[Cite as *State ex rel. Sysco Food Servs. of Cleveland, Inc. v. Indus. Comm.*, 2009-Ohio-4647.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Sysco Food, Services of Cleveland, Inc.,	:	
Relator,	:	
v.	:	No. 08AP-945
The Industrial Commission of Ohio and Edward A. Rutkowski,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on September 8, 2009

Willacy, LoPresti & Marcovy, Timothy A. Marcovy and *Michael S. Lewis,* for relator.

Richard Cordray, Attorney General, and *Elise Porter,* for respondent Industrial Commission of Ohio.

Philip J. Fulton Law Office, Philip J. Fulton and *William A. Thorman, III,* for respondent Edward A. Rutkowski.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

BRYANT, J.

{¶1} Relator, Sysco Food Services of Cleveland, Inc., commenced this original action requesting a writ of mandamus that orders respondent Industrial Commission of Ohio (1) to vacate its order both exercising its continuing jurisdiction and vacating an

earlier order that suspended the claim of respondent-claimant Edward A. Rutkowski due to claimant's alleged refusal to grant relator an unrestricted medical release and provide relator with a list of all medical providers that treated claimant's back for the past ten years, and (2) to reinstate the suspension.

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended to this decision. The magistrate determined the commission did not abuse its discretion when it exercised continuing jurisdiction. The magistrate further concluded the commission did not abuse its discretion in refusing to suspend claimant's claim for failure to provide medical information pre-dating the industrial injury by ten years. Accordingly, the magistrate determined the requested writ should be denied.

I. Objections

> Relator filed objections to the magistrate's decision:
>
> A. Objections to the Magistrate's Findings of Fact
>
> 1. Foremost, absent from the magistrate's factual findings is a determination that relator requested documents other than those directly related to the present claim.
>
> 2. Secondly, as to the facts, the Magistrate must clarify her decision at paragraph 14 of her "Findings of Fact."
>
> B. Objections to the Magistrate's Conclusions of Law
>
> 1. Foremost, in the course of her decision, the magistrate states "[i]f relator would have asked claimant to provide medical information and names of treating physicians who had treated claimant for his back, including the treatment he received following the automobile accident, the result would likely be different."

> 2. Secondly, when the Magistrate states "[i]f relator **would have asked** claimant to provide medical information and names of treating physicians who had treated claimant for his back, including the treatment he received following the automobile accident, the result would likely be different," she, as stated above, shows a misunderstanding of the statutes and rules.
>
> 3. Thirdly, throughout the Magistrate's decision she shows a clear misunderstanding of the facts and law of the instant claim by focusing her attention on the employer's request.
>
> 4. Fourthly, a request for medical records for a period of ten years is not barred by *Lancaster*.
>
> 5. Fifthly, the magistrate's finding that the "commission did not abuse its discretion in applying that case to find that relator's request for records was unreasonable" is not a correct statement of the law.
>
> 6. Lastly, the magistrate's decision fails to acknowledge or even address relator's argument that the respondent's October 2, 2008, decision was a denial of due process.

II. Objections to the Magistrate's Findings of Fact

{¶3} Relator's first objection contends the magistrate should have concluded relator, in fact, requested documents from claimant other than those directly related to claimant's present industrial injury.

{¶4} As the magistrate correctly noted, the record reveals relator sent two release forms to claimant requesting information related to the present industrial injury; claimant signed the releases and returned them. Relator nonetheless contends the record reflects that relator asked a third time for documents. In support, relator points to a transcript of a voicemail claimant left and cites to the commission's order. The transcript of the voicemail does not support relator's contention, as the voicemail does not specify

the terms of any such request; nor did relator include such a request in the record. Thus the magistrate appropriately did not include such a request in the findings of fact.

{¶5} Moreover, to the extent relator relies on the staff hearing officer's order of June 2008 to support its contention, that order suspends all activity "until such time as claimant provides the employer with an unrestricted medical release and gives the employer a list of all medical providers that have treated his back for the last ten years." (Finding of Fact No. 12.) The order, however, does not suggest, much less state, that relator mailed a third request for a release of the names of medical providers and medical information. See also Stipulated Evidence at 163-64 (noting that on inquiry to relator's counsel about where the ten-year reference originated, counsel responded that there was a "non-written communication"). Relator's first objection is overruled.

