

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



DEC 15 1981

Julia L. Phillips, Esq.
Environment Division, Legal Department
E. I. DuPont de Nemours & Company
Wilmington, Delaware 19898

Dear Ms. Phillips:

I am writing in response to your letter concerning the examination and copying of x-rays under the OSHA records access rule, 29 CFR 1910.20. OSHA has concluded that the DuPont policy providing on-site examination of the original x-ray in lieu of providing a free copy of the x-ray is permitted under the rule. We arrive at this conclusion, however, based on a somewhat different reasoning than suggested in your letter.

In our view, original x-rays are clearly part of an employee's medical record. The definition of "employee medical record" includes "the results of medical examinations . . . and laboratory tests (including x-ray examinations. . .)" 29 CFR 1910.20 (c)(6)(i)(B). OSHA considers the x-ray itself, in addition to the written description, to be the result of an x-ray examination. The fact that the definition of "record," 29 CFR 1910.20(c)(9), includes "x-ray film," and the rule requires x-rays to be kept in their original state, 29 CFR 1910.20(d)(2), makes clear that original x-rays are considered to be part of the employee's medical record. Furthermore, x-rays are not considered to be physical specimens, which fall outside the definition of "employee medical record" to the extent they are "routinely discarded as a part of normal medical practice and not required to be maintained by other legal requirements." 29 CFR 1910.20(6)(ii)(A).

OSHA required that x-rays be kept in their original state because it concluded that with currently available technology "appreciable detail is clearly lost when an original film is microfilmed or otherwise copied." (45 FR 35271). This is in contrast to other parts of the medical record, which may be kept in any form. Since only the original x-ray can satisfy the requirement to maintain the medical record for the preservation period, only the original x-ray, in addition to any radiologist's report, must be made available upon request to an employee or designated representative.

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This means that the employer must at least permit on-site examination of the x-ray if it is not willing to loan the original out for any period of time. While an employee would normally designate a physician with the appropriate training to conduct the examination, and the employer may so recommend, the employer cannot preclude an employee or another authorized designated representative from examining the x-ray. The employer, however, may make its physician available for consulting or guidance in the interpretation of the x-ray.

Under 29 CFR 1910.20(e)(1)(ii), the employer is normally required to provide the employee a copy of the record, or the necessary mechanical copying facilities to enable the employee or designated representative to copy the record, or to loan the record to enable the employee or designated representative to copy the record. In the case of x-rays, however, a copy is not interchangeable with the original. Moreover, few employers will have the specialized equipment necessary for the copying of x-rays, which is a costlier and more complicated process than ordinary photocopying. It is our interpretation, therefore, that the copying provisions of the records access rule are intended to apply to the parts of the employee medical record which can be photocopied on the typical office copying machine, and not to x-rays.

Finally, if on-site examination of the x-ray is impractical or infeasible (e.g. the employee's physician is far from the geographic location of the x-ray), we agree that the employer should make suitable arrangements for making the x-ray available. For example, the temporary transfer of original x-rays from one physician to another is accepted practice under many clinical circumstances. These arrangements, including the question of cost, are a matter for the parties to work out between themselves.

I hope that this interpretation satisfactorily answers your inquiry. While this stands as our interpretation of the existing standard, it should be added that the issue of x-ray micro-filming and access to x-rays will be reviewed as part of our general reconsideration of the standard. A copy of this response letter will be sent to our field offices to be used as a guide to enforcement of this rule.

Sincerely,


Mark D. Cowan
Deputy Assistant Secretary
for Occupational Safety and Health

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