Handle Ethical and Moral Dilemmas in the Claims Management Process

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• Define ethics
• Identify ethical and unethical behavior in claims handling
• Define: morals and morality
• Review the CDMS and CMC code of conduct
• Identify immoral vs. amoral conduct
• Review ethical decision making with claims management
• Discuss business ethics for claims professionals
The discipline dealing with what is good and bad and with moral duty and obligation ~Mirriam-Webster

Why:
- Safeguard the public’s interest
- Advocate for clients
- Preserve the rights and inherent dignity of clients
- Maintain objectivity
- Act with integrity and fidelity
- Protect the interests of fellow professionals
“It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.”

Warren Buffett
Ethics - Doing the Right Thing

Best possible decision for all parties concerned

Honesty
Integrity
Responsibility

Respect for Others
Courage
Trust
What is Ethics… Not?

- Ethics is not the same as feelings
- Ethics is not religion
- Ethics is not following the law
- Ethics is not following culturally accepted norms
- Ethics is not science
Ethical norms may be derived from:

• Law
• Institutional policies/practices
• Policies of professional organizations
• Professional standards of care, fiduciary obligations
By careful exploration of the problem, aided by the insights and different perspectives of others, can we make good ethical choices.
INTERCONNECTEDNESS

Ethics

Laws

Claims
Occurrence of Ethical Dilemmas

• The right course of action is not known to the claims staff or nurse case manager
  – Complex situation
  – Individual rights

• Conflict with moral principles and values
  – Difficult to accurately project consequences of an action
"According to your HIPAA release form I can’t share anything with you."
Cultural Beliefs and Ethics

- Different cultures have different ideas about right and wrong
- Development of a personal moral compass
- Cultural influencers; Religious beliefs, secular vision
- Situational factors:
  - consequences of actions
  - background events
  - contextual information (example is bending the truth)
- Personal moral compass
Frame work for Ethical Decision Making

- Clarify the ethics question
- Identify the facts and stakeholders
- Determine the values in conflict
- Identify options
- Evaluate and make a decision
Ethics and Morals

Ethics
- Rules of conduct recognized to a class of human actions or group culture
- Comes from an external social system
- Society tells us it’s the right thing to do
- Analysis of morals

Morals
- Principals or habits to right/wrong conduct
- Personal compass of right/wrong
- Usually consistent – although can change if the individuals beliefs change
- Individualized

MORALS Vs ETHICS
Amoral vs. Immoral

**Amoral**

- Lacking a moral sense
- Unconcerned with right or wrong

**Immoral**

- Contrary to established moral principles
- Wickedness
- Evil
“...virtue is not merely a state in conformity with the right principle, but one that implies the right principle; and the right principle in moral conduct is prudence.” — Aristotle

“Half a truth is often a great lie……….Well done is better than well said” — Benjamin Franklin

“Conscience is the inner voice that warns us somebody may be looking.” — H.L. Mencken

“Let your conscience be your guide” — Jiminy Cricket

“There are two types of people in this world, good and bad. The good sleep better, but the bad seem to enjoy the waking hours much more.” — Woody Allen
“People who try hard to do the right thing always seem mad.” Stephen King
What is an Aguilera claim?

*Aguilera v. Inservices, Inc.*, 905 So. 2d 84 (Fla., 2005)

- Aguilera has reduced dramatically the number of claims handled in bad faith, while allowing good faith disputes to be handled through the workers’ compensation system. A good result and a shining example of how the legal system works to help people.

- Aguilera authorized civil lawsuits against insurance carriers and their adjusters “for harm caused subsequent to and distinct from the original workplace injury.”
The Underlying Facts

April 21, 1999
• Aguilera was struck by a forklift and pushed against a pallet. He suffered immediate injuries and was rushed to the emergency room. Testing performed in the ER showed blood in Aguilera's urine.
  – Aguilera began to complain of kidney and bladder pain.

May 24, 1999
• After two physicians examined him and concluded that he could not return to work, Aguilera's attorney requested that he be examined by a board certified urologist.
• The workers' compensation insurance carrier denied authorization of the urologist, asserting that Aguilera's injury was not work related.

