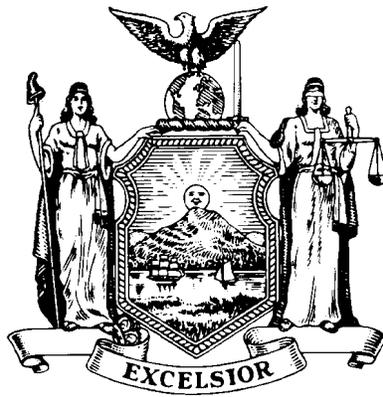


State of New York
Office of the Workers' Compensation Fraud
Inspector General



2018 Annual Report

Andrew M. Cuomo
Governor

Catherine Leahy Scott
Workers' Compensation Fraud Inspector General

EXECUTIVE SUMMARY

The mission of the New York State Office of the Workers' Compensation Fraud Inspector General (WCFIG) is to conduct and supervise investigations of possible fraud and other violations of laws, rules, and regulations pertaining to the state's operation of the workers' compensation system. Through its investigations, audits, and reports, WCFIG focuses on reducing costs to the workers' compensation system by eliminating fraud and improving the efficiency and effectiveness of the system. WCFIG's investigations are complex and often involve detailed analysis of records and taking of testimony from employers, attorneys, employees, health care providers, and insurance carriers, among others. These investigations result in criminal referrals, arrests, and prosecutions, as well as recoveries of overpayments resulting from the fraud identified.

On February 4, 2015, Governor Andrew M. Cuomo appointed Catherine Leahy Scott as the New York State Workers' Compensation Fraud Inspector General. Since her appointment, Inspector General Leahy Scott has implemented enhanced procedures to strengthen WCFIG's investigative capacity. WCFIG also implemented a streamlined process for efficiently managing the large number of complaints received. In 2018, WCFIG conducted investigations that uncovered more than nine million dollars in fraud and resulted in 34 arrests.

In 2018, Inspector General Leahy Scott continued her extensive training and outreach program for the numerous stakeholders in the workers' compensation system. The goals of the Inspector General's outreach efforts are to raise awareness of vulnerabilities in the workers' compensation system among employers and insurance carriers and to generate increased detection and reporting of fraud by the public at large.

PURPOSE AND SCOPE OF ANNUAL REPORT

New York State Workers' Compensation Law section 136 mandates that the workers' compensation fraud inspector general submit a report to the Governor and the Chair of the Workers' Compensation Board that summarizes the activities of the office for each calendar year. Consistent with this statutory mandate, this Annual Report outlines the mission of WCFIG, describes the operational and administrative actions implemented by the office, and provides an overview and summary of significant prosecutions that resulted from the office's investigations. The report also provides information about continued and strengthened partnerships and outreach

to insurance carriers, law enforcement partners and employers, as well as training conducted by WCFIG during 2018.

INTRODUCTION AND BACKGROUND

The WCFIG is responsible for protecting and promoting the integrity of the New York State workers' compensation system, which provides cash benefits, medical care, or both, for workers who are injured or become ill as a direct result of their employment. Claims for compensation are adjudicated by the New York State Workers' Compensation Board.

Pursuant to New York State Workers' Compensation Law section 136, WCFIG is invested with the authority to investigate fraud and other violations of the laws, rules, and regulations relating to the workers' compensation system, and to refer matters to federal, state, and local prosecutors or other appropriate law enforcement agencies for further investigation and criminal prosecution. In addition, WCFIG may refer matters to administrative entities, the New York State Insurance Fund, and other insurance carriers for investigation and/or audit. As part of its mission, WCFIG may also recommend legislative and regulatory changes to strengthen the workers' compensation system.

OVERVIEW AND SUMMARY

Investigations in Response to Complaints

Following Inspector General Leahy Scott's 2015 appointment as the New York State Workers' Compensation Fraud Inspector General, she implemented significant procedural reforms to ensure a robust process for identifying, investigating, and deterring fraud. These actions carried through to 2018 and resulted in a number of arrests, cases referred to prosecutors, and successful dispositions.

