



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No. _____ NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: Service Employees International Union, Local 1000

b. Mailing address: 1808 14th Street, Sacramento, CA 95811

c. Telephone number: (916) 554-1279

d. Name and title of person filing charge: Anne M. Giese, Chief Counsel E-mail Address: agiese@seiu1000.org
Telephone number: (916) 554-1279 Fax No.: (916) 554-1292

e. Bargaining unit(s) involved: 17

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: California Department of Human Resources

b. Mailing address: 1515 S Street, North Building, Suite 500, Sacramento, CA 95811

c. Telephone number: (916) 324-0512

d. Name and title of agent to contact: Frolan Aguilung, Chief Counsel E-mail Address: frolan.aguilung@calhr.ca.gov
Telephone number: (916) 324-0512 Fax No.: (916) 323-4723

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name: California Department of Public Health

b. Mailing address: PO Box 997377, MS 0500, Sacramento, CA 95899-7377

c. Agent: Sonia Y. Angell, MD

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
 - Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
 - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
 - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
 - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
 - Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
 - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: 3519 (a), (b), (c)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent’s conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*

[SEE ATTACHED]

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 08/28/2020 (Date)

at Sacramento, California (City and State)

Anne M. Giese
(Type or Print Name)


(Signature)

Title, if any: Chief Counsel

Mailing address: 1808 14th Street, Sacramento, CA 95811

Telephone Number: (916) 554-1279 E-Mail Address: agiese@seiu1000.org

STATEMENT OF THE CHARGE

SEIU Local 1000 is the exclusive bargaining representative for State Bargaining Unit 17. The most recent Memorandum of Understanding between the State and Local 1000 was entered into for the period January 2020 through June 2023.

After providing notice to the Union, the California Department of Public Health and the Union agreed to meet and confer concerning a major job duty change and effective restructuring of the Health Facility Evaluator Nurses (HFEN) duties after the COVID-19 pandemic struck. When the Union objected to the job duty changes on a number of grounds, rather than complete the bargaining process, CDPH abdicated its bargaining obligation and unilaterally implemented the changes in violation of the Dills Act.

It is not possible to overstate the need for the bargaining over job duties to be completed pursuant to legal requirements. At the meet and confer table, the State heard the conditions affecting HFENs whose jobs are thrown into turmoil due to the CDPH's intentional disregard of the legal and nursing standards requirements under which the HFENs must operate. This includes but is not limited to:

- California Health & Safety Code § 1417.3,
- the 1987 Nursing Home Reform Act (42 U.S.C. § 1395i-3), and
- the Nurse Practice Act.

Nevertheless, CDPH ignored and rejected valid concerns in favor of an immediate and excessive reliance on HFENs as a staffing solution during a pandemic to repair the broken public health standards at many Skilled Nursing Facilities, some of which have allowed COVID-19 to take many lives. This unilateral approach is illegal, unsafe and defies nursing standards.

On Thursday, July 9, 2020, the parties met regarding the CDPH notice of its intent to shift the focus of the HFEN workforce toward education and infection prevention in Skilled Nursing Facilities. (Exhibit 1) The Union conveyed its many objections regarding management's proposed change to the Duty Statement. (Exhibit 2) Management even agreed that the duty statement could have been written more clearly, and committed to revising the duty statement.

On August 4, 2020, the Union met with CDPH about the outstanding notice. CDPH provided a second revised duty statement. (Exhibit 3) The parties agreed to continue the meet and confer process and scheduled another meeting as many outstanding questions and objections still need to be resolved. For example, the Union argued in detail that this change and new duty statement departed from the job specifications and violated the law, citing California Health & Safety Code § 1417.3, the 1987 Nursing Home Reform Act (42 U.S.C. § 1395i-3), and the Nurse Practice Act. All of these violations could jeopardize the HFENs' nursing licenses. Despite these crucial concerns directly conflicting with the job duty proposals, CDPH claimed there was a Department of Consumer Affairs (DCA) ruling regarding the legal issues at hand. However, when pressed, CDPH could not convey the details and did not provide a copy. CDPH said that they did not have an official response to the legal arguments at that time.

Additionally, in the second revised duty statement, CDPH demanded that the incumbent HFEN “Provides instruction, and technical assistance for facility leadership and their staff regarding state and federal regulations.” To ensure HFENs followed legal, and scope of practice requirements, the Union demanded management to define the terms “instruction” and “technical assistance” as used above, and to clarify what they meant by that statement. CDPH responded cavalierly that it was obvious, and had no additional answer.

Also to protect the HFENs’ licenses, the Union demanded clarity on the job expectations, to protect the clear line drawn by the legislature concerning conflict of interest issues that would have HFENs perform duties that would normally be performed by consultants, while at the same time engaging in enforcement activities. (See, California Health & Safety Code § 1417.3)

The Union demanded that CDPH remove the new job duty requiring HFENs to “conduct post-survey activities, including reviewing health care facility plans of corrections.” Reviewing health care facility plans is a duty that management usually performs.

The Union demanded an explanation of the operational need to substantially alter the duty statement based on a temporary emergency. CDPH had no valid explanation. Conflicting with its own notice, CDPH also stated that there is a duration to this duty statement (8-12 months), but this is subject to change as the external COVID environment changes.

The parties agreed to a follow up meeting - scheduled for September 1st - to address the above notices. The parties have neither finished negotiating over the notices, nor agreed to any duty statement.

On August 24th, management sent the Union a 3rd revised duty statement (Exhibit 4) that incorporated some changes. Regarding the 3rd Revised Duty Statement, there remain outstanding questions from the previous meeting on August 4th.

