

From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

Question: In a workers' compensation appeal, can a claimant control what medical records can be requested by the employer?

A patient's medical records are normally privileged documents. *R.C. 2317.02(B)*. However, a patient can be deemed to have waived that privilege in certain instances, including the filing of a workers' compensation claim or lawsuit. In those instances, privilege is waived only for records pertaining to injuries or conditions that relate "causally or historically" to the issues in court or before the Industrial Commission. *R.C.2317.02(B)(3)(a)*. Recently, the Fifth District Court of Appeals considered whether a court erred in granting a motion to compel a "global" medical release, without considering the "causal or historical relationship" between the records and the claim in court.

Collins v. Interim Healthcare of Columbus, Inc., 2014-Ohio-40, involved a healthcare worker who injured her back while moving a patient. A workers' compensation claim was filed and subsequently allowed for a variety of medical conditions, all relating solely to her low back. When a motion filed by the claimant seeking an additional allowance of "disc bulge at L3-4" was denied, the claimant filed an administrative appeal to the Perry County Common Pleas Court pursuant to R.C.4123.512. During discovery, the employee was presented with a "global" authorization for the release of all of her medical records from all providers, and she refused to sign. The claimant requested that the defendants agree to a protective order with respect to unrelated medical records, but the defendants refused. Eventually, the employer filed a motion to compel a signature on the "global" release, and the trial court granted the motion, resulting in an appeal to the Fifth District Court of Appeals.

The Fifth District reversed, concluding that it was an abuse of discretion for the trial court to grant the motion to compel without first conducting an *in camera* inspection to determine whether the records obtained using the release were "causally or historically" related to the issues before the court. The employer argued that the claimant never demanded an *in camera* inspection, but the Court noted that pursuant to Civ. R. 26(C) the trial court retains control over discovery, and that it had both the authority and obligation to conduct an *in camera* review when a discovery request is alleged to be too broad, even when such an inspection is not requested by the party. *Wooten v. Westfield Ins. Co.*, 181 Ohio App3d 59, 2009-Ohio-494.

In the event that a release is not sufficiently limited, it is incumbent upon the trial court to conduct an *in camera* inspection of the records, and place any records that are not related "causally or historically" to the claims in court under seal. This process can become particularly contentious with regard to psychological records, as well as records relating to injuries from other claims. While the "causally or historically" standard is broad, defense counsel should be prepared to make a connection. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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