

**State of California
Department of Industrial Relations**

**Progress Report on Anti-Fraud Efforts
in the California Workers' Compensation System**

Submitted to

David M. Lanier, Secretary

Labor and Workforce Development Agency

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**State of California
Edmund G. Brown Jr., Governor**

**California Department of Industrial Relations
Progress Report on Anti-Fraud Efforts, March 2018**

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Executive Summary

In May 2016, Secretary David M. Lanier of the California Labor and Workforce Development Agency (LWDA) requested that Director Christine Baker of the Department of Industrial Relations (DIR) convene a working group of stakeholders to study and make strategic policy recommendations to strengthen anti-fraud efforts in the California workers' compensation system. DIR in January 2017 issued its [report on the department's anti-fraud efforts](#), and in particular efforts to reduce medical provider fraud and illegitimate liens, which were significantly bolstered by the passage of [Assembly Bill \(AB\) 1244](#) and [Senate Bill \(SB\) 1160](#). This report provides an update on DIR's work since January 2017 to establish an Anti-Fraud Unit whose goal is to use data analytics to detect fraud and determine additional measures needed to further root fraud out of the workers' compensation system.

[Senate Bill 863](#), the landmark reform of 2012, addressed the needs of injured workers and employers, the primary stakeholders in the workers' compensation system, by increasing benefits while lowering premiums through the elimination of frictional costs. In particular, Senate Bill 863 took medical treatment and billing disputes out of the litigation system and redirected them into the evidenced-based, timely, more transparent and less costly Independent Medical Review and Independent Bill Review systems. While these reforms met the primary objectives of increasing benefits and reducing costs, they also generated new data on liens, which aided in exposing provider fraud schemes and fraudulent practices.

The high-profile provider fraud prosecutions by local district attorneys that were publicized in 2016 were supported by investigations and funding from the California Department of Insurance (CDI), and the expertise and data analysis provided by DIR and its Division of Workers' Compensation (DWC). CDI and DWC chose not to publicize their involvement to preserve the integrity of the prosecutions and did not reveal investigative methods and techniques. However, these efforts were key to ascertaining patterns of fraud, relationships among participants, the extent of fraudulent treatment and billing schemes, and how the schemes were perpetrated within the context of the workers' compensation system. Medical provider fraud included elaborate kickback schemes that involved referring patients for unnecessary procedures, treatment or durable medical equipment. One case alone resulted in [fraudulent bills of more than \\$580 million](#).¹

DIR in collaboration with CDI and the Commission on Health and Safety and Workers' Compensation convened meetings of stakeholders across the system in 2016 to assess workers' compensation fraud. The departments moved quickly to help incorporate anti-fraud measures into AB 1244 and SB 1160. In particular, these measures expressly require the automatic stay of lien claims of providers criminally charged with fraud, and for DWC to suspend any medical provider,

¹ DIR Newslines issued May 17, 2017: *DIR and Division of Workers' Compensation Suspend Michael R. Drobot, Steven Howser for Fraud* <https://www.dir.ca.gov/DIRNews/2017/2017-36.pdf>.

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physician or practitioner convicted of fraud from participation in the workers' compensation system. Lien filing requirements were strengthened to ensure that the lien claimant was actually the provider who rendered the service.

DIR's work to combat workers' compensation fraud included the creation of an Anti-Fraud Unit to share and track data from system participants. DIR is actively working to identify how to combat fraud administratively and aid in similar efforts with other enforcement entities.

DIR's Anti-Fraud Unit is charged to:

- Provide executive oversight and policy development to ensure that DIR and DWC are able to combat all forms of workers' compensation fraud and protect the welfare of injured workers;
- Research and identify workers' compensation fraud activities through data analytics (trend patterns and predictive modeling) to support policy directives and enhance fraud prosecutions;
- Coordinate anti-fraud activities with state departmental programs and oversight agencies, such as LWDA, CDI, federal, state and local law enforcement agencies in fraud prevention, detection and deterrence activities;
- Serve as DIR and DWC's central point of contact with all stakeholders.

