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VIA HAND DELIVERY

Honorable Chris Christie, Governor
Office of the Governor
State of New Jersey
125 West State Street
Trenton, New Jersey

Dear Governor Christie:

I am pleased to submit the Annual Report of the Office of the Insurance Fraud Prosecutor (OIFP) for the calendar year 2012, pursuant to N.J.S.A. 17:33A-24. OIFP instituted a number of reforms in 2012, which are now producing the intended results. Four successes in particular mark these reforms:

1. **Personnel Improvement**: OIFP leadership laid the groundwork for its future success through aggressive reformation of its staff. This was accomplished by developing white-collar expertise through recruitment, training, increased staff collaboration and accountability, and the departure of certain staff.
2. **Better Case Results**: In 2011, we shifted the focus of OIFP to larger cases with greater potential to deter would-be fraudsters. In 2012, OIFP began to harvest the fruit of this shift.



Among these are significant prison sentences for licensed professionals, whose frauds impose the greatest cost on the insurance-buying public. The average prison sentence obtained by OIFP more than doubled from 2010 to 2012, from 1.25 years to 2.97 years.

3. Increased Recoupment: In 2012, OIFP recovered a record \$44.6 million¹ for the Medicaid program through False Claims Act (FCA) litigation. This amount exceeds the prior calendar year record of \$26 million (set in 2009) by 72%, and represents a 68-to-1 return on investment of \$650,000 (*i.e.*, the approximate annual cost of the FCA unit).

4. Reduced Costs: OIFP reduced its costs by approximately 10% through steps such as closing an unnecessary branch office, eliminating the assignment of cars for much of its staff, and increasing the use of cost-saving technology.

A. OIFP'S RECENT HISTORY

OIFP was created by statute in 1998, and performed well for a number of years thereafter. However, by 2010, OIFP was underperforming. The most common complaints from government officials and insurers were that OIFP did not pursue significant cases and failed to prosecute cases in a timely manner. By mid-2010, dissatisfaction with OIFP had grown to the point that serious remedial action was necessary. Among the remedial measures taken was the amendment of the Insurance Fraud Prevention Act to return OIFP's civil enforcement function to the

¹ This amount is subsumed within the categories "Total Civil Fines & Penalties Imposed in Medicaid Cases" and "Restitution Imposed in Civil and Criminal Cases" on the attached statistical report.



Department of Banking and Insurance. L. 2010, c. 32. This amendment put OIFP on notice that its performance must improve.

In 2011, the Christie Administration nominated me to serve as the Insurance Fraud Prosecutor. I then installed a new OIFP leadership team. Together, we quickly defined the mission of OIFP as deterrence through the vigorous pursuit of high-level targets. Although this clear mission statement focused OIFP on its mission, accomplishment of that mission required structural reform. OIFP needed to transform itself into an office capable of investigating and prosecuting sophisticated white-collar fraud schemes, a capability that it lacked. We focused on four key issues to transform OIFP into a sophisticated white-collar prosecutor's office: (1) reporting authority, (2) personnel, (3) case selection and prioritization, and (4) internal organization into teams.

1. THE INSURANCE FRAUD PROSECUTOR BECAME A DIRECT REPORT TO THE ATTORNEY GENERAL

By statute, OIFP exists within the Division of Criminal Justice (DCJ). N.J.S.A. 17:33A-16. At times, however, OIFP has suffered from being associated with a larger division. For example, in the past, personnel have been transferred to or from OIFP in order to enhance the prosecutorial and investigative strength of DCJ while weakening the capabilities of OIFP. To remedy this structural weakness, in 2011 I recommended, and the Attorney General agreed, that the position of Insurance Fraud Prosecutor report directly to the Attorney General, rather than report to the Attorney General through DCJ. By this direct reporting relationship, the Insurance Fraud Prosecutor gained the authority and the responsibility to manage OIFP effectively and



coherently. This change gave the Insurance Fraud Prosecutor greater control over OIFP. For example, personnel can no longer be transferred between OIFP and DCJ without the approval of the Insurance Fraud Prosecutor, thereby protecting the integrity of OIFP's capabilities.

2. RECRUITMENT OF WHITE-COLLAR PERSONNEL

Having qualified personnel - people with the appropriate skills, professionalism, and dedication to OIFP's mission - has been a critically important dimension of the reform. Investigation and prosecution is a professional service business, and OIFP's employees are its means of production. Unless OIFP is staffed with personnel who have the skills and the desire to investigate and prosecute significant white-collar cases, OIFP will be unable to accomplish its mission. All other reforms would have only marginal effect. Consequently, I have concentrated on making sure OIFP has the right staff.