Most WCFIG investigations begin with the lodging of a complaint alleging workers' compensation fraud. Allegations received by WCFIG are generally of three types: (1) fraud by medical providers and/or other professionals, including but not limited to physicians, physician assistants, attorneys, and insurance brokers; (2) fraud by employers who are required to maintain workers' compensation insurance coverage for their employees but who fail to maintain insurance coverage, have inadequate coverage, or engage in fraudulent misclassification; (3) fraud involving claimants receiving benefits to which they are not entitled. Additionally, WCFIG may open investigations based on the Inspector General's own initiative.

WCFIG's complaint review process includes the review of every telephone, online, email, mail, and personally delivered complaint by the Case Management Unit. WCFIG complaints are then referred to the WCFIG Triage Unit—a group formed in 2018 in response to the growing number of workers' compensation complaints. This unit, which is headed by an attorney and includes investigators, an investigative nurse, and an auditor, conducts a preliminary investigation involving an in-depth analysis of the allegations. Thereafter, where appropriate, certain preliminary investigations are referred to a WCFIG investigative team for further investigation, others are referred to an appropriate agency or insurance carrier, and others are closed. Following full investigations, findings may be referred to prosecutors for further action, the Workers' Compensation Board for review, the appropriate agency or insurance carrier for administrative or further action (for example, medical providers may be referred to the New York State Office of Professional Medical Conduct). Subsequently, full investigations may also be closed as unsubstantiated.

In 2018, WCFIG received 1,801 complaints, an approximately 17 percent increase from 2017.¹ Following the preliminary investigation of each complaint by WCFIG's Triage Unit, WCFIG opened 171 as full investigations, continued 181 matters as ongoing preliminary investigations, and closed 293 for the failure to allege actionable wrongdoing or where WCFIG lacked jurisdiction to investigate, among other reasons. WCFIG also closed 473 matters as unsubstantiated. Additionally, WCFIG referred 683 complaints for further action to the appropriate agency or insurance carrier, including the New York State Insurance Fund, the New York State Workers' Compensation Board, or its Advocate for Injured Workers.

Complaints opened for full investigation are assigned to multi-disciplinary teams led by an investigative counsel assisted by staff including investigators, investigative auditors, an investigative nurse, and computer forensic specialists. Acting under the authority provided by statute, the investigative teams may subpoena witnesses, take sworn testimony, and compel the production of relevant records. WCFIG may refer its investigative findings for criminal prosecution to the United States Department of Justice, the New York State Attorney General's Office, or local district attorney offices. In cases where criminal prosecution is not warranted,

¹ In 2017, WCFIG formed a partnership with the National Insurance Crime Bureau (NICB), which referred a large number of historic workers' compensation fraud complaints at one time. The Inspector General and NICB have since implemented systems for monthly referrals. The complaints referred by NICB in 2017 were not considered in this calculation.

findings may be referred for civil litigation and/or administrative action, including the revocation by the Workers' Compensation Board of a medical provider's authorization to treat workers' compensation patients and/or the issuing of "stop work" orders against non-compliant businesses for failure to secure appropriate workers' compensation insurance.

Cases Resulting in Criminal Prosecutions

WCFIG's investigations in 2018 uncovered over nine million dollars in fraud and led to criminal prosecutions resulting in 34 arrests, including 17 arrests involving claimant matters, 15 involving employer matters, and two arrests of medical providers. Additionally, WCFIG's investigations facilitated the recovery of funds for supplemental insurance carriers including the New York State Insurance Fund and private carriers that were the victims of workers' compensation fraud.

Cases Involving Fraud by Medical Providers and Other Professionals

In 2018, several of WCFIG's long-term investigations came to fruition, including three investigations that uncovered egregious fraud by medical providers who were complicit in allowing state employees to commit workers' compensation fraud.

