

## **Excerpt 20: Rational for Denial - - Mop up all Resistance**

[Previous excerpt 19 "Not Medically Necessary -- Seize Their Weapons"](#)

Let's go back to the most critical document in your strategy game with the insurance company—the denial letter.

You have already dealt with their "stated reason for denial"—by studying and demolishing their definition of "experimental" or "not medically necessary" in your appeal.

Now, let's finish them off by going after their "Rationale for Denial."

"Rationale" means "underlying reason." In an insurance context, underlying reasons = scientific proof.

Insurance companies do not always mention their rationale in the denial letter. If they do include it, I am delighted. Why? Because insurers always pull their proof from their own medical policy statements. And, most medical policy statements are poorly written, out of date, and off message—with feeble, inappropriate proof that is easily disproved in an appeal.

Don't stop at rebutting your insurer's definitions. Take your battle right to the heart of their argument—the rationale.

Their rationale always comes straight from the Medical Policy Statement, which you already have in your possession.

You have already picked apart the verbiage in the med policy, to see how to turn it to your advantage. Now, you are going to boldly go where no insured person has gone before—into the "References."

"References" is the list of studies, professional organizations, government entities, or other sources which are listed at the end of the Medical Policy Statement. You will have to dig into them a bit, and demolish them in your appeal.

You will be amazed at how easy it is to discredit insurance company proof, and how powerful your discrediting will be, when you include it in your appeal. In the Sample Appeal, Acme Insurance gives two underlying reasons for denial.

I dedicate one section to each reason.

### **ACME OFFERS SPURIOUS PROOF: HAYES DECLARES THEIR ASSESSMENT OUT OF DATE**

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In the First-Level Appeal Decision, Acme's entire clinical argument against this treatment rests on two documents:

1. Hayes Technology Assessment Report dated June 10, 2006
2. NCCN Guidelines

I will prove with facts that neither one of these sources has any validity whatsoever.

### **Hayes declares their Assessment to be out of date**

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Physician Dr. Savady requested the Hayes Technology Assessment report for "Intraperitoneal Hyperthermic Chemotherapy for Abdominopelvic Cancers" dated June 10, 2006. Hayes would not sell him a copy of the report, and the letter explains why (Att. 3):

"The Hayes Report mentioned above, Intraperitoneal Hyperthermic Chemotherapy for Abdominopelvic Cancers, published June 10, 2006 is not available for purchase because it was last published more than 2 years ago and some material may be outdated."

### **How outdated is the Hayes Assessment?**

Very. Let's consider a few examples of how out of date this assessment is:

1. The ThermoChem-HT machine which is listed as "approval pending" was approved by the FDA in 1999.

2. The "Studies evaluating the safety and efficacy of intraperitoneal chemotherapy" date from 1980, 1988, 1994, 1997, 1998, 1999, 2000, 2003, 2004 and 2005. There is exactly one study from 2006. Does the addition of one paper constitute an "update"?

Is a paper from twenty-eight years ago really useful in evaluating this treatment?

3. Hayes found three Medical Policy Statements from insurers that do not approve of this treatment for appendix cancer (Aetna, AmeriHealth, and Regence BC/BS).

I found five Medical Policy Statements from insurers that do approve of this treatment for appendix cancer:

United Healthcare  
HealthNet  
Empire BlueCross BlueShield  
Cigna  
Anthem BlueCross BlueShield

### **NCCN OFFERS NO OPINION ON THIS TREATMENT NCCN MEMBER INSTITUTIONS EMBRACE IT**

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#### **NCCN Guideline do not mention this treatment**

Dr. Griswold, the unqualified reviewer from the Level I Appeal Decision, says:

"I have consulted with a physician who is board-certified in hematology/oncology. He consulted the National Comprehensive Cancer Center Guidelines and related to me that hyperthermic intraperitoneal chemotherapy is experimental in your clinical situation."

If this medical oncologist "related" to Dr. Griswold that hyperthermic intraperitoneal chemotherapy is experimental, he didn't find it in the NCCN Guidelines. Why? Because the NCCN Guideline for colon cancer makes no mention of this treatment.

