

# Franklin County Legal Journal

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Petitioner,  
v. KATHY A. CREEK, Respondent  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action — Law, No. 2007–579

## *Petition to Compel Medical Examination – Statutory Requirements – Good Cause*

1. The Motor Vehicle Code, in 75 Pa.C.S.A. § 1796, governs automobile insurers' petitions to compel an insured to submit to an independent medical examination.
2. Section 1796 requires the insurer to demonstrate both good cause and the materiality of the insured's physical or mental condition to a claim for benefits before a court may order the insured to submit to an independent medical examination.
3. These statutory requirements prevail over contrary policy terms and mandate that the insurer show good cause to justify the medical examination even when the policy does not contain a good cause provision.
4. "Good cause" has no set definition and is determined under the facts of each case.
5. "Good cause" exists when the record substantiates the necessity for the medical examination, but mere allegations of necessity do not justify an examination.

### Appearances:

Thomas F. Klosinski, Esq., *Counsel for Petitioner*

Jerrold A. Sulcove, Esq., *Counsel for Respondent*

## OPINION

Walsh, J., March 19, 2008

### Facts

Kathy Creek was involved in a car accident in December 2005, and she applied to State Farm for first-party medical benefits for injuries that she claimed were caused by the accident. Creek first saw her family doctor, Mark Hurwitz, who examined Creek in May 2006 and referred her to Dr. Mehrullah Khan for a neurological consultation. Following his examination of Creek, Dr. Khan referred Creek to Dr. Marc Loev, a pain management specialist. On August 22, 2006, in response to State Farm's request, Dr. Khan issued a report indicating that the accident caused the injuries for which Creek had received treatment. State Farm also had Dr. Andrew Shaer review MRIs of Creek's spine which were taken in May 2006.

On July 17, 2007, State Farm petitioned the Court to compel Creek to undergo an independent medical examination. State Farm offered two bases for its relief. First, it claimed that the insurance policy granted it an absolute right to require medical examinations.<sup>1</sup> Second, it urged that it had shown the requisite "good cause" for the Court to order an examination under 75 P.S. § 1796. Creek resisted the petition arguing that only upon a showing of "good cause" could State Farm justify an examination and that State Farm had failed to make a showing of "good cause." The Court heard argument in February 2008, and the parties submitted briefs. The case is ready to decide.

### Discussion

In 75 P.S. § 1796, the Legislature has established a uniform standard that applies to all automobile insurers' petitions to compel an insured to submit to an independent medical examination. The statute provides that "whenever the mental or physical condition of a person is material to any claim for medical . . . benefits, a court of competent jurisdiction . . . may order the person to submit to a mental or physical examination by a physician. The order may only be made upon motion for good cause shown." 75 P.S. § 1796(a). Clearly, Creek's physical condition is material

<sup>1</sup> "Whenever the mental or physical condition of a person is material to any claim for medical expenses . . . , a court of competent jurisdiction may order the person to submit to mental or physical examination by a physician. P.16 Insurance policy, Exhibit A, Petition to Compel. The language largely mirrors the statutory language, up to a point. See 75 Pa. C.S.A. §1796.

to her claim, but the Court will compel Creek to undergo a medical examination only if State Farm can demonstrate “good cause.”<sup>2</sup>

“Good cause” constitutes an amorphous term determined under the specific facts of each case and lies on the continuum between necessity, which permits an examination, and mere allegations, for which an examination may not be ordered. State Farm Ins. Companies v. Swantner, 594 A.2d 316, 321-322 (Pa. Super. Ct. 1991). Lack of knowledge can justify an examination. Id. at 321. The determination of “good cause” must be based on the record and is vested in the trial court’s discretion. Id. at 322.

Here, State Farm asserts “good cause” based on allegedly contradictory information from three medical records. First, it points to the report from Dr. Khan, in which he indicates that the accident caused Creek’s injuries. Second, State Farm presents Dr. Hurwitz’s report that it claims contradicts Kahn’s diagnosis by stating that “patient can not clearly relate her injuries to the accident.” Third, after viewing Creek’s MRIs, State Farm’s expert, Dr. Shaer, reported that he found no imaging evidence of injury from the accident. In this case, State Farm has failed to demonstrate “good cause.” Both parties agree that Dr. Khan’s report clearly indicates that the accident caused Creek’s injury. So, to demonstrate “good cause,” State Farm must point to evidence that, at a minimum, places this opinion as to causation in doubt and the insurer has failed to do this.

To begin, Hurwitz’s report fails to produce doubt for two reasons. First, the report is illegible, and as such it conveys no information contradicting Khan’s report. Second, even if the Court were to assume State Farm’s reading of the report is correct, Hurwitz’s report would merely contain a statement that **the insured** had failed to relate her injuries to the accident. In the context of this petition, such an observation simply does not place Khan’s causation opinion in any doubt. Additionally, Dr. Shaer’s MRI report does not contradict Khan’s opinion to any meaningful degree. Although Shaer relates that the MRIs provide no corroboration for Khan’s diagnosis, his statement does not actually challenge Khan’s assessment of causation.

Thus, State Farm has failed to show “good cause.” No necessity exists to justify a medical examination, and, although State Farm has slightly more evidence here than bare allegations, the insurer has not demonstrated any reason to doubt Dr. Khan’s conclusion. Accordingly, the insurer knows, based upon Khan’s uncontradicted report, that the accident caused Creek’s injuries. State Farm’s petition to compel a medical exam will be denied.

#### ORDER OF COURT

March 19, 2008, this matter having come before the Court on Petitioner’s Petition to Compel Medical Examination, and the Court having reviewed the petition, Petitioner’s and Respondent’s briefs, the parties’ arguments, and the law, it is hereby ordered that Petitioner’s Petition to Compel Medical Examination is denied.

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<sup>2</sup> While State Farm may seek to enforce the statutory language by a petition to compel, it cannot enforce the policy provision in such a petition because the legislature has not authorized such action. We find Judge Wettick’s reasoning in Nationwide v. Hoch, 36 Pa. D.&C. 4<sup>th</sup> 256 (1997) to be persuasive. Moreover, language in a policy of auto insurance which is at odds with statutory provisions is generally void as against public policy and cannot be enforced. See Pennsylvania National Mutual Casualty Company v. Black, 591 Pa. 221, 916 A.2d 569 (2007) and Prudential Property and Casualty Insurance Company v. Colbert, 572 Pa. 82, 813 A.2d 747 (2002). Here, the legislature in Section 1796 imposes a good cause requirement. The State Farm policy language substantially mirrors the language of the statute but eliminates any good cause requirement. Such disparity gives to the insurer at the expense of its insured an advantage not contemplated by the legislature when it enacted Section 1796.