

LETHAL COMBINATION: FRAUD & Employee Benefit Plan\$

Texas Total Rewards Conference

Richardson, TX
September 18, 2012


Bushnell & Company
Employee Benefit Consultants

www.BushnellCompany.com

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CPE – Why here ...



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James E. Bushnell, CLU, CEBS



- **B.S. – Finance & Accounting**
- **CLU & CEBS**
- **Auditor Wall St.; Then insurance business**
- **Established Bushnell & Company 1973**
- **Gave up agent licenses in 1981**
- **Fee only employee benefits consultant**
- **Actuaries & Employee Benefit Consultants**

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Define Fraud ...



... is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage. Fraud may also be made by an omission or purposeful failure to state material facts, which nondisclosure makes other statements misleading. (Source: uslegal.com)

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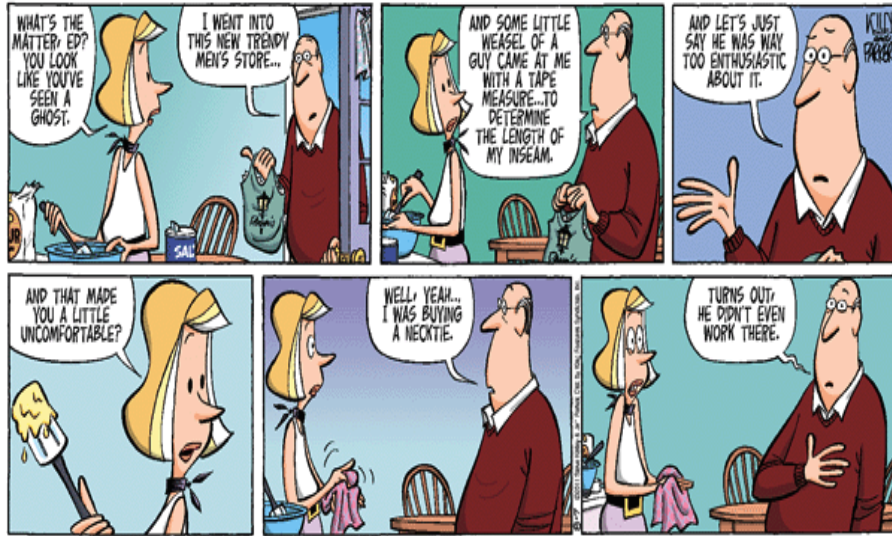
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It's even in the comics



DUSTIN

BY STEVE KELLEY & JEFF PARKER



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Employee Benefit Plans



- Health & Welfare
- Retirement
- Core or Voluntary Benefits

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Health & Welfare



- Medical
- Dental
- Life
- Short Term Disability
- Long Term Disability
- Long Term Care

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Retirement



- **Defined Benefit – Guaranteed Benefit**
 - Age
 - Years of Service
 - Salary
 - ER** assumes investment risk
- **Defined Contribution – Savings Account**
 - 401(k); 403(b); 457
 - IRA
 - **EE** assumes investment risk

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How We Wish Things Were

B



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How They Probably Really Are

B



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Fraud – Where it Occurs

- **Underwriting**
 - Sales practices & Rate setting process
- **Eligibility**
 - Employee and Dependents
 - Service
- **Effective Date of Coverage**
 - Date coverage becomes effective
 - Almost always “at work” requirement

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Fraud – Where it Occurs ...

- **Benefit Levels**
 - High Option
 - Low Option
- **Accounting Premium \$ to Insurance Co.**
- **Employee withholdings**
- **Employer contributions**
- **Employer communications**
- **EE & ER Fraud**

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Fraud – Where it Occurs ... *B*

- **Service Providers**
 - Actuaries
 - Insurance agents
 - Group Reps for insurance companies
 - Attorneys & Accountants
 - Third Party Administrators
- **Health Care Providers**
- **Insurance Company is like Government**
 - Who cares.
 - We all pay!!!!

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Fraud – Where it Occurs ... *B*

- **No “How To Detect” manual**
 - Use your professional benefits knowledge
 - Always be on the lookout
 - Smell test
 - Trust your gut
 - Use common sense
- **Slippery slopes**
- **Ever changing & dynamic**
- **Crooks are creative!!!!**

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Reindeer Accounting

B

MATHS

The total is when you add up
all the numbers and a remainder
is an animal that pulls
santa on his sly.

Underwriting & Sales

B

- **LTD - Age 70 EE becomes age 20**
 - Poor “penmanship”
 - Case underwritten & issued
 - Billing get updated & “corrected” > issue
 - Underwriting “renewal” every 2-3 years
 - Error discovered
 - Past contestability period
 - No claims
 - OK to renew & adjust premium

Underwriting & Sales ...



