OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

PROGRAM DIRECTIVE

Program Directive A-266
Issued March 28, 2008
Revised February 11, 2009

SUBJECT: Oregon OSHA Access to Employee Medical Records.

POLICY (1):

(1) OR-OSHA access to employee medical records is, in certain circumstances, important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, OR-OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, personally identifiable employee medical information will be retained by OR-OSHA only as long as needed to accomplish the purpose for access. Records will be kept secure while being used, and not disclosed to other agencies or members of the public except in narrowly defined circumstances. This Directive establishes procedures to implement these policies.

Scope and application (2):

(2) Except as provided in subsections (2)(b) through (2)(e) below, this Directive applies to all requests by OR-OSHA personnel to obtain identifiable employee medical information, whether or not pursuant to the access provisions of 437-002-1910.1020.

(2)(a) For the purposes of this Directive, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(2)(b) This Directive does not apply to OR-OSHA access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This Directive does not apply to records required by ORS 654.120 and OAR 437-001-0700, to death certificates, or to employee exposure records, including biological monitoring records described by 437-002-1910.1020 or by specific occupational safety and health rules as exposure records. OR-OSHA compliance personnel are permitted access (for compliance

purposes) to biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., blood lead levels). These results are exposure records required by 437-002-1910.1020.

(2)(c) This Directive does not apply where OR-OSHA compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health rule, or with OAR 437-001-0700 An examination of this nature must be conducted onsite and, if requested, under the observation of the recordholder. The OR-OSHA compliance personnel must not record and take offsite any information from medical records other than documentation of the fact of compliance or noncompliance.

(2)(c)(A) OR-OSHA compliance personnel should verify employer compliance with medical recordkeeping requirements by interviewing employer and employee representatives, employees, and where appropriate, physicians.
(2)(c)(B) In addition, compliance officers may want to verify compliance by determining that appropriate medical records exist as required. Where medical records are used to verify compliance:

(2)(c)(B)(1) Documentation of noncompliance will contain only the employee's name and the violation, and not the specific medical information.
(2)(c)(B)(2) Documentation of compliance will consist of a statement attesting to a check of some of the records and compliance with the specific recordkeeping requirements.
(2)(c)(B)(3) No analysis is to be made of the medical content of the file. If copying or review of the content of the records is necessary, the Health Field Operations Manager must follow the procedures set forth in this Directive, e.g., appoint a principal OR-OSHA investigator (See Section (4)(c)).

(2)(d) This Directive does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(2)(e) This Directive does not apply where a written directive by the Health Field Operations Manager authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health rule, or of specific biological monitoring test results. This instruction authorizes appropriately qualified field personnel to conduct reviews of the tests named in (2)(e)(C)

of this instruction where the Health Field Operations Manager determines that there is a need to gain access for compliance purposes.

(2)(e)(A) This authorization applies where the tests are part of medical surveillance programs mandated by standards; or where a laboratory test is not mandated by a standard but is:

(2)(e)(A)(1) A recognized indicator of a worker's past and/or potential exposure to a toxic substance or harmful physical agent which is known to be present or is likely to be present (e.g., hippuric acid found in the urine due to exposure to toluene); or
(2)(e)(A)(2) A recognized indicator of an adverse health effect of that substance or agent (e.g., pulmonary function testing of workers exposed to silica).

(2)(e)(B) For the purposes of this instruction, "employee medical record" means any record concerning a current or former employee's health as it pertains to the laboratory tests specified in (2)(e)(C) of this Directive, and which is made or maintained by a physician, nurse, technician, or other health care personnel. This includes:

(2)(e)(B)(1) The results of the laboratory tests.
(2)(e)(B)(2) Control, certification, and standardization data used for the laboratory determinations and findings.

(2)(e)(C) Specific medical information. This Directive authorizes the examination of the content of and, if appropriate, the copying of employee medical records pertaining to the following:

- Pulmonary function tests.
- Audiograms.
- Blood Urea Nitrogen (BUN).
- Serum creatinine.
- Complete blood count with differential and description of peripheral smear.
- Serum electrolytes.
- Serum calcium.
- Serum phosphorus.
- Lactic dehydrogenase (LDH).
- Creatine phosphokinase (CPK).
- Serum glutamic-oxaloacetic transaminase (SGOT).
- Serum glutamic-pyruvic transaminase (SGPT).
- Urinalysis, including test for hematuria, glucosuria, proteinuria, ketonuria, and microscopic examination of urine.
- Zinc protoporphyrin test.

