Adjuster Ethics: Perception vs. Reality

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WORKERS' COMPENSATION DEFENSE

Claims Adjusters may be the only faces of the Insurance Carrier a Policyholder or Claimant sees, so they need to perform with the highest standards.

There are *four* major areas in which we demonstrate our ethical values:

- **Honesty and Integrity**:
  candid, forthright, trustworthy, truthful

- **Respect and Caring for Others**:
  courteous, respects the rights of all stakeholders

- **Promise-Keeping, Trustworthiness, and Fairness**:
  being objective; awareness of one's own abilities; doing what you say you will do; having a sense of equity; being open minded

- **Personal Accountability**:
  owning up to mistakes and errors; taking responsibility for correcting errors; practicing what you preach; "the buck stops here"

An insurance adjuster . . . has a surprising amount of power to wield. When a claim is filed, the adjuster may dictate in large part the speed by which the claim will be processed and the final settlement amount.[1]

[1] *Insurance Claims Adjuster – Adjuster Ethics*, Dan Kerr (http://ezinarticles.com/?Insurance-Claims-Adjuster---Adjuster-Ethics&id=797656)

Adjuster Rules of Professional Conduct and Ethics

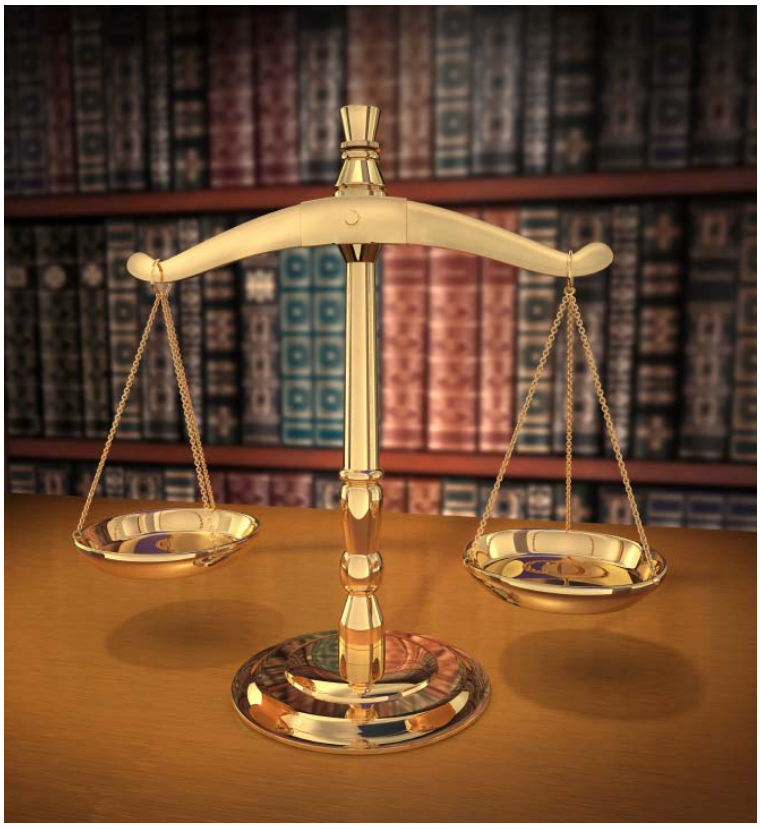
1. **Adjusters shall conduct themselves in a spirit of fairness and justice to . . . the Insurance Companies and the public.**

2. **No misrepresentation of any kind shall be made to an assured or to the Insurance Companies.**

3. **Adjusters shall conduct themselves so as to command respect and confidence. They shall work in harmony with one another, with their clients, and the Insurance Companies' representatives, so as to foster a cordial and harmonious relationship with all branches of the insurance business, and with the general public.**

4. **Adjusters must be fitted, by knowledge and experience, for the work they undertake. They must not endanger the interest of the public adjusting profession, or risk injustice to assureds or to the Insurance Companies, by attempting to handle losses or claims for which they are not qualified, and for which they cannot find competent technical assistance.**

5. **Members shall not engage in the unauthorized practice of law.**



GOLDEN RULES FOR ADJUSTERS

(1) Do not lie.

- presumption that insurance carrier and adjusters lie
- innocent mistakes, innocent false steps, and innocent misrepresentations are presumed to be intentional acts to deceive
- adjuster/insurance company's (unfair?) burden to ensure there is no fodder for such spin

(2) Endeavor at all times to place the public interest above their own.

- contracts of insurance should be reasonably interpreted and enforced

(3) Obey all laws and regulations and avoid any conduct or activity which would cause unjust harm to others.

- be lawful and fair

(4) Be diligent in the performance of occupational duties and continually strive to improve the functioning of the insurance mechanism.

- prevent fodder for allegation of bad faith claim or accusation
- claims handling process is "insurance mechanism"

(5) Assist in maintaining and raising professional standards in the insurance business.

