

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



2019 Annual Report

Andrew M. Cuomo
Governor

Letizia Tagliaferro
Inspector General

EXECUTIVE SUMMARY

The mission of the Office of the New York State Workers' Compensation Fraud Inspector General (WCFIG) is to conduct and supervise investigations of possible fraud and other violations of the laws, rules, and regulations pertaining to New York State's workers' compensation system. Through its numerous investigations, audits, and reports, WCFIG reduces 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 analyses of records and the taking of testimony from employers, attorneys, employees, health care providers, and insurance carriers. These investigations often result in criminal referrals, arrests, and prosecutions, as well as recoveries of overpayments stemming from the identified fraud.

In September 2019, Governor Andrew M. Cuomo appointed Letizia Tagliaferro to serve as the New York State Workers' Compensation Fraud Inspector General. Ms. Tagliaferro also serves as the New York State Inspector General.

During the course of 2019, WCFIG received 1,441 complaints; opened 75 as full investigations; continued 179 matters as ongoing preliminary investigations; closed 235 for the failure to allege actionable wrongdoing or where WCFIG lacked jurisdiction to investigate; and closed 449 as unsubstantiated. Additionally, WCFIG referred 503 complaints for further action to the appropriate agency or insurance carrier, including the New York State Insurance Fund, other investigative offices within the New York State Workers' Compensation Board, or other interested parties. WCFIG's investigations in 2019 uncovered more than \$1.3 million dollars in fraud and resulted in 25 arrests.

In addition, and in furtherance of WCFIG's mission to improve and protect the workers' compensation system, WCFIG also made regulatory and administrative recommendations in 2019 that resulted in changes to forms utilized by the New York State Department of Corrections and Community Supervision and the New York State Workers' Compensation Board. These changes will assist in identifying and combatting workers' compensation fraud. This is one example of a process-based improvement resulting from a major WCFIG initiative.

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 the 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 with and outreach to insurance carriers, law enforcement organizations, and employers, as well as training conducted by WCFIG during 2019. Additionally, the report highlights important WCFIG initiatives, such as the review of certain forms utilized by the New York State Department of Corrections and Community Supervision and the New York State Workers' Compensation Board.

INTRODUCTION AND BACKGROUND

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. Appeals from decisions by the Workers' Compensation Board are brought to board panels and full boards within the workers' compensation system. Ultimately, appeals can be brought to the New York State Supreme Court Appellate Division, Third Department.

Pursuant to New York State Workers' Compensation Law section 136, WCFIG is vested 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.¹ In furtherance

¹ Administrative entities include the New York State Workers' Compensation Board, New York State Department of Labor, and the New York State Office of the Medicaid Inspector General, among other State agencies.

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

WCFIG investigations are often based on receipt of a complaint alleging workers' compensation fraud. Allegations received by WCFIG generally include one or more of the following: (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 either fail to maintain insurance coverage, have inadequate coverage, or misrepresent the number and classification of individuals employed and their payroll in the insurance application process; and (3) fraud by claimants or their caretakers 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 is analogous to that of the New York State Inspector General. As part of this process, every telephone, online, email, mail, and personally delivered complaint is initially received and reviewed by the office's Case Management Unit. Complaints and allegations involving WCFIG are then forwarded to a specialized WCFIG Triage Unit, which was created in 2018 in response to the growing number of workers' compensation fraud complaints. This triage 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 matters alleged. Thereafter, where appropriate, certain preliminary investigations are assigned to a multi-disciplinary team for further investigation.

In 2019, WCFIG received 1,441 complaints. Following the preliminary investigation of each complaint by WCFIG's Triage Unit, WCFIG opened 75 as full investigations, continued 179 matters as ongoing preliminary investigations, and closed 235 for the failure to allege actionable wrongdoing or where WCFIG lacked jurisdiction to investigate. WCFIG also closed 449 matters as unsubstantiated. Additionally, WCFIG referred 503 complaints for further action to the appropriate agency or insurance carrier, including the New York State Insurance Fund, other investigative offices within the New York State Workers' Compensation Board, or other interested parties, including state agencies and local municipalities.

