

State of California
Department of Industrial Relations
Occupational Safety and Health Standards Board

Petition File No. 592

Board Staff Evaluation
Submitted by Amalia Neidhardt, Sr. SE, MPH, CIH, CSP

November 15, 2021



State of California

Gavin Newsom, Governor

INTRODUCTION

On August 16, 2021, Kelly Thomas, President of the California Dental Assistants Association (CDAA) and Susan Dahn, President of the California Association of Dental Assisting Teachers (CADAT) (Petitioners) submitted a petition requesting the Occupational Safety and Health Standards Board (Board) amend existing regulations to require that a Dental Board of California (DBC) approved course be mandatory prior to dental assistants performing any tasks that expose said dental assistants to blood or other potentially infectious materials (OPIM).

Additionally, the Petitioners ask that language be added to define and specify what constitutes 'knowledgeable in the subject matter' more clearly.

REQUESTED ACTION

The Petitioners request the Board amend California Code of Regulations (CCR), title 8, General Industry Safety Orders (GISO), section 5193(g)(2)(B) to add language that would require an unlicensed, on-the-job-trained dental assistant to complete DBC-approved infection control training prior to performing any basic supportive dental procedures involving potential exposure to blood or OPIM.

Similarly, the Petitioners request that section 5193(g)(2)(H) include language that will define and specify what constitutes 'knowledgeable in the subject matter' regarding the bloodborne pathogens (BBP) trainer qualifications, to prevent training that is inadequate and unnecessarily exposes employees to risks of cross-contamination and contraction of a communicable disease.

BACKGROUND/HISTORY

The Board has previously received petitions requesting changes to section 5193, including petitions 384, 416, 480, 513, 569, 576, and 591. However, only petition 591 (the predecessor to this petition, which was withdrawn) was related to the subject of this petition.

PETITIONER'S ASSERTIONS

The Petitioners assert:

- Title 8, section 5193 (2)(B)(1) specific to bloodborne pathogens information and training requires that training take place when an employee is first given the initial assignment (when hired). However, 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.

- The DBC requires an unlicensed, on-the-job-trained dental assistant to complete an eight-hour infection control course by an approved provider, and the Business and Professions Code 1750 allows up to twelve months for completion of this course¹. If the training received by the on-the-job-trained dental assistant is provided by another employee in the dental office who has not completed official education/training in infection control themselves, then this training, as defined by DBC, is inadequate and unnecessarily exposes employees to the risk of contracting a communicable disease.
- During the twelve months in which dental assistants are allowed to complete requisite training per Business and Professions Code 1750, they are responsible for disinfection, instrument cleaning/packaging, sterilization, handling of hazardous waste, waterline maintenance as well as direct patient care. Performing these duties without the requisite approved education and training in infection control places the patient's and dental office employees' health and safety at risk.
- In February 2021 a small sampling of on-the-job-trained, unlicensed dental assistants showed that: 40% had less than six hours of training in the office; 15% were not taught about hand washing, PPE, waterline maintenance or handling hazardous waste and impressions in the office; 100% did not receive the requisite office training prior to exposure to blood, saliva or OPIM.
- There is a lack of data regarding negative health outcomes related to dental assistants being untrained in basic infection control. However, the lack of documented data does not equate to the lack of a problem.

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (DIVISION) REPORT

The Petition Evaluation report dated November 4, 2021 recommended that the Petitioners' request be DENIED for the following reasons:

- The request to add a specific training requirement does not meet the necessity requirement in Government Code (GC) section 11349.1, as subsection 5193(g)(2)(B) already requires comprehensive bloodborne pathogen and OPIM training prior to occupational exposure to infectious materials without exceptions.

¹ Business and Profession Code section 1750 are the DBC regulations that list the basic supportive dental procedures that may be performed by dental assistants, and the approved courses that dental assistants must complete within a year of the date of employment. Business and Profession Code section 1750: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=1750.

