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- Windows 7+ (Microsoft Edge, Latest Internet Explorer, Firefox, or Chrome)
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\* Official support for the "latest" version of a newly released browser, among those noted above, will be added within 8 weeks of public release. Until then, the previous version will continue to be supported instead.

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# Ethics and Good Faith Claims Handling

A workers' compensation and auto no-fault continuing education course



February 27, 2019

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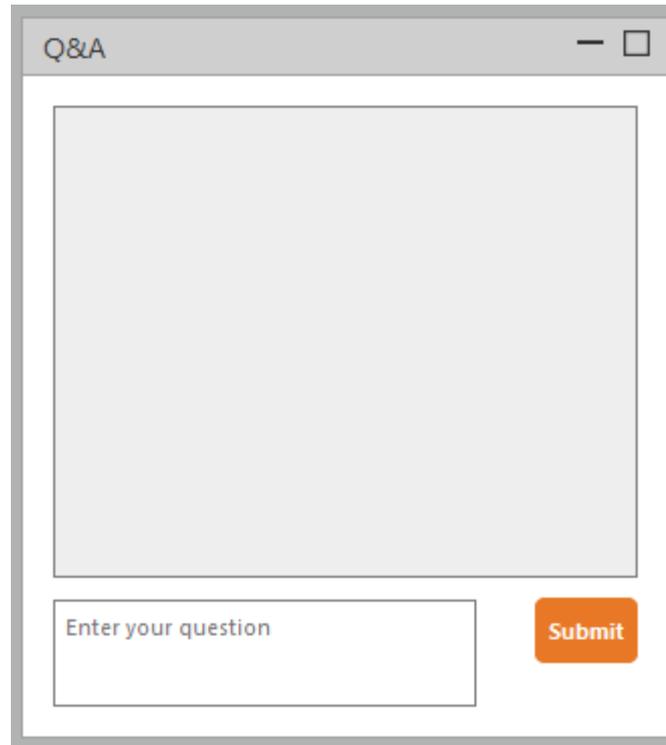
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Questions will be answered at the end of the presentation as time allows.

A screenshot of a web application window titled "Q&A". The window has a grey header bar with the text "Q&A" on the left and a minus sign and a square icon on the right. The main content area is a large, empty light grey rectangle. At the bottom of the window, there is a white input field with the placeholder text "Enter your question" and an orange "Submit" button to its right.

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# Presenter



Kyle Dulock  
Associate General Counsel

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# Learning objectives

- Understand the basis for ethical decision-making
- Understand basic principles in the Division of Insurance Codes of Ethics
- Ability to apply a basic “ethics work-up” to ethical cases
- Define professional and unlawful conduct
- Understand bad faith including terms and obligations
- Review case study examples of unethical conduct

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# Ethics



## March is ethics awareness month

Ethics is conduct that conforms to our accepted standards of conduct. For claims professionals, this means making the “right” decision in the context of our professional standards when more than one decision could be right.

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# Professional code of ethics between agents and clients

**Respecting diversity:** How we treat and value differing opinions and individuals

**Rights of the client:** What rights do my clients have related to a particular claim

**Role of agent and client:** What is my role in assisting the client

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# Privileged communication and privacy

## What is a Privileged Communication?

A communication between parties to a confidential relation such that the recipient cannot be legally compelled to disclose it as a witness.

## Between whom does the privilege exist?

Attorney? Client? Insured?  
Insurer? Adjuster?

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## Rights of the client: Sharing of information

- Who is the client? Multiple clients?
- Who has “rights” in a particular type of information?
- Do different individuals/entities have different rights?

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# Necessary steps for resolving ethical issues



## Ethical standards

Where do we find them?



## Reporting violations

How and when do we report them?



## Role of the ethics committee

How can an ethics committee assist you?

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# What are ethics?



# Defining ethics

- A set of principles of “right conduct”
- A theory or system of moral values
- Rules governing the conduct of the members of a particular profession

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# How do we act ethically?

