

The Law Offices of Bolton & Helm, LLP

CASE LAW UPDATE

Be Aware of Fraud Sanctions Against Employers, Carriers and Defense Attorneys

In McArthur v. Mental Health Care, Inc./Summit Claims Center, --- So.3d ----, 2010 WL 1930119 (Fla. App. 1 Dist., May 14, 2010), a Tampa defense attorney and his clients were accused of misrepresenting medical facts to treating doctors in the defense of a claim. Claimant's counsel moved to strike the defenses and sanction the defense attorney and his clients under F.S. 440.09(4) and F.S. 440.105. The 1st DCA held that the JCC may deny benefits to a claimant under these sections but the proper remedy for defense fraud lies under F.S. 440.106. These sections imply that criminal prosecution may occur in the presence of defense fraud. Further, the Court explained that F.S.440.33 (Powers of the JCC) and Rule 60Q-6.125 may also apply and these sections allow for other sanctions including fees and costs. However, the Court did not address the application of these sections, as they were not preserved for appeal. Thus, the JCC's order denying the claim was affirmed.

Discussion:

Be aware that no party may make a false or misleading statement in order to deny a workers' compensation claim. The criminal penalty for such a statement, if made to deprive a claimant of benefits is a felony.

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