Presently, as of this date, management is rejecting the need to complete the meet and confer, to address the legal violations, and is now unilaterally demanding that employees sign a new duty statement even though the parties have not yet finished their Meet & Confer. (Exhibit 5)

Due to the state’s ongoing recalcitrance to complete bargaining and find a resolution that upholds legal requirements to protect the careers and licenses of HFENs, its unilateral action constitutes an unfair practice.

ARGUMENT

Unilateral Change of Prohibited Subjects of Bargaining

“The rule in California is well settled: [an employer’s] unilateral change in a matter within the scope of representation is a *per se* violation of the duty to meet and confer in good faith.” (*California State Employees Association v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 934-935.) Repudiation of a provision in the parties’ MOU is a *per se* unilateral change. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Dec. No. 2231-M.)

PERB has found that unilateral actions are disfavored because they destabilize employer-employee affairs, denigrate the representative's negotiating power and ability to perform as an effective bargaining agent in the eyes of employees, undermine exclusivity, and denigrate statutory sanctions for negotiations. (*San Mateo Community College District* (1979) PERB Dec. No. 94, 3 PERC Para. 10080.)

Because CDPH is unilaterally abandoning bargaining, understood and agreed to by the Parties, it is committing an unfair labor practice. Such changes have a continuing impact upon the terms and conditions of the employment of BU 17 members. Unlawful unilateral changes have a "generalized impact or continuing effect" on the terms and conditions of employment. In considering whether CDPH's conduct has a generalized effect, it is useful to note that the changes referenced above are not merely one-time breaches of a contract – which have previously been found not to constitute an unlawful unilateral change. Instead, PERB has noted that under existing precedent, "a breach of contract amounts to a unilateral change where the party in breach asserts that the contract authorizes its conduct" or where the breach represents a "change in policy that is generally applicable to future situations."

Moreover, CDPH cannot unilaterally impose proposals that are illegal. (See, *AFSCME v County of San Diego* Decision 2721M):

Illegal subjects of bargaining include "matters prohibited by external law or public policy and may not be negotiated or included in a collective bargaining agreement, even if the parties were to agree to do so. Generally, where a proposal would deviate from an inflexible standard set by external law, it may be characterized as a prohibited, "illegal" or nonnegotiable subject of bargaining." (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 864-865.)

Because they cannot be included in a collective bargaining agreement, prohibited subjects may not serve as the lawful basis for a declaration of impasse nor be imposed by the employer upon reaching a deadlock in negotiations, even assuming good-faith bargaining and exhaustion of any applicable impasse resolution procedures. (*Berkeley Unified School District* (2012) PERB Decision No. 2268 (Berkeley), pp. 3-9, esp. fn. 3.)

The Union notified CDPH of the legal disputes - concerning the assignment of education, public health training and infectious disease control duties to HFENs whose defined role is to survey SNFs for compliance with legal standards. Nevertheless, CDPH flouted these barriers and proceeded to unilateral implementation of duties that crossed legal boundaries. The legal issues are outlined briefly as follows:

- 1. Health & Safety Code 1417.3 requires separation of surveying and licensing from the training and technical assistant unit**

In 2001, CDPH proposed an amendment to existing law found in the Long-Term Care, Health, Safety, and Security Act of 1973 to specifically require statewide training on effective facility practices and training on topics related to the provision of quality of care and quality of life for

facility residents. However, as enacted, this law expressly required this new training unit to be separated from the survey and enforcement process, which already existed at the time.

H&S 1417.3 - The department shall promote quality of care and quality of life for residents, clients, and patients in long-term health care facility services through specific activities that include, but are not limited to, all of the following:

- (a) Research and evaluation of innovative facility resident care models.
- (b) (1) Provision of statewide training on effective facility practices.

(2) Training also shall include topics related to the provision of quality of care and quality of life for facility residents. The topics for training shall be identified by the department through a periodic survey. The curriculum for the training provided under this paragraph shall be developed in consultation with representatives from provider associations, consumer associations, and others, as deemed appropriate by the state department.
- (c) The establishment of separate units to respond to facility requests for technical assistance regarding licensing and certification requirements, compliance with federal and state standards, and related operational issues.
- (d) State employees providing technical assistance to facilities pursuant to this section are only required to report violations they discover during the provision of the assistance to the appropriate district office if the violations constitute an immediate and serious threat to the health and welfare of, or have resulted in actual harm to, patients, residents, or clients of the facility.
- (e) The state department shall measure facility satisfaction and the effectiveness of the technical assistance provided pursuant to subdivision (c).
- (f) No person employed in the technical assistance or training units under subdivisions (b) and (c) shall also participate in the licensing, surveying, or direct regulation of facilities.
- (g) This section shall not diminish the department's ongoing survey and enforcement process.

No change to the Duty Statement can be made without addressing the separation of duties required by this law. Notwithstanding the Union's repeated reference to this law, CDPH was determined to proceed regardless of it. This intentional disregard of the law jeopardizes the employees who are forced to choose between adhering to the duties required or violating the plain language of the law.

