

**UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

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**OSHRC Docket No. 13-1124**

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**Secretary of Labor,**

**Complainant,**

**v.**

**Integra Health Management, Inc.**

**Respondent.**

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**BRIEF OF AMICI CURIAE  
NATIONAL ASSOCIATION OF SOCIAL WORKERS,  
NATIONAL COUNCIL FOR OCCUPATIONAL SAFETY AND HEALTH,  
and  
SERVICE EMPLOYEES INTERNATIONAL UNION  
IN SUPPORT OF  
COMPLAINANT, SECRETARY OF LABOR**

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## **INTRODUCTION**

Pursuant to the Commission's September 18, 2015 briefing notice, the National Association Social Workers (NASW), the National Council for Occupational Safety and Health (NCOSH), and the Service Employees International Union (SEIU) respectfully submit this brief in support of Complainant, Secretary of Labor. This brief address the question, raised in the Commission's briefing notice, of whether Respondent's industry recognized the hazard of workplace violence and the role of the Occupational Safety & Health Administration's (OSHA's) Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers (the "Guidelines").<sup>1</sup>

### **Statement of Interest of Amici Curiae**

Established in 1955, the National Association of Social Workers (NASW) is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. Part of NASW's mission is to promote, develop, and protect the practice of social work and social workers. In alignment with this mission, NASW establishes professional standards, guidelines and resources to support quality social work practice. NASW supports the development of policies and procedures designed to eliminate violence at social work agencies and the conduct of research to document the extent of the problem. NASW has developed, "Guidelines for Social Worker Safety in the Workplace" to address safety and risk factors

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<sup>1</sup> OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, GUIDELINES FOR PREVENTING WORKPLACE VIOLENCE FOR HEALTH CARE AND SOCIAL SERVICE WORKERS (2004). The Guidelines were introduced into evidence below and marked as Ex. 33.

associated with social work practice.<sup>2</sup> These guidelines are a resource to communities, private and public agencies, and local, state, and federal policymakers committed to creating a safer work environment for social workers and related professionals.<sup>3</sup> Indeed, an Integra manager testified she relied upon NASW standards in developing training for the company's service coordinators. (ALJ Decision at 24).

The National Council for Occupational Safety and Health (National COSH) is a federation of local and statewide "COSH" groups--Committees/Coalitions on Occupational Safety and Health. COSH groups are private, non-profit coalitions of worker organizations, health and technical professionals, and others interested in promoting and advocating for worker health and safety. COSH groups assist workers who face threats of violence in their healthcare and social service jobs. The health and safety of the workers on whose behalf COSH groups advocate will be jeopardized if OSHA's authority to rely on the general duty clause, 29 U.S.C. §654(a)(1), to address workplace violence is curtailed.

The Service Employees International Union (SEIU) is a labor union representing two million workers across the United States, including over one million healthcare, public health, social service and home care workers who work in both institutional healthcare settings, as well as the homes of service recipients. These members frequently face the hazards of workplace

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<sup>2</sup> NAT'L ASS'N OF SOC. WORKERS, GUIDELINES FOR SOCIAL WORKER SAFETY IN THE WORKPLACE (2013), *available at* <https://www.socialworkers.org/practice/naswstandards/safetystandards2013.pdf>.

<sup>3</sup> NAT'L ASS'N OF SOC. WORKERS, POLICY STATEMENT: WOMEN IN THE SOCIAL WORK PROFESSION 320, 328 (10th ed. 2012).

violence. Over the past twenty years, SEIU has worked to address these hazards, for example by conducting workplace violence prevention training for employers of home care workers in New York and Illinois, through advocacy for state laws and regulations to protect workers from workplace violence, and by assisting with Federal OSHA inspections at workplaces where employers fail to address these hazards. Most recently, SEIU is advocating for a California OSHA Standards Board proposed Workplace Violence Prevention Standard for Healthcare Workers which will cover public health workers who go into the field to perform their duties. The health and safety of more than one million workers represented by SEIU will be jeopardized if OSHA's authority to rely on the general duty clause, 29 U.S.C. §654(a)(1), to address workplace violence is curtailed.

