

Claims Best Practices - What Not To Do!

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Whether you are sued or receive a threatening or demanding letter criticizing your work, it's hard not to take it personally. While the natural reaction is to immediately respond in one way or another, what you really need to do is take a deep breath, step back and evaluate the situation objectively. Your personal feelings notwithstanding, there is a certain protocol you should follow to correctly respond to a claim. You need to make sure the right people are notified, the best defense assembled and that your professional interests are protected. You also need to make certain not to do the wrong things!

A major part of that protocol is NOT taking certain steps that could undermine your case.

- 1. DON'T overreact.** No matter how you're notified of a claim – whether it's an owner's phone call, an attorney's letter or legal process papers served by a court officer, your job is to remain calm and not overreact. Recognize that you won't be able to settle the problem right on the spot and any reactive comments will likely come back to hurt you.
- 2. Don't admit fault.** Often, if we think we did do something wrong, we are inclined to admit this up front and promise to take care of it. This is the last thing you want to do. You can kill your case from the start by admitting you are wrong. You may not be.



- 3. DON'T make any statements until conferring with your insurers and/or attorney.** This follows closely on number 2 and although it seems obvious, making what seems like an innocuous statement (e.g., "I was wondering when I'd hear about this") to the other party becomes part of the record and later could be interpreted as an admission of liability. Prior to consulting with those in the business of protecting you, the less you say to anyone about the claim, the better.
- 4. DON'T wait to contact your agent/broker or insurer.** The earlier you notify your broker or your insurance company, the sooner they can help you. Unlike a First Growth Bordeaux, claims never get better with age. Most likely, your insurer will immediately begin investigating the potential liability involved and deciding the best course of action to take (e.g., retaining an expert to evalu-

ate the claim) to defend you. The last thing you want to do is take the “ostrich” approach and hope the matter goes away. The worst case is if you turn the claim in late and your lack of timeliness adversely affects the insurance company’s ability to defend the matter, they could deny the claim.

5. **Understand your contractual obligations under your insurance policy.** The sidebar to this article on page 3 is taken from the ISO Commercial General Liability Policy and spells out an insureds **Duties in the event of an Occurrence, Offence Claim or Suit.** It’s pretty straight forward. You must notify the insurance company as soon as practicable (a term which isn’t defined). You must record specifics of the claim. You must “immediately send us copies of demands, legal papers, etc., and cooperate with the insurance company (immediately is not defined). Finally, you agree not to voluntarily make a payment, assume any obligation or incur any expense. Note that violation of this provision can jeopardize your coverage.
6. **DON’T wait to compile documentation.** Getting started right away means you’ll be able to quickly pass your records and documentation on to those defending your interests. It’s also a requirement under your insurance coverage.
7. **DON’T under any circumstances destroy documents related to the matter in question.** As soon as you have any inkling that there’s a dispute or circumstance that may give rise to a claim, even if you don’t appear to be involved, you should preserve all your records and documentation. If your firm has a policy of routinely destroying documents after a certain period of time, you’ll also want to circulate a “litigation hold” memo within the firm. The memo should go out to your staff as soon as you learn about the possibility of litigation – don’t wait until you’ve been

served with a summons and complaint. Documents that are seemingly randomly destroyed will not play well in court.

8. **DON’T sign or accept releases from anyone.** In fact, you shouldn’t sign any document related to a claim unless advised to do so by your attorney or your insurance company. Otherwise, you could end up releasing the party actually responsible for a problem from any liability, leaving you as the sole defendant. You may also be presented with only an incomplete release, exposing you to liability for additional components of the claim.
9. **DON’T agree to make any payments or provide any services.** Most people have a natural inclination to try and solve problems. While this is admirable, agreeing to make payments or perform services to resolve the problem will be considered an admission of fault. Don’t agree to provide a service or make a payment – even if it falls entirely within your deductible – without the advice and consent of your insurer. You can’t spend the insurance company’s money without their consent and if you prejudice the case without their consent, an insurance company can deny coverage. By acting unilaterally, you could jeopardize your insurance coverage.
10. **Be wary of providing free advice or counsel to resolve a problem.** This falls under the “no good deed goes unpunished” doctrine. When in fact you are trying to help others, you might actually be hurting your case.

Best Practices

Correctly responding to claims and circumstances which can give rise to a claim is a critical risk management process. You should educate your staff on how to proactively identify problem situations and how to respond to those situations. The way a claim is managed will have a material effect on what is ultimately paid out on that claim!

Duties in the Event of Occurrence, Offense, Claim or Suit

a. You must see to it that we are notified as soon as practicable of an “occurrence” or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the “occurrence” or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the “occurrence” or offense.

b. If a claim is made or “suit” is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or “suit” and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or “suit” as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or “suit”;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the “suit”; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured’s own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

Risk Management Seminar Series



Sexual Harassment Prevention Training - Webinar

Wednesday, Sept. 11 - Webinar

8:00am - 10:00am

Sexual Harassment Prevention Training - Carlsbad

Wednesday, Sept. 25

7:30am Registration

8:00am - 10:00am Program

Subcontractor Pre-Qualification Process for Safety

Wednesday, Oct. 2nd

7:30am Registration

8:00am - 10:00am Program

This year we are offering certain seminars in our Carlsbad office (5857 Owens Ave., Suite 300, Carlsbad, 92008.

To register, click on the ‘register now’ button in the announcement email, or contact Bethany Mongold at Mongold@cavignac.com or call 619-234-6848.

Live Well, Work Well

August 2019

Health and Wellness Tips for Your Work and Life
Provided by Cavnac & Associates



1 in 5 Deaths Worldwide Associated With Poor Diets

According to a recently published study, 11 million deaths in 2017 were attributable to dietary risk factors. That total number translates to one-fifth of the world's total deaths. The study defines dietary risk factors and poor diets as ones that are heavy in sugar, salt and trans fats.

