Caring for the Injured Worker: Effective Partnerships between Clinicians, Health Centers and Lawyers

Brent Probinsky, JD
Ed Zuroweste, MD

June 26, 2013

FARMWORKER JUSTICE

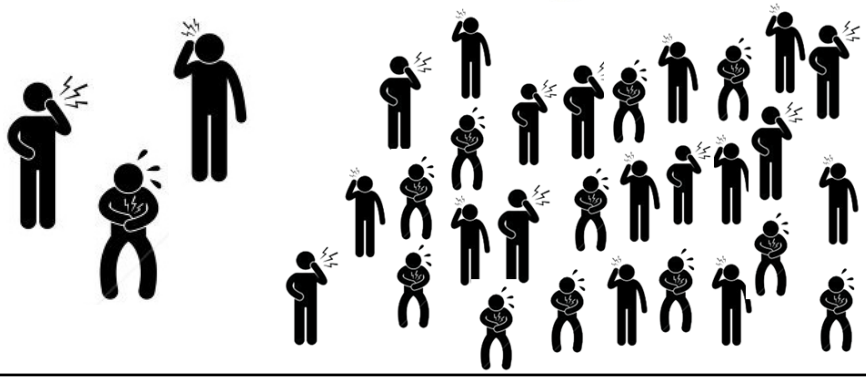
MCN

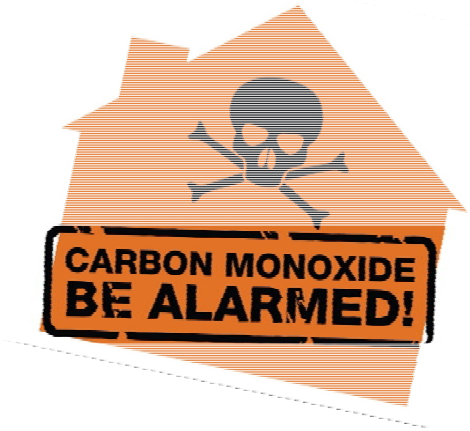
Disclosure Statement

- **Faculty: Ed Zuroweste, MD and Brent Probinsky, JD**
- **Disclosure**: We have no real or perceived vested interests that relate to this presentation nor do I have any relationships with pharmaceutical companies, biomedical device manufacturers, and/or other corporations whose products or services are related to pertinent therapeutic areas

MCN

Despite the sealing of the plant, fork lifts remained in use.





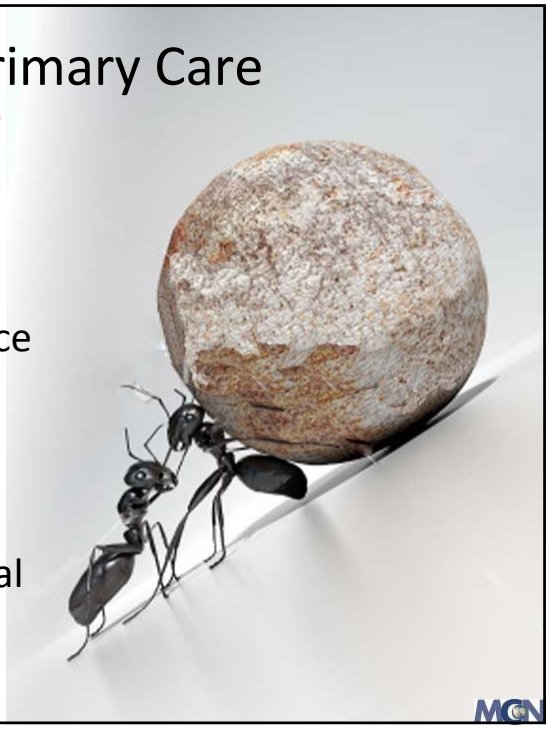
Washington State Department of
Labor & Industries

