

Claim Files with Integrity

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In•te•gral: essential to completeness; lacking nothing essential

In•te•grated: having different parts working together as a unit; marked by the unified control of all aspects

In•tegrity: the quality of being honest and fair; the state of being complete or whole

Introduction – First Ask Why

To the claim professional, the claim file is like water to a fish: vital, yet so ubiquitous that we often take it for granted. We find little research, case law or in-depth written guidance on the subject of insurance claim files other than succinct checklists written to guide compliance with regulatory requirements. Those checklists are appropriate and helpful, for sure. But they don't tell the whole story.

We offer here some different perspectives on the subject of claim file, in service of the emerging claim professional's better understanding of claim file management. We also consider how claim file management influences, and is influenced by, the emerging claim professional's overall professional development.

First, we ask: Why, beyond the obvious, is the claim file important?

Why, Part One: The Medium of Your Profession

In ancient Greece, the legal profession was considered one of three fundamental healing arts: healers of the physical body (doctors); healers of the mind (counselors); and healers of *community relationships* (lawyers). Yes, things have changed with the legal system, considering that it's now self-described as an "adversarial system."

Nevertheless, we propose that insurance sprang from a similar role in the health and healing of community. Fast forward a couple thousand years since ancient Greece. Property and casualty insurance developed in America from a focus on community relationships. The contributions of the many would help alleviate the losses of a few.

For the insurance risk management system to be sustainable in complex society, there has to be a commercial component. That leads us to the claim professional's nearly-impossible task. Claim professionals are expected to get it right while walking the razor's edge between commercial and community impulses. There's another way to put it: We do not help policyholders with legitimate claims, and we undermine the system at large, if we allow insurance to become a lottery. The claim professional's contribution is to get the coverage and valuation decisions correct, in a fair and responsible way.

The claim file is the lasting medium where the claim professional's contribution is demonstrated.

Why, Part Two: Your Fingerprint

Claim representatives are underdogs. Other than medical professionals, there may be no more frequent target for plaintiffs' attorneys than insurance claim professionals. Yes, it's the company's money, but it is the claim professionals themselves who are in the crosshairs at the front lines.

Your claim file (yes, think about it as "yours.") is your fingerprint. Whether it is your fingerprint left at the scene of a crime, or your fingerprint that proves good faith, it's a matter within your control.

Not so long ago in bad faith litigation, insurance attorneys would battle constantly over discovery of claim files. That war is largely over now, considering that regulations and case law protect very little of a claim file from discovery in a lawsuit. In fact, if present trends are any indication, claim files will soon be completely unprotected from discovery; more and more jurisdictions are finding that attorney/client communications and legal work product within a claim file are presumptively discoverable.

Regardless, imagine the day when we are eager to produce our entire claim file as positive evidence of our contribution to claim service?

Review of Basic Claim Duties

- Evaluate/Investigate
- Defend (3rd Party)
- Indemnify
- Settle

The claim file *integrates* these required components. The claim file with *integrity* achieves integration fairly and honestly. A claim professional who understands the value of an integrated claim file is herself an important, *integral* part of the indispensable insurance system.

The Resource Challenge

The following three headings are organizing principles that can influence and inspire your professional development.

Time-Management: Developing the Skills to Do More with Less

"*You don't have time to rush.*" Seemingly impossible to remember, much less practice, this principle lies at the foundation of our work. We all have the experience of "pedal to the metal" that comes from regulatory deadlines, emails and phone messages that require response, coordination of investigations, and regular claim file management. And, of course, the profession calls you to "get the coverage and value decisions" right every time.

Still, if you've ever been late for an appointment, isn't that when your keys or glasses most often get lost? Or you forget something important you needed for the meeting when you rush? Or you decide to take short-cut to the appointment, which turns out to involve twists and turns that make the journey longer after all?

Learning that you don't have time to rush itself takes time to learn. It also takes practice (hint: See Section IV.D.2 below).

Stress-Management: Developing Resilience

“In the event of an emergency, put your own mask on before assisting others.” This one should not require explanation, and it appropriately follows the first one. Stabilizing yourself when the fire gets hottest is often the last thing we do when we rush to get the job done. Still, self care – which includes making time for claim file management so it does not haunt you – must have a place in your professional development.

