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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Envelope from American Dental Association addressed to Carol Rasco (1 page)	Sep 14, 1993	b(7)(C), b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
OA/Box Number: 7349

FOLDER TITLE:
ADA - American Dental Association

2013-0968-S
sb55

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

ADA - American Dental Assn.

DATE: September 3, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: Follow-up on your meeting with the American Dental Association

I talked with the folks from Occupational Safety and Health Administration (OSHA) this morning about the OSHA bloodborn pathogens standards that the American Dental Association (ADA) met with you about on August 16. Since that meeting, representatives from ADA met with OSHA last Friday (August 27) to discuss this issue in detail. The session apparently went quite well, with OSHA and ADA agreeing on some issues, and identifying others for further study. They left the meeting agreeing that OSHA will get back to ADA on the unresolved issues when they issue their report on the subject to Congress in the very near future (the 1993 House Labor Appropriations Report directed OSHA to reexamine the bloodborn pathogens standard). Privately, I was told by OSHA that the report will probably wait to come out until the new head of OSHA is approved (hopefully in the next few weeks).

How else can I help you on this? I can get as much background information on this issue as you want (I'm sure that OSHA bloodborn pathogen standards would make real interesting reading!). As always, call me if I can do anything else.

This all sounds very good - I think we can sit & wait for the moment.

Thanks -
CR

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Mike Schmidt — fyi

ADA

September 16, 1993

Ms. Carol H. Rasco
Assistant to the President for
Domestic Policy
Executive Office of the President
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Carol:

I wanted to bring you up-to-date on the issues we discussed when we met with you last month. Attached is a copy of a letter we sent to David Zeigler on the OSHA Bloodborne Pathogens Standard.

We support the President's interest in streamlining government and reducing unnecessary regulations, and believe that our recommendation for clarifications and changes to the Standard make good sense.

I'm also including a letter I sent to Ken Thorpe on the ADA's definition of preventive services. We think that the Administration should focus its efforts with regard to oral health benefits for the population that needs it most, regardless of age.

Again, thanks for meeting with us and for your interest in the ADA's position on these important issues.

Sincerely,

Dorothy J. Moss

Dorothy J. Moss
Associate Executive Director

Enclosures

DJM:lej

American
Dental
Association

Washington Office

ADA

September 10, 1993

Mr. David C. Zeigler
Acting Assistant Secretary
Occupational Safety and Health Administration
200 Constitution Avenue, N.W., Room S2315
Washington, D.C. 20210

Dear Mr. Zeigler:

Thank you for meeting with us on August 27 about the Bloodborne Pathogens Standard and the prevention of tuberculosis (TB) transmission. The Association appreciates the spirit of cooperation exhibited by your office in giving us an opportunity to discuss the TB issue in the future if OSHA considers expansion of its activities beyond their current scope.

During our meeting, we promised to provide you with a summary of the specific actions the Association is requesting OSHA to take with regard to the six concerns about the Bloodborne Pathogens Standard listed in the House Appropriations Committee Report. Enclosed is that summary, which is based on the two substantive meetings the ADA had with OSHA, as well as the exchanges of correspondence between the two organizations. Several of the changes we propose might require changes in the standard. However, most could probably be achieved through interpretation and clarification of the existing Standard.

We again want to stress that dentists are usually in the office alongside their employees when patients are being treated, and thus have the same risk of infection as do their employees. The result is that dentists as employers have a strong interest in providing a safe workplace. The Association shares OSHA's concern that whatever regulations are promulgated will provide adequate protection for employees without imposing undue burdens on employers.

Thank you again for your assistance.

Sincerely,

Dorothy J. Moss
Director, Washington Office

DJM:CK:chf
Enclosure

bcc: Dr. John S. Zapp, executive director
Division Directors
Jerome B. Herb, deputy executive director
Dr. James Bramson
Dr. Cliff Whall
Kathleen Todd
Carole Kolstad
Skip Wheat
Judy Pulice

THE BLOODBORNE PATHOGENS STANDARD
SUMMARY OF THE ADA'S REQUESTS FOR ACTION OR CLARIFICATION

1. **Whether Saliva in Dental Procedures is Universally Classified as an Other Potentially Infectious Material**

ADA Position - The OSHA standard treats saliva differently in dental offices than in physicians' offices or any other healthcare setting on the assumption (based on CDC advice) that saliva in dental procedures usually contains blood. However, there are many dental procedures in which bleeding is rarely, if ever, produced. The list of those procedures was enclosed with our August 25 letter to you. As you can see, the list was approved by the Director of the Oral Health Division of CDC as being procedures that are unlikely to cause bleeding.

