

Editor:

I would like to add some missing information to the discussion between Bursztajn *et al.*¹ and Robert Miller² of compensation claims and patient care.

Dr. Miller raises the question of the social cost of paying benefits to highly compensated disability claimants whose affective illness is stabilized but whose associated personality disorder urges them to refuse effective psychotherapy. He asks, "What should be the responsibility of a [an insurance] company when an insured individual refuses to cooperate with treatment recommended by treaters or independent evaluators?" He lists court decisions that have supported refusal of benefits based on noncompliance in medical reimbursement and Social Security claims.

There are several answers. One is that disability insurers do stop payments in these circumstances, but disability policies in highly compensated individuals are usually "individual" policies. These policies are not covered by the Employee Retirement Income Security Act (ERISA), and without it, the insurers are wary of the fine points of special "bad faith" and "punitive damages" regulations that apply. So they struggle, but do not act decisively, and react only after many years. By then, the individual's complex work skills are so out of date that there is no possibility of employment that meets the necessary definition of "gainful."

A second answer is that insurers have taken responsibility by changing the wording of newer policies to support appropriate care. In my years of working with a disability insurer writing new policy language, we replaced the words "regular treatment" with "standard treatment" or "appropriate treatment" and added "can work, must work" definitions for partial disability. This wording can support the independent examiner's recommendations, but often the treaters become "advocates." When they will not cooperate any better than the patient, the court is likely to support the treater's opinion over that of an "expert," leaving the insurer never wanting to go to court.

A third problem is harder to describe but has to do with the definitions of disability. In the case Dr. Miller describes, the patient has reached what the

insurer would call baseline. Disability in a highly successful person means there has to have been a significant change in the ability to function (or others' tolerance). If a personality disorder is longstanding, it was surely present during the period of work and success, long before the disabling episode of affective illness. But the treater may have seen the patient only after the onset of the Axis I episode. Treatment files with no history abound, and no distinction may have been made between the Axis I and Axis II diagnoses. The treater has come to believe the patient cannot function until he or she is "better than new" and supports disability status based on the ongoing personality problem. The insurer could end benefits then, not because of noncompliance but because the patient has reached baseline. That might actually motivate treatment—or seeking employment. But insurers, uninformed or stymied, do not get records from the primary care physician, records that usually document the existence and impact of the personality disorder long before the episode.

So everybody loses.

Marcia Scott, MD
Harvard Medical School
Boston, MA

References

1. Bursztajn HJ, Paul RK, Reiss DM, *et al*: Forensic psychiatric evaluation of workers' compensation claims in a managed-care context. *J Am Acad Psychiatry Law* 31:117-19, 2003
2. Miller RD: Disability and psychotherapy: a response to Bursztajn *et al*. *J Am Acad Psychiatry Law* 32:197-9, 2004

Editor:

We welcome a chance to expand on Professor Gunn's exposition¹ of the Royal College of Psychiatrists' statement on the death penalty.² His analysis is necessarily limited because, not being a member of the Ethics Committee, he was not party to our extensive deliberations on this matter and therefore may have missed the ethics reasoning underpinning the statement.

First, although the statement was due for review because of time elapsed since the last review, the impetus for the review of the previous statement arose from the fact that previous statements gave little in the way of advice to members because it was assumed