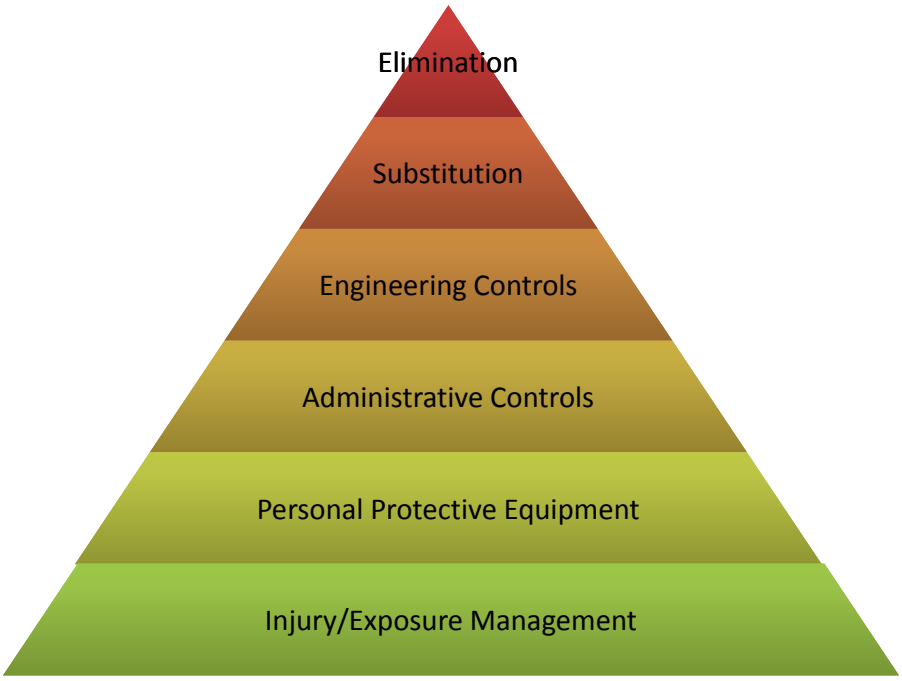
Take Away Points

1. Linkages between individual cases and mass events
2. Objective clinical tests are important.
3. Under certain conditions it is possible to go back and extrapolate to determine exposure levels.

Obstacles for Primary Care Providers/ Staff

- BUSY
- Unfamiliar terminology/ practice
- Public Health Paradigm
- Workers' Compensation/ Legal system/ Reporting
- Office Based



