

What surgeons should know about ...

OSHA regulation of blood-borne pathogens

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As mandated by the Needlestick Safety and Prevention Act signed into law in 2000, changes were made to the Occupational Safety and Health Administration's (OSHA's) blood-borne pathogens standard. These changes, which became effective April 18, 2001, are intended to further protect health care workers and others in the medical community from exposure to blood-borne diseases, such as HIV and hepatitis, by imposing additional employee protection requirements on hospitals and private physician offices. The following questions and answers highlight some of the key requirements in the regulations from the surgeon's perspective.

Q. When was the blood-borne pathogens standard first issued?

A. The standard was released on December 6, 1991, based on OSHA's conclusion that employees face a significant health risk as a result of occupational exposure to blood and other potentially infectious materials. The original standard became effective on March 6, 1992.

Q. Who is covered by OSHA's blood-borne pathogens standard?

A. The standard applies to any person who may be exposed to blood or to other potentially infectious material containing blood-borne pathogens in the workplace. In the standard, OSHA defines occupational exposure as any "reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other

potentially infectious materials that may result from the performance of the employee's duties."

Q. How did the Needlestick Safety and Prevention Act affect the OSHA blood-borne pathogens standard?

A. The law revised the blood-borne pathogens standard to incorporate a broader range of engineering controls, encourage improved documentation, and provide greater employee involvement in developing workplace controls. More specifically, the law directed OSHA to:

1. Include new examples in the definition of engineering controls.
2. Require that exposure control plans reflect changes in technology that eliminate or reduce exposure to blood-borne pathogens.
3. Require employers to document annually in the exposure control plans consideration and implementation of safer medical devices.
4. Require that employers solicit input from nonmanagerial employees responsible for direct patient care in the identification, evaluation, and selection of engineering and work practice controls.
5. Document this input in the exposure control plan.
6. Require employers to establish and maintain a log of percutaneous injuries from contaminated sharps.

Q. How do the current and previous definitions of engineering controls differ?

A. The new definition includes more examples of engineering controls. Previously, they were defined as “controls (for example, sharps disposal containers, self-sheathing needles) that isolate or remove the blood-borne pathogens hazard from the workplace.” The revised standard definition of engineering controls is much broader and includes “sharps disposal containers, self-sheathing needles, safer medical devices, such as sharps with engineered sharps injury protections and needleless systems.”

Q. **What must employers do to comply with the new exposure control plan regulations?**

A. The new standard mandates that employers “document annually in the exposure control plans consideration and implementation of safer medical devices” and consult with “non-managerial employees responsible for direct patient care in the identification, evaluation, and selection of engineering and work practice controls.” In an effort to include everyone in the health care community (physicians, nurses, assistants, and so forth) who is responsible for patient care, employers must consult with all personnel about the consideration and implementation of potentially safer instruments. This consultation must be included in the exposure control plan.

Q. **What are employers required to do to comply with the new sharps injury log requirements?**

A. The new record-keeping rule, effective January 1, 2002, requires employers to log all percutaneous injuries and any related illnesses involving exposure to blood and other potentially infectious materials (OPIM). Work-related needlesticks and cuts from sharp objects that are contaminated with another person’s blood or OPIM must be recorded in the log as an injury; however, for privacy reasons, the employee’s name should be omitted. If the employee is later diagnosed with an infectious blood-borne disease, the identity of the disease must be entered and the classification must be changed to an illness. If an employee is splashed or exposed to blood or OPIM without being cut or punctured, the incident must be recorded in the log only if the exposure results in the diagnosis of a blood-borne illness.

Q. **Have studies been conducted to examine the potential costs of these changes?**

A. The GAO released a study last November entitled *Occupational Safety: Selected Cost and Benefit Implications of Needlestick Prevention Devices for Hospitals* (#GAO-01-60R). It reports that “analysis of available data on the costs and preventability of needlestick injuries shows that the adoption of needles with safety features may be justifiable based solely on decreased initial treatment costs.” Also noted, “Needles with safety features may also reduce liability and worker’s compensation costs to hospitals when health care work-

ers acquire diseases after a needlestick injury.” For a copy of the response, please visit <http://www.gao.gov>.

