



# Ethics for Insurance Professionals

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## Meet Today's Presenters



- › **David J. Alfini** is a partner in Hinshaw's Personal Injury and Property Damage Group. David represents clients in matters involving construction defects, product liability, long-term care, toxic exposure, and premises liability.



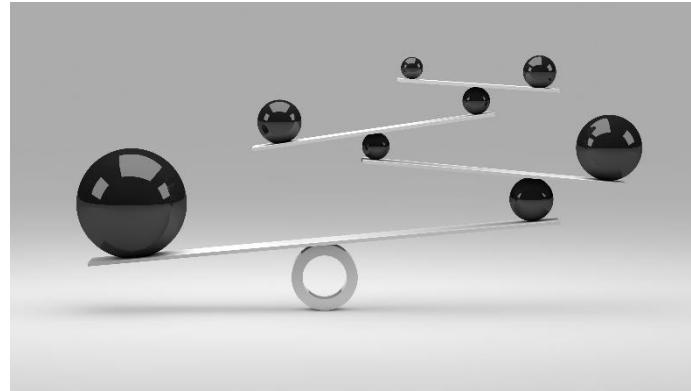
- › **Adam S. Guetzow** is a partner in Hinshaw's Personal Injury and Property Damage group. Adam defends clients in products liability, premises liability and general liability cases at both the local and national level.



- › **Samuel T. Crowley** is an associate in Hinshaw's Personal Injury and Property Damage Group. Sam defends clients in personal injury, property damage and health care services matters.

# Learning Objectives

- I. An understanding of "Ethics"
- II. The basis of the ethical obligations of adjusters and insurance professionals
  - Industry Standards and Codes
  - Laws
  - Internal Regulations
- III. Penalties for ethical violations
  - Licenses lost / Jobs lost
  - Bad Faith
- IV. How ethical issues arise
- V. What can you do to prevent them
- VI. Trends in ethical issues





# What are Ethics?



- › Moral principles that govern a person's behavior or the conducting of an activity
  - › A code of moral standards of conduct for what is "good" and "right" as opposed to what is "bad" or "wrong"
- Oxford Dictionary

## What are “Ethics”?

- › Ethics is never a “separate” part of our lives. It is part of everything we **do** and **say**.
- › It’s a means of creating standards within any given profession to upgrade it and give it **honor**.
- › We would not wish to do business with many professions if ethics did not play a part.
  - Ethics add an element of **trust** to many industries.

*“The reputation of a thousand years is determined by the conduct of one hour.”*

# How We Arrive at Our Ethics

- Beliefs
- Attitude
- Character
- Influences



- Integrity
- Respect for others
- Compliance with the law
- Accountability



# How Ethical Is the Insurance Industry?

- › If you ask the general public about the topic of “ethics in insurance,” some may ask: ***“Is there such a thing?”***
- › Public polling shows that “insurance salesmen” rate just above car salesmen and politicians as the least trusted professions. The Gallup survey of honesty and ethics showed that 10% considered insurance salesmen ethical in 2009 and 15% did so in 2012
- › Institutes and CPCU Society asked 3,000 members of their online community in 2015 some questions about ethics in the insurance industry
  - More than **90%** of respondents said that they believe insurance professionals are already largely ethical
  - *55% said they believe the public views their industry as largely unethical*
  - **More than 80% responded that the key to improving public perceptions of ethics within the insurance industry is enhancing the public’s understanding of how insurance works**




# Why Should You Care?

- › If an insurance agency is to remain in business, it must make a profit, which can only be done through effective sales
- › Word of mouth is the most powerful form of advertising that exists
- › A business which is seen as unethical can quickly gain a reputation within the community that will hurt sales
- › **Simply put: ethical conduct is good business**
- › Engaging in unethical behavior can result in severe disciplinary action such as fines, restitution, suspensions or terminations

