



Pennsylvania Coalition of Affiliated  
Healthcare & Living Communities

SORENSEN  
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*Specializing in Safety & Security Solutions*

# OSHA Regulatory Compliance And Responding to an OSHA Visit

**Presented by:**

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# Steve Wilder

- 15 years hospital risk manager in the Chicago suburbs
- 5 years as corporate risk manager over long-term care division of the same healthcare system
- Co-founded Sorensen, Wilder & Associates (SWA) in 2001
- Today serving over 500 acute care and long-term care facilities in 49 states
- Board certified Healthcare Safety Professional (CHSP)
- 2018 Recipient of Leadership Award in Emergency Preparedness by Illinois Security Professionals Assoc. for his leadership role in assisting an assisted living facility following the shooting of two residents.



# Part 1



## Preparing for an OSHA Inspection



# Preparing for an OSHA Inspection (overview)

- OSHA can inspect senior living communities for many reasons. OSHA's current inspection priorities are:
  1. Safety and Health Complaints – letter
  2. Reporting of Serious Injuries / Illnesses / Fatalities
    1. *Rapid Response Investigations (RRI)*
  3. Emphasis Programs
    1. *Programmed Inspections*
  4. OSHA Whistleblower Complaints
  
- In most situations, OSHA inspections occur without any prior notice

# Preparing for an OSHA Inspection (records review)

- All inspections should begin with an opening conference, where the inspector will explain why they are inspecting your community health center; make sure you know why they are inspecting and document it
- In the opening conference, the inspector will want to review your OSHA recordkeeping forms for the current year and five previous years
  - ✓ Make sure the forms are up to date within 7 calendar days
  - ✓ Make sure these forms are accurate!
  - ✓ You will only have 4 hours to produce these records
- The inspector may also want to see your written OSHA safety compliance and training documentation, as follows:
  - ✓ Hazard Communication Policy
  - ✓ Bloodborne Pathogens Exposure Control Plan (site specific)
  - ✓ Respiratory Protection Plan (needed for N95 respiratory protection)
  - ✓ Personal Protective Equipment - Certification of Hazard Assessment
  - ✓ Lockout / Tagout Program
  - ✓ Fall Protection Program (needed for rooftop maintenance exposures)
  - ✓ Slip, trip, and fall prevention program (Walking/Working Surfaces standard)
- Other areas of focus may include Safe Patient Handling (No Lift Policy) and Workplace Violence Prevention (Combative Patient, Active Shooter, etc.)

# Regular Safety Inspections – Your Best Tool!

- In addition to preparing your communities for a review of your written compliance policies, training documentation, and OSHA recordkeeping, you should also prepare your communities to identify common physical hazards/violations during the walkthrough inspection.
- Continuously increasing penalty amounts make safety inspection more critical than ever
- The most effective defenses are developed before and during an OSHA inspection, not after.
- Develop a formal process for performing safety inspections of all facets of all areas of operations, including allowable time for remediation and follow-up
- The system we recommend for our clients:

# Regular Safety Inspections – Your Best Tool!

Hypothetical safety inspection of the Food Services Department:

- Today: Safety inspection performed, and written memo sent to FS Director listing safety deficiencies, and giving 30 days to correct
- 30 days later Follow-up inspection conducted. Follow-up report sent to FS Director with unresolved deficiencies and giving another 30 days to correct.
- 30 days later Follow-up inspection conducted. Follow-up report sent to FS Director with unresolved deficiencies and giving another 30 days to correct. Copy sent to FS Director's boss.
- 30 days later Follow-up inspection conducted. Follow-up report sent to FS Director with unresolved deficiencies and giving another 30 days to correct. Copy sent to FS Director's boss and ED.
- 30 days later Follow-up inspection conducted. Follow-up report sent to FS Director with unresolved deficiencies and giving another 30 days to correct. Copy sent to ED and President of Governing Body.



