

# MRSA (Staph) Infection—Workplace Liability Issues

By Mark A. Lies, II

Since the millennium, American society and the workplace in particular, have been faced with a myriad of potential health hazards which raise liability issues under federal and state law. Thankfully, most of these potential hazards (e.g., SARS, Avian Flu) never became meaningful realities while others (e.g., tuberculosis) continue to reoccur with some regularity. This article will discuss the latest health hazard in the form of Methicillin-Resistant Staphylococcus Aureus (MRSA) and provide recommendations for employer pre-planning and response.

MRSA is an infection caused by the Staphylococcus aureus bacteria – known in the medical community as “staph.” Many decades ago, a strain of staph emerged in hospitals that was resistant to certain antibiotics used to treat it. In the 1990s, a new type of MRSA began to appear outside of the healthcare community. This form of staph, now known as community-associated MRSA or CA-MRSA, is responsible for many serious skin and soft tissue infections, bloodstream infections and for a serious form of pneumonia. It is most frequently transmitted by direct skin-to-skin contact and not through the environment.



## INFECTION PROCESS

Staph are bacteria commonly carried on the skin or in the nose of healthy people. It is believed that approximately 25-30 percent of the population is “colonized” (bacteria are present on a healthy individual, but are not causing any infection) in the nose with staph bacteria and that about one percent of the population is actually colonized with MRSA.

Staph bacteria are one of the most common causes of skin infections. Fortunately, most of these skin infections are relatively minor (including pimples, boils or red bumps that sometimes resemble spider bites) and can be treated without antibiotics. Unfortunately, if left untreated, they can quickly turn into deep, painful abscesses that may require surgical draining. In some instances, the MRSA can burrow deep into the body resulting in life-threatening infections which can spread to bones, joints, surgical wounds, the bloodstream and to the heart valves and lungs.

The CDC has investigated clusters of CA-MRSA skin infections among athletes, military recruits, certain ethnic groups, men who have sex with men and prisoners. These studies have identified certain factors associated with the spread of the disease: close skin-to-skin contact; openings in the skin, such as cuts and abrasions; contaminated items and surfaces; and poor hygiene.

## MEDICAL DIAGNOSIS AND TREATMENT

Staph bacteria are generally considered harmless unless they enter the body through the protective layer of the skin, typically through a cut or other wound. Even then, such infections may only cause minor skin problems in healthy individuals. There is a heightened risk, however, for older adults and people who are ill or who may have weakened immune systems.

It is important to carefully monitor minor skin problems such as pimples, insect bites, cuts and scrapes, particularly in children. If it appears that the skin condition is becoming infected (inflammation, reddening, secretions), the individual should seek prompt medical treatment. The physician should be requested to test for MRSA before starting antibiotic treatment since the drugs that are used to treat an ordinary staph infection will not be effective against MRSA and such use could cause serious illness and more resistant bacteria.

The MRSA diagnosis will utilize a small tissue sample or nasal secretions. If the diagnosis is positive for MRSA, the physician will utilize antibiotics that have been found effective against the disease.

## CDC RECOMMENDATIONS

The Centers for Disease Control and Prevention (CDC) has developed Key Prevention Messages for Patients with Skin and Soft Tissue Infections and Their Close Contacts, which describes certain practices that should be utilized, as follows:

1. Keep wounds that are draining covered with clean, dry bandages.
2. Clean hands regularly with soap and water or alcohol-based hand gel (if hands are not visibly soiled). Always clean hands immediately after touching infected skin or any item that has come in direct contact with a draining wound.
3. Maintain good general hygiene with regular bathing.
4. Do not share items that may become contaminated with wound drainage, such as towels, clothing, bedding, bar soap, razors, and athletic equipment that touches the skin.
5. Launder clothing that comes in contact with wound drainage after each use and dry thoroughly.
6. If you are not able to keep your wound covered with a clean, dry bandage at all times, do not participate in activities where you have skin-to-skin contact with other persons (such as athletic activities) until your wound is healed.

7. Clean equipment and other environmental surfaces with which multiple individuals have bare skin contact with an over the counter detergent/disinfectant that specifies *Staphylococcus aureus* on the product label and is suitable for the type of surface being cleaned.

It is recommended that these Key Prevention Messages be studied by employers and incorporated into information provided to employees and as part of a response plan if a positive diagnosis of MRSA is identified to the employer.

## EMPLOYER RESPONSE

Unless the employer is directly involved in the healthcare industry, it is typically ill equipped to respond in any meaningful fashion to this health hazard. Frequently, the employer is also unaware of what a potential response should include after receiving information from an employee, employee family member or a third party that an employee may be infected or may have been exposed to an infected individual. The following action items and potential liabilities must be considered by the employer if an infected employee refuses to comply with disease prevention requirements at the workplace.

**Department of Public Health**—Since MRSA constitutes a public health hazard, the employer should consider contacting its local Department of Public Health (DPH), to obtain additional information. Under state law, healthcare providers, like the employee's physician, are required to report communicable diseases to the DPH, which is required to respond. The DPH will be a valuable resource for the employer including possibly visiting the workplace to conduct an investigation among the employees regarding potential exposure.