### **SUMMARY OF ARGUMENT**

OSHA's Guidelines summarize the agency's approach to regulating workplace violence in certain high risk industries. The Guidelines announce OSHA's statutory interpretation that workplace violence represents a hazard within the scope of the general duty clause. 29 U.S.C. §654(a)(1). This interpretation of the scope of the Occupational Safety & Health Act (OSH Act) is entitled to deference. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The Guidelines collect and summarize available literature on the scope of the violence problem in the health care and social service industries. This professional literature demonstrates that, within these industries, workplace violence is recognized as a hazard to workers. OSHA's conclusion that violence is a recognized hazard in some industries is also entitled to deference. *See Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). The Guidelines alert the public that OSHA intends to regulate workplace violence by issuing citations in appropriate cases under the general

duty clause. OSHA has unreviewable discretion to choose between standard setting and enforcement as the best means to protect workers from violence. Finally, the Guidelines describe feasible methods of abating the risk of workplace violence. They provide a roadmap for employers who wish to avoid citation. For all these reasons, the Guidelines represent a reasonable interpretation of the Act and its application to violence. The Commission should defer to the Guidelines and make clear that, in appropriate case, the general duty clause demands action by employers to protect workers from this recognized hazard.

## **ARGUMENT**

### **OSHRC MUST DEFER TO OSHA'S REASONABLE INTERPRETATION THAT THE GENERAL DUTY CLAUSE PROTECTS EMPLOYEES FROM WORKPLACE VIOLENCE**

OSHA's Guidelines, updated several times since 2004, serve four different functions. First, the Guidelines make plain the Secretary's view that workplace violence is a hazard within the meaning of the Occupational Safety & Health Act. Second, the Guidelines announce that "after careful review," OSHA has concluded there is ample evidence that the hazard of workplace violence is recognized by the health care and social service industries. Third, the Guidelines alert the public that OSHA will rely on citations under section 5(a)(1), rather than rulemaking, to protect workers from this recognized hazard. Finally, the Guidelines suggest feasible abatement measures employers can take to prevent workplace violence and avoid citation. The statutory interpretations and policy choices contained in the Guidelines are OSHA's to make. Each is reasonable under the law. The Guidelines are entitled to deference under both *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984) and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

**A. OSHA'S GUIDELINES SUMMARIZE THE OVERWHELMING PROFESSIONAL LITERATURE RECOGNIZING WORKPLACE VIOLENCE AS A HAZARD.**

The Guidelines summarize the available literature on risk to health care and social service employees from workplace violence and provide employers with information on effective tools to minimize the risk. The guidelines are quite narrow and specific. They address violence in health care and social service settings; they do not address violence across all workplaces. OSHA focuses its attention on these workplaces because they “have faced significant risk of job-related violence” and “assaults represent a serious safety and health hazard within these industries.” *Guidelines* at 5. The Guidelines address the hazards posed to health care and social service workers in hospital and clinical settings as well as the hazard faced by home care workers who visit patients’ homes. *Id.* at 8. OSHA’s Guidelines are further limited to addressing violence from “internal” sources, identified as co-workers and patients, and not violence from “external” sources, such as muggers or robbers. *Id.* at 3.<sup>4</sup>

The Guidelines recognize that not every instance of workplace violence can be eliminated. *Id.* at 3. Instead, the Guidelines focus on reducing the risk of violence to workers. When factors suggesting an increased risk of workplace violence are present, the Guidelines recommend that employers develop and implement a workplace violence prevention program. *Id.* at 5. Among the risk factors suggesting that a workplace violence prevention program is necessary are “solo work, often in remote locations” and “lack of training.” *Id.* at 6.

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<sup>4</sup> Thus, contrary to the argument made by Integra (Integra Br. At 17) and the Chamber of Commerce (Chamber) (Chamber Br. At 11) the Guidelines do not portend OSHA regulation of customer/employee interactions across all industries. *See* ALJ Dec. at 64.

Administrative Law Judge Phillips (ALJ) found these risk factors should have alerted Integra to the need for workplace violence prevention programs. ALJ Dec. at 67-69.

The Guidelines suggest a variety of controls to effectively reduce the risk of violence. The recommendations are consistent with OSHA's well-known hierarchy of controls. When feasible, the Guidelines recommend that employers first seek to reduce the hazard of workplace violence through reliance on system solutions, including engineering controls, such as physical barriers. When an employer cannot physically alter the workplace, a problem Integra claims limited its response to workplace violence, the Guidelines recommend that employers implement administrative and work practice controls to reduce the risk of workplace violence. *Id.* at 15-17. The Guidelines specifically recommend several of the abatement measures that ALJ Phillips found would have been feasible for Integra to implement, such as determining the behavioral history of new patients and establishing a buddy system for workers when visiting patients with a history of violence or mental illness. *Id.* at 17.

