

**60-Day Notice of Violations:  
Failure to Warn Public About Chemical Listed Under Health & Safety Code Section 25249.6**

September 15, 2009

**Via Certified Mail and First Class Mail**

Austin M. O'Flynn  
Catholic Healthcare West  
185 Berry Street, Suite 300  
San Francisco, CA 94107

Fisk Electric Company  
8964 Broadway  
San Antonio, TX 78217

Edmund G. Brown, Jr.  
California Attorney General  
(Proposition 65 Enforcement Reporting)  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

Walter Stahl  
The Stahl Companies, Inc.  
11230 Gold Express Drive 310-316  
Gold River, CA 95670

***Re: Notice of Violations of California Health & Safety Code § 25249.5 et seq.***

Dear Gentilepersons:

This firm represents six laborers hired to provide recabling services at Mercy General Hospital, 4001 J Street, Sacramento, CA 95819, Mercy San Juan Medical Center, 6501 Coyle Avenue, Carmichael, CA 95608, and Woodland Memorial Hospital, 1325 Cottonwood Street, Woodland, CA 95695, including but not limited Mark Kinyon, Shane Kelley, William Jackson, Fard Elijah Karim, Michael Duncan, and Frank Magallanes, in connection with this notice of violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5 *et seq.* This letter constitutes notification that Catholic Healthcare West, The Stahl Companies, Inc. and Fisk Electric Company have violated Proposition 65.

Pursuant to §25249.7(d) of the statute, the laborers intend to bring an enforcement action against the above-referenced entities sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify

these violations. A summary of the statute and its implementing regulations, which was prepared by the Office of Environmental Hazard Assessment, the lead agency designated under the state is enclosed with the copy of this notice served upon the violators. The specific details of the violations that are the subject of this notice are provided below.

**The names of the violators covered by this notice are:** Catholic Healthcare West, Fisk Electric Company, The Stahl Companies, Inc. and each of their respective affiliates (collectively, the "Noticees"). The Noticees are currently or have been involved in the Care Connect Project, which entails the operation, maintenance and construction activities at Mercy General Hospital, 4001 J Street, Sacramento, CA 95819, Mercy San Juan Medical Center, 6501 Coyle Avenue, Carmichael, CA 95608, and Woodland Memorial Hospital, 1325 Cottonwood Street, Woodland, CA 95695 (the "Hospital Sites"). These activities have included the installation of Ethernet cabling by drilling, chiseling, hammering, and pounding into walls, ceilings and floors, and other construction and site management work, as well as the inspection and maintenance of the Hospital Sites. These ongoing environmental violations of Proposition 65 arise out of failure to warn of asbestos releases or threatened releases caused by the Noticees' activities at the Hospital Sites. On February 27, 1987, the State of California officially listed asbestos as a chemical known to cause cancer.

**Environmental Warnings at Issue.** The Hospital Sites include Mercy General Hospital, 4001 J Street, Sacramento, CA 95819, Mercy San Juan Medical Center, 6501 Coyle Avenue, Carmichael, CA 95608, and Woodland Memorial Hospital, 1325 Cottonwood Street, Woodland, CA 95695. Persons who were entitled to a warning include all persons entering the Hospital Sites since the project's inception, including, but not limited to, the Laborers, and the Noticee's patients, employees, guests and invitees.

The Hospital Sites are multi-story hospital complexes consisting of several freestanding buildings each. Specifically, Mercy General Hospital is located at 4001 J Street, Sacramento, CA 95819, and is comprised of a South Wing in the shape of a star, the North Wing, the Russell Building, the Northeast Building and Mercy Medical Plaza (North and South). The North and South Wing are the primary hospital facilities, and include the emergency room, maternity ward, and patient rooms. The walls, ceilings and floors of the Hospital Sites are comprised of materials such as tan drywall and joint compound, thermal systems insulation, black floor tile mastic, brown ceiling tile mastic, among other materials, which each contain asbestos. The Laborers were never informed that these materials contained asbestos, nor were they provided with the proper training, personal protective equipment, work procedures, prior to commencing and during their drilling, hammering, pounding, chiseling, coring and pulling activities from October of 2007 through November of 2008. In addition, patients, employees, guests and invitees who may also have been exposed were not warned of the threatened exposure to asbestos dust that resulted from the Laborers' activities.