DIR's Anti-Fraud Unit has successfully defended anti-fraud laws in court, including upholding the lien declaration requirement (Labor Code section 4903.05), and dismissals of a federal court action as well as four writ proceedings challenging the provider suspensions (Labor Code section 139.21).

Since 2017, DIR and DWC's anti-fraud efforts have resulted in:

- [Dismissals of 292,000 liens](#) (with claim values of \$2.5 billion) for failure to file the required declarations under Section 4903.05. This frees up valuable workers' compensation court time that would have been allocated to hearing illegitimate liens.
- 465,000 liens filed by or on behalf of criminally charged providers have been automatically stayed pending criminal prosecution as mandated [under Labor Code section 4615](#). These liens have been designated "4615" in DWC's electronic adjudication management system (EAMS) to alert workers' compensation judges and parties of the action.
- 23,000 active and pending liens filed by or on behalf of 28 suspended providers have been consolidated for adjudication in special lien proceedings.
- 10,000 active and pending liens are being processed for consolidation.
- 30,000 liens filed by or on behalf of suspended providers have been voluntarily dismissed.

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At the time of this report:

- A total of 227 medical providers have been excluded from participating in the workers' compensation system after being issued a suspension order under Labor Code section 139.21.
- Twenty-one providers were issued notices that their suspension will occur in 30 days unless appealed.
- A total of 527 who qualify for suspension under Labor Code section 139.21 have been identified.

Lien Declaration

Prior to SB 1160's passage, fraudulent medical providers could claim no knowledge of billing fraud, citing errors by their office staff as the reason for the fraud. SB 1160 requires the provider sign a declaration under penalty of perjury stating that the lien is not subject to independent medical review or independent billing review, and that the lien claimant fulfills one of the listed requirements to support that the lien is recoverable at the Workers' Compensation Appeals Board:

- Is the employee's treating physician providing care through a medical provider network.
- Is the agreed medical evaluator or qualified medical evaluator.
- Has provided treatment authorized by the employer or claims administrator.
- Has made a diligent search and determined that the employer does not have a medical provider network in place.
- Has documentation that medical treatment has been neglected or unreasonable refused to the employee.
- Can show that the expense was incurred for an emergency medical condition.
- Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under ruled adopted by DWC's administrative director.

This provision identifies the lien claimant, allows DIR's Anti-Fraud Unit to investigate and detect patterns of fraud, and provides resources to prosecuting authorities.

Lien Stays

SB 1160 added section 4615 to the Labor Code, which automatically stays any lien filed by or on behalf of a medical treatment provider who has been criminally charged with an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud or fraud against the Medicare or Medi-Cal programs. DWC's Administrative Director [posts online the names of any providers whose liens were stayed](#).

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Provider Suspension

AB 1244 added section 139.21 to the Labor Code. Subdivision (a) of this section requires DWC's Administrative Director to promptly suspend a provider from participating in the workers' compensation system if the provider has been convicted of certain crimes, or suspended because of fraud or abuse from the federal Medicare or Medicaid programs, or if their license to provide health care has been surrendered or revoked.

Lien Consolidation

Subdivisions (e) through (i) of Labor Code section 139.21 detail the procedures that apply to the adjudication of any liens of a provider suspended following conviction of a specified crime, including any liens filed by or on behalf of the physician, practitioner or provider or any clinic, group or corporation in which the suspended physician, practitioner or provider has an ownership interest. All such affected liens pending in any workers' compensation case in any district office in the state must be identified, consolidated and adjudicated in a special lien proceeding as described.

2017 Clean-Up Legislation (AB 1422)

In September 2017, Governor Edmund G. Brown Jr. signed AB 1422 into law to reconcile the inconsistencies and close gaps identified using the tools provided by SB 1160 and AB 1244. This law:

- Adds language to Labor Code section 4603.2 giving employers the right to:
 - Defer responding to bills from providers whose liens are stayed, and
 - Object to payment on bills from suspended providers;
- Provides for entities convicted of fraud-related crimes to be suspended from the workers' compensation system;
- Closes a time gap so that the lien claims of convicted providers will remain stayed until the start of lien consolidation proceedings following suspension;
- Reconciles inconsistencies in the language of the suspension and lien stay statutes (Labor Code sections 139.21 and 4615 respectively); and
- Addresses other anomalies that potentially could impede the ability to reach and summarily dispose of fraudulent lien claims and clarifies the meaning of statutory terms.