2. The HFEN class specification specifies an enforcement role

The HFEN class specification is based on and reflects this separation of duties found in law. Importantly, the class specification does not refer to training, educating or consulting. Instead, it does specify the primary role is enforcement for the purpose of patient care, which it does by inspection, investigation, survey, and evaluation for compliance with state and federal requirement. Specifically, the specification states:

Incumbents conduct inspections, investigations, surveys, and evaluations of health facilities for conformity with licensing and certification requirements of the Department of Health Services and **for compliance with State and Federal laws, rules, and regulations relating to medical care.** Advise health facilities administrators and community agencies regarding State health facilities inspection, licensing, and certification programs. **Primary responsibility is for enforcement of State and Federal laws, rules, and regulations pertaining to areas affecting total patient care such as nursing, physician, restorative, pharmacy, social, dental, and related services.**

When the proposed duty statement is not reasonably consistent with job specification, it is considered misallocated work. Changing job duties contrary to the class specification violates the merit principle and the classification system. CalHR is empowered to ensure that no one is “assigned to perform the duties of any class other than that to which his or her position is allocated.” (Gov. 19818.8) However, CDPH seems to have no concerns about putting the cart before the horse – mandating job duties changes without regard to the Long-Term Care, Health, Safety, and Security Act amendments of 2001 or the classification specifications.

3. CDPH Demands HFENs to serve as an Onsite Infectious Disease Advisor and Trainer

The infectious disease role is outside the HFENs scope of practice and class specification requirements. CDPH made a very specific demand regarding infection control:

High fatality rates, fast infection spread rates, and lack of consistency with infection control precautions have exposed an immediate need for a sustainable presence for oversight and re-education. In order to create a culture of safety and regulatory compliance, it has been deemed necessary to the expand the HFEN’s infection prevention responsibilities in the SNFs. HFENs will be responsible for providing technical assistance, education, and training on plans of correction

Generally, registered nurses are trained in infection and disease control and are expected to follow **employer procedures** to reduce and control the spread of infection in their practice. As RNs, HFENs have this background. HFENs currently must survey facilities for infection control for the purpose of licensing and certification, as required by federal law:

(3) Sanitary and infection control and physical environment A skilled nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. 42 USC 1395i-3(d)

Checking a SNF to ensure it has a sanitation and infection control program is vastly different than being an onsite expert advisor for infection and disease control and to provide training to staff and management. To impose this duty - for such a serious and unique specialty - in the midst of a pandemic is foolhardy. With the demands of the current COVID crisis throughout SNFs, to insist that HFENs take time out of their existing duties for training in the specialty and training to become the trainers, ignores the stark realities of the role of infectious disease control experts. It is, after all, a certified specialty in the medical field. In addition, it falls more directly under the specialty of Public Health Nurse. State law defines this role:

B&P 2818.

(a) The Legislature recognizes that public health nursing is a service of crucial importance for the health, safety, and sanitation of the population in all of California's communities. These services currently include, but are not limited to:

(1) Control and prevention of communicable disease.

(2) Promotion of maternal, child, and adolescent health.

(3) Prevention of abuse and neglect of children, elders, and spouses.

(4) Outreach screening, case management, resource coordination and assessment, and delivery and evaluation of care for individuals, families, and communities.

(b) The Legislature also finds that conflicting definitions of "public health nurse" have been created by various state and local agencies within California. The Legislature also finds that the public is harmed by the conflicting usage of the title "public health nurse" and lack of consistency between the use of the term and the qualifications required in state law and in administrative regulations. Therefore, the Legislature finds that the public interest would be served by determining the conditions for the legitimate use by registered nurses of a title which includes the term "public health nurse."

(c) No individual shall hold himself or herself out as a public health nurse or use a title which includes the term "public health nurse" unless that individual is in possession of a valid California public health nurse certificate issued pursuant to this article.

(d) No employer subject to regulation by Section 602 of the Health and Safety Code shall hold out any employee to be a public health nurse or grant a title to any employee including the term "public health nurse" unless that employee holds a valid California public health nurse certificate pursuant to this article.

CDPH is blurring the lines between HFENs and public health nurse – violating the requirements set forth in law. In fact, CDPH is imposing the requirement for HFENs to be onsite public health nurses for the facilities for the purpose of controlling an infectious disease that is spreading across the nation and world at an exponential rate. CDPH already employs Public Health Nurses, which is a more appropriate classification for this work. Indeed, the class specification for PHN includes "giving instruction for the care of patients and application of procedures designed to prevent the spread of communicable diseases" among other duties.

4. Nursing policies cannot be developed by non-medical professionals.

Finally, throughout the weeks of these negotiations, CDPH continues to have nursing policies written and developed by non-medical professionals over the objections of the Union. As band-aids in a medical crisis, CDPH continues to err by issuing quick fixes written by bureaucrats rather than sound nursing policy developed by medical professionals. This violates state law as follows:

Business and Professions Code Section 2725: "(e) No state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the provisions of this chapter or develop standardized procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required under state or federal statute. "State agency" includes every state office, officer, department, division, bureau, board, authority, and commission."

CDPH has failed to establish that the Duty Statement and intended scope of practices was developed by a licensed professionals in medicine, nursing and public health.

The changes detailed herein constitute fundamental alterations in the terms and conditions of employment, in the legally mandated scope of duties, and meanwhile CDPH is implementing these changes without completing the meet and confer process initiated by the parties pursuant to its notice. This breach in particular represents an overarching change that it is a "*per se*" violation of the Dills Act.

Interference

An employer engages in illegal interference when that employer takes actions "to interfere with, restrain, or coerce employees because of their exercise of" protected rights. Interference occurs where the employer's conduct "tends to or does result in some harm to employee [or the exclusive representative's] rights." (*Carlsbad Unified School Dist. (1978) PERB Dec. No. 89.*) Typically, these cases involve obstruction of rights through threats, intimidation or similar actions. CDPH's conduct amounted to illegal interference when it punished employees by

unilaterally changing the implementation deadline of the new duty statement and continued to mandate overtime despite functional resolutions.

