



Fraud Prosecutions: Facts Needed for Charging

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WC Fraud Prosecutions



What type of evidence does a prosecutor need to file a WC fraud case???



Purpose of this Presentation

- provide you with information as to how Prosecutors in general make Filing decisions.
- What do we consider helpful evidence?
- What do we consider irrelevant evidence for the purpose of filing charges?
- Combating WC Fraud with LC 4615

Claimant Fraud Cases

Average loss: \$30K to \$50K

- Penal Code § 550 (filing a false claim)
- Insurance Code § 1871.4 (making a false statement in a WC claim / denial of benefits)
- Penal Code § 118 (Perjury)
- Penal Code § 115 (attempt to record a false document)
- Penal Code § 470 (forgery)





Provider Fraud Cases

Average Loss: \$20 million to \$100 million

- Penal Code § 550 (A)(1) (filing a false claim)
- Penal Code § 550 (A)(6) (FILING A FALSE HEALTHCARE CLAIM)
- Penal Code § 550 (A)(5) (MANUFACTURING DOCUMENTS TO SUPPORT A FRAUDULENT CLAIM)
- Penal Code § 550 (A)(7) (BILLING FOR SERVICES NOT RENDERED)
- Penal Code § 550 (A)(8) (RESUBMITTING A FALSE CLAIM)
- Penal Code § 550 (B)(3) (FAILING TO DISCLOSE A MATERIAL FACT)
- Penal code 186.2 (money laundering]
- White collar Crimes enhancement for loss of over \$100K or 500K (PC 186.11)





Provider Fraud Causes

- Insurance Code § 1871.4 (making a false statement in a WC claim / denial of benefits)
- Penal Code § 549 (illegal referrals)
- Business & professions code § 650
- Insurance code § 750 (unlawful kickback to claims handler for referral)
- Business & professions code 2052 (illegal practice of medicine]
- Penal code 186.2 (money laundering]
- White collar Crimes enhancement for loss of over \$100K or 500K (PC 186.11)





We Need Specific Conduct!

- We cannot and *will not* prosecute a case without being able to prove that
 - (1) A crime was committed;
 - When? (Dates of violation)
 - Where? (Orange County or Los Angeles County or...)
 - What did the defendant do? (law violation)
 - (2) the defendant is the person who committed the crime.



Prosecutors understand lying, cheating and stealing!

EVERY CRIMINAL FRAUD INVOLVES A *MATERIAL* LIE.





Example to consider...

FD-1 submitted stating the claimant lied during her deposition when she said she did not pick-up her child.

Deposition transcript reveals that the claimant/deponent was asked multiple times if she picked up her toddler. The deponent consistently answered that she tried to avoid picking up her child and only when she had to pick the child up and how she would hold the child – centered in front of her. At one point during the deposition, the deponent answered the question with just a “no” without any explanation.

Sub-rosa has her picking up the child.

○ DDA rejected the case. Why?

Keep the goals of justice in mind

- Search for the truth
- Present the truth
- Seek justice
- Keep it simple





Another example...

Should you even bother to depose?

- ▶ Consider the following scenario:
- ▶ FD-1 submitted alleging claimant made material misrepresentations to multiple doctors when describing things that the claimant absolutely could not do. Deposition was taken but the attorney never asked about any of the alleged statements the deponent/claimant made to any of the doctors.
- ▶ Medical records from seven separate doctors, some of which were close in time to sub-rosa which clearly supported an I.C. 1871.4(a)(1) charge.
- ▶ Case rejected by DDA. Why?
- ▶ Three doctors were targets or charged in Provider Fraud Cases
- ▶ One Doctor moved out of state and would not cooperate
- ▶ One Doctor had died
- ▶ Two Doctors were elderly, one had Alzheimer's and the other had no memory of the claimant due to onset of dementia.
- ▶ **Could you have made this a case we could criminally prosecute by deposing the claimant?**



Determine Materiality

- ◎ Is this something the suspect had a duty to give to the employer/insurance company to determine its obligations?
- ▶ Criminal History – Is it relevant to the WC claim? Failure to disclose, is this material?
- ▶ Injuries to different body parts, material?
- ▶ What if the employer/insurance company has information of the “lie” and still proceeds to agree to a settlement? Is there materiality – the insurance company knew the truth when they made their decision.