- Communicating honestly
- Making and keeping your promises
- Disclosing conflicts
- Admitting mistakes and fixing them
- Being able to balance the interests of those to whom we owe a duty and, in the face of an ethical dilemma, choosing the right outcome

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# The values of ethics

<b>Honesty</b>	Basing our business relationships on truth
<b>Integrity</b>	Doing what you say you will do
<b>Responsibility</b>	Being accountable for your obligations
<b>Respect</b>	Valuing the emotional and physical wellbeing of others
<b>Courage</b>	Having ethical strength even when it is not popular

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# Basic principles in the Division of Insurance Codes of Ethics

Sources of Ethics rules:

## Professional Codes of Ethics

Ex. American Institute for Chartered Property Casualty Underwriters (AICPCU)

## Jurisdictional Ethics rules

Ex. Florida's rules for adjusters, Rule 69B-220.201

## Society Rules

Ex. Florida's Association of Public Insurance Adjusters

## Legal requirements

Ex. Unfair Trade Practices

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# Ethical and unethical standards of behavior

An insurance adjuster must:

- Work to safeguard and foster the rights and interests of all served, including injured parties.
- Maintain standards of professional conduct that takes into account those served.

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## Process for making an ethical decisions

1. What is the issue? [Gift? Conflict of Interest? Delay?]
2. Who are the stakeholders? [Injured worker? Carrier? Employer?]
3. What legal principles apply? [If unlawful, then answer is simple, don't do it.]
4. What ethical principles apply? [If an ethical principle is stated, use it.]
5. Does your decision uphold your duties? [Look at it from perspective of duty to your constituents.]
6. Could you share your decision with people you respect without concern?  
[How would your most trusted colleagues or family members (mom) regard your decision?]
7. Do you think the decision you made will stand the test of time? [Is the decision you made too narrow?]

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# Bad faith and unlawful conduct

# The keys to avoiding bad faith

- Promptly investigate, communicate and respond to notice of claim
- Notify the insured of the coverage decision
- Notify the insured of a denial of coverage
- Comply with the jurisdiction's fair claims practices act
- Unfair Claim Settlement Practices Act

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# Good vs. Bad Faith

**Good faith is basic honesty and fair dealing with others.**

**Bad faith by an insurance professional means dishonest or unfair conduct in the performance of duty owed to her or her constituents.**

- Failing to conduct a complete investigation in a timely manner
- Denying medical treatment without cause
- Refusing to pay a valid claim
- Failing to deny or pay a claim within a reasonable period of time
- Failing to communicate or withholding necessary information to injured parties and their attorneys
- Misrepresenting the law or policy coverage
- Offering less money than a claim is worth

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## Bad faith

- Common law implied duty on insurers to act in “good faith” and fair dealing
- States’ Unfair Claims Practice Acts generally prohibit engaging in any trade practice, unfair method of competition and unfair or deceptive act of practice involving the business of insurance. Violations are subject to monetary fines and penalties.

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## Factors in bad faith cases

### Committing or performing with such frequency as to indicate a general business practice any of the following:

- Failing to adopt and implement standards
- Misrepresenting pertinent facts
- Failing to acknowledge and act promptly
- Denying claims without conducting reasonable investigations
- Failing to affirm or deny full or partial coverage of claims
- Failing to promptly provide a reasonable explanation in writing to the insured
- Failing to promptly notify the insured of any additional information
- Failing to clearly explain the nature of the requested information

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# Ethical guidelines



## Prudent guidelines

- Public Trust: the work of adjusting insurance claims engages the public trust and involves balancing many competing interests.
- The adjuster must put the duty for fair and honest treatment of the claimant above the adjusters own interests at all times.
- An adjuster shall have no undisclosed financial interest in any direct or indirect aspect of an adjusting transaction – the adjuster shall not refer a claimant needing services to a person with whom the adjuster has an undisclosed financial interest.
- All claimants shall be treated equally.
- Claims must be adjusted strictly in accordance with the insurance contract and state law.
- No adjuster may negotiate or effect settlement directly or indirectly with any third party claimant represented by an attorney, if the adjuster has knowledge of the representation, except with the consent of the attorney. (The term third party claimant does not include the insured or the insured's resident relatives).