One WCFIG investigation was of Oneida County chiropractor Eric Szatko, who was arrested on June 5, 2018, and pled guilty on November 5, 2018, to the workers' compensation crime of Fraudulent Practices for his failure to examine and treat state employees despite certifying that they had sustained debilitating work-related injuries. WCFIG's investigation found that Szatko created fake examinations and reports in order to facilitate workers' compensation claims filed by employees of New York State Office of Mental Health's Central New York Psychiatric Center (CNYPC), which enabled these employees to receive payment to which they were not entitled while absent from work. As part of Szatko's plea agreement with the Oneida County District Attorney's Office, he surrendered his chiropractic license and was ordered to pay in excess of \$5,000 in restitution.²

Szatko submitted to CNYPC a medical excuse for Ryan Haley, a state employee who then worked at the facility, authorizing Haley to be absent from work with pay for almost two

² Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Utica Chiropractor Admits To Faking Medical Exams to Facilitate CNY Psychiatric Center Employees' Bogus Disability Claims (November 5, 2018), <https://ig.ny.gov/sites/default/files/pdfs/11-5-18%20Szatko%20Plea%20PR.pdf>.

and a half weeks in 2016. Szatko, however, had not conducted an examination of Haley, who was not injured at the time. Haley used his paid time off to kayak in Puerto Rico and vacation with his girlfriend in California.³ Szatko provided medical excuses for two additional employees who received paid leave in February 2016. Szatko had not performed an examination on either of the employees and they were not suffering from workplace injuries at the time.

A second WCFIG investigation of a medical provider who facilitated workers' compensation fraud involved Dr. Gregory B. Shankman, a central New York orthopedic surgeon, who—on more than 150 days between January 2015 and August 2017—falsely certified he was overseeing claimant medical examinations at his Utica office when he was instead elsewhere. In fact, on multiple occasions, Shankman performed workers' compensation medical examinations in offices across upstate and western New York State while also billing for examinations conducted simultaneously at his Utica office, where he was required to be present under State law. Shankman then submitted false invoices totaling nearly \$87,000 for his supposed services to the County of Oneida, New York State Insurance Fund, and other insurance carriers, third party administrators, and self-insured entities.

Shankman, who was arrested in 2017 when investigators from the Offices of the Inspector General and Oneida County District Attorney executed a search warrant at his Utica offices, pled guilty on April 10, 2018 to two counts of Offering a False Instrument for Filing in the Second Degree. On June 5, 2018, Shankman was sentenced in Oneida County Court, surrendered his license to practice medicine, and paid full restitution.⁴

A third investigation conducted by WCFIG, the United States Postal Inspection Service, and the United States Attorney's Office for the Southern District of New York resulted in the arrest in April 2018 of former surgeon Spyros Panos on federal Wire Fraud, Health Care Fraud, and Aggravated Identity Theft charges. It is alleged that Panos stole another physician's identity

³ Haley was separately prosecuted for his workers' compensation fraud and pled guilty, paid restitution, and resigned from state service. See Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Central New York Psych Center Employee was Kayaking in the Caribbean While Receiving Workers' Comp and Claiming Inability to Work Due to Injury (August 7, 2017), <https://ig.ny.gov/sites/default/files/pdfs/HaleyarrestPR8-7-17.pdf>.

⁴ Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Central New York Orthopedic Surgeon Pleads Guilty and to Surrender Medical License for Stealing More Than \$86,000 From the Workers' Compensation System (April 10, 2018), https://ig.ny.gov/sites/default/files/pdfs/ShankmanPleaPR4-10-18_0.pdf.

and billed for more than \$860,000 for workers' compensation case reviews that he was not licensed to perform. Moreover, it is alleged that Panos committed these acts during periods in 2013, 2016, and 2017, both before and after Panos was released from federal prison after serving three years of a four-and-a-half-year prison sentence for an unrelated health care fraud and while unlicensed to practice medicine and under federal custody for the prior fraud.

