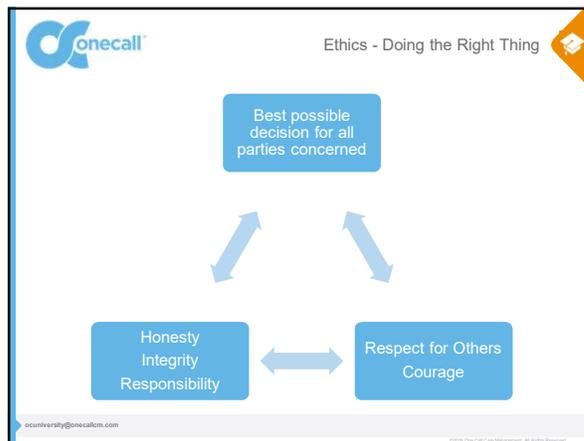




# Handling Ethical and Moral Dilemmas in the Claims Management Process

PRESENTED BY  
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## Agenda

- Define ethics
- Identify ethical and unethical behavior in claims handling
- Define: morals and morality
- Review the CDMS and CMC code of conduct
- Identify immoral vs. amoral conduct
- Review ethical decision making with claims management
- Discuss business ethics for claims professionals



## What is Ethics?

Ethics is not the same as feelings

Ethics is not religion

Ethics is not following the law

Ethics is not following culturally accepted norms

Ethics is not science

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## Ethics Defined

- A set of moral principles that helps you tell right actions from wrong ones
- A theory or a system of moral values
- The study of the general nature of morals and of the specific moral choices to be made by a person; moral philosophy
- A set of standards that helps us make decisions about what is right and wrong
- A system that evaluates actions in light of their situational context rather than by the application of moral absolutes

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## Ethical Norms

**Ethical norms may be derived from:**

- Law
- Institutional policies/practices
- Policies of professional organizations
- Professional standards of care, fiduciary obligations

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**onecall** Ethical Norms

By careful exploration of the problem, aided by the insights and different perspectives of others, can we make good ethical choices.

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**onecall** Ethics and HIPAA

"According to your HIPAA release form I can't share anything with you."

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INTERCONNECTEDNESS

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**onecall** Cultural Beliefs and Ethics

- Different cultures have different ideas about right and wrong
- Development of a personal moral compass
- Cultural influencers; Religious beliefs, secular vision
- Situational factors: consequences of actions, background events, contextual information(example is bending the truth)
- Personal moral compass

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**onecall** Overview

Ethical dilemmas occur when:

- The right course of action is not known to the claims staff or nurse case manager
- Conflict with moral principles and values

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**onecall** Frame work for Ethical Decision Making

Recognize - Am I breaking the law?

Get the facts - Who are the stakeholders?

Am I missing information?

Evaluate the alternatives - What are the short and long term consequences?

Do my decisions align with the company core values?

Act and reflect on the outcome

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**onecall** Ethics and Morals

<p><b>Ethics</b></p> <ul style="list-style-type: none"> <li>• Rules of conduct recognized to a class of human actions or group culture</li> <li>• Comes from an external social system</li> <li>• Society tells us it's the right thing to do</li> </ul>	<p><b>Morals</b></p> <ul style="list-style-type: none"> <li>• Principles or habits to right/wrong conduct</li> <li>• Personal compass of right/wrong</li> <li>• Usually consistent – although can change if the individuals beliefs change</li> </ul>
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*"I count him braver who overcomes his desires than him who overcomes his enemies."* **Aristotle**

*"There are two types of people in this world, good and bad. The good sleep better, but the bad seem to enjoy the waking hours much more."* **Woody Allen**

*"Conscience is the inner voice that warns us somebody may be looking."* **H.L. Mencken**

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**onecall** Amoral vs. Immoral

<p><b>Amoral</b></p> <ul style="list-style-type: none"> <li>• Lacking a moral sense</li> <li>• Unconcerned with right or wrong</li> </ul>	<p><b>Immoral</b></p> <ul style="list-style-type: none"> <li>• Contrary to established moral principles</li> <li>• Wickedness</li> <li>• Evil</li> </ul>
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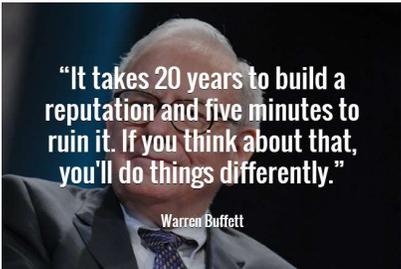
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**Warren Buffett**

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**onecall** What is an Aguilera claim?

