When Your Health Insurance Says 'No' to Your Doctor's Orders

She was diagnosed with a rare cancer. Her doctors recommended the treatment they believed offered the best outcome, but her insurance company disagreed. For one woman with a thymic tumor in her chest, getting access to that treatment became a struggle.

Welcome to **Code WACK!,** where we break down how our healthcare system really works, what it means for you, and how we can make it better for everyone. I'm your host **Brenda Gazzar**.

For many Americans getting the right medical care isn't just about what their doctors recommend, it's also about what their insurance company is willing to cover. So what happens when those two don't agree? And why can it be so difficult for patients to fight back?

Attorney **Lisa Kantor** has spent more than two decades helping patients challenge health insurance denials. Her cases have ranged from eating disorders to life-threatening cancers, giving her a firsthand look at how insurers make coverage decisions and the consequences when they favor profits over patients. This is the second episode in a two part series.

To see how these disputes play out in real life. There's one case that has stayed with her.

Kantor: I just settled a case not too long ago with a young woman who went in for her regular mammogram. They saw something suspicious and thought she had breast cancer, and then when they did the follow up x-ray, they found a huge thymic tumor in her chest, which was affecting both her heart and her lungs. This, again, was a Kaiser case. Not only could they not find a surgeon to take it out, so she had to go out of network and pay for the surgeon. But then when she wanted radiation, and she actually was at a well-known cancer site around the country, and they recommended proton beam therapy because they were radiating right near her heart in her lungs. And Kaiser again denied it and said, it's not necessary we can do other kind of radiation.

Host: Proton beam therapy is an advanced form of radiation that can reduce unnecessary radiation exposure to healthy tissue. It can be especially beneficial when tumors are located near critical organs like the heart and lung. Lisa's client was fortunate to have family members who could pay for both the surgeon and the proton beam radiation costs that were ultimately reimbursed as part of a legal settlement. But the case took four years to resolve. Four years. So what did this case tell you about the way insurance companies make these decisions?

Kantor: We've taken on a lot of these cases because I am convinced that, again, insurance companies are looking at this wrong. First of all, they always assume proton beam is more expensive, which is not necessarily true. Second of all, this is sort of a chronic problem. They don't look at their members as long-term members. They look at their problems as immediate. So right now we have Lisa and she needs radiation and we can send her to our person who we've contracted with who's cheap and she can get her radiation, and we don't really care if three or four years from now she develops another cancer because of this radiation, maybe that'll be someone else's problem, not ours. So it affects, I think, this type of treatment, that kind of thinking, and I feel like we can save a lot of people from future terror of, of another cancer, future surgeries, future illness if we can get them to, to approve the proper treatment upfront.

Host: Lisa says that kind of thinking isn't limited to cancer care. She also represented a teenager with cerebral palsy who had simply outgrown his wheelchair. Why did the insurance company deny him a new wheelchair?

Kantor: 'You have one we already paid for one five years ago. You haven't demonstrated that you really need this new one. Yeah, no logical reason or no reason that the rest of us as regular human beings would ever rely on, but insurance companies are, are their own beast, and they come up with things **<laugh>.**

Host: The family eventually prevailed, but what should have been a routine equipment replacement became a year long legal battle.

Kantor: I tried to tell my clients that at this point I am convinced it is part of the insurance company's business plans to say no, first, don't take it personally. They're doing it to everybody.

Host: Listening to these stories, you might wonder if an insurance company's decisions seriously harm someone or even contribute to their death, why can't patients simply sue? The answer often comes down to a federal law called ERISA.

Kantor: First of all, the vast majority of us have insurance through our employer, which means it's covered by ERISA, which is a federal law, which limits your remedy to the amount you paid for your benefit for your treatment and attorney's fees. That's it. No emotional distress, no punitive damages, no wrongful death <laugh>. It's just about the benefits claim. On the non-ERISA side, it is somewhat easier, but it depends on your state laws and a lot of states do not allow those types of wrongful death actions. So it makes it really challenging.

Host: If a patient decides to challenge a denial, where do they begin?

Kantor: There's two different appeals processes. So let's split it up into those ERISA claims and the non ERISA claims. So if you have your insurance through an employer and you put a claim in, you must do an internal appeal to the insurance

company before you're allowed to file a lawsuit. A lot of people don't realize that. There's timelines. I think they give you six months to appeal. If you don't appeal, you cannot sue. So if you do appeal and you get denied, then you can file an action in federal court, federal court house jurisdiction. The beauty of federal court is the cases go a little more quickly, but as I said, your damages are limited. So in a federal court, ERISA case, the best way to do it is to actually pay for your treatment and try to get your money back. Not everybody can do that. But if you can, that's the avenue you have to take.

Host: In other words, timing matters miss the appeal deadline and you may lose your ability to challenge the denial in court. For patients already dealing with a serious illness, those procedural rules can be overwhelming. The process is different for those who don't get their insurance through an employer.

