

WORKERS' COMPENSATION FRAUD: YOU HAVE TO SEE IT TO BELIEVE IT

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**AGGRESSIVE MANAGEMENT
OF WORKERS COMPENSATION CLAIMS**

FIGHTING WORKERS COMPENSATION FRAUD

**28th ANNUAL SEAK
NATIONAL WORKERS' COMPENSATION
And OCCUPATIONAL MEDICINE CONFERENCE
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AGGRESSIVE MANAGEMENT OF WORKERS' COMPENSATION CLAIMS

FIGHTING WORKERS COMPENSATION FRAUD

I. TYPES OF WORKERS' COMPENSATION FRAUD

A. Fraudulent Accident

Didn't happen at work
Faked claim at work

B. False Claim of Disability

Claimant is working elsewhere while claiming TTD
Claimant is able to work but claims TTD instead
Claimant stays off work to increase value of claim
Claimant loves day time TV – Oprah, Jerry, All My Soap Operas

C. False Claim of Medical

Claimant doesn't get medical treatment but doctor charges for it
Claimant gets medical treatment but doesn't need it
Claimant gets surgery but doesn't need it
Claimant gets medical treatment to build up his WC or his liability case

You must be able to identify questionable cases and recognize when to question liability and responsibility – question whether claimant has, is or will be committing fraud.

II. CLAIMANT FRAUD

Complete your accident investigation and assemble all relevant documents:

CREATE EVIDENCE NOT INFORMATION

A. CLAIMANT FRAUD – FRAUDULENT ACCIDENT ISSUES

RED FLAGS:

Late Reporting – especially if Accident reported Mon AM with claim of Mon AM or Friday PM accident

Accident is Unwitnessed – especially if others are in vicinity but no one saw or heard anything

Accident occurs in an area of the plant where the claimant would not normally be working

Accident allegedly occurs shortly before layoff, termination, strike, end of project or seasonal work end

Claimant is difficult to reach after alleged accident because he is never home or is reportedly sleeping and cannot be disturbed

Claimant is a short term employee – less than 6 months on the job

Claimant has multiple addresses – or uses only a P.O. Box – or uses addresses of friends or family

Claimant moves out of state or country shortly after making claim

Accident allegedly occurs shortly after reprimand, discipline or termination

Accident occurs shortly after a period of unexplained or excessive time off from work

History of prior claims and settlements

History of prior accidents or injuries

Reports of how accident occurred are inconsistent

Accident reported by family member rather than claimant

Conflicting reports as to how accident occurred

Claimant can't recall specific details about accident or injury

Tips from co-workers, friends, family members, ex-wives

Several of claimant's family members are receiving workers' compensation

Income from WC plus collateral sources (unemployment, SSDI, LTD, etc.) exceeds take home pay

ASSEMBLE EVIDENCE TO CONFIRM OR REJECT CLAIM

- A. First report of injury
- B. Accident reports
 - 1. Employer's accident report
 - 2. Employee's accident report
 - 3. Supervisor's report
 - 4. Witnesses' reports (keep track of witnesses – don't assume they will stay employed by insured)
 - 5. Adjuster's summary or narrative report
 - 6. Independent investigator's report – in-house or outside investigator
 - 7. Recorded interview of claimant
 - 8. Recorded interview of witnesses
- C. Obtain background information
 - 1. Payroll records
 - 2. Attendance records
 - 3. Personnel records
 - 4. Other employer files such as medical file, disability file, accident file
 - 5. Group health insurer records
 - 6. Group disability carrier records
 - 7. Photographs of accident site
 - 8. Jobsite analysis – ergonomic study – job video
- D. Identify and assemble all relevant medical records

Compare and contrast all information and documentation – look for consistency – inconsistencies – is there a reason for inconsistencies – how significant are they – can they lead you to further investigation to find the TRUTH

B. CLAIMANT FRAUD – MEDICAL AND DISABILITY ISSUES

RED FLAGS:

CLAIMANT HAS HISTORY OF SAME CONDITION, PRIOR MEDICAL TREATMENT FOR SAME CONDITION

DIFFICULT TO REACH CLAIMANT AT HOME – HE IS SLEEPING OR HE IS OUT – PLEASE LEAVE A MESSAGE AND I WILL HAVE HIM CALL YOU RIGHT BACK

LAWYER OR MEDICAL PROVIDER HAS QUESTIONABLE REPUTATION OR QUESTIONABLE TIES

CLAIMANT CHANGES MEDICAL PROVIDER FREQUENTLY OR TREATS WITH MORE THAN ONE AT A TIME

CLAIMANT CHANGES MEDICAL PROVIDER ONCE RELEASED TO RTW OR FOUND TO BE AT OR CLOSE TO MMI

CLAIMANT REFUSES OR DELAYS DIAGNOSTIC PROCEDURE TO CONFIRM OR RULE OUT INJURY

PETITIONER REFUSES SURGERY WHICH WOULD RESOLVE HIS SYMPTOMS

MEDICAL HISTORY INCONSISTENT WITH ACCIDENT REPORT

CLAIMANT STAYS OUT OF WORK LONGER THAN THE DOCTOR PRESCRIBES

CROSS-OUTS, WHITE-OUTS OR ERASURES ON DOCUMENTS

CLAIMANT IS SEEN WITH CALLUSES ON HANDS OR DIRT UNDER HIS FINGERNAILS

CLAIMANT HAS EXCESSIVE TREATMENT FOR SOFT TISSUE INJURIES

CLAIMANT LIVES FAR FROM MEDICAL PROVIDER – YET RECEIVES FREQUENT MEDICAL TREATMENT

ASSEMBLE EVIDENCE TO CONFIRM OR REJECT DISABILITY CLAIM

1. Obtain ALL medical records concerning treatment for the injury at issue
 - A. Emergency room records
 - B. Hospital records
 - C. Clinic records
 - D. Primary care physician (family doctor) records
 - E. Records of any specialists

Patient history forms – MAKE SURE THESE ARE SENT TO YOU

Carefully read the medical records especially the ER records and hospital records
– Don't accept illegible records – demand transcription

Is medical causation addressed in the medical records or not?