There are plenty of resources that will help you develop your own healthy stress-management practices. Make them happen. It’s part of becoming a professional.

Outside Relationships: Developing the Discernment to Use Support

Consistent with the community roots of insurance, the claims profession is a relationship business. The emerging claim professional knows two important sides of the same coin: (1) she is an important part of the insurance relationship; and (2) so is whoever is on the other side of that relationship at any given time. Using this knowledge requires the courage to engage in the relationship, along with the wisdom to understand the boundaries necessary to make the professional relationships constructive.

A specific adjunct of this principle is developing the skill of knowing when to ask for help, and who to ask.

Using the Four Ls

Language

“If language is not correct, then what is said is not what is meant. If what is said is not what is meant, then what ought to be done remains undone.” – Confucius

Internal Communications

Use these tips to guide your claim file notations:

- Good claim notes tell a story . . . clearly and efficiently. Consider this equation:

Historical note + reason for decision = good claim notation.

For example, do more than note a reserve change. Explain why in a sentence or two: e.g.
“investigator’s report indicates scope of damage greater than previously estimated.”

- Find a consistent approach with the language and abbreviations you use. If you are arbitrary in the abbreviations or coding that you use, you risk two problems down the road. First, others will not know what you were communicating. Second and worse, you might not remember. We’ve seen this happen.

External Communications to Insureds

At a minimum, claim-handling regulations require the claim professional to document communications with the insured, i.e. enter into the claim file a notation of the phone call. Whenever possible, we recommend going one step further: confirm the communication in a brief letter or email to the insured (mindful that email with insureds is fast becoming the rule rather than the exception – though make sure to request and obtain the insured's permission to use this method.)

Not every communication requires documentation in this manner. Here's a good rule of thumb. If the communication is about (a) coverage itself; (b) the scope of claim benefits; (c) the insured's expectation about the timing and sequence of payments; or (d) the specific extent of cooperation needed from the insured, confirm it in writing.

Here's one more rule of thumb, and it's a big one: never threaten; always disclose.

External Communications to Vendors

When it comes to your outside vendors, rely on them to support your claim file documentation. Take a closer look at the organizing principle stated in Section III.C above. You must engage with your vendors. This includes your legal support when the claim requires that.

In particular, lay the ground work for vendor support by communicating to your vendors up-front what you expect from them in writing in addition to their formal reporting. If a forensic investigator needs to expand the scope of her investigation, she should explain what is necessary and why, and do that in some form of communication that can be easily included in the claim file. If a report from the consultant must be delayed, the consultant should disclose that in writing – along with the reasons why. Your notations alone about such events can suffice, but the vendor's own words are better. Why make your job more cumbersome when this scope of activity is within the vendor's scope of responsibility.

Have relationship with your vendors. Let them know your needs and your expectations in advance of their retention. A vendor's independent investigation serves your goal of an integrated claim file.

Logic

Using logic is really simple – have a plan. [We could have titled this subpart “Planning,” but then we could not have referred to the “4 Ls” in this Section. ☺]

Planning applies to the micro and the macro. That is, planning applies to each specific claim file and to the overall development of your career as a claim professional.

Plan the process, but not the outcome.

Anyone who has used or developed planning documents will tell you this – they are subject to change, but having a plan is still indispensable. The key, especially for the claim handling professional, is to have a plan for the process, but not a plan for the outcome.

Put another way, the only outcome of your claim file planning is to have the claim file reflect a fair, honest, timely resolution of the claim. The process planning is how you get there, i.e. the preemptive mapping of deadlines, vendor participation and communications.

Know your audience

Part of the planning process also involves understanding your audience. Again, consider knowing the resources (and resourcefulness) of your vendors, preferably ahead of time. Know what makes your insured tick, and whether there are important issues and values involved for the insured beyond the dollars (e.g. does the insured have a pet that requires a unique ALE response?)