- **Experience Data re: premium & claims**
 - Excel file not write protected
 - Competing Group Rep “massages data” & turns loss ratio from 150% to 70%
 - Underwriter prices it based on 70%
 - Case sold to the group
 - At Renewal
 - Must have been a bad year
 - Huge rate increase

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Underwriting & Sales ...



- **Agent submits case 2 days after effective date** (not unusual in small group market)
- Calls every 2 hours to verify approval by Underwriting
- Apps look OK to Underwriting assistant & e-mails agent
- Agent calls – screaming that owner’s daughter at pharmacy waiting to get Rx filled for Diabetes!
- Nothing disclosed on application

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Underwriting & Sales ...

B

- Underwriting call Dr. office – diabetes?
- Dr. office has lots of pages of notes that Agent called re: the owner's daughter medical condition
- **Call the Fraud Squad!**
- **Agent represents insurance company by definition & contract – never represents customer – that is why he/she is paid a commission.**

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Underwriting & Sales ...

B

- Major carrier – **Group Reps Create Agency**
- Salaried Group Reps sold directly; or, taking over Broker of Record
 - Commissions paid to created agency
 - Group Reps split up commissions
 - No administrative overhead – staff already doing work
 - Both violations of carrier's published policies.
- Agency quickly becomes leading producer in the area

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Underwriting & Sales ...



- Sales VP want to meet the Principals at the Leading Agency to congratulate them on outstanding sales efforts.
 - P.O. Box is only address
 - Pre-Google days
- Fraud uncovered
 - Group Reps getting salary & commissions
 - No reason to pay commissions
 - All group reps were terminated
- Brokerage relationships that had “lost” the business with fraud were restored.

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Underwriting & Sales ...



- Major carrier – **Dumbest Award Contract!**
- Competitors were offering plans that excluded organ transplants except for heart, liver & lung
- They wanted to do the same & company said no (their plan covered all other organs – eyes, kidney, etc.)
 - Company did not file contract forms with State of Virginia + others for approval
- Compliance Dept. request copies of contacts for a client from Sales Office

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Underwriting & Sales ...



- **Contract Dept. sends official copy of group policy contract that includes all organ transplants**
- **Group Reps had cut & paste (literally) paper into group policy limiting benefits**
 - Used typewriter to create new language
 - Photocopied several times to try to hide evidence
- **Benefits based on official contract**
- **Sales team skated & finger pointed**
 - Secretary left holding the bag

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Underwriting & Sales ...



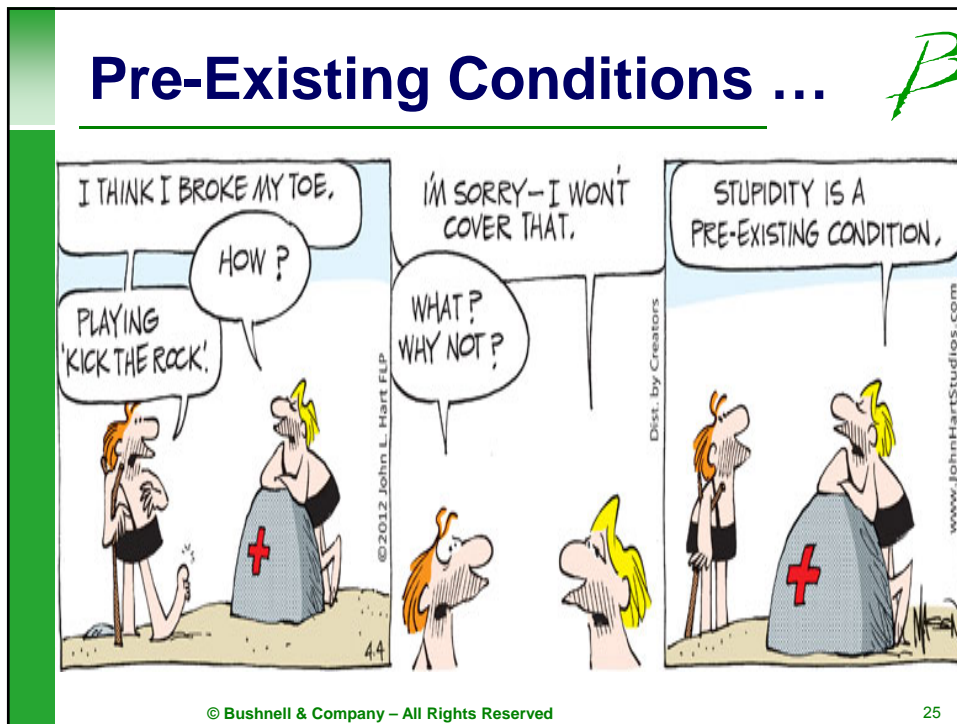
- **Manipulating Standard Industrial Classification (SIC) Codes**
 - Poor “risk” (e.g. restaurants) become great risk (e.g. engineering firms)
- TO DO**
- **Ask questions about Underwriting**
 - **How rates developed**
 - **To good to be true, probably is.**

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Pre-Existing Conditions ...