Do you have a release to obtain medical records? Does your medical record release also allow you to question the physician with respect to medical treatment, return to work, causation, etc? If you contact the doctor, do you face a privacy/HIPAA problem?

Obtain other medical records which may be relevant to your defense including records of prior or concurrent medical care.

Identify and obtain records from the current family doctor, the prior family doctor (if a woman, consider obstetrician/gynecologist).

1. Records of other prior treating specialists – orthopedist, neurologist, etc.
2. Records of other hospitalizations
3. If unable to identify, consider hospital/emergency room record search in geographical region

E. Perform an index search. Identify prior accidents and prior medical providers. Obtain records from carriers and employers involved in prior accidents.

F. Perform prior Workers' Compensation Commission search. Contact prior attorneys involved in prior cases.

Subpoena prior employers, insurance carriers, attorneys

G. Arrange an Independent Medical Examination -

1. Notify claimant and attorney of IME and prepay travel expense
2. Arrange any diagnostic tests needed such as MRI, CT scan, x-rays
3. Consider whether EMG/NCV or myelogram is needed and whether petitioner will agree to it.
4. Arrange FCE if appropriate
5. Work with IME Doctor - he can't do it alone - provide background information, medical records, job description, job video, accident reports, diagnostic test results, films. **Tell him what you need - he is not a mind reader** - ask appropriate questions - causation, RTW, limitations re work, he won't know what you need unless you ask

H. Arrange for Utilization Review – prospective review, retrospective review

I. Internet Searches

Everyone is on the web these days – especially the younger claimants – everyone is still seeking their 15 minutes of fame – FIND THEM

Where - www.google.com
www.facebook.com
www.myspace.com
www.meetup.com
www.match.com
www.youtube.com
www.eharmony.com

Other dating websites, activity websites

www.perfectmatch.com
www.fitness-singles.com
www.friendfinder.com
www.matchmater.com
www.singlesnet.com
www.date.com
www.sugardaddie.com
www.personal.yahoo.com
www.jdate.com
www.matchamerica.com
www.chemistry.com

J. Hire an investigator and arrange for surveillance, activity checks

1. Hire reputable surveillance company
2. Provide background information on claimant and photograph
3. Provide information to investigator to make surveillance worthwhile
4. Work with surveillance – know state law – avoid entrapment but don't be afraid to go after claimant running his own business
5. Identify claimant hobbies and pursue investigation – especially hunting, fishing, boating, camping, bowling, sports (endurance sports – running, cycling, swimming, triathlons)
Get records from clubs – websites from clubs

Don't get discouraged easily – if you have a case of fraud – the claimant will slip up

III. HEALTH CARE PROVIDER FRAUD

RED FLAGS:

Multiple physicians are treating petitioner at single location – with series of cross referrals – internist, chiropractor, physical medicine and rehabilitation, orthopedic, neurologist, neurosurgeon

Injured worker does not recall having received the billed service

Provider’s medical reports read almost identically even though they are for different patients with different conditions

Provider’s medical reports read almost identically for the same claimant for every date of service

Claimant’s injury expands during course of care – e.g., knee injury expands to include low back, then mid-back and neck

Much higher health-care costs than expected for the allowed injury type

Frequency of treatments or duration of treatment period is greater than expected for allowed injury type, especially for older (non-catastrophic) claims

Frequent billing in older (non-catastrophic injury) claims

Larger volume of prescription drugs billed than expected for the allowed injury type

Billing for treatment on consecutive dates of service for minor conditions

No change in treatment regimen or no measurable improvement for extended period

Same doctor(s) and attorney(s) are repeatedly associated with the similar questionable claims

Unexplained sudden increase in a provider’s billing and payment levels

Provider services are billed (for non-emergency care) for dates of service on weekends or holidays or on dates when the patient was hospitalized or known to be out of town

Medical documentation does not support service billed and/or is inconsistent with the services billed

Frequent delays in the submission of requested records

Great distances between the provider and injured worker

Billed procedures are identified by American Medical Association as being for “one or more areas” billed with multiple units of service

Medical records are nothing more than handwritten – chicken scratched – notes; check boxes – or circled preprinted forms

INVESTIGATION

- A. Obtain all medical records of treatment from provider (on multiple occasions) – see if you get the same records twice or whether there are omissions, corrections, changes
- B. Arrange for Utilization Review
- C. Arrange for an IME and independent medical records review
- D. Arrange for Peer Review
- E. Arrange for review by licensing agency
- F. Arrange surveillance
- G. Arrange deposition of doctor – staff – assistants – billing clerks
- H. Send in fake claimant for workup and evaluation
- I. Contact your State Fraud Unit – let them help you put your case together. Determine if other employers/carriers have experienced the same problem

IV. CASE STUDIES

Fraudulent claimants – examples of those who used and tried to abuse the system

Stories and video – See it to believe it.