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## Seven canons of the CPCU Guidelines (based on the CPCU Code of Professional Conduct)

1. Placing public interest above their own
2. Continuing to develop professionally
3. Acting within the law
4. Acting diligently in performing their duties
5. Raising standards of the profession
6. Honoring relationships
7. Improving public understanding of insurance

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## Unethical conduct can also be unlawful conduct

Florida Rule 69B-220.201 includes a **code of conduct** defining ethical behavior binding on all adjusters a duty to put fair and honest treatment of claimant above adjuster's interests *including but not limited to:*

1. Adjuster shall not steer claimants to persons with whom adjuster has undisclosed financial interest;
2. Adjuster shall handle every adjustment with honesty and integrity without any compensation or remuneration to himself or herself except that to which he or she is entitled.
3. Adjuster shall act with dispatch and due diligence in achieving proper disposition of a claim.
4. Adjuster shall not knowingly fail to advise a claimant about the terms/conditions of a policy.

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## Unethical conduct can also be unlawful conduct

In **statutes** regulating adjusters, Fla. Stat. Section 626, Florida also requires the same ethical conduct:

1. Adjuster shall subscribe to the code of ethics specified in the rules.
2. Adjustments shall comply with insurance contract and law.
3. Public adjusters may not engage in conflicts of interest.

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## Duty of good faith and fair dealing

States' **Unfair Claims Practice Acts** generally prohibit engaging in any trade practice, unfair method of competition and unfair or deceptive act of practice involving the business of insurance. See, Fla. Stat. Sections 626.951-626.99.

Unlawful conduct may result in fines, penalties, loss of licensure, and/or civil/criminal responsibility.

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# Misrepresentation

- Misrepresentation involves falsification or distortion of a material fact, whether intentionally or unintentionally
- Misrepresentation is a form of deception, usually with the goal of misleading someone into buying something, but can also be unintentional when exaggerations are made
- In the insurance context, this can be:
  - Material misstatement regarding an insurance policy, its features, benefits or coverage
  - False statements in advertising
  - Fraudulent applications for workers' compensation coverage
- Misrepresentation can be grounds for suspension or termination of licensure, where applicable.
- Misrepresentation is an unfair insurance trade practice by statute in many states. Violations are subject to monetary fines and penalties.

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# Ethical responsibilities

To act ethically, insurance professionals must consider the interests of many to whom a duty may be owed when evaluating an ethical choice.

<b>The injured party</b>	Does the decision support timely delivery of compensable medical treatment?
<b>The injured party's attorney</b>	Does the decision provide adequate communication needed to for the attorney to represent the injured party's interests?
<b>The employer</b>	Does the decision support returning the injured party to work?
<b>The workers' compensation carrier</b>	Does the decision support proper management of the claim?
<b>The employer's/ insurance company's attorney</b>	Does the decision increase the carrier's exposure?

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# Case study examples of unethical conduct



## Ethical case studies

- Apply the rules and guidelines discussed during the previous slides to fact-specific cases to ethical issues that may arise:
  1. Conflict
  2. Gifts
  3. Due diligence
- Adjusters often times run into problems when an enhanced review of the situation must be performed, beyond an easy “yes or no” or “right or wrong” response.
- The following case studies each deal with an ethical dilemma where professional codes of ethics as well as jurisdictional rules will need to be applied in order to come up with an answer.

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## Case Study 1: Conflict: Adjuster Jessica and her friend Nancy

- Jessica and Nancy have been friends and co-workers since both came to work for Churchill Insurance in 2000. Both had similar backgrounds and went to rival colleges, which made football season always a fun time. So much so, that both began hosting the others family over during football season to watch football games and hang out.
- Last year, Nancy decided to leave Churchill Insurance and start-up a durable medical equipment (DME) provider not far from her old office.
- Through all of this, Jessica supported Nancy, and even helped Nancy move boxes and office supplies into her new office space. The space is so close to their old office, that Nancy and Jessica still have lunch together 2-3 times per week.



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## Case Study 1: Conflict: Adjuster Jessica and her friend Nancy

- During their last lunch, Nancy confided in Jessica that her DME business was not doing as well as she had hoped. In fact, if Nancy did not begin seeing an influx of new business over the next month, she was going to have to close the business.
- Nancy also told Jessica that her husband, Bob, was recently let go and the family is having to rely on Nancy's income from the DME business as their sole source of income.
- Jessica was very distressed by this turn-of-events and asked whether there was anything she could do to help Nancy out.