Provider Fraud Referral

- **FD-1 Referral:** We have been receiving claims from ABC company for interpretation bills each for \$195. Three of the Claimants were deposed without an interpreter and spoke English well. Total amount billed on behalf of these claimants was in excess of \$1600 each. The claimant was not questioned about the existence of an interpreter at the deposition. We were unable to locate the interpreter. ABC Company did not return our calls. We ran data analytics and determined that we have received 1200 claims for interpretation for 300 individual injured workers from ABC Company. ABC company is located in your County in an empty building.
- What did the prosecutor do?



Another Provider Fraud Referral

- FD-1: Physician is in our MPN. He provides 35 chiropractic sessions for his patients, instead of the permitted 20 sessions. None of his patients are rehabilitated with the approved 20 sessions. He even has some instances where he is treating the patients for 50 to 60 chiropractic sessions. He is not entitled to payment beyond the first 20 claims. He has overbilled our company by \$500,000.
- What did the prosecutor do?



Another Provider Fraud Referral

- FD-1: Physician is a PTP and he is in our MPN. Every patient this physician sees, gets an in office urine toxicology test. Physician states that he is relying on AECOM guidelines to order the test. His “in-office” test is billed at \$300 per visit. The Urine is then sent to ABC Lab for “confirmation testing.” ABC Lab submitted a bill for to us for \$2000 per test. We recently discovered that ABC Lab is owned by his live-in girlfriend. In the past year, we have been billed in excess of \$200,000 by the provider and \$1,000,000 by ABC Lab for these Urine Toxicology tests.
- What did the prosecutor do with this FD-1?



Documents are NOT enough! But they are a start . . .

DESCRIPTION	AMOUNT
LABORATORY ROUTINE	2,083.19
LABORATORY SPECIAL	4,521.68
PHARMACY	
MISCELLANEOUS CHAR	
PHYSICAL THERAPY	
OCCUPATIONAL THERA	
CENTRAL SERVICE	
RESPIRATORY	
BOYM BUDGE	



Date of Inv	Inv #	Inv Code	Description	Amount
8/1/18	8276701	9028	G35 DR EVAL	
8/1/18	8258801	9023	G35 PHYS INT CONSULT	
8/1/18	8266002	9020	G33 INT OBSV	
8/1/18	8203013		G35 RM CHRG, SEM-PRIVATE	
8/1/18	8175806	3090	G35 METHYLPREDNS	
8/1/18	8175815	3060	G35 INF THERAPY	
8/1/18	8175888	3064	G35 INF THERAPY ACCD	
8/1/18	8070001	9900	G35 SPECIAL SUPPLIES PHYSICN	
8/2/18	8270013		G35 RM CHRG, SEM-PRIVATE	
8/2/18	8028105	9028	G35 PHYS OBVS	
8/2/18	8175806	3090	G35 METHYLPREDNS	
8/2/18	8175815	3060	G35 INF THERAPY	
8/2/18	8175890	3064	G35 INF THERAPY ACCD	
8/2/18	8070001	9900	G35 SPECIAL SUPPLIES PHYSICN	
8/3/18	8270013		G35 RM CHRG, SEM-PRIVATE	1,647.81
8/3/18	8028105	9028	G35 PHYS OBVS	508.56
8/3/18	8470001	7055	G35 F. MRI BRAIN W WO CONTRAST	1,142.00
8/3/18	8470629	7887	G35 SPECT 98-37	542.90
8/3/18	8470635	7440	G35 F/P	129.00
8/3/18	8070001	9900	G35 SPECIAL SUPPLIES PHYSICN	96.93
8/4/18	8270013		G35 RM CHRG, SEM-PRIVATE	1,647.81
8/4/18	8028105	9028	G35 PHYS OBVS	508.56
8/4/18	8175806	3090	G35 METHYLPREDNS	163.00
8/4/18	8175815	3060	G35 INF THERAPY	181.75
8/4/18	8175888	3064	G35 INF THERAPY ACCD	85.80
8/4/18	8070001	9900	G35 SPECIAL SUPPLIES PHYSICN	96.93
8/4/18	8128000	8138	G35 D/R MED SUPPLIES	361.25
8/4/18	8128089	8443	G35 LABORATORY TYS	789.49
8/4/18	8355010		G35 DESHACAM	158.65
TOTAL				14,561.73

22,074.00-
24,978.63-



Summary of our discussion

► What makes a good Criminal Referral?

