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Claim Adjusters & Third Party Administrators

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SOCIAL MEDIA POSTS DISCOVERABLE IN FL

At The Crossroads of Privacy Interests and Social Media: What is Discoverable Under Florida Law?

On January 7, 2015, the Fourth District Court of Appeals (DCA) handed down Florida's first appellate decision addressing the discovery of certain items posted onto social media. In its detailed opinion, the court denied a Writ of Certiorari filed by a personal injury plaintiff who objected to providing the defendant with photographs she had posted to Facebook. The case involved a claim for personal injuries resulting from an alleged slip and fall incident at the defendant's store. The writ was filed in response to a trial court overruling objections filed by the plaintiff with regard to the production of any photographs which depicted the plaintiff posted on her social media accounts, as well as on her cell phone.

In the writ, the plaintiff claimed that her Facebook settings were set to private and therefore the trial court's



order unconstitutionally invaded her right to privacy and violated the Federal Stored Communications Act (SCA), 18 U.S.C. §§ 2701-2712.

In denying the writ, the appellate court ruled that a plaintiff's privacy interest in the posted photographs was minimal, if any. The court stated that "before the right to privacy attaches, there must exist a legitimate expectation of privacy" and "the photographs posted on a social networking site are neither privileged nor protected by any right of privacy, regardless of any privacy settings that the user may have established."

The court further stated the expectation that such information shared through social networking websites is

private is not a reasonable one. The court added that "Facebook itself does not guarantee privacy. By creating a Facebook account, a user acknowledges that her personal information would be shared with others. Indeed, that is the very nature and purpose of these social networking sites else they would cease to exist."

The court also found the photographs being sought by the defendant were reasonably calculated to lead to the discovery of admissible evidence as they were "powerfully relevant to the damage issues in the lawsuit." The court stated "there is no better portrayal of what an individual's life was like than those photographs the individual has chosen to share through social media."

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CEU SEMINARS

5/7/15:
"Anatomy of a Florida Lawsuit"
 by Jaime Pozo of Pozo-Diaz & Pozo, P.A. 11:30 AM – 2:00 PM, Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive, Lakewood Ranch, FL.

6/30/15:
"How to Avoid Attorney Fees in Anticipation of a Castellanos Decision"
 by Russell Young with Eraclides, Gelman, Hall, Indek, Goodman & Waters, PA. 10:30 AM – 1:00 PM, Holiday Inn Lakewood Ranch.

Each presentation provides two hours of CEU credits.

For more details, contact:
 Rose Rome at rrome@johnseastern.com

WHY IS EVERYONE TALKING ABOUT MODIFIER 59?

There has been an increased amount of attention paid to the modifier 59 in recent months. How often is it used? Is it appropriate? Am I paying the correct amount? While all of these questions may be valid, simply stating that the use of modifier 59 is an abuse of the system is an overreach. We will explore this in a two part series; defining modifier 59 and its use in Part I and discussing ways to manage and evaluate the impact in Part II.

The Medicare National Correct Coding Initiative (NCCI) includes Procedure-to-Procedure (PTP) edits that define when two Healthcare Common Procedure Coding System (HCPCS) / Current Procedural Terminology (CPT) codes should not be reported together either in all situations or in most situations. Modifier 59 was created to indicate when distinct procedures or services not normally reported together were appropriate under the circumstances. According to an article on this topic on the Centers for Medicare and Medicaid Services (CMS) website (*Proper Usage Regarding Distinct Procedural Services - Updated 3-24-2015, 2015*), modifier 59 is an important NCCI associated modifier that is often used incorrectly.

Distinct Procedural Service

The CPT Manual defines modifier 59 as follows:

Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services performed on the same day. Modifier 59 is used to identify procedures or services, other than E/M services, that are not normally reported together, but are appropriate under the circumstances. Documentation must support a *different* session, *different* procedure or surgery, *different* site or organ system, *separate* incision or excision, *separate* lesion, or *separate* injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate, it should be used rather than modifier 59. Only if no more descriptive modifier is available, and the use of modifier 59 best explains the circumstances, should modifier 59 be used.



