

**DO NOT FORWARD THIS SIDEBAR AGREEMENT  
TO THE BOARD OF INDUSTRIAL INSURANCE APPEALS**

**RETURN SIGNED SIDEBAR AGREEMENT TO THE  
ATTORNEY GENERAL'S OFFICE**

**SIDEBAR AGREEMENT OF PARTIES**

**BETWEEN**

**WESTERN STATE HOSPITAL**

**AND**

**THE WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES**

The WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES (Department), by and through its attorneys, ROBERT W. FERGUSON, Attorney General, and ELLIOTT FURST, Senior Counsel, and the DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS), BEHAVIORAL HEALTH AND SERVICE INTEGRATION ADMINISTRATION (BHSIA), WESTERN STATE HOSPITAL (WSH) (Employer), by and through its attorneys ROBERT W. FERGUSON, Attorney General, and ERIC NELSON and CRAIG B. MINGAY, Assistant Attorneys General (collectively, the Parties), enter into the following Sidebar Agreement:

**FACTS**

On July 21, 2014, the Department initiated an inspection at the Employer's worksite located at 9601 Steilacoom Blvd. SW, Lakewood, WA 98498. As a result of that inspection, the Department issued Citation and Notice of Assessment No. 317399111 (Citation) to the Employer, received on January 21, 2015 alleging one serious violation of the Washington State Industrial Safety and Health Act (WISHA) and assessing a monetary penalty of \$5,600. The Citation alleges deficiencies in Employer's methods to prevent and abate patient-to-staff assaults, and alleges deficiencies in communications systems used by staff members to communicate safety issues and request assistance with patients who may present a risk of harm to staff members. The basis of the Citation is WAC 296-800-11010, which generally requires employers to "Provide and use means to make your workplace safe."

The Employer timely filed an appeal and request for a stay of abatement on February 5, 2015. The Department reassumed jurisdiction on February 19, 2015. A Corrective Notice of Redetermination was not issued within the time allowed by RCW 49.17.140 and WAC 296-900-17005. Therefore, the appeal was transferred to the Board of Industrial Insurance Appeals (Board).

### AGREEMENT

The Parties are each aware of the facts and proceedings stated above and have considered these facts in entering into this Agreement. The Parties agree as follows:

1. BHSIA has taken substantial steps to reduce workplace violence and is continuing to achieve a meaningful reduction in assaults. The Employer recognizes that further reduction requires additional resources as well as a culture change to occur within the hospitals. BHSIA Management has demonstrated this commitment by completing the following items:

- 1.1 Administrative

- a. Established an Ad Hoc Safety Committee made up of staff, management and union partners who worked together to create a list of recommendations to decrease violence at the hospitals based on independent evaluations of safety done since 2000. The committee's recommendations from a May 2014 meeting with the Secretary of DSHS have been used to guide the legislative decision packages currently moving forward to include the creation of a Psychiatric Intensive Care Unit (PICU) and Psychiatric Emergency Response Team (PERT);
- b. A Psychiatric Emergency Response Team (PERT) was implemented at the WSH Center for Forensic Services (CFS) in 2014;
- c. WSH established and implemented a full week of specialty training, the CFS Basics course, which all CFS staff are required to complete.
- d. The WSH Safety Office added a safety officer assistant and emergency management; and
- e. The employee injury report form used to gather additional information after an incident has been revised and is currently in use.

1.2 Communications Systems:

- a. A Pendant Alarm System ("Firepower" system) was installed in 2001. Since installation of this system, coverage has expanded to nearly all patient care areas within the hospital;
- b. The campus two-way radio system has been upgraded and additional radios have been provided;
- c. A training session on communications systems at WSH has been developed for the Nursing Competency Mall. The training was implemented on February 3, 2015 and will occur on a monthly basis; and
- d. Cellular phones are available to ward staff and are programmed for quick dial to the Communications Office.

1.3 Facilities and Equipment:

- a. \$1.2 million in specifically designed behavioral healthcare safe furniture has been deployed;
- b. Additional camera systems in the Center for Forensic Services have been installed;
- c. Security mirrors have been installed campus-wide to improve line of sight in all areas; and
- d. A "Key Watcher" system has been installed at Center for Forensic Services and the Communications Office to maintain structured control of keys.

2. DSHS and L&I agree that continued implementation of Sections 1.1 through 1.3 and completion of the following steps (Sections 2.1 and 2.2), and a DSHS process of assessment of effectiveness, constitute abatement of Citation and Notice No. 317399111. Further, continued implementation of Sections 1.1 through 1.3 and completion of the following steps constitutes compliance with WAC 296-800-11010. The parties agree that DSHS has an ongoing duty under WAC 296-800-11010 to assess the success of abatement measures set forth herein in lowering both the rate and severity of injuries resulting from assaults upon DSHS

employees. This will be an ongoing process of continuous evaluation of its safety efforts, and continual efforts to improve safety and reduce patient-on-employee assaults.

