

Delay, Deny, Defend...and then some

We've all experienced the unjust denials of claims by insurance carriers. Those of us working within the industry for any length of time have seen the ridiculousness of the claims review process worsen exponentially over the recent years. In fact, it seems that there has been an even greater effort to diminish claims just in the last few months, or so I hear from attorneys in the industry. This is why it comes as no surprise that on 2/11/18 CNN reported on the California Insurance Commissioner's investigation after an open admission by an Aetna medical director of his impropriety in the handling of medical claims.

For those of you who missed the story, which made national news, a former Aetna medical director admitted under oath that he never looked at patients' medical records when deciding to deny or approve a claim. Rather, claims were reviewed by paraprofessionals that made recommendations that were essentially stamped for approval by the medical director, as if he or one of the other physicians had actually reviewed the medical file. When asked why this was done, the medical director responded that he would rely on the nurse's opinion and if he had a question he would call the nurse. How often did he admit calling the nurses over the course of a typical month? He answered "Zero to one". UNBELIEVABLE!!!! or maybe not.

None of this is a revelation to those of us living in the world of insurance every day but it doesn't mean the tactics are Ok. Strategic Implementation of these types of tactics, which are aimed at reducing claim values, has become common place in our personal injury cases too. I've heard stories about contributory negligence defenses on rear impact collisions into cars stopped at a red light or a side swipe when a car is stopped in their lane in traffic. The defenses are ridiculous yet the strategy seems to be working for the carriers or they wouldn't keep using them.

I personally have been the victim of personal reputation attacks when, on several occasions, adjusters or defense lawyers have claimed that I or my organization was "under investigation" when no such investigation existed. It was simply a way to attempt to reduce a claim's value or coax an attorney to allow a statement from a client. Fortunately, my reputation was defended by the attorneys with whom I worked and I suffered no adverse effect and neither did the clients/patients.



A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W. SHAW

I'm going to be bold here and editorialize for a moment. It's easy for me to say this from the cheap seats but perhaps it's time for the plaintiff attorney population to take the offensive. While it may not be financially easy in the short run, over time a reciprocal policy from the plaintiff bar of "no settlement" below policy limits or whatever is fair may serve the industry and your client's well. Of course, you would need to cherry pick the right cases but it would be worth it on those cases with potentially larger values.

We've all heard about the high profile trial attorneys and their better than average settlement values and it's because they get better verdicts on their trials that they wouldn't settle. It may mean a short term reduction in revenue but a long term improvement in average case values. For doctors like me that have a long term vision, I am willing to bite the bullet for a while to see the pendulum swing back to the middle. It's been too long that the carriers have pushed around my patients and your clients. I'd prefer to see justice done. OK, I'll stop the flag waving.

Now back to the point of this newsletter. Whether it's the "Good Hands People", the "We stand with you" folks, "Flo" or the funny reptile with the Australian accent, we all know that behind the rhetoric they are really in the delay, deny and defend business. If we chose to accept the "crumbs" they want to pay our patients and clients then we have no one to blame but ourselves for letting them get away with it without a fight. My doctors and I are ready to do our job by treating appropriately, documenting thoroughly and testifying effectively. We'll do our part to make sure that both minor injuries and major injuries are seen for what they are, nothing more and nothing less. If a case is worth less because a patient recovers well, so be it. However, when the injuries are permanent and disabling, then we are ready to fight the good fight.

I do have one caveat about going into battle. It relates to the client's medical care and documentation. While my offices are primarily treating offices, we also do a fair amount of claims review. All too often providers treat erroneously, over treat, over bill and under document with disjointed records. While that type of management makes my job as a file reviewer easy, it makes your job as a trial attorney much more difficult. Make sure the cases you cherry pick are not full of holes; otherwise the strategy will backfire and embolden the defense interests. In other words, make sure your guns are loaded for big game or you may become the prey! I'm always available to review a case that you are considering for trial to make sure there are no holes from the medical perspective.