

Insurance Fraud: Issues and Case Studies

Presentation Date: July 21, 2022

Michael Anderson

- Michael Anderson is a staff attorney with the Nebraska Department of Insurance and has been with the Department for two years.
- Previously, Michael served as an Assistant Attorney General with the State of Missouri in the Medicaid Fraud Control Unit, and as an assistant prosecuting attorney in Pemiscot County, Missouri.
- Michael graduated from Creighton University in 2011 and from Creighton University School of Law in 2014.

Kimberly Church

- Kimberly Church is the Division Chief with Nebraska Department of Insurance, Insurance Fraud Prevention Division.
- Kim started her investigation career as a police officer with the Lincoln Police Department where she investigated a full range of criminal violations and developed an interest in working on fraud cases. Kim left the police department and focused on fighting fraud from the civil side, working within a Special Investigation Unit for a national insurer.
- In February 2014, the two careers were merged as Kim returned to criminal investigations within the Insurance Fraud Prevention Division as an Insurance Fraud Investigator. In 2020 she was promoted to Division Chief.
- Since then, she has earned a Master's degree in business leadership and obtained professional designations in Insurance Law, Insurance Fraud Investigations, Healthcare Fraud Investigations, State leadership, and project management.

Housekeeping

- Certificates of completion will be emailed to participants
- Please stick around after the Q&A for a brief satisfaction survey

Fraud...What is it good for?

Absolutely Nothing

Before we dive into some of the laws and case studies surrounding insurance fraud, let's get some background:

- According to the Insurance Information Institute, Insurance Fraud costs U.S. Consumers at least \$80 Billion a year.
- The Coalition Against Insurance Fraud (CAIF) estimates that workers' compensation costs insurers and employers \$30 Billion a year.
- The Federal Bureau of Investigation (FBI) reports that non-health insurance accounts for \$40 billion of loss a year.
- This cost the average U.S. family \$400-\$700 a year in premiums.

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What is Insurance Fraud?

Simply put Insurance Fraud is the deliberate deception committed against or by an insurance company or agent for the purpose of financial gain.

But since this is, in part, a continuing legal education seminar, we also have some legal definitions:

- The Insurance Fraud Act can be found in Neb. Rev. Stat. §§44-6601 through 44-6608, which outlines insurance code violations that can result in civil or criminal action. An enumerated list can be found in §44-6604.
- These offenses are also enumerated in §28-631, which also lays out the potential criminal penalties that could be given to those who commit such acts.

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More Insurance Fraud Statues

Most, if not all states, have statutory references to insurance fraud or certainly a fraud statute in general.

Even the federal government has some insurance fraud statutes:

- 18 U.S. Code §1033 addresses interstate acts of insurance fraud:
 - (a) Materially false statements
 - (b) Conduct of an officer, director, agent, or employee of an insurance company in interstate commerce
 - (c) Knowingly makes false entries of a material fact in any book, report, or statement.

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So, Fraud is Bad, What Do We Do?

We all agree that fraud is bad. We all agree that fraud costs money. So, how do we fight fraud?

Some states may be different but in Nebraska, we take several pronged approaches.

- The Fraud Prevention Division
- The Insurance Complaint Division/Market Conduct/Legal
- Collaboration with the National Association of Insurance Commissioners (NAIC)
- Sister/Federal Jurisdiction
- State agencies can also act in a support capacity

Insurance Fraud Prevention Division (IFPD)

The mission of the Insurance Fraud Prevention Division is to confront the problem of insurance fraud in Nebraska through prevention, investigation, and prosecution of fraudulent insurance acts to reduce the premium dollars used to pay fraudulent claims.

IFPD duties and responsibilities include:

- Conducting independent investigations when the Division has cause to believe that an act of insurance fraud has been committed or has been attempted that violates the Nebraska Insurance Fraud Act under the Nebraska Insurance code (Neb.Rev.Stat. §44-6601 - 44-6608)
- They work in cooperation with other law enforcement agencies, prosecuting attorneys, to prosecute violations under Nebraska Criminal Code for Fraudulent Insurance Acts 23-631
- In addition, we provide anti-fraud training to the insurance industry, law enforcement agencies, and civic organizations

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Market Oversight

The Department also utilizes the investigations by our Insurance Complaint Division and Market Conduct Division on the civil side.

