

OCT 5 2004

The Honorable John D. Dingell
U.S. House of Representatives
Washington, DC 20515-2215

Dear Congressman Dingell:

We have recently received your letter dated August 18, 2004 regarding Mr. Jeffrey Mans and Mr. Kevin Ruddy detailing their concerns about Work-Related Musculoskeletal Disorders. They both want OSHA to clarify "what actions constitute observation and what are the limits of counseling." They also want to know who is able to do observations and counseling.

The critical question raised in the letters from Mr. Jeffrey W. Mans and Mr. Kevin Ruddy is whether an employer's recommendations to employees on preventing MSDs, which include advice on improved body mechanics and beneficial warm-up activities, including stretching and muscle building activities, and referral to an on-site fitness facility, constitute medical treatment. The employer must first determine whether the employee has an underlying MSD that amounts to an "injury or illness" under the rule. If the employee has symptoms that were caused or contributed to by work related activities, there may be an existing injury or illness. In this case, a recommendation for exercise may be considered medical treatment and make the case recordable.

1904.5 Preamble

Exercise: ... [E]xercises that amount to self-administered physical therapy, and are normally recommended by a health care professional who trains the worker in the proper frequency, duration and intensity of the exercise. Physical therapy treatments are normally provided over an extended time as therapy for a serious injury or illness, and OSHA believes that such treatments are beyond first aid and that cases requiring them involve medical treatment.

The key issues are (1) whether the employees have an existing injury or illness and (2) whether the employer's recommendations include exercise. We do not think the scenarios raised by Mr. Jeffrey W. Mans and Mr. Kevin Ruddy implicate either "counseling" or "observation."

(As noted in the Preamble, see the Federal Register / Vol. 66, No. 13 / Friday, January 19, 2001 / page 5985, 3rd column.) "OSHA agrees that counseling should not be considered medical treatment and has expressly excluded it from the definition of medical treatment. Counseling is often provided to large groups of workers who have been exposed to potentially traumatic events. Counseling may be provided on a short-term basis by either a licensed health care professional or an unlicensed person with limited training. OSHA believes that capturing cases where counseling was the only

treatment provided do not rise to the level of recording; other counseling cases, where prescription medications, days away from work, or restricted work activity is involved, would be captured under those criteria."

(As noted in the Preamble, see the Federal Register / Vol. 66, No. 13 / Friday, January 19, 2001 / page 5985, 3rd column.) "OSHA believes that visits to a health care professional for observation, testing, diagnosis, or to evaluate diagnostic decisions should be excluded from the definition of medical treatment in the final rule. Visits to a hospital, clinic, emergency room, physician's office or other facility for the purpose of seeking the advice of a health care professional do not themselves constitute treatment. OSHA believes that visits to a hospital for observation or counseling are not, of and by themselves, medical treatment. Accordingly, the final rule excludes these activities from the definition of medical treatment."

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. 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. In addition, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact the Division of Recordkeeping Requirements, at 202-693-1702.

Sincerely,

Jonathan L. Snare
Acting Assistant Secretary