No safeplace standard/general duty clause violations under ch. 296-800 WAC, involving workplace violence and/or communications systems at Western State Hospital, Eastern State Hospital or Child Study and Treatment Center, will be issued by the Department so long as there is continued implementation of Sections 1.1 through 1.3 and the following abatement measures in Sections 2.1 and 2.2 are being implemented or installed.

2.1 Initiatives in Process. The Parties agree that the following steps are in the process of implementation or installation:

2.1.1 Administrative

- a. A safety training curriculum for staff, based upon the settlement agreement in Citation No. 316455559, will be approved and purchased through the guidance of the Ad Hoc Safety Sub-Committee by July 1, 2015.
- b. A Pendant Alarm System Failure reporting requirement has been established and communicated to all staff. In addition, an investigative team has been formed to examine any failure to determine the cause and follow-up with any findings. All Pendant Alarm System Failure investigations are tracked in the WSH Safety Office. A policy has been developed and is anticipated to be implemented by March 31, 2015.

2.1.2 Communications Systems

- a. Expansion of the Pendant Alarm System is underway and completion is anticipated by April 30, 2015. Expansion will cover Buildings 6, 8, and 27, and outside courtyards of Buildings 9, 20, 21, and 29.
- b. An upgrade of the public announcement speaker system is underway for all occupied buildings and completion is anticipated by April 30, 2015.

2.1.3 Facilities and Equipment

- a. WSH has purchased additional behavioral health safe furniture at a cost of \$470,000. The furniture will be received and distributed by July 31, 2015.
- b. Funding is in place for expansion of the Viacom Camera System, and completion of the expansion is anticipated by September 30, 2015.
- c. Funding is in place for installation of secure outdoor fencing in the campus "Quadrangle area", and completion is anticipated by October 31, 2015.
- d. Additional "Key Watcher" boxes will be installed in Building 29 and some buildings in Central Campus. Once installed, staff reporting to work in those areas will use the "Key Watcher" system; and
- e. A campus-wide safety project to upgrade fixtures, doors, and plumbing to improve patient and staff safety at a cost of \$2.7 million is nearing completion.

2.2 Future Initiatives. Employer agrees that it will take the following additional steps to further improve safety and health for the Employer's employees as follows:

2.2.1 Administrative

- a. By January 1, 2016, DSHS will employ two full time employees to provide for the investigation of any assault on a DSHS employee which results in that employee's hospitalization or medical treatment beyond first aid. This investigation will use Root Cause Analysis to determine whether existing processes are effective or require modification. Data derived from the Root Cause Analysis will be used, as appropriate, to develop an action plan for process improvement. This process will include, but is not limited to:
  - 1) Improving the Debriefing Process for Patient to Staff Assault incidents;
  - 2) Improving the Critical Incident Stress Management process;
  - 3) Improving the data review process and content of current data regarding staff injury; and
  - 4) Implementing a policy to review data related to assaults annually and modify the above plan as indicated.

- b. The Employer will mitigate safety issues posed by highly aggressive assaultive patients through the establishment of a Psychiatric Intensive Care Unit, as provided in the attached Decision Package, Appendix A.
- c. The Employer will expand the deployment of Psychiatric Emergency Response Teams, and communication equipment needed to support the team, as provided in the attached Decision Package for WSH and ESH hospitals, Appendix B.
- d. The Employer will fully implement the staff training recommendations from the Ad Hoc Safety Committee to support staff training as a means to reduce workplace violence, as provided in the attached Decision Package for Enhanced Training for Hospital Staff, Appendix C.

2.3 The Parties agree and recognize that all of the initiatives described in Section 2.2 will require legislative appropriation. The Departments of Labor and Industries and Social and Health Services will work cooperatively and in good faith to request funding for the Section 2.2 initiatives through the Office of Financial Management and appropriate committees of the legislature in the 2015-2017 biennial legislative session.

2.4 The Parties agree that this agreement fully settles and resolves Citation and Notice No. 317399111, and that no further appeal will be taken by either Party.