# Preparing for an OSHA Inspection (walkthrough)

- Housekeeping is essential! Everyone has a beautiful, clean lobby, but...
- Back-of-house areas in the community should be clean and well-organized as well.
- *The following slides provide information on avoiding common OSHA violations found during walkthrough inspections of senior living communities.*



# Preparing for an OSHA Inspection



## Flat Roof Fall Protection

- The roof hatch, shown to the left, does not have anything to provide balance assistance at the top of the ladder; roof hatch ladders should have telescoping grab bars or other means to provide balanced support
- The flat roof, as shown on the right, is a high-risk area that requires strict adherence to fall protection measures. Maintenance employees must wear fall protection when servicing rooftop vents, highlighting the gravity of the situation.
- Fall protection must be worn when working within 15 feet of an unprotected roof edge
- A fall protection vendor can help determine the best option for fall protection or travel restraint systems
- Maintenance staff should never be allowed to access sloped roofs!

# Preparing for an OSHA Inspection



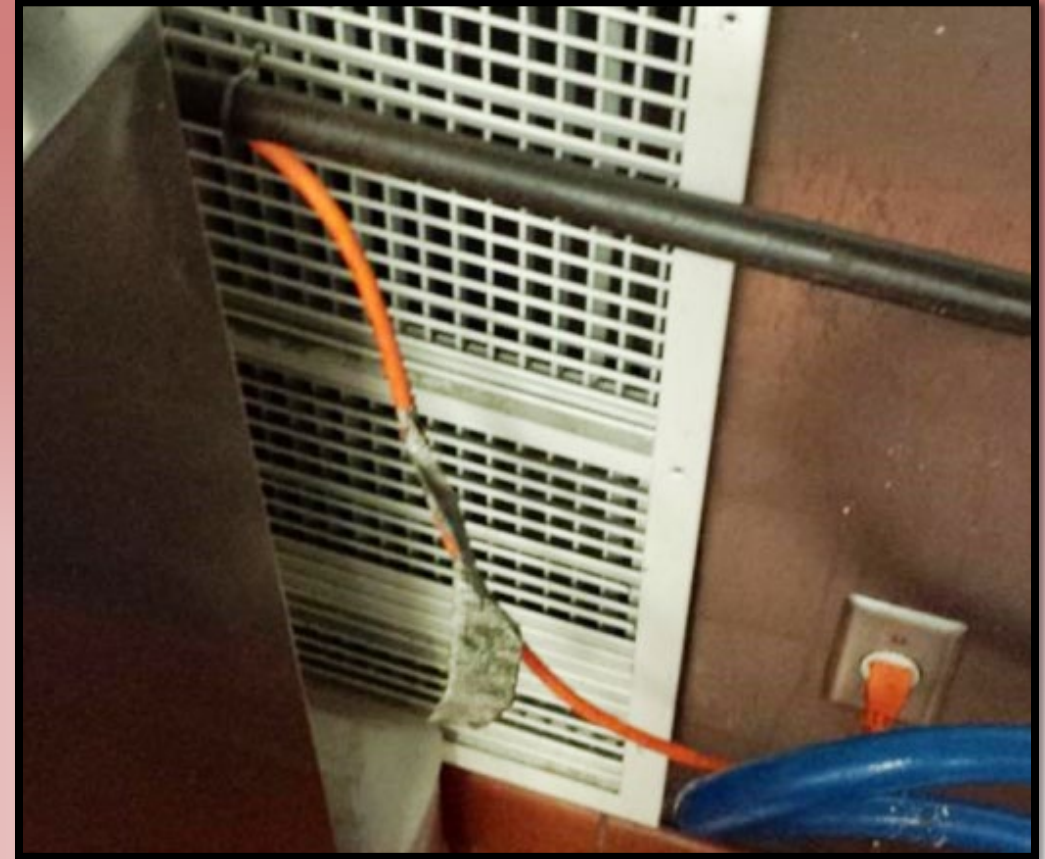
## Electrical Cords & Ground Pins

- The vacuum cleaner shown to the left has a missing ground pin on its cord; the plug to this vacuum should be replaced
- The damaged yellow extension cord pictured to the right should be removed from service and thrown away
- All electric-powered plug-in equipment and extension cords should be in good condition without cuts or missing ground pins

