

# Occupational Medicine Clinical Update

A newsletter by physicians,  
for physicians, dealing  
with issues related to  
occupational medicine

## Occupational Health Clinics for Ontario Workers Inc, Samia-Lambton

### 'Avoiding the rough' when reporting workplace injuries/diseases

What degree of certainty that an injury or disease is work related, does a physician require to notify WSIB?

Physicians are sometimes asked by workers to send a 'report' to the Workplace Safety and Insurance Board (WSIB). This is a frequent occurrence in occupational medicine. In some situations the duty to do so seems clear, in others it is much murkier.

What degree of certainty that an injury or disease is work related does a physician require to notify WSIB (with a Form 8 - Physician's First Report)?

This question was recently posed to the Canadian Medical Protective Association (CMPA). Their written reply followed clarifying doctor's obligations.<sup>1</sup> The following scenarios will help highlight some of the more important points made by the CMPA.



In the following scenarios the question is whether an *obligation* exists to notify the WSIB with a Form 8:

1. A 26 year-old 'roadie' falls from the stage while doing the microphone check before a Blink 182 concert. He receives a complimentary trampling from the appreciative crowd in the 'mosh pit'. His injuries include a broken tib-fib, arm, and a liberal assortment of soft tissue injuries.
2. The aforementioned roadie requests that a report NOT be sent to WSIB. (He's afraid he'll lose his job). Is there an obligation to report?
3. A 65 year-old asbestos worker with a 50 pack-year smoking history and lung cancer requests a report be sent to the WSIB.

#### 1. The Rumpled Roadie

This shouldn't pose too much of a dilemma. It happened at work, at least we think it did. Not much doubt that being trampled can cause these injuries. A relative 'no-brainer'. The Form 8 goes.



#### 2. The Reluctant Roadie

So our roadie doesn't want to lose his fabulous job. Do you have to report to the WSIB anyway? There is a statutory obligation to report a workplace injury or disease on the part of the employer and employee. However, **there is no statutory obligation on the physician in this regard.**<sup>1</sup> The onus is on the employer and the employee for reporting.

Furthermore, the physician who chooses to report a disease against a patient's wishes could find themselves breaching confidentiality.

#### 3. The Smoking Asbestos Worker

This one is a bit tougher. Sure, you might know that asbestos is an independent contributor to lung cancer, but the guy was a heavy smoker. How can you say it caused the disease?

The answer is—you can't, and furthermore you are not being asked to make that determination:

**A physician is not required to determine whether a worker's claim is valid to send a Form 8.**

"The obligation to fill out a Form 8 is triggered by the fact that a worker *is making a claim to WSIB* and not by the nature of his or her medical condition."<sup>1</sup>

Workers have a statutory right to decide to make



*I'm in the woods so much I can tell you which plants are edible.*

- Lee Trevino

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### Key Points on Occupational Reporting Obligations

- You are obliged to send a Form 8 when requested by a worker who wishes to make a claim.
- You are not required to determine whether a worker's claim is valid before sending a Physician's First Report (Form 8).
- You are not obliged to report a workplace injury or disease unless requested to do so by the worker, or the WSIB, or if there is a 'designated substance' involved.

a claim if they, "Think that they are ill because of something they did at work or were exposed to during work."<sup>2</sup> They can initiate a claim through any one of 5 routes:

- Their physician
- The employer
- Their union
- An advocate of their choice
- Themselves

It is not up to them, or the physician they ask to send the medical information, to determine if the claim is valid. That is the job of the WSIB. They will take neither the worker's nor the physician's word for it. The WSIB has its own policies, its own processes and its own physicians and other scientific resources for making these determinations.

So, once a worker decides he wishes to make a claim regarding an injury or condition to the WSIB, **there is an obligation on the part of the MD to complete a Form 8.** However, this only requires that the physician supply, "factual information concerning, among other things, the date of the treatment, patient medical history, physical findings, diagnosis, current treatment and referrals made."<sup>1</sup>

While there is a duty to complete a Form 8 for a patient wishing to make a claim, it is reasonable to give people realistic expectations. In our experience at OHCOW, a thorough literature review sometimes makes it clear that there is no scientific evidence supporting the causal relationship. If we are fairly certain that the WSIB is not going to accept the claim, even under appeal or tribunal, we convey this to

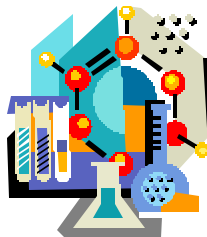
Table 1: Designated substances which require mandatory reporting by physicians

• Acrylonitrile	• Isocyanates
• Arsenic	• Lead
• Asbestos	• Mercury
• Benzene	• Silica
• Coke Oven Emissions	• Vinyl Chloride
• Ethylene Oxide	

the patient. There is no point in pursuing a claim that is going to be an exercise in futility for everyone, particularly the patient.

### Designated Substances and Obligatory Reporting

The only other statutory occupational obligation for physicians is with regard to 'designated substances'. The Occupational Health and Safety Act (OHSA)<sup>3</sup>, defines a designated substance as, "a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which exposure of a worker is prohibited, regulated, restricted, limited or controlled." (see Table 1).



**If you suspect your patient has a disease that is the result of exposure to a designated substance you are required by law to contact the Provincial Physician at the Ontario Ministry of Labour (416-235-5235).**

These reporting obligations only apply if there is a *control program* in place for the designated substance. Any employer who uses a designated substance is required to have a control program in place. Workers are required under the program to submit for medical exam and relevant testing.

Furthermore, reporting is only necessary when the worker is deemed by the physician to be unfit to work, or can work but with limitations. If the physician determines that the worker can keep working in the exposure, reporting is not required.

### Conclusion

We hope this brief review clarifies a potential area of confusion for physicians and keeps you in 'perfect form' as to what to do when faced with workers requesting reports. If you have any questions feel free to contact us.



### References

1. CMPA letter from General Counsel. Dated May 29, 2003.
2. Occupational Health and Safety Act R.S.O. 1990, CHAPTER O.1 @ [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90o01\\_e.htm#P174\\_3061](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90o01_e.htm#P174_3061)
3. WSIB website <http://www.wsib.on.ca/wsib/wsite.nsf/public/MakingAClaimOccupationalDisease>

## OHCOW

### Occupational Health Clinics for Ontario Workers Inc, Sarnia-Lambton

171 Kendall Street  
Point Edward, Ontario  
N7V 4G6

Phone: 519-337-4627  
Fax: 519-337-9442  
Email: [sarnia@ohcow.on.ca](mailto:sarnia@ohcow.on.ca)  
WEBSITE: [www.ohcow.on.ca](http://www.ohcow.on.ca)

Edited by:  
Warren Teel, M.D.

Medical Staff:  
Abe Reinhartz, M.D. [areinhartz@ohcow.on.ca](mailto:areinhartz@ohcow.on.ca)  
Jim Mackenzie, M.D. [jmackenzie@ohcow.on.ca](mailto:jmackenzie@ohcow.on.ca)  
Warren Teel, M.D. [wteel@ohcow.on.ca](mailto:wteel@ohcow.on.ca)