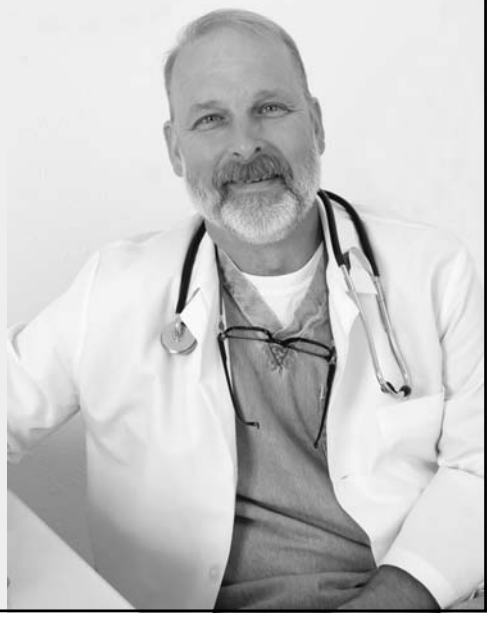


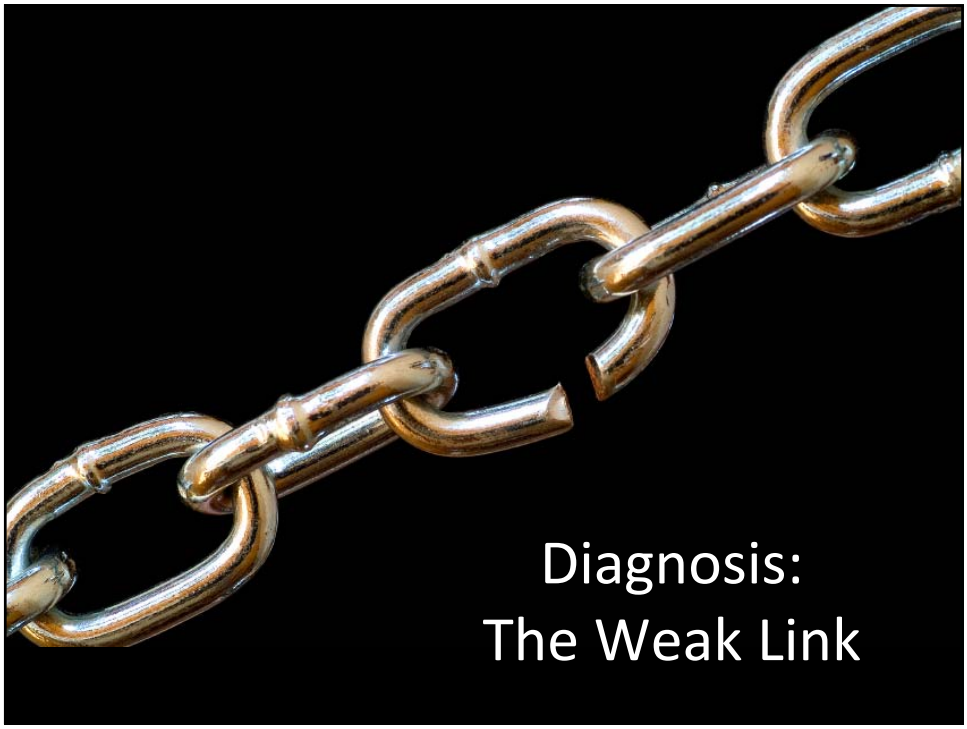
EOH Screening Questions for the Primary Care Setting

1. Occupation	2. Activities and Cause	3. Substances/ Physical Hazards and Cause
• Describe what you do for work.	• Are there any physical activities that you do – at work or away from work – that you feel are harmful to you?	• Are you exposed to chemicals, fumes, dusts, noise, and/or high heat at your work or away from work? • Do you think these are harming you?

Differential Diagnosis

- ✓ Viral illness
- ✓ Food poisoning
- ✓ Hangover
- ✓ Heat exhaustion
- ✓ Medication reaction
- ✓ Malaria
- ✓ Pesticide poisoning
- ✓ Green tobacco illness
- ✓ Pregnancy (if female)





Case Study

Clinician advocate for an injured worker…

Goals of Workers' Compensation

- Medical treatment for injured patient
  - Immediate
  - Long term
  - Access to Specialty Care
- Wages
- Return to Work
- Prevention - Hazard Control
- Public Health
  - Surveillance

Are undocumented workers eligible for workers' compensation in your state?

What can clinicians do?

- ✓ Think like a lawyer!
- ✓ Similar to Criminal v Civil Law
- ✓ Criminal – Beyond a Reasonable Doubt
- ✓ Civil – More likely than not
- ✓ Medical Diagnosis v Occupational Exposure/Injury

A Good Analogy

Acquitted in the criminal case

Found culpable in the civil case

What Can the Clinician Do?

- Document/Chart
- Work Related
  - Exposure
  - Illness
  - Injury
- Consult EOH Specialist

1,300 employees at Quality Pork Processors

14 developed new neurological disease

Was it work related?

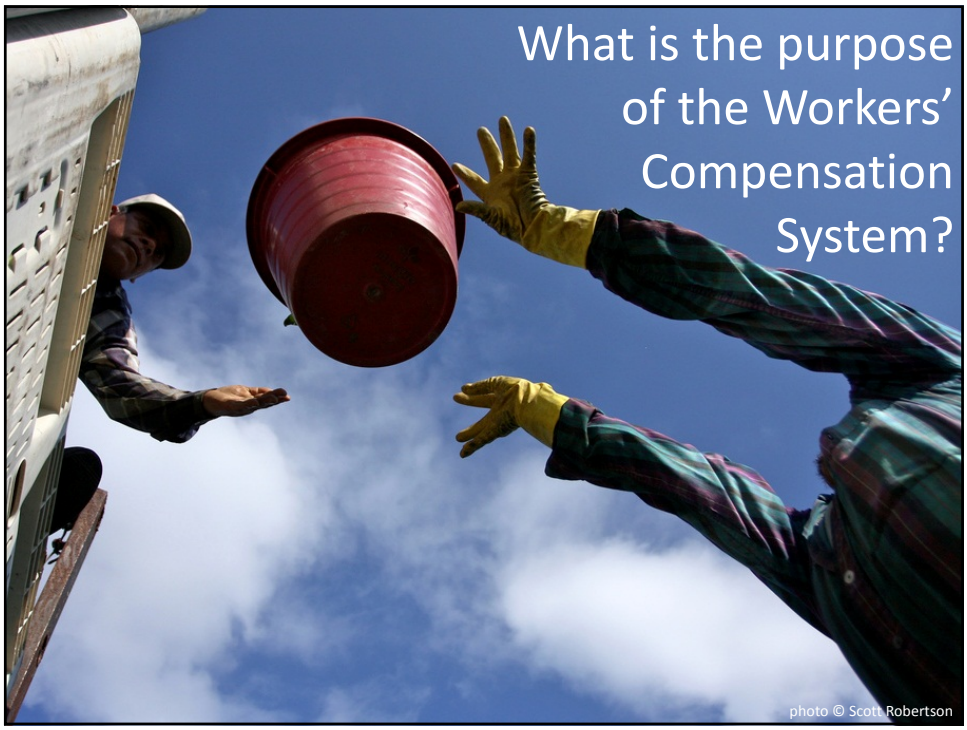
- ✓ All worked near "blowing brains" area
- ✓ Only 3 plants use technique
- ✓ Several workers consulted company nurse—actions?
- ✓ Interpreter reported to physician that she heard the "same story" from three patients

