



OCT 2 9 2007

Reply to the attention of:

COPY

Mr. Scott Desormeaux, LOTR
Manager
MedXcel
2325 Charity Street
Abbeville, LA 70510

Dear Mr. Desormeaux:

Thank you for your January 22, 2007 facsimile originally sent to the Dallas Regional Office and forwarded to my office on January 25 for response. Your fax requests a written opinion from the Occupational Safety and Health Administration (OSHA) regarding the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. In an effort to provide you with prompt and accurate responses, we developed and continue to refine, a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping web site at www.osha.gov/recordkeeping.

In your letter, you ask whether a case would be recordable if a medical provider injected an injured employee with Marcain and Aristacort (or any other pain killer and corticosteroid) into a "trigger point" of a muscular strain/sprain and referred to this procedure as a "diagnostic tool?" You also ask whether there would be any consequences if the above procedure is a recordable injury and the employer failed to record the injury, and whether there would be any consequences for the medical provider for advising the employer that the procedure was "diagnostic?"

Section 1904.7 General Recording Criteria

Section 1904.7(b)(5)(a) states that employers must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. A case would also meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional.

Section 1904.7(b)(5)(i) states that, for purposes of Part 1904, "medical treatment" means "the management and care of a patient to combat disease or disorder." This section of the recordkeeping regulation also states that medical treatment does not include visits to a physician or other licensed health care professional solely for observation or counseling; the conduct of diagnostic procedures, such as x-rays and blood tests, including the administering of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or "First aid" as defined by Section 1904(b)(5)(ii).

Section 1904.7(b)(5)(ii)(A) defines first aid, in part, as: "Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes)." In addition, the preamble to the January 19, 2001 final rule revising OSHA's Part 1904 recordkeeping regulations states: "In the final rule, OSHA has not included prescription medications, whether given once or over a longer period of time, in the list of first aid treatments." See, 66 Fed. Reg. 5986.

OSHA also explained in the recordkeeping final rule preamble that the list of first aid treatments included in Section 1904.7(b)(5)(ii) is comprehensive. This means that any treatment not included on the list is not considered first aid for purposes of Part 1904. See, 66 Fed. Reg. 5984.

Response:

While Section 1904.7(b)(5)(i) states that the administering of prescription medication solely for diagnostic purposes is not medical treatment, your letter indicated that the employee in question sustained a workplace injury. We consulted with physicians in our OSHA Office of Occupational Medicine and they indicated that although the injection of a prescription anesthetic medication (Marcaine) which results in a positive response (relief of pain) may also help diagnose localized muscular conditions, the intent of such an injection is primarily to provide pain relief (treatment). Injection of Aristocort, a long-acting anti-inflammatory medication, is always administered for treatment (not diagnostic) purposes. As noted above, Section 1904.7(b)(5)(ii) does not include the administering of prescription medication to treat an injury on the list of first aid treatments. Once the injured employee received medical treatment beyond first aid, i.e., an injection of prescription pain medication from the examining physician, the case satisfied the OSHA recordkeeping requirements as a recordable injury.

In regard to your questions concerning "consequences" related to the OSHA injury and illness recordkeeping system, only the employer is held responsible by OSHA for making the recordability decision and is ultimately held accountable for keeping accurate OSHA injury and illness records. Section 8 (c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Under Section 1904.32(a)(1), employers must, at the end of each calendar year, certify that the entries on the OSHA Form 300A, *Summary of Work-Related Injuries and Illnesses*, are accurate and complete. OSHA does not hold physicians or health care professionals responsible for Part 1904 recordkeeping determinations made by an employer.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Section 8(c)(2) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. Our interpretation letters explain these requirements

and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith L. Goddard".

Keith Goddard, Director
Directorate of Evaluation and Analysis