{¶6} Relator's second objection asserts the magistrate's finding of fact No. 14 needs clarification because it fails to recognize the dual purpose of the August 26, 2008 proceedings: to determine whether to exercise continuing jurisdiction, and if so, to determine whether relator's claim should be suspended. Even if the magistrate did not clearly articulate the dual purpose of those proceedings, her decision as a whole reflects her appreciation of it. Relator's second objection is overruled.

III. Objections to Conclusions of Law

{¶7} Relator's first five objections to the magistrate's conclusions of law are interrelated, and we address them jointly in their challenge to the merits of the magistrate's decision.

{¶8} To the extent relator contends the Industrial Commission abused its discretion in exercising its continuing jurisdiction, relator's contentions are unpersuasive.

Because relator points to no authority that requires claimant to identify his treating physicians for the ten years preceding his injury, suspension of his claim for failure to provide such information was a clear mistake of law.

{¶9} The magistrate appropriately relied on *State ex rel. Lancaster Colony Corp. v. Indus. Comm.,* 10th Dist. No. 07AP-268, 2008-Ohio-392 for the proposition that when no statute or rule requires the release of information dating back ten years, the commission does not abuse its discretion in refusing to suspend the claim. None of the statutes on which relator relies requires the production of information pre-dating the injury by ten years. Moreover, relator fails to explain why such information would be relevant. Accordingly, relator's first five objections to the magistrate's conclusions of law are overruled.

{¶10} Lastly, relator's sixth objection contends the magistrate failed to address its contention that it was denied due process when the commission refused to enforce relator's third request for medical information by suspending claimant's claim. While relator correctly observes that the magistrate did not address its due process argument, the argument lacks merit.

{¶11} According to the test set forth in *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893, the three factors that determine whether the process afforded is constitutionally adequate include (1) the private interest at stake, (2) the risk that interest will be wrongly compromised or lost and the probable value of additional procedural safeguards, and (3) the government's interest, including administrative burdens, in the additional procedures. See *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 689. Although relator clearly has an interest at stake in the proceedings, the risk of an

erroneous deprivation lies not in the commission's process, but in relator's failure to include in the record the request on which relator hinges much of its request for mandamus relief and to support the relevance of documents pre-dating claimant's injury by ten years. Accordingly, the commission's proceedings have not impinged relator's due process interest. Relator's sixth objection to the magistrate's conclusions of law is overruled.

{¶12} Following independent review pursuant to Civ.R. 53, we find the magistrate has properly determined the pertinent facts and applied the salient law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we deny the requested writ of mandamus.

Objections overruled;
writ denied.

SADLER and CONNOR, JJ., concur.

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APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Sysco Food Services of Cleveland, Inc.,	:	
Relator,	:	
v.	:	No. 08AP-945
The Industrial Commission of Ohio and Edward A. Rutkowski,	:	(REGULAR CALENDAR)
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on April 27, 2009

Willacy, LoPresti & Marcovy, Timothy A. Marcovy and *Michael S. Lewis*, for relator.

Richard Cordray, Attorney General, and *Elise Porter*, for respondent Industrial Commission of Ohio.

Philip J. Fulton Law Office, Philip J. Fulton and *William A. Thorman, III*, for respondent Edward A. Rutkowski

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IN MANDAMUS

{¶13} Relator, Sysco Food Services of Cleveland, Inc., has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order exercising its continuing

jurisdiction and vacating an earlier order which had suspended the claim of respondent Edward A. Rutkowski ("claimant") based upon claimant's refusal to grant relator an unrestricted medical release and providing relator with a list of all medical providers that have treated claimant's back for the past ten years, and ordering the commission to reinstate the suspension.

Findings of Fact:

{¶14} 1. Claimant sustained an injury on February 5, 2008, and alleges that injury occurred within the course and scope of his employment.