B



Eligibility – Dependent Fraud

B

- EE several children – different last names
- She asks to add “daughter” to her plan
 - Open Enrollment for 1/1/10
 - Previously covered by her father
 - He lost coverage
- August 2010 wants to add son to her plan
 - His father was to provide coverage per divorce decree
 - Father of son lost job & could not afford COBRA

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Eligibility ...

B

- **Benefits Manger looks at file – son added**
 - “Daughter” 4 months older than son ????
 - “Daughter” has baby in June 2010
- **Son & “Daughter” are not siblings**
- **Fraud reported to Insurance Carrier**
 - One of the majors
 - Elected to do nothing
 - Cheaper to pay claim than prosecute claimant

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Eligibility ...

B

- **Mother adding son’s girl friend – what to do**
 - Terminate her - Ethical Issues
 - \$1 down & \$1 per week
- To Do
- **Dependent Audits**
 - **Marriage Certificates**
 - **Divorce Decrees**
 - **Birth Certificates**

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Eligibility – Others Areas

- **EE use fake birth date to get age based benefits (e.g. life insurance) cheaper**
- **Employee enrolls “spouse”**
 - Really live in “domestic partner”
 - Plan does not cover “domestic partners”
 - Impact on plan with large claim
- **Other “spouse” issues**
 - Just a friend – do not live together
 - Children of friend

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Eligibility – Others Areas...

- **Employee enrolls mother as**
 - Same sex “domestic partner”
 - Plan does cover “domestic partners”
- **EE covers younger brother and sister as his children – same last name**
- **Covering ex-spouse as a spouse**
- **Children no longer students covered**
 - Employee fired
 - Health Care Reform starting 1/1/11

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Eligibility – Others Areas... *B*

- **Keeping an EE on plan as a “active EE” rather than continuation of coverage.**
 - Missing lots of time from work
 - Continue salary
 - Working less than full-time (illness)
 - After 6 months usually continuation plan
 - Popular person so location keeps on plan
 - Large medical bills

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Eligibility – Others Areas... *B*

- **Dependent Eligibility Audits**
 - 4% – 6% of dependents leave
- **Example: Kansas company**
 - 750 employees
 - Smaller ER & self-funded medical plan
 - Now require proof to enroll dependents
 - Did audit
 - First, allowed amnesty for 60 days
 - 45 “ineligible dependents” drop off
 - Save \$135,000 per year.

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Eligibility – Others Areas...



▪ **Late Enrollees**

- Dependent not eligible > 30 days
- El Paso, TX - \$350,000 claim
- Self-funded plan
- Seeking recovery from employee for claim
 - ER assumed EE did not willfully commit fraud
- HR person
 - Probably said I can get your child covered – maternalistic ???
 - Win favor with EE (Here to help you!)
 - She was terminated

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Effective Date of Coverage



▪ **Offered to all EEs**

- At initial hire – 1st if month after 30 days; or
- January 1 after Open Enrollment each Nov.

▪ **EE hired August 12, 2006**

- Offered plan that would be effective Oct. 1
 - no pre-existing conditions exclusion
- EE declined plan
 - **EE signed form – acknowledges that he understands now 12 month pre-existing if he wants to enroll during open enrollment.**

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Effective Date of Coverage... *B*

- **November decides to enroll in plan**
- **Has a heart attack in February 2007**
 - \$200,000 surgical & recovery claim
- **Plan denies claim**
 - Pre-existing condition
 - Stress test in November
 - Heart condition still there & worsening
 - Triple bypass in 2004!
- **EE appeals denial**
 - Review internal & external upholds denial

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Effective Date of Coverage... *B*

