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"No Crash - No Cash": Another Decade of Duplicity? Three Recent Cases

By Arthur Croft, DC, MS, MPH, FACO

Many of you may have heard stories about insurance company investigators visiting chiropractic and medical clinics, demanding access to the premises for site inspections. I first got wind of this new tactic earlier this year when a medical colleague in Colorado called me. He didn't give many details in our conversation, although he did tell me that he had refused to allow this particular investigator to conduct an unannounced inspection during clinic hours, which he viewed as a probable violation of HIPAA, among other things.

Coincidentally, that weekend, one of my seminar attendees - an MD living in Chicago - came up to me on a break and told me that he had experienced several such inspections. After allowing the inspections, he had no problems with the insurer. As for my colleague in Colorado, because of his refusal to cooperate, the insurer denied reimbursement on all of his cases from that point on.

This has been going on all over the U.S., and I have heard a number of solutions proposed, including scheduling the inspection on a non-patient day and charging a consultation fee for it. If this is all one has to do to remain on good terms, maybe it isn't so bad ... or so you might think. But what will be next? Demands to review your corporate documents, school transcripts, tax records? What authority is being exerted here? Is it a third-party insurer's legal right to demand a site inspection?

As for my Colorado colleague, he had offered to set some time aside later in the week for the inspection, but that didn't suit the investigator. Some time later, armed with a camera, the investigator, who worked for the special investigative (fraud) unit, barged into the doctor's clinic unannounced and wandered into a patient treatment area, despite being told by front-desk personnel that she was not welcome.

One of the doctor's patients, an elderly woman, had brought suit against the insurer for not paying her bills. During the deposition of the insurance agent, which was videotaped, she admitted that this was a new nationwide program for Allstate. The agent thought it was fair and reasonable to make on-demand, unannounced inspections whenever the insurer wanted, and admitted to going into the doctor's office with a camera.

And it gets stranger yet. Another colleague got hold of the deposition video and posted it on the Internet (I don't think it is still up). For this, the insurer countersued the elderly woman for abuse of process. In the end, though, the jury awarded the woman treble damages for the punitive portion, plus attorney's fees and other fees - something in the neighborhood of $300,000. In the world of bad-faith claims, this was not a large settlement, but a victory, nevertheless.

Another seminar attendee, who also happens to be an MD in Colorado, owns several multidisciplinary clinics. Earlier this year, the same insurer arbitrarily decided to stop paying his bills. The basis? The insurer reasoned that, on the basis of the doctor's bills alone, coupled with the multidisciplinary nature of the practice, he must have been doing something illegal. The insurer alleged that the MD's corporation was illegal, which excused the insurer from the responsibility of his bills. The doctor complied with its requests for his corporate documents, to demonstrate that his clinics were in fact legal. The insurer countered that multiple clinics meant that non-MD practitioners were practicing autonomously without supervision of the MD. The doctor demonstrated that DCs and PTs can and do legally work autonomously in the state under their own licenses. As a result, the judge granted a motion to dismiss for the PT and DC defendants, since the insurer failed to show that it had a viable claim against them.

Meanwhile, a suit had been filed - again on behalf of two of the owner's patients - against Allstate for statutory violations and bad faith. The judge handed down a partial summary judgment awarding treble damages, interest on the doctor's unpaid bills, and attorney's fees. The insurer asked for a review, but the judge essentially said that there are legal avenues available to insurers who might be concerned that a practitioner may be committing fraud, but that they did not have a private right of action or defense against these claims outside those legal avenues. The final numbers are not in as I sit here, but I was told by my colleague that the expected money on this suit is around $2 million. Reading the judge's order, the reason for the summary judgment became clear: The case law they cited bore no relationship to the present case, and there was not a single valid claim to allow the case to go forward. The denial of reimbursement was arbitrary and capricious.

Now, let us turn our attention to the great state of California, home to over 20 percent of the world's DCs. If you have not heard the term, "no crash, no cash," read on. I have written on this very important topic in detail previously, so I won't belabor it here. Suffice it to say that it is a slogan coined by the insurance industry, which rather arrogantly proclaims that insurers will refuse to take seriously any medical bills for treatment of injuries allegedly resulting from any crash in which there is little or no property damage to the vehicle. This has virtually become their *raison d' etat*, and probably saves them hundreds of millions, if not billions, of dollars annually by playing on the intuitive logic of jurors and lawyers alike. Consider this: It has been estimated that the cost to insurers in whiplash-type soft-tissue claims is in the neighborhood of $19 billion annually in the U.S. From analysis of the world literature, it would appear that about 40 percent or more of these injuries occur in crashes in which the property damage is negligible. If you can write off 40 percent of your liability on the no crash - no cash deception, you stand to save a lot of money. It is a shell game of science, worked artfully by paid experts; a duplicity the likes of which are heretofore unknown in American business. I wish this were an exaggeration. And, it isn't strictly illegal, as far as I can tell.

