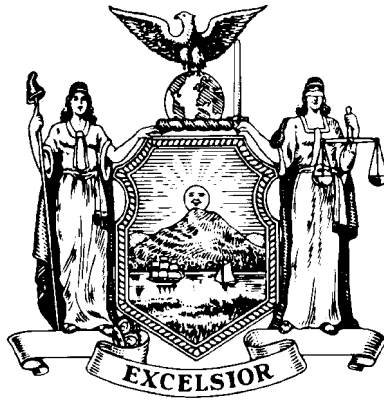


State of New York
Office of the Workers' Compensation Fraud
Inspector General



2020 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 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 analysis of records and taking of testimony from employers, attorneys, employees, health care providers, and insurance carriers. These investigations result in criminal referrals, arrests, and prosecutions, as well as recoveries of overpayments and restitution resulting from the fraud identified.

In 2020, WCFIG, headed by New York State Workers' Compensation Fraud Inspector General Letizia Tagliafierro¹, was presented with unprecedented challenges resulting from the COVID-19 pandemic. Inspector General Tagliafierro adapted quickly to these challenges, adopting procedures to ensure the ongoing safety of the public and her staff while seamlessly continuing to investigate workers' compensation fraud and fulfill WCFIG's mission.

In addition to the health and safety risks posed by COVID-19 in 2020, the pandemic resulted in a drastic increase in New York State unemployment.² With millions of people out of work since April 2020, new workers' compensation claims fell nearly 23 percent to a five-year low of 139,843 in 2020.³ In addition, throughout 2020, New York State courts repeatedly limited or precluded the commencement of criminal proceedings and the summoning of grand juries in response to directives placing restrictions on the congregation of groups of people in public and private places.⁴

¹ Governor Andrew M. Cuomo appointed Letizia Tagliafierro as the New York State Workers' Compensation Fraud Inspector General in September 2019. Tagliafierro also serves as the New York State Inspector General.

² Press Release, Office of the New York State Department of Labor, NYS Economy Loses More Than 1.7 Million Private Sector Jobs in April 2020, Statewide Unemployment Rate Rises to 14.5% in April 2020 (May 21, 2020), <https://www.labor.ny.gov/pressreleases/2020/may-21-2020.shtm>

³ 2020 Workers' Compensation Board Annual Report, <http://www.wcb.ny.gov/content/main/TheBoard/2020AnnualReport.pdf>

⁴ Executive Order A. Cuomo No. 202.8 (March 7, 2020), et al. See also, Press Release, Office of the New York State Unified Court System, Memorandum from Lawrence Marks, Chief Administrative Judge (March 13, 2020), <http://www.nycourts.gov/whatsnew/pdf/MEMO-3.13.20.pdf>; Press Release, Office of the New York State Unified Court System, Memorandum from Lawrence Marks, Chief Administrative Judge (November 13, 2020), http://www.nycourts.gov/whatsnew/pdf/JT_Memo_Nov13-001.pdf

Despite the dire circumstance of the COVID-19 pandemic, in 2020, WCFIG continued to conduct investigations and partner with prosecuting agencies in cases that uncovered more than \$3,200,000 in fraud and resulted in 13 arrests. WCFIG also obtained more than \$1,230,000 in restitution for New York State, private employers, and insurers through successful prosecutions in 2020.

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 WCFIG's operations during the COVID-19 pandemic and continued and strengthened partnerships with and outreach to law enforcement organizations, State agencies, insurers and employers.

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, to 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. As part of its

mission, WCFIG may also recommend legislative and regulatory changes to strengthen the workers' compensation system.

Operations During COVID-19 Pandemic

Despite the unprecedented environment resulting from the ongoing COVID-19 pandemic and the challenges it posed to the essential operations of multiple New York State agencies, WCFIG quickly adapted. New practices were swiftly implemented to ensure the ongoing safety of the public and WCFIG staff members while continuing to fulfill its mission 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. Throughout 2020, WCFIG tailored its procedures to meet the challenges posed by the pandemic and evolving health and safety recommendations. WCFIG conducted operations remotely when necessary using secure technology to safely conduct witness interviews, collaborate with law enforcement partners, and access files and investigative systems. In doing so, WCFIG seamlessly continued its ongoing investigations and prosecutions of individuals involved in workers' compensation fraud.