Many investigations start with a call by a complainant to the Department through our Insurance Complaint Division.

The Department has broad powers over insurance producers and insurers to produce documents and answer questions regarding their conduct.

- Insurance Producers Licensing Act Neb. Rev. Stat. §§ 44-4047 through 44-4067
- Examination Act Neb. Rev. Stat. §44-5901 et.seq.

Management of Risk (What Can Companies Do?)

- Mandatory Reporting (§44-393)
 - Every insurance company, agent, solicitor, or broker, and every person or party knowing a violation of any of the provisions of this chapter, is required to promptly report the facts and circumstances pertaining thereto to the Department of Insurance, which reports, and the name of the informant may be held confidential by the department, its officers, assistants and employees, and not be made public.



Management of Risk (What Can Companies Do?)

- Immunity Statute §44-6605:
- (1) Any person or entity, including the department, an insurer, or a person employed by or authorized by an insurer whose activities include the investigation of or reporting of suspected insurance fraud, acting without malice, fraudulent intent, or bad faith shall be immune from civil liability for furnishing any information relating to suspected fraudulent insurance acts to:
 - (a) The director or his or her agents or employees;
 - (b) Law enforcement officials or their agents or employees;
 - (c) The Nebraska Workers' Compensation Court or its agents or employees;
 - (d) Persons or entities subject to Chapter 44 or their agents or employees; or
 - (e) The National Association of Insurance Commissioners or any organization established to detect and prevent fraudulent insurance acts or its agents, employees, or designees.

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Management of Risk (What Can Companies Do?)

- Anti-fraud policies outline specific procedures, appropriate to the lines of insurance the carrier writes in Nebraska, with the following suggestions, at a minimum:
 - Preventing, detecting, and investigating all forms of insurance fraud covering insurance that the carrier is authorized to write in Nebraska, including, but not limited to:
 - fraud involving the carrier's employees or agents;
 - claims fraud; and
 - security of the carrier's data processing systems.
 - Educating appropriate employees on fraud prevention and detection, the Nebraska Mandatory Fraud Reporting Statute, Neb. Rev. Stat. § 44-393, and the carrier's anti-fraud policy.
 - Informing policyholders about insurance fraud and how to prevent it.
 - Encouraging the reporting of suspected incidents of insurance fraud to the Insurance Fraud Prevention Division of the Nebraska Department of Insurance.
 - Encouraging legal pursuit of restitution for financial loss caused by insurance fraud where appropriate.
 - Designating or identifying the person responsible for oversight and implementation of the carrier's anti-fraud policy.

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Insurer Reporting Requirements

- Reminder: If an insurer terminates an agent's appointment, employment, contract, or other business relationship because of conduct described in section 44-4059, an insurer must notify the Department within 30 days of the effective date of the termination. See Neb. Rev. Stat. § 44-4062(1)
 - Also, if the insurer knows that a court, government body, or self-regulatory organization has ruled that one of its producers engaged in conduct described in section 44-4059, it must notify the Department, again within 30 days
 - If the producer pulls a “you can't fire me, I quit!” the insurer must still notify the Department within 30 days. Neb. Rev. Stat. § 44-4062(3)
 - Insurers are under a continuing duty to provide any additional reportable information later discovered by the insurer. Neb. Rev. Stat. § 44-4062(4)

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Insurer Reporting Requirements

- Reminder: Insurers and their agents/employees are immune from civil liability – except in the case of actual malice – for any statement or information provided to the Department under section 44-4062. See generally Neb. Rev. Stat. § 44-4062(7)(a)
- Any records, statements, or other materials insurers provide to the Department are not public records and are explicitly confidential pursuant to Neb. Rev. Stat. § 44-4062(8)
 - Ultimate purpose of these laws is to ensure the protection of the public and to incentivize liberal reporting of violations
 - We want to know
- **Exception: When criminal charges are filed, documents may be used as Court Exhibits**

Some Real Life Examples

With that background in mind, we can discuss how the Department enforces both the acts of individuals that impact their licensure and how those same acts may rise to the level of criminal prosecution.