The two years between January 1, 2011 to December 31, 2012, was a period of rapid change in and overall reduction of OIFP's personnel. The entire leadership was changed. The Acting Insurance Fraud Prosecutor, the Deputy Insurance Fraud Prosecutor, and the chiefs and assistant chiefs of OIFP's four major components all were changed. The changes did not stop there. Of 27 attorneys who were on staff as of January 1, 2011, 15 (56%) had left OIFP by the end of 2012. During the same period, 38% of OIFP's detectives – 20 out of 52 – left OIFP. Finally, OIFP's filled FTE allotment shrank from 93 at the end of 2011 to 86 at the end of 2012, a decrease of more than 13%.

To replace them, OIFP's leadership made a concerted effort to recruit employees who could transform OIFP into a sophisticated, white-collar prosecutor's office. OIFP recruits



attorneys from two main sources: accomplished trial attorneys from the County Prosecutors' offices, and attorneys from large firms with experience in complex cases. OIFP also recruited detectives and civilian investigators with new skills to complement the skills of its existing detective staff. These new employees include accountants, detectives with backgrounds in the financial services industry, an experienced insurance industry investigator, and select transfers from DCJ who wanted to join the transforming OIFP.

To be able to achieve its mission of deterrence, particularly with fewer personnel, OIFP must have staff with the skills and the desire to investigate and prosecute significant white-collar fraud cases. OIFP has taken strides in that direction, but staff turnover is inevitable and regular. OIFP's leadership will need to continue its focus on recruiting and retaining employees with the right mix of aptitude and attitude to ensure that OIFP is able to accomplish its goals.

3. CASE SELECTION AND PRIORITIZATION

For OIFP to achieve its goal, developing the right staff is the foundation. But the remaining structure must be developed as well. Leadership must also make sure that the staff pursues the right cases. To obtain sentences that deter criminal conduct, OIFP must investigate and prosecute significant cases.

In a typical year, New Jersey's insurance companies refer to OIFP between 4,000 and 5,000 matters of suspected fraud. OIFP's case screening staff review each referral to identify those that OIFP should investigate for potential criminal prosecution. In prior years, OIFP selected cases to prosecute criminally based largely on whether a prosecution appeared viable, even if the crime was relatively minor. While significant frauds would be prioritized, they



competed for attention with smaller cases which would never yield significant sentences but consumed considerable staff time. Time spent on smaller cases was time robbed from more significant cases that had greater potential to deter. As a result, larger cases, which typically require more time and resources to prosecute, languished and often ended with less desirable outcomes than if those cases had received the attention they deserved.

In late 2011, to align OIFP's case selection criteria with its goal of working on significant cases, OIFP changed its case selection practices to focus on identifying the deterrence value of each matter. OIFP's leadership prioritizes deterrence because OIFP's leadership considers deterrence to be the most potent force multiplier available in an era of diminished government resources. OIFP seeks to deter those who lead fraudulent schemes, and therefore prioritizes investigations involving higher-order targets such as healthcare providers or business owners. OIFP also targets such fraudsters through proactive investigations including undercover and sting operations. Larger cases, of course, require more time and attention to investigate and prosecute. Accordingly, OIFP's leadership made a deliberate choice to reduce the number of open cases assigned to each team. Having fewer cases on its docket allows each team to focus on completing each case in a more timely manner, even though the cases handled today are, by and large, significantly more complex than the cases OIFP investigated only two years ago.

Having fewer cases on each team's docket means that, overall, OIFP expects to obtain fewer indictments and convictions, measured in raw numbers, than in prior years. In effect, OIFP has made a strategic decision to trade quantity for quality by selecting a smaller number of cases; but each of those cases has greater significance. For example, in the final year prior to our



reforms (calendar year 2010) OIFP obtained 70 criminal sentences that averaged 1.25 years per sentence. In calendar year 2012, a total of 23 defendants received sentences of incarceration, which averaged 2.96 years. Thus, the average prison sentence OIFP obtained in 2012 was more than double (2.37 times greater) than the average prison sentence OIFP obtained in 2010. In addition, in 2010, 37% of incarcerated defendants received state prison terms. In 2012, by comparison, 54% of incarcerated defendants received state prison sentences. This increase of 17% in state prison sentences (as opposed to county jail sentence, which cannot exceed 364 days) undoubtedly has generated greater specific and general deterrence. The increased attention naturally accorded such cases (due to the seriousness of the offenses, the standing of the professional targets, and the lengthier prison sentences) produces more deterrence than OIFP's former practice of pursuing smaller cases.

