

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**PROPOSED DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
REGARDING PETITION FILE NO. 513****INTRODUCTION**

On December 17, 2009, the Occupational Safety and Health Standards Board (Board) received a petition dated December 17, 2009, from Michael Weinstein (Petitioner) representing the AIDS Healthcare Foundation. Mr. Weinstein is the President of the Foundation. The Petitioner requested that the Board amend California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogen Protection, concerning the adult film industry.

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt.

**SUMMARY AND BACKGROUND**

The Petitioner proposes that Section 5193 be amended to add a new subsection that would clarify required protections for workers in the adult film industry who are exposed to bloodborne pathogens and sexually transmitted diseases. The Petitioner asserts that, although the existing standard provides protection for employees in the adult film industry, amendments of the standard and enhanced enforcement are called for, because there is an epidemic of sexually transmitted disease in the industry and the industry refuses to protect its workers from exposure to potentially infectious materials, such as blood and semen, by requiring the use of condoms and implementing other control measures. The Petitioner has suggested a number of revisions to Section 5193 in response to the hazards at issue.

In February, 2006, the Board received a petition (Petition File No. 480) requesting that Section 5193 be amended to distinguish between healthcare and non-healthcare work settings. The Board denied that petition and reasoned that amending the standard to distinguish between the different work settings would: 1) require a significant investment of time and resources, 2) be constrained by the State's obligation to be at least as effective as the counterpart federal standard and 3) not result in a significant increase in the clarity of the existing standard. The Board also noted that supplemental guidance documents available since the 1990s at the state and federal level already adequately address matters relating to non-healthcare workplaces and occupations. Prior to 2006, the Board received three petitions to amend Section 5193, none of which concerned the subject of the present Petition.

Section 5193 was adopted in 1992 in response to the federal bloodborne pathogen standard, 29 CFR Section 1910.1030, which was adopted in 1991. The State standard closely parallels the federal standard. Both standards apply to all workplaces (except those in the construction industry) where employees are exposed to blood or other potentially infectious materials. Where there is occupational exposure, the employer must: 1) develop an exposure control plan; 2) minimize or eliminate exposure using engineering, work practices and protective equipment; 3) provide hepatitis vaccinations; 4) conduct and document exposure incident evaluations; 5) communicate hazard information in the form of training, signs and labels; and, 6) maintain medical and training records.

Section 5193 applies to all workplaces where there is occupational exposure to blood or other potentially infectious materials, except those in the construction industry. The definition of “Other Potentially Infectious Materials” includes semen, vaginal secretions, and any other bodily fluid that is visibly contaminated with blood such as saliva.

Section 5193 has been amended several times. In 2008, the Board received two applications from employers in the adult film industry for variances from Section 5193. Both applications were withdrawn.

### **DIVISION AND BOARD STAFF RECOMMENDATIONS**

In order to address the specific concerns attendant to the adult film industry and in order to address any federal equivalence issues, the Division of Occupational Safety and Health (Division) recommends that an advisory committee be convened to consider the possible amendment of Section 5193. The Board staff also recommends that an advisory committee be convened.

### **CONCLUSION AND ORDER**

The Division evaluation is in the form of a memorandum dated February 16, 2010 from Len Welsh, Chief of the Division, to Marley Hart, Executive Officer of the Board. The Board staff evaluation is in the form a March 3, 2010 document authored by Senior Safety Engineer Tom Mitchell. Both documents contain extensive renditions of facts regarding the health hazards faced by employees in the adult film industry and the manner in which various aspects of the Petitioner’s proposal might or might not ameliorate those hazards. The contents of those evaluations are incorporated herein by this reference. In light of the evaluations, it is apparent to the Board that serious consideration should be given to the possible amendment of Section 5193 in order to give greater protection to employees in the adult film industry.

In view of the fact that the Petitioner does not represent all stakeholders and in view of the complexity of the issues, the possibly differing approaches to potential rulemaking and possible issues regarding federal equivalence, the Board concludes that an advisory committee would be of great benefit in determining the manner (if any) in which Section 5193 should be amended. Labor Code Section 147.1(c) provides, in effect, that the Division is to take the lead in developing and presenting proposed health standards to the Board, in which case, it is appropriate that the Division take the lead with respect to the advisory committee discussed herein.

In view of the foregoing, the Board grants the Petition that is the subject of Petition File No. 513 to the extent that the Division is requested to convene an advisory committee representing stakeholders in order to consider possible amendments of California Code of Regulations, Title 8, Section 5193 as it pertains to employees in the adult film industry. If determined necessary, regulatory language or amendments should be developed for the Board’s consideration at a future public hearing.