The investigation found that in 2013, Panos pled guilty and surrendered his medical license after admitting to a multi-year scheme in which he defrauded Medicare, the New York State Insurance Fund, and numerous private health insurance providers by systematically lying about the nature and scope of surgical procedures he performed. Panos was also ordered to pay a \$250,000 fine and \$5 million in restitution for those previous crimes. It is alleged that before and after his incarceration, Panos, using the identity of another physician, began performing peer reviews of workers' compensation medical examination reports for six companies that provide physicians to review patient medical files in connection with workers' compensation claims. Panos allegedly billed the six medical records review companies more than \$860,000 for the reviews.⁵

The matter is currently being prosecuted by the United States Attorney's Office for the Southern District of New York.⁶

Cases Involving Fraud by Employers

In 2018, WCFIG continued its investigations of employers within New York State who fail to maintain the appropriate workers' compensation insurance for their employees as mandated by New York State Workers' Compensation Law. WCFIG's investigations in 2018 of workers' compensation fraud by employers resulted in 15 arrests and prosecutions.

For instance, in May 2018, following the execution of multiple search warrants, 13 individuals owning and operating 11 medical taxi and transport companies servicing the Adirondack and Capital regions were arrested on charges alleging nearly eight million dollars in

⁵ Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Disgraced Former Surgeon Facing Federal Charges of \$860,000 Health Care Fraud Committed as He Pleaded Guilty To and Was Serving His Sentence for Another Fraud (April 10, 2018), <https://ig.ny.gov/sites/default/files/pdfs/PanosArrestPR4-10-18.pdf>.

⁶ All defendants are innocent unless and until proven guilty in a court of law.

thefts and frauds against the workers' compensation system and Medicaid.⁷ The charges were the result of a two-year joint investigation led by the New York State Police and including WCFIG, the Essex County District Attorney's Office, the Federal Bureau of Investigation, and the United States Attorney's Office for the Northern District of New York.⁸ The allegations include billing Medicaid for trips that never occurred, bribing Medicaid recipient patients with kickbacks for using their specific transport companies, failing to provide employees of the transport companies with required workers' compensation insurance, and filing documents falsely certifying such required coverage in order to provide Medicaid transport services.⁹

The matter is being prosecuted by the Rensselaer County District Attorney's Office and the United States Attorney's Office for the Northern District of New York.

Cases Involving Fraud by Claimants

In 2018, WCFIG's investigations related to claimants who fraudulently collected workers' compensation benefits resulted in 17 arrests and prosecutions.¹⁰ In some instances, WCFIG's investigations of fraud by claimants revealed evidence of employers who may be defrauding the workers' compensation system as well.

For example, following a WCFIG investigation, in May 2018, a Rockland County grand jury indicted the owner of an automobile window tinting business and his wife on charges they defrauded the workers' compensation system after the wife crashed a client's new Mercedes-Benz while personally using the car. Although the wife was driving the car without any

⁷ Medicaid is a county, state, and federally funded benefit program providing health care coverage for individuals with limited income.

⁸ Others assisting in the investigations include the Office of the New York State Comptroller, Division of Investigations; New York State Attorney General's Office, Medicaid Fraud Control Unit; Essex County Sheriff's Office; Homeland Security Investigations; and the Office of Inspector General for the U.S. Department of Health and Human Services.

⁹ Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Owners and Operators of Medical Transport Companies Serving the Adirondack and Capital Region Charged With Multi-Million-Dollar Health Care Frauds and Conspiracies (May 23, 2018), <https://ig.ny.gov/sites/default/files/pdfs/TaxiArrestsPR5-23-2018.pdf>. All defendants are innocent unless and until proven guilty in a court of law.

¹⁰ For example, see Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Rochester Woman Sentenced to Full Restitution and Probation for Forging Deceased Mother's Signature to Steal Workers' Compensation Benefits (August 10, 2018), <https://ig.ny.gov/sites/default/files/pdfs/8-10-18%20Lloyd-Fountain%20Sentence%20PR.pdf>.

authorization or business purpose, she claimed it was being used as part of her employment.¹¹

WCFIG's investigation found that Samuel Pena owns and operates Sam's Professional Window Tinting, an automotive window tinting business based in Nanuet; Tammy, his wife, is listed as one of several employees. In May 2015, Tammy Pena filed a workers' compensation claim with the business's insurer for injuries sustained in a one car motor vehicle accident when she drove a client's new Mercedes-Benz off a road near the Penas' home and into a tree, demolishing the vehicle. Tammy Pena claimed to the business's insurance company that the accident occurred shortly after she retrieved a client's vehicle for services. Contrary to this claim, the investigation found that Tammy Pena was not engaged in any work activity at the time of the accident. In fact, the vehicle had been in the Penas' possession for more than a week before the accident and Samuel Pena had sent a text to the vehicle's owner minutes before the accident stating that more work was being done and the vehicle would not be finished until later that day. Indeed, at the time of the crash, the work on the vehicle had already been completed.