To enable OIFP to pursue larger cases, OIFP now refers more criminal cases to the County Prosecutors' offices through its County Reimbursement Program (CRP). When OIFP identifies a matter as a potential criminal case, it decides whether to investigate the matter internally or to refer it to a County Prosecutor's office. To maximize the efficacy of the CRP, OIFP took two steps in early 2012. First, OIFP recruited three additional counties (Middlesex, Monmouth, and Sussex) to participate in the CRP. Thus, the CRP now covers 18 of New Jersey's 21 counties. Second, OIFP initiated a regular training program for all 21 counties. In 2012, OIFP provided seven training sessions to the counties on timely subjects such as PIP fraud, forfeiture training, and New Jersey's new prescription monitoring program.

As intended, OIFP's new case selection standards resulted in a greater number of referrals



to the counties. In 2011, OIFP referred 322 matters to the counties. After implementing its new case selection standards in late 2011, OIFP referred 565 matters to the counties in 2012. OIFP tracks the progress of each case referred to a county by requiring each county to report its performance results to OIFP on a monthly basis. Indeed, the counties have aided OIFP's deterrence goal by increasing aggregate prison time (for all counties combined) from 49.30 years in 2011 to 54.98 years in 2012, an increase of 11.5%. The average prison sentence over that time increased modestly, from .47 years to .53 years.² This shift in case selection should yield more efficient use of the anti-fraud resources available to each county prosecutor's office.

4. INTERNAL ORGANIZATION INTO TEAMS

The final key change implemented by OIFP's new leadership concerned the internal organization of staff. OIFP assigned all of its attorneys and investigative personnel into trial teams,³ and then began assigning cases to each trial team. This simple internal re-organization has resulted in a marked improvement in OIFP's prosecutorial efficiency.

Previously, attorneys and detectives were assigned cases based on availability. For example, an attorney and a detective would be assigned to each case when it was opened, and they would work cooperatively on that case. However, attorney assignments and detective assignments were not coordinated. As a result, an attorney may have had cases that were

² The relevant statute (N.J.S.A. 17:33A- 24) does not require reporting of the county statistics. OIFP includes pertinent county statistics here to provide a comprehensive view of its anti-fraud efforts.

³ OIFP uses the term "trial team" to underscore that each investigation and prosecution may result in a trial where the State's evidence will be tested beyond a reasonable doubt, even though the vast majority of cases are resolved prior to trial.



assigned to five or six different detectives, and a detective may have had cases with three or four different attorneys. Inevitably, this system created conflicts where, for example, two attorneys would need the same detective to complete investigative work on different cases at the same time. For years, OIFP labored under this disharmonious system.

In early 2012, OIFP's leadership replaced this system with the trial team concept. OIFP's attorneys and investigative staff now are organized into trial teams, consisting of one attorney and two or three detectives or civilian investigators. Cases are assigned to each team as a whole, thereby coordinating the dockets of each trial team member. This change harmonized the work of attorneys and detectives by prioritizing their cases without creating investigative conflicts.

In addition, the use of teams makes it easier for management to establish and enforce priorities. Because each member of the team has the same case assignments, their case priorities necessarily are the same. Consequently, every OIFP staff member is fully aware of OIFP's overall priority cases, thereby aligning OIFP as a whole in the pursuit of significant cases. To ensure that all staff know these priorities, OIFP posts the priority cases on large boards in common areas of OIFP's offices and on a successful intranet site OIFP designed and launched in 2012. The intranet site also provides the trial teams with one-stop access for a host of investigative and legal tools.



B. REFORMS ARE PRODUCING THE INTENDED RESULTS

In 2012, OIFP began to see the first fruit of its reform efforts. OIFP's attorneys, detectives, and analysts secured significant prison sentences and civil recoveries in a number of cases, including the following:

1. **Christopher Montana** and **Fernando Barrese** were each sentenced to seven-year state prison terms. Montana and Barrese, both chiropractors, were partners in a number of chiropractic clinics across northern New Jersey. The pair had bedeviled the insurance industry for years, and driven up costs to the insurance consumer. They pleaded guilty to accepting cash kickbacks for referring approximately 100 of their patients for other services, and for failing to report a combined total of more than one million dollars in income on their tax returns. The defendants were ordered to pay a total of \$200,000 in restitution to 15 insurance carriers. Barrese was also ordered to pay \$240,451 in back taxes, penalties, and interest to the Division of Taxation. Montana was ordered to pay \$71,032 in back taxes, penalties and interest. In addition, as part of the criminal sentence, each defendant's chiropractic license was suspended for 18 months.

2. **Kelly Roetto** was sentenced to seven years in state prison for stealing several million dollars entrusted to the insurance brokerage for which she worked. As part of its services, the brokerage often would arrange for its clients, which included small and medium-sized businesses, to finance the cost of their policies. The brokerage used numerous premium finance companies to provide the financing. As the controller for the brokerage, Roetto was responsible for arranging this financing and ensuring that the borrowed funds were



forwarded from the brokerage's bank accounts to the insurance carriers or their agents. In pleading guilty, Roetto admitted that she failed to do this and instead used her position as controller to steal between \$3.8 million and \$5 million of financed proceeds.