- Erythrocyte and plasma cholinesterase assays.
- Metabolites found in urine when a specific exposure is identified or postulated.
- Metabolites found in blood when a specific exposure is identified or postulated.
- Radiologists' interpretations of employee X-rays.
- Erythrocyte sedimentation rate.
- Platelet count.
- Serum bilirubin.
- Urine and sputum cytology reports.
- Serum triglycerides.
- Serum cholesterol.

(2)(e)(D) Qualified Compliance Personnel. Review of the results of any medical tests named in (2)(e)(C) of this instruction which are in personally identifiable form are limited to:

(2)(e)(D)(1) OR-OSHA field-qualified industrial hygienists, including the health enforcement managers, as determined by the Health Field Operations Manager.
(2)(e)(D)(2) OR-OSHA accident investigators and/or safety staff, as determined by the Health Field Operations Manager.
(2)(e)(D)(3) Professionals with specific training or experience in medical disciplines if licensed by the state of Oregon.

Compliance procedures (3):

(3) Review of the medical information named in (2)(e)(C) of this instruction could be relevant to the type of enforcement action OR-OSHA may initiate against an employer, or could serve as evidence of the appropriateness of an enforcement action. The following considerations are among those which could indicate the need to gain access to such personally identifiable employee medical information:

(3)(a) To document employer knowledge by establishing that the records show a pattern of disease.

(3)(b) To provide evidence that the employer willfully violated an OR-OSHA standard.

(3)(c) To provide supporting evidence that a "general duty clause" violation occurred.

(3)(d) To document inadequate management of employees found to have evidence of adverse health effects. For example, to document that workers

were not adequately notified of abnormal laboratory values or that appropriate follow-up protective measures were not taken.
(3)(e) To verify compliance during follow-up inspections.

(3)(f) A determination must also be made that:

(3)(f)(A) An employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (e.g., inhalation, ingestion, skin contact or absorption, etc.). This determination of the employee's exposure includes both past or potential exposure.
(3)(f)(B) The laboratory test is a recognized indicator of this employee's past and/or potential exposure to a toxic substance or harmful physical agent, or recognized indicator of an adverse health effect of such an exposure. This can be derived from a variety of sources, including recognized textbooks in the fields of industrial hygiene, medicine and toxicology, federal publications, and technical journals.

(3)(g) This does not authorize the compliance officer to examine records for the purpose of identifying trends of illnesses which are not directly related to the recognized adverse effects of specific substances or agents.

(3)(h) Access to medical information named in 2(e)(C) of this instruction must, if practicable, involve onsite review. A minimum of personally identifiable information must be recorded for enforcement purposes and taken offsite.

(3)(i) Compliance personnel must use, if available, the normal ranges for the laboratory conducting the test, or normal values established in accepted medical texts.

(3)(j) When an abnormality is identified, the compliance officer must investigate the abnormality through one or more of the following mechanisms:

(3)(j)(A) Consult with the examining physician or health care personnel in charge of, or who has access to, employee medical records. If, based on this consultation, the compliance officer determines that no further investigation is necessary, documentation must be made in the file of:

(3)(j)(A)(1) Whose records and which tests were examined.
(3)(j)(A)(2) The rationale for examining those tests.
(3)(j)(A)(3) All abnormalities found (without personally identifiable information).
(3)(j)(A)(4) What procedures were followed.

NOTE: Personally identifiable information must be removed from all other field notes concerning these test results once a decision has been made that no further action is necessary.

(3)(j)(B) If the procedure described in (3)(j)(A) above was not followed, or it was followed but no satisfactory response was given, the Health Field Operations Manager must contact the Administrator.

(3)(k) When abnormalities have been satisfactorily explained by the employer's physician, the compliance officer must investigate whether the physician notified the employee of the results.

