INDUSTRIAL COMMISSION PANEL APPLIES *PETRILLO* DOCTRINE TO WORKERS’ COMPENSATION CLAIMS

On February 8, 1999, Panel B of the Industrial Commission in a 2-1 majority decision entered an order applying the *Petrillo* doctrine to Illinois workers’ compensation claims. The decision was entered in the case of *Lynn Anderson v. Hydraulics, Inc.*, 97 WC 61260, 99 IIC 93. The two-member majority consisted of Commissioners Dickett-Smart and Falcioni. Commissioner Stevenson authored an eight-page dissent.

The *Petrillo* doctrine was established in a case issued by the Illinois Appellate Court in 1986. *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill.App.3d 581, 499 N.E.2d 952 (1st Dist., 1986). In that case, the court held that it was improper for defense counsel to have contact with the plaintiff’s treating physician outside the normal discovery process. The court prohibited *ex parte* communications between defense counsel and any of plaintiff’s treating doctors. Any information obtained as a result of such *ex parte* communication was barred at trial.

The *Petrillo* doctrine has been upheld by subsequent court decisions involving personal injury civil suits. The *Petrillo* doctrine has never been applied to a workers' compensation claim where there is no discovery process. An employer in a workers' compensation claim does not have the ability or right to take a discovery deposition from a treating physician.

The *Anderson* case was a workers' compensation claim wherein the respondent disputed causal connection. After an alleged work injury, respondent referred petitioner to a doctor. Respondent's doctor eventually referred petitioner to a hand specialist. Based on statements made by the petitioner, the hand specialist issued a report finding there was a causal relationship between petitioner's injury and her work duties.
Respondent retained a rehabilitation nurse. The rehabilitation nurse contacted the hand specialist and forwarded him a job description and a videotape depicting petitioner's job duties. After reviewing that additional information, the hand specialist issued a report concluding that petitioner's job duties did not cause petitioner's injury.

At trial, respondent offered the modified report of the hand specialist and petitioner objected, claiming respondent had violated the Pettillo doctrine. The arbitrator ruled in petitioner's favor and rejected the hand specialist's report on the issue of causation. The Commission affirmed the arbitrator's ruling on this issue. The Commission based its decision on the Pettillo case and also the case of Best v. Taylor Motor Works, 179 Ill.2d 367, 689 N.E.2d 1057 (1997). The Commission held,

“The Commission notes Pettillo and Best were non-workers' compensation cases where discovery was available. In the workers' compensation field there is no formal discovery. Section 8(a) of the Act specifically provides for the release of medical reports to the employer. It is conceded that a free flow of information between the parties is inherent to our system.

“This is not a case where the petitioner has refused to turn over medical records at the outset of the injury. Were that to occur, petitioner would not be entitled to benefits. The facts before the Commission concern a nurse for respondent having an ex parte communication with petitioner's treating physician regarding his opinion on causality, and seemingly attempting to change the outcome of that opinion. To hold a workers' compensation claimant, by virtue of filing an application for adjustment of claim, waives his or her physician-patient privilege flies in the face of the public policy announced by the Appellate Court in Pettillo and more recently by the Illinois Supreme Court in Best.”

The Commission felt this rule applied to all treating physicians, whether or not those physicians were chosen by respondent.

The majority found that the arbitrator erred as to certain other evidentiary rulings. Therefore, the arbitrator's decision was vacated and the matter was remanded to the arbitrator for further hearing. However, the arbitrator was precluded from considering the supplemental report of the
hand specialist.

Commissioner Stevenson issued a lengthy dissent finding that the *Petrillo* doctrine cannot and should not be applied to workers’ compensation claims. Commissioner Stevenson cited numerous reasons why the case should not apply. Moreover, he cited case decisions from other states wherein this issue was raised and rejected.

The implications of this decision are severe. If in fact this decision is a proper one and *Petrillo* does apply to workers' compensation, the ability of employers and insurance companies to effectively manage claims will be severely hampered. Essentially, the employer, the insurance carrier, any nurses or medical management or vocational personnel, and attorneys will be precluded from having any contact with a treating physician of petitioner whether or not the treating physician was chosen by respondent. The decision precludes any contact with the treating physician. Presumably, it would allow only the ability to request copies of records. Medical management of cases would basically be eliminated.

Currently, the only way to protect yourself would be to get a release which would allow contact with the doctors contrary to the *Petrillo* restrictions. I have drafted a sample release waiving the *Petrillo* restrictions. If petitioner is willing to sign this medical authorization and release, you should be able to continue to handle claims as before. Without the release, you run the risk of violating the *Petrillo* restrictions and being precluded from using favorable treating doctor records and reports at the time of trial. You should and must expect *Petrillo* objections to be raised by petitioners' attorneys on a routine basis from now on.
AUTHORIZATION FOR MEDICAL RECORDS
AND COMMUNICATION RELEASE

I hereby authorize any licensed physician, chiropractor, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company or other organization, institution or person, that has any records or knowledge of my mental or physical health, history, condition or well-being, to supply such information to my employer or its insurance carrier, claims administrator or attorneys.

I specifically authorize any treating physician or medical care provider to communicate orally or in writing with my employer or its insurance company, claims administrator, rehabilitation or medical management consultant or attorneys as to my care and treatment, and as to any other issues including diagnosis, prognosis, causal connection of care and treatment to my work injury or duties, and ability to work. I hereby waive my physician-patient privilege. In conjunction with this, I also authorize any treating physician or medical provider to review any additional materials provided to them.

A photocopy of this authorization shall be as valid as the original. This release shall remain valid for the length of my claim.

__________________________
NAME-PLEASE PRINT

__________________________
SIGNATURE

__________________________
DATE