Progressive Inflammatory Neuropathy (PIN)

Could have been a lot more imaginative and called it…

Progressive **I**nflammatory **G**lobal-neuropathy **S**yndrome

PIGS

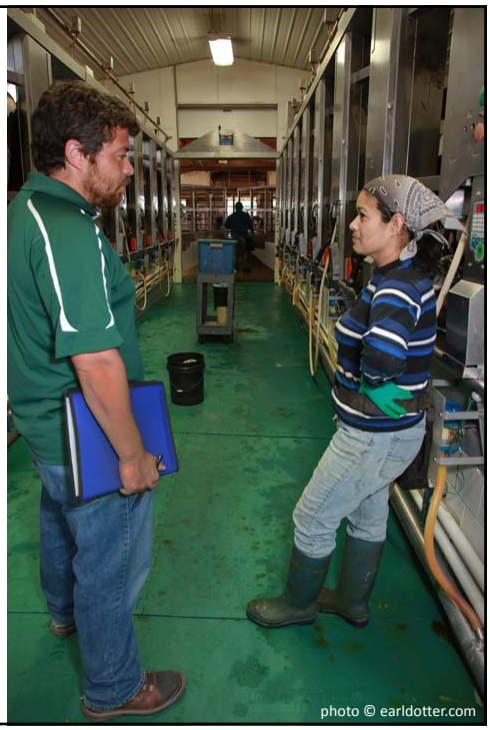


For the worker…

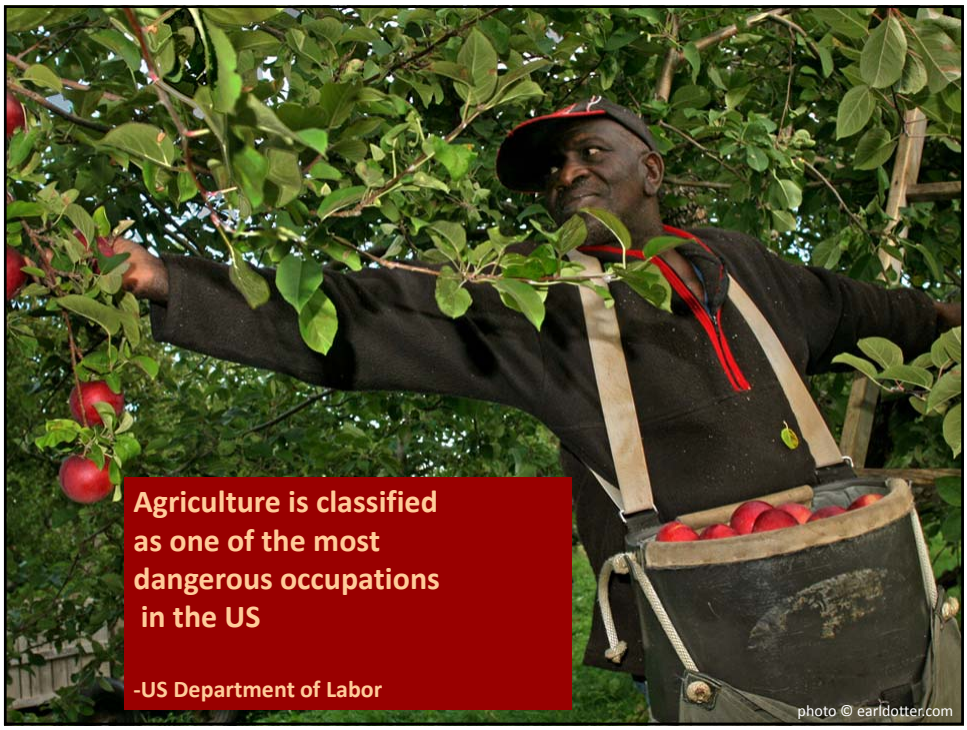
- ✓ Injured worker entitled to immediate medical care and a percentage of lost wages.
- ✓ Injured worker is entitled to receive all necessary medical care for life.