Complaints opened for full investigation are assigned to multi-disciplinary teams led by an investigative counsel, who is assisted by staff including investigators, investigative auditors, an investigative nurse, and computer forensic specialists. Acting under WCFIG's statutory authority, 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 district attorneys' offices across New York State. In cases where criminal prosecution is not warranted, findings may be referred to the New York State Insurance Fund or other insurance carriers for further action such as civil litigation or administrative enforcement and compliance, including the reduction or suspension of workers' compensation wage indemnity benefits to claimants engaging in fraudulent or inappropriate conduct. Referrals may also be made to investigative offices within the New York State Workers' Compensation Board for further action such as the revocation of a medical provider's authorization to treat workers' compensation patients or the issuing of "stop work" orders against non-compliant businesses for failure to secure appropriate workers' compensation insurance. Investigations may also be closed when allegations are determined to be unsubstantiated.

Cases Resulting in Criminal Prosecutions

WCFIG's investigations in 2019 uncovered over \$1,325,000 in fraud and led to criminal prosecutions resulting in 25 arrests, including 16 arrests involving claimant matters, eight involving employer matters, and one involving both a claimant and employer matter. Additionally, through completed prosecutions in 2019, WCFIG's investigations facilitated the recovery of more than \$1,373,000 of funds and orders of restitution for New York State agencies, insurance carriers including the New York State Insurance Fund and private carriers, and self-insured employers that were the victims of workers' compensation fraud. The following are summaries of notable investigations.

Cases Involving Fraud by Employers

In 2019, WCFIG continued its investigations of employers within New York State who fail to maintain appropriate workers' compensation insurance for their employees as mandated by New York State Workers' Compensation Law or misclassify their employees to reduce the cost of their insurance. Fraud by employers adversely impacts both the residents and the

economy of New York State by placing injured employees at risk and placing honest employers on an uneven playing field with those competitors who do not provide their employees with the requisite insurance. WCFIG's investigations in 2019 of workers' compensation fraud by employers resulted in nine arrests and prosecutions.²

Contractor's Workers' Compensation Fraud on Asbestos Abatement Project

In February 2019, a WCFIG investigation resulted in the arrest of Mark Lindsley, the owner of Infinity Enterprises, an Oswego County-based demolition and asbestos abatement company, on charges that he failed to provide required workers' compensation insurance for his employees.³ Lindsley was also charged with the theft of insurance premiums for previous asbestos abatement work conducted by his company during a period that it maintained insurance but had misrepresented the hazardous nature of the work performed and by this means received less costly insurance premiums.

The WCFIG investigation found that during the period that Lindsley's company failed to have the required workers' compensation insurance coverage, it employed seven employees on an asbestos abatement and demolition project at a former Nestlé plant in Fulton, New York. The workers were revealed in a report of an inspection performed at the plant by the New York State Department of Labor. WCFIG's investigation further found that years prior to the Nestlé project, Lindsley purchased workers' compensation insurance coverage for his company through a private insurance carrier but indicated on the coverage application that his company performed only landscaping and lawn care services, resulting in much lower premiums.

As a result of the investigation and findings, Lindsley was prosecuted and, in August 2019, pled guilty to Insurance Fraud in the Fifth Degree, a misdemeanor. He was subsequently sentenced to a \$1,000 fine and paid in excess of \$1,000 in restitution to the carrier.

² One arrest in 2019 was both a claimant and employer matter; a claimant who was collecting workers' compensation benefits was also operating a business that did not secure workers' compensation insurance for its employees.

³ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Contractor Charged With Felony Workers' Compensation Fraud On Former Fulton Nestlé Plant Asbestos Demolition Work (February 26, 2019), <https://ig.ny.gov/news/contractor-charged-felony-workers-compensation-fraud-former-fulton-nestle-plant-asbestos>.