# Framework to Making an Ethical Decision





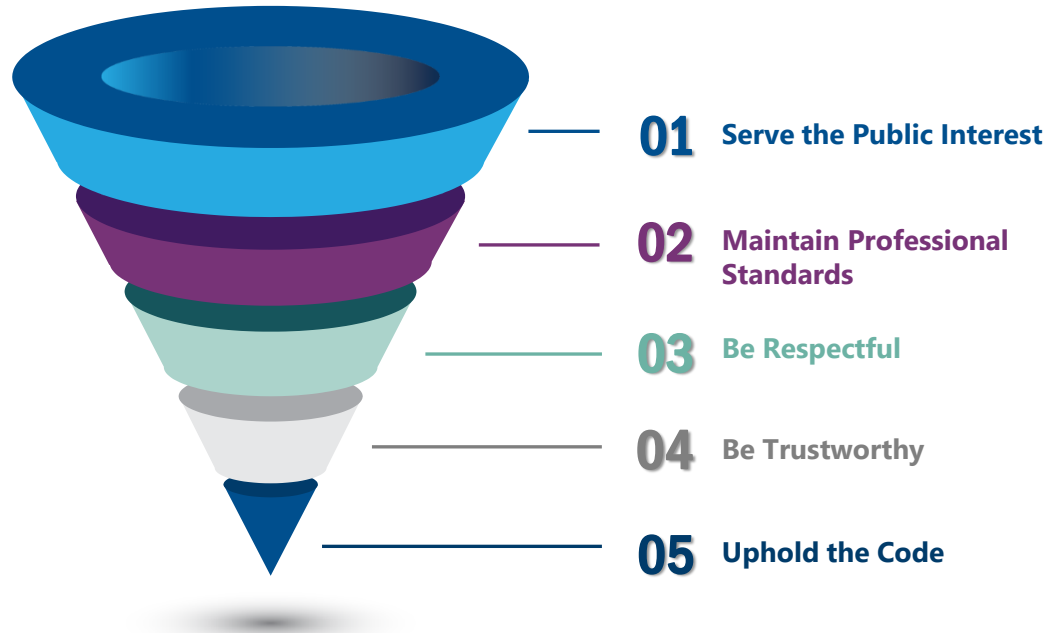
"It takes 20 years to build a reputation  
and five minutes to ruin it. If you think  
about that, you'll do things  
differently."

-Warren Buffet



# Insurance Code of Ethics / Legal Standard

# Insurance Code of Ethics



# 1. Serve the Public Interest

- › Society wants people to have insurance that covers risk
  - Insurance is heavily regulated
- › Benefit to the economy
- › Duty goes beyond the policy
- › Goes beyond the company
- › Bad faith is bad!



## 2. Maintain Professional Standards

- › Clearly identify yourself and your professional qualifications and associations
- › Never oversell your knowledge or abilities; admit when you don't know the answer to a question, quickly admit and rectify mistakes
- › Disclose unavoidable conflicts of interest
- › Do not discriminate on the basis of sex, religion, race, disability, age, or sexual orientation
- › Only accept tasks or offer assistance in areas that are within your realm of expertise
- › Disclose news in a timely manner



### 3. Be Respectful

*Consider the successes you've had in your insurance career thus far and whether they would really be possible if you hadn't shown respect, humility, and all other positive and seemingly selfless traits to your customers, colleagues or even your competitors.*

- › **Be courteous** not just to the insured, Third-Party rudeness is just as bad
- › Respect the customer's time; Treat customers with the same degree of respect you would show to an employer or supervisor
- › **Untimeliness/ignoring requests** can be disrespectful (know your rules)
- › Maintain confidences even about matters that are not protected by law
- › Realize that customers may be afraid to admit **they don't understand** complicated insurance contracts (elderly individuals)

## 4. Be Trustworthy

Individuals buy insurance based on **trust:**

- › Trust that a company will be there
- › Trust in the products purchased
- › Trust in the advice of a professional

### The Key to Ethics

- › Also called “honesty” but more
  - Is there a confidential relationship here?
- › Misrepresentation can be unintentional, however, if it is intentional, it is worse
- › Be careful with your communications!