3. **Rostislav Vilshteyn**, the owner of a now defunct Newark mental health and substance abuse counseling center, was sentenced to state prison after being convicted of defrauding the Medicaid program. Vilshteyn was convicted of second-degree health care claims fraud following a three-week jury trial. In convicting Vilshteyn, the jury determined that Vilshteyn submitted claims for counseling services for numerous Medicaid beneficiaries, even though the services either had not been provided or had not been provided to the extent claimed. Vilshteyn was sentenced to five years in state prison and was ordered to pay \$200,000 in restitution to the New Jersey Medicaid program.

4. **Jimmy Tovar** was sentenced to state prison for illegally acting as a "runner" who solicited patients for a chiropractor and an attorney. In pleading guilty, Tovar admitted that in 2010 he was paid over \$50,000 for soliciting people who had been in automobile accidents to seek treatment at a chiropractic clinic, and referring them to an attorney. The chiropractor and the attorney were willing to pay handsomely for these patients, so that the chiropractor could bill insurance companies for treating them and the attorney could pursue pain and suffering claims. Tovar admitted that on 18 occasions he accepted between \$500 and \$9,000 from the chiropractor. Tovar was sentenced to three years in state prison.



5. **Trial Successes** - OIFP secured convictions in each of its cases (four) that proceeded to a jury trial in 2012. OIFP's leadership team attributes those results to thorough preparation and sound strategic decisions by the trial teams and their supervisors. Success in a series of jury trials sends a strong message of deterrence to potential fraudsters. It also informs the criminal defense bar that OIFP is ready and willing to prove its cases at trial.

6. **False Claims Act Recoveries** - In 2012, the Medicaid Fraud Control Unit's FCA unit obtained a record aggregate recovery of \$44.6 million in restitution, penalties, and interest through its FCA cases. The FCA group handles state FCA cases and participates in national cases through the National Association of Medicaid Fraud Control Units (NAMFCU). These civil cases arise when a plaintiff-claimant alleges that an individual or corporate defendant knowingly presented false claims to a State Medicaid program. Through its collaboration with NAMFCU, in 2012, OIFP's FCA group quadrupled the amount of recoveries as compared to 2011. Since 1992, the Medicaid Fraud Control Unit has reached settlements totaling almost \$146 million for the New Jersey Medicaid program in FCA cases. The \$44.6 million recovered in 2012 represents the largest amount of funds recouped in any single year during the past 20 years, and 31% of the *total* amount recovered in those 20 years. While it is difficult to predict future annual aggregate recoveries, we are pleased to report this success.

7. **Reporting Statistics** - Under N.J.S.A. 17:33A-24, OIFP is required to report each year the number of referrals received, the number of cases investigated, the number of indictments or accusations filed, the number of convictions obtained, the number of cases in which professional licensing sanctions were imposed, the aggregate total of fines and penalties,



and the aggregate total of restitution ordered. These statistics, and others, are reported in the attached chart. These statistics show the success to date of OIFP's deterrence strategy.

C. LOOKING FORWARD

OIFP has begun its transformation from an underperforming office into a sophisticated white-collar prosecutor's office. The transformation is not complete. OIFP leadership will continue on its path by: careful selection of new staff; enhanced training; enhancing the trial team concept; attempting to preempt insurance fraud through a comprehensive, far-reaching anti-fraud advertisement campaign that stresses deterrence; and, maintaining our focus on making significant cases that will serve to strengthen the office's deterrence message. OIFP's successful prosecution of significant insurance fraud cases will deter future criminal conduct, and thereby reduce the costs of insurance for New Jersey's citizens.

Sincerely,

/S/ Ronald Chillemi

Ronald Chillemi
Acting Insurance Fraud Prosecutor

Enclosure

C: Honorable Stephen M. Sweeney, President, New Jersey Senate
Honorable Sheila Y. Oliver, Speaker, New Jersey Assembly
Honorable Jeffrey S. Chiesa, New Jersey Attorney General



Office of the Insurance Fraud Prosecutor 2012 Statistical Report

Calendar Year	2012
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Total Referrals Received	4,709
Criminal Cases Investigated	463
Number of Indictments & Accusations Filed	47
Number of Defendants Charged	56
Number of Defendants Convicted	59
Number of Defendants Sentenced	56
Number of Sentenced Defendants Receiving Prison/Jail Terms	23
Total Years of Incarceration	68
Total Criminal Fines & Penalties	\$105,685
Total Civil Fines & Penalties Imposed in Medicaid Cases	\$20,789,699
Restitution Imposed in Civil and Criminal Cases	\$29,135,018
Assets Seized	\$564,642
Assets Forfeited	\$945,780
Licensing Actions	11