OSHA's Guidelines mirror the recommendations of other organizations which warn that health care and social service workers face a threat of workplace violence from patients and other clients. Between 2003-2012, the Bureau of Labor Statistics reported more than 154,460 nonfatal occupational injuries and illnesses involving days away from work resulting from workplace violence, two-thirds of these injuries occurred among healthcare and social assistance workers. The National Institute for Occupational Safety & Health (NIOSH) issued a Current Intelligence Bulletin in 1996 identifying an increased risk of injury for workers in health care, community services, and retail from workplace violence.<sup>5</sup> NIOSH's Bulletin advises employers

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<sup>5</sup> THE NAT'L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB. NO. 96-100, VIOLENCE IN THE WORKPLACE (1996), *available at* <http://www.cdc.gov/niosh/docs/96-100/>

in these industries to protect workers from this risk. NIOSH has several additional publications, which the Secretary entered into the record below, that describe the risk health care and social service workers face from workplace violence.<sup>6</sup> In addition, several states have adopted laws or regulations increasing the protections for healthcare workers exposed to workplace violence.<sup>7</sup>

Professional organizations in the health care and social services industries have likewise published guidelines and training materials to alert workers and others to the increased risks these workers face of violent assaults from patients. NASW has developed “Guidelines for Social Worker Safety in the Workplace.”<sup>8</sup> These professional standards were adopted because social workers, particularly female social workers, face a serious risk of workplace violence in caring for patients.<sup>9</sup> A study of social workers found that 44 percent reported facing personal safety issues on the job.<sup>10</sup> NASW has a variety of other resources available to employers and

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<sup>6</sup> See NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB NO. 2006-144, WORKPLACE VIOLENCE PREVENTION STRATEGIES AND RESEARCH NEEDS (2006), *available at* <http://www.cdc.gov/niosh/docs/2006-144/>; NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB NO. 2004-100D, VIOLENCE ON THE JOB (CD-ROM, 2004), *available at* <http://www.cdc.gov/niosh/docs/video/violence.html>; NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB. NO. 2001-101, VIOLENCE OCCUPATIONAL HAZARDS IN HOSPITALS (2001); NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB NO. 93-109, PREVENTING HOMICIDE IN THE WORKPLACE (1995); NAT’L INST. FOR OCCUPATIONAL SAFETY AND HEALTH PUB NO. 92-103, HOMICIDE IN U.S. WORKPLACES: A STRATEGY FOR PREVENTION AND RESEARCH *available at* <http://www.cdc.gov/niosh/pdfs/92-103.pdf>

<sup>7</sup> For more information on state and local laws or regulations addressing workplace violence, see American Nurses Ass’n, *Workplace Violence*, NURSINGWORLD.ORG, <http://nursingworld.org/workplaceviolence> (last updated Sept. 2015).

<sup>8</sup> NAT’L ASS’N OF SOC. WORKERS, GUIDELINES. The Secretary cited these professional standards in urging the ALJ below to find that the social service industry of which Integra was a part recognized the risk of workplace violence.

<sup>9</sup> NAT’L ASS’N OF SOC. WORKERS, POLICY STATEMENT: WOMEN IN THE SOCIAL WORK PROFESSION, STRESSORS FOR WOMEN IN SOCIAL WORK, 320, 323 (10th ed. 2012).

<sup>10</sup> WHITAKER T. WHITAKER, TOBY WEISMILLER & ELIZABETH J. CLARK, NAT’L ASS’N OF SOC. WORKERS, ASSURING THE SUFFICIENCY OF A FRONTLINE WORKFORCE: A NATIONAL STUDY OF

others aimed at recognizing the risks social workers face, identifying high hazard work environments, and protecting social workers from these risks.

[http://www.socialworkers.org/practice/social\\_work\\_safety/default.asp](http://www.socialworkers.org/practice/social_work_safety/default.asp) Integra relied upon these resources in designing training for its service coordinators. (ALJ Decision at 24).