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## Case Study 1: Conflict: Adjuster Jessica and her friend Nancy, cont.

- Before Nancy left Churchill Insurance, she heard that a new, large employer was coming onboard, and that they would need quite a bit of DME filled for injured employees during the next several years.
- Nancy then asked Jessica if she would mind funneling some of the overflow DME services to Nancy DME business.
- This help Nancy possibly save her business, and who knows, if Jessica could send enough orders through Nancy's new business, Nancy might be able to afford for Jessica to leave Churchill Insurance and work with her.
- Jessica also recently found out that her husband loaned Nancy \$10,000 to assist in starting up her DME business.

### What should Jessica do?

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## Case Study 1: Conflict: Case analysis

Adjuster Jessica and her friend Nancy, cont.

Adjusters should use the industry's ethical guidelines to determine how best to solve the issue.

Jessica faces several ethical, moral, and legal issues:

- Is there a conflict of interest in helping out a friend and possible future boss?
- Is use of Nancy's DME company in the best interest of her employer?
- Is use of Nancy's DME company in the best interest of the injured worker?
- Is there some sort of "arms-length" or "self-dealing" legal requirement for Jessica to act in a certain manner?

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## Case Study 1: Conflict: Case analysis

Adjuster Jessica and her friend Nancy, cont.

The following ethical Canon's may apply in this situation:

<p><b>Canon 1</b> requires that an adjuster act in the public interest and ensure that not even an appearance of impropriety in any transaction should surface.</p>	<p>Jessica's boss and co-workers know that her and Jessica are good friends, and spend a lot of time together. How will it look when Jessica begins to send services to Nancy's DME business?</p>
<p><b>Canon 3</b> requires that an adjuster obey all laws and regulations, and avoid conduct or activity that is detrimental to others.</p>	<p>Jessica and her husband are now technically investors in Nancy's DME business, which means they are interested parties in how the company does in the market. Most states have explicit rules about "self-dealing" or "arms-length transactions" which prohibits someone from referring business to another entity where they have a vested interest. Sending business to Nancy could be seen as a benefit to Jessica while hurting other DME providers that would otherwise have received the business, and in which, Jessica does not have a vested monetary interest.</p>

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## Case Study 1: Conflict: Case analysis

Adjuster Jessica and her friend Nancy, cont.

The following ethical Canon's may apply in this situation:

<p><b>Canon 4</b> requires an adjuster to be diligent in the performance of their duties and strive to improve the functions of the insurance company.</p>	<p>Is sending business to Nancy's DME business going to improve the function of the insurance company? Does Jessica even know how Nancy's business operates? Does the provider need to be credentialed, first? Is the turn-around time for performing services going to improve the services provided to the injured worker?</p>
<p><b>Canon 5</b> requires adjusters to aspire to raise the professional and ethical standards of their profession.</p>	<p>Is this possible relationship going to raise or lower the standards for Jessica as an adjuster? How will this relationship appear to people from the outside? Even if allowed under Jessica's current employer, Jessica has the duty to not just perform the bare minimum as an adjuster, but to strive to attain the highest level of ethics.</p>
<p><b>Canon 6</b> requires adjusters to strive to establish and maintain dignified and honorable relationships with all whom they service/interact.</p>	<p>If Jessica goes forward with sending services to Nancy's DME business, how does that affect the relationship she has with other DME vendors? With her employer? Other adjusters in her company?</p>

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## Case Study 2: Gifts: Adjuster John and Vendor Kevin

- John has been an adjuster with Winston Insurance for 10 years, servicing their group health-side of the business. Recently, John took a promotion to help run the workers' compensation group, while still maintaining his status as an adjuster on individual claims.
- Last week, Kevin, a regional sales executive with a workers' compensation ancillary vendor stopped by to drop off doughnuts and to see if John had any one-off home health claims that Winston Insurance may need assistance in staffing.
- Since this was John's first time meeting Kevin, they both got to know each other a little better over a cup of coffee.