For the employer…

- ✓ Immunity from suit by employee due to any negligence by employer.
- ✓ No immunity for intentional acts such as battery or sexual assault against employee.



No
Fault
System
LSU
photo © earldotter.com


Agriculture is classified as one of the most dangerous occupations in the US
-US Department of Labor
photo © earldotter.com

- ✓ Varies from state to state.
- ✓ Most states allow undocumented workers to receive workers' compensation benefits.
- ✓ Employers who hire temporary workers under the H-2A visa program are required to provide workers' compensation benefits.

What is Covered?

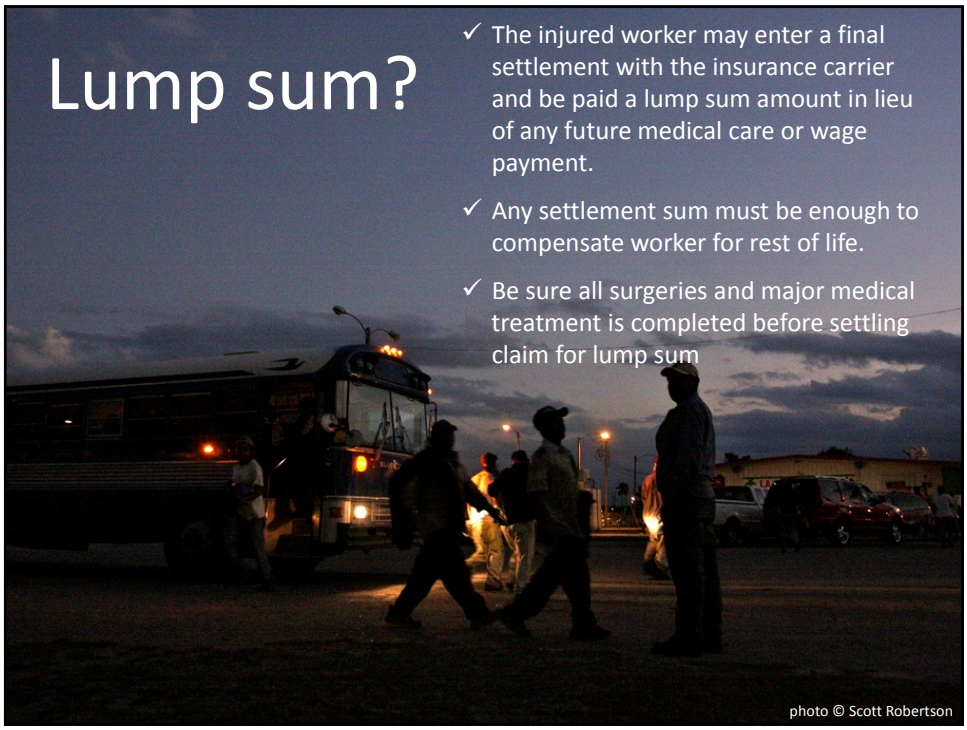
- ✓ Pays the injured worker a percentage of lost wages while disabled, ranging from 66% to 75% of average weekly wage.
- ✓ Pays the cost of all necessary medical care, diagnosis and treatment. Will include emergency care, surgery, hospitalization, physical and occupational therapy, counseling.
- ✓ Will cover pre existing illness or injury if new work injury was "the major contributing cause" of the illness or injury. New injury must cause more than 50% of injury.
- ✓ Will cover injuries while being transported at work from field to field, work related training and errands for employer.
- ✓ Death benefits for survivors of workers who die from injuries and illnesses on the job.

