



“Ask Dr. J”



The “Ask Dr. J” columns are authored monthly by Jennifer Christian, MD, MPH, President of Webility Corporation. See previous columns at www.webility.md.

Dr. J's columns also appear in the monthly Bulletin of the Disability Management Employer Coalition (DMEC). To purchase a book of Dr. J's collected columns, go to www.dmec.org.

The columns often summarize issues discussed by the Work Fitness and Disability Roundtable, a free, multi-disciplinary e-mail discussion group moderated by Dr. Christian. Apply to join the Roundtable at www.webility.md.

March 2005 – Prevent Litigation by Improving Customer Service

Dear Dr. J:

It bugs me how you always sound so positive when you talk about preventing disability! Your optimism and your suggestions seem hopelessly naive in my world, where I spend most of my time on litigated cases and can't even talk to the doctor or the employee directly. Lay off the happy juice, Dr. J!

Randy, a realist in Richmond

Dear Randy:

Thanks for the straight feedback, Randy. The cynical and resigned tone of your letter is very common among claims professionals who have “been around the block a few times”. It is probably impossible to work day in and day out with the kind of difficult situations you see and not get down about human beings and the “system”. I have some ideas about litigation and the “real world” to share with you. Hear me out, OK?

At a recent conference, I heard a workers' compensation company representative describe the results of their study on the cost of claims with and without lawyers involved. Bottom line: a claim with legal representation costs an average of \$30,000 more than a claim without a lawyer involved, even after you control for diagnosis type and state of origin. The median cost of a represented claim is at least 12 times more expensive than a non-represented claim. Both medical and indemnity are affected. For workers with similar claims, the represented ones have 12 times as many lost workdays as the un-represented ones.

So, let's talk about how to prevent litigation. Successful prevention of litigation can have a profound influence on claim costs, precisely because most losses concentrate in represented cases – in many companies, the bulk of the 10% to 15% of all claims that drive 80 to 90% of costs have lawyers involved.

Try this on for size: Most employees seek out lawyers because their needs are not being met. If those needs are “reasonable” and you commit to meet them, you can prevent litigation. I acknowledge that some employees intend to litigate on the first day, and already have a strategy to profit from their injury. None of my suggestions apply to those people. But, how many people are TAUGHT they need to litigate by the way they are treated? How many learn to abuse the system because no one reached out to offer to help them except the “wrong” person?

In today’s litigious society, it is unreasonable to expect people not to consider the lawyer option. If we want to prevent litigation, people must decide they don’t need or want a lawyer. Interestingly, most people don’t hire a lawyer right away, which is evidence that a customer satisfaction issue is what triggers the decision to seek help. The well-known speaker Richard Pimentel has a list of reasons why people commonly seek legal help. As I recall, the list boils down to:

- Ignorance: not knowing how the system works or where else to go for help, particularly if a language barrier exists;
- Poor service, for example, being treated like a number, delays in care or benefits, the inability to get a timely straight answer;
- Uncertainty over their rights, whether they are being treated fairly;
- Suspicion, ill will, revenge: lack of confidence that their best interests have been or are being served.

Once someone has seen a lawyer, both medical and indemnity costs often rise. This is partly due to the financial interest of the claimant’s lawyer in increasing the size of the claim because lawyers are paid a percentage of the awarded amount. Recently I heard a psychiatrist tell a story about a woman with PTSD (she was robbed while at work). She was seeing the psychiatrist who was working to get her back to work. Things were going OK and her recovery was progressing well until she announced that her claim had been rejected and she had now retained a lawyer. During the ensuing discussion with the psychiatrist, she said she was sure she couldn’t handle going back to work and commented that she was now also seeing an orthopedist. Evidently, the lawyer had inquired solicitously whether she had any other problems at all, and when she mentioned that her neck and shoulder were a little sore, the lawyer had encouraged her to see a doctor and “make sure everything is evaluated and taken care of”.

Another reason why medical costs rise is that people get in the double bind of proving they are sick in order to keep getting a check. Uncertainty over their ability to work coupled with the pressing need to assure steady income creates a perverse incentive to stay sick – and since one must keep going to the doctor with complaints in order to prove illness, and doctors are usually willing to provide medical care to people with complaints, medical costs go up.

So, should we consider delivering better service – to the injured worker / employee / claimant? The cost of delivering it will be considerable: it will mean more time spent on the phone, lower claim loads, etc. The culture change required of the claims organization will be significant. The payoff would have to be considerable to make all this worthwhile. How much investment in service levels that “surprise and delight” claimants would make sense if it let you save \$30,000 per claim?

Before I finish, I’d like to comment on my “naïve” optimism. Did you know I cut my teeth in disability management in a very rough environment? When I finished my residency in occupational medicine and went to work for a large naval shipyard, I got my first introduction to

workers' compensation. At that time (20 years ago) the company had a poor safety record and a "hardball" approach to claims management. At first I was simply stunned by the jaundiced and defeatist culture inside that world – and then I got angry when I saw the fruit of their approach: wasted lives and resources. I found myself working in a hostile worksite culture for a company with its economic future in jeopardy, and in the medical department clinic, I kept meeting former employees with wrecked lives. Although the company had already embarked on a safety turnaround, they still felt victimized on the workers' comp side. They would point in turn to the law, the courts, the lawyers, the workers, the unions, the medical providers, and the "system" as intractable problems over which they had no control or influence. Workers who were injured were neglected, viewed with suspicion, and abandoned. Many found their way to the lawyer's office – in fact they had a letter in their mailbox from a lawyer the next day! The employer had a narrowly-focused program with virtually no management systems in place, and bluntly, was more comfortable bitching than taking effective action. Today I would describe them as a "hostile sucker" employer.

This employer actually had lots of (unused) power to improve their own situation, and couldn't see that they were actually creating a lot of the negativity that was generating the poor results. My training in preventive medicine led me to ask these questions:

- What went wrong to create all this mess?
- Which are the things we can't change, and which are the ones we can?
- What can we do differently in the future so we won't keep creating these messes?
- What IS the right thing to do, and what DO we want to happen?

Then, we set out to re-engineer the injury management approach, and had a slam-bang success. We resoundingly demonstrated how a better-managed and more positive "front end" of the operation helps create fewer bad outcomes at the "back end". We also put more effective and coordinated muscle into our handling of problematic claims. Overall, we earned the respect of the workforce and reduced lost time days by 68% in the first year that our new program was in effect. In fact, based on those results, the company was able to negotiate a \$16 million reduction in the next year's workers' compensation premium. The thrill of that first-hand experience helping a "hostile sucker employer" transform into a "caring, fair and firm employer" – and then reap clear business rewards – continues to fuel my personal passion for disability prevention.

Thanks for writing, Randy. Here's hoping your company spots some overlooked opportunities to stop creating so many litigated claims, and to deal more effectively with the ones they have. For the sake of your morale and to avoid burnout, I recommend that you spend part of every day on the "positive front end" so you can stay in touch with the basic goodness of most people.

Smiling,
Dr. J

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