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Interview Techniques to Make Examinations Under Oath More Effective

I. Information Gathering Strategy

Information is necessary to determine whether a claim is legitimate. The most important information source is the policyholder who made the claim, and the sources to which they direct the investigator, both intentionally and unintentionally. Burglary and theft claims, mysterious disappearance, slip and falls, fires and many other types of claims take place with few, if any, witnesses. Determining whether a claim is legitimate or fraudulent often turns on the credibility of the insured or claimant herself. When the person has been untruthful in statements or testimony, it is the most compelling indicator of fraud. If a jury does not believe the insured or claimant, they will not believe the claim is legitimate and fraud will be proved. For all of these reasons, taking an effective statement can be the most important part of the claim investigation. Obtaining information in a statement that sets up an effective Examination Under Oath makes it more likely the truth will be revealed and be able to be proved.

II. Techniques for Interviewing

An effective interview is not a random process. It must be carefully structured and conducted. An adjuster or SIU cannot approach the interview haphazardly. There must be clear objectives in conducting the interview, looking for specific information and facts that will assist in the claim investigation. All of the necessary questions must be asked and just as importantly, the interviewer must follow-up on answers which require further questioning on the issue. The interviewer also must be able to judge when information from other sources must be obtained before an effective question can be asked of the insured. This all requires active listening.

After the interview has been conducted, the adjuster or SIU must carefully and methodically review the statement to look for the indicators of deception which suggest a fraudulent claim.

The initial statement of an insured or claimant typically is taken by the assigned file handler/claims adjuster. This is a critical opportunity to obtain a statement before an adversarial relationship develops. It is understood that this is part of the claims process and most times they will be fully cooperative. This is usually done within a few days of the loss or accident and the person's memory will still be fresh. There may be no better time to take a statement. This makes it an important occasion to actively listen to the answers, follow up and clarify the answers. It also is a time to make sure direct, not evasive, answers are given and to follow up if they are not.

A. Details

In every statement, the details are telling. The initial questions should be broad and open-ended. This allows the person to tell the story in his or her own words. That will give the first indication of candor or deception. Details intentionally omitted indicate an area or issue the person does not want to discuss or divulge. While it may be something the person considers confidential, personal or embarrassing, it may be that the person is concerned about discussing that subject because of a perceived vulnerability or sense of guilt. Purposely evasive answers to questions or non-responsive answers should be viewed with skepticism. The interviewer must follow-up to obtain the details in those and all other areas. Times, places, witnesses and corroborating evidence such as ATM withdrawals, store purchases, cell phone calls and toll road records can pinpoint precisely where somebody was and when they were there. The interviewer must ask for this information.

B. Differences

An initial statement must be compared with all subsequent statements, including those from other persons and witnesses, to determine if there are any substantive differences or contradictions and to identify any variations in what has been said. Those differences will have to be resolved through later statements or other fact investigation to establish which version is the true version of the facts. Not all inconsistencies mean the person is lying, but they are signals to follow up.

C. Language

Analyzing the "Language" used does not only mean whether the person is speaking English or another language. It also refers to the manner of speaking, the tone of the subject's remarks and the "phraseology" used. These are tools that a subject can employ to accomplish an objective. A subject who employs belligerence and hostility in his or her remarks may seek to intimidate the adjuster into a quick settlement or to not ask questions in an area the person wants to avoid. Conversely, a solicitous and congenial subject may seek to "sweet-talk" the company into a quick settlement by

coming across as too nice a person to be seeking to perpetrate a fraud. Other times a person may reveal their ulterior motive by the words they use in a statement, such as responding to a question about the cause of a loss and stating, "I swear to God, I don't know how it happened." All of these and more can give an insight into the person providing the statement.

III. Detecting Admissions

A person making a statement can unwittingly admit a fraud. It may not be as direct as stating "I admit it, this claim is a fraud," but certain statements and comments can only be seen as an admission, particularly when made by a person who is already anxious or nervous about having committed fraud.

A. Unique Words/Phrases

Forensic experts will tell you that certain words and phrases are inherently incriminating. A denial of fraud when an accusation has not been made is a sure sign. Repeated use of the words "I think" or "I believe" reveal a hesitancy to commit to a statement. Use of the plural ("we" or "our") when referring to events taking place at a time when the subject was alone is usually a sub-conscious attempt to suggest corroboration when none is available. When asked about key details, a response that "I don't remember" or "I'm not sure" usually means just the opposite. Mocking the suggestion of fraud is another form of tacit admission, such as saying "I'd have to be pretty stupid to do that."