# Preparing for an OSHA Inspection

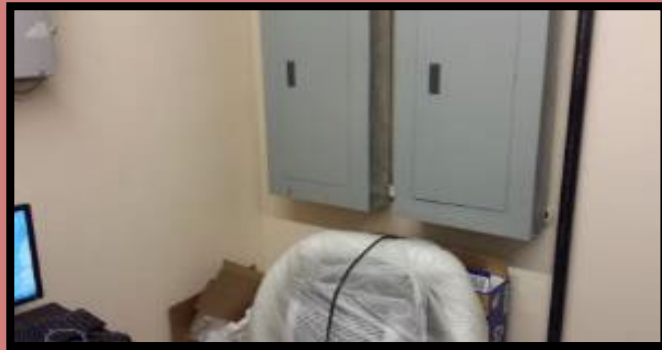
## Do Not Use Extension Cords for Permanent Power Supply

- The extension cord shown here is zip-tied to the gas line at the top of the picture; this is considered a permanent use of an extension cord and a violation of OSHA standards
- The zip tie holding this cord to the gas line should be removed.





# Preparing for an OSHA Inspection



## Do Not Block Electric Panels / Equipment

- The electrical panels shown here are blocked
- All electrical panels and disconnects must be maintained with 36 inches of forward clearance
- Best practice - mark floors underneath electrical panels/equipment helps to maintain this clearance (most electric panels are in “back of house” locations)

# Preparing for an OSHA Inspection



## Cover All Electric Equipment Openings

- Openings and holes in electrical junction boxes and panels violate OSHA's electrical standards
- All openings must be covered to prevent accidental contact with exposed live electricity above 50 volts

# Preparing for an OSHA Inspection



## Do Not Block Fire Exits or Fire Extinguishers

- The fire extinguisher and exit door pictured above are blocked
- All fire extinguishers and exit doors must be maintained with proper access and clearance

# Preparing for an OSHA Inspection

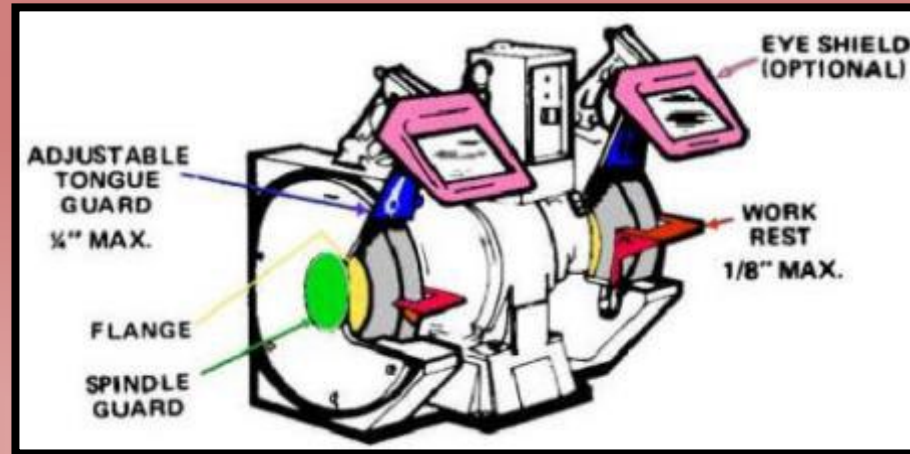


## Kitchen Mixers Must be Guarded

- The large mixer shown to the left does not have a mixer guard
- A retrofit guard should be purchased, or a new mixer should be purchased if a retrofit guard is not available
- The mixer pictured to the right is well-guarded
- Guards prevent kitchen employees from reaching into the mixer bowl during operation



