



Fraud and Abuse in Claims Management

March 23, 2022 | 2:00-3:00 p.m. ET



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Presenter



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Discussion topics

- 1 Recognizing bad faith
- 2 Unfair claims settlement practices
- 3 Effects and costs of fraud and abuse
- 4 Law vs. Ethics
- 5 Personal privacy and surveillance
- 6 Information sharing
- 7 Types of fraud and abuse

Recognizing bad faith

Bad faith – What is it?

Bad faith =
dishonesty “of belief or
purpose” in a legal action

There is an implied duty of the claims handler to act ethically and in the utmost of good faith when performing his or her duties and obligations under the insurance contract.



An ethical conflict

Duty of good faith and fair dealing to the employer and employee in workers' compensation

- To whom is the duty of good faith owed?
Employer or Employee?
- Remedy --- administrative or judicial?
Depends on the state of jurisdiction.

Balancing act

Insurer's right to
reject
fraudulent claims

vs.

Insured's right to
payment of
legitimate claims

How bad faith can occur

- Failing to adopt and implement standards
- Misrepresenting pertinent facts
- Failing to acknowledge and act promptly
- Denying claims without conducting reasonable investigations
- Failing to affirm or deny full or partial coverage of claims
- Failing to promptly provide a reasonable explanation in writing to the insured
- Failing to promptly notify the insured of any additional information
- Failing to clearly explain the nature of the requested information



How is bad faith impactful?

- Insurers can be held liable to an injured worker for any financial consequences that stem from bad faith action in the handling of their claim, including:



Amount that should have been paid on the initial claim (if denied)



Consequential and/or Punitive damages



Court costs



Attorneys' fees



Emotional Distress

- The failure to act in good faith can be both a breach of contract and a tort, depending on the jurisdiction.

Factors considered by the courts when evaluating whether the insurer acted in bad faith



The advice of the insurance company's own adjusters



A refusal to negotiate



The advice of defense counsel



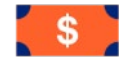
Failure to communicate with the insured that case could be settled within the policy limit



Inadequate investigation and defense



Substantial prospect of an adverse verdict



The potential for damages to exceed the policy limit

Keys to avoid bad faith

- 1 Investigate and communicate – use due diligence!
- 2 Notify the insured of the coverage decision or denial of coverage
- 3 Work within a solid claims system
- 4 Comply with applicable state laws, including fair claims practices acts

Unfair claims settlement practices

Improper claims handling

- Unreasonable tactics such as lowballing
- Refusals to pay
- Policy language



Misrepresentation

- Making a material misrepresentation to an insured for the purpose of effecting settlement on less favorable terms than those provided for in policy
- Misrepresenting pertinent facts or insurance provisions relating to coverage at issue
- Misrepresenting the law or policy language

Deceptive trade practices

- Federal level: Federal Trade Commission Act § 5
- State level : NAIC regulates trade practices in the insurance sector to protect insurance consumers
- Similar to consumer protection laws – if proven, insured can recover:
 - Full coverage of policy limits
 - Treble damages (punitive)
 - Attorneys fees and court costs



Effects and costs of fraud and abuse

Effects and cost of fraud and abuse

An estimated **25%** of the general population knows someone that has committed insurance fraud.



Insurance fraud is considered a “crime of the times”.

Up to **10%** of all property / casualty insurance claims are fraudulent¹

The Coalition Against Insurance Fraud and the National Health Care Anti-Fraud Association estimates that the national costs for insurance fraud are between \$120 and \$150 billion annually

Effects and cost of fraud and abuse

Workers' comp
insurance fraud
\$6B a year²

> 94% of American
businesses
carry workers'
comp insurance

In 2018 there were
2.5M non-fatal
workplace accidents³
(~ 3 injuries/100 FTEs⁴)

Workers' comp fraud costs the
average U.S. consumer
over \$900 per year
in reduced paychecks and bonuses.

² Source: Coalition Against Insurance Fraud

³ Source: FBI; National Ins. for Occupational Safety and Health

⁴ Source: US Bureau of Labor Statistics, US Department of Labor, November 2019

Trickle-down effect of workers' compensation fraud

Insurance companies pass on the costs of fraud to employers as higher premiums.



These employers in turn pass on the costs to consumers for goods and services.



Employers who can't afford the costs are sometimes forced to move to a state with lower compensation premiums, or close their business entirely as a result.

Law vs. Ethics

Legal versus Ethical

Legal

- Created to govern society
- Vary from state to state; can change
- Affected by political and economic interests
- Binding; a breach can result in punishment or penalty

Ethical

- Abstract guidelines and principals to inform people's choices to behave and live
- Transcend time, place, and politics
- Non-binding
- No punishment if broken

- Are our responsibilities limited to what the law requires of us?
- If we are legally allowed to do something, does that mean we should?
- If there is no relevant law to speak of with respect to a problem we're facing, does that mean that anything goes?

Defining Ethics – the rules of the game



Internal rules

- Code of conduct
- Claims practices
- Claims policies

Industry rules

Trade associations



Rules with specific direction

15 working days to acknowledge claim

Rules with ethical direction

Do the right thing

What actions can employers take to protect against fraud?



