



LLARENA MURDOCK
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Worker's Compensation Fraud and Litigation Management

Acquisition and Application of Evidence

Meet our team



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WORKERS' COMPENSATION FRAUD

Definition of Workers' Compensation Insurance Fraud

Ins. Code Section 1871.4 “It is unlawful to...make or cause to be made a knowingly false or fraudulent material representation for the purpose of obtaining or denying any compensation...” (Mirrored by LC 3820)

Definition of Workers' Compensation Insurance Fraud

Elements:

- **False or fraudulent representation** = the “lie” or misrepresentation
 - -can it be by omission? Yes, but hard to prove, so make it a representation. I.e.: didn't tell us about priors vs. Q: Did you have priors? A: No.
- **Material** = makes a difference (the most misunderstood element) can think of it as: would it change benefits if not lied about?
- **For the purpose of obtaining/denying compensation** = motive & intent. Can be inferred.

Definition of Workers' Compensation Insurance Fraud

Examples:

- What kind of things do they lie about that are material?
 - Injury
 - Limitations/Impairment
 - Prior injuries.
- Lies that are not material, or without intent, are not fraud, just a credibility issue.
 - Irrelevant lies, like marriage status, using false name for work

Evidence of Fraud - Investigators

What kinds of evidence of fraud can be gathered by Investigators?

- **Medical Canvases/Documentary** – medical records of prior injuries
- **Social Media** – video/photo, time/location/activity
- **Recorded Statements** – transcribed, then need investigator to testify
- **Background Investigations** – What are we mining for? (80/20 rule)
- **Video** – surveillance, or employer video of area of alleged injury; need notes, testimony
 - *Video Clips, with commentary and background information

Evidence of Fraud - Attorneys

What kind of evidence of fraud can be gathered/developed by attorneys?

- **Depositions** – Employees, witnesses, doctors
- **Interrogatories** – to doctors (PTP communications vs. AME/QME comm)
- **Subpoenaed Records** – what do you have to have, to issue a SDT? (WCAB Juris!)
- **Direct/cross examination at trial**
 - Witnesses, by depo and/or trial
 - Doctors, by depo/cross-examination then submission of transcript of depo

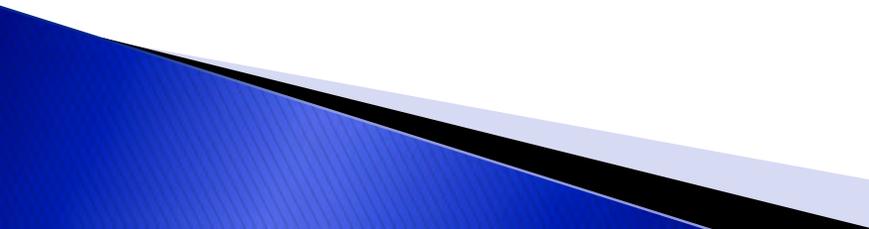
Evidence of Fraud – Claims Examiners

What kind of evidence of fraud can be gathered by claims examiners?

- **Statements** – primarily, with respect to initial interview/statement of claimant
 - **Wages**
 - **Prior injuries**
 - **Medical records**
- 

Evidence – Admissibility

How do we make evidence admissible?

- **Relevance** (similar to materiality)
 - **Physical Evidence** - chain of custody
 - **Statements** – if recorded, by testimony of investigator, or if in records by introducing the medical records or incorporation
 - **Video** – testimony of investigator
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Fraud Referrals

Fraud Referrals (FD-1) what/how/steps

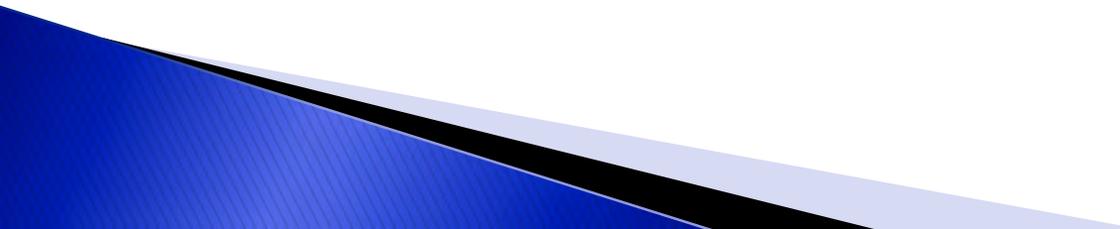
Dept. of Ins. Fraud Unit

- With supporting evidence.
- Cover letter, with detailed information about lies, and contrary evidence = make it easy for them.