June 17, 1999
• The insurance carrier was again notified that urological care was now needed on an emergency basis because Aguilera's urine had begun to smell like feces.

June 21, 1999
• Aguilera was advised that his workers' compensation benefits were being terminated as of July 9, 1999, notwithstanding the report of two doctors, including the opinion of the insurance carrier's own doctor, that he should not return to work.
June 25, 1999
• The insurance company intervened and blocked Aguilera's receipt of medication prescribed by the hospital emergency room doctor for his urinary condition.

June 30, 1999
• The carrier again denied authorization of emergency medical care for the urinary problems
  – claimed it was not medically necessary.

July 7, 1999
• Aguilera's treating doctor advised the carrier that his need for medical care was urgent and that his condition was deteriorating.

July 9, 1999
• The carrier's own doctor issued prescriptions for various urinary tests.

July 30, 2009
• The adjuster intervened and simply unilaterally cancelled some of the medical testing.
• Testing that was ultimately done revealed that Aguilera had a fistula, a hole in his bladder.
August 6, 1999
• Mippy Heath – Assigned as the new insurance company’s nurse case manager. She was specifically told by Aguilera's attorney that she should have no direct contact with Aguilera. She also agreed that no intervention with Aguilera's care would be attempted.

August 19, 1999
• Aguilera's attorney alerted the insurance carrier that the injured employee was in need of emergency care for the fistula. Heath refused the authorization and insisted on a second opinion.

August 25, 1999
• Heath secretly appeared at the physician's office for Aguilera's appointment. She urged Aguilera to lie to his attorney that she has not appeared at his doctor's appointment.
• Subsequently, Heath insisted that Aguilera submit to the administration of invasive tests that were not only painful but also contraindicated by his then-present medical condition.

• The insurance company then proceeded to use Aguilera's refusal to submit to the tests as a basis to justify a refusal and denial of his then needed critical, surgical treatment.
November 4, 1999

- Heath, the case manager, and a nurse practitioner also employed by the insurance carrier had changed positions and agreed that Aguilera needed immediate hospitalization for surgery. However, the insurance carrier's adjuster again intervened and overruled the decision of medical personnel simply because he wanted a second opinion from a general surgeon. Notwithstanding this intervention, the insurance carrier did not follow its own position and authorize Aguilera to consult with a general surgeon, but instead again changed course and sent Aguilera to a gastroenterologist. At this point in time, Aguilera had allegedly been urinating feces and blood for over six months.

Aguilera's ultimate surgery, the need for which had been diagnosed as an emergency as early as June of 1999, was not finally authorized or approved until March 22, 2000. By this time, according to the allegations, Aguilera had been urinating feces and blood for over ten months.
PROTEGRITY SERVICES v. VACCARO, 2005 FL App. LEXIS 13283 (FL 4th DCA, August 24, 2005)

First case applying the Supreme Court's decision in Aguilera v. Inservices, Inc., 905 So. 2d 84 (FL 2005), in which the Court held that the workers' compensation Act does not afford blanket immunity for all conduct during the claim process, particularly the insurance carrier's intentional tortuous conduct.
The Florida Supreme Court has never permitted compensation insurance carriers to cloak themselves with blanket immunity in circumstances where the carrier has not merely breached the duty to timely pay benefits, or acted negligently, but has actually committed an intentional tort upon an employee.
The Supreme Court held that adjusters/carriers are not immune from being sued for the tort of intentional infliction of emotional distress where their conduct in handling a claim is ore than simply bac faith or a breach of contract, but where the conduct is intentional and outrageous

Carriers and adjustors can be sued in circuit for damages caused by outrageous conduct.
Code(s) of Ethics
Chartered Property Casualty Underwriters

- Only make promises that you can keep
- Honesty in all communications
- Disclose bad news in a timely manner
- Disclose conflicts of interest
- Admit when you do not know the answer
- Work through the proper channels
- Maintain confidences
- Admit to and rectify mistakes
- Join organizations that support ethics and integrity in business
Commission for Case Manager Certification