Amazingly, this ploy continues to work, primarily because plaintiff lawyers, plaintiff experts and treating doctors simply don't know how to counter it. They do not have the requisite knowledge to succeed. Let me be clear on one thing, however: This is a strictly revenue-driven policy; a business model. The Insurance Institute for Highway Safety, the scientific arm of this industry and whose president of more than 30 years, Brian O'Neill, neither invents this fiction, nor does it condone it. The IIHS conducts real crash tests of its own, and conducts epidemiological research. They know what the real risks and statistics are concerning whiplash injuries. Why else would they spend so much effort in whiplash-related research projects, head restraint ratings, etc.? But, they are paid for by a consortium of auto insurers and walk a careful line. I have great respect for Brian O'Neill and the IIHS and always have. But I digress...

To sell this fictional notion of linearity between property damage and injury risk to its claims adjustors (and it **is** fiction, having been scientifically disproved in nearly a dozen studies), Allstate has developed a series of training videos, featuring a actor portraying a nerdy engineer, sporting a Sherlock Holmes-style sleuth cap and pocket protector, who gives an almost cartoon-like performance with fairytale-like audacity. In one scene, we see him sitting in a car that is struck from behind and undergoes a claimed speed change of 4 mph. Rather remarkably, and in defiance of the laws of physics, the actor barely moves an inch. But this is clearly a stunt. You see only a close-up of the actor; the other vehicle does not appear in the frame. In all likelihood, there is no other vehicle.

In contrast to this, in our (real) crash tests at that speed (and we've done nearly 100 crash tests at this point), the occupant kinematics are really quite dramatic and the head will violently contact the head restraint. Moreover, the struck vehicle will typically quickly roll out 10-15 feet or so before the volunteer applies the brakes. In another scene, we are introduced to the "Nicely family," who get bumped from the rear at perhaps 0.1 mph. Again, this is virtually a non-event, but no doubt one intended to send a subliminal suggestion that all of the low-velocity crashes probably look as trivial as this. Afterward, we see the whole Nicely family - including the dog - wearing cervical collars and lamenting their various symptoms. The nerdy professor explains to the viewer that the temptation to "win the lottery" is sometimes too much, even for good folks such as the Nicely family. This often fatuous dissembling goes on for hours, as we hear from accident reconstructionists, orthopaedic surgeons and other experts, all of whom assure the viewer that injuries simply can't and don't occur in these crashes. Unfortunately, unbalanced and with no one to refute it, it is easy to see how many of these adjustors might jut swallow the whole thing. Why wouldn't they? It is called "industrial brainwashing."

So, perhaps we shouldn't be surprised when an insurance adjustor reports a California DC to the Department of Insurance for suspicion of fraud. The basis of the accusation? There was little or no damage to the plaintiff's vehicle. The fraud in that is clear, even to an insurance adjustor. The Department of Insurance then referred the case to the state Board of Chiropractic Examiners, who in turn, handed it off to one of their investigators. This has turned into a real nightmare for the doctor. I have spoken to the attorney representing the doctor, and have filed a motion with the administrative law judge's office to be allowed to file an amicus brief with the court. As I sit here writing this, I am waiting for a phone call. But the press can't wait, so I will have to follow up on this case later.

It is important to keep in mind that this is not an isolated case. There are several others underway right now in California. Is this a new tactic designed to harass or maliciously prosecute innocent practitioners? Perhaps it is just the product of a successful brainwashing campaign. Will this game be coming to a Department of Insurance and State Board of Chiropractic Examiners near you? Count on it. Whatever is behind it is certainly based on nothing more than the insurance industry's time-honored and highly successful duplicity of foisting the myth that injury is impossible with minor or zero-damage crashes. Will this charade ever end? It appears that something so financially successful will be hard to take down, but I have no doubt that eventually, its irrelevance will augur its doom.

In the meantime, there is one important point I'd like to end with. The first two doctors in this series clearly prevailed, and I have no doubt that the third will as well (the hearings have nearly ended as I write this). While doctors ignorant of the facts will undoubtedly find themselves victims to many of these deceptive tactics, those who have knowledge - those who know the real facts - will always prevail over the purveyors of falsehoods and fabrications.

In my estimation, whiplash victims benefit more from chiropractic than from any other form of health. They are entitled by law to that care, just as their practitioners are entitled by law to fair and reasonable reimbursement for their services. Personal injury can be an extremely rewarding and challenging area of practice. But today, more than any time in history, without top-level, cutting-edge knowledge, failure is always one of your possible outcomes. I encourage you to get smart and be a survivor; it's the stuff gene pools are made of.

Arthur Croft, DC, MS, MPH, FACO
Director, Spine Research Institute of San Diego
San Diego, California
info@ srisd.com

Click here for more information about Arthur Croft, DC, MS, MPH, FACO.

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