

OPINION NO. 79-047**Syllabus:**

If a claimant for workers' compensation voluntarily and knowingly signs an application form that includes a statement to the effect that the claimant waives all provisions of law forbidding any physician from disclosing information about the claimant, a regional board of review has the power, pursuant to R.C. 4123.518, to compel the claimant to authorize the employer's counsel to obtain the records of the claimant's attending physician, to the extent that such records are pertinent to identify the cause of the particular injury or occupational disease which forms the basis for the claim.

**To: William W. Johnston, Chairman, The Industrial Commission of Ohio,
Columbus, Ohio**

By: William J. Brown, Attorney General, July 31, 1979

I have before me your request for my opinion on whether a regional board of review can order a claimant for workers' compensation to authorize the employer's counsel to obtain the records of the claimant's attending physician. In 1976 Op. Att'y Gen. No. 76-038, I concluded that a regional board of review does not have the power to compel a claimant to sign a medical waiver. Your current question, however, is limited to situations in which the claimant has voluntarily signed a waiver of his patient-physician privilege with respect to the investigation and determination of his claim. The waiver is given when the claimant signs his original application, which includes the following statement.

By signing this application I expressly waive, on behalf of myself and of any person who shall have any interest in this claim, all provisions of law forbidding any physician or other person who has heretofore attended or examined me, from disclosing any knowledge or information which they thereby acquired.

Regional boards of review are established pursuant to R.C. 4123.14 and are under the jurisdiction of the Industrial Commission. One of the functions of a regional board of review is to hear appeals of the decisions of a district hearing officer granting or denying disputed claims. The procedures for such hearings are set forth in R.C. 4123.516, et seq. Of particular significance to the question you have raised is that portion of R.C. 4123.518 which provides as follows:

Before making or denying an award in the appeal of a disputed claim, a regional board of review . . . shall afford to the claimant, the employer, and the administrator an opportunity to be heard upon reasonable notice and to present the testimony of witnesses and other evidence. The rules and procedures promulgated by the industrial commission for hearings as well as the powers granted to the district hearing officer pursuant to section 4123.515 of the Revised Code, and the rendering of a decision are applicable to a regional board of review . . . in its consideration of a claim under Chapter 4123. of the Revised Code.

Thus, for the purposes of hearing the appeals of a disputed claim, a regional board of review has been granted the same powers as are conferred upon a district hearing officer by R.C. 4123.515.

R.C. 4123.515 provides in pertinent part as follows:

Where there is a disputed claim, the administrator of the bureau of workers' compensation or one of his deputies shall refer that claim

to the appropriate district hearing officer. The district hearing officer shall afford to the claimant and the employer an opportunity to be heard upon reasonable notice and to present testimony and facts pertinent to the claim. The district hearing officer when he deems it appropriate may compel testimony or the production of evidence that is pertinent to a violation of a specific safety requirement, identifies the cause of injury or occupational disease, or presents the circumstances of the injury or occupational disease.

Therefore, a district hearing officer, and consequently a regional board of review, would appear to have the power under R.C. 4123.515 to compel production of medical records to the extent that such records are pertinent to identify the cause of the injury or occupational disease.

The Ohio Supreme Court in State ex rel. Galloway v. Industrial Commission, 134 Ohio St. 496 (1938) held, however, that the statutorily created patient-physician privilege found in G.C. §11494 (now R.C. 2317.02) applies to hearings before the Industrial Commission and that the Commission could not condition consideration of a claimant's application upon waiver of the patient-physician privilege. Hence, the power of a regional board of review to compel production of a claimant's medical records is limited by R.C. 2317.02(B). That section provides, in pertinent part, that "[a] physician [shall not testify] concerning a communication made to him by his patient in that relation or his advice to his patient but the physician may testify by express consent of the patient. . . ." It is, therefore, necessary to determine whether by signing an application form that includes the statement set forth above, a claimant expressly waives the patient-physician privilege. A waiver is the voluntary relinquishment of a known right. The inclusion of waiver language in a worker's compensation form can constitute an effective waiver and was sustained as such in Ronald v. Young, 117 Ohio App. 362 (Cuyahoga Co. 1963).

In specific response to your request, it is, therefore, my opinion, and you are advised, that if a claimant for workers' compensation voluntarily and knowingly signs an application form that includes a statement to the effect that the claimant waives all provisions of law forbidding any physician from disclosing information about the claimant, a regional board of review has the power, pursuant to R.C. 4123.518, to compel the claimant to authorize the employer's counsel to obtain the records of the claimant's attending physician, to the extent that such records are pertinent to identify the cause of the particular injury or occupational disease which is the basis for the claim.