B. Deceptive Language

There are many forms of deceptive language. The common feature is that they are all intended to mislead the interviewer. A classic indication of deception is when a subject answers a question with another question of his or her own. "Do you think I did this?" "Are you saying I'm a fraud?" Another indication of deception is when the person says that being told of the loss event, they thought it was a joke. "My neighbor called me and said my house was on fire, but I didn't believe him and thought it was a practical joke." When a person says "to tell you the truth . . ." or "let me be honest with you . . .", what you are about to hear is almost certainly *not* the truth.

IV. Statement Analysis

To effectively evaluate a statement, it must be reviewed in precise detail.

A. Recorded Statement Facts

It all comes down to the facts. At the outset, it must be recognized that there are two types of facts: true facts and alleged facts. The first step in evaluating a recorded statement is to segregate the true facts from the alleged facts. Facts which are known to be true should be noted as such. These facts can be independently corroborated and proved to be true. The alleged facts are a different matter. Some of them may well be true. Most people engaging in deception will intersperse fact and fiction. A little truth tends to bolster the credibility of the overall statement. A clever fraud will try to provide as many “true facts” in a statement as possible, so that it all appears to be the truth. The only way to determine if “alleged facts” are true is to conduct further investigation, so they can be verified or refuted independently. Of course, some alleged facts may be incapable of independent verification. An insured who claims she came home to see a masked man running away from her back door poses a real challenge. In all likelihood, that fact will never be verified as true unless the person was apprehended. And if the statement is false, it is by definition incapable of proof.

When a statement is being analyzed, it should be measured against all other statements taken in the case. As with the subject’s statement, those other statements must be carefully reviewed and analyzed. The true facts must be separated from the alleged facts in those statements. The same process of verifying or refuting the facts must be employed. When another witness or person has given a deceptive statement, it must be taken into account in evaluating the overall investigation of the claim. Once a person has been shown to be deceptive and untruthful, nothing else should be believed except that which can be independently verified and proved.

B. Participant’s Interaction

The interaction between the subject of an interview and the interviewer can provide further evidence of deception and fraud. When a person being interviewed asks a lot of questions during the interview, particularly concerning the results of the investigation thus far, it may be that they are truly a victim and have a well-intentioned interest in learning about what has been uncovered in the investigation. However, it can often reveal an apprehension that the investigation is leading straight back to them. There is another aspect of interaction and that is “physical” interaction during an interview. There have been many studies made of the “body language” indicative of deception. Folded arms, avoiding eye contact, slouching in a chair, hands picking up and putting down things on a table, and any number of other “signals” may suggest deception based upon physical conduct. The need to take a sudden bathroom break or smoke a cigarette may be a sign that the person is feeling pressure and needs to escape the situation.

V. Strategies

A. Statement Review

As noted above, a detailed review of a recorded statement is necessary to properly evaluate the statement in terms of deception and fraud. A close reading of the transcript may reveal things which were not noted at the time of the interview. Similarly, listening to a recording may have the same result. Stress causes a change in the voice tone and the pace of talking, which is usually associated with the stress of trying to conceal deception. When listening to a recording, such changes in the voice pattern should be noticed and correlated to the issue being discussed at that time.

B. Deceptive Phrases

There are certain phrases used in an interview that signal deception. A lack of precision is one indication, such as when a person says they were last at the loss site “around 9 or 10 or 11 that morning” and were there for about “5 or 10 or 15 minutes,” even when they just went inside to get some car keys. Another deceptive phrase is when a person is directly asked about involvement in an improper or fraudulent activity and responds “never” instead of simply saying “no”.

C. Non-Verbal Pairing

This technique refers to comparing the verbal responses during an in-person statement or EUO with the non-verbal behavior of the person in making those responses. Avoiding eye contact, fidgeting in the seat, folding hands, sitting back in the chair, looking out the window, sweating, sitting sideways, placing hands behind the head, and spatial distancing from the interviewer are some examples of behaviors which are commonly associated with deception and untruthfulness.

D. Subsequent Statements

When an insured or claimant has been interviewed immediately after the loss and additional witnesses have been interviewed in the course of the investigation, the adjuster or SIU should have a good idea by then whether the claim is suspect. Armed with the information developed from those other statements, it is time to consider a subsequent statement of the insured or claimant. The most common means of doing this is by invoking the right to conduct an Examination Under Oath of the insured. The objective is to fill-in any gaps in the investigation of the claim, resolve any uncertainties about the facts, and if appropriate, confront the person about the inconsistencies and deception. An Examination Under Oath is generally preferable when possible.

VI. Setting Up for An Examination Under Oath

Although Examinations Under Oath are not taken in most claims, all recorded statements should be taken with an understanding that there may be an examination.

The more detail that is obtained in the recorded statement, the easier it will be to take an effective examination. If precise answers are obtained, the witness has less wiggle room in the examination. If evasive answers are followed up, the witness can be better pinned down for the examination. Precision in questions also is important.