DEALER ALERT

TO: Environmental Health and Safety (EHS) Coordinator
FROM: Sam Celly, MS JD CSP
SUBJECT: **Recordable vs. Reportable Injuries**
DATE: March 1, 2015

RECORDABLE: Federal-OSHA requires auto dealers to keep a record of occupational injuries and illnesses using Log of Work-Related Injuries & Illnesses (OSHA Form 300) (https://www.osha.gov/recordkeeping/new-osha300form1-1-04-FormsOnly.pdf). We discussed this in great detail in our October 2014 Newsletter. We note that first-aid is not recordable on OSHA Log 300. The federal legal definition of first-aid is as follows:

THESE ARE GENERALLY CONSIDERED FIRST-AID TREAMENT IF THE EMPLOYEE DOES NOT LOSE CONSCIOUSNESS, HAVE RESTRICTION OF WORK OR MOTION, OR IS TRANSFERRED TO ANOTHER JOB**:**

- Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);
- Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
- Cleaning, flushing, or soaking wounds on the surface of the skin;
- Using wound coverings, such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices, such as sutures, staples, etc. are considered medical treatment);
- Using hot or cold therapy;
- Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
- Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);
- Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;
- Using eye patches;
- Removing foreign bodies from the eye using only irrigation or a cotton swab;
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;
- Using finger guards;
- Massaging (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes);
- Drinking fluids for relief of heat stress;
- Application of hot or cold compress(es) during first visit to medical personnel;
- Application of ointments to abrasions to prevent drying or cracking; or
- Observation of injury during visit to medical personnel.

INJURIES REQUIRING ANY OF THE FOLLOWING TREATMENTS ARE ALMOST ALWAYS RECORDABLE:

- Treatment of infection;
- Application of antiseptics during the second or subsequent visit to medical personnel;

- Treatment of second or third degree burn(s);
- Application of sutures (stitches);
- Application of butterfly adhesive dressing(s) or Steri-Strips™ in lieu of sutures;
- Removal of foreign bodies embedded in eye;
- Removal of foreign bodies from wound; or if procedure is complicated because of depth of embedment, size, or location;
- Use of prescription medications (except a single dose administered on first visit for minor injury or discomfort);
- Use of hot or cold soaking therapy during the second or subsequent visit to medical personnel;
- Cutting away dead skin (surgical debridement);
- Application of heat therapy during second or subsequent visit to medical personnel;
- Use of whirlpool bath therapy during second or subsequent visit to medical personnel;
- Positive x-ray diagnosis (fractures, broken bones, etc.); or
- Admission to a hospital or equivalent medical facility for treatment.

REPORTABLE: All injuries are reportable to your Workers Compensation insurance carrier. In certain instances, a financial agreement may be in place in which the insured pays the clinic for treatment of injury that is classified as first-aid. Two issues arise. One, this does not absolve the dealership from reporting injuries to the insurer. The pertinent regulation is stated as follows:

> 6409. (a) Every physician as defined in Section 3209.3 who attends any injured employee shall file a complete DFR (Doctor's First Report of Injury) for every occupational injury or occupational illness to the employee with the employer, or if insured, with the employer's insurer, on forms prescribed for that purpose by the Department of Industrial Relations. A portion of the form shall be completed by the injured employee, if he or she is able to do so, describing how the injury or illness occurred. The form shall be filed within five days of the initial examination. Inability or failure of an injured employee to complete his or her portion of the form shall not affect the employee's rights under this code, and shall not excuse any delay in filing the form. The employer or insurer, as the case may be, shall file the physician's report with the department within five days of receipt. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee.

Although the Labor Code contains first-aid exceptions for the Employers' Report (Form 5020) and the Employee Claim Form (DWC-1), there is no such exception for the DFR. The insurance carrier (or the employer if the employer is self-insured) must forward these DFR's to the Department of Industrial Relations. There is no "first-aid" exception to the statute.

California state regulators believe that there are improper arrangements in place between some medical providers and employers that allow the employer to dictate how injuries are classified by physicians. In some cases, the physicians send DFR only to employers and not to insurance carriers. This practice is marketed to employers as a way to keep insurance premium down. We recommend that all DFR's be forwarded to the insurance carrier for them to undertake procedural steps as required under the law and thus, remain clear of running afoul of Department of Insurance regulations! We further note that many injuries, which at first may be perceived as first-aid, may later become non-first-aid. If the case is conclusively first-aid, then the employer should alert their insurance carrier of the case being "first-aid".

We encourage employers in other states to report all injuries, first-aid, or otherwise, to their insurance carrier for processing and filing with state authorities.

Ref: *Fed-OSHA definition of first-aid treatment. See https://www.osha.gov/recordkeeping/firstaid_list.pdf.*