The landscape of illegal practice investigation has changed dramatically over the last ten years.

The Landscape Ten Years Ago

- "Lone Wolf" offenders
- Evidence needed was straight forward
  - Proof of holding out
  - Proof of controlled acts
- Approach
  - Undercover operation
  - Photos, video, statements
- Cooperation was usually provided by others
- Prosecution or injunction of illegal practitioner
The Landscape Today

- Offenders often collaborate with licensed practitioners or even clients
- Evidence needed is more complex
  - They are prepared for the investigation
- Approach
  - Undercover ± summons or search warrants
  - Statements
- Often complete lack of cooperation from clients, staff, and other practitioners
- Multiple legal remedies required to deal with illegal practitioner and licensed collaborators

Statistics

- In 2010, 48 fraud cases - 75% illegal practice or a component of it
- In 2011, 50 fraud cases as of August 30, 2011 - 62% illegal practice or a component of it
- 35% simple investigations, 65% complex
- Nurses, opticians, dental hygienists, chiropractors, physiotherapists, naturopaths, occupational therapists, dietitians, audiologists

Fraud Tied to Illegal Practice

- Fraud versus theft
- With illegal practice, clients not always aware everything is not as it seems
- Rise in fraud
  - Practitioners and clients working together to deceive insurance companies to benefit financially
Fraud on the Rise

- Billing for services not provided
- Billing for services under a license number, but provided by unlicensed individual
- Billing for products not required
- Maximizing service to match insurance coverage
- Services not covered by insurance billed as covered services

Identity Theft

- Licensed practitioners’ billing numbers used without their knowledge or consent
  - New graduates and practitioners particularly vulnerable in this area
  - New to the field, looking for employment
  - Do not feel comfortable questioning how a clinic uses their number
- Naivety versus willful blindness

Client Involvement

- Hinders investigation - cannot rely on them to truthfully confirm services
- Lack of cooperation for fear of consequences to them
- Think about recording interviews
  - Initial information might be the most useful before they can “get their stories straight”
Client Involvement - Continued

• Cultural/ethnic link
  - “Special offer” might only be made to members of the same cultural community, issue of trust

• Unconcerned, just happy to get help
  - Common in small, remote communities
  - Clients aware individual not licensed, but no other licensed practitioners in the area

Investigative Techniques

• Main techniques for investigating illegal practitioners and collaborative fraud:
  - Undercover
  - Hidden camera
  - Collaborations with insurance companies
  - Use of forensic analysis
  - Corporate searches
  - Collaborations with police

Illegal Practitioners

• Want evidence of:
  - Holding self out as qualified
  - Using a protected title or designation
  - Performing specific acts restricted to those who are regulated
Sources of Evidence

- Advertising
- Office location
- Client files
- Interviews
- Undercover

Case Study 1: Then and Now

- 10 years ago: Less ethnic-centric
  - Less established in community
  - Less expensive to obtain legitimate care
- Now: Proliferation of ethnic-centered care
  - Advertising in non-English media
  - Only work with members of same ethnic group
  - Difficult to get close

Case Study 1: Approach

- More elaborate methods needed to get to illegal practitioner
  - Go into the community, talk to people, try to get a referral
- Informants become more important to learn about illegal practitioners
- Use investigators from same ethnic group
- Undercover may be only option
Case Study 1

- Russian newspaper advertisement
  - Mobile veterinary service “surgery done in your home”
- Conducted undercover operation and used that information to obtain a search warrant

Case Study 1

- Russian translator used to call and make inquiry
- Convinced him to spay a cat at his home
- Appointment made – no cat brought
- While at home saw surgical instruments
- Return appointment made
- Returned with a search warrant

Investigating Collaborative Fraud

- Little or no cooperation is expected
- Element of surprise is needed
- Must work with other disciplines
- Need to expose identity fraud
  - Undercover operations on licensed members may be the answer, but politically unpalatable
Investigating Collaborative Fraud

- Members smarter and covering their tracks
- Taking steps to fabricate records, hide records, store them off-site
- Need forensic analysis to determine if records authentic
  - Document analysis, ink impressions, indented writing, computer forensics

Investigating Collaborative Fraud

- Members coordinating with clients to “match up stories”
- Interviewing of clients may need to be more aggressive (pseudo-interrogation)
- Search warrants where possible and appropriate
- Greater collaboration with police
  - Consider turning evidence over if appropriate

Collaborating with Insurance Comp.

- Each company can only analyze patterns it sees in its own records
- Start to see other patterns when comparing info across multiple companies
- Also helpful when owner of a clinic is not a regulated professional
  - Direct action against the clinic owner not always possible for Colleges
Legislative Framework

- Legal aspects to consider:
  - Confidentiality issues
  - When can you provide info on members and non-members to police or insurance companies?
  - Different prosecutorial approaches within a single case
  - E.g., cases involving non-regulated and regulated, stronger evidence against some

Legal Remedies

- Legal undertakings
  - Promise never again
  - Less serious cases
  - Useful for prosecution in subsequent cases
- Registration Committee
  - Report incident to Committee
  - Committee considers this when determining admissibility of applicant
  - Conditions on admission such as courses, etc.