State Employee Charged in Workers' Compensation and Welfare Fraud Schemes

In January 2019, a WCFIG investigation resulted in the arrest of Raphael Ziegler, a former New York State Office of Mental Health employee, on charges that he engaged in several fraudulent activities enabling his theft of more than \$100,000 in workers' compensation benefits and Medicaid payments.⁴ He was charged with Grand Larceny in the Second and Third Degrees, Insurance Fraud in the Third Degree, two counts of Falsifying Business Records in the First Degree, and the two counts each of the Workers Compensation crimes of Failure to Secure Compensation and Fraudulent Practices, all felonies.

The WCFIG investigation found that Ziegler, while absent from his State job on workers' compensation disability leave, operated a business and worked on several other jobs. Ziegler began operating his business, a Medicaid taxi transportation company, on the first day he went on leave from his State job. The business was operated illegally because it failed to provide the statutorily required workers' compensation insurance coverage for its employees despite Ziegler's certification in its Medicaid provider application that the business was in full compliance with State laws. As the business failed to provide workers' compensation insurance coverage for its employees, the taxi company, Emunah Transportation, was ineligible to provide Medicaid transportation services.

This matter is pending with the Rockland County District Attorney's Office.⁵

Cases Involving Fraud by Claimants

In 2019, WCFIG continued its investigations of workers compensation claimants who defrauded the workers' compensation system by falsely reporting their work status or activities or otherwise collecting benefits to which they were not entitled. Claimant fraud increases the costs of insurance to New York State employers and erodes the public's trust in the workers' compensation system. In 2019, WCFIG's investigations related to claimants who fraudulently collected workers' compensation benefits resulted in 16 arrests and prosecutions. In one case, WCFIG's investigation of fraud by a claimant revealed evidence that the claimant also operated

⁴ Press Release, State Employee With Side Business And Outside Jobs Charged With Six-Figure Workers' Compensation And Welfare Fraud (January 17, 2019), <https://ig.ny.gov/news/state-employee-side-business-and-outside-jobs-charged-six-figure-workers-compensation-and-welfare-fraud>. Medicaid is a county, state, and federally funded benefit program providing health care coverage for individuals with limited income.

⁵ All defendants are innocent unless and until proven guilty in a court of law.

a business that failed to provide workers' compensation insurance for its employees.

Thruway Mechanic Involved in Workers' Compensation Fraud

In October 2019, a WCFIG investigation resulted in the arrest of Daniel Dattilo, a former New York State Thruway Authority mechanic who filed two separate claims for injuries incurred while working for the State, on charges that he was working at his own HVAC repair business while falsely reporting that he was not working. Dattilo allegedly collected more than \$33,000 in indemnity benefits to which he was not entitled.

A WCFIG investigation found that Dattilo remained out of work and collected workers' compensation benefits between October 2016 and November 2017 after filing a claim for a workers' compensation injury sustained years earlier in 2014. Five days after returning to work in November 2017, Dattilo filed a workers' compensation claim for a new injury sustained on his State job and remained out of work collecting benefits until November 2018.

While collecting benefits, Dattilo repeatedly asserted to independent medical examiners and in testimony before the Workers' Compensation Board that he was not working due to his sustained injuries. However, WCFIG's investigation determined that Dattilo was indeed performing work for his HVAC business, Absolute Heating, Air Conditioning and Plumbing, Inc., during the times he claimed he was unable to work and concurrently collecting workers' compensation benefits.

In November 2019, Dattilo pled guilty to Attempted Fraudulent Practices in violation of Workers' Compensation Law section 114 and paid more than \$33,000 in restitution to his insurance carrier, the New York State Insurance Fund.⁶ Dattilo also signed a waiver of rights to future indemnity benefits on his workers' compensation claims and resigned from State service.