**B. OSHA’S STATUTORY INTERPRETATION THAT WORKPLACE VIOLENCE IS A HAZARD UNDER THE GENERAL DUTY CLAUSE IS PLAINLY CORRECT.**

Section 5(a)(1) of the OSH Act requires employers to provide “to each of his employees employment and a place of employment which are free from recognized hazards.” 29 U.S.C. §654(a)(1). To establish a violation of this section, OSHA must show that “a condition or activity in the workplace presents a hazard to an employee.” OSHA interprets the scope of the general duty clause to include the hazard of workplace violence. OSHA’s interpretation of the statute it administers is entitled to deference. *See Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).<sup>11</sup>

Integra and the Chamber of Commerce nevertheless urge the Commission to ignore OSHA’s reasonable interpretation of the OSH Act, arguing that violence falls outside the scope of section 5(a)(1) of the OSH Act. (Integra Br. At 12-15; Chamber Br. At 5-6). They argue that direct contact with patients is the nature of Integra’s business and, therefore, cannot be defined as

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LICENSED SOCIAL WORKERS EXECUTIVE SUMMARY (2006) *available at* [http://workforce.socialworkers.org/studies/nasw\\_06\\_execsummary.pdf](http://workforce.socialworkers.org/studies/nasw_06_execsummary.pdf).

<sup>11</sup> Courts usually apply *Chevron* deference to a statutory interpretation developed in the course of informal agency action such as the process OSHA used to develop the Guidelines. *See generally*, JEFFREY LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING, 505-507 (ABA 2006). But, even in circumstances where *Chevron* deference is not warranted, courts generally give some deference or weight to an agency interpretation of the statute it administers under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *See generally*, Lubbers at 507.

a hazard. It is worth noting that nothing in ALJ Phillips decision bars Integra's service coordinators from continued contact with patients. Indeed, the argument Integra makes about the nature of its business is similar to the argument made by Sea World, and rejected by the Commission and the D.C. Circuit, that direct contact with killer whales was the essential nature of its business. *Sea World of Florida v. Perez*, 748 F.3d 1202, 1210 (D.C. Cir. 2014). In both cases, workers can be protected from recognized hazards, and employers can continue their business, if the method of performing the job is modified to abate risk.

**C. OSHA'S GUIDELINES ESTABLISH THAT HEALTH CARE AND SOCIAL SERVICE EMPLOYERS RECOGNIZE WORKPLACE VIOLENCE AS A HAZARD.**

The well-settled test for proving a violation of section 5(a)(1), 29 U.S.C. §654(a)(1), requires the Secretary to establish the existence of a hazard that was either actually recognized by the cited employer or by the industry of which it is a part. *National Realty and Constr. Co., v. OSHRC*, 489 F.2d 1257 (D.C. Cir. 1973); *Sea World*, 748 F.3d at 1207. ALJ Phillips found that Integra had actual knowledge of the workplace violence hazards its' service coordinators faced. (ALJ Dec. at 70-75). Given the breadth of federal, state, and professional attention to these risks, it is hard to imagine how any reasonably prudent employer could not have known that social service workers, such as Integra's service coordinators, faced a serious risk of workplace violence.

But, even if Integra did not know actually know of the risk of violence, the health care and social service industries of which it is a part clearly recognized the risk of violence. The Commission and the courts have consistently held that professional standards and NIOSH publications, alerting employers to a serious occupational risk facing workers, can be used to establish industry recognition under the general duty clause. *See Kokosing Constr. Co.*, 17 BNA

OSHC 1869 (Rev. Comm'n 1996); *Cargill, Inc., Nutrene Feed Div.*, 10 BNA OSHC 1398 (Rev. Comm'n 1982); *Bethlehem Steel Corp. v. OSHRC*, 607 F.2d 871 (3<sup>rd</sup> Cir. 1979); *USPS*, 25 BNA OSHC 1116 (Rev. Comm'n 2014).

Under settled law, each of the professional codes and other materials cited in the Guidelines, standing alone, could be relied upon to show that Integra's industry recognized the threat workplace violence posed to service coordinators.<sup>12</sup> The Guidelines summarize this body of evidence, advise employers that OSHA views this evidence as establishing that workplace violence in the health care and social service industry is a recognized hazard, and that the agency will rely on the general duty clause, 29 U.S.C. §654(a)(1), as enforcement authority when employers fail to take adequate steps to protect employees from this hazard. OSHRC should defer to OSHA's interpretation of the scope of the general duty clause and its application to workplace violence. *See, Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Christensen v. Harris County*, 529 U.S. 576 (2000).

