



Memorandum

To: Christina Shupe, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Date: November 4, 2021

From: Eric Berg, Deputy Chief of Health
Division of Occupational Safety and Health

Subject: Evaluation of Petition 592 to Amend Title 8 Section 5193(g)(2)

1.0 INTRODUCTION

On September 7, 2021, the Division of Occupational Safety and Health (Cal/OSHA) received a petition from Kelly Thomas and Susan Dahn (petitioners). The petitioners represent the California Dental Assistants Association and California Association of Dental Assisting Teachers respectively. The petitioners request changes to the California Code of Regulations, title 8, section 5193(g)(2) Bloodborne Pathogens Information and Training.

Labor Code section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Occupational Safety and Health Standards Board (Standard Board) to consider such proposals. Labor Code section 147 requires the Standards Board to refer to Cal/OSHA for evaluation any proposed occupational safety and health standard.

2.0 PETITIONERS' REQUEST TO AMEND SUBSECTION 5193(g)(2)

The petitioners request to amend the training requirements in title 8 section 5193 Bloodborne Pathogens. Specifically, the petitioners request to add a requirement to subsection 5193(g)(2)(B) that an on-the-job trained dental assistant receive infection control training approved by the Dental Board of California (DBC) prior to performing any basic supportive dental procedures involving possible exposure to blood or other potentially infectious materials (OPIM) and provided the following as suggested language:

Prior to performing any basic supportive dental procedures an on-the-job trained dental assistant must receive infection control training that is consistent with the current Dental Board of CA infection control requirement.

Additionally, the petitioners request that language be added to clearly define and specify what constitutes 'knowledgeable in the subject matter' for trainers in subsection 5193(g)(2)(H).

3.0 APPLICABLE TITLE 8 REGULATIONS

Title 8, section 5193, Bloodborne Pathogens applies to all occupational exposures to blood or OPIM. However, the regulation does not apply to the construction industry.

Subsections 5193(g)(2)(B), (G), and (H) are relevant to this petition and include the following:

5193. Bloodborne Pathogens.

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(g) Communication of Hazards to Employees.

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(2) Information and Training.

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(B) Training shall be provided as follows:

1. At the time of initial assignment to tasks where occupational exposure may take place;
2. At least annually thereafter.

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(G) The training program shall contain at a minimum the following elements:

1. Copy and Explanation of Standard. An accessible copy of the regulatory text of this standard and an explanation of its contents;
2. Epidemiology and Symptoms. A general explanation of the epidemiology and symptoms of bloodborne diseases;
3. Modes of Transmission. An explanation of the modes of transmission of bloodborne pathogens;
4. Employer's Exposure Control Plan. An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;
5. Risk Identification. An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and OPIM;
6. Methods of Compliance. An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, administrative or work practice controls and personal protective equipment;
7. Decontamination and Disposal. Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
8. Personal Protective Equipment. An explanation of the basis for selection of personal protective equipment;
9. Hepatitis B Vaccination. Information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;
10. Emergency. Information on the appropriate actions to take and persons to contact in an emergency involving blood or OPIM;
11. Exposure Incident. An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident, the medical follow-up that will be made available and the procedure for recording the incident on the Sharps Injury Log;
12. Post-Exposure Evaluation and Follow-Up. Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident;
13. Signs and Labels. An explanation of the signs and labels and/or color coding required by subsection (g)(1); and

14. Interactive Questions and Answers. An opportunity for interactive questions and answers with the person conducting the training session.

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(H) The person conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

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The above title 8 requirements are substantially the same as the federal OSHA regulations, title 29 Code of Federal Regulations section 1910.1030(g)(2).

4.0 Dental Board of California Training Requirements

Training requirements for dental assistants in the California Business and Professions Code subsection 1750(c)¹ are as follows:

1750.

* * * * *

(c) The employer of a dental assistant shall be responsible for ensuring that the dental assistant who has been in continuous employment for 120 days or more, has already successfully completed, or successfully completes, all of the following within a year of the date of employment:

(1) A board-approved two-hour course in the Dental Practice Act.

(2) A board-approved eight-hour course in infection control.

(3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent and that provides the student the opportunity to engage in hands-on simulated clinical scenarios.