Appropriate Usage

The National Correct Coding Initiative applies for CMS and other payors that utilize the NCCI edits per below:

- Documentation indicates two separate procedures performed on the same day by the same physician (or therapist)
- Represented by a different session or patient encounter, different procedure or surgery, different site, or separate injury (or area of injury)
- Use modifier 59 with the secondary, additional or lesser procedure of combinations listed in NCCI edits
- Use modifier 59 when there is *no* other appropriate modifier

CMS directs providers to not report certain CPT code pairs for the same date of service, as they may be viewed as “unbundling” comprehensive services. CMS provides guidance that modifier 59 may be added to a CPT per above if those services were provided in separate and distinct sessions (physical and occupational therapy in the same day) or in the same session.

The frequency at which modifier 59 is used cannot be standardized across all therapy providers, as provider types and patient types vary. For example, a provider who offers physical and occupational therapy where patients are treated by both disciplines on a single day would be required to apply NCCI edits across both disciplines, if the payor is implementing Medicare’s full program. There is no valid published data that indicates a “normal” frequency. Statements that claim use of modifier 59 should be less than a certain percentage of billed codes are speculative and not based on comprehensive valid data.

Statutes and regulations in each state, as well as guidance from professional associations, provide documentation and billing standards that require physical and occupational therapists to demonstrate the services are provided within treatment documentation and support services that are billed.

Vendor Partner: Greg Nichols, President of SPNet Clinical Solutions

EMPLOYEES SURPASS 1ST QUARTER FUNDRAISING GOAL



Rose Rome
Exec. Assistant

Here at Johns Eastern we are off to an amazing fundraising start for 2015! Our 1st quarter events for MS have come to an end. We surpassed our goal of \$4,500 and raised over \$5,000!

In March, employees and their families took part in the MS Walk 2015 in Lakewood Ranch. Thank you to our vendor partners who came out to support MS!

In the 2nd quarter, we are focusing on local Manatee County school children by providing food and funds for Feeding Empty Little Tummys (F.E.L.T.). This is a great charity that helps schools support the children who are in need. The program meets every Friday to fill and distribute backpacks with food so the children won't go hungry over the weekend. Together we can help ensure these children are provided with enough food to grow and focus on being a kid.

We will collect food items until the middle of May and deliver them to FELT before the school year ends. We will continue to support FELT throughout the 2nd quarter so we can provide them with funds for the start of the school year in August. In 2014, we donated two carloads of food and just under \$2,000 to FELT. Our goal this quarter is to provide three carloads of food and \$2,500!

Want to take part in our collection? Donations can be dropped off in the lobby of our Lakewood Ranch office or given to any Johns Eastern representative.



WHAT'S YOUR NUMBER? BLOOD PRESSURE EDUCATION MONTH

May is High Blood Pressure Education month. Do you know your number? Blood pressure is the force of blood pushing against the walls of the arteries as the heart pumps blood. If this pressure rises and stays high, over time it can damage the body in many ways. Nearly 1,000 deaths each day in the U.S. are attributed to high blood pressure.

The Silent Killer

According to the U.S. Department of Health and Human Services, one of every three U.S. adults has high blood pressure. Furthermore, this condition is often called *the silent killer* because it does not have any obvious symptoms. It is estimated that 20% of U.S. adults do not even know they have it.

Work with your Doctor

First and foremost, ask your doctor what your blood pressure should be. If your blood pressure is higher than 120/80, set a goal with your doctor to reduce your numbers. If your doctor has prescribed medication to control your blood pressure, be certain to take the medication as directed. If you are experiencing side

effects from the medication, let your doctor know - do not stop taking the medication.

Make Lifestyle Changes

High blood pressure can also be controlled by looking at various lifestyle factors which may contribute to high blood pressure. Lifestyle changes which can help reduce blood pressure include maintaining a healthy body weight, limiting alcohol intake, quitting smoking and following a low sodium diet rich in fruits and vegetables. Regular exercise can also help reduce your blood pressure. A 10 or 15 minute walk with a friend or family member can help reduce both your stress and your blood pressure levels.