**D. OSHA HAS DISCRETION TO RELY ON THE GENERAL DUTY CLAUSE TO PROTECT WORKERS FROM THE THREAT OF WORKPLACE VIOLENCE**

Guidance documents, such as OSHA's Guidelines, are a widely accepted tool for alerting employers that OSHA views workplace violence as a recognized hazard in the health care and social service industries and describing its enforcement policy towards violence. OSHA

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<sup>12</sup> The Guidelines, and many of the publications they reference, speak to the threat of violence facing health care and social service workers. OSHA's expert testified that Integra's service coordinators were doing social work based activities. (ALJ Dec. at 58). Integra attempts to argue that it was not a part of the health care or social service industries were properly rejected by the ALJ. (ALJ Dec. at n.110). Even if Integra was part of a related industry, the Commission can easily infer that professional standards applicable to the health care and social service industries should apply to Integra as well. *Arcadian Corp.*, 20 BNA OSHC 2001 (Rev. Comm'n 2004).

Compliance Directive (Ex. 32) further describes the circumstances under OSHA may cite employers for exposing workers to violence hazards. OSHA should be commended for transparently alerting interested stakeholders of its intent to cite employers who fail to abate violence hazards under the general duty clause.

The decision to rely on enforcement over standard setting as a method to reduce the risk of workplace violence is OSHA's to make. It is generally recognized that administrative agencies may select between rulemaking and adjudication to establish standards of conduct in the regulated community. *See* JEFFREY LUBBERS, A GUIDE TO FEDERAL AGENCY RULEMAKING, 139 (ABA 2006). Nothing requires OSHA to enforce the OSH Act "principally by promulgating standards." (Chamber Br. At 16).

OSHA's choice to rely on standards or enforcement to eliminate hazards has consequences. *See Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015). If OSHA issues a standard under section 6(b), 29 U.S.C. §655(b), the standard has the force and effect of law. *Perez*, 135 S. Ct. at 1204. If OSHA cites an employer for violation of a standard, it can establish a violation of the Act by showing that the standard applied and was violated. *See generally, The Duty to Comply with Standards in OCCUPATIONAL SAFETY & HEALTH LAW* 81 (Gregory N. Dale & P. Matthew Shultz Eds. 3<sup>rd</sup> ed. 2013). The abatement measures included in a standard are presumed feasible. *United Steelworkers v. Marshall*, 647 F.2d 1189, 1269 (D.C. Cir. 1980). If OSHA had promulgated a workplace violence standard, Integra would have been obligated to comply.

When OSHA issues guidelines, such as those addressing workplace violence, they are not binding and do not have the force of law. *Perez v. Mortg. Bankers*, 135 S. Ct. at 1203-04. They advise employers of what OSHA thinks the general duty clause requires. *Id.* Because the

Guidelines are interpretive they may be issued without notice and comment rulemaking. 5 U.S.C. 553(b)(A). To the extent that they persuasively interpret the literature on industry practices and professional standards on workplace violence risks, OSHRC and the courts should defer to them. *See Christensen v. Harris County*, 529 U.S. at 587; *Skidmore*, 323 U.S. at 140.

Granting deference to OSHA's judgment that violence poses a recognized hazard in Integra's industry does not have the effect of converting advisory guidance into mandatory rules. In any enforcement proceeding, OSHA would still bear the burden of showing that the abatement measures it suggests are feasible. And, since the Guidelines are interpretive, and not legislative, rules and do not have the force of law, Integra is free to argue that the Guidelines are unreasonable, in the sense that they do not accurately describe existing professional standards relating to workplace violence or that the abatement methods they describe are infeasible. *See Perez v. Mortg. Bankers*, 135 S. Ct. at 1209. In other words, OSHA's burden of proving a general duty clause citation remains higher, even if OSHRC defers to the Guidelines, then it would be if OSHA had promulgated a workplace violence standard. Deference does not give OSHA's Guidelines the force of law.