After Tammy Pena filed her false workers' compensation claim, Samuel Pena filed multiple documents with the Workers' Compensation Board and his business's insurance company supporting his wife's claim that the accident was work-related, claiming inflated wages for his wife, and requesting reimbursement for wages allegedly paid to his wife after her accident. More than \$45,000 was paid by the workers' compensation insurance company for medical bills and wage indemnity benefits for Tammy Pena's fraudulent claim. Additionally, the investigation revealed that Samuel Pena submitted fraudulent documentation to the insurance company when applying for workers' compensation insurance in order to obtain insurance at a reduced cost.

In October 2018, Samuel Pena pled guilty to Attempted Grand Larceny in the Third Degree, a Class E felony, and Tammy Pena pled guilty to Attempted Fraudulent Practices in Workers' Compensation, a Class A misdemeanor. The pleas included restitution of \$30,000 to the defrauded insurance carrier, \$11,500 to the owner of the Mercedes-Benz; and up to \$70,000 to the vehicle's corporate owner for increased insurance premiums due to the accident.

¹¹ Press Release, New York State Office of the Workers' Compensation Fraud Inspector General, Rockland County Auto Window Tinting Business Owner and Wife Face Fraud Charges after Crashing a Client's Luxury Mercedes During a Joyride (February 23, 2018), <https://ig.ny.gov/sites/default/files/pdfs/PenaArrestPR2-23-18.pdf>.

Training and Outreach

During 2018, Inspector General Leahy Scott and her executive staff continued outreach efforts to stakeholders across New York State. The Inspector General and her staff also continued to provide training on WCFIG's mission and various aspects of workers' compensation fraud at numerous state agencies. As part of this initiative, the Inspector General provided training to every new recruit enrolled in the DOCCS law enforcement academy regarding the Inspector General's jurisdiction and issues relating to workers' compensation fraud and abuse. Since the inception of this initiative, the Inspector General has trained hundreds of correction officer recruits on these matters.

In March 2018, the Inspector General's executive staff conducted a presentation regarding workers' compensation fraud at the annual meeting of the New York Alliance Against Insurance Fraud in New York, New York. Additionally, a comprehensive roundtable case study presentation was led by the Inspector General and her team at the National Insurance Crime Bureau's Workers' Compensation Medical Fraud Seminar in Plainview, New York, in April 2018. In May, the Inspector General's executive staff and chief investigators addressed members of the Niagara Frontier Building Officials Association in Buffalo, New York.

In July 2018, the Inspector General and executive staff presented a continuing legal education course regarding workers' compensation fraud at the New York Prosecutors Training Institute summer conference at Syracuse University College of Law. In September, the Inspector General's executive staff conducted a workers' compensation presentation for the New York Claim Association's September workshop in New York City and presented before members of the Injured Workers' Bar Association in Saratoga, New York.

In October 2018, a continuing legal education training was provided to New York State Workers' Compensation Board administrative law judges by the Inspector General's executive staff. Also in October, the Inspector General conducted a presentation at the New York State Association of Self-Insured Counties' fall conference in Corning, New York, and the Inspector General's executive staff presented at a meeting of the Long Island Labor Advisory Council. And in November 2018, the Inspector General's executive staff conducted a presentation before members of the New York Anti Car Theft and Fraud Association in Bethpage, New York.