In an unfair practice case involving an allegation of interference, a violation will be found where the employer's acts interfere or tend to interfere with the exercise of protected rights and the employer is unable to justify its actions by proving operational necessity. (*Carlsbad Unified School District* (1979) PERB Decision No. 89.) In an interference case, it is not necessary for the charging party to show that the respondent acted with an unlawful motivation. (*Regents of the University of California* (1983) PERB Decision No. 305-H.)"

It is clear from the facts set forth above that CDPH's conduct targeted the HFENs with illegal, unsafe and unsound job duties, abandoned the commitment to protect employees' nursing licensures, and fundamentally undermined the meet and confer efforts with the Union occurring throughout the summer. This conduct put a target on the Union's back, that takes seriously the guarantee to protect employees from illegal and improper job duties, that worked for weeks throughout the pandemic to achieve protections, and that also engaged and informed workers toward achieving the goal of sound and legal job duties during this public health crisis. Consequently, the timing of the CDPH's abandonment of bargaining - very specifically occurring during meet and confer negotiations, comes at a time where it is intended to cause as much damage as possible to the Union's strength at the table to protect the HFENs. CDPH targeted this very specific union activity - in an effort to diminish the status and the rights of the Union. CDPH has chosen a path of unilateral change and flouted the Union's efforts to obtain agreement at the table. This conduct amounts to interference with the Union's rights to represent its members, and the members' rights to have Union representation. This conduct was direct and specific in regards to the Union's power and authority at the table. It was intended to chill support of the Union during the pandemic.

CONCLUSION

CDPH may not legally use HFENs as a public health staffing solution to repair the broken infection control issues that exist at Skilled Nursing Facilities. Bureaucrats thrive on so-called quick fixes that provide fodder for press releases and sound bites.

By the acts and conduct described above, the State interfered with the rights of bargaining unit employees being represented by Local 1000 in violation of Government Code section 3519(a).

By the acts and conduct described above, the State interfered with the rights of Local 1000 to represent its bargaining unit employees in violation of Government Code section 3519(b).

By the acts and conduct described above, the State failed to meet and confer in good faith with Local 1000 in violation of Government Code section 3519(c).

REMEDIES

Local 1000 requests that the PERB order the following:

- Cease and desist unilateral changes and interference;
- Return employees to *status quo ante*;
- Provide adequate notice of changes within scope;
- Bargain in good faith with Local 1000 representatives;
- Any other appropriate relief; and
- That any such PERB order be posted at worksite bulletin boards throughout the State of California where Local 1000 represented employees work.

Exhibit 1

From: Terry, Sharron@CDPH <Sharron.Terry@cdph.ca.gov>
Sent: Friday, June 12, 2020 5:11 PM
To: Walker, Yvonne
Cc: Rivera, Kristanna@CDPH <Kristanna.Rivera@cdph.ca.gov>
Subject: Infection Prevention Case Management

Good Afternoon:

Due to the State of Emergency and COVID-19 response, the California Department of Public Health (CDPH) had to shift the primary focus of the Health Facility Evaluator Nurse (HFEN) workforce to infection prevention education in Skilled Nursing Facilities (SNFs) and other facilities regulated by the Department of Social Services.

The COVID-19 response has highlighted gaps in quality and safety at our SNFs. High fatality rates, fast infection spread rates, and lack of consistency with infection control precautions have exposed an immediate need for a sustainable presence for oversight and re-education. In order to create a culture of safety and regulatory compliance, it has been deemed necessary to the expand the HFEN's infection prevention responsibilities in the SNFs. HFENs will be responsible for providing technical assistance, education, and training on plans of correction and unresolved action items during daily onsite facility visits. Depending on geographical distance of facilities, this may include video calls in addition to site visits. The CDPH will provide masks, gowns, gloves, and safety glasses or face shields to all HFENs for site visits and has an adequate supply of personal protective equipment (PPE) for all HFENs.

The anticipated effective date for implementation is on or about June 15, 2020, and will continue for 8-12 months. Attached is a copy of the updated HFEN duty statement.

Please let me know if you have any questions.

Thank you,

Sharron Terry, Labor Relations Specialist
Labor Relations
Human Resources Division
Department of Public Health
(916) 552-9937

Exhibit 2

DUTY STATEMENT

**NEW HFEN
DUTY STATEMENT
UPDATED 5-12-20**

Employee Name:

Classification: Health Facilities Evaluator Nurse	Position Number: 580-XXX-8011-XXX
Working Title: Nurse Surveyor	Work Location:
Collective Bargaining Unit: 17	Tenure/Time Base: Permanent/Full-Time
Center/Office/Division: Center for Health Care Quality	Branch/Section/Unit: Office of Field Operations

All employees shall possess the general qualifications, as described in California Code of Regulations Title 2, Section 172, which include, but are not limited to integrity, honesty, dependability, thoroughness, accuracy, good judgment, initiative, resourcefulness, and the ability to work cooperatively with others.

This position requires the incumbent to maintain consistent and regular attendance; communicate effectively (orally and in writing) in dealing with the public and/or other employees; develop and maintain knowledge and skill related to specific tasks, methodologies, materials, tools, and equipment; complete assignments in a timely and efficient manner; and, adhere to departmental policies and procedures.

Competencies

The competencies required for this position are found on the classification specification for the classification noted above. Classification specifications are located on the [California Department of Human Resource's Job Descriptions webpage](#).

