

**Pennsylvania  
Office of Attorney General  
Insurance Fraud Section**



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**Insurance Fraud Section  
of the  
Office of the Attorney General**

- Authority to prosecute Insurance Fraud and any related crimes in any county in PA.
- Even if the crime of Insurance Fraud is not present, IFS is authorized to prosecute if the matter was referred from any state agency - usually, the Insurance Department.

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**Insurance Fraud Section  
of the  
Office of the Attorney General**

- **12 prosecutors** in Harrisburg, Norristown, & Pittsburgh
- **31 investigators** in Harrisburg, Norristown, Wilkes Barre, & Pittsburgh
- All specializing in investigation and prosecution of Insurance Fraud

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**Insurance Fraud Section  
of the  
Office of the Attorney General**

- Most investigations are referred to the Insurance Fraud Section by an insurance company.

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**The easiest way to refer  
cases to IFS / OAG is online.**

- Go to Pennsylvania Office of the Attorney General website.
- From the homepage menu, select:
  - "Criminal"
  - "Insurance Fraud Section"
  - "Insurance Fraud Referrals"
- Forms can also be found there for filing by mail.

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**Immunity for Referring Cases  
of Suspected Insurance Fraud**

- General immunity under 40 P.S. §474.1 (Insurance Act):
  - "In the absence of fraud or bad faith... no person... shall be subject to civil liability" for reporting suspected insurance fraud to law enforcement
- Specific grant of immunity under 77 P.S. §1039.7 (WC Act):
  - An insurer or employee shall be immune from civil or criminal liability for supplying information to "any entity" authorized to receive such information in connection with an allegation of fraudulent conduct... if done so with "reason to believe that the information supplied is related to the allegation of fraud."

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**Worker's Compensation Frauds**  
**77 P.S. §1039.2**

All crimes under this section are felonies of third degree.

- Regardless of the dollar amount involved.

Maximum sentence:

- 3 ½ – 7 years imprisonment
- fine up to \$50,000 or double the amount of the fraud
- restitution

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**Other Crimes Typically Charged with WC Fraud**

- Theft by Deception or Attempted Theft by Deception
- Conspiracy
  - Agreeing with another person that one of them will commit a crime or assisting another person in committing a crime.
    - Every conspirator is charged with all crimes committed as part of the conspiracy.
- Forgery
  - Creating, altering, or signing document of another without permission ...
  - ...or distributing such a document.
- Perjury
  - Telling a material lie under oath in a court proceeding.

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**Specific WC Crimes:**  
**Failure to report employment**  
**§1039.2(10)**

- Knowingly and with intent to defraud...
- Fails to report employment or other information relevant to determining entitlement to or amount of compensation.

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**Specific WC Crimes:  
Employed while Collecting Total Disability  
§1039.2(11)**

- Knowingly and with intent to defraud...
- Receives total disability benefits...
- While employed or receiving wages.

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**Specific WC Crimes:  
Receiving Excess Partial Disability  
while Employed  
§1039.2 (12)**

- Knowingly and with intent to defraud...
- Receives partial disability benefits in excess of the amount permitted with respect to the wages received.

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**Common issues in  
"Working while Collecting Benefits"  
Cases**

Fraudulent Intent Unclear:

- Claimant returned to work with prior employer.
- Claimant notified prior employer of new employment.
- Prior employer had reason to know of new employment.
- New employment was for a short time.
- Reasonable under circumstances for claimant to say that he was "testing the waters" as to his ability to work.
- Claimant acted upon attorney's advice.

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**Common issues in  
"Working while Collecting Benefits" Cases**

- Unclear whether claimant was actually employed or receiving wages:
  - informal work or irregular hours.
  - family business.
  - occasional & incidental sales, such as sales at a flea markets, yard sales, sales from a hobby.
  - start-up business.

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**Specific WC Crimes:  
False Statement in Support of Claim  
§1039.2(2)**

Knowingly and with intent to defraud insurer...

Presents or causes to be presented to any insurer...

A materially false statement forming a part of or in support of a WC claim.

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**Critical Elements under  
§1039.2(2):**

- "Knowingly and with intent to defraud insurer":
  - Prosecution must prove that the defendant:
    - deliberately made the false statement, and...
    - did so with the purpose of cheating the insurer.

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**Critical Elements under §1039.2(2):**

- "Presents or causes to be presented to any insurer":
  - The false statement does not have to be made directly to the insurer.
  - False statement could be made to claimant's employer, lawyer, doctor, or any other person, with the result that it is passed on to the insurer.

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**Critical Elements under §1039.2(2):**

- "Materially false statement forming a part of or in support of a WC claim":
  - Not limited to a person making a false statement in support of his own claim.

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**Critical Elements under §1039.2(2):**

- "Materially false statement **forming a part of or in support** of a WC claim":
  - False statement need not be part of the formal claim itself.
  - Can be at any time during claim handling process: original filing of claim, interview, medical evaluation, legal process, etc.,...
  - ... entire time that benefits are paid.

