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Occupational Safety and Health Standards Board  
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PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 592)

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on August 16, 2021, from Kelly Thomas, President of the California Dental Assistants Association (CDAA) and Susan Dahn, President of the California Association of Dental Assisting Teachers (CADAT) (Petitioners). The Petitioners requests the Board to amend California Code of Regulations (CCR), title 8, General Industry Safety Orders, sections 5193(g)(2)(B)<sup>1</sup> and (H) to require the completion of a Dental Board of California (DBC) approved infection control course prior to dental assistants performing any tasks that expose said dental assistants to blood or other potentially infectious materials (OPIM) and to add language to clearly define and specify what constitutes “knowledgeable in the subject matter” for trainers, respectively.

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 render a decision no later than six months following receipt.

Further, as required by Labor Code section 147, any proposed occupational safety and health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation. The Division has 60 days after the receipt to submit an evaluation regarding the proposal.

SUMMARY

1. The Petitioners request the Board take the following courses of action: Amend section 5193(g)(2)(B) to require unlicensed, on-the-job-trained dental assistants to complete DBC-approved infection control training prior to performing any basic supportive dental procedures involving potential exposure to blood or OPIM; and
2. Amend section 5193(g)(2)(H) to define and specify what constitutes “knowledgeable in the subject matter” regarding the bloodborne pathogens (BBP) trainer qualifications to

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<sup>1</sup> Unless otherwise noted, all references are to the California Code of Regulations, title 8.

prevent training that is inadequate and would unnecessarily expose employees to risks of cross-contamination and the contraction of a communicable disease.

#### DIVISION'S EVALUATION

The Division's evaluation report dated November 4, 2021, disagrees with the Petitioners' claims that the training requirements within section 5193(g)(2) are deficient. Specifically, the Division explains that section 5193(g)(2) requires annual training following initial training. The Division further explains:

The training must include the 14 elements listed under subsection 5193(g)(2)(G), including the applicable controls and procedures in [an] 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. (Division Memo, p. 5)

Moreover, the Division highlights that, "[t]he infection control training required by DBC and Cal/OSHA are two separate training requirements. Although they cover similar subjects, there are significant differences. (Division Memo, p. 5)" The DBC allows a dental assistant to undergo the DBC's required training within the first year of employment. The Division explains that the training required under section 5193(g)(2)(B) is required at the time of initial assignment and annually thereafter. The Division does not support adding the DBC's required training to the requirements within the BBP standard.

Regarding the Petitioners' second request to define "knowledgeable in the subject matter" within the context of section 5193(g)(2)(H), the Division points to the Federal OSHA compliance directive CPL 02-02-069. The Division agrees with the position put forth by Federal OSHA that knowledge may be obtained through different means and that the meaning is consistent with ordinary use.

The Division recommends that the Petition be DENIED.

#### BOARD STAFF EVALUATION

In the Board staff's evaluation dated November 15, 2021, Board staff is mindful of the Petitioners' concerns raised over lack of compliance with section 5193's training requirements. Moreover, Board staff points to a 2016 study in the *Compendium of Continuous Education in Dentistry*, where researchers found that even more than 20 years after the enactment of the Federal OSHA BBP standard, some dental employers lacked knowledge of this standard or failed to implement the required policies and protocols necessary to prevent occupational exposure to BBP.

Board staff acknowledges:

The lack of compliance and/or lack of knowledge of the BBP standard must be addressed. Petitioners are encouraged to share incidents of dental employers not complying with section 5193, with Cal/OSHA Enforcement. In addition, rather than proposing a duplicative regulation, outreach and education should take place to ensure that dental healthcare employers better understand and fulfill their responsibilities under the BBP standard, and dental workers recognize their rights under the BBP standard. (Staff Memo, p. 7)

Board staff believes that the incorporation of the DBC training into the schema within section 5193(g)(2) could cause Cal/OSHA to exceed its authority as it would expand its jurisdiction to more than worker safety and health. The Petitioners' request would duplicate requirements established within the Business and Professions Code:

The Petitioners request to require DBC infection control approved training would expand the required training elements within section 5193 to include topics related to patient safety and Dental Board infection control regulations. Section 5193 applies to all occupational exposure to BBP and is not limited to dentistry. However, DBC focuses on patient safety and, inconsistent with Cal/OSHA, requires that their infection control training be approved by the DBC and be provided by a DBC-registered education provider. (Staff Memo, p. 7)

The Board staff points to the Division's Frequently Asked Questions to provide additional clarity:

The employer must ensure that accurate and effective information is transmitted during the course of training. Since employees must be provided with site-specific information (e.g. the location 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), the employer needs to analyze the trainers' capability to perform the required training and ensure the trainer is qualified to answer questions with respect to all of these issues. (Staff Memo, p. 7-8)

Board staff recommends that the Petition be DENIED.

#### DISCUSSION

The Petitioners' concern is premised upon:

[A] dental assistant has no minimum educational requirements prior to being hired, so 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.

Also, there is no current requirement that an unlicensed dental assistant update their infection control skills, so [the eight-hour infection control course] and on-the-job-trained dental assistants [are the] only [source of] education relative to infection control required to work in a dental office. (Petition, p. 1)

The Petitioners' concern is that dental employees who have not completed official education/training in infection control may train newer dental assistants within the dental office. Further, the Petitioners add:

[D]uring those twelve months in which dental assistants have potentially not completed the requisite training, they are responsible for workspace disinfection, instrument cleaning/packaging, sterilization, handling of hazardous waste, waterline maintenance as well as direct patient care. 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 in the office, at risk. (Petition, p. 2)

The Petitioners aim to require, under Cal/OSHA regulation, the completion of the DBC-approved infection control course prescribed by the Business and Professions Code, section 1750 prior to the dental assistant performing any basic supportive dental procedure.

The Board cannot enact regulations that govern DBC requirements. Labor Code establishes no authority allowing the Board to do so. The DBC administers that portion of the Business and Professions Code (See B&PC sections 1601.1 and 1614).

As reflected in the respective Division and Board staff evaluations, there is no deficiency within the BBP regulations for the training requirements to protect employees. Dental assistants, like all others covered under the regulation, must undergo initial training and annual training thereafter of the required elements within section 5193(g)(2)(G).

Title 8 regulations within section 5193 are appropriate to address occupational exposures to BBP and OPIM without incorporating alternative training prescribed by the DBC. The Board shares the concerns raised by the Petitioners, which point to a lack of implementation of the very measures that Cal/OSHA and the DBC established to protect employees and patients alike. Incorporating the DBC training requirements into BBP regulation does not advance occupational safety and health. The Board agrees with the positions put forth by the Division and Board staff.

The Petitioners' second request is to define "knowledgeable in the subject matter." The Board is mindful that the quality of training relies on both the trainer's knowledge and the proficiency of those being trained. The phrase "knowledgeable in the subject matter" is an expression of

competency of the trainer and its meaning is plain. The Board encourages employers to examine the competency of those providing training to ensure employees undergoing instruction are adequately trained.

The Board agrees with the Division and Board staff. The plain meaning of the regulation is as intended. Defining the phrase “knowledgeable in the subject matter” is unnecessary.

#### CONCLUSION AND ORDER

Having considered Petition 592 and evaluations by the Division and Board staff, the Board hereby DENIES the Petition.