Prior to the 2011 amendments, the employer and its insurance company did have access to information about the injured worker's medical treatment. They were entitled to receive copies of the worker's medical records for treatment of the workplace injury. Moreover, they could also hire a nurse case manager to attend an injured worker's appointments and consult the doctor about medical treatment. The nurse would then pass along the information learned from the doctor to the insurance company.

The employer and its insurance company were prohibited, however, from speaking directly to the doctor about the injured worker's treatment without the worker's permission. In the case of *Salaam v. N.C. Dep't of Transp.*, the Court of Appeals held that due to 'patient privacy' and 'the confidential relationship between doctor and patient,' employers were not allowed to communicate with a doctor without the worker's permission.

The new section 97-25.6, entitled 'Reasonable access to medical information,' makes significant changes to the law. I would like to focus on three provisions. First, the employer, or more likely its attorney, is now authorized to write the physician and request additional information. The employer must send the worker a copy of the letter and must provide her the doctor's response within 10 days of receipt.

This is a fairly reasonable change, but it has potential for abuse. First, a less-than-scrupulous employer could make derogatory or prejudicial statements in the letter about the worker aimed to influence the doctor. Second, I suspect most letters will end with a sentence like this: 'If you have any questions, please do not hesitate to call me.' This sentence would essentially invite the doctor to make improper contact with the employer.

The second major change is that employers are now allowed to submit 'additional information' to the doctor. Although, thankfully, the employer must first notify the injured worker of the intended communication, this change also had potential for abuse. It's not hard to imagine that the additional information submitted by the employer will almost always be prejudicial to the injured worker. But what if the information is not reliable? For example, what if the employer intends to submit a surveillance tape, but the videotaped subject is not the injured worker? The section does allow the worker ask the Indusrial Commission for a protective order, but it remains to be seen whether that will effectively protect workers from an employer's scurrilous communications.

The third change is the most signficant. The employer, or again its attorney, is now allowed to pick up of the phone and discuss the injured worker's medical treatment with her doctor without the worker's consent. Again, the injured worker must be notified ahead of time and given an opportunity to participate in the phone conversation. One wonders, however, whether an unrepresented worker will know that she should participate in the call. Moreover, allowing the employer to call the doctor simply does not seem consistent with the notion of doctor-patient confidentiality. Finally, this procedure is also ripe for abuse. An unscrupulous employer may use the call as opportunity to influence the doctor by communicating unreliable prejudicial information about the worker.

Obviously, in a workers' compensation claim, the employer needs access to an injured worker's relevant medical information. Otherwise, the insurance company cannot effectively manage the claim. However, the changes made by the 2011 reforms strip away the medical privacy rights of injured workers and leave them more vulnerable to the attacks of unscrupulous employerrs.