Q. What about physicians who have established an independent practice, as opposed to those employed at a hospital? What is the difference between physicians as employers versus as employees?

A. In applying the provisions of the standard in situations involving physicians, the status of the physician is important. Physicians may be employers or employees. Physicians who are unincorporated sole proprietors or members of a bona fide partnership are employers and may be cited for violations of the standards if they employ at least one individual (such as a technician or secretary). Such physician-employers may be cited if they create or control blood-borne pathogens hazards that expose their employees at hospitals or other sites where they have staff privileges in accordance with the multi-employers worksite guidelines of compliance directive CPL 2-0.124, *Multi-Employer Citation Policy*.

However, because physicians in these situations are not themselves employees, citations may not be based on their exposure to the hazards of blood-borne diseases. In other words, depending on the circumstances, surgeons who employ a nurse to assist in procedures at a hospital at which they have privileges could be cited for actions that directly result in a nurse’s exposure to a blood-borne pathogens. On the other hand, depending on the circumstances, such a hospital cannot be cited for the surgeon’s exposure, if he or she is directly at fault.

Physicians may be employed by a hospital or another health care facility or may be members of a professional corporation that provides their services to a hospital and conduct some of their activities at hospital sites where they have staff

privileges. In general, professional corporations are the employers of their physician-members and must comply with the following standard provisions: hepatitis B vaccination, postexposure evaluation and follow-up, record keeping, and generic training provisions with respect to these physicians when they work at host employer sites. The hospital where these physician-members have staff privileges is not responsible for the above provisions but, in appropriate circumstances (for instance, not having a sharps bucket in an operating room), may be cited under other provisions of the standard in accordance with the multi-employer worksite guidelines of CPL 2-0.124.

Q. A number of states already have needlestick laws on the books; do these new requirements affect those laws?

A. OSHA’s revised blood-borne pathogens standard has raised questions about the status of those state laws. It has been established that the standard does preempt state laws “relating to issues in the private sector on which federal OSHA has promulgated occupational safety and health standards, such as the blood-borne pathogens standard, regardless of whether the requirements are more or less stringent.” Preemption is a complex legal matter that can only be finally resolved by the courts when raised by an affected party. OSHA does not take any formal legal or other action with regard to preemption of state activities. However, in general, the following principles apply:

1. *States with plans.* All OSHA-approved state plans are required to incorporate “at least as effective” needlestick protection for private sector and public sector (state and local government) employment, either through a standard or a state needlestick prevention law administered under the plan. To avoid the preemptive effect, state


needlestick prevention laws applicable to the private sector must be administered under the state plan.

2. *States without plans.* State needlestick laws and/or regulations in these states would not be affected by the preemptive effect of the federal blood-borne pathogens standard to the extent that they regulate the occupational safety and health conditions of public sector (state and local government) employment. However, state laws or programs that regulate private sector activities addressed by the federal blood-borne pathogens standard, absent an OSHA-approved state plan, would be subject to challenge as preempted.

Q. Where can a copy of the updated blood-borne pathogens standard and the accompanying compliance directive be obtained?

A. For a copy of the standard, go to http://www.osha-slc.gov/OshStd_data/1910_1030.html. The compliance directive, *Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens* (# CPL 2-2.69) establish policies and provides clarification to ensure uniform inspection procedures are followed when conducting inspections to enforce the blood-borne pathogens standard. Reviewing this document is the best way to determine if you are complying with the standard's requirements. It can be found on the Internet at http://www.osha-slc.gov/OshDoc/Directive_data/CPL_2-2_69.html.

Q. How can I get more information about compliance?

A. More information can be obtained by contacting OSHA on the Internet at <http://www.osha.gov>. 

Bibliography

General Accounting Office: *Occupational Safety: Selected Cost and Benefit Implications of Needlestick Prevention Devices for Hospitals*, #GAO-01-60R. Web site: www.gao.gov.

Occupational Safety and Health Administration: *Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens*, # CPL 2-2.69. Web site: http://www.osha-slc.gov/OshDoc/Directive_data/CPL_2-2_69.html.

Occupational Safety and Health Administration: *Occupational Exposure to Bloodborne Pathogens Standard*, #1910.1030. Web site: http://www.osha-slc.gov/OshStd_data/1910_1030.html.