Workers Compensation Prosecutions

INVESTIGATOR VERN VANDEBERG
Workers Compensation & Unemployment Insurance Fraud Unit

- To be hired soon– AAG

- Vern Vandeberg
  - Half time worker's compensation investigator
  - Former DCI Agent/Detective

- Four full time Unemployment Insurance Investigators
  - All former Law Enforcement

- Started December 2016
Before it was a Local issue

Department of Workforce Development received tips referred cases to you and would ask you to investigate.

All prosecutions to local law enforcement (county DA)
Very few charged
In 2015: Wisconsin Act 180 was passed and took effect in 2016.
Statewide approach
Dedicated staff to evaluate and prosecute cases
Increased Awareness
Developing Expertise in staff
One stop shopping
Start of something more?
Every initial tip that comes in, all are forwarded to investigator

Expect contact from pretty quickly after report, usually via phone

Contact will be made with whoever is on file with DWD
102.125 Fraud reporting, investigation, and prosecution.

Amended to allow Department of Justice to prosecute and investigate on behalf of DWD

The department *may* require an insurer or self-insured employer to investigate any allegedly false or fraudulent claim and may provide the insurer or self-insured employer with any records of the department relating to that claim.
"If an insurer or self-insured employer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the claim to the department will not impede its ability to defend, the insurer or self-insured employer shall report the claim to the department."

For s. 102.125 (1), Wis. Stats., to apply the insurer or self-insured employer is to have evidence a claim is false or fraudulent in violation of s. 943.395, Wis. Stats. It is important to remind everyone that in a criminal case the standard of proof is that the case must be proved beyond a reasonable doubt. There is no requirement to report false or fraudulent claims that are not defined within the meaning of s. 943.39, Wis. Stats., and for which the evidence does not meet the beyond reasonable doubt standard.

In some cases there is a reasonable basis to believe that fraud has occurred, but the elements of s. 943.395, Wis. Stats., have not been meet and the evidence of the cases do not meet the required beyond reasonable doubt standard. There is no statutory requirement to report these cases and in my opinion these cases should not be reported. Many times there are conflicting opinions by practitioners who treat and examine injured employees related to the cause of an injury being work-related and the extent of disability. Conflicting opinions are not alone adequate proof of fraudulent claims.
What kinds of Fraud are out there for Worker’s Compensation?

Too many!!!!
A Lot of Money!
Deterrence and Restitution
Can encompass many crimes in Wisconsin:

§ 943.20(1)(d) – Theft by Fraud
§ 943.395 – Fraudulent insurance and employee benefit program claims
§ 943.39  – Fraudulent Writings
§ 943.392  – Fraudulent data alteration
Many, many others.
Burden of Proof
Much harder in Criminal case
vs.
Civil Cases
Beltran
Pay to the Order of

$796.41

Dollars

Payment Memo

3/4 $184.00

J. D. Ford

6/14

DEPOSITED

700.00

9/12

TOTAL

796.41

1/3

IN THIS CHECK

184.00

6/24

L. G. Ford

6/24

3/4

check

3/4

check

June 14, 1948

Peck and Nunn Co.

3 juice lemons

STATE SAVINGS BANK

OF ANN ARBOR

74-102

ANN ARBOR, MICH.

19

No. 350

Dollars
Smith/Jones hidden employees

Remember worker comp case can lead to unemployment case
What can Insurers and other stakeholders do?

First Spotting Fraud – Well known Flags (partial)
Monday morning accidents
No witnesses (know their workplace)
Delayed reporting
Employee has other problems at work
History of claims
Familiar actors (doctors, lawyers, etc)
Avoiding contact with insurer
Your own experience and intuition
Many are the same things we will look for when building a case
Check in on claimant – ask questions
How are they doing?

Are they working anywhere else?
Talk to their doctors
Often taken off on subjective reports (pain)
Is what the doctor sees lining up with reports?
Consider independent examinations when appropriate
Document!
Work with your investigative unit
Evidence is crucial

Misstatements or Misrepresentation
Statements to Dr or Insurer
Video
Limited Civil Immunity to report

- Don’t be afraid to report
  - Wis. Stat. §895.486 Civil immunity exemption; reports of insurance fraud
  - If you are worried, check with your organization
  - Website allows anonymous tips
    - But these can be problematic to investigate

- If you don’t report, we won’t be able to do anything
  - Use it or lose it
Where should I go with the case that I have right now that is bothering me?

- Referral to your Special Investigation Unit (SIU)
- SIU will create a “Prosecution Package” including, but not limited to:
  * In collaboration with the Claims Adjuster
  - FROI / FNOI
  - Initial medical report – identifying specific work restrictions
  - Initial adjuster interview / statement
  - Subsequent medical record – continuing to identify restrictions
    - PT / OT / Chiro
  - Co-worker / witness statements
  - Claims Log Notes
  - Investigation Report (SIU)
  - Surveillance Report & Video
Where should I go with the case that I have right now that is bothering me?

- DWD Website – report online or via phone
  - [https://dwd.wisconsin.gov/wc/insurance/fraud/](https://dwd.wisconsin.gov/wc/insurance/fraud/)
  - I see every tip that comes in & we follow up
- Contact me directly
  - vandebergla@doj.state.wi.us
Thank you!

Questions?