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5.0 PETITIONERS’ BASIS FOR THE NEED FOR A NEW REGULATION/AMENDMENTS

The petitioners state that there is no minimum educational requirements for dental assistants prior to being hired and there are many dental assistants who enter the workforce with no prior knowledge of dentistry, infection control, or the hazards they will encounter while in the dental office. The petitioners also state that there is no current requirement that an unlicensed dental assistant update their infection control skills on a regular basis.

The petitioners explain that DBC currently requires an unlicensed, on-the-job trained dental assistant to complete an approved eight-hour infection control course within a year of the date of employment pursuant to the Business and Professions Code section 1750 discussed above.

The petitioners state that the on-the-job trained dental assistant is commonly trained by another employee in the dental office. The petitioners assert that this is inadequate because the employees

¹https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=1750.

who provide training are often people who have not completed official education/training in infection control themselves, which results in unnecessary employee exposures to communicable diseases.

In addition, the petitioners are concerned that dental assistants, who have potentially not completed the requisite training, are responsible for workspace disinfection, instrument cleaning/packaging, sterilization, handling of hazardous waste, waterline maintenance as well as direct patient care during the first 12 months of employment. The petitioners are concerned that allowing dental assistants to perform these duties without the requisite approved education and training in infection control places the patient's health and safety, as well as all the dental health care workers, at risk.

The petitioners state that they took a small sampling of on-the-job trained, unlicensed dental assistants in February 2021 with the following results:

- 40% have less than 6 hours of training in the office
- 15% of them were not taught about hand washing, PPE, waterline maintenance, or handling hazardous waste and impressions in the office
- 100% did not receive the training prior to exposure to blood, saliva or OPIM

The petitioners note that acquiring additional data to demonstrate lack of training is not available as the Dental Board is complaint driven; it relies on the knowledge and willingness of employees or patients to file complaints. Most patients, according to the petitioners, will not be aware of breaches in the standards or inadequacies of training provided to employees. Additionally, employees are reticent to file a complaint for fear of reprisal. The petitioners write that documentation from other agencies is also difficult to acquire because of the way the data is stored for privacy protection; requiring specific knowledge about a case to access the data. The petitioners state that lack of documented data does not equate to a lack of a problem.

According to the petitioners, given the current environment following the COVID-19 pandemic and emphasis on disease transmission, it is imperative that requirements that protect employees be consistent throughout the dental industry. There have been many dental employees who have not returned to their job because of the concerns for their health and potential exposures to infectious diseases.

The petitioners assert that they have witnessed violations in the current implementation of the DBC standards and have had concerns for many years. They believe that an increased level of accountability in infection control standards is long overdue and long-held practices that endanger employees and patients need to change.

6.0 ANALYSIS

6.1 Request to add DBC approved infection control training to subsection 5193(g)(2)(B)

The petitioners request DBC approved infection control training be added to the training requirements in subsection 5193(g)(2)(B) and that this training be provided prior to employees performing any basic supportive dental procedures involving potential exposure to blood or OPIM.

The infection control training required by DBC and Cal/OSHA are two separate training requirements. Although they cover similar subjects, there are significant differences. DBC requires a dental assistant, who has been in continuous employment for 120 days, to complete an eight hour infection control course approved by DBC within a year of the employment. It must include discussion of DBC's Minimum Standards for Infection Control (title 16, section 1005).

Title 8, section 5193(g)(2)(B) requires bloodborne pathogen and OPIM training be provided at the time of initial assignment and at least annually thereafter. The training must include the 14 elements listed under subsection 5193(g)(2)(G), including the applicable controls and procedures in employer's exposure control plan. The training must include an opportunity for interactive questions and answers with the trainer and be provided by a person knowledgeable in the subject matter. Subsection 5193(g)(2)(E) requires additional training whenever a change in an employee's responsibilities, procedures, or work situation is such that an employee's occupational exposure is affected. Unlike DBC requirement, there is no minimum time requirement for infection control training in the title 8 regulations.

6.2 Cal/OSHA disagrees with Petitioners' claim of deficiencies in the training requirements of subsection 5193(g)(2)

The petitioners assert that there is no current requirement that an unlicensed dental assistant update their infection control skills. This is incorrect as subsection 5193(g)(2) requires annual training following the initial training and additional training whenever a change in an employee's responsibilities, procedures, or work situation is such that an employee's occupational exposure is affected.