## 5. Uphold the Code

- › Allow the code of ethics to **govern what you do**
- › Be **vigilant** with others
- › Be a leader by example
- › Seek help with ethical issues *when needed*



## Risk Management Professionals

- › Nurse Case Managers and Workers Compensation Adjusters must work to safeguard and foster the rights, interests, and prerogatives of patients or others served.
- › Risk Management professional must maintain standards of professional conduct that will serve to withstand the scrutiny of all constituencies served.

# Competing Interests of the Risk Management Professional

Adjusters and NCM's must consider interests of

- › The worker
- › The workers Attorney
- › The employer
- › The workers comp carrier (including the claims administrator or TPA)
- › The employer or carriers' attorney



## Pop Quiz

Which of the following is not part of the insurance code of ethics?

- a) Serve the public interest
- b) Be respectful
- c) Smile
- d) Uphold the code



# Important Misconceptions

## Important Misconceptions

### › It's ethical if it's legal and permissible.

- *Loopholes, lax enforcement and/or personal moral judgment do not outweigh what is right or lawful*

### › It's ethical if everyone does it.

- *Treating questionable behaviors as ethical norms under the guise of "safety in numbers" is a false rationale*

### › Being "unethical" is intentional.

### › If our lawyer says it is permissible, then I can do it.

### › Ethics only applies to my insured/first-party claims.

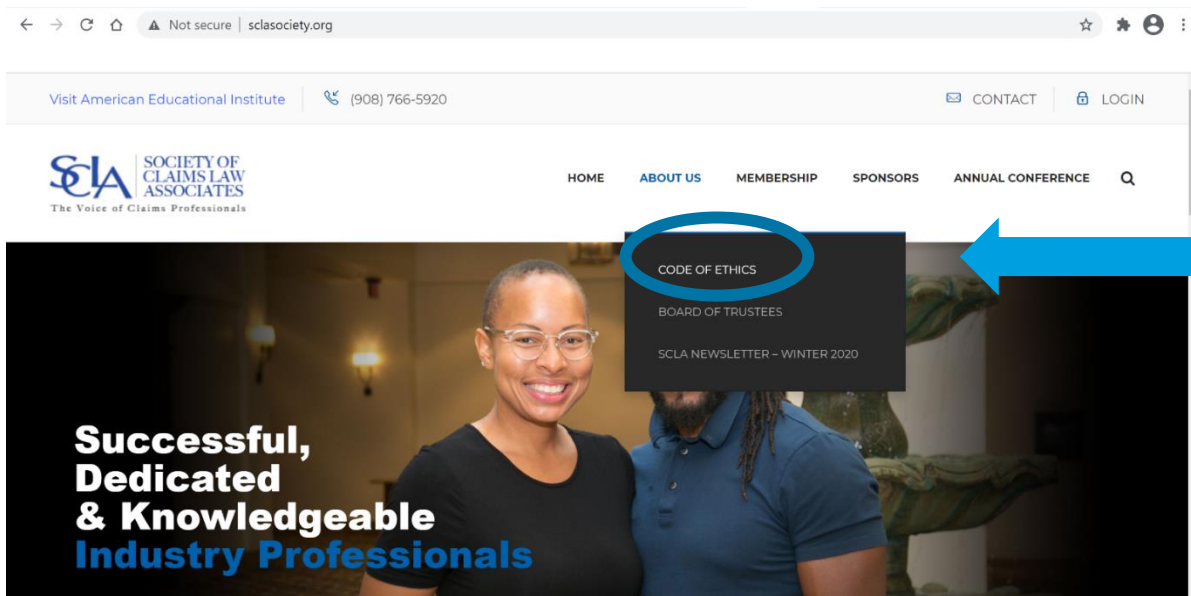




# Professional Standards

# Professional Standards

Society of Claims Law Associates (SCLA)



*The Society encourages its members to maintain a high level of competence and adhere to the highest ethical standards. In support of this goal the Society has adopted the following Code of Ethics:*