(1) A specific lie +

(2) Evidence that the lie is Material +

(3) Evidence that proves the truth +

(4) Evidence that shows the lie was intentional



LC 4615 – Automatic Stay

- LC §4615 places an automatic stay on liens filed by or on behalf of physicians and providers who are criminally charged with certain types of fraud.
- Pursuant to LC §4615(a)(1) and LC §132.21(a)(3), any lien filed by or on behalf of the physician, practitioner, or provider or any entity controlled (i.e., is an officer or a director of the entity, or a shareholder with a 10% or greater interest in the entity) shall be automatically stayed.



LC 4615 – Due Process to Providers

- In addition, the lien claimant physicians or medical providers have the right to dispute and obtain a judicial determination at a lien trial if it is indeed subject to the stay
- In order to accord the lien claimant physicians or medical providers with their procedural due process right to dispute if it is subject to the LC §4615 stay, the DIR has a list of physicians and providers whose liens are stayed pursuant to this statute.



LC 4615 – List of Charged Providers

[http://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf]

Department of Industrial Relations

Criminally Charged Providers Whose Liens are Stayed

Pursuant to Labor Code § 4615 as of 1/27/2020

Provider	Case Name	Jurisdiction	Case Number
Agbu, Obiageli	USA v. Charles Achike Agbu, Obiageli Brooke Agbu, Dr. Emmanuel Adebayo Ayodele, Dr. Juan Tomas Van Putten, Alejandro Maciel, and Candalaria Corral Estrada	U.S. District Court Central District of California	11-134(A)-GW
Ahmed, Kareem	People v. Kareem Ahmed, Michael Rudolph, Andrew Robert Jarminski, and Norma Reyna Garner	Orange County Superior Court	16CF1351
Ahn, Duke	People v. Duke Ahn	Orange County Superior Court	17CF0810
Albert, Samuel Harry	USA v. Samuel Albert	U.S. District Court Central District of California	CR16-0435
Alvarez, Leticia Lemus	People v. Munir Uwaydah, Paul Turley, Maria Turley, Marisa SchermbeckNelson, Peter Nelson, David Johnson M.D., Leticia Alvarez Lemus, Jeff Stevens, Wendee Luke, Kelly Park, Ron Case	Los Angeles County Superior Court	BA425397
Anderson, Laura Jean	People v. Laura Anderson	Sacramento County Superior Court	1242210
Anguizola, Eduardo Ernesto	People v. Eduardo Ernesto Anguizola	Orange County Superior Court	16CF1362
Arguello, Carlos III	People v. Soraida Veronica Castro, Tania Arguello, Carlos Arguello III	Orange County Superior Court	17CF1372



Suspended Provider List

https://www.dir.ca.gov/Fraud_Prevention/Suspension-List.htm

Providers Suspended Under Labor Code §139.21(a)(1)

Name	Location	Provider Type	Grounds for Suspension/ Documentation	Notice issued	Appealed	Suspension
Onubah, Boniface	Marina del Rey	Neurologist	(B) and (C)	1/17/2017		2/17/2017
Arguello, Carlos	Chula Vista	Durable Medical Equipment Provider	(A)*	1/17/2017		2/17/2017
Dahan, Daniel	Long Beach	Chiropractor	(B) and (C)	1/17/2017		2/17/2017
Ivar, Alan C.	Costa Mesa	Chiropractor	(A)*	1/17/2017		3/24/2017
Barri, Michael	Santa Ana	Chiropractor	(A)*	1/17/2017	Appealed	4/3/2017



Provider Suspensions

https://www.dir.ca.gov/Fraud_Prevention/Suspension-List.htm#Why

Labor Code [§139.21\(a\)](#) suspends providers from the system if they:

A. Are convicted of a crime* that involves:

- fraud or abuse of the Medi-Cal or Medicare program, workers' compensation system, or any patient;
- the individual's medical practice as it pertains to patient care;
- a financial crime relating to Medi-Cal, Medicare, or the workers' compensation system;
- the qualifications, functions, or duties of a provider of services.*

B. Suspension due to fraud or abuse from the federal Medicare or Medicaid programs.

C. Surrender or revocation of the individual's license, certificate, or approval to provide health care.

*Providers suspended under (A) are also subject to consolidation and dismissal of all pending lien claims. [Lien consolidation hearings](#) are posted online.





NEW THIS YEAR – Surveys on the App

Find the App, Click on Events, Click on Browse by Day, Click on the Specific Session, Click on Rate Event. See Below for Screen Shots.