Kantor: In a non-ERISA case when you get a denial, you do not have to appeal. You can go straight to court in those jurisdictions that allow bad faith, then you sue for breach of contract and insurance, bad faith, and you can look for not only the amount you might have paid, but any damage that you incurred, financial, emotional damage. And then you can also try to get punitive damages. The purpose of which is to punish the insurance company rather than compensate you for your loss. The, the, the possibility of getting punitive damages. It's difficult to prove the requisite intent to get punitive damages. It does happen. The problem is that maybe one or two big bad faith insurance cases settle or go to verdict a year in our country, maybe a little more than that, as compared to the budget of insurance companies, how much money they're saving by not paying claims, this is okay with them for the most part. Right, it's kind of part of doing business.

Host: Cancer isn't the only area. Lisa sees denials happening. Increasingly, she's seeing insurers denied treatment for patients with eating disorders, even when the patient's own treatment team believes continued care is medically necessary.

So what's happening now is that, let's say for example a person is in a residential treatment center and the treatment center, the psychiatrist and the therapist are saying she needs to stay another, you know, two weeks. Then the insurance company gets the request and without talking to the patient, we'll say we're looking at the records and it's our opinion, she can leave now and we've decided that that treatment is no longer medically necessary. Well then you have the fight of the doctors and oftentimes the insurance company wins because they've got a doctor saying she doesn't need it. It's their determination. And most people don't fight it either go outta treatment, most of them go outta treatment, some of them private pay. So the trend I'm seeing is medical necessity denials backed by hired doctors, many of which have never treated patients. And in almost every case, they never talk to the patient or look at them.

Host: So what incentive does an insurance company doctor have to deny care recommended by a patient's own physician?

Kantor: I think he has every incentive to say no because that's his job. I mean, he's hired by the insurance company. I have no evidence of this and I've never been able to prove it. But I have to believe that if they hire someone who says yes every time, that person's not gonna keep their job. We have also discovered, um, by doing a lot of depositions and a lot of discovery, that there are a lot of ways that the insurance companies train both their doctors and their clerical people on sort of how to say no. What can you use to say no to this request? All these questions you need to ask in a trial. I once had a doctor on the stand talking about residential treatment for a young woman. And he testified that to stay in residential treatment, they had 17 separate criteria she had to meet, which is overwhelming to begin with, but that he was allowed to say no if, and these are his words, the child had a normal dysfunctional family. In other words, an everyday family because it was the obligation of that family to monitor her overnight. And so the insurance company could say no, which it's not true. It's, you know, you buy insurance so you don't have to be sitting up with your child all night making sure that they're okay. Uh, but that was his view and that was the basis of the denial

Host: Experiences like these leave many patients and families feeling that the system is stacked against them. Lisa argues that it doesn't have to be this way.

Kantor: So if I were the queen of health insurance <laugh>, I would get rid of pre-authorization so that nobody has to ask for that. And I would make it a rule that if a doctor asks for it, it gets covered. So the presumption should be coverage, cut out all that administrative work that goes on in the insurance company side, which is costly, both financially and emotionally to people who are denied. And then if the insurance company wants to challenge it, let them challenge it. Let them hit it head on. If they think, okay, you know what, this is fraud. You know, this person doesn't need it. Let them show that they don't need it because the vast majority of us are out there trying to get better, talking to reasonable doctors who are reasonably trying to help us get better and they shouldn't have to spend their time, which they do on the phone, fighting for what they want for their patients. Let's just assume it gets paid. Then the insurance company can challenge it, it turns it all on its head. But I think it's the only way to really protect people.

Host: She acknowledges it would take a change in legislation to make that happen.

Kantor: Major legislation, <laugh> and unfortunately the insurance industry, their lobbies are so strong that I don't ever see my fantasy happening 'cause they get to protect themselves in both the state and federal legislatures.

Host: Lisa also believes broader reforms are needed. One proposal she supports overall is an improved Medicare for all type system.

Kantor: Generally, I'm in favor of it. I think there would have to be some changes to the Medicare system, not a lot to make it truly fair because Medicare is directed at the elderly and a smaller portion. Those who are disabled who qualify after two years, and so they don't have coverage and they don't know how to deal with certain things. For example, Medicare has no code and doesn't cover residential

treatment for mental illness. Makes sense because not a lot of elderly people go into residential treatment for mental's illness. But we'd have to deal with that somehow and, you know, make changes to the system. But I think if we could make those changes and I don't think they'd be hard, a single payer system would be fantastic.

That was **Lisa Kantor,** founding partner of Kantor and Kantor, LLP. If you've enjoyed this code WACK episode, subscribe, leave a review and share it with a friend.

This podcast was powered by **HEAL California,** uplifting the voices of those fighting for healthcare reform around the country. I'm Brenda Gazar. Thanks for listening, and until next time, stay healthy.