{¶15} 2. Claimant was treated at Concentra Medical Center from February 5 through February 8, 2008. Claimant has not received any additional treatment for the injury.

{¶16} 3. Relator is a self-insured employer and refused to certify claimant's claim as a compensable injury.

{¶17} 4. Relator's third-party administrator ("TPA") sent two letters to claimant asking him to complete forms authorizing the release of his health information to relator. The letters were essentially identical and provided as follows:

> We received a claim for you with the date of injury stated above and are in need of medical documentation to support the claim and to get your medical bills paid and processed. Please fill out the attached medical release and also give us a list of any Drs and their address to which you have seen for this injury.

(Emphasis added.)

{¶18} 5. Relator indicates that a note was attached to the second request explaining to claimant how the TPA wanted him to complete the form; however, that note is not contained in the record.

{¶19} 6. Claimant filled out two authorization forms for the TPA. The first form provided, in pertinent part, as follows:

> Patient Name: Ed Rutkowski
>
> * * *
>
> [One] I authorize the use or disclosure of the above named individual's health information as described below:
> [Two] The following individual or organization is authorized to make the disclosure:
>
> Concentra Med Center Address 4660 Hinckley Ind. Pkwy. Cleveland OH. 44109
>
> [Three] The type and amount of information to be used or disclosed is as follows: (include dates where appropriate)
>
> * * *
>
> [x] most recent history and physical
> [x] most recent discharge summary
> [ ] laboratory result
> [x] x-ray and imaging reports
> [x] consultation reports

{¶20} Dates of treatment were February 5 to February 7, 2008 and provided the name of the doctor who treated him.

> [Five] This information may be disclosed to and used by the following individual or organization:
>
> SYSCO FOODS
> Address: 4747 GRAYTON RD P.O. BOX 94570 CLEVELAND OH.
>
> * * *

> Date: 2-7-08
>
> The other release form provides, in pertinent part, as follows:
>
> I, Edward Rutkowski, hereby authorize Concentra Med Ctr. (the "Provider") to use and/or disclose protected health information maintained by the Provider regarding me as described below:

{¶21} The following individually identifiable health information may be used and/or disclosed:

> [X] Diagnosis/Treatment Record
> [X] Discharge Summaries and Records
> [X] Procedures Preformed [sic]/Recommended
> [X] Test and X-Ray Reports
> [X] Other [please describe]:
>
> All records from injury and physical therapy from 02·05·08 thru 02·07·08 at CMC South Central 4660 Hinckley Ind. Pkwy Cle OH. 44109
>
> * * *
>
> Reason or purpose for the use and/or disclosure of the information:
>
> Workers' compensation claim
>
> * * *
>
> Date 3·10·08

{¶22} 7. Apparently, relator still was not satisfied with the release forms signed by claimant. As such, relator filed a motion with the commission asking that claimant's claim be suspended.

{¶23} 8. In its brief in support of its motion to suspend claimant's claim, relator indicated that claimant's medical release was too restrictive and that it did not provide

relator with access to claimant's medical history. Further, relator indicated that it had included a note explaining to claimant how to fill out the form and why certain information was needed (this document is not contained in the stipulation of evidence).

{¶24} 9. In a compliance letter mailed May 17, 2008, the Cleveland Hearing Administrator denied relator's request indicating that relator had not shown good cause.

{¶25} 10. Relator requested an expedited hearing before a staff hearing officer ("SHO").

{¶26} 11. A prehearing conference was scheduled and held on June 5, 2008. Because the dispute between relator and claimant continued, the matter was set for hearing.

{¶27} 12. The matter was heard before an SHO on June 18, 2008. The SHO granted relator's motion and stayed claimant's claim as follows:

> The Staff Hearing Officer finds that claimant signed a restricted medical release for the employer which the Staff Hearing Officer finds does not comply with the applicable law and rules regarding the free flow of information between the parties.
>
> The Staff Hearing Officer suspends all activity in this claim until such time as claimant provides the employer with an unrestricted medical release and gives the employer a list of all medical providers that have treated his back for the last ten years.
>
> This suspension shall be automatically removed upon the employer notifying the Industrial Commission that the release and list of medical providers has been received, or by the filing of the medical release and list of providers with the Industrial Commission by either party.

