• Standard Number: 1904.6; 1904.6(b)(3)

September 24, 2010

Ms. Sandra V. Ohlson
Boston Scientific Corporation
47900 Bayside Parkway
Fremont, CA 94538

Dear Ms. Ohlson:

Thank you for your September 24, 2010 letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide the public 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.

Scenario: Your letter states an employee experienced a work-related injury on June 12, 2009, as a chair he was attempting to sit on rolled away from him and he fell to the floor. He went to the Emergency Room and received a physical examination and X-ray; both of which were normal. The Emergency Room physician then discharged the employee and recommended modified duty. The employer was able to accommodate the restrictions since it did not impact his ability to do his normal job.

On June 22, 2009, the employee was seen by the employer's occupational medicine clinic and was released to full duty (no longer on modified duty). On June 26, 2009, the employee went to a chiropractor and was instructed to take days away from work. Finally, it is your opinion that the emergency room physician and occupational physician have more authoritative contemporaneous opinions due to having specialized training in occupational medicine.

Question: Can the employer rely on the first two medical opinions as more authoritative and not record the case as days away from work?

Response: OSHA's Frequently Asked Question (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?
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> 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 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.

Under OSHA's recordkeeping system, in order 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 signs or symptoms are in the same stage of development, same degree of severity, and can be viewed in a similar context for analysis. When there are contemporaneous conflicting recommendations from two or more physicians or LHCP's, an employer may choose to rely on the most authoritative opinion. The most authoritative opinion would be the best documented, the best reasoned, or the most persuasive.

Assuming the chiropractor is a Licensed Health Care Professional, the recommendation in your scenario occurred four days after the clinic physician's recommendation, and fourteen days after the emergency room physician's recommendation, the differing medical opinions are not contemporaneous. Under such circumstances, it is unlikely the injury was evaluated when the signs or symptoms are in the same stage of development, same degree of severity, or viewed in a similar context for analysis. The employee's work-related injury changed to a more serious outcome, and therefore must be recorded as days away from work beginning on June 26, 2009. This is consistent with OSHA's Letters of Interpretation dated April 3, 2007 (Orpha B. Thomas) and May 15, 2007 (David F. Coble).

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. Also, from time to time we update our guidance in responses to new information. To keep appraised of such developments, you can consult OSHA's website at http://www.osha.gov.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluation and Analysis