



Abusing Workers' Comp



By John Loofbourow, MD

THESE OBSERVATIONS ABOUT an abusive physician were originally told to me by a former patient, a person I have known for decades as very reliable. We are friends. I know his family, his life story. I found his assertions significant enough to invest considerable time and trouble to confirm them. I will not reveal process, or name names, places or times. Frankly, it's likely no one will ask me to do so; no journalist, no legislator or watchdog agency will care.

Why? Because the facts merely reflect an unwelcome but well documented aspect of human behavior: We cheat for profit when unlikely to be caught - when within the letter of the law, even though clearly abusing its intent and our own professed professional, societal and moral principles. We usually do so not by stealing money, but by abusing a process.

I relate this story not to suggest new laws or to berate a respected colleague, but to make this point: When more than two principal parties are involved in medical care, any of them is sometimes able to abuse the others.

Physicians and insurance providers are capable of bullying, or cheating, and some patients are as well. While abuse can take place when physician and patient are one on one, each added participant makes matters worse. (I won't consider lawyers and the courts, here, even though the added complexity and dysfunction these other players bring is very significant.) The dismal outcome with only three parties is obvious enough, for example, in Workers' Compensation injuries, where the parties subject to abuse are:

The powerless patient whose injuries are severe and who cannot economically or emotionally tolerate months or years of delays, denials, and referrals. Meanwhile physicians and the insurance carrier profit from the same endless "care." He may lose his mortgage, his car may be repossessed, and his family disintegrate during this cruel process. If he seeks legal help, all too often the severely injured worker becomes powerless in three hostile arenas rather than two.

The powerless physician who can't justify or afford a practice designed to deal with pre-authorizations, tactical denials, delays in payment, and continually changing heavy administrative burdens. It becomes economically and emotionally tempting for this doctor to abandon a well known patient, turning "comp" cases over to a workers' comp specialist of some sort.

The powerless insurance carrier that is abused by patients who make false claims and are willing to stubbornly milk the system. This is a kind of medical blackmail that threatens ever increasing medical and legal costs. The insurance carrier can also be abused by medical practices artfully organized to systematically plant and harvest fees, sometimes in naked collusion with patients.

The situation below is one where the insurance carrier is abused, although in this case the patient is not a participant.

Mr. X's Complaints

Mr. X and his wife enjoy good general health; they have a large, close family, and own a modest but comfortable home. Mr. X worked at heavy labor for 38 years, developing severe incapacitating back problems not amenable to surgery. By age 54, after thorough workup, his condition was judged permanent and stable.

In such workers' comp cases, the patient can elect either a lump sum settlement without medical benefits, or lifetime coverage for injury-related medical care. Realizing he would require ongoing medical care for his back, Mr. X chose paid medical care instead of a lump sum settlement. Now retired, he also receives Medicare and Social Security benefits, so his middle class medical situation is, altogether, satisfactory.

With medications he is able to walk, stand, or sit for up to a half hour, can lift light objects from waist height, can reach, bend, and twist with limitations. He sleeps in three or four hour shifts, re-medicates, and in that way totals about 7 hours sleep plus a 1 or 2-hour daytime nap. He stretch-exercises as prescribed, and walks a half hour twice daily.

This has been his life for about 6 years, without significant change. He projects the image of a successful, contented patriarch, uncomplaining, a rather wryly stoic but cheerful man who has struggled, and won his battles with, and for, life. Nonetheless, when we spoke recently he complained rather uncharacteristically about his medical care. I quote, while taking literary, but not factual, liberties:

Mr. X: "First, I have to make a two hour drive every month to get pain medication refills. I'm told the doctor can't call or write a prescription to be filled in my home town."

JL: "That may be part of the effort to control drug abuse. So many patients sell their hard drugs that pain docs now do unannounced drug testing to confirm medication is actually taken."

Mr. X: "Even so. That does seem, well, stupid. It's a hardship for me. I have to stop the car, get out, and walk around twice each way. Why can't the prescription be sent to my local pharmacy or sent there, say, by fax?"

JL: "To win the war. On drugs."

Mr. X: "Yeah, right. Good luck with that. You don't think it helps the doctor's bottom line if I come in every month?"

JL: "Maybe...I suppose."

Mr. X: "There is another war I fight myself; can't seem to win even a battle. Do you know how many EMGs I've had within these last two years? Sixteen! They steal another hour or so of my time, and are not fun. You ever had one? I don't think they are all really needed. The last time, I tried to refuse. I did refuse! The doctor, who never actually has seen me for the past two years because I always see a nurse, actually appeared. In the flesh. He was pissed because I didn't want another EMG. Said I had to do it because I am due to see the orthopedist again soon. Claimed the other specialist insists on another EMG. But I am never going to have surgery; nothing has changed; and the ortho guy has never mentioned EMG studies to me. But I gave in; you know why?"

JL: "No. Why?"

Mr. X: "Because I am completely dependant on my medication to live a relatively decent life."

JL: "So? Change doctors."

Mr. X: "I'm afraid to. The next might be worse, and the process of changing is

threatening."

JL: "You know, you didn't have to do the 16th EMG. Why do you think there were so many EMGs?"

Mr. X: " That's easy! The test is expensive. It is done by a technician employed by the doctor. And most important: It doesn't yet require pre-authorization. The doc just wants me to cooperate while he crawls through a lucrative loophole."

JL: " But you are getting satisfactory care, aren't you? I'd just count my blessings. Don't let this situation upset you."

Mr. X: "Maybe. But this particular blessing? It sucks."

Preauthorization is an imperfect remedy, yet is justifiable when a devotion to gain overrides reason, logic, and principle. Transparency is the only medicine that works well in these situations. When transparency is lacking people can justify anything, and may do so, until Kapow! They are outed. The Redding cardiac procedure abuses, the latest banking crisis, the mortgage meltdown, and the ongoing activities of our Congress are just a few instances of this generic problem.

Typically, when caught we usually can find something or someone to blame. Like the devil made me do it. Yes. The devil within.

john@loofbourow.com

Sierra Sacramento Valley Medical Society
5380 Elvas Avenue #100 • Sacramento, CA 95819
916.452.2671 PH • 916.452.2690 FX • Email: info@ssvms.org

Copyright © 2000-2008 Sierra Sacramento Valley Medical Society - All Right's Reserved