



# Claims Challenges, Negotiations and Ethics

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Michael Coupland, RPsych  
Integrated Medical Case Solutions (IMCS Group)





# Outline

1. ETHICS – A required course for many jurisdictions
2. CONFLICT OF INTEREST
3. CONFLICT RESOLUTION
4. Types of Conflicts of Interests
5. The Agony and the Ecstasy of a Free Lunch
6. What is Conflict?
7. Patient Disclosure/Consent Issues
8. CLAIMS CHALLENGES- with a focus on the ethical treatment of delayed recovery
9. NEGOTIATION- with a focus on motivational interviewing

\*\*For the purpose of this presentation Adjusters, Examiners and Case Managers are referenced as 'Case Managers'



# Webster's Dictionary

- Ethic: the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.
- Ethics: The principles of conduct governing an individual or group



# Multiple Ethics Bodies

- Certified Rehabilitation Counselor (CRC)
- Certified Case Manager (CCM)
- Certified Registered Rehabilitation Nurse (CRRN)
- Certified Disability Management Specialist (CDMS)
- Certified Occupational Health Nurse (COHN)
- American Nursing Association
- State Nursing Boards
- URAC
- Adjuster State Licensing



# Code of Ethics

- **CCM:** Adopted November 1996.... Revised 2001-3-4-9
- **CRC:** Adopted Jan. 1, 2002...Revised 2010
- **CDMS:** Nov 2010
- **CRRN:** Position statement, based on ANA Code of Ethics (2001) and Patient Bill of Rights (1992)
- **COHN:** AAOHN - adopted 2009
- **URAC:** Case Management Standards



# URAC: Case Management **Ethics** Standards

- Advocacy for consumer needs
- Guidance for professional relationships with consumers
- Prohibition of relationships that could compromise professional objectivity
- Resolution of conflicts of interest between the case manager, consumer, third party payer, provider or other entity
- Business, financial, and marketing practices
- Resolution of perceived lapses in quality of care resulting from actions by consumers, payers, case managers, providers, organizations or other entities affecting the case management process
- Policies that address case managers' handling of consumer needs when such needs extend beyond the scope of the organization's services
- Prohibition of discrimination against a consumer or group of consumers by the case manager or organization
- Information on how policies regarding the ethical framework will be shared with staff, contractors, clients, and consumers.



# Code of Ethics

- Provides a guide, not answers
- More than 1 code may apply and possibly contradict
- “Serve as a means to maintain professional accountability and to protect the public from the potential damage incurred by substandard behaviors” (Vacc, N, Juhnke, G., & Nilsen, K. p. 223, 2001)



# Ethics and the Law

- Case Managers also need to be guided by laws
- Need to be aware of legal impact
- Code of Ethics should add to or clarify the law, not be above it





# Ethics

- Many times our decisions don't directly involve the codes or laws, but "they operate in areas that laws and regulations don't reach" (Kidder, p.15)
- Toughest decisions will be those that put one right against another



# Ethics Skill Set

Those skilled in ethics recognize

- Acting ethically may not feel good
- May require choosing a lesser harm over a greater harm, or violating one ethical principle to uphold another
- Acting ethically requires consideration of the public trust in the profession
- Acting ethically requires tolerating the ambiguity of ethical decision making

(Patterson p. 192, 1998)



# Codes and Principles

All the Codes fall under the umbrella of 5 ethical principles



## 5 Basic Ethical Principles

- Autonomy
- Beneficence
- Nonmaleficence
- Justice
- Fidelity

Beauchamp & Childress 1989



# Autonomy

## Webster's Definition

- The quality or state of being self-governing; self-directing freedom and especially moral independence
- The right to make your own decisions (right or wrong)
- Balance between autonomy and doing what is perceived to be best for the client
- Will look different for every client



# Autonomy

## Example

- The insured's Risk Manager suggests that all cases go to their choice of medical provider who holds the opinion that ALL carpal tunnel is NOT causally related



# Beneficence

## Webster's Definition

- The quality or state of doing or producing good
- This is the foundation of the case management process (or any professional relationship in the disability field)



# Beneficence

## Example

- Finding a surgeon who has can perform surgery for a patient in a timely manner





# Nonmaleficence

## Webster's Definition

- Non – not: other than: reverse of: absence of:
  - a. the act of committing harm or evil;
  - b. a harmful or evil act
- Do no harm
- This is 2 fold – both self and others



# Nonmaleficence

Example: Ensuring potential areas of harm are protected against

- Medical Provider is prescribes a medication that has potentially harmful effects when combined with other mediations the case manager knows the patient to be on



# Justice

## Webster's Definition

- The quality of being just, impartial, or fair
- Equal access and equal treatment



# Justice

Example: Who gets benefits accepted?

