

Lessons from the USAA Lawsuit

The class action lawsuit for alleged breach of contract and covenant of good faith against USAA, AIS, et al has brought to light a number of things many have long suspected. Below are a few of the most important lessons we need to remember.

1. Aggressively fight any MedPay denials : In MedPay cases, the injured party has a contract with his/her insurance company. This agreement affords special protection under Bad Faith laws that essentially obligates the insured to a greater level of fair play from his/her carrier than that generally provided in third party cases. Thus, the treating doctor and plaintiff's attorney have greater leverage with the MedPay carrier. However, USAA allegedly found it quite lucrative to unfairly deny a high percentage of the MedPay treatment. Much of what was denied was ineffectively uncontested by the treating doctors. Additionally, the plaintiffs' attorneys typically failed to fight the denials and, in fact, often used the denials to pressure the treating doctors to reduce their bills as being "not medically necessary." **Lesson: Review any denial in MedPay with a microscope and fight any unfairness with the large club the law provides.**

2. Don't assume review companies are actually independent: This lawsuit claims that USAA, without the permission or knowledge of their insured, funneled their MedPay cases to a review company, Auto Injury Solutions (AIS). USAA gave every indication that the reviews generated by Auto Injury Solutions were, in fact, truly independent. The contracted doctors at AIS included medical and chiropractic doctors who allegedly performed sham reviews, with the objective of unfairly reducing the amount billed. From my experience in dealing with this company, any review appeal is funneled only to other reviewers in AIS, and not out of the *biased brotherhood*. **Lesson: Approach any review with an open, but suspicious mind. Sometimes one can learn of deficiencies in one's case via a review, but it is more likely that a deeper look at the case review will reveal biases and inappropriate conclusions.**

3. Don't assume reviewers are accurately quoting references and/or using unbiased sources: As support for the opinions rendered by the AIS reviewers, sources cited that were, allegedly, "immaterial and not reliable with reference to the individualized injuries...." It is common knowledge that most treating doctors are not well versed in the medical literature concerning whiplash associated disorders. Because of this fact, it is relatively easy to deceive most treating doctors. Additionally, the cost of owning a copy of the various guidelines often quoted by reviewers may be hundreds of dollars, and they are quickly outdated by follow-up versions. Such costs make it prohibitive for most *treating* doctors to carefully review the sources being quoted. These two factors make it difficult for treating doctors to adequately fight the review company abuses. **Lesson: Get informed, use established whiplash guidelines (such as those generated by Dr. Arthur Croft and/or the ICAC), and vigorously fight any denial.**

4. Don't assume that the case reviewers generate reports based upon a "thorough review of the provided records": USAA's *non-independent* review company, Auto Injury Solutions, allegedly used the same "template forms" and the same "cut and paste" verbiage in report after report, regardless of the facts of the case. Most people find it amusing that, according to the lawsuit, even the same typographical errors appeared repeatedly across different reports, different cases, and different reviewers. Unfortunately, all amusement aside, these reviews serve as the medical and ethical foundation for denying care that resulted in millions of additional profit for USAA. Patients, treating doctors, and attorneys are forced to accept the frustrations these reports cause, or invest considerable time/energy in an uphill battle to get what should have been allowed without objection. **Lesson: Make sure your PI cases are well documented. If one fails to do this, expect to fight more and more battles. When a reviewer challenges the necessity of your care, take the time to show, in writing, point-by-point, exactly where your records indicate both the necessity and value of your treatment. Also, kindly inform the reviewer that professionalism demands a more careful review be performed *prior* to rendering opinions that affect the patient's life and the doctor's livelihood.**

5. Don't assume that review companies actually use real experts: You might find it quite informative to do an internet search on the doctor/case reviewer that supposedly generated the report that USAA relied upon to deny payment. This office found that one AIS chiropractic reviewer was practicing in an area that was not zoned for *any* business activity. The google earth photo revealed a most unprofessional setting. It was immediately obvious that this particular reviewer was struggling to eke out a living in any manner possible. To top it off, the lawsuit alleges that some of the AIS "physician's reviews" never actually occurred, despite the presence of electronically signed reports. **Lesson: When dealing with any review company, question everything. Don't assume the case reviewer knows more than you. Don't even assume that the person whose signature appears on the report is directly responsible for generating it. When you send a written response to the review company, don't retaliate by venting your frustrations. Focus on steadfastly addressing the issues raised. Show the company that you are not a *push-over* and that you plan to fight back aggressively on any improper reduction.**