

Suspension of Benefits for Failure to Comply: Maintaining Control of Medical Treatment under S.C. Code Ann. Section 42-15-60 and 42-15-80.

February 28, 2015

Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

In South Carolina workers' compensation practice, it is common knowledge that the Employer and the Carrier control medical treatment. But what happens if a claimant is being non-compliant with the treating physicians? What happens if the claimant is missing scheduled appointments? A complete understanding of S.C. Code Ann. Sections 42-15-60 and 42-15-80 will assist in maintaining control over the medical treatment in a claim.

S.C. Code Ann. Section 42-15-60(A) provides that "[t]he refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission *bars the employee from further compensation until the refusal ceases* and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service" (emphasis added).

Further, under S.C. Code Ann Section 42-15-80(A), "[a]fter an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer of the commission. . . If the employee refuses to submit himself to or in any way obstructs the examination requested and provided for by the employer, *his right to compensation. . . must be suspended* until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the commission the circumstances justify the refusal or obstruction" (emphasis added).

Under S.C. Code Ann. Sections 42-15-60 and 42-15-80, the Employer/Carrier is able to **suspend** Claimant's benefits following the refusal of medical treatment within the first 150 days following the accident. Of importance under these statutes is the distinction between **suspension** and **termination** of benefits. While the Employer/Carrier is unable to terminate an injured worker's benefits within 150 days from the date of accident, the Employer/Carrier can suspend benefits before the 150 day benchmark if an injured worker refuses medical treatment. Under both 42-15-60 and 42-15-80, it is important to note that the suspension of benefits is temporary and that benefits *must* be reinstated upon a claimant's compliance with medical treatment.

If the Employer/Carrier would like to suspend benefits for failure to comply with medical treatment after 150 days following the accident, a Form 21/ Hearing Request needs to be immediately filed to address the suspension of benefits and to obtain an Order from the Commission compelling the claimant to comply with medical treatment. The Employer/Carrier must continue to pay benefits to the Claimant until a hearing is set on the Form 21 to avoid the 25% penalty for improper suspension or termination of benefits. The Employer/ Carrier can then request a credit for overpayment of all benefits paid during the time of non-compliance.

While Employer/Carrier has the ability to control physicians and an injured worker is required by statute to comply with the medical treatment, the statute does allow for refusal "if the commission finds the circumstances justify the refusal". The most common example of justification for refusal of medical treatment would be a situation that it appears an Employer/Carrier is "doctor shopping". The Commission does not look favorably upon Employers/ Carriers that they believe are sending a claimant to a number of doctors in order to obtain a favorable opinion. While the Commission will allow for a reasonable second opinion or independent medical evaluation, they will likely find a justified refusal of medical treatment after one or two IMEs or second opinions.

As indicated above, benefits are to be reinstated upon a claimant's compliance with medical treatment. Even without an Order from the Commission, the Employer/Carrier must reinstate benefits once the claimant has returned to the doctor or complied with medical treatment.

Overall, the ability to suspend benefits allows the Employer/Carrier to require a Claimant's attendance at medical appointments and compel claimants to follow medical treatment. It can assist with stopping a claimant from attempting to draw out a claim by avoiding medical treatment and ensures that the medical treatment runs as quickly and smoothly as possible.

This article originally appeared on February 23, 2015 on the Workers' Compensation Institute's [website](#), and is republished here with permission.

This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation.

ABOUT THE AUTHOR

Katie Lyall is an attorney with McAngus Goudelock & Courie. MGC is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. From 11 regional offices, we serve clients across the Southeast. Ms. Lyall may be reached at 864.239.4016 or by [email](#).