#### **Five NCCN member institutions endorse cytoreductive surgery and HIPEC**

Absent any NCCN statement about cytoreductive surgery and HIPEC, how then can we determine what is their position on this treatment? By their actions.

The National Comprehensive Cancer Network is comprised of twenty-one member institutions.

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Surgical oncologists at five of these NCCN institutions signed the Consensus Statement endorsing cytoreductive surgery and heated intraperitoneal chemotherapy for abdominal malignancies including ovarian cancer.

University of Washington, Fred Hutchinson Cancer Center  
MD Anderson Cancer Center  
H. Lee Moffitt Cancer Center  
Roswell Park Cancer Institute  
Johns Hopkins, Sidney Kimmel Comprehensive Cancer Center

(Esquivel J, et al. Cytoreduction and hyperthermic intraperitoneal chemotherapy in the management of surface malignancies: a consensus statement. *Ann of Surg Oncol* 2006;14(1): 128-33.)

NCCN managed to find medical oncologists at these five institutions who didn't mention this treatment, one way or the other. I have found surgical oncologists at the same five institutions who have spoken out publicly in favor of it.

### **Two NCCN member institutions are high-volume HIPEC centers**

MD Anderson is one of the NCCN member institutions. Dr. Paul Mansfield has performed hundreds of cytoreductive surgeries with HIPEC there, and published extensively about it. Roswell Park is also an NCCN member institution, and Dr. John Kane has performed at least fifty cytoreductive surgeries with HIPEC. For some reason, NCCN didn't seek an opinion from either of these two experts. I'm sure that they would be surprised to discover that their institutions are invoked to deny the very treatment upon which they have based their careers.

On balance, Kaiser's effort to paint NCCN as opposed to HIPEC and cytoreductive surgery is feeble at best, deliberately deceptive at worst.

The reviewer in this case has pulled two items out of the medical policy statement, and used them to justify Acme's denial.

We discussed medical policy statements in Chapter 2. As soon as you receive your denial, you want to see if your insurer has a medical policy statement (also known as "treatment guidelines") that covers your treatment.

I have supplied a sample medical policy statement as a separate PDF file (see "Med Policy Example.pdf"). References are like footnotes to the med policy—a list of articles and other documents that supposedly support their assertions.

This med policy from Priority Health lists five references. Some med policies—in an attempt to overwhelm you—list twenty-five or fifty or eighty references. Don't be alarmed. Acme will mention two or three in their denial, and you will disprove and discredit them.

What if Acme Insurance doesn't mention their rationale in the denial? If it were me—I would pick out the weakest two or three references, and discredit them just for fun.

Show them that you aren't afraid to dig into this material.

The bean counters at Acme Insurance who review your appeal is not going to bother to delve into the med policy or its references. Get up earlier in the morning than they do, find the weak spots in their medical policy, and point them out in your appeal.

They will know for sure that you are smarter—and more motivated—than they are. They will throw their hands up and finally say, "This is way too much trouble. Let's just pay."

### **Hayes Technology Assessment is out of date**

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I chose the Hayes Technology Assessment, because it is a perfect example of the type of mysterious, official-sounding sources that insurance companies like to use.

Insurers often cite this "Hayes Medical Technology Directory." Check the med policy for your treatment; you will likely find Hayes quoted there. 99.9% of patients assume that this is a very official organization, that they disapprove of the requested treatment, and there no way to refute it.

By the time that I noticed how often Hayes was rearing its ugly head, I was a veteran of forty-four winning appeals. I finally asked, "Who are these Hayes people, anyhow—and what do they really say in this "assessment?"

Whenever some supposedly official group is mentioned by the insurance company, get on the Internet and find out who they are.

I looked at the Hayes website. They are a private company; they exist for the benefit of insurance companies. They publish a huge directory covering hundreds of medical treatments. For each treatment, they do a basic literature search, then list what three different insurance companies medical policy statements have to say about the treatment.

Sounds incestuous doesn't it? Medical policy statements being used by insurance companies to support other medical policy statements of other insurance companies.

Do you suppose that Hayes is motivated to find literature that SUPPORTS promising and expensive new treatments? Not likely. They serve as proof and back-up for insurance companies. Insurance companies are their customers, insurance companies are the only ones who have copies of this directory.