Build Confidence and Self-reliance

This is part of the macro planning process for your career. Find colleagues, useful blogs (constructive ones), local organizations that meet on semi-regular dates. Take a writing class or a Toastmasters class. Start a Meet-Up in your area for emerging claim professionals and together plan a career building process that includes claim file tips. Like any emerging self-made career, the tools are available. Learn how to use them.

Ask for help

It cannot be stated enough. At the beginning and throughout the claim-handling and claim-file process, anticipate the issues or the scope of work that will require help. You cannot foresee every instance when you'll need help. But with honest early assessment, many issues can be spotted, and the need for help can be addressed early with mentors, vendors or legal support.

Law

We drew a comparison above about medical providers and insurance claim professionals being the most targeted professions for law suits. Along similar lines, it is no coincidence that medicine and insurance are two of the most regulated professions measured by the volume of applicable statutes and administrative regulations.

Even the most experienced coverage lawyers do not have every legal nuance of claim-handling and claim-documentation at their finger tips. Claim professionals are certainly not expected to know the law at every turn. Still, there are a few key legal points you should know and document, when and where appropriate, in your claim file.

Know the source of the legal requirement

What is your jurisdiction, i.e. what state? This is obviously important if you work a multi-state territory. Make note of it. Determine whether that state has any unique regulations that affect the specific claim on which you are working. Consult with others who have worked that state. Get a referral to a lawyer from that state who is willing to establish a relationship by giving you some free "education" about such regulations.

If you are not paying for the advice or education, document what you've learned. If you are purchasing that advice or education, have the vendor document it for your claim file.

The principles of good faith

The strict legal definition of good faith is that the claim professional does not raise the financial interest of her company above the interest of the insured. The integrated claim professional gives equal consideration to the insured's interest as she does the company's interest.

The converse is the legal definition of bad faith, which in most jurisdictions requires proof that the insurance company acted "unreasonably, frivolously or without foundation."

As your work and your claim files consistently exemplify good faith and integrity, remember this. Any professional who works long enough in any business will experience the legal system in a way that he or she would prefer to avoid. If you have that experience, it won't kill you. Rather, it could make you better.

Mistakes happen and the law actually does forgive them

A mistake is not bad faith. This is the law in most jurisdictions. But just like in any context, a mistake gets worse and becomes bad faith if not addressed honestly and efficiently. If you or a vendor makes a mistake, consult with your in-house and outside resources about how to address it, and how to document within the claim file the mistake and the solution.

Logistics

By logistics, we mean the tactics you use to develop your plan, to implement it and document performance in the claim file.

Sequence

Respect the sequence of the claim professional's duties. Put more bluntly, do not anticipate the outcome. A claim file that documents a pre-disposition toward a certain result immediately upon intake will be used as evidence of an "outcome-oriented" investigation and adjustment. Keep an open mind as the adjustment and investigation unfold, while you also remain diligent about red flags.

Less is more

This tactic is about time management. Focus on doing a little each hour and each day. The amount that gets done by doing "a little" frequently adds up to getting more done in the long run. This is particularly true when your claim file preparation is overwhelmed by the pressure of dealing with the personalities around you.

Doing more in the long run by doing a little frequently is one of the most effective ways to counter procrastination. Just like doing a little each hour and day adds up, so does the effect of procrastination if not overcome on a regular basis.

Consistency

Develop the discipline to be consistent – consistent in your time management practices, consistent with the language and symbols you use for claim file notation, consistent about expectations with your vendors, and consistent in your belief about the importance of what you do as a claim professional.

Adversity: real or imagined

Adversity is a natural symptom of a diverse world. Human nature at its best is unpredictable, and even more so when human beings are dealing with the kind of crisis that brings them to the insurance claim world. The aforementioned nexus between insurance and the legal system is an easy invitation to see your job as one laden with adversity.

Consider an alternative. Consider that your professional development is not a path into adversity, but rather one that aims at mastery of your profession. Consider that mastery does not come in dramatic breakthroughs, but in slow, arduous, sometimes barely conscious steps. Consider that mastery of your profession that is not dependent on an opposition from an insured's attorney, a public adjuster or even the insured herself. Consider mastering the impossible task of weaving the community impulse of insurance with the commercial component that makes it sustainable. And then, craft your claim files with integrity.

