

Why to use a Physical Therapy Expert in a Fraud Case

The federal government and other payers rely on physical therapists to use their clinical judgment to provide patients with appropriate services and to submit proper claims for payment with accurate information. While the vast majority of health care providers are ethical and provide high-quality care, there are a few who abuse the system.

Fraud generally is defined as an intentional deception or intentional misrepresentation that a person makes to gain a benefit for which that person is not entitled.

Examples of fraud in health care may include:

- Knowingly billing for services that were not furnished
- Falsifying or altering patient records
- Using unlicensed individuals to provide services
- Providing kickbacks to patients or other individuals



Abuse involves payment for items or services when there is no legal entitlement to that payment, and the health care provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Examples of abuse may include:

- Misusing codes on a claim
- Charging excessively for services or supplies
- Billing for services that were not medically necessary
- Unbundling and billing individual components of a service instead of the all-inclusive procedure
- Waiving co-pays and deductibles

There are **6 Federal Fraud and Abuse Laws** that are *important for physical therapists to know about*. They are the:

- False Claims Act (FCA) (31 U.S.C. Sections 3729-3733)
- Anti-Kickback Statute (AKS) (42 U.S.C. Section 1320A-7B(B))
- Physician Self-Referral Law (i.e., Stark Law) (42 U.S.C. Section 1395NN)
- Exclusion Statute (42 U.S.C. Section 1320A-7)
- Civil Monetary Penalties Law (42 U.S.C. Section 1320A-7A)
- RICO and Conspiracy (18 U.S.C. Sections 1961-1968)

In addition to the federal fraud and abuse laws, many states have established their own fraud and abuse laws, which govern billing relationships with **private payers**.

Often times when an insurance company (the payer) suspects a provider of wrongdoing, they will audit past payments to the provider. If the insurance company determines that they paid the PT claims in error, they may ask for recoupment as a refund request; but at the same time they could send the claims to their Special Investigation Unit ("SIU") to investigate further. The PT provider would need to be aware of the basic ERISA obligations, so that provider can get clear understanding of their right to request audit materials, written notice with specific reference to the plan's documents and the appeals process, and understand that the PT provider has a right to bring a civil action against the insurance company.

Depending on the type of fraud and abuse, penalties to the PT provider can be denial, non-renewal, suspension, or revocation of a PT's license; fines; restitution; and for severe crimes, it may include a prison sentence.

Remarkably, while insurance companies have a wide range of resources and experts, these experts don't often times have the physical therapy background to support their claims, therefore these insurance companies rely heavily on statistical data comparing the accused provider's claims with that of their own database of providers.

Consequently, a potential PT Expert Witness needs to be “qualified”.

A witness who is qualified as a PT Expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue,
- (b) The testimony is based on sufficient facts or data,
- (c) The testimony is the product of reliable principles and methods, and
- (d) The expert has reliably applied the principles and methods to the facts of the case.



So, why is a Physical Therapy Expert needed for a Fraud Case?

Some healthcare fraud claims are rooted in whether the physical therapist’s diagnosis and treatment were medically necessary. If the insurance company can prove that the treatment was unwarranted, they can assert that the physical therapist submitted a false claim for it.

Yet only a physical therapy provider can truly render an opinion regarding the clinical needs of a patient. Therefore, the most crucial expert to engage is a physical therapist who concentrates on the same practice as the defendant.

This physical therapy expert should be able to meet the Daubert standard and the qualifications necessary to be considered an expert, in order to discern whether the defendant’s actions served a legitimate clinical purpose within the usual course of a PT’s professional practice.

Therefore, a strong defense requires a narrowing of the standard, solid expert testimony, and a strong presentation of the patient’s medical need for the recommended course of therapy.

Written by Dr. Michelle Wolpov, PT, DPT, MBA
Contact: info@physicaltherapyexpertwitness.com

