incident to the Chief Deputy Warden (CDW) and Warden. The Warden will immediately notify the Internal Affairs Lieutenant who will assemble the threat Assessment Team to evaluate the seriousness of the threat.

(Exh. 26, p. 11, emphasis added.) As emphasized in Employer's own IIPP, a threat of workplace violence can come from a variety of sources. Additionally, Employer's In-Service Training on its IIPP adds to the list of potential threat sources and elaborates on Employer's safety measure. (See Exh. 24, p. 4.) It provides, in relevant part:

> The threat of workplace violence may come from a member of the public, *an inmate*, or a co-worker. If you feel you are under immediate threat of violence from any source, summon assistance by utilizing your personal alarm, a whistle, the telephone alarm system, or dialing the institution emergency number.

(Exh. 24, p. 4, emphasis added.) Inmates were not only identified as a workplace violence hazard in Employer's In-Service Training on its IIPP, but Employer's Chief of Mental Health, Myers, and Associate Warden overseeing health care operations, Ourique, testified regarding their identification of the hazard posed by inmates.

Myers testified that "you could have any patient anytime – it is, obviously, working with convicted felons – so you can at any time have a person or patient that becomes violent for any reason, right? It doesn't matter [what] their custody level may be, doesn't matter what their mental health level may be, they could be violent." (Hearing Transcript (Hrg. Tr.), Aug. 28, 2024, p. 669.) Myers also testified, "The inherent risk of working in corrections is very different than it is in the community." (Hrg. Tr., Aug. 28, 2024, p. 765.) Myers explained inherent risk in this context means:

> We work with convicted felons. We're working with individuals who have broken the law in some way, shape, or form, which means they don't always ascribe to prosocial behaviors and acting in ways in which we would expect to in the community. So there is an inherent risk, I would say, in working in corrections, that you're working with people who at times can be unpredictable, which is a lot of times the reason that they are incarcerated to begin with, is impulse control issues and things like that.

(*Id.*)

Additionally, Ourique testified, "Basically, in my opinion, an inmate is an inmate regardless of the level. That propensity for violence is there regardless of being level 1, level 2, level 3, or level 4. They are all just as dangerous." (Hrg. Tr., Aug. 28, 2024, p. 805.) Ourique also testified about the security precautions taken in Delta Yard. Ourique explained that Delta Yard was designated as a level four yard, meaning that more security precautions, including gun coverage, were required for that area. Pursuant to the foregoing, it is apparent that Employer, through its IIPP training and its supervisors, identified a workplace violence hazard associated with inmates.

Villa and Camacho both testified that they provided mental healthcare to inmates in Delta Yard and that appointments with inmates were typically a one-on-one setting where they were isolated from other staff. Additionally, the testimony established that gun coverage was not provided for the mental health area of Delta Yard. As such, it is established that Villa and Camacho were exposed to situations that Employer identified as posing a hazard of workplace violence. Therefore, Employer had an unsafe practice at the jobsite.

Employer argues that it is inappropriate to label inmates as a hazard. Employer's Post-Hearing Brief asserts:

> The insinuation that inmates cannot be trusted when behind closed doors with their mental providers is a harmful stereotype that perpetuates the stigma of inmates and mental health patients as dangerous and violent--a stereotype that has proven to be untrue at SATF.

The finding regarding the identified hazard is not based on stereotypes or generalization. It is noted that Employer identified inmates as a potential source of workplace violence. Although Employer identified other potential sources of workplace violence hazards, the evidence presented at hearing focused on the inmate interactions with clinicians, rather than the other identified potential sources of workplace violence, and so the other sources are not examined further herein. Additionally, Employer's own written material and supervisor testimony is credited and given weight as to the assessment of the risk of workplace violence posed by inmates at Employer's jobsite. Employer's argument to the contrary is inconsistent with evidence presented at hearing.

