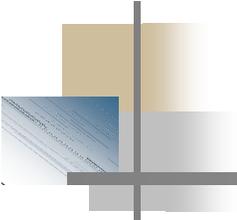


# Workers' Compensation Fraud Issues

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Presented by:  
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## 3 Types of Fraud

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- Employee Fraud
- Employer Fraud
- Medical/Health Care Fraud

# Employee Fraud- Civil

- Civil Workers' Compensation Fraud
  - Elements:
    - Misrepresentation or concealment of fact
    - The misrepresentation/concealment is material to an issue in the claim
    - The misrepresentation/concealment is made with the intent of misleading another to rely on it
    - The misrepresentation/concealment caused the Bureau/Employer to rely on the contents of the misrepresentation/concealment
    - The misrepresentation/concealment proximately caused an injury to the Bureau/ employer (typically payment of benefits)

# Employee Fraud- Civil

- Most issues of civil workers' compensation fraud involve collecting temporary total or permanent total disability while engaging in gainful employment.

# Employee Fraud- Civil

- Recoupment of funds by the BWC is governed by Ohio Revised Code § 4123.511(J) and (K) but is different for state fund versus self-insured employers.

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# Employee Fraud- Civil

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State Fund vs. Self-Insured Employers

# Employee Fraud- Civil

- State Fund Employers
  - Most often with civil fraud, the overpayment is collected through future awards but the Employer's account is credited immediately.
  - Any premium impact will also be alleviated.

# Employee Fraud- Civil

- Self-Insured Employers
  - Self-Insured Employers that still pay into the surplus fund can recoup the overpayment in the same way as state fund employers under § 4123.511(J) and (K).
  - Self-Insured Employers that no longer pay into the surplus fund which is now the majority of Self-Insured Employers must go after the employee independently.

# Employee Fraud - Civil

- Practical Applications of Workers' Compensation Fraud
  - Almost always applied to claimants who are working while collecting disability benefits.
  - Malingering is not fraud!
    - Are private investigators worth the cost?
    - Submission of P.I. reports and videos at hearing

# Employee Fraud – Red Flags

- Facebook, LinkedIn, SOCIAL MEDIA!!!  
(must be an open account. You cannot friend the person under a pseudonym to see the account.)
- Claimant is never home, never answers phone calls or has specific times and days for IMEs
- Seasonal work that is about to end and files a claim
- Claimant engages in physical activity while on TT or PTD that is inconsistent with limitations due to injury
- Claimant is collecting TT or PTD while working
- Claimant is “diverting” narcotics to others or deceiving medical providers to obtain prescriptions

# Employee Fraud- Criminal

- Criminal Fraud is governed by O.R.C. § 2913.48.
- The elements are almost the same as civil fraud but must include clear evidence of intent to defraud.
- Bureau must prove criminal theft without consent of the owner through deception, threat or intimidation.
- Criminal fraud can also include forgery.

# Employee Fraud- Criminal

- A conviction can result in a first degree misdemeanor to a third degree felony, depending on the amount of money.
- In addition to criminal penalties, a finding of criminal fraud will result in an attempt to immediately recoup all payments tied to the fraud from the claimant.

# Employer Fraud

- Employer fraud usually involves premium non-payment and/or misreporting of workers' compensation payroll.
  - Failure to pay premiums under O.R.C. § 4123.37.
  - Misrepresentation as to amount or classification of payroll under O.R.C. § 4123.25.

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# Employer Fraud

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- Employers can be criminally prosecuted under O.R.C. § 4123.99.
- Penalties can range from a minor misdemeanor to a second degree misdemeanor and can also involve treble damages.

# Employer Fraud – Red Flags

- Suspicion that a competitor is underbidding contracts because they are not paying workers' compensation coverage.
- Certificate of coverage is not visible to employees or is outdated.
- Employer is misreporting payroll or shifting payroll suddenly to lower cost jobs.
- Employer misclassifies employees as independent contractors/subcontractors.

# Medical/Health Care Fraud

- Medical/Healthcare fraud involves obtaining payment by deception from the BWC and/or a self-insured employer.
- Medical fraud can involve a health care provider, manage care organization (MCO), the owner of a medical practice or a management care practice.

# Health Care Fraud – Red Flags

- Medical providers are performing medically unnecessary treatments or diagnostic tests.
- Services that have not been provided have been billed, or more expensive procedures than those performed are billed.
- An unlicensed medical provider is billing for services.
- Narcotic prescriptions are being provided with limited or no medical treatment/evaluations.

# Workers' Compensation Fraud

Who are the players in the workers' compensation fraud system?

# Workers' Compensation Fraud

- BWC Special Investigations Unit (SIU) is the lead agency for investigating all workers' compensation fraud.
  - SIU is comprised of three regional special investigation units for claimant fraud that operates in most customer service offices.

# Workers' Compensation Fraud

SIU, in addition to claimant fraud team, has three other teams:

- Health care provider team
- Employer fraud team
- Safety violations investigation unit (VSSR)

# Workers' Compensation Fraud

The Ohio Attorney General's Office can become involved in fraud investigations, especially criminal fraud prosecutions.

# Workers' Compensation Fraud

The Ohio Highway Patrol has jurisdiction over crimes committed in state buildings or on state property.

# Workers' Compensation Fraud

Local law enforcement often becomes involved in BWC fraud investigations where there is evidence of illegal dispensing of narcotics by health care providers. "Pill Mill" cases.



## Workers' Compensation Fraud Statistics

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From the inception of the program in  
1993 through June 2015:

- Researched 114,538 allegations;
- Completed 62,465 investigations;
- Closed 25,534 founded cases;
- Identified \$1.6 billion in savings;
- Identified \$26,478 per closed case;
- Referred 4,672 subjects for prosecution;
- Secured 2,429 criminal convictions.

# 2015 Statistics

	Prosecution Referrals	Indictments	Convictions	Identified Savings
Employer Fraud	65	36	42	\$3,286,721
Health Care Fraud	11	3	3	\$19,382,499
Claimant Fraud	153	92	106	\$37,090,867

# 2014 Statistics

Prosecution Referrals    Indictments    Convictions    Identified Savings

Employer Fraud	67	55	40	\$3,746,592
Health Care Fraud	32	2	6	\$19,562,267
Claimant Fraud	168	92	86	\$32,597,553

# Workers' Compensation Fraud

Questions about workers' compensation fraud or workers' compensation in general?

# OSHA Reminder

On November 1, 2016, OSHA's new reporting rule, 29 CFR § 1904.(b)(1)(i) take effect.

- Retaliatory reporting procedures:
  - Reporting procedures that discipline for failure to immediately report an injury run afoul of the new rule.
  - Incentive programs that encourage employees not to report injuries or disease are not compliant.
- Unreasonable reporting procedures:
  - Deter or discourage reporting such as mandatory post-accident blanket drug testing policies. **Exception to the rule are federal and state mandated drug testing.**