- endeavor to do the right thing and create a system that ensures right thing is done

Power Over a Claim

(1) Selling a claim

Losses:

(1) job
(2) credibility
(3) license
(4) freedom

(2) Overvaluing Claim

Losses:

(1) job
(2) credibility
(3) license

South Carolina Workers' Compensation

GOLDEN RULES (Review!)

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(5) Assist in maintaining and raising professional standards in the insurance business.

Frequently Asked Questions that Lead to Complaints

Regardless of the circumstances, the adjuster is always going to be blamed by the injured worker for problems – or perceived problems - with the claim. The adjuster is the face of the claim, and whether justified or not, the following questions can eventually lead to litigation.

(1) Why don't my checks arrive consistently on the same day of the week?

> **§ 42-9-230**: *Installments paid weekly must be paid on the same day of the week...*
>
> *Be diligent in performance of occupational duties.*
>
> *Obey all laws and regulations and avoid any conduct or activity which would cause unjust harm to others.*

(2) What benefits am I entitled to receive?

> *Be diligent in performance of occupational duties.*

(3) What concludes the process?

> - explanation of MMI and forms claimant can expect to receive requesting signature
> - problems at time of settlement for pro-se claimant
>
> *Be diligent in performance of occupational duties.*
>
> *Do not lie.*
>
> *Obey all laws and regulations and avoid any conduct or activity which would cause unjust harm to others.*

(4) Do I receive compensation if my hours have been reduced?

§ 42-9-20: . . . when the incapacity for work resulting from the injury is partial, the employer shall pay . . . to the injured employee during such disability a weekly compensation equal to sixty six and two-thirds percent the difference between his average weekly wage before the injury and the average weekly wages he is able to earn thereafter . . . .

Average Weekly Wage
- Current Weekly Wage
Difference

.6667 x Difference = Partial Compensation Rate

Be diligent in performance of occupational duties.

Do not lie.

Obey all laws and regulations and avoid any conduct or activity which would cause unjust harm to others.

(5) What is a deposition?

Be diligent in performance of occupational duties.

(6) Why doesn't the adjuster return my phone calls?

Be diligent in performance of occupational duties.

Assist in maintaining and raising professional standards in the insurance business.

(7) Why do I have to wait for authorization for appointments?

§ 42-15-60: . . . the employee shall accept, and attending physician and any medical care or treatment that is considered necessary by the attending physician . . .

Be diligent in performance of occupational duties.

Do not lie.

(8) Who schedules my medical appointments?

Be diligent in performance of occupational duties.

Do not lie.

Legislation of Conduct

(1) S.C. Code Ann. § 38-55-530 (D)

As used in this article:

(D) "False statement or misrepresentation" means a statement or representation made by a person that is false, material, made with the person's knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

(1) false report of business activities;

(2) miscount or misclassification by an employer of its employees;

(3) failure to timely reduce reserves;

(4) failure to account for Second Injury Fund reimbursements or subrogation reimbursements; or

(5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

- Expands the definition of "false statement or misrepresentation" specifically to include:
    1) intentional acts of false reporting of business activity;
    2) miscount or misclassification by an employer of its employees;
    3) **failure to timely reduce reserves;**
    4) **failure to account for Second Injury Fund or other third party reimbursements; and**
    5) **failure to provide verifiable information to insurance rating bureaus and the Department of Insurance §38-55-530 (D)**

- States that "underserved economic benefit" includes **favorable insurance premium**, payment schedule, award, or settlement

(2) S.C. Code Ann. § 38-55-540

(A) A person who knowingly makes a false statement or misrepresentation, and any other person knowingly, with an intent to injure, defraud, or deceive, or who assists, abets, solicits, or conspires with a person to make a false statement or misrepresentation, is guilty of a:

(1) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received is less than one thousand dollars. Upon conviction, the person must be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than thirty days;

(2) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received is one thousand dollars or more but less than ten thousand dollars. Upon conviction, the person must be fined not less than two thousand nor more than ten thousand dollars or imprisoned not more than three years, or both;

(3) felony, for a first offense violation, if the amount of the economic advantage or benefit received is ten thousand dollars or more but less than fifty thousand dollars. Upon conviction, the person must be fined not less than ten thousand nor more than fifty thousand dollars or imprisoned not more than five years, or both;

(4) felony, for a first offense violation, if the amount of the economic advantage or benefit received is fifty thousand dollars or more. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both;

(5) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) In addition to the criminal penalties set forth in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to a victim for any economic advantage or benefit which has been obtained by the person as a result of that violation, and to pay the difference between any taxes owed and any taxes the person paid, if applicable.