Woman Cashed Workers' Compensation Checks Intended for Deceased Relative

In April 2019, as a result of a WCFIG investigation, Brandy Sheppard was arrested on charges that she fraudulently cashed 23 workers' compensation indemnity benefit checks

⁶ Press Release, Orange County Thruway Mechanic Who Worked For Private HVAC Business While Collecting Workers' Compensation For Alleged Injuries Convicted For Fraud (November 26, 2019), <https://ig.ny.gov/news/orange-county-thruway-mechanic-who-worked-private-hvac-business-while-collecting-workers>.

intended for her grandmother who, unbeknownst to the insurance carrier, had passed away.⁷ In August 2019, Sheppard was indicted by a Monroe County Grand Jury on charges related to this wrongdoing.

The WCFIG investigation found that Sheppard created the alias “Teshana Balbough” to sign her grandmother’s benefit checks for nearly a year after her grandmother’s death and to mislead investigators retained by the workers’ compensation insurance carrier. Sheppard also used several friends in her scheme to assist in cashing the checks as Sheppard did not have her own bank account.

In October 2019, Sheppard pled guilty to Grand Larceny in the Third Degree and agreed to pay more than \$5,000 in restitution.⁸

Bus Driver Coached Sports Team While Collecting Workers’ Compensation Benefits

In October 2019, a WCFIG investigation resulted in the arrest of a former bus driver employed by a State entity on charges that he was working as a high school basketball coach while fraudulently claiming that he was unable to work and entitled to workers’ compensation indemnity benefits.

WCFIG’s investigation found that this individual submitted documents during independent medical examinations indicating that he was not working and had not worked in any capacity since sustaining a work injury in November 2016. However, throughout the period he was collecting workers’ compensation benefits, this individual was actually working as the coach of a girls’ varsity basketball team in Putnam County, New York. The individual was observed by investigators actively bending, squatting, pacing, waving his arms, and abruptly standing up from the sidelines during games and practices despite his claim that he sustained a debilitating injury to his knee, which rendered him unable to work.

In November 2019, this individual pled guilty to Disorderly Conduct and paid nearly \$17,000 in restitution. He was also terminated from his position with the State entity.

⁷ Press Release, Rochester Woman Charged With Stealing Over \$5,000 In Workers’ Compensation Benefits By Forging Her Deceased Grandmother’s Checks (April 10, 2019), <https://ig.ny.gov/news/rochester-woman-charged-stealing-over-5000-workers-compensation-benefits-forging-her-deceased>.

⁸ Press Release, Rochester Woman Pleads Guilty To Cashing Workers’ Compensation Checks Intended For Her Deceased Grandmother (October 16, 2019), <https://ig.ny.gov/news/rochester-woman-pleads-guilty-cashing-workers-compensation-checks-intended-her-deceased>.

Training and Outreach

During 2019, WCFIG continued outreach efforts and provided training and information on its mission and various aspects of workers' compensation fraud to a number of groups and stakeholders across New York State and to numerous State agencies. As part of this initiative, the Inspector General's staff provided training to every new recruit enrolled in programs at the New York State Department of Corrections and Community Supervision's Albany Training 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 thousands of correction officer recruits on these matters. The Inspector General's staff also provided training to new parole officer recruits regarding workers' compensation fraud and abuse.

In March 2019, the Inspector General's staff conducted a workers' compensation fraud presentation in New York City at the annual meeting of the New York Alliance Against Insurance Fraud. Additionally, in April 2019, a comprehensive roundtable case study presentation was led by the Inspector General's staff at the National Insurance Crime Bureau's Workers' Compensation Medical Fraud Seminar in Plainview, New York. In May 2019, the Inspector General's staff conducted a presentation regarding workers' compensation fraud at the spring conference of the New York State Association of Self-Insured Counties in Oswego, New York.

In July and August 2019, the Inspector General's staff presented at the Workers' Compensation Board's Summer Conference in Albany, Rochester, and New York City. In September 2019, the Inspector General's staff also conducted a presentation regarding workers' compensation fraud at a meeting of the Independent Medical Examination (IME) Advisory Committee. This advisory committee was convened in 2019 by the Workers' Compensation Board pursuant to New York State Workers' Compensation Law section 137(12), which was a legislative reform enacted in 2017 to examine issues concerning IME availability, quality, and potential fraud.