(3)(l) OR-OSHA compliance officers have the responsibility to maintain the confidentiality of all medical information and records.

(3)(l)(A) The compliance officer must not discuss any of the information found in the records which is or could be identified with specific individuals, with any employer or employee representatives, except the physician or health care personnel in charge of or who has access to employee medical records. This restriction applies even in situations where such medical information may be known to those (or other) individuals.
(3)(l)(B) The compliance officer is authorized to reveal the following information to an employee whose medical record has been looked at:

(3)(l)(B)(1) The laboratory test examined.
(3)(l)(B)(2) The rationale for examining that test.
(3)(l)(B)(3) The normal ranges used and where these ranges were derived.
(3)(l)(B)(4) The numerical test result if known by the compliance officer.

NOTE: (1) Under no circumstance should the compliance officer attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc. These judgments can be made in view of the total medical record and only by an examining physician. If the employee wants clarification, they must be referred to a physician for any discussion of test results.

(2) The compliance officer must not reexamine the medical records solely to inform an employee of their test results.

(3)(m) Security Procedures. Whenever personally identifiable employee medical information is obtained pursuant to this instruction and taken offsite, the Health Field Operations Manager must insure that the compliance officer follows the security procedures outlined in section (6) and (7).

(3)(n) Citations.

(3)(n)(A) If abnormalities have been detected and the employee has not been notified, the compliance officer must consult with the Health Field Operations Manager before issuing a citation.
(3)(n)(B) Documentation to support a citation must include personally identifiable information. However, this information must *not* be disclosed on the citation.
(3)(n)(C) Even if not covered by the terms of this Directive, all medically related information reported in a personally identifiable form must be handled with appropriate discretion and care befitting all information concerning specific employees.

Responsibilities (4):

Health Field Operations Manager (4)(a) The Health Field Operations Manager, or their designee such as the Health Enforcement Manager, is responsible for the overall administration and implementation of the procedures contained in this Directive, including making final OR-OSHA determinations concerning:

(4)(a)(A) Access to personally identifiable employee medical information (Section (4)(c), (4)(d), and (4)(e)).
(4)(a)(B) Interagency transfer or public disclosure of personally identifiable employee medical information (Section (9)).

OR-OSHA (4)(b) The Health Field Operations Manager is the OR-OSHA Medical Records Officer. The OR-OSHA Medical Records Officer, or their designee, is responsible for:

(4)(b)(A) The approval or denial to seek medical releases (Section (4)(c)).
(4)(b)(B) Assuring that medical releases meet the requirements of this Directive.
(4)(b)(C) Responding to employee, collective bargaining agent, and employer objections concerning medical releases.
(4)(b)(D) Regulating the use of direct personal identifiers (Section (4)(c)(G)).
(4)(b)(E) Regulating internal agency use and security of personally identifiable employee medical information (Section (5) through (9)).
(4)(b)(F) Assuring that the results of agency analysis of personally identifiable medical information are, where appropriate, communicated to employees (Section (8)(a)).
(4)(b)(G) Preparing an annual report of OR-OSHA's experience under this Directive (Section (8)(b)).
(4)(b)(H) Assuring that advance notice is given of intended interagency transfers or public disclosures (Section (9)).

Principal OR-OSHA Investigator (POI) (4)(c) The Principal OR-OSHA Investigator is the OR-OSHA employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by the requirements of this Directive.

(4)(c)(A) The Principal OR-OSHA Investigator determines the need of personally identifiable medical information.
(4)(c)(B) The POI requests permission from the Health Enforcement Manager to seek personally identifiable medical information via a medical release form.
(4)(c)(C) Upon receiving permission, the POI prepares the medical release form, which is available in English and Spanish (See Appendix A). Most health care facilities will require that the English release be signed, so the POI should obtain signatures on both for Spanish speaking employees.
(4)(c)(D) The POI takes the prepared medical release(s) to the employee, parent/guardian, or next of kin for whom the personally identifiable medical information is needed. The POI explains why the information is necessary, and obtains a signature.
(4)(c)(E) The POI makes a copy of the signed release, and takes the original to the health care facility, or record holder, to obtain the personally identifiable medical record.