- Increase penalties for fraud (**person** who knowingly makes false statement or misrepresentation with intent to deceive or defraud):
    - *misdemeanor* if economic benefit received is less than $10,000;
    - *felony* if economic benefit received is $10,000 or more, or for two or more violations, regardless of the amount received (up to 5 years if benefit is between $10,000 - $50,000 and up to 10 years if more than $50,000 plus fine) §38-55-540

(3) S.C. Code Ann. § 42-3175 (Contempt and Penalties)

(A)(1) If a claimant brings an action before the commission to enforce an order authorizing medical treatment or payment of benefits and the commission determines that an insurer, a self-insured employer, a self-insured fund, or an adjuster, without good cause, failed to authorize medical treatment and/or pay benefits when ordered to do so by the commission, the insurer, the self-insured employer, the self-insured fund, or the adjuster must pay the claimant's attorneys' fees and costs of enforcing the order. The commission may impose sanctions for wilful disobedience of an order, including, but not limited to, a fine of up to five hundred dollars for each day of the violation.

(2) The commission must notify the Department of Insurance of an insurer's or an adjuster's failure to authorize and pay benefits for medical treatment. If the Director of the Department of Insurance or his or her designee determines that there has been a violation of any provision of Title 38, he may impose penalties for each violation, including, but not limited to, administrative penalties pursuant to Section 38-2-10.

(B)(1) If the commission discovers a pattern of an insurer failing to pay benefits pursuant to an award, as defined in item (2), the chairman must notify the Director of the Department of Insurance. The director or his or her designee must hold a hearing to determine if the insurer had good cause for nonpayment. If the director or his or her designee determines that nonpayment was intentional three or more times within a two-year period, the director may revoke the license of the insurer to do business in this State. If the director or his or her designee revokes the license of the insurer, he must take any steps he considers necessary for the protection of the insurer's policyholders in this State.

(2) For purposes of this section, a pattern is established upon an insurer's failure to pay an award at least three times within a two-year period by failing to pay:

(a) for individual claims;

(b) for a claim in which the claimant had to request enforcement of an award; or

(c) any combination of subitems (a) and (b).

(3) All fines collected pursuant to this section must be submitted to the general fund.

- Commission has contempt authority if award (to provide medical treatment or pay benefits) is ignored without good cause. §42-3-175 (A)(1)
- If a commissioner finds a person/company in contempt, person failing to abide by award pays attorney fees for enforcement of award and may be fined up to $500 per day of violation. §42-3-175 (A)(1)
- Commission must notify Department of Insurance (DOI) of someone’s failure to pay benefits and DOI may impose penalties if there has been a violation of the insurance code §42-3-175 (A)(2)
- If commission discovers pattern of failure to pay benefits (3 or more intentional failures within 2 years), the commission must report the failure to pay to DOI. DOI may revoke the insurer’s license if they determine that the failure to pay at least 3 times within 2 years was intentional. §42-3-175 (B)(1)

(4) S.C. Code Ann. § 42-9-260 (TTD penalty)

(A) When an employee has been out of work due to a reported work-related injury or occupational disease for eight days, an employer may start temporary disability payments immediately and may continue these payments for up to one hundred fifty days from the date the injury or disease is reported without waiver of any grounds for good faith denial. Upon making the first payment, the employer immediately shall notify the commission, in accordance with a form prescribed by the commission, that payment of compensation has begun.

(B) Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:

(1) the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately; or

(2) the employee agrees that he is able to return to work and executes the proper commission form indicating that he is able to return to work; or

(3) a good faith investigation by the employer reveals grounds for denial of the claim; or

(4) the employee has been released by the treating physician to work without restriction and the employer offers comparable employment; or

(5) the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released; or

(6) the employee refuses medical treatment, as provided in Section 42-15-60, or refuses an examination or evaluation, as provided in Section 42-15-80, and the termination or suspension of benefits continues until the refusal ceases or the commission determines the refusal is justified pursuant to either Section 42-15-60 or 42-15-80.

(C) An employee whose disability payments have been terminated or suspended pursuant to this section may request a hearing to have the payments reinstituted. The hearing must be held within sixty days of the date of the employee's request for a hearing.

(D) If an employee has been declared as having reached maximum medical improvement, the employer may request a hearing to address the termination of temporary disability payments. The hearing must be held within sixty days of the date of the employer's request for a hearing.

(E) An employer may request a hearing at any time to address termination or reduction of temporary disability payments.

(F) After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present. Further, the commission may not entertain any application to terminate or suspend benefits unless and until the employer or carrier is current with all payments due.

(G) ***Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this***

section, and the amount of the penalty must be paid to the employee in addition to the amount of benefits withheld. *However, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.*

- Improper suspension of benefits after 150 days results in a 25% penalty of the balance owed.

REMEMBER . . . . . .

Innocent mistakes, innocent false steps, and innocent misrepresentation are presumed to be intentional acts to deceive. It's the adjuster/insurance company's (unfair?) burden to ensure there is no fodder for such spin