ADA Recommendation - State that PPE, other than gloves, does not need to be used in oral procedures that are unlikely to cause bleeding, unless bleeding unexpectedly occurs. List these procedures.

2. **The Issue of Interference With the Dentist's Ability to Exercise Professional Judgment with Regard to Patient Care**

ADA Position - The blanket requirement for the use of "appropriate" PPE plus the requirement that procedures always be performed to minimize splashing and spraying conflicts with the dentist's ethical and legal obligation to put the patient's welfare first. Please refer to the list of examples of procedures in which PPE interferes with patient care, provided to you at the August 27 meeting.

ADA Recommendation - Clarify that PPE need not be worn by dental care workers in situations where, in the dentist's professional judgment, use of PPE is infeasible in order to provide appropriate patient care. List the circumstances where the use of PPE will be deemed infeasible. Create the same type of clarification for procedures involving splashing and spraying.

3. **The Use and Laundry of Personal Protective Equipment**

ADA Position - While the ADA understands the need for special laundry requirements in a hospital where bloody linens and sharps are present, the laundry requirement has no scientific justification as applied to dental office gowns, which in most cases are only lightly soiled with saliva, and which do not contain sharps. The CDC has

confirmed that contaminated laundry has not been implicated in the transmission of hepatitis B virus (HBV) or human immunodeficiency virus (HIV). The CDC has also advised us that employees who receive a full series of HBV vaccine and respond with adequate antibody are protected from HBV infection found in laundry or any other source. Since scientific research indicates that HIV is not transmitted by saliva, and since all dental staff must be offered HBV vaccine, it follows that the overwhelming majority of dental workers cannot become infected with either disease by saliva only. As a result, there is no scientific justification for requiring special laundry handling with regard to dental gowns in order to protect employees. Dental workers who have chosen not to be immunized can be prohibited from handling contaminated laundry.

In addition, some dentists have found it infeasible to launder gowns either on-site or via a commercial laundry service, and have been forced to use the much more expensive option of disposable gowns.

ADA Recommendation - Exempt dental offices from the laundry requirement. Alternatively, state that in dental offices only gowns that are visibly soiled with blood are subject to the laundry requirement.

4. **The Medical Records Requirement**

ADA Position - Very small employers find the requirements for record retention (duration of employment plus 30 years) and confidentiality extremely difficult, if not impossible, to comply with. They risk violations of confidentiality if they keep the records on-site, but if they contract with a third party to maintain the records off-site, they risk liability if the third party fails to keep the records confidential, make them available to OSHA or retain them for the required length of time. For our position on the legal defense of reasonable diligence, please refer to the discussion in paragraph 6. In addition, because of the high turnover rate of dental hygienists and assistants, storage space can become a major problem in small offices over the course of 30 plus years.

ADA Recommendation - Place the duty for maintaining the medical record on the healthcare professional caring for the employee, not on the employer. In the alternative, OSHA could require employees in private dental offices to maintain their own medical records and carry them with

them when they move to a new position. Another option would be to allow the employer to forward the record to an entity such as the state labor or public health department or CDC every five years or so, so that the employer is only responsible for maintaining the most recent record.

If OSHA decides on an option that continues to impose the duty on the employer, the ADA asks OSHA to clarify that an employer who contracts with a responsible third party to maintain employee medical records is not responsible for violations of the third party as long as the employer exercises reasonable diligence. State that reasonable diligence will be presumed (and no citation will issue) if there is a written contract that requires the third party to comply with OSHA requirements or, in the absence of a written contract, if the employer provides the third party with a copy of the standard.

5. **The Need for a Medical Opinion on the Necessity of Administering HBV Vaccine**

ADA Position - The Association objects to the expense and time involved in obtaining a written opinion from the healthcare professional stating that hepatitis B vaccination is indicated for the employee in cases where the vaccine was, in fact, administered. No healthcare professional would, consistent with the standard of care, administer HBV vaccine without first evaluating the employee to determine whether vaccination was indicated. The fact that hepatitis B vaccination was indicated can reasonably be inferred from the fact that the vaccine was administered. There is no need for the healthcare professional to explicitly state that vaccination was indicated.