Keep an Eye On It

If your blood pressure is high or borderline high, your doctor may ask you to monitor it at home. There are many affordable blood pressure monitors available, making it convenient to monitor your blood pressure at home.

U.S. Department of Health and Human Services

COMPOUND DRUGS: WHAT ARE THEY?

In the world of pharmacy, a compound drug is something a pharmacist makes for a patient when a medical need exists and a product approved by the U.S. Food and Drug Administration (FDA) cannot be used. The ingredients in a compound must all be acceptable for use according to the standards set by the FDA. A compound can simply be a liquid form of a drug that is typically only available in a tablet or capsule. This may be recommended when the patient is unable to swallow the tablet or capsule for a legitimate medical reason. Children may receive a liquid compound of an adult drug because the dose the child needs is much smaller than the adult dose. The FDA website describes some reasons for compounding and declares “examples of the need for compounding include:

- If a patient has an allergy and needs a medication to be made without a certain dye
- If an elderly patient or a child can't swallow a pill and needs a medicine in a liquid form that is not otherwise available.”¹

In workers' compensation, there are many compounds that contain multiple powders in a cream or gel formulation. These compounds are pushing the limits of the FDA's intended use of compounds. Topical compounds seen in the workers' compensation system raise several concerns from clinical and financial standpoints. Some of these concerns include:

- Compounds often contain oral drugs for which there is little, if any, reliable clinical support for topical use of these drugs
- Safety and effectiveness are largely unknown
- The FDA does not control compounding processes or approve compounds
- The FDA states that use of compounded drugs needs to be based on medical necessity, meaning that a strong clinical reason for using a compound in place of FDA-approved products should be clearly documented²

- There is no required testing for identity, purity, drug concentrations or bacteria/fungi contamination
- The concentrations used have no clinical basis
- Some compounds include drugs that are available in marketed products, but sometimes at much higher concentrations and this may pose a threat to patient safety
- Many of the oral drugs used in topical compounds are likely ineffective because of how they work in the body
- There is no information substantiating that the mixtures are chemically stable

- The Official Disability Guidelines do not support use of compounds for the reasons listed above.³



The prices charged for compounds are often excessive compared to FDA-approved alternatives. Employers should be aware that these products are often prescribed to injured workers despite the lack of clinical efficacy and safety data, and the high cost associated with them.

Johns Eastern's trusted Pharmacy Benefits Manager, Healthsystems, recommends that claims professionals closely review the request for compounded products. Johns Eastern has implemented a new program

where adjusters or nurse case managers are requesting an explanation of medical necessity, as well as literature supporting safety and effectiveness from the prescriber, prior to approving compound medications.

Sources

¹ *Pharmacy Compounding and the FDA: Questions and Answers*. Rockville, MD: U.S. Food and Drug Administration; 3/1/2013. Available at: <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm>. Accessed March 25, 2015.

² *Food and Drug Administration Modernization Act of 1997* [Page 111 STAT. 2296] Public Law 105-115 105th Congress SEC. 127. Application of Federal Law to Practice of Pharmacy Compounding.

³ Denniston PL. *ODG Treatment in Workers' Comp 2013, Eleventh Edition*. Work Loss Data Institute, Encinitas, CA.

Vendor Partner: Clinical Services Team, Healthsystems

IS YOUR GLASS HALF FULL? THE BENEFITS OF OPTIMISM

People whose glasses are half full are reportedly twice as likely to have healthy hearts, according to a new study published in the *Health Behavior and Policy Review* journal.

"Individuals with the highest levels of optimism have twice the odds of being in ideal cardiovascular health compared to their more pessimistic counterparts," said Rosalba Hernandez, the lead author of the study and professor of social work at the University of Illinois.

The study looked at the general outlook on life and the cardiovascular health of more than 5,100 adults aged 45-84 over the course of 11 years, beginning in July

2000. The participants' health levels were assessed by looking at blood pressure, body mass index, dietary intake, physical activity, tobacco use, cholesterol and blood glucose levels.