Organization of the Anti-Fraud Unit

The Anti-Fraud Unit operates within DIR's Office of the Director. This unit identifies providers who are subject to suspension as specified in Labor Code Section 139.21 (a). The process involves assisting prosecutors throughout the state to review criminal case paperwork, and provide them with data analytics. At this time, Memorandums of Understanding are in place or pending between DIR and the California Department of Insurance as well as district attorneys' offices in Alameda,

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San Diego, Napa, Solano, Contra Costa, Marin, San Francisco, Santa Clara, Orange, Los Angeles, Riverside and San Bernardino counties to facilitate information sharing. The unit has conducted or is currently conducting 27 different data analytics projects to support statewide criminal prosecutions of medical provider fraud.

The unit reviews documents from the federal and state agencies that license health care professionals and regulate participation in the Medicare, Medicaid and Medi-Cal programs. The unit's research and investigative work utilizes data mining and predictive analysis of more than 100 million medical reports, bills and case filings within DWC's system. The unit also tracks external data and reviews court decisions. The Anti-Fraud Unit's attorneys represent DIR in all related proceedings including provider suspension hearings, and special lien consolidation and adjudication cases and any related appeals. The attorneys also handle constitutional challenges in opposition to the suspension and special lien adjudication process as a whole.

Summary of Anti-Fraud Unit Activity

The Anti-Fraud Unit has been instrumental in the following activities since its inception:

- The processing of over 28,000 voluntary lien dismissals filed by or on behalf of the following suspended providers pursuant to Labor Code section 139.21:
 - Jeffrey Campau, Abraham Khorshad, Landen Mirallegro (Aspen and related entities)
 - Tushar Doshi
 - Toubia Pakdel-Nabati
 - Jason Yang
 - Quynam Nguyen
- As of August 25, 2017, [DIR and DWC dismissed](#) more than [290,000 liens](#) filed with the Division of Workers' Compensation by operation of law per [Labor Code section 4903.05\(c\)\(2\)](#). The estimated total claim value of the dismissed liens is \$2.5 billion. This frees up valuable workers' compensation court time previously allocated to hearing lien trials and conferences.
- The stay and consolidation of 23,000 liens filed by or on behalf of the following suspended providers pursuant to Labor Code section 139.21:
 - Michael R. Drobot, who has to date stipulated to the dismissal of over \$9 million in liens
 - George Reese, whose liens have been dismissed
 - Alan C. Ivar, who had more than half of his liens dismissed prior to the final briefing in the lien consolidation proceeding
 - Michael D. Drobot
 - Philip A. Sobol
 - Fermin Iglesias

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- Steven Rigler
- Steven Howser
- Robert Gogatz
- Khristine Eroshevich
- A total of [157 criminally charged providers](#) and more than 465,000 associated liens are currently designated as “4615” in EAMS by operation of law under Labor Code section 4615.
- To date, 227 providers have been suspended under Labor Code section 139.21(a). Twenty-one physicians, practitioners, or providers have also been sent suspension notices.
- An additional 527 providers have been identified as meeting one or more of the criteria for provider suspension under Section 139.21:
 - 143 meet the criteria for suspension on conviction of enumerated crimes,
 - 48 meeting criteria for suspension due to fraud or abuse from Medi-Cal, Medicare or Medicaid,
 - 311 meeting criteria for suspension due to the surrender or revocation of the medical license or certificate.
- The unit is also reviewing a list of 300 providers who have been parties to disciplinary proceedings by various professional medical licensing boards.

Litigation Activities

The Anti-Fraud Unit has defended against legal challenges to the recent workers’ compensation reforms, as summarized below:

- ***Lien Declaration Requirement Protected (CWCIA v. WCAB)***

In *California Workers’ Compensation Interpreters Association, et al. v. WCAB*, Case No. A150681 (First District), interpreter lien claimants challenged the new lien declaration requirement (Labor Code section 4903.05) on constitutional grounds. The court denied the writ in May 2017 following briefing by DIR and DWC. It found, among other things, that the petitioners had not demonstrated the inadequacy of the ordinary liens claim process.