ADA Recommendation - Provide that a copy of the professional fee statement is an acceptable medical opinion, provided that it clearly states that the vaccine was administered to the employee. This version of the change is what we understood OSHA staff to agree to verbally at the meeting.

However, the enclosure to the written letter from Roger Clark dated August 26 creates some confusion on this point. That document states that, in addition, the bill for professional services must state that a medical opinion as to whether or not the vaccine was indicated was provided. This does not meet ADA's objections.

6. **The Employer's Obligation Relating to the Provision of Hepatitis B Vaccine and Post-Exposure Evaluation and Follow-Up**

ADA Position - These provisions are unduly complex and vague and their interplay with CDC recommendations is confusing. They also impose strict liability on employers for actions of third parties over which the employer has no control.

The "reasonable diligence" defense is inapplicable or ineffective in addressing this problem, since this defense only applies in situations, such as those between contractors and subcontractors, where the employer has control over the violation. Usually the dentist has no contract with the third party and, therefore, no control over the violation. We provided the example of the dentist who could not, even with extreme effort, obtain a written opinion from the physician who administered post-exposure evaluation and follow-up services to the dentist's employees.

Even where a contract exists (for example, when the dentist contracts with a third party to maintain employee medical records), the reasonable diligence defense is of little practical value, because the high cost of bringing a legal action discourages very small employers, like dentists, from challenging OSHA citations even when they believe those citations are wrong. Few dentists have a real opportunity to assert reasonable diligence in their defense.

ADA Recommendations - State that an employer who arranges with a responsible third party to provide services to the employer's employees in connection with HBV vaccination or post-exposure evaluation and follow-up or to maintain the employee medical records will not be held responsible for violations of the third party as long as the employer exercises reasonable diligence. Reasonable diligence will be presumed and no citation will issue: 1) where a written contract exists, if the contract requires the third party to abide by the standard, or 2) where no contract exists, if the employer provides the third party with a copy of the standard.

We also recommend that OSHA work with CDC to create an educational brochure that clarifies the protocol for post-exposure evaluation and follow-up. As we mentioned, this section of the standard creates perhaps the most

confusion, not only among dentists, but among healthcare professionals who are responsible for providing post-exposure evaluation and follow-up care. An educational brochure could go a long way toward improving understanding, and, hence, compliance, with this section of the standard. The Association would be happy to provide the assistance of our Communications Division in developing and distributing such a brochure.

Finally, the ADA recommends that the standard defer to federal and state laws regarding confidentiality and disclosure of test results and put the burden on OSHA to establish that these were violated; not on the employer to prove that they were not.

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ADA

September 14, 1993

Mr. Kenneth E. Thorpe
Deputy Assistant Secretary for Health Policy
Office of the Assistant Secretary for
Planning and Evaluation
200 Independence Avenue, SW
Room 442E
Washington, D.C. 20201

Dear Ken:

Thank you for offering the American Dental Association the opportunity to provide our views on the guaranteed benefits package as it relates to preventive dental services. The Association believes that a minimum adequate definition of preventive dental services includes:

> fluoridation of community water supplies; oral prophylaxis and application of topical fluorides and sealants; dietary fluoride supplements; restoration of carious teeth; maintenance of space resulting from the early loss of primary teeth; and patient education.

As you may recall from our meetings with you and Secretary Shalala, the ADA believes that dental coverage under the health care system reform proposal be targeted on an income related basis to those individuals who have the greatest need, rather than by age group. A majority of Americans presently receive their care through dental benefit plans that are based on prepayment, with copays, deductibles and annual maximums, through their employment and other settings, in the private sector. I understand that those individuals who receive AFDC and SSI may still be eligible for additional benefits, but this population group is much smaller than those who presently receive dental benefits under Medicaid and does not include those near poor individuals who also, we maintain, comprise the group with the greatest need.

Ken, we remain concerned about the reduction in benefits for this population of no income or of low income individuals, and we urge that you redirect the emphasis of providing dental benefits to those people who need it most.

Thank you for your consideration of our views.

Sincerely,

Dorothy J. Moss
Associate Executive Director
Government Affairs

DJM:lej

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