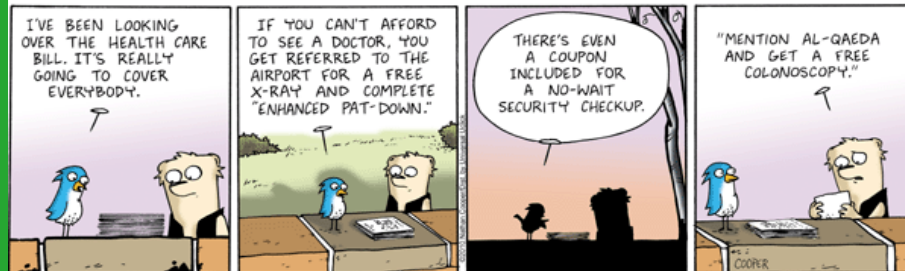
- **Hospital sues ER - 2008**
 - Claim should have been paid
 - Not a pre-existing condition
 - EE not adequately notified about extended pre-existing condition of plan that he signed
 - ER wins suit!
- **Hospital appeals District Court ruling**
 - Appeals court overturns District court ruling in 2009
- **State of Washington – Supreme Court**

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H&W Fraud Fixes 2010

B



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ER – Administration Fraud

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- Provided actuarial services to small DB plan
- Client referred by CPA
- Never met client – telephone, mail, or fax as per instructions of CPA
- In 3rd year of relationship, happened to be in city for another client
- Decided to pop in, say hi & introduce myself

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ER – Administration Fraud... *B*

- Was given grand tour of facility
- Noticed lots of EEs
 - Asked if part of Union - NO
- Census we received had max. 15 names
- Asked owner about difference
- **“We only send in names of important people, others do not need to be covered by the Plan”**
- **Sent resignation letter via FedEx**

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Dr. Over Billing Fraud *B*

- EE receives Explanation of Benefits (EOB) from Ins. Co. for Dr. visit
- Charges for Lab; x-ray; & other services **not** rendered for pneumonia diagnosis
- Dr. office near facility where EE worked
- Communicated policy will accept payment in full whatever insurance company pays
 - **No collection for Deductibles; co-insurance; U&C cutbacks; out of network fees; etc.???**

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Dr. Over Billing Fraud...

B

- EE reports this to ER
- Checked lots of other claims like this
 - Billing for work not done
- Ins. Co. sued the Dr. Over Billing for Fraud & case was settled.
- Dr. Over Billing moved out of area

Hospital Overbilling #1 Fraud

B

- Graduate of Dr. Over Billing money grab course
- **HIV patient – \$700,000 bill**
- Several months of haggling
- Reviewed all their “incredible charges”
- **Settled for \$300,000**

Hospital Overbilling #2 Fraud

- **Invitro Heart Transplant - \$1,000,000**
- **Yes baby received heart transplant before she was born “in utero”**
- **Plan did not exclude it**
- **ER paid it - Good learning experience!**
- **Revised definitions & provisions re:**
 - **Experimental Procedures**
 - **Heart Transplants**

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Robert Courtney, RPh

- **Kansas City - Courtney Pharmacy**
- **His customers did not lose hair or get sick with Chemotherapy treatments = more referrals from Oncologists = \$\$\$\$**
- **How - diluting medication – 98,000 Rx & 4,200 patients - American Greed TV show**
- **Medicare reimbursement – CMS Involved**
- **Eli Lilly audit = sold more than purchased**
- **30 years in Federal Prison - 300 suits for fraud & wrongful death; \$2.2 Billion +++**
- **Gave wife \$80,000 cash & 100 Prozac**

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TPA H&W Administrative Fraud *B*

- TPA for medical plan
- Usually arranges Stop Loss Re-Insurance because of Approved TPA rules by re-insurance company
- Re-insurance claim checks payable to ER but sent to TPA for accounting & delivery
- TPA holds all reimbursement checks by re-insurance company
- Deposits into ER escrow claim & expense account & then withdraws money for TPA administrative fees
- **Guess what happened?**

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TPA H&W Admin. Fraud ... *B*

- Essentially \$ to run his TPA
- Good learning experience for re-insurance Company & ER
- Refiled all contracts - \$ to ER directly
- ER never received re-insurance \$
- ER filed criminal charges against owner of TPA
 - Guilty 2 years in prison
 - AVP for re-insurance company testified at sentencing hearing

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TPA – MEWA Fraud

- Multiple ER Welfare Association
- Meridian Benefits - NJ – TPA
 - Kept \$ & tried to be an insurance company
 - Bought houses & boats in Florida
- Plead Guilty – Owner & Corporate Atty.
 - www.justice.gov/usao/nj/press/files/ruth0922_r.htm
- Sentenced to 7 years in prison
 - www.justice.gov/usao/nj/press/files/ruth0413_r.htm

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ER – Communications Fraud

- Client – Laundry Industry
 - Very blue Collar
- Group A – Mgt EEs only (200 EEs)
 - Self-Funded PPO
- Group B – All other EEs (900 EEs)
 - **No plan**
- Consultant asked to develop “Mini-Med” plan for Group B

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ER – Communic. Fraud...