1. Members of the Society shall adhere to the highest ethical standards in their dealings with the public and other professionals both within and outside the industry. This includes, but is not limited to, claims professionals, physicians, attorneys, insureds, claimants and experts
2. Members of the Society shall conduct themselves in such a manner as to command respect and confidence and shall approach claims investigations and evaluations with an unprejudiced and open mind

3. Members of the Society shall make truthful and unbiased reports of the facts and shall maintain a standard of fairness and integrity in all their professional duties
4. Members of the Society shall remain current on the laws and regulations affecting their professional responsibilities by attending such classes, seminars and training as necessary
5. Members of the Society shall not injure the reputation or professional practice of colleagues

# State Laws

# California Code

## Insurance Code §790.03



(h) Knowingly committing or performing with such frequency as to indicate a general business practice of any of the following unfair claims settlement practices:

- (1)** Misrepresenting to claimants pertinent facts or insurance policy provisions relating to coverages at issue.
- (2)** Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3)** Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

# California Code

Insurance Code  
§790.03



- (4)** Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.
- (5)** Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
- (6)** Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

# California Code

Insurance Code  
§790.03



- (7)** Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled to reference to written or printed advertising material accompanying or made part of an application.
- (8)** Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent or broker.
- (9)** Failing after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made.



# California Code

Insurance Code  
§790.03



**(10)** Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

**(11)** Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss, both of which submissions contain substantially the same information.

# California Code

## Insurance Code §790.03



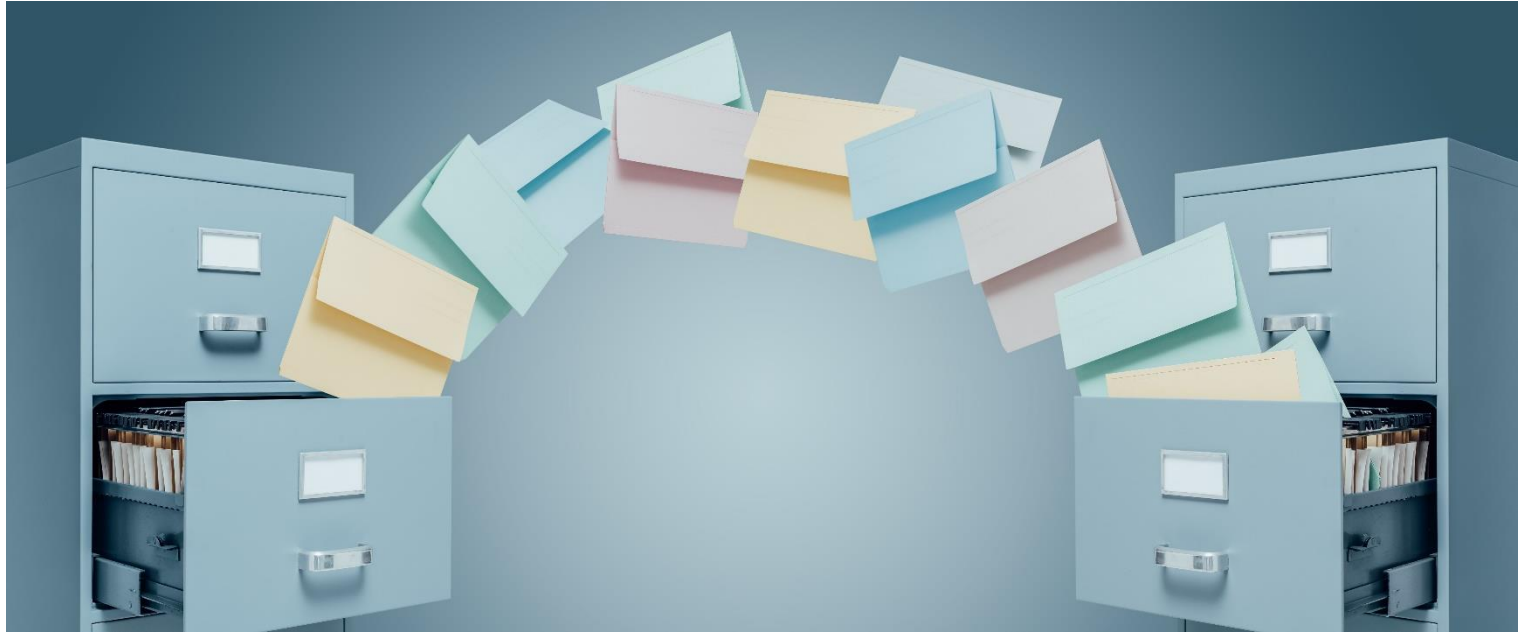
**(12)** Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

