



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**December 20, 2010**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Brian Cody, a former investigator for the Office of the Workers' Compensation Board Fraud Inspector General ("OFIG"), knowingly fabricated entries in reports he filed with OFIG regarding investigations he had conducted. Cody's employment with OFIG was terminated as of November 7, 2008, based upon similar findings by OFIG. The Inspector General has referred these findings for prosecutorial review.

## ALLEGATION

On October 27, 2008, Workers' Compensation Board Fraud Inspector General William Gurin informed the Inspector General that, in September 2008, OFIG investigator Cody had admitted fabricating information in his investigative reports addressing allegations of fraud by employees, health care providers, and others. Specifically, Cody had remarked to colleagues that in order to close cases, they should do what he does and "make up" information. Based upon that remark, OFIG reviewed a sample of 41 of Cody's closed cases from the previous year, and memorialized its findings in a report dated September 29, 2008. The review revealed that in eight cases Cody had manufactured information about his investigations in official reports.<sup>1</sup>

## SUMMARY OF INVESTIGATION

Shortly after informing the Inspector General of Cody's fabrications, OFIG provided its September 29, 2008 report of Cody's false and inaccurate statements to the Inspector General, as well as an October 29, 2008 memorandum memorializing an October 24, 2008 conversation among OFIG employees Cody, Deputy Inspector General Robert Gabrielli, and Assistant Inspector General Scott Jaffer. According to that memorandum, the conversation took place shortly after Cody was informed that he would be terminated from employment. In his memorandum, Gabrielli noted:

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<sup>1</sup> OFIG also determined that, in seven of the 41 cases, Cody had entered incorrect or misleading, though not materially false, information.

[Cody] acknowledged that he had “embellished” and fabricated interviews and personal visits but was adamant that none of his embellishments had result in to the effect [sic], “nobody innocent went to jail and nobody guilty got a free ride.” Mr. Cody stated that he “just wanted to make myself look smart” and that this practice had been long going [sic], including back to his service in the NYPD. At one point, he turned to Mr. Jaffer, a former NYPD detective, and stated, “You know, it was just like we always used to do on the [NYPD form] DD5s.”

Gabrielli also noted that Cody “seemed not to grasp the seriousness of these ‘embellishments’” and stated that, “if he had to do all the things he had represented on [sic] his reports, he would not have the time to close any cases.” According to Gabrielli’s memorandum, Cody insisted several times that he had acted alone.

On or about December 2008, OFIG provided the Inspector General with 137 of Cody’s reports, a sample from his caseload encompassing the period January 2006 to August 2008. The Inspector General analyzed the documents in each case and, where appropriate, contacted the person or persons whom Cody alleged had provided material information which served as a basis for closing the investigation.

The Inspector General determined that Cody fabricated information in the following cases:

(1) Cody was assigned to determine whether an employee of a New York City plumbing firm had fraudulently sought and received Workers’ Compensation payments. The Inspector General found that, in a report dated July 8, 2008, Cody falsely asserted that an individual he identified as the owner of the plumbing firm had signed a statement that he had no payroll or employment records for the employee in question. Initially, the OFIG file contained no such statement. The Inspector General determined that the person Cody indicated had provided the statement did not in fact exist.

(2) In his July 7, 2008 report of his investigation of an individual who allegedly worked while receiving Workers’ Compensation payments, Cody stated that he had spoken with a New York State Insurance Fund (“NYSIF”) investigator, who had purportedly directed surveillance of the individual which failed to uncover evidence of fraud. Contrary to Cody’s report, the NYSIF investigator reported to the Inspector General that no surveillance had been assigned or conducted in the case.