# Preparing for an OSHA Inspection



## Bench Grinders must be properly guarded/adjusted

- The stone wheel of the bench grinder shown in the upper left photo is not guarded properly
- The diagram on the right shows how to guard this grinder properly
  - The top or “tongue guard” should be positioned 1/4 inch or less from the surface of the grinding wheel and
  - The tool or work rest should be positioned 1/8 inch or less from the surface of the wheel

# Preparing for an OSHA Inspection



## Biohazard Labels

- Bio-specimens storage in mini-fridges or small coolers should be labeled with biohazard symbols
- This specimen fridge shown here was not labeled, which is an OSHA violation

# Preparing for an OSHA Inspection



## Sharps' Containers

- Sharps' containers should be monitored to ensure they are replaced when full
- Staff should be diligent in replacing containers so they are readily available when needed

# Preparing for an OSHA Inspection



## Emergency eyewash/shower stations

- Needed wherever caustic chemicals are dispensed or used
- The eyewash bottles pictured on the left are not OSHA-compliant because they do not provide 15 minutes of continuous water flow to the eyes
- The plumbed eyewash with a ladder and mop bucket blocking access is not OSHA-compliant
- Plumbed eyewash stations or gravity feed tanks are acceptable
- Do not block access to emergency eyewash and shower stations

# PART 2

## During an OSHA Inspection



# Verify Credentials!

## WHEN OSHA SHOWS UP

### 1. *Inspect their credentials*

- **Every Compliance Safety & Health Officer (C-SHO) will have a photo ID confirming they are from the USDOL – OSHA. We do this for several reasons:**
  - On first impression, the C-SHO realizes that you have been trained for their visit and you know what you are doing
  - It is your first step in showing safety preparedness
  - It is a vital security measure, as it shows that this is not just a formality; it's your first step in demonstrating our collective you check the credentials of everyone who enters your building.

### 2. *Obtain their information*

- Ask for a business card. Every C-SHO has one. If they “forgot them”, ask their name, what regional office they are from, and the office phone number.
- Politely ask them to have a seat in the lobby and call that regional office to confirm the legitimacy of the visit.

# During an OSHA Inspection

## *3. Ask the reason for the visit*

Much like a police officer, they must have a cause or reason for the visit. They cannot just make random visits (with certain exceptions). Common reasons will be:

- Investigation of a reported illness, accident, or fatality
- They saw a hazard as they were driving by
- Enforcement of a National Emphasis Program (NEP) or a Local Emphasis Program (LEP)
- Statistics based visit (used in high-risk industries), based on annual 300 log recordings (site specific targeting – SST)



# Virtual vs. On-Site

- In interviews, it's crucial to respond with brevity. Focus on answering their specific questions, not what you believe they're expecting to hear.
- **As I used to tell my nursing staff:**  
*“If they ask you the time, tell them the time; don’t tell them how to build a watch.”*
- When sending documents, send the ones they ask for, not what you think they want!  
Don’t offer to send “this too...”

# Examples on Questions

Question asked of you:

*How many employees do you have?*

Correct answer: 34

Your answer:

*“Well, let’s see. We have 16 in this building, another eight at the facility on Daymore Road, and ten at the Gitchigoome Drive facility.”*

**Instead of answering their question, you gave them additional locations to try to find a reason to explore!**



# The Opening Conference

**The OSHA inspector will want to have an opening conference to discuss the conduct of the inspection. The leadership team should attend, as should any union representative. The opening conference should cover at least the following topics:**

- The communities' designated inspection coordinator and their role
- Any facility-required safety training that the OSHA inspector wants to review
- Any facility-required PPE that the OSHA inspector must wear (e.g., respiratory protection)
- Confirm the scope/basis for the inspection (SST, NEP, complaint, etc).

# The Opening Conference (cont'd)

- How long is the inspection expected to last?
- The company requests that the OSHA inspector inform them as the inspector identifies areas of concern or at the end of each inspection day.
- The company requests a closing conference at the end of the inspection (or at the end of each significant segment).