- Peer Reviewer opines that a post-surgery embolism is not causally related



# Fidelity

## Webster's Definition

- The quality or state of being faithful: accuracy in details
- Synonyms: loyalty, honesty
- This principle includes confidentiality and informed consent
- Keeping promises



# Fidelity

## Example

- Medical Records that include personal health history are being sent to the insured employer HR department



# Conflict of Interest

- A situation in which someone in a position of trust has competing professional or personal interests. Such competing interests can make it difficult to fulfill his or her duties impartially or effectively.
- A conflict of interest exists even if no unethical or improper act results from it. A conflict of interest can create an appearance of impropriety that can undermine confidence in the person, profession or system



# Conflict of Interest

Examples of conflict of interest:

- Acceptance of gifts or money from persons the case manager is assisting
- A case manager referring a person to services or goods for the purpose of personal/financial gain to the case manager
- The financial gain can take the form of the free lunch, gifts, entertainment, trips from vendors





# Conflict of Interest

## Disclosure

- Case managers should inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible.
- In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.



# Conflict of Interest Behavior

- Identify competing interests which are involved in an conflict of interest dilemma
- Critically evaluate decisions you make
- Establish collaborative relationships based on mutual respect and informed consent and full disclosure with clients
- Continually monitor your own behavior and upgrade your knowledge and skills



# URAC Standards relevant to WC

Policies to address:

- The process by which consumers are informed of choices regarding services
- The right of consumers to have input into the case management plan
- The right of consumers to refuse treatment or services, including case management services and the implications of such refusal relating to benefits
- The right of consumers to receive notification and a rationale when case management services are changed or terminated
- Alternative approaches when the consumer and/or family is unable to fully participate in the assessment phase



# Special Issues in Work Comp

- Corporate financial or recognition incentives for closing cases or controlling costs
- Policies and methods of communicating patient records
- Methods of communicating consumer (claimant) rights, how to appeal, satisfaction/dissatisfaction



# Conflict of Interest Resolution

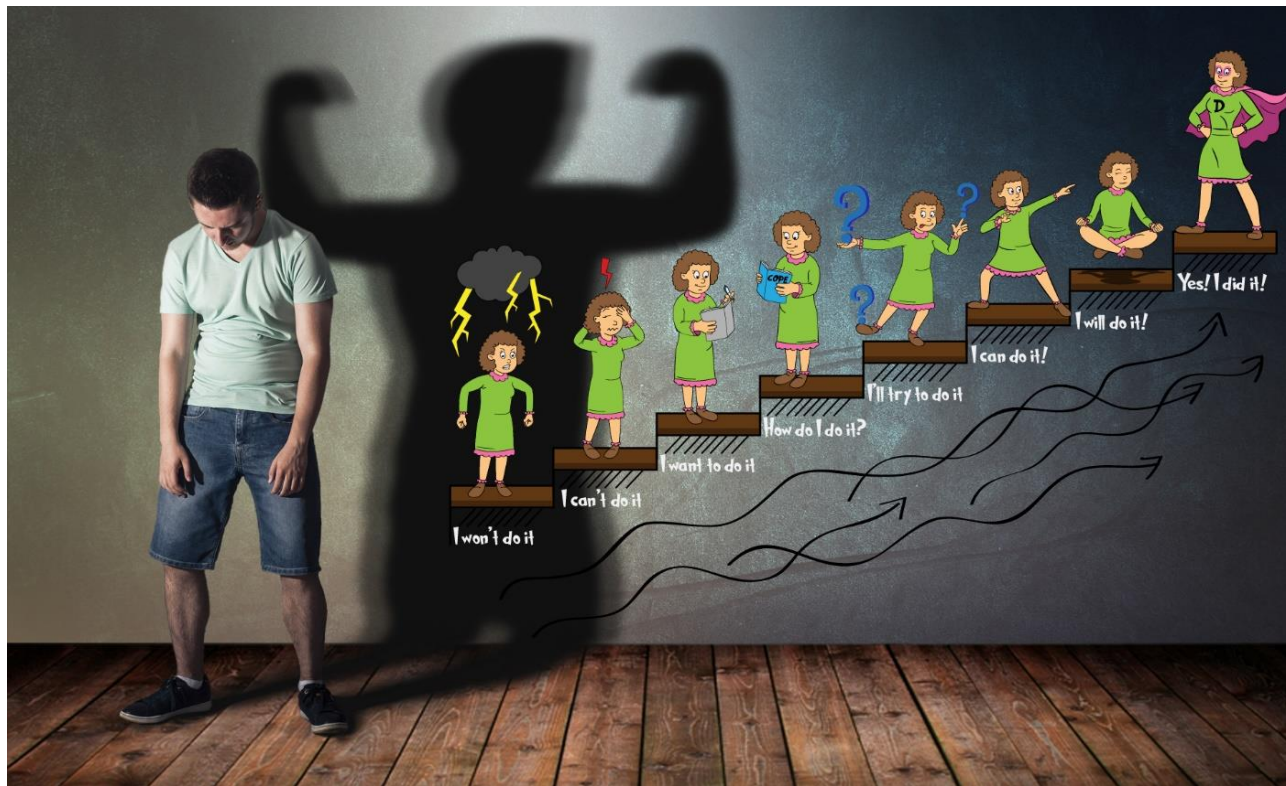
- Prevention: Policy and Procedures, Training
- Personal Judgment
- Conflict Resolution: Peer Consult; Prof Assoc. Ethics Committee



