

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



FEB 06 2007

Reply to the attention of:

Ms. Linda Ballas
Linda Ballas & Associates
7129 Nightingale Drive
Holland, OH 43528

Dear Ms. Ballas:

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) dated March 26, 2002 and recently re-submitted, regarding the Injury and Illness Recording and Reporting requirements contained in 29 CFR Part 1904. Specifically, you are requesting OSHA's guidance regarding the use of prescription medication in treating a work-related case. In your letter you asked OSHA to clarify the following question and scenarios:

Question:

An employee is hurt on the job and that employee is sent to a medical center. At the medical center, the doctor gives the employee a prescription and tells the employee to take if needed. Are there any circumstances that would keep this incident from being recordable?

Are any of the following or any other scenario able to **not** make the status recordable?

- a. The employee tells the doctor I do not want or need the prescription.
- b. The employee does not take the prescription and tells a plant official he did not take it and provides the plant official the prescription.
- c. A company doctor reviews the case and states the prescription was not necessary.
- d. The medical center doctor later agrees the prescription was not necessary.
- e. Any combination of the above conditions.

Response:

Section 1904.7(b) states that a work-related injury or illness must be recorded on the OSHA 300 Log if it results in death, days away from work, restricted work or transfer to another job, **medical treatment beyond first aid**, loss of consciousness, or diagnosis of a serious injury or illness.

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 first aid, as defined by Part 1904(b)(5)(ii), does not fall within the definition of medical treatment. OSHA also explained in the January 19, 2001, preamble to the final rule revising the Part 1904 regulation 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.

The preamble to the final rule also 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. Moreover, the preamble states: "OSHA's longstanding policy has been that if a prescription medication of this type has been issued, medical treatment has been provided, and the case must therefore be recorded." See, 66 Fed. Reg. 5987. As a result, the patient's acceptance or refusal of the treatment does not alter the fact that, in the health care professional's judgment, the case warrants medical treatment.

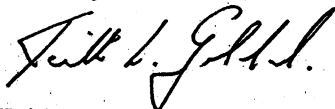
In the situation you described in your letter, the examining physician clearly provided "medical treatment beyond first aid" as that phrase is defined by Part 1904. Once your employee received medical treatment beyond first aid, i.e., a prescription for medication from the examining physician, the case satisfied the OSHA injury and illness recording requirements.

In certain circumstances, OSHA's recordkeeping requirements permit an employer to choose between two conflicting or differing medical recommendations. When an employer receives contemporaneous recommendations from two or more physicians or other licensed health care professionals about the need for medical treatment, the employer may decide which recommendation is the most authoritative and record the case based on that recommendation. However, once medical treatment (i.e., issuance of a prescription) is provided for a work-related injury or illness, the case is recordable. See OSHA's Frequently Asked Question 7-10a.

Accordingly, the five scenarios discussed in your letter would still result in a recordable injury under Part 1904.

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 OSHA's Office of Statistical Analysis at (202) 693-1875.

Sincerely,

A handwritten signature in dark ink, appearing to read "Keith L. Goddard", written in a cursive style.

Keith L. Goddard, Director
Directorate of Evaluation and Analysis