# Employee Interviews

**The OSHA inspector may want to interview hourly and management employees. It helps to manage those interview requests. Consider the following:**

- Obtain a list of employees the inspector wants to interview from the OSHA inspector.
- If possible, interview those employees before the OSHA inspector does about what they know about the subject matter of the inspection.
- Employees have the right to refuse to be interviewed if they aren't comfortable with the idea. OSHA may then get a subpoena and compel the interview.
- You are to make the employee available in a manner that doesn't interrupt resident care

# Employee Interviews

- Inform employees who are to be interviewed by the OSHA inspector:
  - They should tell the truth during their interview. (The OSHA inspector may ask employees if their employer told them what to say; they can respond that they were told to tell the truth.)
  - It is okay to say, “I don’t know”!
  - Make sure employees understand that the community supports cooperation with OSHA during the inspection.

# Employee Interviews

- In a union environment, hourly employees may choose to be accompanied by an employee representative, such as a union steward, during their interview. If they would like an employee representative to attend, they should request that. In a non-union environment, this isn't the case.
- A management representative may accompany management employees if they choose. Generally, the company should recommend that a management representative sit in on the interview and take notes.



# Employee Interviews

- If the OSHA inspector asks if there is an objection to the inspector recording the interview, at SWA, we advise our clients to decline the request. Blame it on your attorney if you need to justify the response.
- If virtual (was common during COVID), mention at the start that we ask that no recording be made of the meeting(s).
- Meet with every employee interviewed, contact his or her supervisor or the management team, and participate in a debriefing afterward to learn what happened during the interview.

# Employee Interviews

- Make sure employees know that if they do not understand the inspector's question, they should ask for clarification.
- Employees should limit their responses to what they know. They should listen carefully to the inspector's question, pause to collect their thoughts before responding, and then respond to the question. Speculation about what may have happened or what caused an incident is not appropriate.

# Employee Interviews

- Let the OSHA inspector conduct the interview. The employee need not volunteer information unless it is clear that the inspector misunderstands the situation, in which case the employee may want to provide only clarifying information.
- Employees are not required to sign any statement indicating that the statement accurately recounts what they said.
- Employees may request a copy of any such statement. When the employee receives a copy, they should share it with senior management.

# Employee Interviews

- Your inspection coordinator should ask the OSHA inspector to have a management representative attend the interviews of management employees. The company's team should identify an appropriate management representative.
- If possible, debrief each employee promptly after the interview, taking detailed notes on what the inspector and the employee said. Ask if the interview was recorded and if the employee obtained a copy of the recording (if so, ask to make another copy for use by the company). Ask if the employee signed any statement that the OSHA inspector's notes were accurate and if the employee received a copy (if so, ask to make another copy for use by the company).

# The Closing Conference

**At the end of each day of the inspection, ask to speak with the OSHA inspector about the inspection, including topics such as the following:**

- Whether the OSHA inspector has identified any violations, and if so, what they are.
- Whether the OSHA inspector has identified any other areas of concern, and if so, what they are.
- The names of any employees whom the OSHA inspector still plans to interview, if any.
- The documents that the OSHA inspector plans to request, if any.
- The anticipated schedule for the rest of the inspection process.

# The Closing Conference

**In addition, at the end of the inspection or a significant stage of the inspection, clarify issues such as the following:**

- Whether the OSHA inspector will return for a follow-up inspection, and if so, when.
- The timing for when the company will provide any documents requested by the OSHA inspector that have not yet been provided.
- The timing for issuance of any citations.