B

- **Mini-Med Plan for Group B**
 - \$10,000 Annual Max. Benefit
 - Preventive care access included
 - Limits everywhere (e.g. \$1,000 Rx)
 - **Communication stressed limits in SPD, ID Cards, etc. to protect Company and Agent**
- **Ran great for 3 years**
 - < \$100 per EE per month
- **New company President instructed all not to mention \$10,000 Max. & other limits**

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ER – Communic. Fraud...

B

- **He wanted EEs to think that they had a regular PPO plan with high limits!!!**
- **Agent refused and resigned on the spot**
 - Major account
 - Excellent reference source
- **A year later –**
 - Plan & ER sued by multiple EEs & Providers
 - High Claims
 - Omission of limited benefits information in communications material

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ER – Communic. Fraud...



- Company loses ALL law suits
- Damages \$1,000,000 claims
 - Plus attorneys fees
- **ER has FIDUCIARY RESPONSIBILITY**
- Surprised no Jail Time

ER – Financial Fraud



- Withhold premiums and not remit to Insurance Company or Retirement Plan Investment company
- **Breach of Fiduciary Liability!**
- **Prohibited Transaction under ERISA!**
- **Criminal Penalties!**
- **Jail Time!**

ER – Financial Fraud...



- **Hotel – Management & Financial Problems**
 - 300 EEs
 - Tax Withholding
 - Medical Withholding
 - 401(k) Withholding
- **Bank placed lien on Company checking account because they were late on Loan**
- **Owner becomes disabled**
 - Hires Management Company

ER – Financial Fraud...



- **Management company**
 - Runs finances, including Payroll & Loan
 - Taxes paid to IRS, Soc. Sec., State, etc.
 - **Never get on wrong side of IRS**
 - Medical premiums paid to Insurance Company
 - **EE would have known quickly - no benefits from providers b/c no coverage**
 - 401(k) withholdings go to corporate checking account – Bank sweeps account to pay loan!
 - **Buys more time because 6+ months before statements missing are demanded**

EE – Financial Fraud



- Dennis Dowd - Hitachi America case 2008
- Hired 1979
- Senior Manager of Corporate Benefits
- In 1997 opened bank account “Hitachi Group Insurance Health & Welfare Trust”
- \$8,000,000 flowed into account
 - \$4.9M claims reimbursements from re-insurance
 - \$2.9M from insurance companies (subrogation), health care providers,

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EE – Financial Fraud ...



- Checks to Hitachi America
- Checks to the Plan
- Used to pay
 - \$1M in credit cards
 - \$2M payable to Dowd – various spellings
 - Combinations & Permutations???
 - \$42,000 Lexus
 - \$625,000 house in Vero Beach, FL
 - Univ. of CT - \$30,000 - Tuition

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EE – Financial Fraud ...

B

- Drew checks on H&W Trust account to pay for car, house, tuition, etc. in 2007
- House – Attorney’s Trust Account???
- Car dealership – why this account???
- UConn – why this account???
- Calls from payees – OK??
- Employer starts investigation
- **Dennis Dowd fired in March 2008**

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EE – Financial Fraud ...

B

- **Now ... watch the fast timeline.**
- ER turns case over to Feds 3/08
 - DOL – Office of Inspector General
 - DOL – Employee Benefit Security Administration
 - IRS – Criminal Investigation Division
- Dowd arrested 11/12/08
- Dowd pleads guilty 3/11/09 – goes to jail
- Dowd sentenced 57 mos. prison 9/22/09

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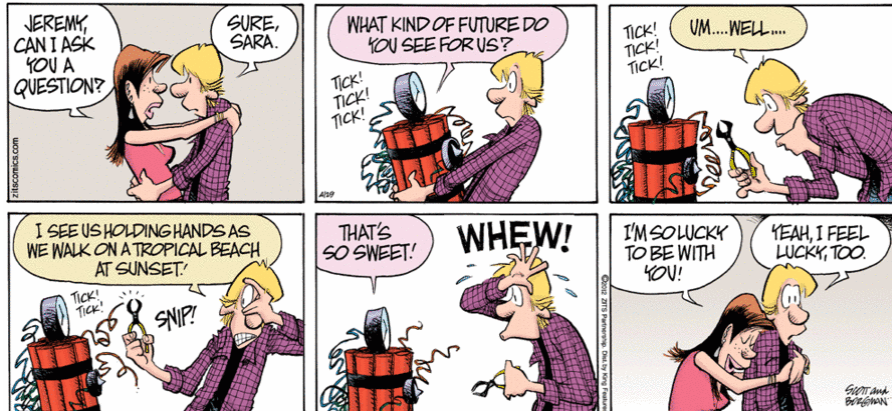
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Fraud & Disabling a Bomb

B

ZITS

BY JERRY SCOTT AND JIM BORGMAN



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TPA Retire. Admin. Fraud

B

- Small TPA – 50 plans
- Set up Master Trust at Bank Trust Dept.
- Comingled all the assets
- Professionally managed in 1 account
- TPA did the accounting and reconciliation for each plan and then each individual participant

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TPA Retire. Admin. Fraud...