**(13)** Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in retaliation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

**(14)** Directly advising a claimant not to obtain the services of an attorney.

**(15)** Misleading a claimant as to the applicable statute of limitations.

# Your Internal Rules & Policies



# Penalties

## Violation of California Ins. Code § 790.035

- Any person who engages in any unfair method of competition or unfair deceptive act or practice defined in Section 790.03 is liable to the state for a civil penalty to be fixed by the commissioner, not to exceed \$5,000 for each act, if the act or practice was willful, a civil penalty not to exceed \$10,000 for each act. The commissioner shall have the discretion to establish what constitutes an act.

## Other Forms of Penalties

Willful misrepresentation or  
deception of any policy or insurance  
contract

Suspension - 9 months

§626.611(1)(e)

Demonstrated lack of fitness or  
trustworthiness to engage in  
business of insurance

Suspension - 6 months

§626.611(1)(e)

Material misrepresentation of the  
terms of an insurance contract for  
purpose of effecting a settlement of  
claim or loss of damages or benefit

Suspension - 9 months

§626.611(1)(e)

Knowingly making any misleading  
representations or incomplete  
comparisons with respect to any policies

Suspension - 6 Months

§626.621(5)



# How Do Ethical Issues Arise?

# Investigation

## › Reasonable in time & scope

› What are you investigating?

› Background investigations

- **Witness interviews**

- Criminal histories

- Financial/tax investigations

- Health/medical records

- Records and Document investigations

- Alibi verifications

- Loss site inspections

- Bankruptcy records

- Divorce records

› **What do your internal rules say?**

› **DOCUMENT**





## Evaluation

- › Is there a reasonable basis of evaluation?
- › What kind of claim is it?
- › Who is my insured?
- › What kind of policy do I have?
- › Is there coverage?
- › Do I need counsel?
- › Is there any risk transfer I can take advantage of?
- › **Did you follow your internal rules?**

# Negotiations / Settlements

- › Professional
- › Timely
- › Appropriate
  - Who are you negotiating with?
- › Settlements
- › Releases



## Importance of Communication

- › Consumers will base a number of important financial decisions ***on your advice***. Mistakes or misrepresentations can have tragic consequences and/or extreme financial repercussions.
- › Consumers will often ask your ***advice or opinion***. It's very easy to recount what you have been told or have read, but if you don't ensure that the customer clearly understands that you are not an expert outside of the products you hold a license for... an ethical issue may arise.

# Communications

## > Insured

- Coverage

## > Third Parties

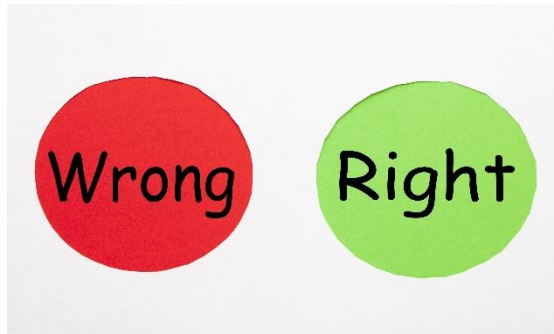
- Represented Parties

## > ***What do your internal rules say?***



## Common Ethical Issues

- › Knowingly misrepresenting relevant facts and policy provisions to claimant
- › Not exercising reasonable promptness in claim communications
- › Not adopting or implementing reasonable claim processing standards
- › Failing to affirm or deny coverage of claims in a reasonable time after investigation when the insured requests it in writing



