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M. E. EISENHOUR

UNION CARBIDE CORPORATION
270 PARK AVENUE
NEW YORK, N.Y. 10017

T. A. LINCOLN, M.D.
CORPORATE MEDICAL DIRECTOR
HEALTH, SAFETY & ENVIRONMENTAL AFFAIRS
(212) 551-6521

REC'D
10/31/80

September 20, 1980

Colleagues:

The attached review of the implications of the new OSHA Standard on Access to Employee Exposure and Medical Records was prepared to help you get the Corporate Medical Department's point of view. It is possible that you may be asked by a UCC employee or his designated representative for a copy of a medical record. Since medical records sometimes present special problems because personal medical information has been included, this summary is designed primarily for physician use. It has been reviewed by our legal department.

If you have any questions, please call me.

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T. A. Lincoln, M.D.

PLAINTIFF'S EXHIBIT
UC-5073

BRC 0640

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September 4, 1980

Colleagues:

Most of you are aware of OSHA's effort to gain access to the exposure and medical records of workers in American industry. Although there was vigorous opposition to the original proposal in 1978, it was modified only slightly and eventually promulgated on August 21, 1980. (Access to Employee Exposure and Medical Records, 45 Federal Register 35212, May 23, 1980). UCC participated with the Louisiana Chemical Association in a "Complaint for Declaratory and Injunctive Relief" directed to OSHA. As a consequence, a voluntary stay of 14 days was obtained. The purpose of this letter is to give you some general background material and advice oriented to the physician. "To be forewarned is to be forearmed. To be prepared is half the victory." Although you will get lots of help, should you receive a request for medical or exposure records, you need to have some background of understanding so you can respond calmly and correctly.

It is my recommendation that we not unnecessarily escalate reasonable requests to view or discuss an employee's medical record with the employee. If we make the process formidable, it will arouse suspicions that our records contain material which we do not want the employee to see. Such should not be the case. Our major concern occurs when an employee and/or his designated representative wants a copy of the record. At such time we lose all control and any ability to answer questions, etc.

I strongly advise you to review your plant's plans to respond to a request for exposure or medical information. If you should get a request from a designated representative, be sure you contact your local management immediately. Please also call John Whittlesey (212 551-6797) and me (212 551-3101). (Please call N. E. Bolton 212 551-5583 if exposure information alone has been requested.) There is no need to contact us if the request comes from the employee and the information is to be sent to an attending physician to facilitate patient care. If the request is for inspection of the employees own records we would like to be notified.

I have listed below some important points of the regulation and their implication to you and UCC. I derived this material from

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several long technical memoranda from John W. Whittlesey of the UCC Law Department and the standard itself.

1. The new rule does not allow NIOSH the same access as OSHA. They must follow their own rules.

2. The rule does not require the creation of any new records, reports or examinations nor new monitoring of exposures.

3. The rule allows access to studies, analyses and individual records of consulting firms (e.g. for epidemiological studies) and contract physicians. If the UCC portion of the private physician's record is mixed with non-job related visits, the whole record is accessible.

4. The records do not have to be related to specific OSHA standards. OSHA can justify access because of potential exposure to anything listed in the NIOSH Registry of toxic effects which lists over 33,000 different chemicals.

5. Access means the right and opportunity to examine and copy no later than 15 days (calendar, not working) after the request is made. OSHA has access even without the consent of the employee. Only an OSHA Medical Records Officer can examine and copy "personally identifiable medical information" and then only under specific rules. The "data" requested must be relevant, needed to accomplish OSHA's legally defined needs and will be seen only by OSHA personnel who are professionally qualified. Such demand access would be made only if the employee refused to give OSHA specific written consent.

6. A designated representative is any person or organization to whom an employee gives a written authorization to effect access. Such authorization can be revoked at any time if requested in writing and an access automatically expires in one year. No blanket requests for more than one person are to be accepted.

7. Since to what information a designated representative may have access is potentially complicated, each request should be precisely defined and cleared with the local management and the headquarters' legal department. In essence, the medical and exposure

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record covers almost every conceivable record.

8. When an employee requests to see his or her own medical record, the plant physician may recommend that he be consulted or that the requestor accept a summary of "material facts and opinions" in place of the record. If the physician feels that such access could be detrimental to the employee's health, he may deny access. In such case, however, access could be obtained through a designated representative and presumably would be immediately given to the employee anyway. Therefore, denying access does not seem to be a useful tactic.

9. Medical records are to be "preserved and maintained" for the duration of employment plus 30 years. Exposure and analysis records are to be kept only one year so long as the sampling results and other data necessary for interpretation are kept 30 years.

