



Just Say No to Insurance Company Requests for Overpayments- Part One

When the insurance companies send you a "request" for repayment of an overpayment -
JUST SAY NO!

Like every other podiatry practice in California, my associates and I are contracted with multiple insurance companies to provide podiatric services. As a result of these contracts, we periodically receive "requests" from the insurance companies for repayment of overpayments. However, unlike many other podiatry practices - when we receive a request for repayment of an overpayment - we just say no. You should also say no and here's why.

A California case, [City of Hope Medical Center v. Superior Court](#), 8 Cal. App. 4th 633 (1992), stands for the proposition that a doctor who accepts assignment, provides valuable medical services, submits a bill to the insurance company for the services provided (and makes no false misrepresentations to the insurance company to induce payment), receives payment from that insurance company for the services provided, and has no notice of the insurance company's mistake (overpayment) at the time of payment — does not have to repay the insurance company a penny of the overpayment. This is the law in California but interestingly, this same basic fact pattern has been litigated in many other jurisdictions and the courts have arrived at the same conclusion.

Why have the courts ruled in our favor and why does this rule sound counter-intuitive? Let's take the counter-intuitive feeling first. The general rule of applicable law (equitable restitution) says that a person who is paid more than he deserves to be paid for a service is required to repay the difference between what he was owed and what he was paid. In legalese: a person unjustly enriched at the expense of another is required to make restitution to the other. This kind of sounds OK but the courts have carved out an exception to this rule as spelled out above in [City of Hope](#).

Why have the courts made this exception? There are several reasons. Without an exception to the general rule of equitable restitution, the doctors would be continually exposed to refund liability for the duration allowed by the state statute of limitation (four years in California) for every insurance payment on every claim paid. The courts know what a nightmare this would be and the courts understand the need for "closure" on the issue of payments. In addition, while the courts view both the insurance company and the doctor in these circumstances as "innocent

persons," the courts correctly assert the insurance companies are in the best position to know the policy provisions and the extent of coverage obligations regarding each of the policyholders.

Although not specifically stated in the written decisions, it seems obvious the courts grasp the fact the insurance companies set the fees, have complete control over claims processing, and make payments based on the insurance companies' own internal controls. In plain speak, the insurance companies and the doctor are both "innocent" parties but the overpayments are due to the negligent acts of the insurance companies. As a result, the various courts have ruled, as between the insurance company and the doctor, the insurance company is the more appropriate party to suffer the loss. This, of course, assumes the doctor has not induced payment by submitting an erroneous bill.

When you receive a request for repayment of an overpayment, assuming you meet the requirements stated above, you may tell the insurance company the following:

I am a contracted provider with _____ insurance company. I accepted assignment for the services provided to _____ on _____. The services billed were provided as stated on the claim form. I have made no misrepresentation to _____ insurance company to induce this payment, and I had no notice of your mistake at the time payment was made. Therefore, based on these facts and based on prevailing case law in California as stated in City of Hope Medical Center v. Superior Court, 8 Cal. App. 4th 633 (1992), I am respectfully declining your request for repayment. Have a nice day.

OK, leave out "have a nice day."

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