{¶28} 13. Thereafter, claimant requested that the commission reconsider the SHO's decision based upon a clear mistake of law.

{¶29} 14. A hearing was held on August 26, 2008. Following the hearing, the commission exercised its continuing jurisdiction, vacated the prior order suspending the claim, and found that relator's request for medical records going back ten years was unreasonable. That order provides as follows:

> * * * After further review and discussion, it is the finding of the Industrial Commission that the Injured Worker has met his burden of proving that the Staff Hearing Officer order, issued 06/20/2008, contains a clear mistake of law of such character that remedial action would clearly follow. Specifically, the medical release authorization in question included a request for medical documents over the past ten (10) years, which is not in compliance with case law, State ex rel. Lancaster Colony Corp. v. Indus. Comm., 10th Dist. No. 07AP-268, 2008-Ohio-392. Therefore, the Commission exercises continuing jurisdiction pursuant to R.C. 4123.52 and State ex rel. Nicholls v. Indus. Comm. (1998), 81 Ohio St.3d 454, State ex rel. Foster v. Indus. Comm. (1999), 85 Ohio St.3d 320, and State ex rel. Gobich v. Indus. Comm. (2004), 103 Ohio St.3d 585, in order to correct this error. The Injured Worker's request for reconsideration, filed 07/03/2008, is granted and the Staff Hearing Officer order, issued 06/20/2008, is vacated.
>
> * * *
>
> It is the finding of the Commission that there is no authority under the Ohio Revised Code, the Ohio Administrative Code or case law that allows for a claim to be suspended for failure to execute a medical release that includes a list of all medical providers over a ten-year period prior to the date of the industrial injury.
>
> Historically, the Injured Worker signed two medical release forms, dated 02/07/2008 and 03/10/2008, prior to the 04/04/2008 medical release form request at issue today. The two earlier release forms were signed by the Injured Worker and provided to the Employer. However, the Employer was not satisfied with the content of these release forms and requested submission of a third, more expansive medical release. This request was refused by the Injured Worker and his legal counsel. The Staff Hearing Officer then suspended

> the claim for the Injured Worker's refusal to comply with the employer's medical release request of 04/04/2008.
>
> First, the Commission finds that the Injured Worker has complied with the Employer's written medical release requests. The Employer sent two letters to the Injured Worker, dated 02/28/2008 and 04/04/2008, respectively. Both letters requested that the Injured Worker execute a medical release and provide a list of doctors and their addresses. In both letters, the Employer specifically requested information from the Injured Worker related to "…this injury." The Employer did not request a medical release or medical information pertaining to the ten years prior to the date of injury in this claim. Therefore, the Commission finds that the Injured Worker's signed releases, dated 02/07/2008 and 03/10/2008, satisfy the Employer's written requests.
>
> Next, a review of R.C. 4123.651(B) and Ohio Adm.Code 4121-3-09(A)(6) indicates that there are no definite guidelines for what is required in the contents of the medical release. However, under Ohio Adm.Code 4121-3-09(A)(3), "Medical releases are to be executed on forms provided by the bureau of workers' compensation, the commission, or on **substantially similar forms**." (emphasis added) The Commission finds that the requirement to provide "a list of medical providers over a ten-year period prior to the Injury" in the medical release form was not within the contemplation of the statute or rule. Specifically, the Commission finds that the Employer's medical release request is not substantially similar to the Bureau of Workers' Compensation's C-101, Authorization to Release Medical Information, form.
>
> Last, the Commission finds that a medical release request for a ten year period of time, prior to the date of injury, is not reasonable pursuant to the case of *Lancaster Colony Corp.* Therefore, the Commission finds no legal authority exists to compel the Injured Worker to complete such an expansive medical release form as requested by the Employer.

