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Insurers Use Biased Records Review Companies

Medical exams in many personal injury cases are anything but 'independent'

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Creating the illusion of an independent "second opinion," insurance companies involved in personal injury lawsuits frequently contract with vendors to provide "records reviews," "peer reviews" or "paper reviews." No matter what name they are called, our experience has been that the conclusion of records reviews is almost always some combination of: (a) the plaintiff was treated for an unreasonable length of time; (b) his or her injuries are less severe than claimed or unrelated entirely to the accident; and (c) the medical bills are unnecessary, unreasonable or not related to the accident. In other words, they are far from objective. This is not surprising since the records review industry has a strong financial incentive to provide reports favorable to insurers.

Although a truly independent review could be useful in some cases, the common practice of almost every major insurance company in the country is to repeatedly procure slanted reports, which is unfair to policyholders and other plaintiffs and causes a large number of cases to go to trial unnecessarily. This practice should be examined more closely by lawyers and the courts.


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A hugely profitable industry of so-called cost-containment companies competes for the records review business. (These companies typically offer independent medical examinations and other similar services as well). One of these companies, for example, has a market capitalization of more than $1 billion. According to an investigation on NBC's "Dateline" program from 2001 (on YouTube now), State Farm alone used 200 different "paper review" organizations in the period studied. Mergers and name changes are common in the industry.

We recently conducted some limited discovery of MES Solutions, which frequently provides records reviews to Liberty Mutual. MES produced a spreadsheet with information as to each time a particular records reviewer had been retained on behalf of the insurer over a given period of time (97 times in five-plus years), showed to which of various Liberty Mutual accounts (i.e. workers' compensation, automobile accident) and offices each review was sent, and how much the doctor was paid.

That doctor, for his part, explained that when a request for a records review comes to him from MES, he knows from the documents that are sent that he is being asked to provide an opinion for Liberty Mutual (or some other insurance company) as to the reasonableness of treatment. He then reviews the records and dictates a report into his computer and transmits it to the vendor, all in less than an hour usually. The vendor then puts the opinion on letterhead and makes it available to the insurer. The doctor is paid in bulk periodically. That particular "peer reviewer" testified that

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more than 95 percent of his testimony in the preceding six years was on behalf of personal injury lawsuit defendants, as was the overwhelming majority of independent medical examinations and "peer reviews" he performed in that time. He also admitted that he has never contacted any one of the "peers" he has reviewed to inform them of his opinions.

Another frequent records reviewer we encountered in a case last year, a local orthopedic surgeon secured for Liberty Mutual through Workplace Health Solutions, testified that he earns $550,000 a year for his independent medical exam and records review work alone, and that 85 to 90 percent of his efforts are on behalf of defendants. For the most part, this work does not even require that he leave his office. (He usually insists on having his trial testimony videotaped after-hours.)

The Peabody award-winning "Dateline" episode ("The Paper Chase") examined medical claims to State Farm and two of the records review companies it used at the time. The NBC team inspected more than 70,000 pages of documents, performed a nationwide online search of computer files, and cracked computer code to analyze the two companies, which were ostensibly providing independent, objective medical reviews.

NBC's review of 79 reports provided by one of the companies, Medical Claims Review Services, revealed that every one of them favored the insurer. In fact, the president of that company said that he thought it was his job to save the insurer money, and that his company advertised itself as providing "cost-containment" services. Likewise, a former adjuster interviewed stated that it was common knowledge that "paper reviews" cut medical care and were not independent. A former State Farm executive explained that the vendors that provided the most useful and favorable reports were rewarded with repeat business.

The other company examined by the "Dateline" team, Comprehensive Medical Review, was found to have altered reports to make them more favorable to the insurer after they had been signed by the doctor (i.e., changing the word "unlikely" to the phrase "extremely unlikely"), and to have provided reports written by nonphysician staff writers. The company's reports also often used combinations of more than 150 stock paragraphs, almost every one of which denied or limited medical care in some way. This company also provided reports to Allstate, Geico, Nationwide and USAA.

On their websites, it is interesting to see how companies in the records review industry straddle the line between maintaining the appearance of objectivity, while signaling to their customers their real purpose: keeping the value of claims down. One claims to provide independent services to "confirm the veracity of claims by sick or injured individuals." Another offers several varieties of "peer review," in which its "specially trained," credentialed independent physician reviewers provide objective medical assessments to "facilitate claims resolution and settlement," by "identifying unnecessary, wasteful and fraudulent expenditures and providing risk mitigation for clients."

The records review industry's co-option of the terms "peer review" and "evidence-based" from the medical community is also no accident. For the rest of the world, "peer review" refers to the process by which colleagues objectively evaluate the quality of a physician's performance. It is one of the most respected activities in the process of quality assurance. According to BMJ (formerly known as the British Medical Journal), "evidence-based medicine" is the conscientious, explicit and judicious use of current best evidence in making decisions about the care of individual patients. Neither of these definitions aptly describes the "records reviews" we frequently see in our cases.

From the ambiguously objective sounding names of the companies, to the misleading terminology they employ, to the fiction of an arm's-length transaction, it is an industry based on illusion. The illusion of independence. The illusion of objectivity. According to Jim Matthis, a former State Farm executive who later testified against insurance companies, the only purpose for an insurance company's using a records review is to increase profits by reducing costs. It has nothing to do with objectivity, fairness, accountability or honesty.

In the 15 years since the Dateline episode aired, it does not appear to us that much has changed. The records review/independent medical exam industry is still set up to allow insurance companies to benefit from the appearance of objectivity when in fact these records reviews, in our experience, almost always favor the insurer. And we repeatedly come up against the same records reviewers time and time again with little if any variation in their opinions. These doctors are laughing all the way to the bank. Meanwhile, the insurers reap enormous profits from this practice, and insureds, plaintiffs, the courts (and by implication the public) are left holding the bag.

Insurers are not like other companies. They are not allowed to prioritize their own financial interests in deciding their insureds' claims or in resolving claims against their insureds. Judges and lawyers alike should examine this practice of repeatedly obtaining favorable opinions from companies and records reviewers with a strong financial incentive to provide biased reports more closely. Is it not an institutionalized unfair insurance practice? Is it not a want of due care? Is it not bad faith? ▪