Have a solid understanding of the claim and the treatment being rendered



Recognize red flags that may apply to the medical treatment, the claimant and the injury

Medical treatment

- Frequent physician changes
- Request to change physicians after full return to work
- Inconsistent reports re: claimant's appearance or behavior
- No-shows



The worker

- Injuries ≠ accident facts
- Multiple versions of accident facts
- Unstable work history
- Subjective injury
- Uncooperative employee
- Disgruntled employee
- Early retirement; seasonal employee
- Excessive demands
- Address changes
- Pushy; wants a quick settlement
- Too familiar with workers' comp system



The injury

- No witnesses
- Subjective injury
- Not reported promptly
- NOI does not come from the injured person
- Vastly differing medical opinions
- No medical basis for disability; medical doctor's reports indicate a full recovery
- Disability claim > injury
- Accident occurs late on Friday or early Monday morning
- Odd timing or location
- Task that caused the injury is out of scope with claimant's job



Personal privacy and surveillance

Personal privacy and surveillance

- Source of privacy rights; to whom does it apply?
 - 4th and 14th amendment to U.S. Constitution
 - Case law
- Stalking, harassment
- Consented recordings
- Wiretaps
- Ethical considerations



Information sharing

Information access

- Public records
- Telephone/medical records



Legal implications

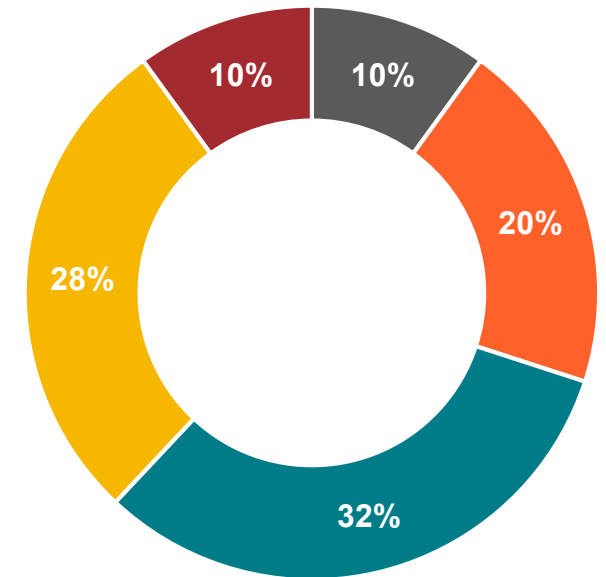
- Sanctions and punishments
- How does it affect each claim?



Types of fraud and abuse

Types of fraud and abuse

Agent Fraud and Theft	Medical Fraud	Claims Fraud
<ul style="list-style-type: none"> Agents and adjusters 	<ul style="list-style-type: none"> Auto accident injury medical & wages Illegal solicitation Medical health insurance – by a patient Medical health insurance – by a provider Slip and fall Disability 	<ul style="list-style-type: none"> Automobile ditching Automobile accident – damages to vehicles and others Homeowners' claims – burglary, theft, inflated claims Commercial claims Staged auto accidents Marine insurance Grand theft
Workers' Comp fraud	Other	
<ul style="list-style-type: none"> Claimant/Employer/Provider Employer premium Leasing companies Companies operating without coverage Risk management 	<ul style="list-style-type: none"> Bail bondsmen violations & fraud Illegal entities Life insurance Title insurance Company embezzlement Aviation fraud Special intelligence Forged documents Investigative inquiries Agency assistance 	



- Agent fraud and Theft
- Medical fraud
- Claims fraud
- Workers' Comp Fraud
- Other

Medical fraud – Multiple providers

United States v. Grusd, et.al; United States v. Iglesias et al; United States v. Garcia, etc

Facts

In February 2019, dozens of marketers, attorneys, medical providers, lawyers and doctors pleaded guilty in federal court to a \$200M scheme that targeted seasonal, migrant workers in southern California and subjected them to unnecessary and sometimes painful medical procedures.

Investigating agencies

- FBI
- San Diego District Office of Attorney General
- California Department of Insurance

Outcome: sentencing / fines

- Prison time
- Forfeiture of monies collected
- Civil Fines
- Probation



Medical fraud – Individual provider



Facts

A Springfield, Ohio nurse practitioner pleaded guilty and was convicted on 11/16/18 of felony drug trafficking for running a pain clinic without a license.

Investigating agencies

- Special Investigations Department, Ohio Bureau of Workers' Compensation
- Ohio Board of Pharmacy
- Ohio Board of Nursing
- Ohio Attorney General's Medicaid Fraud Control Unit
- Ohio Bureau of Criminal Identification and Investigation
- Clark County Prosecutor's Office

Outcome: sentencing / fines

- Three years in prison
- Ordered to pay restitution in the amount of approx. \$30k

Claimant fraud



Facts

In October 2020, a Daly City, CA man pleaded no contest to two felony counts of insurance fraud after illegally working for multiple employers while simultaneously collecting over \$85,000 in workers' compensation benefits from two insurance companies.

Investigating agencies

- California Department of Insurance
- San Mateo County District Attorney's Office

Outcome: sentencing / fines

- 60 days in county jail
- Three years probation
- Ordered to pay restitution of \$40k to SCIF, and additional monies to Travelers and his former employer

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