## Common Ethical Issues

- › Not exercising good faith in effectuating prompt, fair, and equitable claims resolution
- › Compelling suits by offering substantially less than the amount reasonable in a suit
- › Refusing to pay claims without a reasonable investigation
- › Making claims payments without indicating under which coverage the payment was made, when the insured has requested this information in writing

## Common Ethical Issues

- › Requiring duplicate information in order to delay claim investigation or settlement
- › Failing to promptly explain claim denial or compromise settlement when the insured has requested this information in writing
- › Issuing checks in partial settlements under a specified coverage that release an insured of its total liability



## Pop Quiz

**Which of the following is not an ethical issue?**

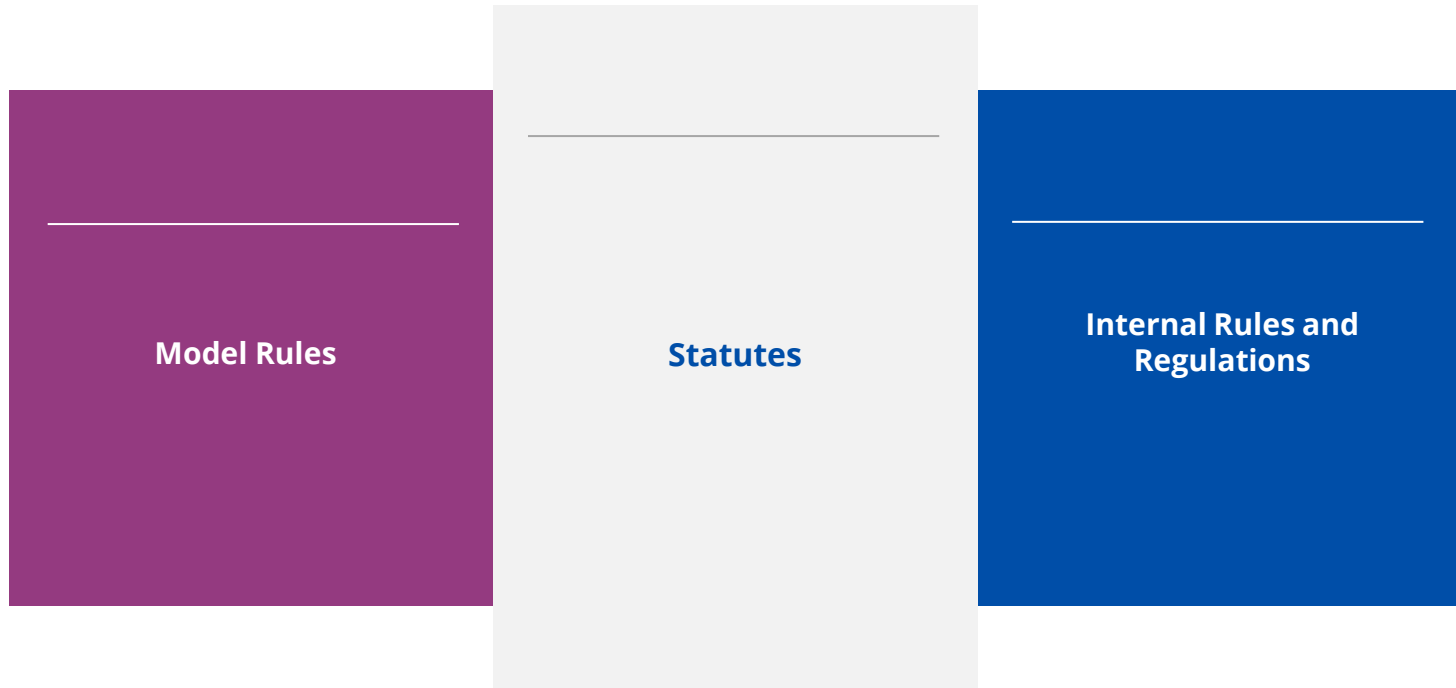
- a) Knowingly misrepresenting relevant facts and policy provisions to claimant
- b) Failing to affirm or deny coverage of claims in a reasonable time
- c) Keeping in touch with the employees, employers and the medical providers
- d) Failing to provide forms that are necessary to file claims





