



2019 CLM Worker's Compensation Conference
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**#Risk ManagementIsWatchingYou: Tweeting, Hashtagging, and SnapChatting
Through the Trove of Social Media Avenues**

I. Social Media and Workers' Compensation Claims

Approximately 70 percent of the United States population has at least one social media account. Facebook has more than 2.2 billion social media users worldwide, with 300 million photos being uploaded each day. Social media has increased with the shift towards mobile platforms, which has increased the number of people using Twitter, Instagram, Tumblr, or Snapchat. By 2021, the number of worldwide monthly active social media users is expected to be 3.02 billion. This is a third of the world's population.

Everyone has seen the headlines of people making fraudulent claims and being caught on their social media accounts. In the recent year, there was a California corrections officer who claimed a back injury, and two days later after the alleged incident, he participated in a mountain bike race. This was seen on Facebook posts with videos taken from the officer's headcam video. He spent 45 days in jail and paid a \$5,000.00 fine. There was a Pennsylvania case, where the Court allowed Facebook and Social media posts in a matter that involved a nurse claiming post-traumatic stress disorder after a patient attacked her. There were photographs of the nurse happily participating in her son's wedding, her daughter's graduation and holding her new grandson.

II. Using Social Media Investigation technology

Given the substantial increase of social media users, there is the pressure to conduct routine searches on posts, tweets, and snapchats, all within real time. Using social media for surveillance in workers' compensation claims is a valuable strategy for detecting fraud. Social Detection uses real-time social media investigative software that

finds, filters and organizes the enormous amount of data. In the past evidence was often easily obtainable. Approximately 2/3 of social media accounts are “public.” However, with the increasing headlines, people have smartened up and have been more diligent in placing privacy settings on their accounts. There are a number of other tools that exist such as text-mining software, social network analysis, search terms and sequencing, cross-leverage data sources, and tools for real-time monitoring. Social Detection will walk through the innovative steps on how to hone searches and exclusions to reduce false positives.

III. New Challenges for Employer and insurance companies

With the increase of social media, the chances of being investigated after filing a workers’ compensation claim is very high. The National Insurance Crime Bureau reported an estimated \$7.2 billion in annual costs towards workers compensation fraud. There are new challenges with monitoring social media pages, mainly due to the large amount of information out in the cyber world, and the ability to retrieve the information in real time.

With the advantages of social technologies, there are risks associated with the spontaneous communications between images and messages being placed on the web. This is why the monitoring and use of social media to detect fraud has to be done carefully. If you are an insurance company, and there are one billion new social media posts that appear every two days, there has to be the right tools to fight insurance fraud. Insurance companies have to build the right team and use an investigator such as Social Detection, who understands the data available and how it fits into the context of a larger investigation. Given the large amount of data, there has to be clear objectives between the employer/risk manager, the insurance company and the investigator on what questions they want answered and where information, if found, may be able to develop additional leads. One example is employers have used nurse case managers to monitor injured employees and have used information they have provided to use for additional searches on social media.

IV. Legal Blocks and Alternatives to Creative Social Detection of Fraudulent Claims

Along with the creativeness and ingenuity of finding useful information on the social media pages, there has to be careful consideration as to how this information can be used in a legal case. There have been cases where investigators have gone into churches to conduct surveillance in workers’ compensation claims. Also, in North Carolina, there is a claim before the courts, where there were cameras placed on street lights. However, many people think Facebook posts, tweets, photographs and messages that were found in social media searches automatically come into evidence. This is not always the case.

The allowance of Facebook pages is discretionary and decided on a case by case basis. If more people are placing their social media accounts on privacy settings, an insurance adjuster or employer cannot “hack” an account, and they cannot become a “fake friend” on a person’s account. Therefore, the reliability turns to the chance a mutual friend has a public account and has relevant posts.

Also, insurance carriers have to be careful of sanctions when accusing workers of insurance fraud. There was a recent case in Texas where an injured worker and his wife were arrested and accused of committing insurance fraud based on a complaint by the insurance company. The insurance company suspected the worker was not using a gym that was prescribed for his rehabilitation. The company based this on an investigation that showed the workers was not electronically swiping his gym card. The evidence eventually did not warrant fraud and the Division of Workers compensation in Texas has the power to levy fines up to \$25,000 per day per occurrence for violations by insurers.

In Wurtenberg v. W.C.A.B. (Tenet Health System Hahnemann, LLC, No. 2293 C.D. 2015 (Pa. Cmwlth.2016), the Pennsylvania Commonwealth Court allowed photographs and social media posts as evidence to rebut a mental claim. Another case in Arkansas raised the use of Facebook posts and admissibility in a workers’ compensation case. Claimant was out of work for a hernia and submitted evidence that he was in excruciating pain that prevented him from doing any type of work. He also applied for Social Security Disability stating that the disability benefits should be permanent. The employer and insurance company were watching the claimant’s Facebook pages and found photographs of claimant drinking beer at a party. The workers’ compensation board terminated workers’ compensation benefits and the matter went on appeal. One of the key questions was whether the state board was allowed to consider Facebook photographs, and the appellate court replied yes, affirming the denial of the benefits.

The admission of evidence is discretionary, and legal counsel, insurance companies, employers need to be careful of what evidence is being selected for submission to the court.