

OSH INFORMATION MEMORANDUM #80-X-48

TO: All OSH Directors, Supervisors and Industrial Hygienists

FROM: William M. Lybrand, Director of OSH

SUBJECT: Article IX, Section 9.01 F, Authorization of Review of Medical Opinions

DATE: January 12, 1981

PURPOSE

This memorandum designates appropriately qualified OSHA personnel to conduct reviews of medical opinions mandated by specific occupational safety and health standards where there is a need to gain access for enforcement purposes.

BACKGROUND

- a. OSHA Compliance personnel have unlimited access to conduct an examination of medical opinions that are mandated by specific occupational safety and health standards, solely in order to verify employer compliance with recordkeeping requirements (i.e., to determine that the medical opinions exist). See Article VI, Section 1910.20(c)(3) and Article IX, Section 9.01F.
- b. There may, however, be compliance needs for reviewing the content of and, if appropriate, copying—the medical opinions mandated by standards. For example, access to medical opinions could serve to determine whether an employer failed to take necessary corrective action recommended by a physician. Other potential needs to gain access to such medical opinions are illustrated in the Statutory Purpose and Need to Gain Access section of this memorandum.
- c. Article IX, Section 9.01F excluded from the rules of agency practice and procedure concerning OSHA access to employee medical records situations “where a written directive by the Commissioner of Labor authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standards, or of specific biological monitoring test results”.
- d. Thus, this instruction designates appropriately qualified field personnel to conduct reviews of medical opinions mandated by the specific standards set forth in the Specific Medical Information section of this memorandum where there is a need to gain access for enforcement purposes.

SPECIFIC MEDICAL INFORMATION.

This instruction designates the examination of the content of and if appropriate, copying of physician-written medical opinions mandated by the following standards:

- a. Respiratory Protection, Article VI, Section 1910.134(b)(10)
- b. Vinyl Chloride, Article VI, Section 1910.1017(k)(4)
- c. Inorganic Arsenic, Article VI, Section 1910.1018(n)(6)(i)
- d. Lead, Article VI, Section 1910.1025(j)(3)(v) and (k)(1)(ii)
- e. Coke Oven Emissions, Article VI, Section 1910.1029(j)(5)
- f. Cotton Dust, Article VI, Section 1910.1043(h)(5)
- g. 1, 2-Dibromo-3-chloropropane (DBCP), Article VI, Section 1910.1044(m)(5)
- h. Acrylonitrile, Article VI, Section 1910.1045(n)(6)
- i. Cotton dust in Cotton Gins, Article VI, Section 1910.1046(e)(6)

NOTE: The “medical opinion” is that information the employer is required to obtain pursuant to the specific provisions cited above for these standards.

QUALIFIED COMPLIANCE PERSONNEL

Review of the content of any medical information obtained or maintained pursuant to the standards named in the Specific Medical Information section of the memorandum, which is in personally identifiable form, shall be limited to OSHA field-qualified industrial hygienists or professionals with training in medical disciplines.

STATUTORY PURPOSE AND NEED TO GAIN ACCESS

- a. The purpose of obtaining access to this medical information is to assure safe and healthful working conditions for working men and women by providing an effective enforcement program for OSHA standards and the Occupational Safety and Health Act.
- b. The need to gain such access in specific circumstances could be indicated by the following considerations:
 - 1. Access to medical opinions could serve to determine whether an employer failed to take necessary corrective action recommended by a physician, such as medical removal or respiratory protection; or to inform employees of the recommended action required by the standards.
 - 2. Review of the content of employee medical opinions could be relevant to the type of enforcement action OSHA may initiate against an employer, or can serve as proof of the appropriateness of an enforcement action.
 - 3. Medical opinions could be highly relevant to imminent danger situations. Medical opinions could demonstrate that a particular employee, in light of that employee’s current health status, faces an imminent danger of morbidity or death from present working conditions.
 - 4. Access to medical opinions may be necessary to identify problem areas for physicians or other qualified OSHA personnel to review.

LIMITATIONS

- a. Before obtaining access to the medical information described in the Specific Medical Information section of this memorandum, it must be determined that there is a need to gain access for OSHA enforcement purposes other than for the limited enforcement needs illustrated in the Statutory Purpose and Need to Gain Access section of this memorandum will require a written access order (Article IX, Section 9.03) unless:
 1. Specific written consent of an employee is obtained pursuant to Article VI, Section 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information.
 2. An OSHA staff or contract physician consults with an employer's physician pursuant to Article IX, Section 9.03 D.2.
- b. Access to this medical information shall, if practicable, involve onsite review. A minimum of personally identifiable information shall be recorded for enforcement purposes and taken off-site.

SECURITY PROCEDURES

Whenever personally identifiable employee medical information is obtained pursuant to this memorandum and taken off-site, the Assistant Director/OSH Compliance shall:

- a. Promptly name a Principal OSHA Investigator to assure protection of this information.
- b. Assure that the personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of Article IX, Sections 9.07 thru 9.12.

EFFECTIVE DATE

This memorandum is effective upon receipt and will remain in effect until cancelled or superseded.