# How to Prevent Ethical Issues

# 1. Follow the Rules!



# Proper Documentation

## Where?

- Claim notes - **ALWAYS**
- Letters - sometimes



## What?

- **ALL activity on file, including:**
- Telephone calls, messages, unanswered calls
- Letters, texts and email
- When letters were sent
- Attempts to obtain information (specify)
- Attempts to secure extension [CAREFUL!]
- All reports from Independent Adjusters and Experts
- Copies of checks, releases, and cover correspondence

## Lack of Documentation Can Be *VERY BAD*

### › **Spoliation**

- If evidence is destroyed, altered, or simply lost it is referred to as spoliation
- Spoiled evidence can result in the imposition of sanctions, evidentiary presumptions, or even a separate cause of action for spoliation of evidence against the spoliator

### › **Federal Requirements for Electronic Disclosure/Discovery**

- Federal Rules require disclosure of electronically stored information and heavily penalize any perceived violations of failing to produce or destruction of that information



# Trends in Ethical Violations

# The Impact of Social Media in 2021

**Nearly 60%** of the World's population is now on digital



Users have increased by **more than 1 BILLION** in the past three (3) years

**98%** of users report using at least one other platform

**Almost one (1) FULL DAY** a week

- Ages 16-64 report spending two (2) hours 24 minutes daily

## Uncovering Key Details using Social Media

- › Currently, there are no laws in place restricting any person to scour social media
- › ***“Persons who share information PUBLICLY have no reasonable expectation of privacy”***
- › The courts have held that when social media accounts are created, users are essentially consenting to the possibility their personal information may be shared with others, as there is no guarantee that the pictures & information posted will not be further broadcasted

# What About Private Accounts?

## › States are slowly, but surely implementing statutes to specifically address online impersonation

<b>California</b>	<p>§ 528.5 <b>FALSE IMPERSONATION</b> – Any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a public offense punishable by a fine not exceeding \$1,000 or by imprisonment in a county jail not exceeding one year, or by both...</p>
<b>Texas</b>	<p>§ 33.07 <b>ONLINE IMPERSONATION</b> – A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:</p> <ul style="list-style-type: none"><li>(1) Create a web page on a commercial networking site or other Internet website;</li><li>OR</li><li>(2) Post or send one or more messages on or through a commercial social networking site.</li></ul>



## Developing an Ethical Search Plan

- › ***Run a full social media search.*** If you happen to run into one private account, the individual may have other social media platforms that are not private.
- › Check the accounts of *close family and friends*. Even if you run into a dead end, it's possible close family and friends may have public social media platforms displaying comments and tagged photos of the individual.
- › Some adjusters are creating a "Social Media Release" in order to obtain the information early on in a claims investigation. Adjusters can also create a list of questions directed at social media usage that can be asked during a recorded statement.

## If You See It, Secure It

› If you see it, secure it. Social media posts can be deleted just as quickly as they are uploaded. The moment relevant social media content is found, it should be saved by:

- Screen printouts on paper
- Saving an electric file directly onto the company's server
- Saving on separate storage media such as a flash drive
- Screen capture or recording software

Written descriptions are NOT enough! Posts can be here today and gone tomorrow.



## Pop Quiz

**Which of the following is not permissible with respect to social media investigation?**

- a) Viewing public information of claimant
- b) Printing public information claimant
- c) Creating a fake account and “friending” the claimant
- d) Viewing public information of friends and relatives of claimant



Questions?

# REMINDER:

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**Any questions, please contact the CEU Institute [info@ceuinstitute.net](mailto:info@ceuinstitute.net)**

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Thank  
you!



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