Throughout 2019, the Inspector General's staff also addressed several chapters of the New York State Building Officials Conference (NYSBOC) and its member municipalities. NYSBOC's mission is to assist building officials in properly interpreting and enforcing the various building codes and ordinances, and to make recommendations, based on experience, to

the New York State Fire Prevention and Building Code Council. The Inspector General's staff provided training related to identifying, documenting, and reporting suspected workers' compensation fraud by employers and employers' use of workers' compensation exemption certificates in applying for municipal building permits.

Initiatives and Task Forces

In 2019, WCFIG maintained key partnerships in its efforts to combat workers' compensation fraud. WCFIG regularly met with representatives of the New York State Insurance Fund to share information and coordinate resources to combat fraud and improve the efficiency and effectiveness of the workers' compensation system. WCFIG 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 regularly met with the Albany and Buffalo chapters of the Northern District of New York Health Care Fraud Task Force.

Throughout 2019, WCFIG also continued its participation in a task force on workers' compensation created by Governor Cuomo in 2015 in an effort 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 from the New York State Insurance Fund and human resource staff from various state agencies. In 2019, numerous investigations involving the task force are ongoing.

Additionally, in 2019, WCFIG collaborated closely with the Joint Task Force on Employee Misclassification and Worker Exploitation (JTF), which was established by Governor Andrew Cuomo's Executive Order 159 in July 2016.⁹ WCFIG had previously been a member of both the Joint Enforcement Task Force on Employee Misclassification, created in September 2007, as well as the Task Force to Combat Worker Exploitation, created in July 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

⁹ Exec. Order No. 159, Joint Task Force on Employee Misclassification and Worker Exploitation (July 20, 2016), <https://www.governor.ny.gov/news/no-159-establishing-permanent-joint-task-force-fight-worker-exploitation-and-employee>.

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. Accordingly, 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. WCFIG is currently investigating several cases involving employee misclassification.

WCFIG also continued its collaboration in 2019 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 2019 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 2019, 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 prosecution, WCFIG refers those matters to the Workers' Compensation Board for appropriate administrative enforcement and compliance action.

Regulatory and Administrative Changes Resulting from WCFIG Recommendations

WCFIG conducted multiple investigations that demonstrated fraud and abuses of the New York State Department of Corrections and Community Supervision's (DOCCS) contractual workers' compensation benefit program. In the course of these investigations, WCFIG found that the form utilized in the workers' compensation program to evidence a medical physician's or provider's determination that an employee was unable to work was sometimes in fact completed by the employee or someone other than the physician whose signature appeared at the bottom of the form.

As a result, WCFIG recommended changes in the directives and forms utilized by DOCCS for this program. Specifically, in December 2019, DOCCS adopted changes to its directives governing the administration of DOCCS' contractual workers' compensation benefit program. The directives and documentation for workers' compensation leave form utilized in the program were modified to include an attestation that, by submission of the form, the claimant requesting benefits attests that all information provided was completed by a licensed medical physician or provider.

In 2019, WCFIG also made recommendations to the Workers' Compensation Board to modify a form utilized by claimants to report a claim. As a result of WCFIG's recommendations, the Workers' Compensation Board adopted a new version of this form—the Employee Claim C-3 form—in which a prospective claimant is asked whether she or he had another injury to the same body part or a similar illness to the current claim. This inquiry replaced a previous question on the form asking the prospective claimant if she or he “remember[s]” having another injury to the same body part or a similar illness.

CONCLUSION

This 2019 WCFIG Annual Report summarizes the office's anti-fraud activities during the past year. In 2020, 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 year ahead, WCFIG's efforts will continue to protect vulnerable workers, prevent fraud, and yield significant savings for New York State.