Legal Remedies

- Civil injunctions and contempt of court remedies
  - Injunction to order impostor to not violate statutes
  - Violation is contempt of court, may lead to fines or jail
  - Usually consensual agreement

Key benefits – cost orders are possible + less bureaucratic red tape, faster
Legal Remedies

- Quasi-criminal private prosecutions
  - Applicable legislation where available
  **Key benefits - great PR, general deterrent is greater, search warrant is an option**

- Criminal prosecutions
  - Assault, fraud, criminal negligence
  **Key benefits - police involvement reduces costs, great general deterrent**

Licensee collaborators must be dealt with where possible
- Concurrent investigation
- Complaints likely
- Likely disciplinary proceedings required
This creates many questions regarding processes, timing and use of investigative powers

Case Study 2: Then and Now

- 10 years ago: Illegal practitioners tended to work alone
  - Flying under the radar
  - Minimizing suspicions

- Now: They work in collaboration with licensed members
  - Using false identity and license number
  - Working under the “supervision” of a licensed member

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Case Study 2: Approach

- Need to do concurrent investigations to not let the “cat out of the bag”
  - Investigate the illegal practitioner
  - Investigate the licensed member
  - Essentially, investigating all activities at a clinic at once
- Legislative implications of these investigations

Case Study 2

- Staff at a clinic “turned in” the owner after discovering “Jane” was not licensed as she indicated
- Conducted undercover operation and used that information to obtain a search warrant and seize patient files
  - Files indicated treatments billed under a licensed provider’s name and number (“John”), although notes in Jane’s writing

Case Study 2

- Jane explained she worked under the supervision of John while she was in the process of obtaining her license
- Jane took John’s notes as part of her “training” to observe treatments and learn from John
- John said he worked at the clinic occasionally, but could not recall the names of any of his patients
Case Study 2

• John also confirmed Jane took all of the notes, but acknowledged he did not review them
• Reasonable and probable grounds John committed professional misconduct
  - Either allowed his number to be used to bill for treatments he did not provide; OR
  - Provided inadequate supervision to someone working under him

Case Study 2

• Investigation started in regards to an illegal practitioner
• Information gathered was in part used in actions against the licensed member
• During the investigation into John, he subsequently provided more information on his business arrangement with Jane, which was then used in the action against Jane

Case Study 3: Then and Now

• 10 years ago: Clients less likely to knowingly participate in the fraud
• Now: Clients and practitioners working together
  - Often submitting fraudulent claims and splitting the reimbursements
Case Study 3: Approach

- Fewer sources of information, they typically close ranks
- Collaborate with insurance companies
- Forensic options
- Different approaches to interviewing clients
  - Reassurance
  - Pseudo-interrogation

Case Study 3

- A spa offers clients bogus invoices for chiropractic, naturopathy, and massage therapy to submit to their insurance companies to receive reimbursement for services not covered by insurance
- Informant identifies a chiropractor providing receipts and provides emails requesting the invoices and a few invoices

Case Study 3

- Investigator works with four large insurance companies to obtain all invoices issued by the chiropractor
- Summons at chiropractor’s office - no files for any of them
- Chiropractor denies anything nefarious
- Investigator searches the computer - no records for any of them
Case Study 3

- Obtains the ink stamps in the office as each invoice is stamped with ink stamp impression
- Forensic examination of ink stamps and receipts proves ink stamps from office were used on the invoices submitted to the insurance companies
- The invoices match the emails to the chiropractor requesting the receipts

Case Study 4: Then and Now

- 10 years ago: Illegal practitioners worked within a single discipline
  - Multidisciplinary clinics not as common
- Now: Involvement from practitioners across multiple fields of practice
  - Rise of holistic and MVA clinics, offering “one stop shop” for all care and treatment

Case Study 4: Approach

- Colleges must collaborate
  - Determine who would benefit from the fraud
  - Owner, providers getting paid by the treatment not by the hour
  - Client files across all practice fields are relevant
  - May require forensic analysis - who wrote the notes and when?
Case Study 4: Approach

- When interviewing clients:
  - Ask about all services and providers
  - Can they give physical descriptions
  - Does the info match that in file
- Colleges need to share info obtained from their members and the clients
  - Earliest information obtained usually the most helpful and accurate

Case Study 4

- Former employee alleged clinic billed treatments as one service, but they were actually another
- Owner of the clinic was a regulated professional
- Clinic was multidisciplinary, offering treatments in physiotherapy, chiropractic, massage, acupuncture, etc.

Case Study 4

- Unannounced site visit to collect files, invoices, and sign-in sheets
  - Clients signed in for one type of service, treatment notes corresponded, but billed for different service
  - Appointment schedule showed one type of service, account ledger showed another
  - Notes in the files instructed admin staff to “bill as chiropractic once physiotherapy coverage done”
Case Study 4

- Clients fully aware of the fraud and were participating in it
- Strongest evidence came from the patient files and treatment records
- By going announced, the clinic did not have a chance to alter the records
  - During subsequent interviews with the other providers, many of them claimed not to realize this was occurring

Conclusion

- Proliferation of fraudulent activity
- Collaborations by fraudsters necessitates collaborations by investigators
- Investigative approach needs to be more creative, more complex, and more aggressive
- Regulators need to focus on educating licensees and members of the public