

THE FORUM

Ethical issues faced by workers compensation practitioners

MODERATOR



Richard Lenkov, capital member, Bryce Downey & Lenkov L.L.C.

Mr. Lenkov's practice areas include insurance litigation and workers compensation, among others. With nearly 20 years of experience, he serves as co-chair of the Claims and Litigation Management Alliance's Workers Compensation Committee.

In each issue of *WC* magazine, we gather a cross-section of experts in the workers compensation field and grill them on key issues affecting the sector. In this issue, we look at how workers compensation practitioners deal with their own professional ethics.

What is a common ethical dilemma faced by professionals in your part of the workers compensation world?

WILLIAM W. SCHRIMPF SR.: What constitutes "reasonable medical care" in extraordinary care situations (i.e. lung transplants, experimental treatments for cancer conditions, prosthetics)? Also moral and ethical obligations where narcotic prescription drugs enter the claim for long-term "pain management."

LANCE EWING: The two most common causes that lead to ethical issues are greed and ignorance. Greed is knowing that your choice is wrong, and ignorance is not having the knowledge to know the choice is wrong. Ignorance can be the gray area where a (third-party

administrator) or a claim professional may not know the answer or does not take the time to raise the question.

LISA WARNER HUNTER: Dealing with unrepresented claimants is difficult; you have to be careful that they understand your role. To avoid situations where such a claimant could suggest that you acted inappropriately, communicating in writing is wise.

JENNIFER J.C. KELLY: Communication with prospective clients. You must constantly remind the individual that you are not their attorney. If you decline a case, this must be clearly conveyed, and the prospective client should be told about statutes of limitations and that additional legal opinions are available.

How do you serve your role as a zealous advocate for your clients within the rules of ethics?

LH: Many ethical dilemmas arise due to last-minute scrambling and inattention to detail. Both can be solved by staying ahead of your work and deadlines.

JK: Respecting ethical boundaries and being aggressive advocates for our clients go hand in hand. Rules of ethics serve as a guiding light in our handling of cases and our interactions with clients and opposing counsel.

How do you balance managing claims with treating claimants fairly and honestly?

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Lisa Warner Hunter

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MEET THE PANEL



William W. Schrimpf Sr. is senior vice president and chief claims officer

at American Mining Insurance Co., a Berkley company, which serves the domestic mining industry and its attendant risks — transportation, mine construction/preparation, drillers, blasters, mining equipment and repair and more. Mr. Schrimpf oversees the claims functions that operate out of three regional claims offices from the home office in Birmingham, Alabama.



Lance Ewing has extensive executive experience in the field of risk management

and insurance, including his role as executive vice president-global risk management for Cotton Holdings Inc., Katy, Texas. Previously he was vice president-industry practice group leader at American International Group Inc. and in senior risk management capacities for Caesars Entertainment Corp., GES Exposition Services/VIAD and for the City of Philadelphia School District.



Jennifer J.C. Kelly is a partner at Anesi, Ozmon, Rodin, Novak & Kohen

Ltd. in Chicago, a firm with over 60 years of experience advocating for individuals who have been seriously injured. Ms. Kelly's practice focuses on representing petitioners in workers compensation cases.



Lisa Warner Hunter, who currently works at Pullin, Fowler, Flanagan,

Brown & Poe P.L.L.C. in Charleston, West Virginia, has more than 15 years of experience in defending employers in various industries and professions, including coal mining, health care, education and state agencies. She has extensive experience practicing before the Office of Judges and in appellate work before the Board of Review and West Virginia Supreme Court of Appeals.

When two parties come together, usually someone goes away not happy. But being able to demonstrate that the decision and outcome were based on ethical and factual moral compass merits can lessen the hurt feelings.

Lance Ewing

WS: Have empathy but speak honestly about the system, how decisions are made and why they are made. Give the individual the respect they deserve. This may be one of a hundred claims in the claims handler's life, but it is the most important thing going on in that claimant's life.

LE: When two parties come together, usually someone goes away not happy. But being able to demonstrate that the decision and outcome were based on ethical and factual moral compass merits can lessen the hurt feelings. And educating the claimant has to be the foremost goal, as many times this is their first foray into the system.

What are some tools you use to identify potential ethical issues before they become problems?

WS: The Official Disability Guidelines give us some guidance on what complicated (and often very expensive) treatment is indicated. We use networks for treatment of the very complicated medical issues to drive better outcomes. We stay on top of medical literature, studies and trends to guide us in creating a "decision tree" to deal with these often-heartbreaking issues.

LE: The business judgment rule: a sound business decision to act or not act; disinterest on a personal level;

use of due care of all the information available; good faith on behalf of all parties; and not to abuse authority.

LH: Preparation and communication are key. Preparation is two-fold: knowing the rules and staying ahead of your work to ensure time to follow the rules. Then effective communication to ensure your points and positions are clear.

JK: If issues arise, I will speak with a colleague to obtain his or her feedback. I have also taken advantage of the (Illinois Attorney Registration & Disciplinary Commission's) Ethics Inquiry Program when uncertain about professional obligations in a tricky situation. And communication and documentation are key.

Basic communication is fraught with potential ethical issues. What advice do you have for WC professionals to make sure that their oral and written interactions meet ethical standards?

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LH: Think before you speak (or hit send). In our field, emotions often run high due to the subject matter and volume of claims, and a deep breath and reflection can avoid many arguments that may lead to ethical issues.

JK: Think about how your communication will be interpreted by the receiving party. A lot gets lost in translation, and minor misunderstandings lead to larger problems. In both oral and written communication, it's best to explain things clearly and simply.

Do you think the ethics of workers compensation professionals are viewed through a different prism by society vis a vis other practice groups?

WS: Yes. Claims handlers are often seen as villains. It is a false representation.

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Eighty percent to 85 % of claims that come across our desks are legitimate, and people need real solutions to difficult problems. We do that. We put the family at ease to let them know we are doing everything we can to get that person back to health. The employer who is concerned also wants answers and assurance that we have the right direction, are working quickly and have that claimant in mind when treatment is needed.

LE: I am not sure it is really an

ethical issue. We are dealing with a claimant's emotions, and those emotions cloud the lens that society and the claimant look through. The advantage workers compensation professionals have is that there are laws, statutes and rulings that back up our decisions and actions. Ethics is part of that, and many times, even if we are following the state statutes, we are looked upon as the "evil Darth Vader" of claims. It is a perception that we have to overcome through education and better PR.



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