



PARTNER UPDATE

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Lying For Money: A Doctor's Perspective on Workers' Comp Fraud

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Whether it's tax fraud, accounting fraud, Medicare fraud, or workers' comp fraud, it's all the same thing: Lying for money. Anyone who touches a workers' compensation claim, including claimants, employers, lawyers, insurance companies, and doctors, have an opportunity to profit from lying. Of course, people intending to commit fraud try to avoid detection, so what are some clues we can gather to indicate that fraudulent activity might be occurring?

An injury claim filed by a disgruntled employee might raise suspicion. Employees often feel powerless with employers whom they might view as unfair, but can wield some power against their employer by filing a workers' comp claim. Employees working a second job while on TTD from a work injury raises suspicion. Injured workers with persistent subjective complaints without objective findings might prompt further investigation. Within the clinic, certain tests and observations by the provider can raise or bolster suspicion for fraud.

Provider fraud might be suspected if one observes a pattern of work injuries suggestive of patient recruitment: Multiple employees within the same company filing workers' comp claims, seeking the same attorney, referred to the same doctor, who then refers the patient to the same diagnostic and treatment facilities. Other clues to provider fraud might be identical medical reports on different patients, or an extensive medical report, with associated high medical bill, when the patient reports only a brief office visit.

Experience shows us that well-intentioned people can slip into fraudulent behavior little-by-little, without ever intending to commit fraud at the outset. The chief architect of one of the largest and most devastating corporate accounting fraud schemes in US history, Enron Corporation's CFO Andrew Fastow, told his story to MBA students after serving his 6-year federal prison sentence. He told the students that he never intended to commit fraud at the beginning; he was just doing his job as CFO to protect the company. But over time, baby steps lead to larger dives into illegal behavior. He never even realized, he told his students, at what point he crossed the line into outright fraud.

Is it possible that the well-meaning readers of this article could fall down a similar trap: Gradually slipping into fraudulent behavior without intending to do so at the outset? One way to see how this could happen is to imagine the relationship between the employer and the doctor, and what it is that each is seeking from the other. The employer, of course, is trying desperately to protect the company from rising workers' comp costs, and enlists the

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doctor's help. The doctor wishes to have loyalty from the employer so that all of the employers' occupational medicine needs will be fulfilled at the doctor's clinic, rather than with a competitor. This sets up an alignment of incentives such that the doctor can offer "favors" in exchange for employers' loyalty. Favors such as creating a medical record consistent with keeping a case in the "first aid" category, when the case really does not strictly fit the first aid criteria. Or, if a doctor is consistently biased towards a nonindustrial causation in exchange for employer loyalty. There is nothing wrong with an employer having a conversation with the doctor about aspects of a case, such as an employer's suspicion that the case is not work-related, feigned, or otherwise suspicious. But the doctor must make a professional and unbiased conclusion. A line is crossed when simple sharing of information becomes collusion between the employer and doctor to trade favors for loyalty.

When do you pull the trigger on reporting suspicious activity to the insurance company Fraud Investigation Division or to the District Attorney's office? At a recent conference on workers' comp fraud, one DA told the audience of employers, doctors, and insurance company representatives that if you suspect fraud, just give us whatever you have. The information doesn't need to be neatly wrapped up in a box with a bow on top, "like a gift box from Tiffany's." After all, she said, we can't investigate what we don't know exists.

About the Author

Randall Browning, MD, MPH, MBA graduated with honors from the University of Texas Medical School at San Antonio. He received a Master of Public Health (MPH) degree from the Medical College of Wisconsin and a Master of Business Administration (MBA) from San Diego State University. He is Board Certified in Emergency Medicine and fellowship trained in Medical Toxicology, and is a Fellow of the American College of Emergency Physicians. Dr. Browning has over 25 years experience in Occupational Medicine and is the Chief Medical Officer for WorkPartners Occupational Health Specialists. He has numerous peer-reviewed publications in the fields of Occupational Medicine, Emergency Medicine, and Toxicology.

WorkPartners Occupational Health Specialists

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