Initiatives and Task Force Actions

In 2018, Inspector General Leahy Scott cultivated key partnerships to support her efforts to combat workers' compensation fraud. The Inspector General and her executive staff regularly met with representatives of the New York State Insurance Fund to share information and coordinate resources to combat fraud and to improve the efficiency and effectiveness of the workers' compensation system. The Inspector General and her staff also met with many of the state's district attorneys, the United States Attorneys' Offices, and the Federal Bureau of Investigation to discuss WCFIG's enhanced oversight and enforcement efforts, as well as case referrals. Additionally, WCFIG staff met regularly with Albany, Buffalo and Syracuse chapters of the Joint Healthcare Task Force.

In 2018, WCFIG continued its participation in the Workers' Compensation Task Force. The task force was created by Governor Cuomo in 2015 to reduce workers' compensation costs in New York State as well as prevent and mitigate accidents, create efficient and effective claims management, and reduce fraud and abuse in the workers' compensation system. WCFIG has been an active participant in this task force since its inception and meets regularly with members of the task force, including representatives of the governor's office, members of the Triad Group, a workers' compensation third-party administrator, the New York State Insurance Fund, and human resource staff from various state agencies. In 2018, numerous investigations involving the task force are ongoing.

Additionally, in 2018 WCFIG participated with the Joint Task Force on Employee Misclassification and Worker Exploitation (JTF), which was established via Executive Order by Governor Cuomo in July 2016. WCFIG had previously been a member of both the Joint Enforcement Task Force on Employee Misclassification as well as the Task Force to Combat Worker Exploitation, which was created by Governor Cuomo in July of 2015. In 2016, the two task forces were merged with the Nail Salon Task Force to create the JTF. Employee misclassification adversely impacts the residents, businesses, and economy of New York State by denying employees of the protections of workers' compensation and unemployment compensation and placing honest employers on an uneven playing field with those competitors who do not provide their employees with legally required benefits. Therefore, the JTF was charged with coordinating the work of state agencies to ensure the enforcement of laws violated when employers misclassify workers and developing legislative proposals and other tools to

combat this problem, among others. WCFIG currently is investigating several cases involving employee misclassification.

WCFIG also continued its collaboration in 2018 with the New York State Workers' Compensation Board's Division of Operations and Compliance Enforcement Unit, which monitors the workers' compensation insurance coverage of businesses and employers in New York in order to ensure coverage for all New York workers in the event of a work-related injury. WCFIG and the Division of Operations and Compliance Enforcement Unit met regularly in 2018 to combine resources in investigating matters involving fraud perpetrated by employers in New York State. In cases where a criminal prosecution is not warranted, WCFIG referred matters to the Division of Operations and Compliance Enforcement Unit for administrative or civil action, such as a "stop work" order against a non-compliant business and/or civil penalties for failure to secure appropriate workers' compensation insurance.

In addition, WCFIG continued its collaboration with the Workers' Compensation Board in order to combat fraud committed by healthcare providers complicit in enabling fraud against the workers' compensation system. Throughout 2018, WCFIG coordinated efforts with the Workers' Compensation Board's Office of General Counsel, which oversees healthcare provider discipline, in conjunction with the Office of the Medical Director within the Workers' Compensation Board. Healthcare providers and physicians must be authorized by the Workers' Compensation Board in order to treat workers' compensation patients. Similar to WCFIG's endeavors with the Workers' Compensation Board's Division of Operations and Compliance Enforcement Unit, when a WCFIG investigation involving a medical provider reveals misconduct that does not rise to the level of criminality sufficient for a referral to a prosecutor, WCFIG refers those matters to the Workers' Compensation Board for appropriate administrative action.

CONCLUSION

This 2018 WCFIG Annual Report summarizes the office's anti-fraud activities during the past year. In 2019, WCFIG will continue to promote the integrity of the New York State workers' compensation system through its investigations; collaborative efforts with other local, state and federal agencies; and training and outreach. Additionally, WCFIG will commence proactive initiatives that will strengthen the workers' compensation system and increase the

detection, prevention, and prosecution of claimant, employer, and provider/professional fraud. In the years ahead, WCFIG's efforts will protect vulnerable workers, prevent fraud, and yield significant savings for New York State.