B

- **Not unreasonable for small ERs**
 - No individual investment options
 - Reduce communication costs
 - Reduce administrative costs
- **Problem TPA has Financial Problems**
 - Withdraws money from Master Trust for “Benefit Payments”
 - \$ to TPA
 - Phony statements to participating ERs
 - Over reporting assets

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TPA Retire. Admin. Fraud...

B

- **Shades of Bernie Madoff but not a Ponzi Scheme**
- **It unraveled when some ERs retired and wanted their money.**
 - First couple OK
 - Then Fund is short of cash
- **Like Madoff, he went to Jail!!!**

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EE – Illegal Immigration

B

- EE presented what appeared to be valid documents at time of employment
- Accepts Medical coverage for himself
 - Declines family coverage
- EE was promoted at company – more \$
- Goes to HR & asks to enroll family who have been living with him for several years
- HR response – needs qualifying event outside of open enrollment

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EE – Illegal Immigration...

B

- 2 months later goes to a different HR person
 - Says family just moved here (Qualifying Event) for first time
 - Presented copies of very recent Passport Entry
 - Therefore, should be eligible to enroll.
- **They made him wait to Open Enrollment!**

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Amorous Retiree



- **Defined Benefit Retirement Plan**
- **Charles moves from Atlanta to Israel & lives on Kibbutz**
- **Dies at age 71**
 - Plan has Joint & Survivor spouse benefit
- **Widow comes forward & presents**
 - Valid marriage license
 - She was listed as his pension beneficiary
 - She had been a dependent on his Retiree Medical plan
 - She sign an affidavit asserting that she was Charles' widow.

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Amorous Retiree...



- **Pension Board approves spousal pension**
 - Reviewed by Internal Audit Division
 - Reviewed by the pension attorney
- **Benefits commence \$4,000 per month**

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Amorous Retiree...



- After a year, another woman says she was Charles' widow and wants spousal benefit
- **2nd widow comes forward & presents**
 - Valid looking marriage license
 - She completes paper work
 - Alleges 1st widow was divorced from Charles many years before he died
 - Alleges there was a 3rd woman that Charles married, though not legally

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Amorous Retiree...



- **2nd widow & 3rd woman & Charles all lived together**
 - She provided pictures as proof
- **Employer contacted court where the alleged divorce occurred**
 - Final judgment decree was there
 - Divorced spouse's signature did not look like the 1st widow's handwriting???
 - Suspended payments to all widows

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Amorous Retiree...

B

- Retiree medical plan costs & fraud there
 - Charles
 - 1st widow; 2nd widow; 3rd wife
 - 7 children in all
 - ED treatment costs?

Frauds on Small ERs

B

- Paula Garst – Amarillo, TX
 - Indicted Nov. 30, 2007
 - Healthcare Fraud; Wire Fraud; Mail Fraud; Money Laundering
 - www.justice.gov/usao/txn/PressRel07/garst_indict_pr.html
- Sentenced to 3 years in Federal Prison
 - May 22, 2008
 - www.justice.gov/usao/txn/PressRel08/garst_HCF_sen_pr.html

Medicare Fraud

B

- 60 Minutes ran a program on Medicare \$60Billion Fraud in Florida in 2009.
- Shack submitting claims to Medicare & receiving payments for false claims using stolen identities of retirees
- www.cbsnews.com/stories/2009/10/23/60minutes/main5414390.shtml

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Miscellaneous Fraud Schemes

B

- Short Term Disability
- Long Term Disability
- Workers Compensation
 - Ran into an employee of my wife on the ski slopes in VT and out on workers comp with a bad back because she fell – 15 years!!!
 - **San Francisco Treat** – running race while disabled (Emily Hegner - San Francisco Chronicle 5/23/11)
 - ABC News – great 4 min. video
www.youtube.com/watch?v=wdhk88TcPho