(4)(c)(E)(1) If a copy of the record is necessary to substantiate a violation, after receiving permission from the Health Enforcement Manager, the POI makes a copy of the record. Copying of medical records must be done in accordance with this Directive.
(4)(c)(E)(2) All copies of medical records must be marked "confidential – medical record", and placed in a separate confidential envelope.
(4)(c)(E)(3) All confidential personally identifiable medical records must be segregated from other agency files. When not in active use, files containing this information must be kept secured in a locked cabinet.

(4)(c)(F) If the employee, parent/guardian, or next of kin for whom the medical record is sought refuses to sign the medical release, the POI must discuss options with the Health Enforcement Manager, which would include seeking advice from the Department of Justice on how to proceed.

(4)(c)(G) Whenever employee medical information obtained pursuant to a medical release is taken offsite with direct personal identifiers included, the Principal OR-OSHA Investigator must, unless otherwise authorized by the OR-OSHA Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical

code must thereafter be used and kept secured as though still in a directly identifiable form. The Principal OR-OSHA Investigator must also hand deliver or mail the list of indirect personal identifiers with their corresponding numerical codes to the OR-OSHA Medical Records Officer. The OR-OSHA Medical Records Officer must thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

Health Enforcement Manager (4)(d) Medical releases

(4)(d)(A) Requirement for medical release. Each request by an OR-OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder must be made pursuant to a medical release which has been approved by the Health Enforcement Manager and signed by the affected employee, their parent/guardian, or next of kin.
(4)(d)(B) The Health Enforcement Manager will ensure that the requirements of this Directive are followed.
(4)(d)(C) The Health Enforcement Manager will ensure that the need of the personally identifiable medical record is valid and necessary to complete the investigation.
(4)(d)(D) The Health Enforcement Manager will review and approve the prepared medical release prior to the POI obtaining the employee, parent/guardian, or next of kin signature.
(4)(d)(E) The Health Enforcement Manager will ensure that personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access.
(4)(d)(F) The Health Enforcement Manager will ensure that personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

Internal agency use of personally identifiable employee medical information (5):

(5)(a) The Principal OR-OSHA Investigator must in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this Directive.

(5)(b) The Principal OR-OSHA Investigator, the OR-OSHA Medical Records Officer, and any other authorized person, may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OR-OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(5)(c) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Legal Section of Workers' Compensation Department, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(5)(d) OR-OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific medical release of an employee is obtained as to a secondary purpose, or the procedures of Sections (4)(c) and (4)(d) of this Directive are repeated with respect to the secondary purpose.

(5)(e) Whenever practicable, the explanation of personally identifiable employee medical information shall be performed onsite with a minimum of medical information taken offsite in a personally identifiable form.

Security procedures (6):

(6)(a) Agency files containing personally identifiable employee medical information must be segregated from other agency files. When not in active use, files containing this information must be kept secured in a locked cabinet.

(6)(b) The OR-OSHA Medical Records Officer must maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(6)(c) The photocopying or other duplication of personally identifiable employee medical information must be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(6)(d) The protective measures established by this Directive apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(6)(e) Intra-agency transfers of personally identifiable employee medical information must be by hand delivery, United States mail, or equally protective means. Intra-office mailing channels may not be used.

Retention and destruction of records (7):

(7)(a) Consistent with OR-OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers must be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(7)(b) Personally identifiable employee medical information which is currently not being used actively, but may be needed for future use, must be transferred to the OR-OSHA Medical Records Officer. The OR-OSHA Medical Records Officer must conduct an annual review of all centrally held information to determine which information is no longer needed for the purposes for which it was obtained.

Agency analysis (8):

(8)(a) The OR-OSHA Medical Records Officer must assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(8)(b) The OR-OSHA Medical Records Officer must on an annual basis review OR-OSHA's experience under this Directive during the previous year, and prepare a report. This report must discuss:

(8)(b)(A) The number of medical releases approved and a summary of the purposes for access.
(8)(b)(B) The nature and disposition of requests for interagency transfer or public disclosure of personally identifiable employee medical information.