While this study reveals startling numbers, it's a well-known fact that eating healthy can help reduce your risk of developing chronic conditions like heart disease or Type 2 diabetes. By keeping such conditions at bay, you can maintain your overall health and be well on your way to living a long, healthy life.

Here are some tips to help you start eating healthier:

- **Balance your plate with a variety of foods.** Your plate should be 50% fruits and vegetables, 25% lean meat, poultry or fish, and 25% grains.

- **Get a personalized eating plan.** Speak with your doctor to develop a plan that will give you the amounts of each food group you need daily. Your doctor may recommend you seek out a registered dietician or nutritionist to create the best plan for you.
- **Beware of sweetened drinks.** Sodas and sports drinks are high in calories and sugars or sugar substitutes. Whenever possible, choose water over these drinks.
- **Read food labels carefully.** Make sure to always read nutrition labels to find out how healthy a particular food may be. It's also important to check the ingredient list, which is different from the nutritional label.

For more information on how you can improve or maintain a healthy diet, contact your doctor.

Fruit Slush

2 ⅓ cups cantaloupe or watermelon (coarsely chopped, peeled, seeded)
1 ⅔ cups kiwi (peeled, chopped)
2 Tbsp. sugar
2 Tbsp. lime juice
2 cups water
Ice

Preparations

1. In a blender, puree fruit with sugar and lime juice until smooth.
2. Combine fruit mixture and water in a large pitcher.
3. If desired, pour through a strainer to eliminate pulp.
4. Cover and refrigerate for up to a week.
5. To serve, stir well and pour into tall glasses over ice.

Makes: 4 servings

Nutritional Information (per serving)

Total Calories	62
Total Fat	0 g
Protein	1 g
Carbohydrates	15 g
Dietary Fiber	1 g
Saturated Fat	0 g
Sodium	22 mg
Total Sugars	15 g

Source: USDA

Your Heart Rate: Indicator for Health and Fitness

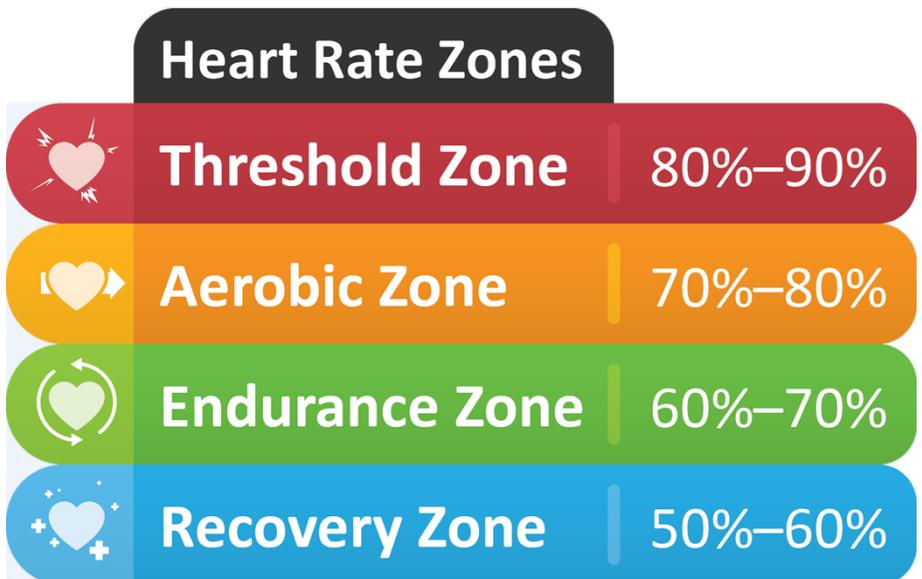
You've probably noticed that your wearable fitness technology is monitoring your heart rate—but have you ever wondered why? There's a direct relationship between your heart rate and your workout's intensity.

Resting Heart Rate

As the name suggests, your resting heart rate is the number of times your heart beats per minute (bpm). While your resting heart rate can vary daily, the typical range is 60-100 bpm. Improving your cardiovascular health can reduce your resting heart rate.

Heart Rate and Exercise

When you're working out, you should strive to keep your heart rate within a target heart rate zone. This target heart rate zone is 50%-85% of your maximum heart rate. To calculate your maximum heart rate, subtract your age from 220. From there, you can find out your target heart rate numbers by multiplying your maximum heart rate by your target heart rate percentage. Once you've calculated your maximum and target heart rates, you can use these numbers to monitor your workout's intensity and track your fitness.



Introducing Foods Early May Help Prevent Allergies

According to a new report from the American Academy of Pediatrics (AAP), introducing allergenic foods like peanut products, fish or eggs may help prevent food allergies in infants at high risk of developing one. The report explains that when allergenic foods are given to infants as early as the age of 4 months, the immune system's cells can take up the allergenic proteins and develop a tolerance to them.

While most infants aren't considered to be at a high risk for developing food allergies, the report states that infants with a low or standard risk of food allergies can benefit from early introduction, too.

It's important to remember, though, that every infant is different. For more information, consult your pediatrician.

Spotlight On



Cavignac & Associates is proud to support local and non-profit civic organizations, including Workshop for Warriors:



Workshops for Warriors is a State-licensed, board governed, fully audited 501(c)(3) nonprofit school that trains, certifies, and helps place Veterans, Wounded Warriors, and Transitioning Service Members into advanced manufacturing careers. Students earn nationally recognized portable and stackable credentials.



**642 Total Workshops for Warriors
Graduates and Counting**

For more information, go to www.wfw.org