Job Summary

This position supports the California Department of Public Health's (CDPH) mission and strategic plan by conducting inspections, investigations, surveys, and evaluations of health care facilities and agencies for conformity with state licensing and federal certification requirements for compliance with state and federal laws, rules, and regulations relating to the delivery of medical care. Advises health care facility administrators and community agencies regarding state health care facilities inspection, licensing, and certification programs. Primary responsibility for uniform application and enforcement of state and federal laws, rules, and regulations pertaining to areas affecting total patient care such as nursing, physician, restorative, pharmacy, social, environmental and related services. Extensive local and statewide travel will be required. This position may require overnight stays, evening, weekend, or holiday surveys. The Incumbent must have a valid state driver's license, a good driving record and is expected to drive the car safely. Incumbent will travel and will be required to wear appropriate Personal Protection Equipment such as: Mask, gown, gloves, safety glasses or face shield during site visits to health care facilities.

slight diff. wording

The incumbent works under the general direction of the Health Facilities Evaluator II Supervisor.

Special Requirements

✓ Blank as opposed to "X" in original duty statement

- Conflict of Interest (COI)
- Background Check and/or Fingerprinting Clearance
- Medical Clearance
- Travel: Mandatory – Minimum of 50%
- Bilingual: Pass a State written and/or verbal proficiency exam in
- License/Certification: RN License
- Other:

Essential Functions (including percentage of time)

35% → 30%

Conducts in-depth surveys at Skilled Nursing Facilities (SNFs) and other health care facilities, individually or as part of a team, to determine compliance with state licensing and federal certification requirements. Conducts surveys, investigations, and inspections. This position may require overnight stays, evening, weekend, or holiday surveys. Conducts and documents interviews with health care facilities' residents, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information for regulatory and legal action while ensuring patient confidentiality. Independently, or as part of a team, makes a determination of health care facilities' compliance with state and federal laws and regulations based on observations, interviews and record reviews. Conducts post-survey activities including reviewing and responding to health care facility plans of corrections. Conducts follow-up visits at health care facilities to verify facility has corrected cited deficiencies. Prepares written comprehensive narrative reports of findings including conclusions and recommendations and prepares written statements of deficiencies when deemed appropriate.

0% → 30%

The Incumbent will be the liaison and primary contact for the California Department of Public Health to assist health care facilities with the regulatory actions and processes. Provides consistent feedback, instruction, and education for facility leadership and their staff. Depending on geographic location, the surveyor may be onsite daily, many times a week, and conduct frequent video calls as check-ins. The incumbent will not only address infection control but will also provide quality and safety oversight to SNFs and other healthcare facilities. Advises and assists health care facility administrators in matters relating to the state requirements for inspections, licensing, construction, and operation of health care facilities.

↑ was 5% before

35% → 25%

In response to complaints submitted to the CDPH regarding patient care and health care delivery in licensed health care facilities, the incumbent travels to and conducts investigations at facilities, documenting fully for regulatory and legal actions all evidence relating to non-compliance. Conducts and documents interviews with the complainant, relevant witnesses, health care facilities' patients, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information while ensuring patient confidentiality. Independently makes a determination of health care facilities' compliance with state and federal regulations based on observations, interviews and record reviews. Prepares written comprehensive narrative reports

of investigations including conclusions and recommendations, and prepares written statements of deficiencies when deemed appropriate.

10% 5%
=>

Develops and presents both written and verbal testimony to provide support for civil monetary penalties at informal conferences, citation review conferences, evidentiary hearings, state and federal hearings, informal dispute resolutions, municipal or superior court proceedings, and arbitration procedures. Responds to these legal actions as an expert witness on matters relating to state and federal laws and regulations pertaining to patient care and healthcare delivery system.

5%

Advises and assists health care facility administrators in matters relating to the state requirements for inspections, licensing, construction, and operation of health care facilities.

Marginal Functions (including percentage of time)

5%

Other duties as required, including, but not limited to, collecting data required for special studies and preparing licensing and complaint packets for staff.

I certify this duty statement represents an accurate description of the essential functions of this position. I have discussed the duties and have provided a copy of this duty statement to the employee named above.

I have read and understand the duties and requirements listed above, and am able to perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation may be necessary, or if unsure of a need for reasonable accommodation, inform the hiring supervisor.)

Supervisor's Name:	Date	Employee's Name:	Date
Supervisor's Signature	Date	Employee's Signature	Date
HRB Use Only: Approved By:	Date		

Exhibit 3

Second Revised DUTY STATEMENT as of 8.4.20

Employee Name:

Classification: Health Facilities Evaluator Nurse	Position Number: 580-XXX-8011-XXX
Working Title: Nurse Surveyor	Work Location:
Collective Bargaining Unit: 17	Tenure/Time Base: Permanent/Full-Time
Center/Office/Division: Center for Health Care Quality	Branch/Section/Unit: Office of Field Operations

All employees shall possess the general qualifications, as described in California Code of Regulations Title 2, Section 172, which include, but are not limited to integrity, honesty, dependability, thoroughness, accuracy, good judgment, initiative, resourcefulness, and the ability to work cooperatively with others.

This position requires the incumbent to maintain consistent and regular attendance; communicate effectively (orally and in writing) in dealing with the public and/or other employees; develop and maintain knowledge and skill related to specific tasks, methodologies, materials, tools, and equipment; complete assignments in a timely and efficient manner; and, adhere to departmental policies and procedures.

Competencies

The competencies required for this position are found on the classification specification for the classification noted above. Classification specifications are located on the [California Department of Human Resource's Job Descriptions webpage](#).

