



Josh Dobson
Commissioner

Occupational Safety and Health Division

_____ DATE

Name
TITLE
Address
CITY, STATE, ZIP

Re: Release - Receipt of Medical Records
Employer Name - _____ - Injured/Deceased Employee

Dear _____:

The N.C. Department of Labor (“NCDOL”), through its Occupational Safety and Health Division (OSHNC), enforces the occupational safety and health regulations for North Carolina employers. As such, OSHNC conducts investigations of employers in our state for violations of the Occupational Safety and Health Act of North Carolina (Chapter 95, Article 16 of the N.C. General Statutes), and state and federal OSHA regulations (Title 13, Chapter 7 of the N.C. Administrative Code and Title 29, Parts 1910 and 1926 of the Code of Federal Regulations).

The Occupational Safety and Health Act of North Carolina authorizes OSHNC to access records, including employee medical records, during the course of inspections and investigations conducted under the Act. In accordance with this statutory authority, OSHNC would like to examine the medical records listed in the attached document. The examination of this medical information is in connection with the OSHNC's inspection at the above-referenced facility. Pursuant to N.C.Gen. Stat. §95-133(b)(13), the Commissioner of Labor or his authorized agents “may obtain medical records of injured or deceased employees that are both directly related to the investigation being conducted and are necessary to conduct investigations and enforcement proceedings. . . .” of the Occupational Safety and Health Act of North Carolina. The investigating compliance officer, CSHO _____, the Supervisor _____, and the Western/Eastern District Bureau Chief, _____ are authorized agents of the Commissioner of Labor and the Director of the OSH Division.

In order to safeguard the employees' interest in the privacy of the medical records that are to be examined and copied (if necessary), OSHNC has prescribed detailed rules of practice and procedure in Title 13, Chapter 7A, Section .0900 of the N.C. Administrative Code to govern the OSH Division's handling of personally identifiable employee medical information. A principal OSH Division Investigator has been designated to be primarily responsible for assuring that the examination and use of medical information obtained during this investigation is in accordance with applicable regulations, and statutory provisions.

Because we understand the apprehensions that employers and medical providers have about running afoul of the Health Insurance Portability and Accountability Act (“HIPAA”), we have put together this letter to assure both groups that the disclosure of medical records in this situation is within the confines of HIPAA. HIPAA was created for the purpose of securing the transfer of patient information to various covered entities, i.e., health plans, health care clearinghouses, and health care providers. However, under HIPAA, a covered entity may disclose protected health information (“PHI”) to third parties without first obtaining the patient's consent, authorization or allowing the patient an opportunity to agree or object to

such disclosure, in a few limited situations. These exceptions include releasing such information without individual authorization to “public health authorities” and to “health oversight agencies.” *See* 45 CFR 164.512(b) and (d). In accordance with 45 CFR § 164.514(d)(1), the OSH Division and its authorized agents noted above will limit the amount of information disclosed by the named entity from which records are being obtained to the minimum necessary for the public health purpose and to achieve the goals of OSHNC. The preamble to the HIPAA privacy regulation specifically mentions OSHA, and by extension OSHNC, as an example of both. *See* 67 Fed. Reg. 53182 (regarding 45 CFR Parts 160 and 164; U.S. Department of Health and Human Services; “. . . Privacy Rule does not conflict with an employer’s obligation under numerous other laws, including OSHA . . .”). *See:* <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/privacyrule/privrulepd.pdf>.

In addition, a separate set of exemptions generally allows covered entities to disclose PHI as required by law and as necessary for law enforcement and judicial and administrative purposes. *See* 45 CFR 164.512(a), (e) and (f). As a result, it is clear that the release of employee medical records to OSHNC does not require the prior authorization of the individual patients.

I appreciate your attention to this matter, and please let me know if you have any questions or concerns about this request. **Prior to fulfilling this medical records request, please notify the requestor in writing if there are any associated fees.** If you have any questions about the authority to release this information under HIPAA, contact our NCDOL Legal Affairs Division at (919) 707-7713.

Sincerely,

NAME
Title

N. C. Department of Labor