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## **BLOOD-BORNE INFECTIOUS DISEASES; THE VALUE OF WORKERS' COMPENSATION MEDICAL CARE; AND THE MEDICAL REVIEW PROCESS**

**BY: SCOTT A. O'MARA**

Methicillin-Resistant Staphylococcus Aureus — better known as “MRSA” — is a bacteria-related disease or infection which has become more prevalent, or has been the subject of greater awareness, in safety officer cases in the past six months.

Labor Code §3212.8 specifically addresses this condition and characterizes it as an injury to be included among blood-borne infectious diseases covered under the presumption of work-related causation. MRSA also has an extended presumption up to a maximum of 60 months, depending upon the years of service of the injured safety worker, with a three-month extension credited for each full year of service.

Fortunately, there appear to be proactive steps — medical avenues which lower the risk of incurring and spreading MRSA — which can be taken. Among the first potential signs of this disease are pimple-like structures and small blisters which grow in size and create increasing discomfort. Left undiagnosed or untreated, MRSA can become very aggressive, causing a breakdown of the body system, potentially impacting vital organs and even causing the death of the infected individual. This strain of bacteria can be challenging to treat, but from the cases I have seen to date, MRSA is indeed treatable, and the risk of further harm can be minimized.

Studies show that a major risk factor is an individual's work environment, especially when people are confined to small areas, such as in jails and prisons. Apparently, the crowdedness and confinement of these areas, combined with the poor health of many of the people who inhabit them, enhances the likelihood of exposure to MRSA.

In many cases, a factor of concern is differential diagnoses — differing opinions as to what the actual problem is. As a result, some practitioners, unfortunately, are not quick to recognize the presence of MRSA. Therefore, it is incumbent upon people subject to these unique exposures such as safety officers to be aware of the risks in their work environment. If any change occurs in the structure of your skin — whether it be reddening, or pimples or blisters as mentioned above,

or any other notable symptoms — affected safety officers should see their health provider to learn whether the soft-tissue changes noted are an indicator of MRSA.

Labor Code §3212.8(a) reinforces the basic concept of Workers' Compensation, stating:

“The compensation that is awarded for a blood-borne infectious disease or methicillin-resistant staphylococcus aureus skin infection shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.”

The major value in Workers' Compensation cases is the medical care, and the most important point relative to MRSA is to treat any signs or symptoms promptly so the disease is not overlooked and spread to others.

Recently, news reports have covered the exposure to ricin, a highly-toxic, naturally occurring protein from the castor oil plant. As many readers probably are aware, this substance is so toxic that ingestion or inhalation of a dose equivalent to a few grains of table salt is sufficient to kill an adult human being.

Labor Code §3212.85 addresses the concept that “injury” includes death or illness from exposure to biochemical substances. The same level of care is provided for these injuries, and once again the benefit to safety workers is the presumption that they are work-related.

I have had cases where safety members have developed medical problems from exposure to feces, urine and blood bombs utilized in jail or prison facilities. Labor Code §3212.85 has been used successfully to establish members' entitlement to Workers' Compensation benefits for these exposures. Section 3212.85(e)(1) states explicitly that “biochemical substances” are not limited to chemical warfare agents, weaponized biological agents, and nuclear and radiological agents.

The next section of the Labor Code — §3212.9 — extends the presumption of work-related causation to meningitis for peace officers, probation officers, district attorney investigators and firefighters. This presumption extends to a maximum of 60 months post-employment — the same extension which applies to cases involving MRSA pursuant to Labor Code §3212.8 and biochemical substances pursuant to Labor Code §3212.85.

Another section of the Labor Code designed to deal with the unique exposures faced by specified safety officers is §3212.12, which concerns Lyme disease. This disease has a presumption of work-related causation which is directed to peace officers as defined by Penal Code §830.1, subsections (e), (f), and (g), and Penal Code §830.2. Once again, the presumption extends to 60 months after the last day of work.

Many safety workers are aware of these presumptions, but do not have a focus on them. These sections of the Labor Code have evolved and come into existence because of our ever-changing society and the legislative body's recognition of the unique exposures faced by safety officers.

Injured workers are entitled to medical care to cure or relieve the effects of their injuries. If the medical care required for same creates ancillary problems — whether they be kidney problems, sleep disorder, dental problems, medication addiction or any other problems — those problems become the responsibility of the employer.

A very helpful Internet site is WebMD. If you are taking any prescribed medications for a job-related injury, I would suggest that you go to WebMD to research the side-effects of those medications. *Do any of the side-effects listed match symptoms you currently are experiencing?* If so, please be aware that any symptom caused by medication taken for a job-related injury is also deemed to be work-related — and therefore becomes the responsibility of the employer — if the symptom first appeared or worsened after the medication was commenced.

Obtaining approval for prescribed medications in Workers' Compensation often requires “going through hoops” and “around barriers”, as there are various obstacles to overcome. However, that does deter from pursuing the goal of returning workers to their pre-injury status or at least improving their condition. Moreover, treatment for work-related injuries can be expansive, including, where needed, coverage for household renovations, in-home health care, and the purchase of a van to transport the injured worker, travel expenses, and various other benefits.

There are many other examples of the expansiveness of medical care under Workers' Compensation. For instance, if a worker has a job-related heart condition, and this condition is made more problematic by diabetes, the diabetes then falls within the scope of Workers' Compensation coverage, as does compensation for any residual impairment caused by this condition when the case is settled.

The utilization review process which every employer is required to establish deals prospectively and retroactively with treatment, either granting or denying approval. This process must be dealt with, despite its cumbersome nature. If your physician is proactive in his/her treatment, and that proactiveness is reflected in a clear description as to the protocol needed, with strong justification for the necessity of same, it enhances the likelihood that utilization review may accept your doctor's recommendations.

The Labor Code states that utilization review decisions shall be made in a timely fashion considering the nature of the employee's condition — and issue no later than five working days following receipt of the information reasonably necessary to make a determination, and in no case more than 14 days after the date of the physician's medical treatment recommendations.

The Labor Code contains a section indicating that if the injured worker faces an imminent and serious threat to his/her health — such as, but not limited to, potential loss of life, limb or other major bodily function — the 5-to-14-day rule no longer applies, as the response time is reduced to 72 hours within receipt of the information reasonably necessary to make a determination. The Labor Code further indicates that any decision to approve, deny or delay the treatment requested shall be communicated to the physician requesting the treatment within 24 hours of the decision.