OVERVIEW AND SUMMARY

Investigations in Response to Complaints

WCFIG investigations usually 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, law judges, attorneys, court reporters, and insurance professionals; (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 commenced in the same manner as complaints received and reviewed by the New York State Inspector General. Under this process, every telephone, online, email, mail, and personally delivered complaint is initially received and reviewed 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 fraud 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 matters alleged.

Thereafter, where appropriate, certain preliminary investigations are referred to a WCFIG investigative team for further investigation. Others are referred to the appropriate agency or insurance carrier for further action. Following a WCFIG investigation, findings may be referred for prosecution to district attorneys across New York State, the New York State Attorney General's Office, or the United States Department of Justice. Additionally, investigative findings may be referred for review and appropriate action to the New York State Workers' Compensation Board, state agencies, insurance carriers including the New York State Insurance Fund, or other interested parties. Investigations may also be closed as unsubstantiated.

In 2020, WCFIG received 1,019 complaints. Following the preliminary investigation of each complaint by WCFIG's Triage Unit, WCFIG opened 47 as full investigations, continued 190 matters as ongoing preliminary investigations, and closed 180 for the failure to allege actionable wrongdoing or where WCFIG lacked jurisdiction to investigate, among other reasons. WCFIG also closed 336 matters as unsubstantiated. Additionally, WCFIG referred 266 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.

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 proceedings, 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.

Cases Resulting in Criminal Prosecutions

WCFIG's investigations in 2020 uncovered over \$3,200,000 in fraud and led to criminal prosecutions resulting in 13 arrests, including one arrest involving a provider/professional matter, four arrests involving claimant matters, and eight involving employer matters. Additionally, through completed prosecutions in 2020, WCFIG's investigations facilitated the recovery of more than \$1,230,000 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.

Cases Involving Fraud by Medical Providers or Other Professionals

In 2020, WCFIG continued its investigation of medical providers and other professionals whose work is integral to the proper administration of the Workers' Compensation system. These professionals included treating and independent physicians, physician assistants, law judges, attorneys, court reporters, and insurance professionals. These cases are often complex and involve long-term investigations. WCFIG's investigations in 2020 of workers' compensation fraud by medical providers and other professionals resulted in one arrest and prosecution.

Stenographer Arrested for Extensive Overbilling Scheme

Following one such WCFIG investigation, in February 2020, Laura Hayes, an Oswego County stenographer, was arrested on charges that she intentionally overbilled multiple insurance carriers for her services.⁵ The WCFIG investigation found that Hayes, who was the owner and operator of Quality Court Reporting, a stenographic service in Central New York, routinely added zeros to billing invoices sent to insurance carriers for her work in workers' compensation

⁵ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Oswego County Stenographer Arrested for Extensive Overbilling Scheme (February 19, 2020), <https://ig.ny.gov/news/oswego-county-stenographer-arrested-extensive-overbilling-scheme>

proceedings. These actions resulted in the theft of more than \$187,000 over the course of several years.

As a result of the investigation, Hayes was prosecuted and, in October 2020, pled guilty to Grand Larceny in the Second Degree, a felony.⁶ She was subsequently sentenced to a five-year term of probation and the repayment of \$152,000 in restitution to multiple insurance carriers.

Cases Involving Fraud by Employers

In 2020, 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 2020 of workers' compensation fraud by employers resulted in eight arrests and prosecutions.

Employee Injured on Job While Contractor Lacks Workers' Compensation Insurance

Following a WCFIG investigation, in November 2020, Peter and Kathryn McCann, the owners of PMC Construction, a Pearl River-based construction company, were arrested on felony charges that they failed to provide required workers' compensation insurance for their employees.⁷ The McCanns were also charged with the workers' compensation crime of Fraudulent Practices for the filing of false documentation in order to avoid the requirements of the workers' compensation law.

The WCFIG investigation found that the McCanns repeatedly filed for home improvement licenses/renewals with the Rockland County Office of Consumer Protection and claimed that PMC had no employees and therefore was not required to maintain workers'

⁶ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Oswego County Stenographer Pleads Guilty to Running Extensive Overbilling Scheme (October 6, 2020), <https://ig.ny.gov/news/oswego-county-stenographer-pleads-guilty-running-extensive-overbilling-scheme>

⁷ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Inspector General Tagliaferro Announces Arrest of Pearl River Contractor for Failing to Have Workers' Compensation Insurance After Employee Gets Injured on Job (November 13, 2020), <https://ig.ny.gov/news/inspector-general-tagliaferro-announces-arrest-pearl-river-contractor-failing-have-workers>

compensation insurance. However, the Inspector General reviewed multiple bills submitted by PMC to clients that detailed work performed by the entity and included more than five employees on the jobs. Most notably, the investigation found that one employee, who worked for PMC as a painter and sustained a serious fracture to his foot when he fell off a ladder, filed a claim with the Workers' Compensation Board. The Board subsequently found PMC liable for the employee's claim, which resulted in extensive payments by the New York State Uninsured Employers' Fund for medical and wage indemnity benefits.

