

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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Opinion No. 08-161

Workers' Compensation -- *Ex parte* Communication Between Case Managers and Employee's Physician

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**QUESTIONS**

1. Does the prohibition in *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626 (Tenn. 2008), regarding *ex parte* communications between an employer and an employee's physician apply to case managers operating under Tenn. Code Ann. § 50-6-123?
2. If so, to what extent does *Overstreet* prohibit a case manager from communicating with a treating physician when the injured employee has not consented to such communication?

**OPINIONS**

1. No. *Overstreet's* prohibition against *ex parte* communications between an employer and an employee's physician does not apply to case managers operating under Tenn. Code Ann. § 50-6-123.
2. In light of the answer to Question No. 1, this Question is pretermitted.

**ANALYSIS**

**1.**

Under the Workers' Compensation Law, the Commissioner of the Tennessee Department of Labor and Workforce Development ("Commissioner") is required to establish by rulemaking process "a system of case management for coordinating the medical care services provided to employees" who claim workers' compensation benefits. Tenn. Code Ann. § 50-6-123(a). In relevant part, if employers utilize their own case management system, then employees must cooperate with such program:

- (b) Employers may, at their own expense, utilize case management, and, if utilized, the employee shall cooperate with

the case management, and such case management shall include, but not be limited to:

- (1) Developing a treatment plan to provide appropriate medical care services to an injured or disabled employee;
- (2) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;
- (3) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;
- (4) Ensuring that the injured or disabled employee is following the prescribed medical care plan; and
- (5) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

Tenn. Code Ann. § 50-6-123(b).

This Office has interpreted § 50-6-123 in the past, opining that “[n]either a physician nor an attorney has the right to deny access to an injured worker by a case manager who is fulfilling the requirements of [this provision] and applicable rules and regulations.” Op. Tenn. Att’y Gen. No. 94-100 (Sept. 9, 1994). In reaching this conclusion, this Office reasoned that the plain and ordinary meaning of Tenn. Code Ann. § 50-6-123 made it “clear that the legislature intended the case manager to have access to the injured employee. A case manager would not be able to carry out the requirements of [Tenn. Code Ann.] § 50-6-123(b) if denied access to the injured employee by the physician or attorney.” Op. Tenn. Att’y Gen. No. 94-100 (Sept. 9, 1994).

The Commissioner has promulgated rules to implement this medical case management system in order to ensure the coordination of medical case management services provided to injured employees under the Workers’ Compensation Law. Tenn. Comp. R. & Regs. 0800-2-7. In particular, under this regulatory framework, a case manager<sup>1</sup> or contractor<sup>2</sup> has the right to contact the injured employee, employer, their legal representatives and all health care providers so that the contractor or case manager may provide effective case management services. Tenn. Comp. R. & Regs. 0800-2-7-.07(1). Moreover, injured employees and their legal representatives must “cooperate with the contractor or employer’s case management provider with respect to all reasonable requests for information necessary for case management purposes. The contractor shall report any refusal to cooperate to the Medical Director.” Tenn. Comp. R. & Regs. 0800-2-7-.07(2). Disputes regarding the reasonableness of requests for information may be submitted to the medical director, whose determination on the matter shall be final. Tenn. Comp. R. & Regs. 0800-2-7-.07(3).

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<sup>1</sup> A case manager is defined at Tenn. Comp. R. & Regs. 0800-2-7-.01(2).

<sup>2</sup> A contractor is defined at Tenn. Comp. R. & Regs. 0800-2-7-.01(5).

In *Overstreet*, the Supreme Court recently held that, because an implied covenant of confidentiality implied in law exists between an employee and any physician supplied by the employer under the Workers' Compensation Law, any access to medical information beyond that provided by Tenn. Code Ann. § 50-6-204 requires the employee's consent. 256 S.W.3d at 634, 636. Thus, under § 50-6-204, an employer is limited to accessing the following information:

“a complete medical report ... as to the claimed injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an itemized statement of charges for medical services to date,” as well as “subsequent prognosis reports, medical records and statements of charges. . . .” Tenn. Code Ann. § 50-6-204(a)(1), (2)(B)[.]

*Overstreet*, 256 S.W.3d at 636. The Court noted that, while Tenn. Code Ann. § 50-6-204 requires much disclosure, “none of the terms permit *ex parte* communications by the employer with the employee's treating physicians.” *Overstreet*, 256 S.W.3d at 633.

In construing statutes, we must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). We must “construe the statute so that no part will be inoperative, superfluous, void or insignificant.” *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978).

This Office concludes that *Overstreet's* prohibition against *ex parte* communications between an employer and an injured employee's physician does not apply to case managers operating under Tenn. Code Ann. § 50-6-123. As a threshold matter, *Overstreet* did not interpret § 50-6-123, but dealt solely, in relevant part, with whether § 50-6-204 allowed *ex parte* communications between an employer and an employee's treating physician. While acknowledging that § 50-6-204 permits “much disclosure” of information to the employer by the employee's treating physician, the Court noted that the “conspicuous absence” of a provision in § 50-6-204 allowing *ex parte* communications indicated that the legislature had not intended to allow such communications. *Overstreet*, 256 S.W.3d at 633. Given that *Overstreet* solely interpreted § 50-6-204, the question of whether § 50-6-123 allows *ex parte* communications has not been decided by a Tennessee court. In fact, the Court's recognition that the Workers' Compensation Law provides a “comprehensive statutory scheme for the disclosure of [confidential] information” about an employee, *Overstreet*, 256 S.W.3d at 633, suggests that other provisions of the Code may allow such *ex parte* communications.

Unlike Tenn. Code Ann. § 50-6-204, section 50-6-123(b) does allow *ex parte* communications between a case manager discharging his or her duties as provided by the statute

and an injured employee, his health care provider, or his legal representative. Because § 50-6-123 is unambiguous, we determine legislative intent from the plain meaning of the statute's language. *Freeman*, 27 S.W.3d at 911. The statute's plain text provides that an employee must cooperate with an employer that uses its own case management system by allowing the case manager, among other things, to develop "a treatment plan to provide appropriate medical care services to an injured or disabled employee;" "[s]ystematically monitor[ ] the treatment rendered and the medical progress of the injured or disabled employee;" and ensure "that the injured or disabled employee is following the prescribed medical care plan[.]" Tenn. Code Ann. §§ 50-6-123(b)(1), (2) and (4). Indeed, the Commissioner, recognizing this necessity, promulgated rules that mandate an employee's cooperation with reasonable requests for information from a case manager. Tenn. Comp. R. & Regs. 0800-2-7-.07. These regulations, in conjunction with the Commissioner's statutory authority, make it conspicuously clear that the legislature intended for such communications to occur.<sup>3</sup>

As this Office noted in the past, it would be impossible for a case manager to discharge his or her statutory duties without possessing the ability to communicate directly with an injured employee, his employer, his legal representative, or his health care providers, including his physician(s). Op. Tenn. Att'y Gen. No. 94-100 (Sept. 9, 1994). An interpretation that reached a contrary result would render the statute inoperative in violation of well-established canons of statutory interpretation. *See Northcutt*, 568 S.W.2d at 637-38. Further, this conclusion is not inconsistent with *Overstreet's* holding.

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Requested by:

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<sup>3</sup>In Tennessee, "interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts." *Riggs v. Burson*, 941 S.W.2d 44, 50-51 (Tenn. 1997) (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984)). Accordingly, courts will defer to the Commissioner's interpretation without substituting "their own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 844.

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