- The request to include DBC approved infection control training in section 5193 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 request would create an inconsistency between DBC enforced training requirements and section 5193.

STAFF EVALUATION

On July 2, 2021, the Petitioners submitted petition 591 requesting the Board's help to protect the health and safety of dental assistants that enter the workforce without the benefit of a formal/didactic training. However, during phone conversations Board staff held with the Petitioners on July 13 and 23, the latter including the Division, Petitioners expanded their pursuit to include specific requests and additional information that had not been included in the original petition (591). As a result, Petitioners updated and resubmitted their petition (592) after withdrawing the original.

During the above phone conversations, Petitioners described several instances where they have witnessed on-the-job-trained dental assistants face undue exposure to BBP, including an incident where a worker who suffered a needlestick injury was discouraged from requesting post-exposure evaluation and follow-up by their employer, and was eventually discharged after insisting on their workers' rights. Petitioners also shared examples of on-the-job-trained dental assistants that have no knowledge of their rights under the BBP standard and/or are reluctant to file a workplace complaint because they fear retaliation or the loss of an opportunity for advancement.

Relevant Standards

Federal Standards

Bloodborne Pathogens Regulation

The Federal Occupational Safety and Health Administration (OSHA) standard, 29 CFR section 1910.1030, Bloodborne pathogens, in effect since 1991, applies to all occupational exposure to blood or OPIM². Several of OSHA's resources, including the Compliance Directive (CPL) 02-02-069, web page for Dentistry Enforcement, and the most frequently asked questions concerning the bloodborne pathogens standard, list several job classifications that may have occupational exposure to blood, including dentists, dental hygienists, dental assistants, and

² U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). 29 CFR section 1910.1030 - Bloodborne pathogens; accessed 7/28/21. <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030>

dental laboratory technicians³. The CPL 02-02-069 also mentions that employee information and training can eliminate or minimize exposure to BBP.

29 CFR section 1910.1030 details a comprehensive list of mandated training elements and includes a requirement that the trainer be knowledgeable in the subject matter and be familiar with how the course topics apply to the workplace that the training will address.

Federal Compliance Directive CPL 02-02-069

CPL 02-02-069 clarifies that appropriate training must include, at a minimum, the elements detailed in 29 CFR section 1910.1030 paragraphs (g)(2)(vii)(A) through (N) of the standard, and these training elements must relate to the particular workplace. Additionally, CPL 02-02-069 states that trainees must have direct access to a qualified trainer during training and specifically stresses that in 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).

Regarding the terms 'knowledgeable in the subject matter,' CPL 02-02-069 notes that 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.

California Standards

Occupational safety and health standards within title 8 of the CCR protect workers from hazards in general, and several may apply to the health and safety of dental workers. However, Petitioners specifically request to amend section 5193.

Section 5193 is substantially the same as the counterpart federal standard except for additional requirements in section 5193 regarding sharps injury prevention, which were added in response to Labor Code section 144.7. Section 5193 directly applies to dentistry, as there is occupational exposure to blood or other potentially infectious materials as defined by subsection (b).

³ OSHA. Directive No. CPL 02-02-069; Effective date: November 27, 2001; Subject: Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens. https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-069.pdf; OSHA. Safety and Health Topics/Dentistry-Enforcement. <https://www.osha.gov/dentistry/enforcement> ; OSHA. Most frequently asked questions concerning the bloodborne pathogens standard; Standard Number: 1910.1030. <https://www.osha.gov/laws-regs/standardinterpretations/1993-02-01-0#hazards>.

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Similar to its federal counterpart, section 5193(g)(2)(B) mandates that all employees with occupational exposure receive training at the initial time of assignment and annually thereafter on the hazards associated with BBP and the protective measures to be taken to minimize the risk of occupational exposure.

Section 5193 mandates that employees be trained, at a minimum, on all the required elements listed in subsection (g)(2)(G), at the time of initial assignment to tasks where occupational exposure may occur. Similarly, subsection (g)(2)(H) states that 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.