(Emphasis sic.)

{¶30} 15. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶31} In order for this court to issue a writ of mandamus as a remedy from a determination of the commission, relator must show a clear legal right to the relief sought and that the commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141. A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.* (1986), 26 Ohio St.3d 76. On the other hand, where the record contains some evidence to support the commission's findings, there has been no abuse of discretion and mandamus is not appropriate. *State ex rel. Lewis v. Diamond Foundry Co.* (1987), 29 Ohio St.3d 56. Furthermore, questions of credibility and the weight to be given evidence are clearly within the discretion of the commission as fact finder. *State ex rel. Teece v. Indus. Comm.* (1981), 68 Ohio St.2d 165.

{¶32} For the reasons that follow, it is this magistrate's conclusion that the commission did not abuse its discretion when it exercised its continuing jurisdiction and ultimately denied relator's motion to suspend claimant's claim.

{¶33} Pursuant to R.C. 4123.52, "[t]he jurisdiction of the industrial commission and the authority of the administrator of workers' compensation over each case is continuing, and the commission may make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion is justified." In *State ex rel. B & C Machine Co. v. Indus. Comm.* (1992), 65 Ohio St.3d 538, 541-542, the court examined the judicially-carved circumstances under which continuing jurisdiction may be exercised, and stated as follows:

> R.C. 4123.52 contains a broad grant of authority. However, we are aware that the commission's continuing jurisdiction is not unlimited. See, *e.g., State ex rel. Gatlin v. Yellow Freight System, Inc.* (1985), 18 Ohio St.3d 246, 18 OBR 302, 480 N.E.2d 487 (commission has inherent power to reconsider its order for a reasonable period of time absent statutory or administrative restrictions); *State ex rel. Cuyahoga Hts. Bd. of Edn. v. Johnston* (1979), 58 Ohio St.2d 132, 12 O.O.3d 128, 388 N.E.2d 1383 (just cause for modification of a prior order includes new and changed conditions); *State ex rel. Weimer v. Indus. Comm.* (1980), 62 Ohio St.2d 159, 16 O.O.3d 174, 404 N.E.2d 149 (continuing jurisdiction exists when prior order is clearly a mistake of fact); *State ex rel. Kilgore v. Indus. Comm.* (1930), 123 Ohio St. 164, 9 Ohio Law Abs. 62, 174 N.E. 345 (commission has continuing jurisdiction in cases involving fraud); *State ex rel. Manns v. Indus. Comm.* (1988), 39 Ohio St.3d 188, 529 N.E.2d 1379 (an error by an inferior tribunal is a sufficient reason to invoke continuing jurisdiction); and *State ex rel. Saunders v. Metal Container Corp.* (1990), 52 Ohio St.3d 85, 86, 556 N.E.2d 168, 170 (mistake must be "sufficient to invoke the continuing jurisdiction provisions of R.C. 4123.52"). Today, we expand the list set forth above and hold that the Industrial Commission has the authority pursuant to R.C. 4123.52 to modify a prior order that is clearly a mistake of law. * * *

{¶34} In the present case, relator contends that the commission abused its discretion when it determined that the order suspending claimant's claim did not comply with *State ex rel. Lancaster Colony Corp. d/b/a Pretty Prod. Inc. v. Indus. Comm.*, 10th Dist. No. 07AP-268, 2008-Ohio-392. The magistrate disagrees with relator's assertions.

{¶35} In *Lancaster Colony*, the claimant's date of injury was March 14, 1998. In November 2006, the claimant filed an application for permanent total disability compensation. The claimant had completed a medical release form; however, the claimant refused to release social security information as well as records covering the prior ten years in which the claimant had received any treatment for each of the alleged symptoms and injuries upon which her claim was based. This court found that there was

no statute or rule that required the release of information requested by the employer. Specifically, this court adopted the decision of its magistrate as follows:

