



U.S. Department of Labor

Occupational Safety & Health Administration

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Standard Interpretations

05/12/2006 - Recordkeeping requirements when an employer receives two or more differing medical recommendations for an injury/illness.

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• **Standard Number:** 1904.7; 1904.7(b)(5)(ii)

This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any situation not delineated within the original correspondence.

May 12, 2006

Mr. Brian W. Price
Colonial Pipeline Company
1185 Sanctuary Parkway, Suite 100
Alpharetta, GA 30004-4738

Dear Mr. Price:

Thank you for your letter of November 23, 2004 requesting guidance on the applicability of the OSHA recordkeeping rule, 29 CFR Part 1904, to a work-related injury from September 2004. Your letter raises the issue of whether to record a work-related injury or illness when an examining physician's medical treatment is questioned by a second physician's recommendation that first aid, as that term is defined by 29 CFR 1904.7, is the proper course of treatment. Your letter specifically asks whether it is permissible under the OSHA recordkeeping system to "redline the original entry made in the OSHA 300 Log as to make the incident a non-recordable injury."

Scenario: On September 21, 2004, your employee was clearing an overgrown area of soil, gravel, and weeds. In doing so, he disrupted a yellow jack nest, receiving multiple stings to the hand, arm, ear, neck, and back areas. The employee was immediately driven to a local clinic and seen by a physician. The employee received injections of Benadryl and Kenalog and was advised to apply ice packs, drink fluids, and rest.

In two separate communications dated September 29, 2004, a second physician, while admitting that the treating physicians' use of Benadryl and Kenalog injections was "within the standard of care" for the injury suffered, went on to state that "Many providers would have instead offered oral diphenhydramine (Benadryl) and topical triamcinalone (Kenalog)." In other words, the second physician stated that the injury could have been treated by administering first aid, and, therefore, resulting in a non-recordable injury.

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 requirements also states that first aid, as defined by Part 1904.7(b)(5)(ii),

does not fall within the definition of medical treatment. Section 1904.7(b)(5)(ii) 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 OSHA's revised recordkeeping rule from January 19, 2001, 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 *Federal Register* 5986.

OSHA also explained in the preamble to the revised recordkeeping rule 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 *Federal Register* 5984. We note that Benadryl and Kenalog injections are not included on the list of first aid treatments set forth at 1904.7(b)(5)(ii).


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 is provided for a work-related injury or illness, the case is recordable. See, Frequently Asked Questions for OSHA's Injury and Illness Recordkeeping Rule, FAQ 7-10 and 7-10a at <http://www.osha.gov/recordkeeping>.

In the situation you describe 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., prescription medication from the examining physician, the case satisfied the OSHA injury and illness recording requirements.

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) 693-1876.

Sincerely,

Keith Goddard, Director
Directorate of Evaluation and Analysis

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