The study found that those with the highest self-reported levels of optimism were about twice as likely to score strongly in terms of cardiovascular health. The optimists

in the study were also found to have significantly better blood sugar and cholesterol levels than their counterparts.

Optimists were also found to be more physically active, have healthier body mass indexes and were less likely to smoke.

The study was funded by the National Heart, Lung and Blood Institute and the National Center for Research Resources and its findings contribute to a growing pool of research suggesting a correlation between physical health and mental and emotional well-being.

University of Illinois News Bureau

SOCIAL MEDIA, continued

Lastly, the Court ruled the SCA had no application to the case as it "prevents 'providers' of communication services from divulging private communications to certain entities and/or individuals. The act [did] not apply to individuals who use the communications services provided" and did "not preclude civil discovery of a party's electronically stored communications which remain within the party's control even if they are maintained by a non-party service provider."

The case is *Maria F. Leon Nucci v. Target Corp. et al.*, Florida Fourth District Court of Appeal; Case Number: 4D14-138.

Attorneys Nicolette John and Thomas Paradise of Vernis and Bowling of Broward, P.A. represented the defendant, Target Corporation, in successfully arguing against the Writ of Certiorari.

Nicolette John, Attorney
Vernis & Bowling of Broward, P.A.

CONFERENCE CONNECTION

Plan now to meet Johns Eastern team members at an upcoming conference this summer...

American Association of Managing General Agents

Annual Meeting
May 17 - 20, 2015
National Harbor, MD

National Council of Self-Insurers

Annual Meeting
May 31 - June 3, 2015
St. Pete Beach, FL

Public Risk Management Association

Annual Conference
June 7 - 10, 2015
Houston, TX

National Association of Independent Insurance Adjusters

Annual Conference
June 24 - 28, 2015
Williamsburg, VA

Florida Educational Risk Management Association

Summer Conference
July 14 - 17, 2015
Sarasota, FL

Florida Association of Self Insureds

Educational Conference
July 19 - 22, 2015
Naples, FL

Florida Risk Management Society

Educational Conference
July 28 - August 1, 2015
Naples, FL

Workers' Compensation Institute

Educational Conference
August 23 - 26, 2015
Orlando, FL



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- University of Illinois News Bureau

SCHOOLS HELP PROTECT STUDENT PRIVACY

For schools and districts, agreeing to the terms of service included in educational services could have big implications for student privacy. As a result, the U.S. Department of Education recently issued guidance on how school districts can help protect student privacy online and in applications.



The pronouncement includes terms of service guidance and a training video to help schools identify which services

and apps have strong privacy and data security policies to protect our students.

The guidance also identifies provisions that would allow the service to market to students and parents and how data is used, collected, transferred, shared and destroyed. It also guides schools to make sure they are satisfying parental

access requirements, as well as proper security controls.

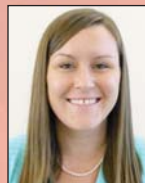
Learn more at <http://ptac.ed.gov>.
Sniffen & Spellman, P.A.

IN THE SPOTLIGHT

WELCOME!

- **Franka Baird-Tirado**, the new Director, Quality Improvement & Risk Management, at Miami Jewish Health Systems.
- **Lisa Mercado**, the new Risk Management Specialist at the School District of Manatee County.
- **Laura Porter**, the new Risk Administrator at the Okaloosa County BOCC.
- **Ginnie White**, the new Director of Human Resources at Alico, Inc.

GET TO KNOW...KRISTIN DESAULNIERS



Kristin DeSaulniers is the Account Manager for Johns Eastern's Special Account Services. She is the primary client contact for regulatory and administrative needs. She also files state reports on behalf of our self-insured clients and is responsible for the overall administration of their accounts.

Kristin began her career with Johns Eastern in 2012 as a workers' compensation adjuster. She was promoted to Account Manager earlier this year. Kristin has a Bachelor's Degree in Public Health from the University of South Florida.

She can be reached at kdesaulniers@johnseastern.com or (877) 879-9539.