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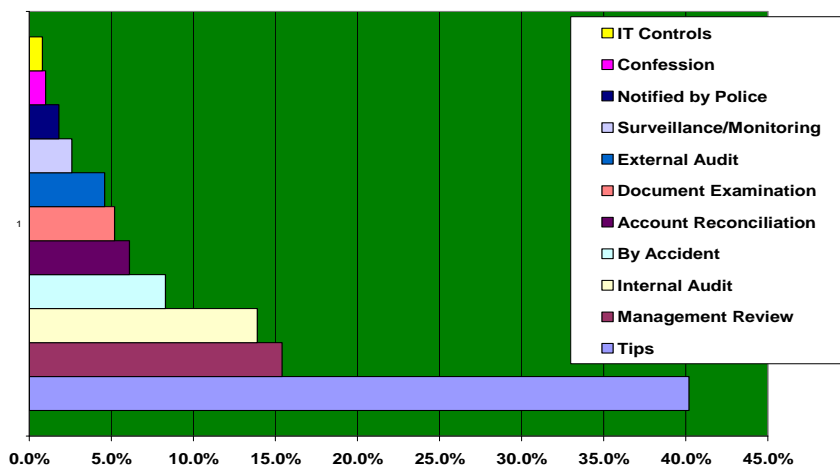
Miscellaneous ...

B

- Pharmacy submitting claims for uninsured using other customers good ID with coverage b/c no EOBs issued – cost \$240,000 before it was caught.
- Boston pharmacist hired street people to get Rx & then did not fill them but billed Medicaid – free COGS.
- Self-funded plan claim audits- discussion
 - LinkedIn – Benefits and Health & Welfare Professionals group (6,100 Members)

Detecting Occupational Fraud

B



Source: Association of Certified Fraud Examiners

Tips – Preventing/Detecting *B*

- **Separate bookkeeping, billing and account reconciliation functions.**
- **Company Owners / Senior Executive should receive bank, credit card, insurance list bill statements.**
- **Establish a hotline for receiving tips of suspicious activity.**
- **Educate employees on the cost of fraud to the company.**

Source: Association of Certified Fraud Examiners

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Tips – Preventing/Detecting... *B*

- **Culture of Risk Management Awareness.**
- **Encourage co-workers to report fraud.**
- **Create a climate of honesty and integrity.**
- **Use continuous auditing software.**
- **Rotate sensitive jobs.**
- **Use background checks in hiring.**
- **Prosecute when you discover.**

Source: Association of Certified Fraud Examiners

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Resources – What To Do



- **Employer** – HR or CFO
- **DOL / EBSA** – Fraud Investigations
 - www.dol.gov/ebsa
- **Medicare** – Fraud
 - www.cms.gov
- **Department of Justice** - Fraud
 - www.Justice.gov/criminal/fraud/contact/report-fraud.html
- **Medicaid** – Fraud
 - State issue – start with Attorney General
 - www.cms.gov good general information

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What To Do ...



- **State Insurance Department**
 - Life – Disability – Medical
 - Workers Compensation
- **False Claims Act**
 - http://www.law.cornell.edu/uscode/uscode_sec_31_00003729----000-.html
- **Association of Certified Fraud Examiners** - www.acfe.com
- **Global Options** – **Outside firm**
 - www.globaloptions.com

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What To Do ...



- **Lessons from Dark Side**

- By Paul Gallagher 7/1/09 in HR Executive Online
- **Case history of husband & wife in MN**
 - They are “normal” now but also, ex-cons.
 - She was a staffing vendor to his Dept.
 - \$1M bogus invoices
 - Journey begins with one penny
 - 2-3 years in prison; split up kids
 - Working on Master of Divinity degrees

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What To Do ...



- **The Fraud Diamond: Considering the Four Elements of Fraud**

- David Wolfe, Forensic Accountant
- Dana Hermanson, Professor of Accounting at Kennesaw State Univ.
 - Incentive
 - Opportunity
 - Rationalization
 - Capability

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Hammer – Fiduciary Liability

ERISA creates personal liability for fiduciaries. This places the fiduciary's personal assets (house, cars, bank accounts, etc.) at risk. In Baker v. American Mobile Power Corp., the court held an individual personally liable for losses to a plan, and stated, **“While we are not unsympathetic to his burden, we note that fiduciaries may be insured for this type of liability. It would appear that prudent fiduciaries would have their plan or employer’s secure such insurance.”**

