



U.S. Department of Labor

Occupational Safety & Health Administration

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Standard Interpretations

05/15/2007 - Clarification of the term "contemporaneous" as used in recordkeeping FAQ 7-10a.

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• **Standard Number:** [1904.7\(b\)\(3\)\(ii\)](#); [1904.7\(b\)\(3\)\(iii\)](#)

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 15, 2007

Mr. David F. Coble, CSP, President
CTJ Safety Associates
113 Cambay Court
Cary, NC 27513

Dear Mr. Coble:

This is in response to your February 2, 2006 letter to the Occupational Safety and Health Administration (OSHA) requesting an interpretation of the term "contemporaneous" as used in Frequently Asked Question 7-10a to the injury and illness recordkeeping regulation at 29 CFR Part 1904.

FAQ 7-10a states:

If a physician or other licensed health care professional recommends medical treatment, days away from work or restricted work activity as a result of a work-related injury or illness can the employer decline to record the case based on a contemporaneous second provider's opinion that the recommended medical treatment, days away from work or work restriction are unnecessary, if the employer believes the second opinion is more authoritative?

Yes. However, once medical treatment is provided for a work-related injury or illness, or days away from work or work restriction have occurred, the case is recordable. If there are conflicting contemporaneous recommendations regarding medical treatment, or the need for days away from work or restricted work activity, but the medical treatment is not actually provided and no days away from work or days of days of work restriction have occurred, the employer may determine which recommendation is the most authoritative and record on that basis. In the case of prescription medications, OSHA considers that medical treatment is provided once a prescription is issued.

In general, FAQ 7-10a provides that, when making a determination as to how to record a specific work-related injury or illness, an employer may choose to rely on a second conflicting

medical recommendation from a physician or other licensed health care professional, provided the subsequent recommendation is contemporaneous to, and more authoritative (best documented, best reasoned or most persuasive) than the first recommendation. However, once medical treatment has been provided, or days away from work or restricted work activity have occurred, the employer must record the medical treatment, days away from work or restricted work activity on the OSHA 300 Log. In other words, the employer may not consider a conflicting recommendation once medical treatment, days away from work or restricted work activity have taken place, even if the subsequent recommendation is more authoritative.

For purposes of FAQ 7-10a, the term "contemporaneous" is used in determining whether an employer may consider conflicting medical recommendations from two or more physicians or other licensed health care professionals when making certain Part 1904 recordkeeping decisions. Neither the Part 1904 regulation, nor the preamble to the 2001 Part 1904 final rule, provides an exact definition of "contemporaneous." However, OSHA intends that for two or more conflicting recommendations to be considered contemporaneous, they must be conducted within a time frame so that an injury or illness can be evaluated when the signs or symptoms are in the same stage of development, same degree of severity, and this can be viewed in a similar context for analysis. Of course, whether conflicting medical opinions/recommendations are contemporaneous may depend on the specific circumstances surrounding a given case, such as the type and severity of an injury or illness.

In most instances, medical recommendations provided on the day of the injury or illness would be considered "contemporaneous." For example, because Part 1904 does not require employers to count days away from work or restricted work activity on the day of the injury or illness, the employer should be able to consider conflicting recommendations issued on the day the employee was injured or became ill. Also, medical recommendations issued on the same day as the injury or illness are likely to have been developed when signs and symptoms are in the same stage of development and same degree of severity. Likewise, recommendations issued on the same day as an injury or illness involving medical treatment would typically be considered contemporaneous. However, please keep in mind that once medical treatment is provided to an employee, the case must be recorded, and regardless of when it is made the employer may not consider a subsequent conflicting recommendation.


On the other hand, a medical recommendation provided during a year-end review of injuries and illnesses recordkeeping information would almost never be considered "contemporaneous." In such circumstances, the second physician or other licensed health care professional would be evaluating an injury or illness when signs or symptoms are not in the same stage of development, not in the same degree of severity, and in a different context for analysis. Again, the facts and circumstances surrounding a given injury or illness will determine whether differing medical recommendations may be considered contemporaneous.

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. Employer decisions regarding conflicting medical recommendations are likely to be accurate if such recommendations are contemporaneous.

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 Recordkeeping Section at (202) 693-1876.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluations and Analysis

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