Please keep in mind that these are two separate standards when we are “prosecuting” cases.

The legal division of the Department will take administrative actions against individuals who hold licensure with us (or should have) to either warn, fine, suspend or revoke the license.

The fraud division makes criminal referrals for prosecution.

In some instances, there are cross-cases.

FRAUD VS. ADMINISTRATIVE ACTION

In The Matter Of L.M.

- Resident Nebraska insurance agent (producer)
- DOI received a consumer complaint concerning L.M., alleging that L.M. had forged the signature of a consumer, taken premium payment, and not issued a policy for the consumer
- DOI investigator contacted L.M. for a response. L.M. admitted to DOI that:
 - L.M. forged consumer signatures for an estimated 20 consumers;
 - Specifically, on electronic funds transfer (EFT) authorizations
 - L.M. allowed a consumer's policy to lapse due to failure to upload documentation required by the insurer;
 - L.M. eventually paid reinstatement fees from her pocket to reinstate the consumer's policy, which had lapsed due to her neglect; and
 - Similar events occurred with four other clients

In The Matter Of L.M.

- No evidence of intent to defraud – rather, lack of diligence/competence
- Clear violation of
 - § 44-4059(1)(j) (Forging another's name to...any document related to an insurance transaction)
 - § 44-4059(1)(h) (demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state)
 - § 44-4059(1)(b) (violating any insurance law)
 - § 44-4059(1)(g) (having admitted [to]...any insurance unfair trade practice, any unfair claims settlement practice, or fraud)

In The Matter Of L.M.

- Why subsection (1)(g)?
 - Unfair trade practice includes “making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefits from any insurer, agent, broker, or individual person.” Neb. Rev. Stat. § 44-1525(10)
- Falsifying EFT documents constitutes “making a false representation relative to an application for a policy.”
- Paying money out of one’s own pocket to reinstate a policy rather than with insured funds? Maybe...

In The Matter Of L.M.

- Ethical concerns:
 - Forgery, even if ostensibly in furtherance of client interests, is unethical and unlawful
 - Lack of transparency; lack of communication with clients
 - At the core of ethical behavior is trustworthiness and responsibility; L.M. failed here
- Also, as an aside, L.M. could have had an errors & omissions (E&O) problem on her hands if clients had experienced covered events
 - Nebraska courts have long held that “an insurance agent who agrees to obtain insurance for another but negligently fails to do so is liable for the damage proximately caused by such negligence.” *Flamme v. Wolf Insurance Agency*, 239 Neb. 465, 470 (1991)

L.M. Q&A

CLAIMS EMPLOYEE EXAMPLE

Claims Employee Example

- Pursuant to a mandatory reporting statute a carrier reported several incidents of claims fraud that they discovered as the result of a random claims audit
- When the carrier was contracted, they revealed that the fraud was perpetrated by a claim's employee during her normally scheduled shifts
- After internal investigation and interview, the employee was terminated



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Claims Employee Example

- An immunity request letter was sent to the insurer. Both the claims and internal investigation records were requested
- Upon review it was discovered that the employee had also accessed eight client's policies and changed the profiles to change the contact information and to add EFT information
- In total, 63 claims were made with the proceeds of 57 claims being direct deposited into an account under the control of the employee
- Sufficient evident was gathered for prosecution and the employee currently has an outstanding felony warrant for insurance fraud

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The key points of this case are:

- During an interview, the employee stated that during her training they accessed “unused,” active policy profiles to “learn” to assist customers with their policies
 - During this time, she noted several policies that had been in force for over a decade but had not ever had wellness claims filed against them
 - She admitted she devised the plan to file false claims during her training period using the policies she had used in training
 - The fraud scheme began the first day working on the claims floor and continued for 20 working days until being fired
- Although the insurer complied with fraud reporting, they considered the employee conduct as an HR issue