Job Summary

This position supports the California Department of Public Health's (CDPH) mission and strategic plan by conducting inspections, investigations, surveys, and evaluations of health care facilities and agencies for conformity with state licensing and federal certification requirements for compliance with state and federal laws, rules, and regulations relating to the delivery of medical care. Advises health care facility administrators and community agencies regarding state health care facilities inspection, licensing, and certification programs. Primary responsibility for uniform application and enforcement of state and federal laws, rules, and regulations pertaining to areas affecting total patient care such as nursing, physician, restorative, pharmacy, social, environmental and related services. Extensive local and statewide travel will be required. This position may require overnight stays, evening, weekend, or holiday surveys. The Incumbent must have a valid state driver's license, a good driving record and is expected to drive the car safely while driving on state business. Incumbent will travel and will be required to wear appropriate Personal Protective Equipment according to guidance requirements, such as: Mask, gown, gloves, safety glasses or face shield during site visits to health care facilities.

The incumbent works under the general direction of the Health Facilities Evaluator II Supervisor.

Special Requirements

- Conflict of Interest (COI)
- Background Check and/or Fingerprinting Clearance
- Medical Clearance
- Travel: Mandatory – Minimum of 50%
- Bilingual: Pass a State written and/or verbal proficiency exam in
- License/Certification: RN License
- Other:

Essential Functions (including percentage of time)

35% Conducts in-depth surveys at ~~Skilled Nursing Facilities (SNFs) and other health care facilities~~, individually or as part of a team, to determine compliance with state licensing and federal certification requirements. Conducts surveys, investigations, and inspections. ~~This position may require overnight stays, evening, weekend, or holiday surveys.~~ Conducts and documents interviews with health care facilities' residents, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information for regulatory and legal action while ensuring patient confidentiality. Independently, or as part of a team, makes a determination of health care facilities' compliance with state and federal laws and regulations based on observations, interviews and record reviews. Conducts post-survey activities including reviewing ~~and responding to~~ health care facility plans of corrections. Conducts follow-up visits at health care facilities to verify facility has corrected cited deficiencies. Prepares written comprehensive narrative reports of findings including conclusions and recommendations and prepares written statements of deficiencies when deemed appropriate.

30% The Incumbent will be the liaison and primary contact for the California Department of Public Health to assist health care facilities with the regulatory actions and processes. Provides ~~consistent feedback, instruction, and education~~ technical assistance for facility leadership and their staff regarding state and federal regulations. ~~Depending on geographic location, the surveyor may be onsite daily, many times a week, and conduct frequent video calls as check-ins.~~ The incumbent will not only address infection control but will also provide quality and safety compliance oversight to ~~SNFs and other~~ healthcare facilities. Advises and assists health care facility administrators in matters relating to the state requirements for inspections, licensing, construction, and operation of health care facilities.

25% In response to complaints submitted to the CDPH regarding patient care and health care delivery in licensed health care facilities, the incumbent travels to and conducts investigations at facilities, documenting fully for regulatory and legal actions all evidence relating to non-compliance. Conducts and documents interviews with the complainant, relevant witnesses, health care facilities' patients, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information while ensuring patient confidentiality. Independently makes a determination of health care facilities' compliance with state and federal regulations based on observations,

interviews and record reviews. Prepares written comprehensive narrative reports of investigations including conclusions and recommendations, and prepares written statements of deficiencies when deemed appropriate.

5% Develops and presents both written and verbal testimony to provide support for civil monetary penalties at informal conferences, citation review conferences, evidentiary hearings, state and federal hearings, informal dispute resolutions, municipal or superior court proceedings, and arbitration procedures. Responds to these legal actions as an expert witness on matters relating to state and federal laws and regulations pertaining to patient care and healthcare delivery system.

5% ~~Advises and assists health care facility administrators in matters relating to the state requirements for inspections, licensing, construction, and operation of health care facilities.~~

Marginal Functions (including percentage of time)

5% Other duties as required, including, but not limited to, collecting data required for special studies and preparing licensing and complaint packets for staff.

I certify this duty statement represents an accurate description of the essential functions of this position. I have discussed the duties and have provided a copy of this duty statement to the employee named above.		I have read and understand the duties and requirements listed above, and am able to perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation may be necessary, or if unsure of a need for reasonable accommodation, inform the hiring supervisor.)	
Supervisor's Name:	Date	Employee's Name:	Date
Supervisor's Signature	Date	Employee's Signature	Date
HRB Use Only: Approved By:	Date		

Exhibit 4

DUTY STATEMENT
3rd Revision sent 8.24.20

Employee Name:	
Classification: Health Facilities Evaluator Nurse	Position Number: 580-XXX-8011-XXX
Working Title: Nurse Surveyor	Work Location:
Collective Bargaining Unit: 17	Tenure/Time Base: Permanent/Full-Time
Center/Office/Division: Center for Health Care Quality	Branch/Section/Unit: Office of Field Operations

All employees shall possess the general qualifications, as described in California Code of Regulations Title 2, Section 172, which include, but are not limited to integrity, honesty, dependability, thoroughness, accuracy, good judgment, initiative, resourcefulness, and the ability to work cooperatively with others.

This position requires the incumbent to maintain consistent and regular attendance; communicate effectively (orally and in writing) in dealing with the public and/or other employees; develop and maintain knowledge and skill related to specific tasks, methodologies, materials, tools, and equipment; complete assignments in a timely and efficient manner; and, adhere to departmental policies and procedures.

