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August 26, 2009

Gary M. Cannon
Executive Director
S.C. Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

RE: Workers Compensation Commission Regulation 4043
Our File No: 25419/09001

Dear Mr. Cannon:

I represent the South Carolina Civil Justice Coalition. On behalf of the Coalition, please accept this letter as a formal expression of our concerns regarding the most recent revisions to Workers' Compensation Commission Regulation 4043. While most of these regulatory changes are technical in nature, the revisions in Chapter 67-1308 are substantive and contain two provisions that reflect a material difference and departure from the relevant statute, S.C. Code Section 42-15-95, which dictates the manner in which health care providers may communicate with an employer, insurer, or their attorney regarding an employee's injury and treatment.

First, Chapter 67-1308 states that employees must be given "not less than ten days notice" of the communication, while the statute merely states that prior notice of the communication must be given to an employee "in a timely fashion." As a result, the regulatory language impermissibly establishes a bright-line temporal requirement for giving notice that does not exist in the statute and that, in some circumstances, may expand the rights of employees at the expense of employers and their representatives.

Second, Chapter 67-1308 also states that the employee's attorney may attend and participate during the communication between health care providers and employers or their representatives, while the statute only gives the right of attendance to employees without referring to their attorneys. Again, this is a substantive difference from the legislative language that impacts the rights of parties involved in workers' compensation matters. The communication contemplated in S.C. Code Section 42-15-95 is not intended to be a deposition, nor is it intended to be a forum for the employee's counsel to ask questions of health care providers or interfere with the communication. While the Coalition would not object to regulatory language that allows employee attorneys to attend such communication sessions within certain limitations and

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Page 2

guidelines, we do have serious concerns if employee attorneys are granted unrestricted participation rights by regulation when no such rights are granted by statute.

Thank you for your consideration of our objections raised in this letter. Please do not hesitate to contact me if you have any questions.

Yours very truly,

Karl S. Bowers, Jr.