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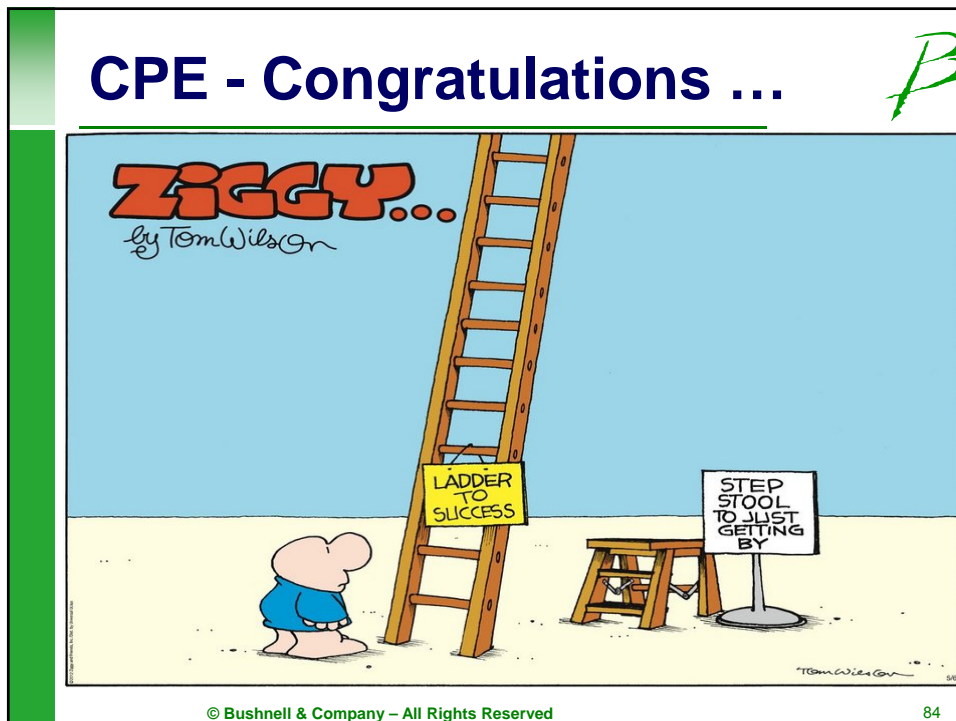
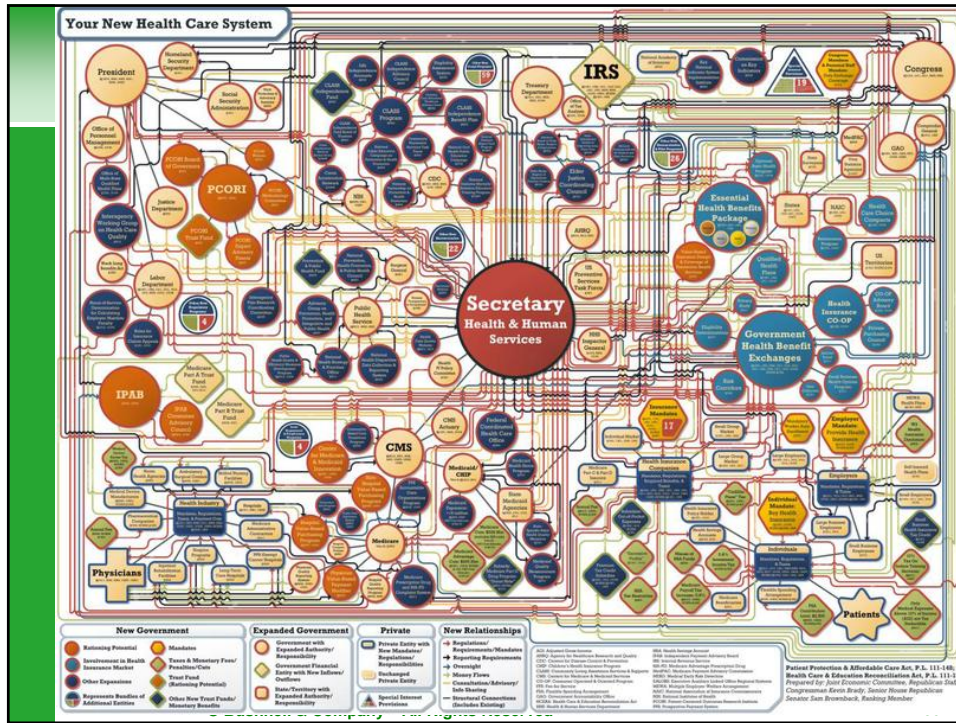
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Hammer – IRS Tax Fraud

- Under reporting of income
- Back taxes, penalties & interest
- Jail time (e.g. Pro Golfer - Jim Thorpe; Tax Masters – Patrick Cox; Hotelier – Leona Helmsley; Ms. Perfect – Martha Stewart; Gangster – Al Capone; + many more)
- Opinion “IRS is the most brutal collection agency on the planet”.

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Questions ...



- Thank you and congratulations on your endurance.

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