

Settling Claims at a Deposition

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Why Do We Take Depos Anyway?

Why Do We Take Depos Anyway?

- ✓ What happened?
- ✓ Assess credibility.... Of both the applicant and facts, as presented by the applicant!
- ✓ Tie the applicant down to ONE STORY
- ✓ Reporting of the injury



Why Do We Take Depos Anyway?

- ✓ Do you need additional witness statements?
- ✓ Prior injuries or medical treatment?



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Why Do We Take Depos Anyway?

- ✓ Get RECORDS! They may reveal other issues
- ✓ Attack the applicant's credibility
- ✓ Address post-term issues (specific issues)
- ✓ Address post-term issues (CT claim/ LC 5412)



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Why Do We Take Depos Anyway?

- ✓ Assess applicant's disability and limitations
- ❑ Do we have surveillance? Or do we WANT surveillance? Compare video footage to depo testimony



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Why Do We Take Depos Anyway?

- ✓ Reveal the existence of surveillance at the depo?? (strategy consideration)



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Settling At A Deposition

Settling at a deposition

A closed file is a happy file.....

- ✓ Running the risk of additional allegations by keeping the file open:
 - ❑ Neuro, psyche, add-on-orthopedic body parts, medication/ stomach issues, treatment costs/liens, aggravation of preexisting HBP/diabetes, litigation costs, additional panels



Settling at a deposition

Lower the employer's x-mod



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Settling at a deposition

✓ Most defense attorneys SAY they want to settle at depo.....

But have they taken the necessary steps beforehand?



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Settling at a deposition

- ✓ No MMI? No Problem!
- ✓ The absence of a MMI report should NOT hold up a settlement.
- ❑ Example: Applicant is actively treating, MRI on file, not yet MMI
- ❑ Consult the AMA Guides



Settling at a deposition

- ✓ What if the case is denied and the applicant is not treating at all? (typically easier cases to settle)
- ✓ Actual, substantive case value vs anticipated cost to defendant.



Settling at a deposition

5,710 reasons to settle a case

- ✓ AA is trying to run a successful business AND represent the applicant's interests



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Settling at a deposition

- ✓ Return on investment (dollars/ hours)
- ❖ Don't be stingy with 5710 fees
- ❖ Make AA your hired negotiator
- ❖ ROI principle applies to applicants as well, not just to AA's (treatment, UR non-certifications, PQME evals, hearings...frustration over time)



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Settling at a deposition

- ✓ Play your opponent, not the cards
- ❑ Who is your AA on this particular case?
- ❑ Is he/ she reasonable?
- ❑ Unreasonable?



Settling at a deposition

- ✓ Does your AA like to settle?
- ✓ Or does your AA get PQME reports in five different specialties before even discussing a C&R?



Settling at a deposition

- ✓ Does your AA send a contract attorney to depositions
- ✓ If so, does that contract attorney have settlement authority at the time of the deposition? Ha!



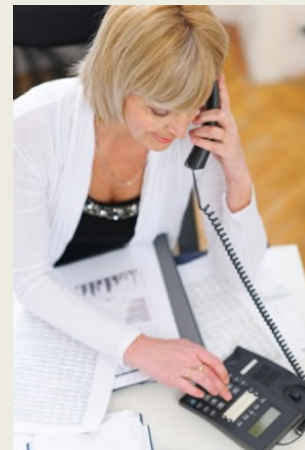
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Settling at a deposition

- ✓ Call the AA BEFORE the day of the deposition to find out.



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Settling at a deposition

- ✓ You down with EDD?
- ❑ Call DAYS (not minutes) before the depo
- ❑ If EDD did not pay, did the applicant even APPLY for benefits?



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Settling at a deposition

- ✓ Are there duplicate benefit dates paid?
- ✓ Don't just check EAMS for an EDD lien



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Settling at a deposition

- ✓ Have the FINAL version of the C&R with you at the deposition.
- ✓ If depo by Zoom, fax/email C&R to AA day before the depo



Settling at a deposition

- ✓ Know what benefits have been paid BEFORE the depo (total paid, weekly rate paid, dates covered) i.e., get the benefit print out from claims *before* the deposition.



Settling at a deposition

- ✓ How much was paid in medical benefits? (some WCJ's really care about this number)
- ✓ Voucher issues to be considered
- ✓ Is the applicant MMI? If not, what language goes into the C&R?



Settling at a deposition

- ✓ Is this a post-termination case?
 - If so, what language goes into the C&R?
 - Offer of proof to support denial and Beltran finding (BE SPECIFIC!)
 - Have witness information handy at deposition



Settling at a deposition

- ✓ Have you addressed:
 - Medicare issues
 - Child support issues
 - TTD overpayment
 - Verify PDA's



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Settling at a deposition

Some final considerations.....



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Settling at a deposition

Medicare issues:

- ✓ Discuss MSA/CMS claim handling guidelines with claims prior to settlement
- ✓ CMS workload threshold (\$25,000)
- ✓ Do you really need a MSA for a 65-year old applicant when settling for \$24,500?



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Settling at a deposition

- ✓ Know the value of your case BEFORE the morning of the deposition
- ✓ Get settlement authority BEFORE the deposition
- ✓ Make sure someone with settlement authority is available by phone at time of depo



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Settling at a deposition

Is the Employer agreeable to the settlement value?



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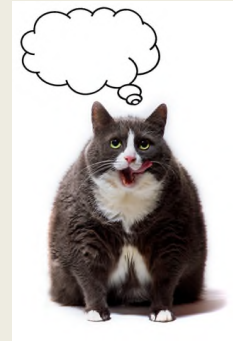


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Wrapping Up.....

Wrapping up

- ✓ It's all about probabilities(ish)



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Wrapping up

- ✓ I don't have ducks.....
.....or a row



I have SQUIRRELS..... and they're
EVERYWHERE!!!!



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