> * * * [The employer] cites no statute or rule requiring the claimant to disclose all of her treating physicians in the manner that relator has requested such information in this case. While R.C. 4123.651 and the rules supplementing the statute demand that the claimant provide a current signed medical release, they do not require the claimant herself to respond to relator's verbal or written requests to identify all of her treating physicians. * * * In the absence of a statute or administrative rule supplementing a statute that grants to relator a clear legal right to compel from the claimant the information that relator seeks, relator cannot obtain relief in mandamus to compel the commission to suspend the claim under R.C. 4123.651.
>
> Moreover, contrary to relator's assertion, claimant's failure to provide the information that relator seeks regarding her treating physicians does not somehow create for relator a clear legal right to compel claimant to execute an SSA release form as an alternative to claimant's failure to respond to relator's requests for information. In fact, this court has held that there is no legal authority to compel a claimant to execute a release for social security records. *[State ex rel.] GMRI, Inc. v. Indus. Comm*., Franklin App. No. 03AP-931, 2004-Ohio-3842.

Id. at ¶32-33.

{¶36} In *Lancaster Colony*, the claimant's work-related injury occurred in 1998 and the claimant sought permanent total disability compensation eight years later in 2006. The employer sought the claimant's medical records for the ten years preceding the filing of her application, which included two years prior to the date of her injury. In the present case, relator alleges that claimant was involved in an automobile accident approximately three months prior to the date claimant asserted he sustained injuries at work. In making its argument, relator indicated that claimant's automobile accident may very well be

causing some of the current problems which claimant alleged occurred from a work-related injury. However, it is unclear to the magistrate how records going back ten years prior to both the work-related injury and claimant's automobile accident are clearly relevant to claimant's workers' compensation claim. Relator has not provided this court with a copy of any request made to claimant for records other than the request for information concerning the doctor he saw for this injury.

{¶37} At oral argument, counsel was asked where in the record was relator's request for *any* information other than treatment regarding this injury. Counsel replied that claimant's May 5, 2008 voicemail message is proof that relator requested additional information. That voicemail message provides, in pertinent part:

> Hi Heidi, this is Ed Rutkowski. * * * You had wrote me a second request for release of health information and I gave you the health, the first request I signed off on it uh and you wrote a note here that says fill in any blank spaces as we use this release for multiple doctors. Uh I know my rights and you are not allowed to talk to any of the doctors other than the ones that are involved with this case so if you want to continue on with this, I will gladly hire a lawyer[.]

{¶38} Nothing in this message proves that relator sought medical records which were historically relevant to the injuries claimant alleged he sustained in this claim. Instead, the evidence presented here demonstrates that relator received from claimant exactly what it requested.

{¶39} This factor alone supports the commission's determination that relator's current request seeking medical records going back ten years was unreasonable. Applying the decision from *Lancaster Colony* to the facts of this case, the magistrate finds

that the commission did not abuse its discretion in applying that case to find that relator's request for records was unreasonable.

{¶40} Part of relator's argument here concerns relator's assertion that a different result is in order because relator's motion to suspend claimant's claim was not based solely on R.C. 4123.651 as was applied in *Lancaster Colony*, but was also based on R.C. 4123.511(G) and R.C. 4121.36(A)(7). Relator contends that the order suspending claimant's claim was based on claimant's failure to comply with the applicable laws and rules regarding the free flow of information and, as such, relator contends that *Lancaster Colony* does not apply. For the reasons that follow, it is this magistrate's conclusion that relator's citation to other Ohio Revised Code and Ohio Administrative Code provisions does not change the outcome. R.C. 4123.651 provides, in relevant part:

> (B) The bureau of workers' compensation shall prepare a form for the release of medical information, records, and reports relative to the issues necessary for the administration of a claim under this chapter. The claimant promptly shall provide a current signed release of the information, records, and reports when requested by the employer.
>
> (C) If, without good cause, an employee * * * refuses to release or execute a release for any medical information, record, or report that is required to be released under this section and involves an issue pertinent to the condition alleged in the claim, his right to have his claim for compensation or benefits considered, if his claim is pending before the administrator, commission, or a district or staff hearing officer, or to receive any payment for compensation or benefits previously granted, is suspended during the period of refusal.