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## Case Study 2: Gifts: Adjuster John and Vendor Kevin

- Since “March Madness” is currently underway, Kevin and John started to discuss the recent upset of Virginia by an up-start smaller school. Kevin was interested to learn that John went to the smaller school and was super excited to see them doing so well. John hoped to maybe see one of their games if they continue to make-a-run during the tournament.
- Kevin thanked John for his time and told John to let him know whether he needed anything on some hard-to-source home health cases.
- Later that week, as John left the office, he noticed Kevin outside with his car’s hood up. Kevin’s car has a dead battery and asked John if he would mind dropping him off at his wife’s office, which is just a few miles away.

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## Case Study 2: Gifts: Adjuster John and Vendor Kevin, cont.

- John is happy to oblige, and drops Kevin off at his wife's office. As Kevin got out of the car, he tells John, "Hey buddy, I owe you big time! Thanks again, and good luck in the basketball tournament."
- One morning several weeks later, John arrived at the office a little late after having stayed up to watch his school win in overtime in order to move on to championship game! On his desk he finds a small envelope from Kevin on his chair.
- The envelope includes two court-side tickets for the championship game, along with a note from Kevin that reads: "Hey buddy! Thanks again for the ride! Great to see an underdog make it this far! Your school reminds me of my company! Scrappy! Have fun at the game! Let's catch up next week and you can fill me in on the experience!"

### What should John do?

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## Case Study 2: Gifts: Case analysis

Adjuster John and Vendor Kevin, cont.

**Adjusters should use the industry's ethical guidelines to determine how best to solve the issue.**

John faces several ethical, moral, and legal issues:

- Were the tickets intended for John as a thank you for helping Kevin out with the ride, or as an inducement to do business with Kevin's company?
- Should John disclose receipt of the ticket to his employer?
- If John accepts the tickets, and does business with Kevin's company, does that create a conflict of interest?
- Are there any possible legal repercussions if John accepts the tickets and does business with Kevin?

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## Case Study 2: Gifts: Case analysis

Adjuster John and Vendor Kevin, cont.

The following ethical Canons may apply in this situation:

**Canon 1** requires that an adjuster act in the public interest and ensure that not even an appearance of impropriety in any transaction should surface.

John's acceptance of the tickets could be seen as putting his personal interests above those of the public at large. Were the tickets truly a "thank you" for the car ride or an inducement to send business to Kevin? At the very least, John should disclose the tickets to his employer and seek guidance. Most company's internal ethics policy's have a rule for this very instance. Those policy's should be reviewed. If there are no dollar limits on acceptance of gifts, most policy's state that even the "appearance" of a conflict of interest" should be avoided.

**Canon 3** requires that an adjuster obey all laws and regulations, and avoid conduct or activity that is detrimental to others.

John should ensure that acceptance of the tickets don't violate any sort of ant-kickback or other inducement laws. While no services have been sent to Kevin's company as of yet by John, if it happens in the future, even if John sees them as unrelated, the law may say other wise.

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## Case Study 2: Gifts: Case analysis

Adjuster John and Vendor Kevin, cont.

The following ethical Canons may apply in this situation:

**Canon 5** requires adjusters to aspire to raise the professional and ethical standards of their profession.

Is accepting the tickets going to raise or lower the standards for John as an adjuster? Does this open John up to possibly being coerced into sending business when Kevin shows up and intimates to John that those tickets were expensive, and while John thought they were in response to giving Kevin a ride, Kevin expects to get some business out of it. What should John do at that point?

**Canon 6** requires adjusters to strive to establish and maintain dignified and honorable relationships with all whom they service/interact.

If John decides to accept the tickets, how does that change his relationship with his company and Kevin? Does it change how he interacts with other vendors?

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## Case Study 3: Due diligence: Adjuster Jack, Injured Worker, Diane

- Jack has been an adjuster for two years with Spencer Insurance. One of the first injured worker cases he received was for Diane. Diane was injured on the job roughly two years ago and is totally disabled. Due to Diane's total disability, she requires around-the-clock care.
- Diane is also very demanding of Jack's time. Jack often times receives 2-3 calls a day from Diane about her home health aides, as well as her medication refills being delayed, even though Diane has received the same prescriptions on a monthly basis for the entirety of her claim.