Consensus Standards

None.

Other Standards, Guidelines, Codes

In 2003, the Centers for Disease Control and Prevention (CDC) issued a Morbidity and Mortality Weekly Report (MMWR) titled “Guidelines for Infection Control in Dental Health-Care Settings” to provide guidance to dental health-care personnel for preventing disease transmission and to promote a safe working environment⁴. More recently in 2016, the CDC issued infection prevention recommendations through a publication titled “Summary of Infection Prevention Practices in Dental Settings”⁵.

Both reports highlight the need for comprehensive and effective training to improve understanding of underlying principles, recommended practices, their implementation, and the conditions that must be met to prevent disease transmission. Finally, in the “Administrative Measures and Infection Prevention Education Training”, the CDC highlights that training should include both dental healthcare personnel safety (e.g. bloodborne pathogens training) and patient safety⁶.

⁴ Centers for Disease Control and Prevention (CDC). Morbidity and Mortality Weekly Report, December 19, 2003, Vol. 52, No. RR-17; Guidelines for Infection Control in Dental Health-Care Settings – 2003; assessed 8/2/21. <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a1.htm>

⁵ CDC. Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care; October 2016; assessed 8/2/21. <https://www.cdc.gov/oralhealth/infectioncontrol/pdf/safe-care2.pdf>

⁶ CDC. Oral Health webpage; Summary of Infection Prevention Practices in Dental Settings: Administrative Measures and Infection Prevention Education Training; accessed 9/15/21. <https://www.cdc.gov/oralhealth/infectioncontrol/summary-infection-prevention-practices/administrative-measures.html>

Staff Analysis

Distinct Regulatory Agencies Training Requirements

Both Cal/OSHA and the DBC have regulations governing infection control practices in dental settings. Although some of the training elements are similar, these are two separate infection control training programs⁷. Additionally, the mission of the DBC is to protect and promote the health and safety of consumers, through licensing, regulatory and disciplinary functions; whereas Cal/OSHA's priority is to protect and improve the health and safety of workers through the setting and enforcement of standards⁸.

Regarding worker protection against BBP, title 8, section 5193 applies to all work settings where there is occupational exposure to blood or other potentially infectious materials, except for the construction industry. On-the-job-trained dental assistants are likely to perform tasks associated with occupational exposure to BBP or OPIM. As such, dental employers must follow the practices and procedures, including training, required by the BBP standard to protect these workers.

Addressing Inadequate Training

Section 5193, mandates that at a minimum, all 14 training elements listed under subsection (g)(2)(G) be included in the BBP training at the time of initial assignment and at least annually thereafter. The Petitioners' accounts stating that 100 percent of on-the-job-trained unlicensed dental assistants surveyed did not receive the office training (i.e. bloodborne pathogens and infection control) prior to exposure to blood, saliva or OPIM, and that employees are reluctant to file a complaint for fear of reprisal, strengthens the case that these could be instances of employers being out of compliance with section 5193.

The lack of employers' knowledge or compliance with the BBP standard does not appear to be an aberration. A 2016 study published on the Compendium of Continuous Education in Dentistry described a national survey conducted by researchers where findings demonstrated that even after more than 20 years since the enactment of the Federal OSHA BBP standard, some dental employers lack knowledge of this standard or failed to implement required policies

⁷ Dental Board of California: Infection Control and Cal/OSHA FAQ; accessed 9/15/21.

<https://www.cda.org/Home/Resource-Library/Resources/category/practice-management-news/infection-control-and-calosha-faq>

⁸ Dental Board of California: Mission and Vision; accessed 9/15/21.

https://www.dbc.ca.gov/about_us/mission_and_vision.shtml; Cal/OSHA website; accessed 9/15/21.
<https://www.dir.ca.gov/dosh/>

and protocols necessary to prevent occupational exposure to BBP⁹. The study states that “providing training prior to clinical assignment sets the foundation for proper worksite practices.” Thus, Board staff agrees with Petitioners that when training is inadequate, it unnecessarily exposes employees to risks of cross-contamination and contraction of a communicable disease.