3. Contact names for exchange of information shall be as follows:

The Department Contact Person will be:

JOHN KORZENKO  
Regional Compliance Manager  
950 Broadway Ste. 200  
Tacoma, WA 98402  
Phone: (253) 596-3888  
Fax: (253) 596-3876

The Employer Contact Person will be:

VICTORIA ROBERTS  
Deputy Assistant Secretary  
Behavioral Health and Service Integration Administration  
Department of Social and Health Services  
PO Box 45330  
Olympia, WA 98504-5330  
Phone: (360) 725-3715  
Fax: (360) 725-2279

4. Disposition of the Citation. The Department of Social and Health Services agrees that the Citation shall be affirmed, but that abatement shall be satisfied by compliance with the initiatives identified in Sections 2.1 and 2.2 above.
5. Reports.
  - 5.1 DSHS will provide information on implementation and compliance with the initiatives described in this Agreement in its annual report to the legislature on Workplace Safety in State Hospitals, as required under RCW 72.23.451 and submitted by September 1 of each year.
    - a. Consistent with Department policies regarding monitoring of abatement, DSHS will provide the Department with additional reports every September 1 and March 1 for the duration of the Agreement, to include any extensions if requested and granted. In order to allow effective monitoring of abatement, DSHS will send the Department the following information:
      - i. Assault data (both normalized per 10,000 patient days, and actual or “raw” numbers) relating to number of reported patient-to-employee assaults for the preceding six months, as presented to the WSH Central Safety Committee;
      - ii. WSH Assault Data per Year (with an additional chart normalized to assaults per 2,000 employee hours worked.)
      - iii. Days missed due to assault as presented to the WSH Central Safety Committee;

- iv. A copy of the root cause analysis and proposed prevention action plan regarding any patient assault on a DSHS employee which results in that employee's hospitalization or medical treatment beyond first aid.
  - v. Data on the number of "Code Green" alerts called by WSH staff. WSH staff are encouraged to call "Code Green" alerts; therefore, the Parties agree that changes in the frequency of "Code Green" alerts are not a factor in determining WSH compliance with this Agreement.
  - vi. Data on any reported failures of communication systems for the preceding six months.
  - vii. A completed copy of the OSHA 300 and 300A for the preceding year with each March 1 report.
6. The Department reserves the right to conduct one abatement monitoring inspection to determine compliance with this Agreement, if it is deemed necessary to do so, in accordance with WAC 296-900-12005.
7. The Parties agree that the total penalty will be \$2,800.00. The Employer agrees to pay the amount of penalties assessed within 15 days after execution of this Agreement. Payment check shall reference Citation and Notice of Assessment No. 317399111 and payment shall be sent to:

Department of Labor and Industries  
ATTN: CASHIER  
P O Box 44835  
Olympia, WA 98504-4835

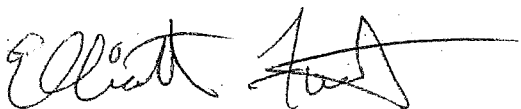
8. By entering into this Agreement, the Department of Labor and Industries does not admit that it could not have established the Citation and Notice of Assessment as originally written and the Employer does not admit that its conduct was illegal/in violation of WISHA regulations. Rather, the Parties believe that settlement of the Citation and Notice of Assessment is in the interest of all in order to avoid the costs and uncertainties of litigation.



9. The term of this Agreement shall be from the date of signature by the Parties until June 30, 2017. At that time, the obligations and commitments of the Parties shall cease under this Agreement, and nothing shall limit the Department of Labor and Industries from imposing Violations of WISHA concerning the subject matter of this Agreement. DSHS understands that its duty to comply with WAC 296-800-11010 is an ongoing duty, and that it must continually attempt to improve the safety and health of its employees.
10. This Agreement does not render the Employer immune from future compliance efforts generated by complaints, accident investigations, follow-up inspection protocol, and/or by Division of Occupational Safety and Health's inspection targeting system, except as provided above in Section 2.
11. If a dispute arises between Parties involving the subject matter of this Agreement, the Parties will work in good faith to resolve the dispute through best efforts and involvement of respective agency leadership and the Office of Financial Management.
12. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings regarding the subject matter of this Agreement shall be deemed to exist to bind any of the Parties hereto.
13. This Agreement may be amended by mutual agreement of the Parties. In order to have binding effect, such amendments must be in writing and signed by persons authorized to bind each of the Parties.

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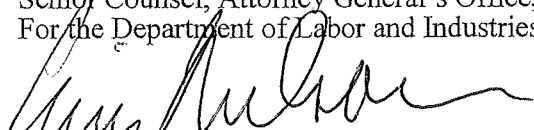
14. The Parties agree that if the final 2015-2017 biennial state budget does not provide DSHS with funding, in whole or part, to accomplish any of the initiatives set forth in this Agreement and attached Decision Packages, the Parties shall meet in good faith to amend the portions of this Agreement discussing abatement so that abatement initiatives can be modified to accomplish necessary improvements of workplace safety within the limitations of legislative appropriation.



Elliott Furst  
Senior Counsel, Attorney General's Office,  
For the Department of Labor and Industries

4-30-15

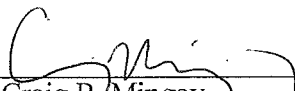
Date:



Eric Nelson  
Assistant Attorney General  
For the Department of Social and Health  
Services

4-30-15

Date:



Craig B. Mingay  
Assistant Attorney General  
For the Department of Social and Health  
Services

4/30/15

Date: