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from the desk of

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September 22, 1978

Docket Officer
Docket No. H112, Room S-6212
U.S. Department of Labor
Third Street & Constitution Ave., N.W.
Washington, D.C. 20210

Dear Sir:

The proposed rule of the Occupational Safety and Health Administration entitled "Access to Employee Exposure and Medical Records" published in the Federal Register, Volume 43, No. 141, July 21, 1978, requests comments regarding the proposed rule.

The specialists in occupational medicine have followed the principle that the employee has a right to know and understand the hazards of his job and he should have access to data which describes his exposures. The interpretation of this data should also be furnished to the employee. His medical record, however, is kept confidential in industry and the only information furnished to the employer is the worker's fitness for work. The employee's medical record has been available to the worker's physician and it should also be available to government medical personnel. We must protect the privacy of the worker while we protect his health and at the same time promote further ethical scientific medical studies regarding his work experience.

The summary (page 31371) states the employees have a right to know about their exposures to workplace hazards and the effects of such exposure. There can be no question but that the employee should have this information but the question does arise as to how best he should get this information. The ethical code of the AOMA clearly outlines the physician's responsibility to know and to inform the employee (principles 7 & 8). There is, therefore, no question but that the employee should have access to industrial hygiene data but for medical data, can he learn more than the physician can tell him and should tell him? The only possible reason for the employee to look at his medical record would be that the employee could learn more than the physician can or will tell him--this is an unlikely possibility and much more likely would be

misinterpretations of the medical record, misinterpretations which will be misleading, possibly threatening to the employee where there is no threat, and access to partial information which is only confusing.

Therefore, if the physician does his job the worker will know significant observations. If the physician does not do his job, the medical record will not be worth reading.

The summary also states that the medical record should be made available to the employee's representatives and OSHA and NIOSH. The ethical code of the AOMA clearly states that the medical records should be made available to the employee's physician at the employee's request (principle No. 7). This is already the active practice of occupational medicine. It is difficult to understand how other than the employee's physician could correctly interpret the medical record. There is the oft-cited question of conflict of interest by the occupational physician (though this possibility is also covered in the code of ethics, principle No. 5). If OSHA has a genuine interest in the health of the employee, the medical record could be made available to him by the employee's personal physician. This personal physician will recognize and protect the employee's sensitive records as necessary. An employee who designates a "representative" to have access to his medical records has not been informed of his rights nor does he understand the possible implications of the release of medical information to non-medical representatives. To release medical records directly to non-medical representatives does no service to the employee.

The release of medical information to NIOSH and OSHA can be required for scientific investigations and principles 10 and 11 of the ethical code would require that this be done. However, to have other than physicians have access to the medical information violates the principle of protection of privacy to the employee. This should be the concern of OSHA as well as being the concern of the occupational medicine specialists. The extraction of specially recorded data from medical records can be done by non-medical specialists if specific data has been recorded for general use. Such information would include blood lead, liver profiles for vinyl chloride or other such laboratory data. However, when there is a need to extract data from medical records where specific information has not been required, this extraction requires medical judgment. In addition, only medical representatives can be required to abide by the ethical guidelines of medicine which require the protection of the privacy of the individual. To simply remove the name from the chart can protect the privacy of the individual but such a procedure makes follow-up in such procedures impossible. In most studies some follow-up is necessary.

It is our position that the occupational medicine specialist has a responsibility to protect the privacy of the worker. He has recognized the need of furnishing these records to the employee's personal physician who also will want to protect the privacy of the worker. This personal physician can pass along the non-sensitive records to the employee's non-medical representative. NIOSH and OSHA should use only physicians in their search of employee records. If this scientific study is not worth physician time, the study probably is not worth doing. If other than a physician reviews the record, the employee's privacy is in jeopardy.

Background and legal authority: Occupational Medicine recognizes the right of the employee to know the hazards of the workplace. This section implies the employee will find additional information regarding the hazards of the workplace from the medical records and that he will understand these hazards by reading medical records. Occupational medicine specialists insist that pertinent medical information will be provided to the employee. It is further the responsibility of all physicians to furnish pertinent information to their patients. This section states the legal authority for the employee to have access to medical records and cites Section 8; the implication is that medical records are records of exposure but it is our impression that these medical records are not records of exposure. In addition, since Section 8 and this proposed regulation recognize that medical records do not need to be maintained, it is quite apparent that they accept that medical records are not records of exposure.