(3) In his November 28, 2007 investigative report of an individual, Cody claimed that a NYSIF investigator directed that video surveillance be conducted in 2007 and found no evidence of fraud. In contrast, the NYSIF investigator informed the Inspector General that: (1) he did not work on the case in question; (2) no video surveillance was performed of the subject in 2007; (3) routine checks of the subject had been performed *prior* to

2007; and (4) video surveillance of the subject had been performed a year later, in 2008. Accordingly, the Inspector General determined that Cody had fabricated the information and improperly closed the case.

(4) The Inspector General determined that in his report dated August 1, 2008, regarding an individual, Cody falsely claimed to have spoken to an insurance company representative, and improperly closed the case.

(6) The Inspector General determined that in an investigation of Workers' Compensation fraud by an individual, Cody falsely claimed that he and a NYSIF investigator had gone to the subject's known address, but were told by a witness that the subject had moved to another state. Cody improperly sought closure of the case, in part based on his assertion that the subject had moved. The NYSIF investigator informed the Inspector General that he had had no involvement in this case and had not accompanied Cody to the subject's house.

(7) In his July 10, 2008 report in this case, Cody claimed that he had spoken to an assistant corporation counsel in the New York City Law Department regarding video surveillance of an individual, who was allegedly working while receiving Workers' Compensation benefits. According to Cody's report, the assistant corporation counsel had reported to him that surveillance uncovered no evidence of the subject working while receiving the benefits. Contrary to Cody's report, the assistant corporation counsel informed the Inspector General that he had no notes reflecting any such surveillance or conversation, nor did he otherwise recall these events occurring. The Inspector General concluded that Cody had manufactured this story to close the case without performing the necessary work.

(8) The Inspector General determined that Cody falsely claimed that he had requested that NYSIF conduct surveillance of an individual who allegedly was working while receiving Workers' Compensation benefits. According to Cody, a NYSIF investigator informed him that (1) a work activity check was performed in 2007 revealing that the subject was not working, and (2) on February 11 and March 19, 2008, surveillance was conducted, but revealed no work activity. Based on this putative investigation, Cody recommended that the case be closed for lack of evidence of fraud. When interviewed, the NYSIF investigator informed the Inspector General that he did not, in fact, work on the case. Moreover, the investigator noted that the case file reflected that the only surveillance conducted had been in 2002.

(9) In this case, Cody was assigned to determine whether an electrical firm had obtained sufficient Workers' Compensation insurance for its workers. In his report dated January 28, 2008, Cody noted that he had ostensibly referred the case to a specific co-employee of the Workers' Compensation Board's Enforcement Unit in Queens, which handles such cases. The employee informed the Inspector General, however, that her normal practice was to memorialize such referrals and her computer records did not reflect any such referral. Accordingly, the Inspector General determined that Cody had falsified his statement about having referred the case to the employee.

(10) In this matter, the Inspector General determined that Cody falsely claimed that a NYSIF investigator had provided him with information which formed the basis for closure of an investigation of an individual who was allegedly illegally working while receiving Workers' Compensation benefits. The investigator informed the Inspector General that his file did not support the information listed by Cody. Accordingly, the Inspector General determined that Cody had fabricated his interaction with the investigator in order to close the case.

(11) While OFIG determined that one of Cody's entries in his July 28, 2008 report in the investigation of an individual was merely incorrect, the Inspector General determined that, once again, Cody had claimed to have spoken to a NYSIF investigator and closed this case based on information purportedly provided by the investigator. The investigator informed the Inspector General that he never spoke to Cody regarding this matter.

## FINDINGS AND RECOMMENDATIONS

The Inspector General determined that former OFIG investigator Brian Cody manufactured information in his official reports. The Inspector General referred these findings to OFIG and for prosecutorial review.

Workers' Compensation Board Fraud Inspector General William Gurin advised the Inspector General that, aside from restructuring the downstate office where Cody worked, a new online case management system is being established that will provide supervisors instant access to investigators' cases to ensure proper handling. Gurin also reported, "Cases that Cody investigated and closed over the past several years are being examined by OFIG to determine whether or not they should be reopened and processed anew."