Having determined there was an unsafe practice at the jobsite, the next issue is to what extent Employer removed exposure to the hazard through corrective measures. Camacho and Villa testified that, during the period that they worked in Delta Yard, they were provided with a whistle and an alarm to use if they were attacked. Camacho and Villa testified that, typically, the inmate patients were unrestrained and there was not a security presence in the room where care was provided or in an adjacent room. The evidence adduced at hearing shows that Employer relied primarily on responsive measures to address the identified hazard, such as the alarm and whistle, to summon assistance in the event of an attack. The record does not show that Employer took preventative measures to prevent workplace violence from occurring. As such, Employer identified a hazard of workplace violence but did not implement its IIPP to correct the hazard through preventative measures.

Accordingly, the Division met its burden of proof to establish a violation of section 3203, subdivision (a)(6), and Citation 2 is affirmed.

2. Did Employer fail to provide training and instruction to employees in accordance with its safety program?

Section 3203, subdivision (a)(7), requires Employer to provide training and instruction to various groups of employees that include new employees, employees with new job assignments, employees encountering new job hazards, and employees where employer learns of new or previously unrecognized job hazards.

In Citation 3, Item 1, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to on 2/17/2022, the employer failed to establish, implement and maintain an effective program in that employer failed to provide effective training and instruction to employees exposed to the hazard of assault by inmates in Unit D rooms 140, 142, 143, and 144, in preventing workplace assaults, what to do when an assault occurs, and post-emergency procedures.

Recently, in *Amazon.com Services, LLC dba Amazon Warehouse LGB3*, Cal/OSHA App. 1473644, Decision After Reconsideration (Sept. 18, 2025), the Appeals Board explained:

> The Division may prove a violation of section 3203, subdivision (a)(7), by showing that the employer's implementation of required training was inadequate or ineffective to make the employees proficient or qualified in recognizing and avoiding the hazard at issue. [Citation.] Proof of adequate training may include training records and/or employee testimony. [Citation.] Just as the existence of training records may support a conclusion that training occurred, a "lack of records, coupled with employee testimony indicating that no training was provided, may lead to a reasonable inference that no such training was provided." [Citation.]

The evidence shows that the training provided by Employer did not instruct mental health clinicians on avoiding the hazard of workplace violence. Myers testified that new employees received training on the hazards of working in a corrections environment from supervisors on their first day. However, Myers testified that this training consisted of instructions on obtaining alarms and whistles and instructions on use of the alarms and whistles. Myers also testified that that mental health clinicians are not authorized to use force and are not trained to use force to defend themselves. This evidence demonstrates that the initial training provided to the mental health clinicians was focused on responsive measures which, as discussed above, are insufficient for correcting the identified hazard. As such, it is found that Employer did not provide training on how to avoid exposure to the identified hazard of workplace violence but instead provided training on how to react to workplace violence through seeking help once the employee was exposed to the hazard.

Therefore, the Division has met its burden of proof to establish that Employer failed to provide training and instruction to employees in accordance with its safety program. Accordingly, a violation of section 3203, subdivision (a)(7), is established and Citation 3 is affirmed.

3. Did the Division establish a rebuttable presumption that Citations 2 and 3 were properly classified as Serious?

Labor Code section 6432, subdivision (a), in relevant part states:

> There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
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> […]
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> (2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

"Serious physical harm" is defined as an injury or illness occurring in the place of employment or in connection with any employment that results in:

> (1) Inpatient hospitalization for purposes other than medical observation.
> (2) The loss of any member of the body.
> (3) Any serious degree of permanent disfigurement.
> (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(Lab. Code §6432, subd. (e).)

The Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*Sacramento County Water Agency Department of Water Resources*, *supra,* Cal/OSHA App. 1237932.)

Labor Code section 6432, subdivision (g), provides:

> A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her division-mandated training is current shall be

deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

Michael Burgess (Burgess), Associate Safety Engineer for the Division, testified that he was current on his Division-mandated training. Burgess identified the hazard associated with Citation 2 and Citation 3 as an assault from an inmate. Burgess testified that an assault could realistically lead to death or serious permanent disfigurement. Accordingly, the Division established a rebuttable presumption that Citation 2 and Citation 3 were properly classified as Serious.