In the end, this case resulted in healthy dialogue about NE insurance codes, including immunity, and mandatory reporting and cooperation requirements

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Claims Employee Q&A

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Dr. Z – Federal Organized Crime Case

- Fortunately, organized crime is not something we see frequently in Nebraska however it does occur
- In 2015, we received a suspected fraud referral form a 3rd party vendor who handed claims for a self-insured company. They reported that after they noticed a spike in activity in a quarterly healthcare report, they found a new clinic in Grand Island had submitted over 1,000 employee claims and billed \$3.1 million in services within a single quarter.



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The key indicator in this case were

- A review of the claims noted uniformity in the CPT codes that were billed and uniformity in the treatment plans and therapies being received
- The provider has recently reinstated her Nebraska medical license just prior to filing articles of incorporation. However, she maintained clinics and a residence in Florida
- Interviewed a employees reveled they were recruited by a fellow employee and paid a small sum for their cooperation and additional recruiting fees for each person brought in

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Key concern in this case was:



- Due to this being a self-insured plan the case was turned over to the feds, after several contacts we collaborated with the FBI who successful prosecution of both Dr. Z and her associate resulted in both receiving 70 months in prison with 3 years' probation and restitution of \$414K

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Dr. Z Q&A

AGENT CASE STUDY

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Agent Case R.S. – Widow Fraud

- IFPD received information about suspicious bank activity on the personal account held by a licensed insurance agent
 - It appeared that several personal checks were issued to the account holder with policy numbers written in the memo section
 - Account activity all appeared to be for personal expenditures
 - Bank records were subpoenaed for a two-year period and over \$202k from six accounts were found to have been deposited
- The six payees were interviewed and believed the payments were for the purchase of annuity investments. Follow up with the insurer confirmed the money was not used for the benefit of the client and no policies existed

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Key points in this case

The agent was convicted of multiple III felonies in two counties. Resulting in a 6-20 year incarceration and 60 months' probation.

Key points in this case:

- Most victims were elderly widows, who were befriended by the agent
- Victims were not initially cooperative, until presented with physical evidence
- Agent made unsolicited visits to his clients with urgent investment opportunities
- None, will recover even their initial investment
- Agent continued to defraud clients after we interviewed him attempting to pay back selected victims at the expense of other victims

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Agent Fraud Q&A

PASSING THE BUCK: SNEAKER CLAIMS

Sneaker Claims – missed opportunity, rolls down hill

In compliance with the mandatory reporting, an insurer submitted a suspected fraud referral after the identified several potential fraud indicators during the claim process that remained unresolved

Upon receiving the referral, it was discovered the insured had recently filed another theft claim. Claim records were requested in both claims and the facts were similar. Both were for a stolen shoe collection.

Fraud Indicators Identified:

- New policy/no prior coverage
- Recent incarceration
- Large quantity of newly purchased items
- Financial liens/recent bankruptcies
- No witnesses/no police report file

There was one exception

In the first claim, the claim handler identified potential fraud, but instead of following up with additional questions to resolve the questions or to address the potential fraud, the decision was made to pay over \$45K with no supporting documentation being requested. Shortly after payment, the policy was cancelled, with the remaining premiums were refunded.

Within a few months, the insured purchased another renter's policy with a different carrier and again suffered a loss. This time for \$70K shoe collection. This time, additional documentation was requested, and the insured chose to close his claim without payment being issued. He again cancelled the policy and was refunded the remaining premiums.

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Q&A

FRAUD CONFERENCE

22nd Annual Insurance Fraud Conference

Wednesday, August 3, 2022

Hosted by:

Nebraska Dept. of Insurance
Fraud Prevention Division



Eugene T. Mahoney State Park
Interstate I-80, Exit 426
Ashland, Nebraska

Reserve your spot for
August 2023
Kimberly.church@nebraska.
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Questions?

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Satisfaction Survey

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