# Claims Challenges-Delayed Recovery

- Delayed Recovery: is it willful\volitional, an outcome of the work comp system or psychological condition
- In the bio-psycho-social model it is all of the above
- Other Terms Used: what is ethical? malingering, seeking secondary gain, gaming the system, stuck
- Ethical Treatment: identify if a full work up and appropriate diagnosis has been made.... then consider a biopsychosocial intervention such as cognitive behavioral therapy (CBT) and/or assisting the claimant get 'unstuck'

# Claims Challenges-Delayed Recovery



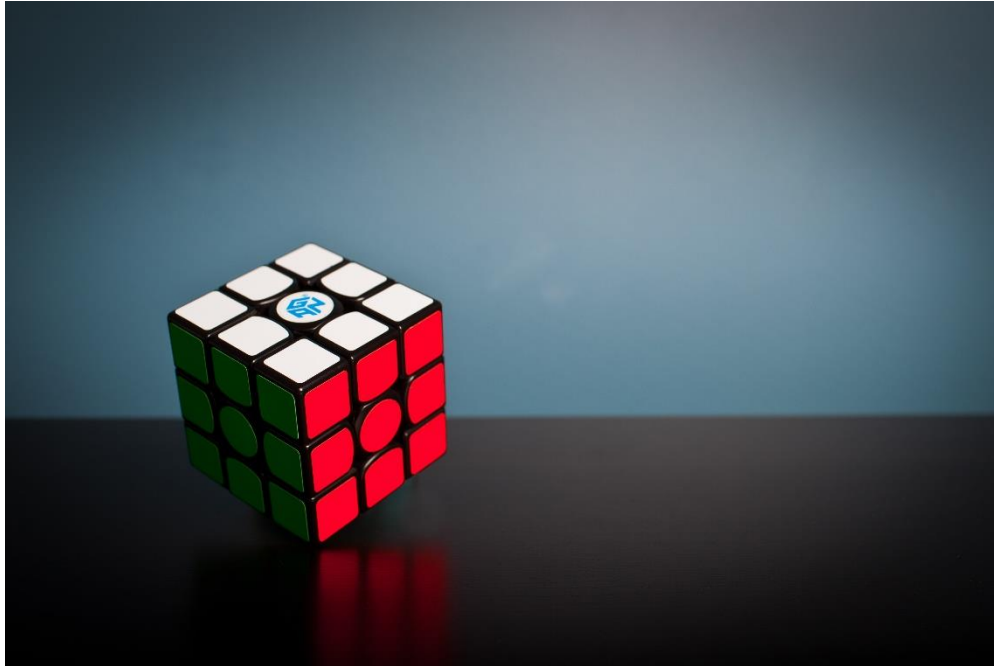


# Claims Challenges-Delayed Recovery

- Negotiating for change
- Skill 1: Active Listening
- Skill 2: Overcoming “I don’t know”
- Skill 3: Asking for change: Determine a change\behavior you want to encourage and use the ‘broken record’ technique



# Questions...



Michael Coupland, RPsych (AB, BC)  
Network Medical Director  
Integrated Medical Case Solutions  
(IMCS Group)

[mcoupland@imcs.us](mailto:mcoupland@imcs.us)  
[www.imcs.us](http://www.imcs.us)