R.C. 4123.511(G)(2) provides:

> The parties, in good faith, shall engage in the free exchange of information relevant to the claim prior to the conduct of a

hearing according to the rules the commission adopts under section 4121.36 of the Revised Code[.]

R.C. 4121.36(H)(2) provides, in relevant part:

The hearing administrator shall do all of the following:

* * *

(c) Issue compliance letters, upon a finding of good cause and without a formal hearing in all of the following areas:

* * *

(vii) Any other matter that will cause a free exchange of information prior to the formal hearing.

Ohio Adm.Code 4123-3-12(B) provides:

In the event an employee fails to supply required facts, complete the required forms, submit to medical examinations ordered by the Commission, Board or Bureau or submit other proof which may be requested or in any way unduly delays the expeditious processing of his claim, the Bureau, Board or Commission may withhold action on the claim and may withhold future actuarial reserve while such situation obtains. In such cases further consideration shall be given to the claim when the employee remedies the condition which invoked suspension of action on the claim.

Ohio Adm.Code 4121-3-09(A)(3) provides:

The injured worker must provide, when requested, a current signed medical release as required by division (B) of section 4123.651 of the Revised Code. Should an injured worker refuse to provide a current signed medical release as requested, then the claim shall be referred to the hearing administrator so that an order suspending the claim may be placed pursuant to division (C) of section 4123.651 of the Revised Code. Medical releases are to be executed on forms provided by the bureau of workers' compensation, the commission, or on substantially similar forms.

{¶41} Relator contends that the commission's earlier order suspending claimant's claim was actually issued under R.C. 4123.511 and was based on the finding that claimant had not, in good faith, engaged in the free exchange of information relevant to his claim. As such, relator contends that the commission then applied R.C. 4121.36(H)(2)(c)(vii) and issued the compliance letter in order to cause a free exchange of information prior to the formal hearing.

{¶42} Relator is correct that the court did not apply these additional provisions in the *Lancaster Colony* case. However, just as in *Lancaster Colony*, there is no statute or rule requiring claimant to disclose all the evidence relator seeks in the present case.

{¶43} The stipulated evidence provides that claimant received a limited amount of treatment following his industrial injury. Specifically, relator has only sought treatment from February 5 through February 7, 2008. The evidence from those visits is relevant and claimant was required to provide relator access to that information. The record also indicates that claimant was involved in an automobile accident a few months prior to the work-related injury. Medical information regarding any injuries claimant sustained from that automobile accident are likely relevant to this action and should be disclosed to relator. However, relator's request for information from claimant originally asked only for information concerning treatment and the doctors who treated him relevant to this injury. Clearly, claimant provided a release that gave relator access to this information. There is no evidence that relator requested any other evidence. All we have is the June 18, 2008 SHO's order originally suspending the claim until claimant provides "an unrestricted medical release and gives the employer a list of all medical providers that have treated his back for the last ten years." Relator has not put forth a valid argument for why

medical evidence going back ten years is in any way relevant to claimant's current claim. While relator contends that it did provide claimant with a letter explaining how claimant should complete the second release form and what information relator was seeking, that instructional letter is not part of the record and it is impossible to determine whether or not that explanation somehow makes relator's request for information reasonable. If relator would have asked claimant to provide medical information and the names of treating physicians who had treated claimant for his back, including the treatment he received following the automobile accident, the result would likely be different. However, given the evidence as it exists in this case, the magistrate finds that the commission did not abuse its discretion in exercising its continuing jurisdiction, vacating the order suspending claimant's claim, finding that the claimant had actually complied with relator's requests, and finding that relator's request for information for ten years preceding the date of injury is not within the contemplation of the statute or the rule. Further, the magistrate finds that relator's arguments that claimant's actions actually violated the code provisions facilitating the free exchange of information does not require claimant to provide a list of medical providers for ten years preceding the date of injury.

{¶44} Based on the foregoing, it is this magistrate's conclusion that relator has not demonstrated that the commission abused its discretion and this court should deny relator's request for a writ of mandamus.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).