# Additional Thoughts

- If this is an SST visit, they will almost certainly look at your Workplace Violence Prevention (WPV) program
- Be certain that you are familiar with *OSHA Guideline 3148: Guideline for the Prevention of Workplace Violence for Healthcare and Social Service Workers*
- Follow the key points of that guideline from both a programmatic and training perspective
- Develop a WPV Committee (can be sub-committee of Safety Committee) to regularly review incidents of WPV in the community and to develop programs,, etc. to keep employees prepared and to minimize the risk
- Perform Workplace Violence Risk Assessments to identify where the “chinks in the armor” are in your security management program that would contribute to the likelihood of a WPV event
- Combative residents are one of the greatest sources of WPV injuries and complaints. Review your OSHA 300 log for such events



# PART 3



## AFTER THE OSHA INSPECTION

# Citations

## ESSENTIAL ELEMENTS

1. In **writing**
2. **Signed** by Area Director
3. Describe violation with “**particularity.**”
4. **Timely** (issued within six months of the violation, unless continuing violation)
5. Specifies the **proposed penalty**
6. Served by **certified mail**
7. **Post** for three days or until abatement, whichever is longer

# 2024 Federal Citations and Penalties (as of 8/24)

## Types

1. Other than serious
2. Failure to abate/correct
3. Serious
4. Repeat
5. Willful

## Amounts

1. Up to \$16,131 per violation
2. Up to \$16,131 per day past
3. Up to \$16,131 per violation
4. Up to \$161,323 per violation
5. Up to \$161,323 per violation

# Criminal Law Liability

- **OSHA**

- Potential criminal liability if:

- **Fatality**

- Violation of specific regulation

- Violation was willful, and

- Violation caused fatality

- **Penalty**

- 6 mo. imprisonment, and/or (currently misdemeanor – may soon be elevated to felony)

- \$500,000 fine per fatality for employer

- \$250,000 fine per fatality for individual

**NOTE: No Miranda Warning Necessary**

# Criminal Law Liability

## OSHA

### Via DOJ:

- Obstruction of justice for interfering with inspection
- Falsification of records
- Lying to federal inspector

## State Law

### Via State Attorney General:

- Murder
- Manslaughter
- Reckless Endangerment
- Battery
- Liability for Employer and Managers



# Citations – What Are Your Options?

1. Agree to citation and pay the full penalty (rarely recommended)
2. Informal conference/informal settlement (being careful of admissions)
- 3. Notice of Contest – 15 working days (Federal); some state plans allocate different time periods**
  - 1. Not tolled for an informal conference**
4. Formal settlement (*involves attorneys...think of an “out of court” settlement*)
5. Hearing

# Hearings



- Occupational Safety and Health Review Commission
- Formal complaint and answer
- Discovery similar to Federal Court
- Can represent self pro se'
- Hearing before Administrative Law Judge
- ALJ issues written opinion
- Appeal to three-member Review Commission
- Other options – expedited proceedings

# Proving Violations – What OSHA Must Show

1. The cited standard **applies** to the condition;
2. **Non-compliance** with the standard;
3. Employees were **exposed** to or had **access** to the cited condition;
4. The employer **knew or should have known** of the cited condition and
5. The selected **characterization** (e.g., serious, willful, repeat) is appropriate

**The burden of proof is on OSHA!**

# The OSHA General Duty Clause

- The General Duty Clause, by definition, means that employers must protect employees from any serious hazard once they're aware of it – whether OSHA's rules specifically address it or not.
- Section (5)(a)(1) of the OSH Act (referred to as the General Duty Clause) says:

*Each employer shall furnish each of his employees with employment and a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm to the employees.*

- The General Duty Clause, by definition, means that employers must protect employees from any serious hazard once they're aware of it – whether OSHA's rules specifically address it or not.

# Requirements to Use General Duty Clause (5)(a)(1)

OSHA must prove:

- Condition or activity in the workplace presented a hazard
- Employer or its industry recognized the hazard
- Hazard was likely to cause death or serious physical harm
- A feasible means existed to eliminate or materially reduce the hazard was available

# Takeaways

- Know what you don't know!
- Don't panic!
- Study your rights
- Know OSHA's rights and your timelines
- Plan for OSHA Inspections
- Know when to use your consultants
  - Preparatory
  - When OSHA on site
  - After citations received
- Know when to involve legal counsel
  - History of past citations
  - Known hazards existed that weren't addressed
  - Any incident resulting in fatalities and serious injuries.



# Questions and Thoughts



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