*Aguilera v. Inservices, Inc., 905 So.2d 84 (Fla., 2005)*

- *Aguilera* has reduced dramatically the number of claims handled in bad faith, while allowing good faith disputes to be handled through the workers' compensation system. A good result and a shining example of how the legal system works to help people.
- *Aguilera* authorized civil lawsuits against insurance carriers and their adjusters "for harm caused subsequent to and distinct from the original workplace injury."

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 The Underlying Facts 

- April 21, 1999 - Aguilera was struck by a forklift and pushed against a pallet. He suffered immediate injuries and was rushed to the emergency room. Testing performed in the ER showed blood in Aguilera's urine.
- Aguilera began to complain of kidney and bladder pain.
- May 24, after two physicians examined him and concluded that he could not return to work, Aguilera's attorney requested that he be examined by a board certified urologist.
- The workers' compensation insurance carrier **denied authorization of the urologist**, asserting that Aguilera's injury was not work related.
- June 17, 1999, the insurance carrier was again notified that urological care was now needed on an emergency basis because Aguilera's urine had begun to smell like feces.
- June 21, Aguilera was advised that his **workers' compensation benefits were being terminated as of July 9, 1999**, notwithstanding the report of two doctors, including the opinion of the insurance carrier's own doctor, that he should not return to work.

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 Facts (cont'd) 

- By November 4, 1999, Heath, the case manager, and a nurse practitioner also employed by the insurance carrier had changed positions and agreed that Aguilera needed immediate hospitalization for surgery. However, **the insurance carrier's adjuster again intervened and overruled the decision of medical personnel simply because he wanted a second opinion from a general surgeon**. Notwithstanding this intervention, the insurance carrier did not follow its own position and authorize Aguilera to consult with a general surgeon, but instead again changed course and sent Aguilera to a gastroenterologist. At this point in time, Aguilera had allegedly been urinating feces and blood for over six months.
- Aguilera's ultimate surgery, the need for which had been diagnosed as an emergency as early as June of 1999, **was not finally authorized or approved until March 22, 2000**. By this time, according to the allegations, **Aguilera had been urinating feces and blood for over ten months**.

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 Facts 

- June 25, 1999 - the insurance company intervened **and blocked Aguilera's receipt of medication prescribed by the hospital emergency room doctor** for his urinary condition.
- June 30, the carrier again **denied authorization of emergency medical care** for the urinary problems, claims it was not medically necessary.
- July 7, 1999, Aguilera's treating doctor advised the carrier that his need for medical care was urgent and that his condition was deteriorating.
- July 9, 1999, the carrier's own doctor issued prescriptions for various urinary tests.
- July 30, 2009, **the adjuster intervened and simply unilaterally cancelled some of the medical testing**.
- Testing that was ultimately done revealed that Aguilera had a fistula, a hole in his bladder.
- August 6, 1999, Mippy Heath – Assigned as the new insurance company's nurse case manager. She was specifically told by Aguilera's attorney that she should have **no direct contact with Aguilera**. She also agreed that **no intervention with Aguilera's care would be attempted**.

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 Protegrity Services Vs Vaccaro 

PROTEGRITY SERVICES v. VACCARO, 2005 FL App. LEXIS 13283 (FL 4th DCA, August 24, 2005)

First case applying the Supreme Court's decision in Aguilera v. Inservices, Inc., 905 So. 2d 84 (FL 2005), in which the Court held that the workers' compensation Act does not afford blanket immunity for all conduct during the claim process, particularly the insurance carrier's intentional tortious conduct

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 Facts 

- On August 19, Aguilera's attorney alerted the insurance carrier that the injured employee was in need of emergency care for the fistula. Heath refused the authorization and insisted on a second opinion.
- On August 25, Heath secretly appeared at the physician's office for Aguilera's appointment. She urged Aguilera to lie to his attorney that she has not appeared at his doctor's appointment.
- Subsequently, Heath insisted that Aguilera submit to the administration of invasive tests that were not only painful but also contraindicated by his then-present medical condition.
- **The insurance company then proceeded to use Aguilera's refusal to submit to the tests as a basis to justify a refusal and denial of his then needed critical, surgical treatment.**

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 Florida Supreme Court 

The Florida Supreme Court has never permitted compensation insurance carriers to cloak themselves with blanket immunity in circumstances where the carrier has not merely breached the duty to timely pay benefits, or acted negligently, but has actually committed an intentional tort upon an employee.