Competencies

The competencies required for this position are found on the classification specification for the classification noted above. Classification specifications are located on the [California Department of Human Resource's Job Descriptions webpage](#).

Job Summary

This position supports the California Department of Public Health's (CDPH) mission and strategic plan by conducting inspections, investigations, surveys, and evaluations of health care facilities and agencies for conformity with state licensing and federal certification requirements for compliance with state and federal laws, rules, and regulations relating to the delivery of medical care. Advises health care facility administrators and community agencies regarding state health care facilities inspection, licensing, and certification programs. Primary responsibility for uniform application and enforcement of state and federal laws, rules, and regulations pertaining to areas affecting total patient care such as nursing, physician, restorative, pharmacy, social, environmental and related services. Extensive local and statewide travel will be required. This position may require overnight stays, evening, weekend, or holiday surveys. While driving on state business, the incumbent must have a valid state driver's license, a good driving record and is expected to drive the car safely. Incumbent will travel and ~~will be required to wear~~ appropriate Personal Protective Equipment according to guidance requirements, such as: Mask, gown, gloves, safety glasses or face shield during site visits to health care facilities.

The incumbent works under the general direction of the Health Facilities Evaluator II Supervisor.

Special Requirements

- Conflict of Interest (COI)
- Background Check and/or Fingerprinting Clearance
- Medical Clearance
- Travel: Mandatory – Minimum of 50%
- Bilingual: Pass a State written and/or verbal proficiency exam in
- License/Certification: RN License
- Other:

Essential Functions (including percentage of time)	
35%	<p>Conducts in-depth surveys at Skilled Nursing Facilities (SNFs) and other health care facilities, individually or as part of a team, to determine compliance with state licensing and federal certification requirements. Conducts surveys, investigations, and inspections. This position may require overnight stays, evening, weekend, or holiday surveys. Conducts and documents interviews with health care facilities' residents, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information for regulatory and legal action while ensuring patient confidentiality. Independently, or as part of a team, makes a determination of health care facilities' compliance with state and federal laws and regulations based on observations, interviews and record reviews. Conducts post-survey activities including reviewing and responding to health care facility plans of corrections. Conducts follow-up visits at health care facilities to verify facility has corrected cited deficiencies. Prepares written comprehensive narrative reports of findings including conclusions and recommendations and prepares written statements of deficiencies when deemed appropriate.</p>
30%	<p>The Incumbent will be the liaison and primary contact for the California Department of Public Health to assist health care facilities with the regulatory actions and processes. Provides consistent feedback, instruction, and education technical assistance for facility leadership and their staff regarding state and federal regulations. Depending on geographic location, the surveyor may be onsite daily, many times a week, and conduct frequent video calls as check-ins. The incumbent will not only address infection control but will also provide quality and safety compliance oversight to SNFs and other healthcare facilities. Advises and assists health care facility administrators and staff in matters relating to the state and federal requirements for inspections, licensing, construction, and operation of health care facilities.</p>
25%	<p>In response to complaints submitted to the CDPH regarding patient care and health care delivery in licensed health care facilities, the incumbent travels to and conducts investigations at facilities, documenting fully for regulatory and legal actions all evidence relating to non-compliance. Conducts and documents interviews with the complainant, relevant witnesses, health care facilities' patients, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information while ensuring</p>

patient confidentiality. Independently makes a determination of health care facilities' compliance with state and federal regulations based on observations, interviews and record reviews. Prepares written comprehensive narrative reports of investigations including conclusions and recommendations, and prepares written statements of deficiencies when deemed appropriate.

5% Develops and presents both written and verbal testimony to provide support for civil monetary penalties at informal conferences, citation review conferences, evidentiary hearings, state and federal hearings, informal dispute resolutions, municipal or superior court proceedings, and arbitration procedures. Responds to these legal actions as an expert witness on matters relating to state and federal laws and regulations pertaining to patient care and healthcare delivery system.

~~5% Advises and assists health care facility administrators in matters relating to the state requirements for inspections, licensing, construction, and operation of health care facilities.~~

Marginal Functions (including percentage of time)

5% Other duties as required, including, but not limited to, collecting data required for special studies and preparing licensing and complaint packets for staff.

<p>I certify this duty statement represents an accurate description of the essential functions of this position. I have discussed the duties and have provided a copy of this duty statement to the employee named above.</p>	<p>I have read and understand the duties and requirements listed above, and am able to perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation may be necessary, or if unsure of a need for reasonable accommodation, inform the hiring supervisor.)</p>
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Supervisor's Name:	Date	Employee's Name:	Date
Supervisor's Signature	Date	Employee's Signature	Date
HRD Use Only: Approved By:	Date		

Exhibit 5

From: Steinecker, Heidi@CDPH <Heidi.Steinecker@cdph.ca.gov>
Sent: Wednesday, August 26, 2020 10:41 AM
Subject: Early CHCQ Weekly Email

Dear CHCQ staff,

My apologies but I will not be joining today for our weekly All Staff Call, as I will be offline over the next week to spend some quality time with my family. I will be back next Wednesday, but encourage everyone to continue to rotate to have some time offline. Cassie will lead today's call.

For Field Staff:

- As a reminder, everyone entering facilities must complete their baseline testing by August 31st, and then run in results to DMU. If you have questions, please reach out to DMU, or Jen Hill from our team.

-I have attached the final version of the new HFEN duty statement and want to thank the HFENs who had good input in making these final revisions. Please sign and send to your managers so we have the new copy on file.

Thank you again for all the incredible work you are doing during the most incredible time. Next week, for our Heroes of the Week, I will go into more depth regarding the second annual CHCQ Transformational Leader Award.