I searched high and low for a copy of this Hayes assessment. I searched the public library, I searched the Web, I searched medical libraries. I was beginning to think that insurance companies were deliberately keeping this Hayes Directory to themselves, to make it harder for folks like you and me to debunk it.

Finally, I asked a doctor friend to order a copy of this Hayes assessment. He received a response on official Hayes stationery, saying, "We don't sell that assessment anymore. It was last reviewed in 2006, and parts of it may be out of date." Major gold nugget for the appeal, and for all future appeals for this treatment.

I finally got ahold of the Hayes assessment for cytoreductive surgery and HIPEC. Guess what? It consisted of fifty-five pages of fluff, bluff, and bluster. Articles from 1980, studies that didn't prove their point.

They stated that the FDA approval for the HIPEC pump was "pending." The pump was approved by FDA in 1999. Ridiculous.

Hayes found three med policies that were against HIPEC. I found five med policies that were in favor of it.

See how it's done? Like shooting fish in a barrel.

### **NCCN Guidelines**

NCCN Guidelines are another popular rationale for insurance companies. After running across NCCN many times, I asked, "Who are these people? Are they really against this treatment?"

Would you be surprised to find out that they are nobody official—and they are not against this treatment? Once again, it's a bluff.

NCCN stands for "National Comprehensive Cancer Network." Sounds official,

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doesn't it? I believe that this acronym is supposed to make us think of the NIH (National Institutes of Health), or the NCI (National Cancer Institute), which are official government entities.

On their website, NCCN calls themselves "an authoritative source." When a group calls ITSELF authoritative, I begin to wonder.

The National Comprehensive Cancer Network is an affiliation of twenty-one cancer treatment centers. Certain doctors from these medical centers get together, and formulate "practice guidelines" for cancer treatment.

We know how much insurance companies love "guidelines." They use them to support denials of treatment.

At issue in the Sample Appeal is a combined treatment—cytoreductive surgery and heated intraperitoneal chemotherapy. The NCCN guideline for colon cancer has absolutely no opinion about this treatment, and makes no mention of it.

Let's see how Acme Insurance takes this guideline, and uses it to support their denial.

### **NCCN guideline does not mention this treatment**

Dr. Griswold twists himself into a pretzel, to make it sound like the NCCN guideline has decreed that this treatment is experimental:

"I have consulted with a physician who is board-certified in hematology/oncology. He consulted the National Comprehensive Cancer Center Guidelines and related to me that hyperthermic intraperitoneal chemotherapy is experimental in your clinical situation."

1. Griswold asks the opinion of a medical oncologist. Medical oncologists are not experts in cytoreductive surgery. They are not surgeons. They do not perform it, they don't understand it.
2. The oncologist consults the NCCN Guidelines.
3. The oncologist "relates" to Griswold that this treatment is "experimental."

Nice try, Dr. Griswold. There is one missing link, though. Nowhere in the NCCN Guideline for colon cancer does it mention cytoreductive surgery or HIPEC, or say that these treatments are experimental.

### **Five NCCN member institutions endorse cytoreductive surgery and HIPEC**

After studying the NCCN guideline, I asked, "Who are these NCCN member institutions?"

I suspected that, while NCCN managed to find a medical oncologist at each of their "leading cancer centers" that did not mention cytoreductive surgery, there would be plenty of surgical oncologists at the same institutions who were in favor of this treatment, who performed large numbers of these treatments.

I was right. Surgeons at five of the twenty-two NCCN member institutions had signed the Consensus Statement endorsing cytoreductive surgery and HIPEC.

As a matter of fact, I happened to know that two of the NCCN institutions who participated in writing this Guideline—MD Anderson and Roswell Park Cancer Center—are high-volume centers for this treatment.

Busted. Acme Insurance has gone to great lengths to take thin air, and try to turn it into proof. Don't let them get away with it.

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Digging into footnotes on a medical policy statement is the last thing in the world that you want to do. This I know for sure.

However, if you do your due diligence on the insurance company's "rationale," it will pay off in a big way.

The medical director of Acme who is reviewing your appeal is not going to lift a finger to check out the references on Acme's medical policy statement. If you do it, you will be one giant step ahead of him, and one step closer to winning your appeal.

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