Other Issues

- ✓ Notice of claim to employer must be made as soon as possible after injury.
- ✓ Insurance carrier will select medical providers unless emergency treatment.
- ✓ Injured worker may request a one-time change of medical providers if unsatisfied.
- ✓ Insurance carrier must provide an interpreter, transportation or mileage reimbursement for medical visits.
- ✓ The insurance carrier pays for attorney's time for securing unpaid benefits.

Lump sum?

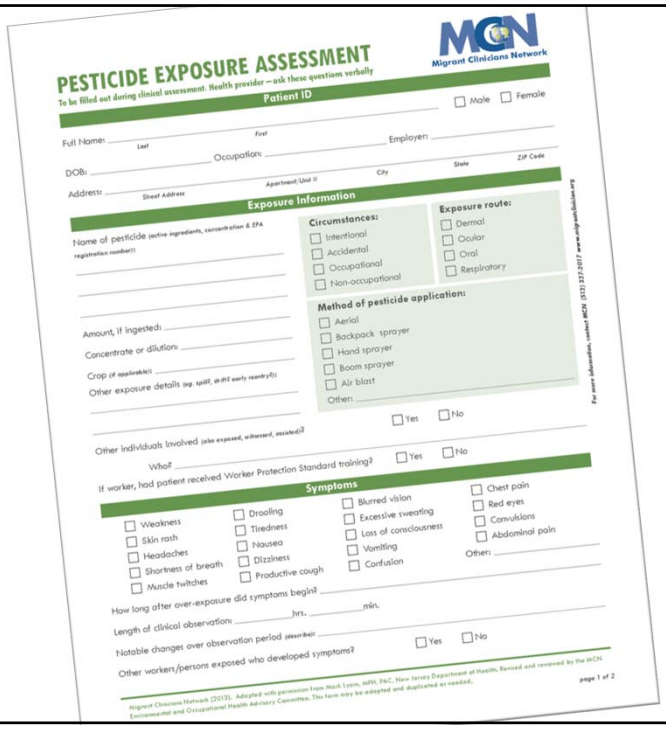
- ✓ The injured worker may enter a final settlement with the insurance carrier and be paid a lump sum amount in lieu of any future medical care or wage payment.
- ✓ Any settlement sum must be enough to compensate worker for rest of life.
- ✓ Be sure all surgeries and major medical treatment is completed before settling claim for lump sum



Spotlight on Chemical Hazards

Clinician must be aware of symptoms caused by exposure to toxic chemicals

1. Skin lesions and swelling
2. Nausea, vomiting, disorientation, confusion
3. Dizziness
4. Vertigo
5. Fatigue
6. Depression
7. Blurred vision



MCN Migrant Clinicians Network

PESTICIDE EXPOSURE ASSESSMENT

To be filled out during clinical assessment. Health provider – ask these questions verbally

Patient ID

Full Name: _____ (Last, First) ☐ Male ☐ Female

DOB: _____ Occupation: _____ Employer: _____

Address: _____ (Street Address, Apartment/Unit #, City, State, ZIP Code)

Exposure Information

Name of pesticide (active ingredients, concentration & EPA registration number)?

Amount, if ingested: _____

Concentrate or dilution: _____

Crop (if applicable): _____

Other exposure details (e.g. spill, drift early reentry?): _____

Circumstances:
- ☐ Intentional
- ☐ Accidental
- ☐ Occupational
- ☐ Non-occupational

Exposure route:
- ☐ Dermal
- ☐ Ocular
- ☐ Oral
- ☐ Respiratory

Method of pesticide application:
- ☐ Aerial
- ☐ Backpack sprayer
- ☐ Hand sprayer
- ☐ Boom sprayer
- ☐ Air blast
- Other: _____

Other individuals involved (also exposed, witnessed, assisted)? ☐ Yes ☐ No

Who? _____

If worker, had patient received Worker Protection Standard training? ☐ Yes ☐ No

Symptoms

- ☐ Weakness
- ☐ Skin rash
- ☐ Headaches
- ☐ Shortness of breath
- ☐ Muscle twitches
- ☐ Drooling
- ☐ Tiredness
- ☐ Nausea
- ☐ Dizziness
- ☐ Productive cough
- ☐ Blurred vision
- ☐ Excessive sweating
- ☐ Loss of consciousness
- ☐ Vomiting
- ☐ Confusion
- ☐ Chest pain
- ☐ Red eyes
- ☐ Convulsions
- ☐ Abdominal pain
- Other: _____

How long after over-exposure did symptoms begin? _____

Length of clinical observation: _____ hrs. _____ min.