10. Within 60 days after any stay in the effective date has expired, all employees must be provided with information on the existence, location and availability of any records, the person responsible for maintaining and providing access and the employee's right of access.

11. In the event of sale or shutdown of a plant, the employer is required to transfer all records to the successor employer. If there is no successor, the employee must be advised of rights to access three months before cessation of business.

I hope I can speak for my colleagues that our opposition to access is based on the fear that confidential medical information derived from the doctor/patient or nurse/patient relationship (Yes! It does exist in industry!) not be made available to non-medical people (or medical for that matter) who would use it contrary to the best interests of the employee.

We also are concerned that a designated representative could solicit medical and exposure records on a "witch hunt" or "fishing expedition" to find material to embarrass the company. We all know that medical records taken out of context can easily be misinterpreted. When they are reviewed by a physician trained in occupational medicine

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with the company physicians such misunderstandings are less likely. We have never and will never intentionally deny access to medical information that is valuable to the employee's health. It has been and continues to be our responsibility to keep employees fully informed as to the physical and laboratory findings of any medical examination or visit.

I do not expect that the new regulation, if and when it is finally promulgated, will cause any major increase in employees seeking information in their own medical records. In the past few years, occasionally an employee has been uncomfortable about the content of his or her medical record. When it has been shown to him with the plant physician knowledgeable in its content, problems have usually easily been resolved. We expect that to continue.

Our concern is unsophisticated, potentially meddlesome third parties "pawing" through medical records. We, of course, will comply with the law but we are anxious that we only do what is required. When not armed with the facts, it is easy to be intimidated to do more than necessary.

I have attached a suggested revised medical release form. The Draft Employee Medical and Exposure Record Access form is suggested for use to document carefully the details of the request for information and how it was handled. Such information is necessary should there be some unfortunate publicity, claim of injury or employee relations problem. If desired, a copy of such information may need to be sent to your plant records "coordinator". A copy should be kept in the medical record.

Remember, call John or me as well as your plant official who has been given the responsibility of reviewing any requests for information from a designated representative as soon as you receive such a request. Tell the employee or "representative" that the request will be processed according to the law and he (she) will be advised. With help, get a decision as to whether the request is proper and what information should be released and how.

It should be self evident that medical records are becoming

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more accessible to patients and thrid parties. As a consequence, greater care should be exercised in entering material in the record. Avoiding speculation, side comments and unnecessary personal detail is prudent. A good medical record should have adequate factual historical information, laboratory findings, diagnostic impressions and recommendations so it can help in enabling continuing good medical care.

Please call me or the Assistant Corporate Medical Director responsible for your Division if you have any medical questions. Call your local records representative or coordinator for procedural details. Call John Whittlesey about legal problems.

Sincerely,

T. A. Lincoln, M.D.
Corporate Medical Director

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BRC 0645

DRAFT

EMPLOYEE MEDICAL/EXPOSURE RECORD ACCESS FORM

I- Employee Name _____ Identification NO. _____

Date Requested _____

General Information Requested: _____

_____

_____

_____

_____

Specific Data Requested: _____

_____

Entire File: _____

Stated Reason for Request (Optional) _____

_____

_____

_____ Employee Signature _____ Date

II Date of Inspection _____

Record Inspection Agent _____

_____ Company Agent Signature

Parties present for Inspection:

_____ Company Physician (print) _____ Signature

_____ Employee (print) _____ Signature

_____ Non-UCC parties _____ Relationship to Employee _____ Signature

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III Employee Comments on File Data
Please be specific.

_____

_____

_____

IV Copy Requests Yes_____ No_____

Date of Delivery of Copies _____

V Follow-up Action:

Action needed: Yes_____ No_____

If YES state specifically what must be done and dates needed:

_____

_____

_____

_____

VI Designated Representative Request: _____
Organization

_____ _____ _____
Representative Signature Date

Item Requested: _____

_____

_____

_____

_____

_____
Employee Consent

_____
Date

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AUTHORIZATION FOR RELEASE OF MEDICAL AND EXPOSURE INFORMATION

I,_____, Identification No._____

hereby authorize_____

to release to: (name and address of individual organization authorized to receive medical/exposure information from my personal medical and exposure records).

_____

_____

_____

Describe below as specifically as you can what information you desire to be released:

_____

_____

_____

_____

_____

I give my permission for the release of this medical/exposure informatic to be used for the following purpose(s).

_____

_____

_____

but I do not give permission for any other use or re-disclosure of this information. (Several extra lines are provided below so that you can place additional restrictions on this authorization. We recommend that you specify an expiration date and describe which portions of your medical/exposure record which you do not wish to be released.)

_____

_____

_____

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