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.

To effect change, awareness could be raised through existing dental assistant community websites about workers’ rights under the BBP standard and the right of every worker to have a safe workplace. For instance, the Dental Assistant Life blogsite notes that “some on-the-job-trained assistants may learn the hows, but not the whys. The dentist may not explain to them why you do it this way or what happens if you don’t do it this way. It’s important to have knowledge of why you’re doing something, not just how.”¹⁰

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. Thus, the requested amendment would be counterproductive because it would likely confuse the workers and increase the length of time, complexity, and cost of the training. Additionally, it could cause Cal/OSHA to exceed its authority as it would expand its jurisdiction to more than worker safety and health.

The Petitioners request to define and specify what constitutes ‘knowledgeable in the subject matter’ could risk limiting the work experience, educational background, job category or profession of the individual conducting the training. 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,

⁹ Laramie AK, Bednarsh H, Isman B, Boiano JM, McCrone SH. Use of Bloodborne Pathogens Exposure Control Plans in Private Dental Practices: Results and Clinical Implications of a National Survey. *Compend Contin Educ Dent*. 2016 Jun;38(6):398-407. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5795264/>

¹⁰ Dental Assistant Life Online Community Blog. On-the-Job Training vs. Dental Assisting School, May 1, 2017, accessed 7/28/21. <https://www.dentalassistantlife.org/on-the-job-training-vs-dental-assisting-school/>.

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 issues¹¹. Federal OSHA CPL 02-02-069 notes that “One way, but not the only way, knowledge can be demonstrated is the fact that the person received specialized training,” and lists a variety of healthcare and non-healthcare professionals that could conduct the training provided they are knowledgeable in the subject matter contained in the training program as it relates to the workplace. Section 5193(g)(2)(H) should be read in its entirety: ‘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.’ Board staff believes that the “common meaning” of these words is the intent of the subsection; moreover, the Petitioners’ proposed amendment is not necessary and would make section 5193 less effective than federal regulations.

Providing an effective and comprehensive training by a knowledgeable and qualified trainer is a fundamental control measure that exists to protect all dental assistants from exposure to BBP and OPIM. Likewise, to be effective, employees must be trained prior to being placed in positions where occupational exposure may occur, and the training must cover the topics listed in the standard. These control measures have been an integral part of the BBP standard and became mandatory in 1992, when section 5193 went into effect.

Staff Conclusions

Board staff agrees with the Petitioners that to protect on-the-job-trained dental assistants and eliminate or minimize their exposure to BBP, appropriate training must take place and be provided by a qualified trainer. However, the issues raised by the Petitioners are more effectively addressed by: educating employees on their rights under the BBP standard; educating employers on their responsibilities under the BBP standard; and more scrupulous enforcement of existing regulations. Effective and comprehensive training by a knowledgeable and qualified trainer are control measures already mandated by section 5193; therefore Board staff finds no deficiency that merits modifying existing regulations.

¹¹ DOSH Frequently Asked Questions About the Bloodborne Pathogens Standard (Question #103); January 2002. <https://www.dir.ca.gov/dosh/bloodbornefaq.html>

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The Petitioners' requests to amend section 5193 by requiring on-the-job-trained dental assistants to take a DBC approved course and by defining 'knowledgeable in the subject matter' would be contrary to the procedural requirements of the Administrative Procedures Act because the amendments would be unnecessary, outside the Board's authority and inconsistent with existing regulations.

Additionally, Board staff believes that, if proposed, such amendments would result in section 5193 being reduced or the standard becoming less effective than the counterpart federal OSHA standard, and therefore in violation of section 142.3 of the Labor Code.

STAFF RECOMMENDATION

Consistent with and based upon the foregoing discussion, Board staff does not believe the Petitioners' requests to amend section 5193 are necessary and recommends that Petition File No. 592 be **DENIED**.