

OPINION NO. 76-038**Syllabus:**

1. A Regional Board of Review is not legally permitted to order a workmen's compensation claimant to sign medical waivers and submit them to counsel for the employer in order to obtain medical records from the claimant's attending physicians.

2. A Regional Board of Review is not legally permitted to deny a claim or to refrain from the further processing of a claim on the basis that a claimant has refused to waive the physician-patient privilege.

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

By: William J. Brown, Attorney General, May 14, 1976

I have before me the Industrial Commission's request for my opinion, which may be summarized as follows:

(1) Is a Regional Board of Review legally permitted to order a workmen's compensation claimant to sign medical waivers and submit them to counsel for the employer to be used for the purpose of obtaining medical records from the claimant's attending physicians?

(2) If a Regional Board of Review is legally permitted to order a claimant to sign such a waiver and if the claimant refuses to do so, would the Board be justified in either

denying or refraining from further processing the claim?

Both of the questions you present are answered by the case of State ex rel. Galloway vs. Industrial Commission of Ohio, 134 Ohio St. 496 (1938). In this case the claimant had filed an application for adjustment of claim. However, before filing the application he had erased the medical waiver provision contained on the form. The Industrial Commission ordered the claimant to file a new application without any reservation as to privileged communications. Upon the refusal of the claimant to comply with that order the Commission refused to take further action in the claim. The claimant then instituted a mandamus action to require the Commission to consider his application.

The Supreme Court set forth the issue as follows at page 498:

"The question first in importance in this case is whether the Industrial Commission is authorized under its rule-making power conferred by Section 1465-44, General Code [R.C. 4123.05], to require an applicant for workmen's compensation, as a condition precedent to a consideration of his claim, to sign and file a waiver providing as follows:

'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, or who may hereafter attend or examine me, from disclosing any knowledge or information which they may thereby acquire.'"

In affirming the Court of Appeals decision that a writ be issued as prayed for, the Supreme Court held that:

- "1. Under the rule-making power conferred upon the state Industrial Commission by the provisions of Section 1465-44, General Code [R.C. 4123.05], it is not authorized to adopt and enforce a rule in conflict with the express provisions of statute.
- "2. The provisions of Section 11494, General Code [R.C. 2317.02], protecting as privileged the communications of patient and physician in that relation, confer a substantial right, waiver of which may not be required by the state Industrial Commission as a condition precedent to the consideration of an application for workmen's compensation."

I find that Galloway, supra, is determinative of the questions you have presented. Therefore, in specific answer to your questions, it is my opinion and you are so advised that:

- (1) A Regional Board of Review is not

legally permitted to order a workmen's compensation claimant to sign medical waivers and submit them to counsel for the employer in order to obtain medical records from the claimant's attending physicians.

(2) A Regional Board of Review is not legally permitted to deny a claim or to refrain from the further processing of a claim on the basis that a claimant has refused to waive the physician-patient privilege.