Heidi

Heidi W. Steinecker

Deputy Director
Center for Health Care Quality (CHCQ),
California Department of Public Health



DUTY STATEMENT

Employee Name:

Classification: Health Facilities Evaluator Nurse	Position Number: 580-XXX-8011-XXX
Working Title: Nurse Surveyor	Work Location:
Collective Bargaining Unit: 17	Tenure/Time Base: Permanent/Full-Time
Center/Office/Division: Center for Health Care Quality	Branch/Section/Unit: Office of Field Operations

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Competencies

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Job Summary

This position supports the California Department of Public Health's (CDPH) mission and strategic plan by conducting inspections, investigations, surveys, and evaluations of health care facilities and agencies for conformity with state licensing and federal certification requirements for compliance with state and federal laws, rules, and regulations relating to the delivery of medical care. Advises health care facility administrators and community agencies regarding state health care facilities inspection, licensing, and certification programs. Primary responsibility for uniform application and enforcement of state and federal laws, rules, and regulations pertaining to areas affecting total patient care such as nursing, physician, restorative, pharmacy, social, environmental and related services. Extensive local and statewide travel will be required. This position may require overnight stays, evening, weekend, or holiday surveys. While driving on state business, the incumbent must have a valid state driver's license, a good driving record and is expected to drive the car safely. Incumbent will travel and wear appropriate Personal Protective Equipment according to guidance requirements, such as: Mask, gown, gloves, safety glasses or face shield during site visits to health care facilities.

The incumbent works under the general direction of the Health Facilities Evaluator II Supervisor.

Special Requirements

- Conflict of Interest (COI)
- Background Check and/or Fingerprinting Clearance
- Medical Clearance
- Travel: Mandatory – Minimum of 50%
- Bilingual: Pass a State written and/or verbal proficiency exam in
- License/Certification: RN License
- Other:

Essential Functions (including percentage of time)	
35%	Conducts in-depth surveys at health care facilities, individually or as part of a team, to determine compliance with state licensing and federal certification requirements. Conducts surveys, investigations, and inspections. Conducts and documents interviews with health care facilities' residents, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information for regulatory and legal action while ensuring patient confidentiality. Independently, or as part of a team, makes a determination of health care facilities' compliance with state and federal laws and regulations based on observations, interviews and record reviews. Conducts post-survey activities including reviewing health care facility plans of corrections. Conducts follow-up visits at health care facilities to verify facility has corrected cited deficiencies. Prepares written comprehensive narrative reports of findings including conclusions and recommendations and prepares written statements of deficiencies when deemed appropriate.
30%	The Incumbent will be the liaison and primary contact for the California Department of Public Health to assist health care facilities with the regulatory actions and processes. The incumbent will not only address infection control but will also provide quality and safety compliance oversight to healthcare facilities. Advises and assists health care facility administrators and staff in matters relating to the state and federal requirements for inspections, licensing, construction, and operation of health care facilities.
25%	In response to complaints submitted to the CDPH regarding patient care and health care delivery in licensed health care facilities, the incumbent travels to and conducts investigations at facilities, documenting fully for regulatory and legal actions all evidence relating to non-compliance. Conducts and documents interviews with the complainant, relevant witnesses, health care facilities' patients, staff, and other relevant personnel. Requests and reviews resident medical files for relevant patient information, documenting necessary information while ensuring patient confidentiality. Independently makes a determination of health care facilities' compliance with state and federal regulations based on observations, interviews and record reviews. Prepares written comprehensive narrative reports of investigations including conclusions and recommendations, and prepares written statements of deficiencies when deemed appropriate.

5% Develops and presents both written and verbal testimony to provide support for civil monetary penalties at informal conferences, citation review conferences, evidentiary hearings, state and federal hearings, informal dispute resolutions, municipal or superior court proceedings, and arbitration procedures. Responds to these legal actions as an expert witness on matters relating to state and federal laws and regulations pertaining to patient care and healthcare delivery system.

Marginal Functions (including percentage of time)

5% Other duties as required, including, but not limited to, collecting data required for special studies and preparing licensing and complaint packets for staff.

I certify this duty statement represents an accurate description of the essential functions of this position. I have discussed the duties and have provided a copy of this duty statement to the employee named above.

I have read and understand the duties and requirements listed above, and am able to perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation may be necessary, or if unsure of a need for reasonable accommodation, inform the hiring supervisor.)

Supervisor's Name:	Date	Employee's Name:	Date
Supervisor's Signature	Date	Employee's Signature	Date
HRD Use Only: Approved By:	Date		

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 1808 14th Street, Sacramento, CA 95811

On 08/28/2020, I served the Unfair Practice Charge
(Date) *(Description of document(s))*

(Description of document(s) continued) in Case No. _____
(PERB Case No.)

on the parties listed below by (check the applicable method(s)):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by
the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations 32090
and 32135(d).

electronic service (e-mail) - I served a copy of the above-listed document(s) by
transmitting via electronic mail (e-mail) to the electronic service address(es) listed below
on the date indicated. *(May be used only if the party being served has filed and served a
notice consenting to electronic service or has electronically filed a document with the Board. See
PERB Regulation 32140(b).)*

(Include here the name, address, e-mail address and/or fax number of the Respondent and/or any other parties served.)

Frolan Aguilin, Chief Counsel
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Fax No. (916) 323-4723

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on 08/28/2020, at
(Date)

Sacramento, California
(City) *(State)*

Ronney J. Etheridge

(Type or print name)


(Signature)