Notable changes over observation period (describe): _____

Other workers/persons exposed who developed symptoms? ☐ Yes ☐ No

For more information, contact MCN (512) 323-0017 www.migrantclinicians.org

Migrant Clinicians Network (2013). Adapted with permission from Mark Lyons, MPH, PAC, New Jersey Department of Health. Revised and reviewed by the MCN Environmental and Occupational Health Advisory Committee. This form may be adapted and duplicated as needed.

page 1 of 2

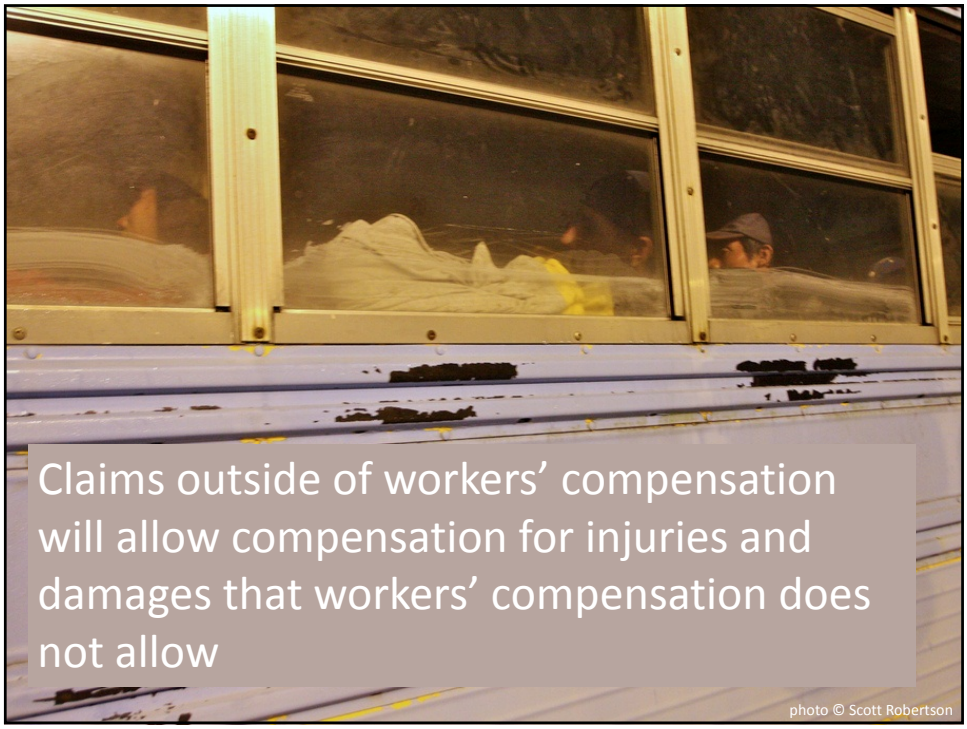
Other Follow-up

- ✓ Notify state and local agencies of suspected chemical exposures so that formal investigations can take place
- ✓ Notify employer of chemical exposure by worker with date and location of exposure.
- ✓ Continue assistance to injured farm worker by clinician and social worker to be sure farm worker follows up with needed diagnosis and medical care.

photo © Scott Robertson

Claims Outside of Workers' Compensation

- ✓ Claims against employer for intentional acts, such as battery and sexual assault.
- ✓ Accidents that are caused by third parties, such as vehicles operated by persons who do not work for same employer.
- ✓ Defective products such as tractors, mowers, hand tools, automated packing tables that cause injury.
- ✓ Birth defects to child born to farm worker's chemical exposure.


Claims outside of workers' compensation will allow compensation for injuries and damages that workers' compensation does not allow
photo © Scott Robertson

Questions?
photo © Scott Robertson