

Communicating with Health Care Providers¹

In the wake of *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E.2d 836 (2003), the South Carolina legislature has provided specific procedures regarding communications with a treating physician or health care provider, previously referred to as “ex parte communications with physicians.” Section 42-15-95 (B) provides that a health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought under the Workers’ Compensation Act may discuss or communicate an employee’s medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals.

In exchange, the employee (1) must be notified in a timely fashion, in writing or verbally, of the discussion or communication and may attend and participate; (2) must be advised prior to the discussion or communication; and (3) must be provided a copy of the written questions at the same time they are provided to the health care provider, as well as be provided a copy of the response. Such communications must not be in conflict or interfere with the employee’s examination or treatment. Any discussions, communications, medical reports, or opinions obtained in accordance with these provisions will not constitute a breach of the physician’s duty of confidentiality. However, any information that is obtained in violation of this section must be excluded from any proceedings (i.e., fruit of the poisonous tree).

Section 42-15-95 was also modified to require the release of all information pertaining directly to a workers’ compensation claim from an employee’s health care facility to the

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insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen days of receipt of written request.

Section 42-15-80 further specifies that facts communicated to or otherwise learned by a physician or surgeon are not privileged. The Section requires that the Commission promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals, giving consideration to the duties owed to both the employer and employee.

Section 42-15-80: Submission to physical examinations; admissibility of communications to physician; autopsy; role of rehabilitation professionals.

- (A) After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission. The employee has the right to have present at the examination any qualified physician or surgeon provided and paid by him. A fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, is not privileged, either in hearings provided for by this title or any action at law brought to recover damages against an employer who may have accepted the compensation provisions of this title. If the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the commission the circumstances justify the refusal or obstruction. The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.
- (B) The commission shall promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals in workers' compensation cases with consideration given to these persons' duties to both the employer and the employee and the standards of care applicable to the rehabilitation professional or other similarly situated professional as the case may be.

Section 42-15-95: Release of medical records; communication of medical history by health care provider.

- (A) Any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44-7-130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen days after receipt of written request. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record in accordance with regulations promulgated by the Workers' Compensation Commission. Fee schedules established through regulations of the Workers' Compensation Commission shall apply only to claims under Title 42. If a health care provider fails to send the requested information within thirty days after receipt of the request, the person or entity making the request may apply to the commission for

an appropriate penalty payable to the commission, not to exceed two hundred dollars.

- (B) A health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title may discuss or communicate an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals, or the commission without the employee's consent. The employee must be:
- (1) notified by the employer, carrier, or its representative requesting the discussion or communication with the health care provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the health care provider knows the discussion or communication will occur in the near future;
 - (2) advised by the employer, carrier, or its representative requesting the discussion or communication with the health care provider of the nature of the discussion or communication prior to the discussion or communication; and
 - (3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider. The employee also must be provided with a copy of the response by the health care provider.

Any discussion or communication must not conflict with or interfere with the employee's examination or treatment.

Any discussions, communications, medical reports, or opinions obtained in accordance with this section will not constitute a breach of the physician's duty of confidentiality.

- (C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.