Prosecution of Fraud – Who does it?

Fraud is prosecuted by
The Local District Attorney – Fraud Unit
with funds from the
Department of Insurance.

What about Perjury?

- Defined = lie under oath
 - Signed/unsigned transcript CCP 2025.520 requires transcript to be signed, to be completed
 - If not signed, “attempted perjury” – so, what do AA’s do? Used by district attorneys as bargaining chip
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What is the Effect of a Fraud Conviction?

Ins Code 1871.5 “Any person convicted of workers’ compensation fraud...shall be ineligible to receive or retain any compensation...where that compensation was owed or received as a result of a violation of Section 1871.4...for which the recipient of the compensation was convicted.”

What is the Effect of a Fraud Conviction?

- Conviction = entry of an order or judgment, by criminal court
 - nolo contendere
 - Only that species of benefits, if not compensability itself
 - Tensfeldt
 - Zenith
 - Longs Drugs
- *Extent WCAB willing to take limitations

What is the Effect of a Fraud Conviction?

- Can we stay or suspend WC proceedings pending outcome of Criminal Prosecution?
 - Dobert – no, b/c remedy is a bar and credit/restitution per Tensfeldt
 - Reality: Defense attorneys will refuse to seek restitution if you had suspicion of fraud and paid... no win situation. So, delay/deny and slow WC case while criminal going.

Evidence of Fraud

What do we do with the evidence if not enough for referral, or no conviction of fraud?

- Use it with doctors
- Use it for credibility issue with Workers' Comp Judge at trial



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LITIGATION MANAGEMENT

Introduction

Perspectives

- ▶ Insurance company or third-party administrators (Adjusters)
- ▶ Defense Attorneys
- ▶ Employers
- ▶ Brokers

Mitigate NOT Litigate

Avoid litigation for the sake of litigation!

- ▶ Settlement to be pursued at every stage of litigation.
- ▶ Prior to final medical report/medical legal report

Proper Assignment and Acknowledgement

- ▶ Defense counsel selection
- ▶ Knowing venues, Judges and applicant attorneys
 - Reputations
- ▶ Initial Litigation Plan and Budget

Proper Assignment and Acknowledgement

- ▶ Initial Litigation Plan and Budget
 - Defense Counsel Acknowledgement
 - Communication with claims examiner
 - Key Issues
 - Goals
 - Budget

Reporting

- ▶ Why Report?
- ▶ Requirements
- ▶ Expectations

Communication

- ▶ Client Status Updates
- ▶ Deposition Summaries
- ▶ Management of Communication

Compensability vs Nature & Extent

▶ Cases on Delay

- Denied
- Accepted

Settlement Agreements

What should your case settlement agreement look like?

- Approaches to settle
- Creative settlements

Walk Through Procedures

- ▶ Documents are electronically filed to obtain an ADJ number from the appropriate WCAB. Once an ADJ is assigned the case is ready to be walked through.
- ▶ When e-filing, the EAMS form must exactly match the Compromise & Release or Stipulations exactly signed by the applicant. Please ensure the spaces that require numbers or dates are filled out correctly. EAMS will not accept “N/A” or letters in spaces requiring numbers.

Walk Through Procedures

The following documents are needed in order to obtain an Award/Order at the WC Appeals Board:

- Stipulation with Request for Award or Compromise & Release signed by applicant
- Benefit Printout
- Benefit Notices
- Wage Statement
- Permanent & Stationary Report
- PQME Reports (if any)
- PQME Waiver (if no PQME)
- Rating of Medical Report (if any)



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Questions?



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