4. Did Employer rebut the presumption that the violations cited in Citation 2 and 3 were Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violations?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. In order to satisfactorily rebut the presumption, the employer must demonstrate both:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Labor Code section 6432, subdivision (c), shifts the burden to the employer to rebut the presumption that the citation was properly classified as Serious. Employer primarily argued that the Division did not meet its burden of proof to establish the classification as Serious and did not address Employer knowledge substantively.

a. Citation 2

The violation asserted in Citation 2 is the failure to correct the hazard of workplace violence posed by inmates to the mental healthcare clinicians working in Delta Yard. As discussed above, Employer identified the hazard of workplace violence, both through its supervisors and IIPP training, and therefore was aware of the hazard. Further, as discussed above, Employer did not institute methods to prevent employees from being exposed to the identified hazard.[3] Additionally, reactive measures put in place by Employer do not equate to preventative measures and, therefore, Employer failed to establish that it took all steps a reasonable and responsible employer should to take, before the violation occurred, to anticipate and prevent the violation.

Accordingly, Employer did not establish that it met both elements of Labor Code section 6432, subdivision (c), and cannot rebut the presumption that Citation 2 was properly classified as Serious.

b. Citation 3

The violation asserted in Citation 3 is the failure to train for the hazard of workplace violence posed by inmates to the mental healthcare clinicians working in Delta Yard. As discussed above, Employer identified and was aware of the hazard. Further, the record supports that the training provided did not include preventative measures to address the hazard of workplace violence, but rather, covered only reactive measures, such as the whistle and alarm. As the nature of the training was known to Employer, it cannot be said that Employer took all steps a reasonable and responsible employer should to take, before the violation occurred, to anticipate and prevent the violation.

Accordingly, Employer did not establish that it met both elements of Labor Code section 6432, subdivision (c), and cannot rebut the presumption that Citation 3 was properly classified as Serious.

5. Are the proposed penalties reasonable?

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*Sacramento County Water*

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[3] A notable contrast is drawn between the mental health clinic and other areas in the Delta Yard. Ourique testified about security measures taken in other areas of Delta Yard that included a tower that provided gun coverage of inmates. This contrast demonstrates other security measures available to Employer in the same area to address the same hazard identified by Employer.

Agency Department of Water Resources, supra, Cal/OSHA App. 1237932, citing *RNR Construction, Inc., supra,* Cal/OSHA App. 1092600.)

The parties stipulated that, if the citations were affirmed, the penalties were correctly calculated in accordance with section 336, subdivisions (b), (d), and (e), as well as the Division's policies and procedures. As the citations are affirmed, and pursuant to the stipulation of the parties, the proposed penalties are found reasonable.

Conclusions

For Citation 1, Item 1, the citation and penalty are vacated and the AVD is amended pursuant to the stipulation of the parties.

For Citation 2, Item 1, the Division established a violation of section 3203, subdivision (a)(6), because Employer failed to correct unsafe conditions in accordance with its safety program by failing to institute measures to prevent exposure to a hazard that was identified by Employer. The citation was properly classified as Serious. The proposed penalty amount is found reasonable as issued.

For Citation 3, Item 1, the Division established a violation of section 3203, subdivision (a)(7), because Employer failed to provide training and instruction to employees in accordance with its safety program by failing to provide training on how to prevent exposure to a hazard that was identified by Employer. The citation was properly classified as Serious. The proposed penalty amount is found reasonable as issued.

Order

It is hereby ordered that, as stipulated by the parties, Citation 1, Item 1, shall be vacated and a Notice in Lieu of Citation shall be issued with an amended AVD. The penalty is also vacated pursuant to stipulation.

It is hereby ordered that Citation 2, Item 1, and the associated penalty are affirmed and assessed as set forth in the attached Summary Table.

It is hereby ordered that Citation 3, Item 1, and the associated penalty are affirmed and assessed as set forth in the attached Summary Table.

/s/ Christopher Jessup

Dated: 10/08/2025

Christopher Jessup
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.