

# How to Conduct an Effective Sub Rosa Investigation

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Sub Rosa is a term we use so often in the Workers' Compensation community that it is surprising how many do not know the original meaning. Sub Rosa is a Latin term meaning "under the rose"

The rose, a beautiful flower used to express love, is also the symbol of secrecy. In fact, in ancient Rome roses were hung from the ceiling of the great council chamber to pledge the assembly to secrecy. We also see the rose in early Christian symbolism. The image of a rose was often carved on confessionals, indicating that the act of confession between the priest and confessed would remain a secret.

Fast forward to today and the word Sub Rosa is used to describe surveillance or the secret act of watching a person or group. The use of Sub Rosa is one of the most powerful tools a claims professional has to document evidence. What is more damaging than someone caught on film cutting and stacking wood when hours earlier he was barely able to hobble into a doctor's office? Film that catches a subject in unguarded moments will document the claimant's true physical limitations and the confirmation of a fraud.

It is the claims professional's responsibility, after much evaluation, to initiate the Sub Rosa investigation. However, some adjusters are very hesitant to request a surveillance especially if they have not had success in the past with obtaining film. But if you have strong evidence that fraud is likely, then you should commit the resources to establish a defense. Be sure to have a clear understand of what you want to achieve as well as what is possible within the law.

Keep in mind a Sub Rosa investigation involves many moving parts and unless you work with someone who is well trained, knowledgeable, experienced and a trusted professional you could end up with unusable video and a blown opportunity.

I've outlined a few tips to help you get your Sub Rosa investigation going in the right direction. Preparation and knowledge is the key. Of course, not every situation is covered here, but if you employ these five steps, you are more likely to have a successful outcome.

## **Document your suspicion of fraud**

Once you have identified a possible fraud, document it in your file. Recording your suspicions will help you to identify the fraud and work out a course of action. Using surveillance arbitrarily is unlawful. Only employ Sub Rosa when you have a reasonable suspicion of fraud.

## **Move on it quickly**

A great way to botch an investigation is to wait too long to act. Once a reasonable suspicion has been established, talk to your investigator as soon as possible and plan a course of action together.

When you hire any vendor on your file you are hiring their expertise. You would not hesitate to question your attorney on a legal point or a doctor on a diagnosis, so don't hesitate to ask the investigator what they think and make your decision based on their advice.

## **Provide up to date information**

Our firm was asked to do surveillance on a man who was arriving at a downtown bus station. We reviewed the physical description and injury information with the client; they even provided a picture. We established the surveillance but the man was not on the bus. At least, the man in the picture did not arrive.

Actually, the man was on the bus but he didn't fit the description and picture. We found out later that the information was five years old. The subject's hair color was different and longer, he gained weight and had grown a beard. We did eventually re-establish the surveillance and obtained some good film, but valuable time and money were wasted.

Give your investigator accurate information. Take the extra step to verify descriptions and ask your insured for up to date photos or films of the claimant. The more information you provide, the better our chances to identify and film the right person.

### **Communicate with your investigator**

Set aside time at the beginning of the assignment to talk with the investigator and go over the case information. Set up some ground rules about the amount of time authorized and how a request for additional time is handled. Coming to an understanding now will eliminate problems down the road.

Keep in contact with the investigator and update them with any new information when you receive it. Try to be available when they call or return calls quickly.

### **Authorize enough film to defend your case**

Bottom line is that an investigator is aware of the amount of time you have authorized and they will try to allocate the time wisely, but there are periods when a subject will become active when the allocated time is almost out.

The investigator will usually call to request more time, but if you are not available they might continue or drop filming because there is no time left. Don't let an opportunity slip by and damage your investigation. Allow some wiggle room for your investigator. Trust them to know what is needed to establish your case.

Let them know at the beginning of the investigation that they can go over the time requested (within reason and within certain situations) but they must continue to try to contact you. Most of the time, investigators will continue to film because it is in the best interest of the case.

Don't beat them up when they have gone over the time, especially if they have good film.

Authorizing or not authoring additional film can also be a trust issue, but if you don't trust the investigator to give you an accurate assessment, then you have another problem which needs to be addressed directly.

Be aware that an investigator will request at least two more days of filming if he/she has clear evidence of fraud. Allow the investigator to continue shooting for at least the next two days.

Bear in mind that one active day is not enough to prove fraud to a judge, you must show that the activity was not an unusual "one time event." Another two days of activity will give you enough evidence to establish fraud.

Lastly, the length of the film should be enough to establish a true account of the claimant's activities. Filming twenty minutes of a three hour baseball game is not enough time to represent a true account.

If you have any questions about Sub Rosa, AOE/COE, Fraud or Investigation, email me. at [david@2mypi.com](mailto:david@2mypi.com)