The Noticees were required to comply with the California law Health & Safety Code §25915 *et seq.* regarding managing asbestos and notifying employees, patients and contractors of asbestos risk. The Noticees had knowledge of the California asbestos laws and knew they had an obligation to notify their employees, patients, contractors, guests and invitees of the asbestos risks and to regularly monitor, inspect and manage the asbestos known to exist in the Hospital Sites. As a result of the failure to abide by the California asbestos laws, the Noticees permitted the Laborers to disturb asbestos containing materials without containment or protective procedures in place. Consequently, asbestos containing dust was emitted into the hallways, lobbies and corridors of the Hospital Sites as well as being tracked throughout the hospital from the workers' clothing for more than a year without proper notification or warning. Asbestos dust was also tracked into the Laborers' vehicles and homes where there family was exposed.

Catholic Healthcare West contracted with DPR Construction, an unrelated contractor on the Hospital Sites at the same time, to build additional buildings, construction of which took place prior to and during the Care Connect Project, and renovate portions of the existing buildings at the Mercy General Hospital site. As the work conducted by the Laborers proceeded, a construction worker with DPR Construction notified the Laborers that the Laborers were drilling into asbestos-containing material. Work was temporarily halted after the Laborers reported the concern to their superiors. Without providing an explanation, the Laborers were instructed to continue their work so the project could be completed on time. A memo written by management of Fisk Electric Company on June 19, 2008 reported "minimal exposure" despite the significant drilling activities into asbestos-containing material and despite no empirical air measurements being taken to confirm the airborne asbestos concentration. An asbestos survey report dated June 28, 2008, after the Fisk Electric Company memo, revealed significant quantities of asbestos-containing materials at Mercy General Hospital in and around the locations of the Laborers' drilling activities. The Noticees knew or should have known that asbestos dust was released and threatened to be released at the Hospital Sites. Accordingly, Noticees knew or should have known prior to commencing the Care Connect Project that the Laborers' drilling activities would dislodge asbestos-containing materials in the Hospital buildings. Nonetheless, the work continued through November of 2008 without any warning or notice to the Laborers, hospital employees, patients, guests or visitors.

**Route of Exposure.** The asbestos exposures that the Laborers, employees, patients, guests and invitees should have been warned of is through inhalation.

**Duration of Violations.** These violations began at the beginning of the Care Connect Project, believed to have occurred prior to October of 2007, and continued every day while the Laborers were on site working. Some or all of the Laborers continued to work on the Care Connect Project through November 2008.

**Counsel.** The Laborers will be represented in connection with the matter by:


Craig E. Farmer  
Farmer, Smith & Lane, LLP  
3620 American River Drive, Suite 218  
Sacramento, CA 95864  
Telephone: (916) 679-6565

In keeping with the public interest goals of the statute and the Laborers' objective of protecting the community from further unlawful toxic exposures, we are interested in seeking a constructive resolution of this matter to avoid continuing unwarned exposure to asbestos without protracted litigation. While we intend to file a citizen enforcement action against the Noticees upon the expiration of the 60-day notice, we are also willing to discuss effective remedies for the violations noted in this letter. The suit will include causes of action for negligence, negligent infliction of emotional distress, intentional infliction of emotional distress, violation of Health & Safety Code §25249.5 *et seq.*, violation of Business & Professions Code § 17200 *et seq.* In addition, the suit will allege that the testing for asbestos was deliberately delayed and improperly conducted to avoid producing data that would require notifying the Laborers, employees, patients, guests and invitees of the extent of asbestos contamination in the Hospital Sites. If you wish to pursue discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the need of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when that period ends.

Please direct all communications regarding this notice to Craig E. Farmer at the above listed firm address and telephone number.

Very truly yours,

FARMER SMITH & LANE, LLP

  
Craig E. Farmer

GWB:llm  
Enclosures  
21462

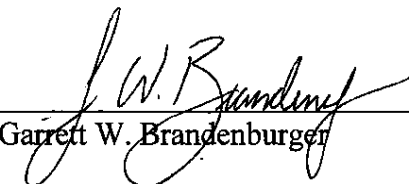
**CERTIFICATE OF MERIT**

(for Mark Kinyon, Shane Kelley, William Jackson, Fard Elijah Karim,  
Michael Duncan, and Frank Magallanes Notice of Proposition 65  
Violation at certain Catholic Healthcare West Hospitals)

I, Garrett W. Brandenburger, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that Catholic Healthcare West and Fisk Electric Company have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiffs’ case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 15, 2009

  
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Garrett W. Brandenburger

Attachments (for Attorney General Copy only)  
Attorney General Copy: Contains Official Information  
Pursuant to Evidence Code Section 1040