The petitioners claim that training is often provided by another employee who has not completed official education/training in infection control themselves. If a trainer is not familiar with workplace infection control procedures, this is a violation of the existing training requirement in section 5193 that trainers be knowledgeable in the subject matter (bloodborne pathogens, OPIM, section 5193, etc.) as discussed below in part 6.3 of this evaluation.

The petitioners presented their survey showing that 100% of on-the-job trained, unlicensed dental assistants did not receive training prior to exposure to blood, saliva, or OPIM. The survey results indicate that certain employers are not complying with the existing requirements in section 5193. Adding another duplicative training requirement will not resolve this failure to comply. Instead, there should be more enforcement, and outreach and training for employees and employers to make them aware of the requirements. In addition, employees and other interested persons may file complaints with Cal/OSHA about workplace hazards. DBC also investigates complaints filed by a patient, colleague, family member, or another member of the public. Finally, it is unlawful for an employer to retaliate against an employee for making a complaint.

6.3 Request to add language to clarify 'knowledgeable in the subject matter' in subsection 5193(g)(2)(H)

Subsection 5193(g)(2)(H) states that the person conducting the training be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address. The regulation does not require the trainer to complete a particular course to allow flexibility regarding the trainer qualification since workplaces where

bloodborne pathogen and OPIM exposure can occur are varied. Rather, the trainer must be knowledgeable in the contents of the training program the employer is required to provide and must be qualified to answer questions related to the training program at the worksite (e.g. the location and contents of the Exposure Control Plan, procedures to be followed if an exposure incident occurs, engineering and work practice control measures in place at the worksite to prevent exposure incidents, and procedures for obtaining post-exposure evaluation and follow-up).

In federal OSHA's bloodborne pathogens compliance directive ([OSHA Instruction CPL 02-02-069](#)) explains in more detail what knowledge the trainer must have; it states:

The person conducting the training is required to be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address. In addition to demonstrating expertise in the area of the occupational hazard of bloodborne pathogens, the trainer must be familiar with the manner in which the elements in the training program relate to the particular workplace.

The Compliance Officer should verify the competency of the trainer based on the completion of specialized courses, degree programs, or work experience, if he/she determines that deficiencies in training exist.

Possible trainers include a variety of healthcare professionals such as infection control practitioners, nurse practitioners, registered nurses, occupational health professionals, physician's assistants, and emergency medical technicians.

Non-healthcare professionals, such as but not limited to, industrial hygienists, epidemiologists, or professional trainers, may conduct the training provided they are knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace. One way, but not the only way, knowledge can be demonstrated is the fact that the person received specialized training.

In some workplaces, such as dental or physicians' offices, the individual employer may conduct the training, provided he or she is familiar with bloodborne pathogen exposure control and the subject matter required by paragraphs (g)(2)(vii)(A) through (N).

There are different ways for a trainer to obtain the required knowledge such as completion of specialized courses, degree programs, or work experience. It is not necessary to add language to clarify 'knowledgeable in the subject matter' as its meaning is consistent with ordinary use.

6.4 Requirements for adopting regulations

For a state agency to adopt or change a regulation, Government Code (GC) section 11349.1 requires proposals meet the following standards: necessity, authority, clarity, consistency, reference, and non-duplication.

The petitioners' request to add a specific training requirement for on-the-job trained dental assistants does not meet the necessity requirement in GC section 11349.1 as subsection 5193(g)(2)(B) already

requires comprehensive bloodborne pathogen and OPIM training be provided prior to occupational exposure to infectious materials without exceptions.

The petitioners' request to include DBC approved infection control training in section 5193 does not meet the non-duplication requirement in GC 11349.1. The request is duplicative of existing requirements in section 5193 and existing training requirements in the Business and Professions Code subsection 1750(c) enforced by DBC.

The petitioner's request also does not meet the requirement for consistency in GC 11394.1. The request would create an inconsistency between DBC enforced training requirements and section 5193. The proposal would require DBC approved infection controlled training be provided before initial assignment in section 5193 while the Business and Professions Code would require the same training be provided within one year of employment.

7.0 CONCLUSION

Cal/OSHA reviewed the petitioners' proposed changes to title 8, section 5193(g)(2). The review included information provided in the petitioners' application, discussions with the petitioners, and research of existing regulations. Cal/OSHA recommends the petition be DENIED.

cc: Keummi Park
Kevin Graulich
Chris Kirkham