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### Critical Elements under §1039.2(2):

- "Materially **false statement** forming a part of or in support of a WC claim":
  - Must be an **Historical Statement & Objectively False**
  - **Not** a prediction about future.
    - ~unless historical statement is unmistakably implied.
  - **Not** an opinion, subjective assessment, vague or general characterization.
  - Cannot be viewed as an honest mistake, misunderstanding, oversight, etc.

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### Critical Elements under §1039.2(2):

- "Materially false statement forming a part of or in support of a WC claim":
  - False Statement must be **relevant** to the process of determining the entitlement to, duration of, or amount of benefits.
  - **Not** limited to statements that are "outcome-determinative."
  - Must show that the false statement, if **believed**, had the potential to change the course, but not necessarily the result, of the process.

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### Who can be charged under §1039.2(2)?

- Not limited to the claimant.
- **Anyone** who knowingly makes a materially false statement in support of a WC claim.
  - e.g., family member, co-worker, lawyer, doctor...
- **Anyone** who **conspires** with another to pursue a fraudulent claim or knowingly assists claimant in pursuit of such a claim.

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**Significant point about §1039.2(2)**

- Crime is not defined as continuing to collect benefits after recovery.
  - A crime is not established when evidence shows that a claimant who is still receiving benefits has recovered.

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**Significant points about §1039.2(2)**

- No requirement that insurer believed or acted upon the false statement.
- Therefore, it is irrelevant that insurer did not pay.
- Irrelevant that fraud was intended to procure payment to someone other than the defendant, such as a medical provider.

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**Typical factual scenarios under §1039.2(2):**

- Defendant lied to insurer, employer, doctor, or lawyer about cause, nature, or duration of claimed injury.
- Defendant forged doctor's reports about cause or extent of injury, or return to work date.
- Defendant falsely denied being employed while collecting benefits

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**Typical factual scenarios under §1039.2(2):**

- After a claimant died, family member lied to insurer in order to continue payments.
- Family member exaggerated medical or other services provided to claimant.
- Medical provider lied about treatment provided to injured worker.
  - This could be: unnecessary treatment, treatment billed but not actually provided, up-coding, treatment by an unlicensed provider.

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**Typical factual scenarios under §1039.2(2):**

- Worker has documented injury, but creates multiple versions of how it happened.
- e.g., claimant simultaneously but independently claims that an injury was caused by a work accident, an auto accident, and a slip and fall in a store. Claimant then uses separate groups of lawyers & doctors for each version.

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**Important information needed for Prosecution under §1039.2:**

- A summary in the referral simply stating that the subject lied is not enough.
- To the greatest extent possible, we need the specifics of what was said, when it was said, to whom it was said, etc.
- All original documentation of false statements:
  - Recordings
  - Transcripts of Recordings
  - Verbatim statements
  - Log notes
  - Summaries

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**Important information needed for Prosecution under §1039.2:**

We can file charges in any county where any act in furtherance of any crime occurred, but we are required to prove which act(s) provide the basis for filing in the county that we chose.

Therefore, we need to know where various events occurred, e.g.:

- where defendant made each false statement.
- where each statement was received by recipient.
- where each statement was acted upon (e.g. where the insurer approved payment or issued check).
- where checks were received.

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**Prosecuting Employers under §1039.2(9)**

- Knowingly and with the intent to defraud...
- Makes any false statement...
- For the purpose of avoiding or reducing WC premiums.

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**Common Problems in False Statement cases under §1039.2(2):**

- False statement not sufficiently documented.
- Subject not "pinned down" on falsehood.
- False answer can be explained away.
- False Statement not material.

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**Common Problems in Prosecuting false statements about injuries.**

- Allegedly false statements are about claimant's subjective assessments of pain, ability.
- Claimant relying on doctor's orders.
- Prosecution would turn into doctor vs. doctor dispute.
- Symptoms "verified" by doctor.

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**Evidentiary and Legal barriers to prosecutions**

- Not all information that insurer learns is admissible in court, e.g., hearsay.
- Witnesses may be unavailable.
- Documents / files / records cannot be authenticated.
- Statute of Limitations
- Corpus Delicti Rule

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**Inherent Weakness of Some Video Surveillance Evidence**

- Surveillance is done after statements and would not, therefore, prove that statement was false at the time it was made.
- Defendant cannot clearly be identified in video.
- Limited time.
- Defendant can explain how activity shown in video is not inconsistent with statements.

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### Even if criminal charges are not filed....

- Whether criminal charges are filed is a very different than question of whether insurer can reduce or terminate benefits.

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### Common Dilemma for Prosecutor in Sentencing:

- Prison vs. Restitution
  - In some cases, nature of the crime and / or defendant's criminal record warrants a prison sentence, but...
  - A prison sentence, at best, delays payment of restitution, and, at worst, eliminates any chance that defendant will pay restitution.

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### IMPORTANT TIPS FOR BETTER FRAUD REFERRALS

- Provide a Clear, Concise Summary of the Case.
- Include ALL Statements Made by the Subject.
- Identify ALL Evidence of Fraud
- If it is not self-evidence, explain how false statements are material to the claim.
- Identify ALL Potential witnesses (including insurer employees)
- Identify where Statements, Forms, Calls Received and By Whom
- Include ALL Claim & SIU Notes.
- Organize and Identify all Materials Before Sending In.

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