Discussion of the proposed role, scope and application (page 31372): This section deals with the recognition that much of the medical record is not related to workers exposure or to occupational medicine. This writeup does not recognize or discuss the importance of the medical record in the practice of occupational medicine.

a) It must be recognized that the major proportion of the medical record deals with personal health and is not in any way occupationally related, though it does impact on the worker's health and his fitness for work. This proposal should not lead to a significant curtailment of any portion of the medical record if the employee's health is really of paramount importance. There is the real possibility that the patient/doctor relationship will be affected and the record will be curtailed if the regulation is enforced as written.

b) The medical record is both a medical worksheet and a recording of findings. If this record becomes public record there will be of necessity a definite curtailment of the recording of impressions or use of the medical record as a worksheet. Each and every professional, as well as the medical professional, has worksheets he uses to reach conclusions but he certainly would not want all of his worksheets to become public information. Similarly, the physician does not want his every impression to become public record. If they are easily accessible to the public, he will restrict the record to only limited objective findings on the employee. This would be a misuse of the professional's expertise and a disservice to the employee.

c) Since part of the medical record is occupational and part non-occupational, the occupational record could be separated from the non-occupational record. If this approach were utilized, the occupational record could be easily separated from the non-occupational and the sensitive parts of the record need not be made public. Such an approach could be useful in all future medical records but the historical records already recorded and the subject of this proposed regulation could not be separated.

Sincerely,

George Roush Jr., M.D.
Director
Department of Medicine and Environmental Health

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E. STEELE

RUSH TELEX TO FOLLOWING-

G M ELLSWORTH - SPRINGFIELD
R V SUIZ - TEXAS CITY

MP AND P-S INTERIM STATEMENT TO ANSWER PRESS INQUIRIES CONCERNING MONSANTO-S REACTION TO THE DEPARTMENT OF LABOR VINYL CHLORIDE GAS STANDARDS IS AS FOLLOWS - QUOTE. WE HAVE NOT SEEN THE ACTUAL RULING BY THE DEPARTMENT OF LABOR. HOWEVER BASED ON NEWSPAPER REPORTS CONCERNING THE VINYL CHLORIDE GAS STANDARDS WE DO NOT KNOW AT THIS TIME HOW WE CAN MEET THE STANDARDS AS CURRENTLY REPORTED BY THE NEWS MEDIA. UNQUOTE.

JOHN SPANO ST LOUIS PM

May 27, 1977

Acrylonitrile Process Design

J.T.G. to A.W.A. 5/24/77

J. T. Garrett - A2SG

A. W. Andrews - F4EA
G. L. Bratsch - F2WA
D. E. Cayard - C2ND
O. DeGarmo - A2SA
N. B. Galluzzo - E3SH
H. Hamme - 1690
H. M. Keating - E1SA
J. E. Lipe - 1690
R. L. Miller - F2WA
R. S. Nelson - B2NA
M. Pierle - E1SA
G. Roush - A2SA
F. L. Turner - C2SF

In your above referenced memorandum to Al Andrews you implied the possibility that OSHA might, in the not too distant future, propose an exposure standard for acrylonitrile at levels which have been established by OSHA for vinyl chloride and benzene. This memorandum is to clarify the existing situation with respect to OSHA vinyl chloride and benzene standards.

The vinyl chloride standard has been in existence for over two years. An order by OSHA establishing an emergency temporary standard (ETS) for benzene, which was to have been effective May 21, 1977, has been stayed by the Fifth Circuit Court of Appeals pending a hearing now scheduled for June 6, 1977. A permanent benzene standard was proposed by OSHA in the May 27, 1977 issue of the Federal Register. This permanent standard will not become effective until required procedures (hearings, etc.) have been followed. Thus, no benzene standard is presently in effect.

Although the wording in the vinyl chloride standard is slightly ambiguous, each of the three standards (vinyl chloride, ETS benzene, permanent benzene) allows a maximum employe exposure of 1 ppm as an 8 hour time-weighted average and 5 ppm averaged over any 15 minute period. This latter portion of the standards allows excursions in excess of 1 ppm so long as the average concentration over any 15 minute period is not in excess of 5 ppm. Very brief excursions in excess of 5 ppm are, therefore, allowed so long as the average concentration over a 15 minute period does not exceed 5 ppm and the 8 hour time-weighted average does not exceed 1 ppm.

Phocion S. Park

jf