This matter is pending with the Rockland County District Attorney's Office.⁸

Cases Involving Fraud by Claimants

In 2020, 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. Fraud by claimants increases the costs of insurance to New York State employers and erodes the public's trust in the workers' compensation system. In 2020, WCFIG's investigations related to claimants who fraudulently collected workers' compensation benefits resulted in four arrests and prosecutions.

Sing Sing Guard's Workers' Compensation Fraud – False Medical Documents

Following a WCFIG investigation, in October 2020, Darquis Wright, a correction officer working at Sing Sing Correctional Facility who filed multiple workers compensation claims for injuries sustained on the job, was arrested on nine felony charges that he repeatedly submitted forged or falsified medical documentation in order to obtain workers' compensation wage benefits to which he was not entitled.⁹

A WCFIG investigation found that between March 2018 and September 2019, Wright claimed three separate injuries while on duty and filed applications for workers' compensation leave benefits with the New York State Department of Corrections and Community Supervision. To support these claims, Wright repeatedly submitted medical documentation to Sing Sing purportedly from a Staten Island-based orthopedic surgeon and another Staten Island-based

⁸ All defendants are innocent unless and until proven guilty in a court of law.

⁹ Press Release, Office of the New York State Workers' Compensation Fraud Inspector General, Sing Sing Prison Guard Arrested for Falsifying Documents to Get More Than 3 Moths in Workers' Comp Leave (October 20, 2020), <https://ig.ny.gov/news/sing-sing-prison-guard-arrested-falsifying-documents-get-more-3-months-workers-comp-leave>

physician. The documentation falsely stated, based upon medical examinations allegedly performed by the physicians, that Wright was unable to work. This enabled Wright to obtain workers' compensation leave and collect wage benefits for multiple periods. WCFIG's investigation found that the examinations upon which the medical documentation was purportedly based in fact never occurred. Both the orthopedic surgeon and the other physician confirmed in interviews conducted by the Inspector General that the documentation was fraudulent. During the out of work periods excused by the fraudulent notes, Wright received more than 100 days of workers' compensation leave and at least \$16,000 in wages.

This matter is pending with the Westchester County District Attorney's Office.¹⁰

Training and Outreach

During 2020, WCFIG continued its efforts to provide training and information on its mission and various aspects of workers' compensation fraud to stakeholders across New York State and 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 addition, the Inspector General's staff delivered a presentation to the Workers' Compensation Board on October 20, 2020, regarding WCFIG's 2019 annual report, notable WCFIG cases, and the office's response to COVID-19.

While the Inspector General's staff was also scheduled to conduct several presentations and outreach to numerous groups in 2020, these presentations were largely cancelled or postponed due to the ongoing COVID-19 pandemic and are expected to resume in 2021.

Initiatives and Task Forces

In 2020, Inspector General Tagliafierro maintained key partnerships in her efforts to combat workers' compensation fraud. WCFIG regularly met virtually with representatives of the

¹⁰ All defendants are innocent unless and until proven guilty in a court of law.

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 met regularly with the Northern District of New York Health Care Fraud Task Force.

Throughout 2020, WCFIG also continued its participation in the Workers' Compensation Task Force 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. 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 resources staff from various state agencies. In 2020, numerous investigations involving the task force were ongoing.

Additionally, in 2020, WCFIG continued to collaborate 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, 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 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, among others. WCFIG is currently investigating several cases involving employee misclassification.

WCFIG also continued its collaboration in 2020 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 in 2020 to combine resources in investigating matters involving fraud perpetrated by employers in New York State. In cases where a criminal prosecution was 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 2020, 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 action.

CONCLUSION

This 2020 WCFIG Annual Report summarizes the office’s anti-fraud activities during the past year. Despite the ongoing COVID-19 pandemic, in 2021 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 additional 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 continue to protect vulnerable workers, prevent fraud, and yield significant savings for New York State.