Protect the Public interest

- Compliance of the code is an expectation for every board-certified case manager (CCM)
- Provides a framework for all case managers to provide ethical advocacy for their clients, putting safety, privacy and autonomy first
Case Management – A Balancing Act

1. Place public interest above their own at all times
2. Respect the rights and inherent dignity of all clients
3. Maintain objectivity in relationship with clients
4. Maintain competency at a level that ensures their clients will receive the highest quality of service
5. Obey all laws and regulations
6. Maintain the integrity of the Code by responding to request for public comments
Rehabilitation Providers in Workers’ Compensation

- Vocational Rehabilitation – Maryland
- Rehabilitation Supplier - Georgia
- QRC - Minnesota
- Medical Rehabilitation Nurses – North Carolina
- ARN - RN License, CRRN, COHN, CRC, CDMS, CCM
- Rehab Counselor Current CRC or CDMS Certification
- Vocational Evaluator - Current CVE Certification

Several Codes to follow:
- IARP Code of Ethics, Standards of Practice, and Competencies
- Code of Professional Conduct of the Certification of Disability Management Specialists Commission
- Code of Professional Conduct of The Association of Rehabilitation Nurses
- The Standards of Practice for Case Managers
- The Code of Professional Conduct for Case Managers
The fundamental spirit of caring and respect with which the Code is written is based upon five principles of ethical behavior.

1. **Autonomy**: To honor the right to make individual decisions
2. **Beneficence**: To do good to others
3. **Non maleficence**: To do no harm to others
4. **Justice**: To act or treat justly or fairly
5. **Fidelity**: To adhere to fact or detail
Certified Disability Management Specialists:

CDMS certified individuals recognize that their actions or inactions can either aid or hinder clients in achieving their objectives, and they accept this responsibility as part of their professional obligation. CDMS specialists may be called upon to provide a variety of services and they are obligated to do so in a manner that is consistent with their education, formal training, and work experience. In providing services, CDMS specialists must demonstrate their adherence to certain standards. The CDMS Code of Professional Conduct (Code) has been designed to achieve these goals.
Ethical Requirements for Adjustors

- Treat all claimants equally
- Make truthful and unbiased reports
- Handle every adjustment and settlement with honesty and integrity
- Act with due diligence
- Be objective
- Be competent
- Maintain confidentiality
- Manage multicultural diversity issues
- Provide social advocacy
- Disclose information
- Provide consistency
- Attain informed consent
Since its adoption at the **found meeting** of the American Medical Association in 1847, the AMA *Code of Medical Ethics* has articulated the values to which physicians commit themselves as members of the medical profession. Together, the Principles of Medical Ethics and the Opinions of the *AMA’s Council on Ethical and Judicial Affairs* that make up the Code offer guidance to help physicians meet the ethical challenges of medical practice.
Business Ethics through Culture
A lawyer charged a man $1,000 for legal services.

The man paid him in cash with crisp new $100 bills.

After the client left, the lawyer discovered that two bills had stuck together

He was overpaid by $100
EMPLOYEE HANDBOOK

Our number one goal is to provide outstanding customer service. Set both your personal and professional goals high. We have great confidence in your ability to achieve them, so our employee handbook is very simple. We have only one rule...

NORDSTROM

OUR ONE RULE

Use good judgment in all situations.

Please feel free to ask your department manager, store manager or Human Resources any questions at any time.
Considerations

Can professional and personal ethics be separated?
- How you behave in your personal life affects how you behave in your workplace

Why should corporations care about ethical conduct?
- Government regulations demand ethical behaviors
- Employees prefer to work for ethical companies
- Ethical behavior helps to keep consumer loyalty
Ethical Summary

• Be truthful
• Do the right thing
• Avoid actions that can be perceived as a lie or deceitful
• Be diligent
• Claims adjustors, nurse case managers and rehabilitation professionals are provided with guidelines for ethical decision making – USE THEM
• Adjusters investigate /adjudicate claims
• Rehabilitation providers coordinate care and develop the rehabilitation plans
References

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Thank you!

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