

 Council on Licensure, Enforcement and Regulation
2011 Annual Educational Conference



**Fakes & Frauds:
How to Address the
Evolving Problem of
Illegal Practice**

Pittsburgh Pennsylvania

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Promoting Regulatory Excellence

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



2

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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

3

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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

4

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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

5

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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

6

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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

7

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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

8

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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"

9

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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

10

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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

11

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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

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Sources of Evidence

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

13

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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

14

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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

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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

16

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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

17

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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

18

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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

19

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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

20

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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

21

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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

22

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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.

23

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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

24

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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

25

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Legal Remedies

- 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

26

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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

27

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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

28

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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

29

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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

30

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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

31

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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

32

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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

33

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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

34

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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

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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

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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

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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

38

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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?

39

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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

40

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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.

41

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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"

42

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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

43

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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

44



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