



James J. Campbell
Commissioner

The Commonwealth of Massachusetts

Department of Industrial Accidents

600 Washington Street

Boston, Mass. 02111

CIRCULAR LETTER NO. 262

FEBRUARY 12, 1992

TO: ALL INTERESTED PERSONS
FROM: JAMES J. CAMPBELL, COMMISSIONER
RE: FRAUD PROVISIONS OF CHAPTER 398 OF ACTS OF 1991

A NATIONAL PROBLEM: Fraud is a national topic in workers' compensation reform. Numerous articles appear on it in the popular press and it is the subject of television documentaries. A top priority of the Department for 1992 is the elimination of fraud in the workers' compensation system of the Commonwealth.

DEPARTMENT'S FRAUD COMMITTEE: A Fraud Committee has been established to address this issue. The Department refers matters alleged to be fraudulent to outside agencies for investigation and possible prosecution.

FRAUD REFERRALS OUTSIDE DEPARTMENT: The Fraud Committee will make recommendations to the Commissioner of matters to be referred for determination as to prosecution. The referral is to the appropriate District Attorney or the Attorney General when violations of Massachusetts law are at issue, and possible violations of federal law will be referred to the United States Attorney (e.g. medicare fraud, mail fraud, fraudulent use of social security numbers, etc.). Matters where more investigation is required will be forwarded to the General Counsel of the Insurance Fraud Bureau of Massachusetts.

INSURANCE FRAUD BUREAU OF MASSACHUSETTS: Section 99 of Chapter 398 of the Acts of 1991 expands the scope of Chapter 338 of the Acts of 1990 to include a privately operated and funded Fraud Bureau which is designed to investigate allegations of fraudulent workers' compensation insurance transactions.

REPORTING FRAUDULENT INSURANCE TRANSACTIONS:

WHO MUST DO IT? Under Section 99, any insurer licensed by the Commonwealth to offer insurance, and/or any person in the business of insurance in the Commonwealth, who has reason to believe that a fraudulent insurance transaction may have taken place, or is about to take place, within thirty (30) days after the determination that a transaction may be fraudulent, must file with the Insurance Fraud Bureau, on a form prescribed by the Fraud Bureau's Executive Director, all information that is available concerning the potentially fraudulent transaction.

WHO IS AFFECTED? The statute focuses on fraud and abuse of the system not only by claimants filing for or receiving compensation but also by attorneys, insurers, employers, medical providers, vocational rehabilitation providers, agents for attorneys or other service providers, claimants, and any other individuals or companies alleged to have engaged in unlawful acts pursuant to provisions of M.G.L. c. 152, §14 and other general laws concerning insurance fraud.

WHO REPORTS? Beginning August 1, 1992, and every six months thereafter, both the Insurance Fraud Bureau and the Office of the Attorney General must file a report with the Joint Legislative Committees on Insurance and Commerce and Labor concerning the disposition of matters referred to both agencies.

SUMMARIES OF OTHER CHANGES:

The new legislation amends Massachusetts General Laws (M.G.L.) chapters 23E, 152 and 176D as follows:

M.G.L. Chapter 23E:

- ° §3(b)(8): Division of Administration investigates all written allegations of questionable claims handling techniques and patterns of unreasonably controverting claims;
- ° §6(vii): Senior Judge accepts motions for expedited conferences relating to fraudulent behavior (see Circular Letter #258 dated May 15, 1991); and
- ° §11: For purpose of investigating fraud Department is authorized to request, receive and exchange information from Department of Revenue, Employment and Training, Registry of Motor Vehicles, Welfare, Insurance Fraud Bureau of Massachusetts, Workers' Compensation Rating Bureau, individual insurers, self-insurers and self-insurance groups, and shall forward information regarding fraudulent activities with documentation to Office of the Attorney General.

M.G.L. Chapter 152:

- ° §11D(1): Any employee entitled to weekly compensation shall report to insurer all earnings on form approved by Department; failure to file such form within 30 days of request by insurer may result in suspension of such benefits;

- ° §14(1): Judge may assess whole cost of proceedings against employee or counsel determined to have brought proceeding without reasonable grounds; if party, counsel or medical expert knowingly fails to disclose what law requires to be revealed, uses perjured testimony or false evidence, makes false statement of fact or law, participates in creation or presentation of evidence he knows is false, party is reported to General Counsel of Insurance Fraud Bureau; party pays for whole cost of proceedings plus attorneys fees plus penalty of six times state average weekly wage; Department sends copy of order of such payment to appropriate board of professional registration; person convicted of committing such fraud faces up to five years in state's prison and pays restitution;
- ° §14A: Criteria set forth for employee leasing companies (i.e. business entities whose business consists largely of leasing employees to client companies under contract, often to help such client companies avoid paying appropriate workers' compensation premiums);
- ° §25C(9) and (10) Anyone losing competitive bid for certain contracts (e.g. construction, repair, remodeling, alteration, conversion, modernization, replacement, renovation of building, roadway or structure) may sue entity awarded contract due to cost advantage achieved by violation of statute; proof by preponderance of evidence entitles moving party to award of 10% of bid or \$15,000, whichever is lesser, plus reasonable attorneys fees; one in violation of statute is debarred from bidding on state/municipal contracts for three years and subject to penalties set forth in §14; and
- ° §55A: Fraud or material misrepresentation affecting the policy or insured is cause for insurer to issue a mid-term notice of cancellation of a workers' compensation policy.

M.G.L. Chapter 176D:

- ° §7: Commissioner of Insurance may order that restitution be made by an insurer or its agent to any claimant who has suffered actual economic damage as a result of this chapter.

The establishment of the Insurance Fraud Bureau of Massachusetts and other changes in the workers' compensation legislation will help eliminate fraud and abuse, and ensure that legitimately injured workers receive the benefits they deserve.

Please feel free to share this circular letter with anyone you know who might find it informative, and remember that workers' compensation fraud injures us all.

**TO REPORT FRAUD: CALL INSURANCE FRAUD BUREAU OF MASSACHUSETTS:
1-800-32-FRAUD**