Nor will deference to OSHA's Guidelines circumvent the rulemaking process. OSHA is not required to issue a section 6(b) standard for every hazard covered by the OSH Act. *UAW v. Chao*, 361 F.3d 243 (3<sup>rd</sup> Cir. 2004) (OSHA has broad authority to allocate its resources and refuse to issue a standard). The OSH Act covers thousands of unregulated hazards. Rulemaking has become ossified and, on average, the standard setting process takes more than seven years to complete. OSHA would be derelict in its duty if it took no action to protect workers from recognized hazards until it could issue a 6(b) standard governing each risk facing workers. Indeed, even if OSHA has adopted a standard, where an employer knows it to be inadequate the

employer has an independent statutory duty to protect workers from harm. *UAW v. General Dynamics*, 815 F.2d 1570 (D.C. Cir. 1987). Thus, even if OSHA were to issue a workplace violence standard, the general duty clause would remain applicable. *Id.*

By notifying employers about how OSHA will exercise its enforcement discretion under section 5(a)(1), and the steps employers can take to avoid citation, OSHA's Guidelines provide constitutionally adequate notice. So long as a "reasonably prudent employer in the industry would have known that the proposed method of abatement was required," courts have rejected employer claims that they lacked notice of the requirements imposed by law. *Sea World*, 748 F.3d at 1216. Here, the Guidelines, and OSHA's Compliance Directive (Ex. 32), make plain OSHA's intent to rely on the general duty clause to cite employers who fail to address workplace violence and describe a variety of feasible abatement measure employers should implement to avoid citation. The Guidelines provided Integra with adequate notice of what the law required.

**E. OSHA'S GUIDELINES DESCRIBE FEASIBLE MEASURES TO ABATE THE HAZARD OF WORKPLACE VIOLENCE.**

The Guidelines recommend that employers establish workplace violence prevention programs to protect workers from the risk of violence. Among the measures OSHA recommends be included in such a program were increased training, screening of patients to identify those with a history of violence, and assigning more experienced service coordinators to conduct intake with more challenging patients. ALJ Phillips found each of these abatement measures would have been feasible for Integra to implement. (ALJ Dec. at 86-90). In fact, Integra implemented several after its' service coordinator was killed.

Integra and the Chamber nevertheless argue that abatement of the citation is infeasible because Integra does not control its' service coordinators' work environment. Assuming that

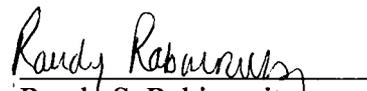
Integra cannot effectively control the homes of the patients its service coordinators visit, it can control the means by which service coordinators accomplish their tasks. OSHA and the Commission have long recognized that even where engineering controls (or fixes to the workplace) are not feasible, an employer must nevertheless try to reduce the hazard through administrative and work practice controls (or fixes to the way the job is accomplished). *United Steelworkers v. Marshall*, 647 F.2d at 1269. Here, the Secretary demonstrated, and the ALJ found, that Integra could have increased the training for service coordinators, assigned an experienced service coordinator to initial assessments of patients with a history of violence, or implemented a mandatory buddy system so a service coordinator would not face a potentially violent situation alone. None of these abatement measures require changes to the physical aspects of the workplace. Integra is feasibly able to implement each of them.

Doing so would not threaten Integra's business model. Just as the remedy for Sea World's general duty clause violations permitted "continued human interactions and performances with killer whales" so long as they "continue with increased safety measures," so too the remedy for Integra's 5(a)(1) violations permit continued patient contact by service coordinators but with increased training, more experience, or accompanied by a co-worker. *See Sea World*, 748 F.3d at 1210. Integra had a duty under the general duty clause to provide its employees with "employment" "free from recognized hazards," 29 U.S.C. §654(a)(1), even when it could not physically alter their place of employment. Clearly, Integra could have organized the work of service coordinators differently to reduce the hazard posed by client violence.

## CONCLUSION

For the foregoing reasons, and those advanced by the Secretary of Labor, the ALJs decision affirming the citations issued to Integra Health Management should be upheld.

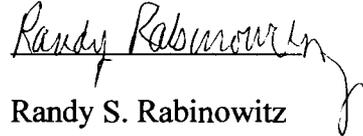
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of December 2015, I served a copy of the foregoing Brief for Amici Curiae on counsel for the Secretary and Integra electronically.

  
Randy S. Rabinowitz