- ***Provider Fraud and Lien Abuse Challenges***

DIR and DWC successfully defended against legal challenges by suspended providers of their Section 139.21 suspensions in Superior Courts and in federal district court.

- *Philip Sobol*
Sobol is an orthopedic surgeon who accepted over \$5 million in kickbacks in exchange for referring his workers’ compensation patients for spinal surgery and

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other medical services to Pacific Hospital. Following DIR's demurrer, Sobol filed a petition for the dismissal of all claims, with prejudice.

- *Mitchell Cohen*

Cohen is an orthopedic surgeon who took over \$1.6 million in illegal kickbacks in exchange for performing spinal surgeries at Pacific Hospital. DIR/DWC has successfully fought against a stay of the suspension and the court has found that Cohen failed to demonstrate a likelihood of success on the merits. In January 2018, Cohen filed his request for dismissal of his writ in Superior Court, with prejudice.

- *Fermin Iglesias*

Iglesias recruited workers' compensation applicants for legal and medical services. Iglesias and his co-conspirators engaged in an unlawful cross-referral and kickback scheme in which they referred applicants to certain doctors, in exchange for agreement by those doctors to refer the workers to certain co-conspirators for ancillary goods and services (i.e., durable medical equipment and MRIs). Iglesias and his companies received \$5 million in income from the illegal cross-referral scheme. Iglesias personally received over \$1 million. Following the filing of DIR and DWC's demurrer in the Sobol writ challenge, Iglesias also filed a dismissal of his writ in superior court, with prejudice.

- *Michael D. Drobot (Senior)*

Drobot argued, among other things, that he is not a provider under Section 139.21, that DIR and DWC violated his due process rights by failing to give him notice of suspension and a hearing, that Pacific Hospital's due process rights have been violated in the special lien proceedings. Upon the unit's filing of a demurrer, Drobot dismissed his writ with prejudice.

- *Khristine Eroshevich:*

Eroshevich brought a federal constitutional challenge to Section 139.21 in federal district court for the central district. The unit successfully moved to dismiss her federal challenge. Judge George Wu granted the dismissal, without leave to amend, on *Younger* abstention grounds. This ruling discourages future constitutional challenges to Section 139.21 in federal courts.

- ***Provider Suspension and Lien Consolidation Proceedings***

DIR's Anti-Fraud Unit attorneys appear at provider suspension hearings and lien consolidation proceedings on behalf of DWC's Administrative Director George Parisotto. Workers' compensation judges from DWC's special adjudication unit oversee the proceedings. Since January 2017, 26 providers requested appeal hearings on their suspension. In those appeals, the workers' compensation judges upheld the provider suspensions in 23 (two withdrew their appeals after the unit appeared at hearing), and the remaining three appeals are still in process. [Suspension activities](#) are regularly updated online and include information on appeal requests and decisions.

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Lien consolidation proceedings take place for those providers who were suspended due to workers' compensation fraud, abuse or financial crimes related to Medi-Cal, Medicare or the workers' compensation system. Proceedings also take place for providers convicted of a crime involving patient care or the qualifications, functions or duties of the provider. In these proceedings, the burden of proof lies with the lien claimant to verify that the lien is legitimate and not connected to the criminal activity. Proceedings for ten providers are currently scheduled for lien consolidation hearings. [DWC's special adjudication calendar](#) is regularly updated with information on current and past consolidation proceedings.

The unit's representation of DIR and DWC in provider suspension and lien consolidation proceedings involved making 55 board and court appearances (suspension and lien consolidation proceedings before the WCAB, superior courts and federal court) and writing over a dozen briefs.

Ongoing Efforts

DIR's work related to anti-fraud laws has yielded significant gains. The knowledge gained from data mining, analysis and the implementation of other anti-fraud tools will help identify patterns of fraudulent activity in the workers' compensation system. Moving forward, DIR will examine and suggest measures as needed to effectively and efficiently address workers' compensation fraud.