Often the DPH will advise the employer of alternative courses of action that must be considered and the employer must document its actions. This may include requiring the infected employee to remain away from work

to prevent further infection if the employee refuses to comply with disease prevention requirements at the workplace, for example, the CDC recommendations described above.

**OSHA**—OSHA has no regulation that specifically deals with the health hazards associated with MRSA. The agency does not have the resources to provide any type of medical assistance to the employer. There is no requirement under OSHA regulations to report a case of employee infection to the agency. Likewise, there is no requirement to record an incident of an employee infection on the OSHA 300 Log unless there is a medical determination that the infection is "work related" (which typically would be limited to those workplaces where



employees are routinely expected to treat patients or to provide services to individuals who may have the disease).

**Worker's Compensation**—Under worker's compensation laws, the employer is legally responsible to provide benefits to an employee who sustains an injury or illness that "arises out of and in the course of employment." Since MRSA is not typically a hazard that arises out of the employment, the employer would, in most cases, not be responsible for worker's compensation benefits if an employee contracts MRSA. Unless the employer is involved in work activities where employee exposure to MRSA is reasonably expected to occur within those activities. In any event, medical evidence would

be required to establish that the exposure occurred within the course of employment. Since workers' compensation is regulated by state law, it will be necessary to evaluate the standards for determining whether there is legal liability for any such "exposure."

**Family and Medical Leave Act**—Under the FMLA, an employer which is subject to the Act and whose employees qualify for leave under the Act, may be required to provide an employee up to twelve (12) weeks of unpaid leave. This includes the employee who has developed a "serious health condition" as a result of MRSA. This could also include allowing an employee leave, based upon a physician's certification, to provide care and support to an immediate family member who has developed a "serious health condition" resulting from MRSA. In that case, the employer must comply with the Act regarding appropriate notifications and documentation, particularly relating to return to work. One area that is unclear is whether the employer can require an employee to utilize FMLA leave where the employee may have MRSA exposure and symptoms of infection and the employer is concerned about whether the employee should be kept away from the workplace while being evaluated to determine if the employee has active MRSA and could be infectious or if the employee refuses to comply with recommended hygiene practices while infectious and at work.

**Americans with Disabilities Act**—Under the ADA, a qualified employee with a disability constituting a significant impairment of a major life activity cannot be discriminated against in his/her employment. This protection includes an employee who currently has a disability, has a history of a disability or is perceived by the employer to have such a disability.

In the context of MRSA, the employer can have several potential liabilities. Initially, if the employee's MRSA infection has resulted in a serious and chronic health impairment (e.g., cardiovascular, reduced pulmonary function)

the employee may have a disability affecting the major life activity of breathing. This could require the employer to accommodate the employee with leaves of absence for treatment, reasonable modifications to work activities because of the employee's inability to perform certain work functions (e.g., certain exertions, use of respirators, exposure to certain substances).

In addition, the employer could be at legal risk if the employee were to claim that the employer refused to hire the employee or to provide other employment benefits to an existing employee because the employer was aware of the employee's history of MRSA-related disability or a perception of a disability related to MRSA, when no such disability in fact existed.

## RECOMMENDATIONS

Unfortunately, it appears that new health hazard has already and will continue to impact the workplace. It is recommended that the employer take the following steps to preplan for such a hazard.

- **Obtain information** on the disease from the local Department of Public Health, the Centers for Disease Control and Prevention (CDC), or the employer's local health provider so that the employer can determine whether there is a MRSA health risk in the community and/or within the particular groups which may be within the workplace.
- **Inform its employees** that the employer is committed to providing a safe and healthy workplace (required under the OSHA Act) and that it wants to protect its employees against potential exposure to any disease whether or not work-related, including MRSA, within the workplace. Provide information to employees, such as the CDC Key Prevention Messages discussed above.
- **Advise employees** that they are required to report immediately to the employer any communicable diseases (including MRSA) so that the employer can institute appropriate action with public health authorities to control the spread of the disease within the workplace and ensure that an adequate medical response is occurring.
- **Inform employees** that all such medical information will be maintained as confidentially as possible and that no employee will be subjected to retaliation for reporting such information.
- **Ensure that the employer** documents its actions to respond to any actual, reported infection or other information involving MRSA, including recommendations from the DPH, medical providers and to the affected employees, as the situation is resolved.
- **Follow the employer's** policies relating to documenting any requests for FMLA or other leaves which may be required to treat MRSA and resulting chronic health conditions.
- **Document any employee** requests for an accommodation and the interactive process with the employee for any MRSA related "disability."

If the employer becomes informed of the facts relating to MRSA and responds in a reasonable manner as outlined above, the employer will be able to properly respond to this health hazard to protect the health of its employees, as well as to limit its potential legal liability.

The author acknowledges source material on the disease, including the Centers for Disease Control and Prevention (CDC); American Medical Association; Mayo Foundation for Medical Evaluation and Research.

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