It has long been an axiom of workers' compensation in North Carolina that the employer 'directs medical care.' In other words, once an employer accepts responsibility for a claim, the employer gets to choose the injured worker's doctor. Obviously, the choice of doctor can have a tremendous impact on an injured worker's treatment and her case. Not surprisingly, some employers and their insurance companies send injured workers to doctors who are less sympathetic to the worker and whose primary goal, it seems, is to release the worker from treatment and back to work as quickly as possible.

Before the recent reforms, this rule was moderated by several 'exceptions.' First, an injured worker could at any time seek treatment with a doctor of her own choosing and then ask the Industrial Commission to designate that doctor as her treating physician. Second, after being rated and released by the doctor chosen by her employer, the injured worker could seek a comprehensive second opinion with the doctor of her choice, paid for by the employer.

The 2011 amendments have reduced the scope of these exceptions and thereby given employers even greater control of medical care. First, the new law makes it more difficult to change to a physician that the injured worker saw without her employer's permission. Second, the reforms establish a new standard that the injured worker must meet in petitioning the Industrial Commission for a change of physician. The worker must prove that the change is 'reaonably necessary to effect a cure, provide relief, or lessen the period of disability.' N.C. Gen. Stat. 97-25 (2011). Although this isn't an unreasonable standard, before the reforms the Industrial Commission had greater discretion to grant the change.

Second, and more importantly, the amendments significantly limit an injured worker's right to a second opinion, essentially by creating two 'categories' of second opinions. Under the first category, the employer can seek a comprehensive second opinion, but does not have the right to choose the doctor. After the worker requests a second opinion in writing, the parties have a duty to bargain in good faith about who will perform the second opinion. This may sound reasonabe, but actually it strips the injured worker of her right to choose the second opinion doctor. In essence, the employer now gets a say in who the injured worker sees for a second opinion.

Under the second category of second opinions, the injured worker has absolute right to choose the doctor, but only for another opinion about her permanent disability rating. The new law commands the Industrial Commission to

disregard any opinion the doctor gives about the need for future medical treatment or the worker's physical limitations. The end result of the reforms is that injured workers can no longer choose their own doctors to provide comprehensive second opinions.

As noted, these changes give employers even greater control over an injured worker's medical treatment. Hopefully, employers and their insurance companies will yield this new power responsibly. Inevitably, however, the changes will prevent some workers from getting the treatment they need for the best possible recovery from their injuries.

Next, we'll look at the changes that allow your employer to pick up the phone and speak to your doctor without your consent.