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## Case Study 3: Due diligence: Adjuster Jack, Injured Worker, Diane

- Jack has been planning a big spring break trip with his family to Orlando, Florida, including MouseWorld. Jack has been somewhat distracted during the week before the trip and didn't see that a pre-authorization request came over from a pharmacy for one of Diane's medications on a Wednesday afternoon.
- It is now Friday, and Jack hopes to leave a little early to beat traffic, so he and his family can get moving down to Orlando and start their vacation.
- At the last minute, Jack sees the pre-authorization request from the pharmacy for Diane's prescription. Jack also notices that he has several voicemails that have come in over the past 24-hours that he recognizes as Diane's phone number.

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## Case Study 3: Due diligence: Adjuster Jack, Injured Worker, Diane, cont.

- Jack notices that the prescription is for a new medication with her current treating physician. Jack also knows that new pharmacy formulary rules have come down that Jack hasn't had the time to study in-depth. After all, he's been planning the big trip!
- Jack doesn't realize that, although a pre-authorization was sent over, it was a glitch in the system used by the pharmacy benefit manager (PBM) that provides pharmacy services to Spencer Insurance, and the state regulator does not allow for pre-authorizations on this particular type of medicine. Also, there are strict fines and penalties associated with delaying an otherwise valid prescription, which Jack has no idea about, since he hasn't caught up on his reading about the new formulary.
- Rather than running through the new formulary rules and getting up-to-speed, especially with the limited amount of time he has left before vacation starts, Jack just sends Diane's prescription to utilization review (UR) rather than deal with it and Diane.
- Jack and his family have a great time at MouseWorld! It was the best trip they've ever had! However, when Jack gets back into the office, he is met by many furious emails and phone calls, not only from Diane, but also her attorney. In addition, she received an email from the state regulator seeking information about the transaction as a complaint has been filed against her and Spencer Insurance.

### What should Jack have done to avoid this problem?

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## Case Study 3: Due Diligence: Case analysis

Adjuster Jack, Injured Worker, Diane, cont.

**Adjusters should use the industry's ethical guidelines to determine how best to solve the issue.**

Jack faces several ethical, moral, and legal issues:

- As a licensed adjuster, should Jack be up-to-speed on new laws and regulations?
- Did Jack owe Diane a duty to effectively respond to her complaints?
- Did Jack do everything he should in order to assist the injured worker?

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## Case Study 3: Due Diligence: Case analysis

Adjuster Jack, Injured Worker, Diane, cont.

The following ethical Canon's may apply in this situation:

<b>Canon 1</b> requires that an adjuster act in the public interest rather than for their own personal interests.	By concerning himself more with this trip than with Diane, Did Jack act in the public's best interest or his own?
<b>Canon 2</b> requires an adjuster to continually maintain and improve their professional knowledge, skills, and competence.	Jack's issue started long before the Friday afternoon before he left for vacation. Jack had an obligation to improve his knowledge and skills related being an adjuster. Did he do that in this situation? Did he maintain a high-level of expertise in the workers' compensation field?
<b>Canon 3</b> requires that an adjuster obey all laws and regulations, and avoid conduct or activity that would cause unjust harm to others.	By failing to learn the new pharmacy formulary rules, did Jack follow through with Canon 3? Jack should have been up-to-speed on the new regulations long before the effective date. What sort of unjust harm did he cause to Diane?

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## Case Study 3: Due Diligence: Case analysis

Adjuster Jack, Injured Worker, Diane, cont.

The following ethical Canon's may apply in this situation:

<b>Canon 4</b> requires an adjuster to be diligent in the performance of their duties and strive to improve the functions of the insurance company.	By failing to properly review the new regulations and the specific prescription for Diane, was Jack diligent in his performance, and did he strive to improve the functions of the insurance company?
<b>Canon 5</b> requires adjusters to aspire to raise the professional and ethical standards of their profession.	By ignoring Diane and her prescription, did Jack raise the professional and ethical standards of the profession?
<b>Canon 6</b> requires adjusters to strive to establish and maintain dignified and honorable relationships with all whom they service/interact. .	Did Jack maintain defined and honorable relationships with Diane, her attorney, and the regulator by failing to properly handle the claim? How does that affect Diane and her company's standing in the industry, and their ability to maintain good relationships in the future?

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# Summary



# Thank you!

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