



The Brown & Carlson Insight

Has the "Super Bug" invaded Minnesota Workers' Compensation?

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Over the last several years, the public has been placed on notice of a staph variety known as Methicillin-Resistant Staphylococcus Aureus, or MRSA, known as one of the "super bugs." Staphylococcus Aureus is a bacteria that lives on half of the population usually in the nose. The most common source of skin infections, such as boils and impetigo can cause far more serious infections. Some strains of staph produce toxins extremely dangerous to individuals with sensitivity to them. MRSA is a staph that has evolved to be resistant to many commonly used antibiotics. Treatment includes less commonly used drugs. Hospital-associated MRSA is more resistant to more types of antibiotics. Community-associated MRSA is the strain of concern in sports involving skin contact. This strain is easier to treat with antibiotics, but more likely to produce toxins extremely dangerous to some individuals. The best prevention is the common washing of hands. It is also recommended that people do not share water bottles and use alcohol-based disinfectants.

Information on staph bacteria and MRSA is available from the Minnesota Department of Health, www.health.state.mn.us/divs/idepc/diseases/mrsa/camrsa/basics.html or at the Centers for Disease Control and Prevention at <http://www.cdc.gov/mrsa/>.

What does MRSA and workers' compensation injuries have in common? Many health care workers have alleged that they contracted MRSA as a result of work-related activities. In the 1960's, MRSA predominantly was located in health care settings and over time, as become a major problem in the health care industry causing infection in not only hospitalized patients, but patients in long-term care facilities and now in the general community. Initially, Penicillin was able to eradicate staphylococcus aureus infections, but subsequently a resistant strain developed to Penicillin. Methicillin was developed and aided in treating in MRSA infections. By 1970, occurrence of strains of staph aureus now were resistant to Methicillin with an increased number of patients developing infections with Methasone-Resistance Staph Aureus in hospitals, but also in chronic care facilities like nursing homes and transitional care facilities, as well as wound clinics. HA-MRSA or hospital-acquired MRSA was the

original form of MRSA located predominantly in hospitals and health care settings. Subsequently, a new strain of MRSA called community-acquired MRSA or CA-MRSA revealed itself, noting a different strain in that it has adapted to transmission in the community. Community-acquired MRSA can cause boils or abscesses over the body. HA-MRSA, is highly associated with being a patient or working in a health care system where community-acquired MRSA is associated with neither, but more often found on athletic teams or in prison environments. The main risk factor for HA-MRSA is being a chronic patient, having prolonged hospitalization of two weeks or more. Other risk factors include attending a wound care clinic or being a home care patient. A health care worker can become colonized with MRSA by touching someone's skin, or an open wound or handling a patient's tracheostomy or touching inanimate objects such as tabletop or countertop in a room. Other doctors disagree with this way of transmission. Other risk factors include non-Hispanic race, use of any antibiotic in the preceding month, previous history of MRSA infection and close contact with the person with a similar infection. Additionally, diabetes mellitus and renal insufficiency. Some individuals are colonized with MRSA, but never become infected. Individuals can be carriers briefly or for months or years at a time. An individual with chronic diseases can pre-dispose the individual to infection.

Studies have indicated that the distinction between the community type and health care type of MRSA over time have become blurred. MRSA has now spread to the entire population. Although there is an increased risk of MRSA colonization and infection if a person has extensive contact within the medical field, there are ways to prevent transmission which includes hand washing, the use of gloves and masks, as well as isolation.

The vast majority of people with MRSA colonization do not know that they are colonized, nor does the colonization cause any symptoms. The colonization does not progress to the level of infection in the absence of injuries, diseases or surgeries. Without specific testing, it is difficult to determine where and when the colonization and subsequent potential infection arose. There are two varieties of testing to determine whether an individual is colonized and/or infected with MRSA. A nares test is one that tests from the nares of the nose. An alternative test is a sputum test.

In order to prove a workers' compensation injury, the MRSA infection must be found to have resulted as a result of an occupational disease. Pursuant to Minn. Stat. §176.101, Subd. 15(a), ordinary diseases of life to which the general public is equally exposed outside of employment are non-compensable, except where the diseases follow as an incident of an occupational disease, or where an exposure peculiar to the occupation makes the disease an occupational hazard. In order to claim workers' compensation benefits for an ordinary disease of life as an occupational disease, it is not enough to show that one practiced an occupation with a higher

rate of the disease. In addition to showing that people who practice in said occupation acquire the disease at a greater rate than the general population, the employee must also prove that a particular employment caused the disease. The employee must prove that they acquired the disease and that the work activities were a substantial contributing factor to the development of the occupational disease.

It is the burden of the employee to prove that the MRSA resulted in an occupational disease that arose out of and in the course of employment. It should be remembered that there are a variety of possible sources of colonization of MRSA and an argument can be made that it is too speculative to determine exactly where and when the employee became colonized and potentially infected with MRSA.

Please call me if you should have any questions with regard to this issue, as I have had experience successfully litigating cases involving MRSA, including a case appealed to the Workers' Compensation Court of Appeals. Please contact Penny Helgren at Brown & Carlson, P.A. at 763-591-9950 or email at pwhelgren@brownandcarlson.com

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