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**onecall** Aguilera v. Inservices, Inc.

The Supreme Court held that adjusters/carriers are not immune from being sued for the tort of intentional infliction of emotional distress where their conduct in handling a claim is ore than simply bac faith or a breach of contract, but where the conduct is intentional and outrageous

**Carriers and adjustors can be sued in circuit for damages caused by outrageous conduct**



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**onecall** Case Management – A Balancing Act



1. Place public interest above their own at all times
2. Respect the rights and inherent dignity of all clients
3. Maintain objectivity in relationship with clients
4. Maintain competency at a level that ensures their clients will receive the highest quality of service
5. Will obey all laws and regulations
6. Will maintain the integrity of the Code by responding to request for public comments

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**onecall** Chartered Property Casualty Underwriters

- Only make promises that you can keep
- Honesty in all communications
- Disclose bad news in a timely manner
- Disclose conflicts of interest
- Admit when you do not know the answer
- Work through the proper channels
- Maintain confidences
- Admit to and rectify mistakes
- Join organizations that support ethics and integrity in business

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**onecall** Rehabilitation Providers in W/C

- Vocational Rehabilitation – Maryland
- Rehabilitation Supplier in Georgia
- QRC - Minnesota
- Medical Rehabilitation Nurses – North Carolina
- ARN - RN License, CRRN, COHN, CRC, CDMS, CCM
- Rehab Counselor Current CRC or CDMS Certification
- Vocational Evaluator- Current CVE Certification



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**onecall** Commission for Case Manager Certification

Protect the Public interest

- Compliance of the code is an expectation for every board-certified case manager (CCM)
- Provides a framework for all case managers to provide ethical advocacy for their clients, putting safety, privacy and autonomy first



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**onecall** Certification of Disability Management Specialist

The fundamental spirit of caring and respect with which the Code is written is based upon five principles of ethical behavior.

1. **Autonomy:** To honor the right to make individual decisions
2. **Beneficence:** To do good to others
3. **Non maleficence:** To do no harm to others
4. **Justice:** To act or treat justly or fairly
5. **Fidelity:** To adhere to fact or detail



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**onecall** CDMS Code of Professional Conduct

**Certified Disability Management Specialists:**

*CDMS certified individuals recognize that their actions or inactions can either aid or hinder clients in achieving their objectives, and they accept this responsibility as part of their professional obligation. CDMS specialists may be called upon to provide a variety of services and they are obligated to do so in a manner that is consistent with their education, formal training, and work experience. In providing services, CDMS specialists must demonstrate their adherence to certain standards. The CDMS Code of Professional Conduct (Code) has been designed to achieve these goals.*

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**onecall** Ethical Summary

- **Do Not Lie**
- **Do the Right Thing**
- Do not take actions that can be perceived as a lie or deceitful
- **Be Diligent**
- Claims adjustors, nurse case managers and rehabilitation professionals are provided with guidelines for ethical decision making – USE THEM
- Adjusters investigate /adjudicate claims
- Rehabilitation Providers coordinate care and develop the rehabilitation plans

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**onecall** Ethical Requirements for Adjustors

- Treat all claimants equally
- Make truthful and unbiased reports
- Handle every adjustment and
- Settlement with honesty and integrity
- Act with due diligence
- Objectivity
- Competency
- Confidentiality
- Multicultural Diversity Issues
- Appropriate Role for Practitioner
- Social Advocacy
- Disclosure
- Consistency
- Informed Consent



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**onecall** Settlement in Workers Compensation



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**onecall** When in Doubt - Tell the Truth

A lawyer charged a man \$1,000 for legal services.

The man paid him in cash with crisp new \$100 bills.

After the client left, the lawyer discovered that two bills had stuck together

He was overpaid by \$100



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**onecall** Questions

**Can professional and personal ethics be separated?**

- How you behave in your personal life affects how you behave in your workplace

**Why should corporations care about ethical conduct?**

- Government regulations demand ethical behaviors
- Employees prefer to work for ethical companies
- Ethical behavior helps to keep consumer loyalty

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Business Ethics through Culture

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AMA Code of Medical Ethics

Since its adoption at the **found meeting** of the American Medical Association in 1847, the *AMA Code of Medical Ethics* has articulated the values to which physicians commit themselves as members of the medical profession. Together, the Principles of Medical Ethics and the Opinions of the **AMA's Council on Ethical and Judicial Affairs**, that make up the Code offer guidance to help physicians meet the ethical challenges of medical practice.

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Questions

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Ethical Issues in End-Of - Life Care

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