Interagency transfer and public disclosure (9):

(9)(a) Personally identifiable employee medical information must not be transferred to another agency or office outside of OR-OSHA (other than to the Legal Section of Workers' Compensation Department or the Oregon Department of Justice) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Administrator.

(9)(b) Except as provided in subsection (9)(c) below, the Administrator must not approve a request for an interagency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

(9)(b)(A) Needs the requested information in a personally identifiable form for a substantial public health purpose.
(9)(b)(B) Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment.
(9)(b)(C) Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this Directive.
(9)(b)(D) Satisfies an exemption to the Privacy Act, to the extent that the Privacy Act applies to the requested information.

(9)(c) Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

(9)(c)(A) The National Institute for Occupational Safety and Health (NIOSH).
(9)(c)(B) The Department of Justice and the Workers' Compensation Department Legal Section when necessary with respect to a specific action under the Oregon Safe Employment Act and/or Occupational Safety and Health Act.

(9)(d) The Administrator must not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

(9)(e) The Administrator must not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy (see 5U.S.C. 552a(b); 29 CFR 70a.3).

(9)(f) Except as to interagency transfers to NIOSH, the Department of Justice, or the Workers' Compensation Department's Legal Section, the Administrator or OR-OSHA Medical Records Officer must assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that OR-OSHA intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the OR-OSHA Medical Records Officer must take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers.

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APPENDIX A
OR-OSHA MEDICAL RELEASE FORM

Authorization letter for the release of employee medical record information to a designated representative

I, _____, (full name of worker/patient) hereby authorize _____ (individual or organization holding the medical records) to release to _____ (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

_____
_____
_____
_____
(Describe generally the information desired to be released)

I give my permission for this medical information to be used for the following purpose:

_____
_____
_____

but I do not give permission for any other use or re-disclosure of this information.

Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.

_____
_____
_____
_____
_____
_____
_____
_____

_____
Full name of Employee or Legal Representative

_____
Signature of Employee or Legal Representative

_____
Date of Signature

Subject: Release of Personal Medical Records for:

Sujeto: Permiso de publicación de anotación médico para:

Name (nombre): _____

Date of Birth (fecha de nacio): _____

Social Security Number (numero de seguridad social): _____

Date(s) of treatment/admission: (fecha(s) del tratamiento o admisión):
_____

The Oregon Occupational Safety and Health Division (OR-OSHA) needs further information in order to assist in its investigations of _____(company name). To this end, I, _____(name), hereby authorize _____(hospital name) and _____ (employer/company name) to release to OR-OSHA the following information from my personal and medical records:

El division de Oregon Occupational Safety and Health (OR-OSHA) necesita información adicional, para asistir en la investigación de _____(nombre de la compania). Entonces, yo, _____(nombre), autorizo _____(nombre del hospital) y _____(nombre del compania) permitir la publicación a OR-OSHA la información siguiente, de mi anotación médico y personal:

List specific records/tests/information requested:

Lista los examenes/papeles/información specificos les gusta:

I give my permission for this medical information to be used to complete the inspection/investigation of _____(incident/company name), but I do not give permission for any other use or re-disclosure of the information.

Doy mi permisión usar este información médico, completar la inspección/investigación de _____(incidente o nombre de la compania), pero no doy mi permisión para razónes otros o para divulgar de la información.

Signature: _____
Date: _____

Firma: _____
Fecha: _____

NOTE: If you wish to place additional restrictions on this authorization letter, several lines have been provided for your use. You have the option to leave these lines blank or you can 1) stipulate an expiration date for this letter (if less than one year); 2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or 3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.

NOTA: Si, quiere poner restricciónes adicionales adentro esta carta de autorización, usa las lineas siguientes. Tiene la opciónes, salir las lineas blancos o puede 1.) Dar una fecha de expiración para esta carta (si, menos un año) 2.) Describir información médico creará que quiere incluir en esta carta. 3.) Describir los secciónes/partes de su anotación médico personal, no le destino divulgar como un resultado de esta carta.

Your cooperation during the course of this investigation is greatly appreciated. If you have any questions, please contact me.

Muchas gracias para su cooperación durnate la investigación. Si, tiene algunas preguntas, porfavor, llamame.