



Preferred

Suspicion to Proof: Navigating the WC Fraud Landscape

Wednesday, November 19, 2025

What is WC Fraud ?

F.S. 440.105:

To knowingly make or cause to be made, any false, fraudulent or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.



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(Fraud means): ...To knowingly make, or cause to be made, any false, fraudulent or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.

F.S. 440.09 (4)(a):



(Fraud means): ...To knowingly make, or cause to be made, any false, fraudulent or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment under this chapter.



The Four Elements of Fraud



There is a lie.

A misrepresentation to obtain a benefit which is not otherwise entitled.



The lie is made knowingly.

The claimant is aware that they are not being truthful. The claimant knows that the injury is not as severe as stated, occurred off the job, or never happened.



The lie is made with intent of obtaining a benefit.

The claimant intends to receive the unwarranted benefits knowing the benefits are based upon the misrepresented information and policy terms.



The lie must be material.

The insurance company experiences a loss or damage as a result of the misrepresentation and fraud has been committed.

Fraud Applies To Everybody

The Statute does not differentiate between claimants, adjusters and employers in terms of the definition of fraud.



Criminal Sanctions

440.105(4)(f) If the monetary value of any violation of this subsection:

- 1 Is less than \$20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.
- 2 Is \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.
- 3 Is \$100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.



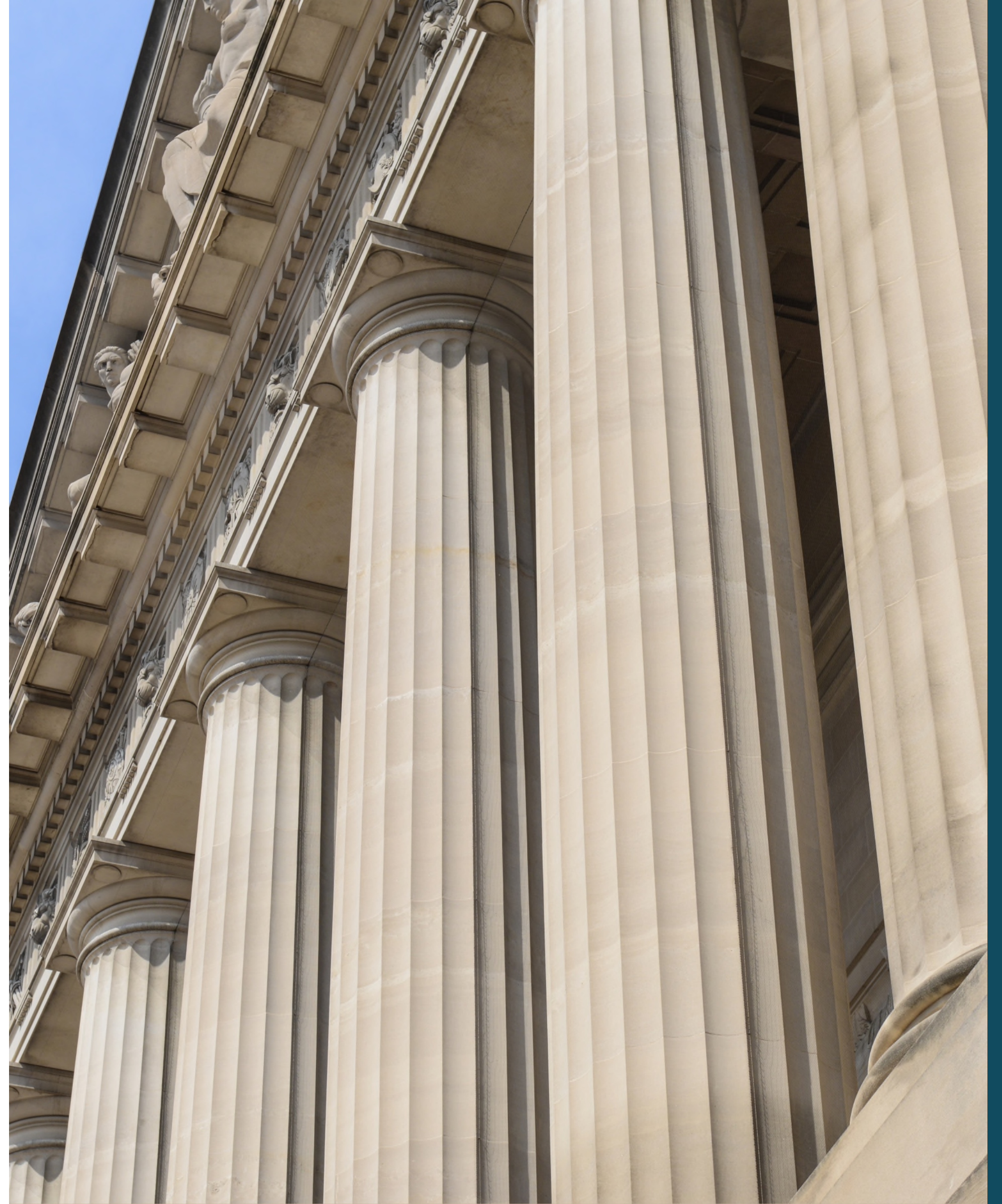
Pursuant to F.S. Section 440.105(1)(a), “any insurer, agent, or other person licensed under the insurance code, or any employee thereof” who has knowledge of or believes a fraudulent act or any other practice that would, upon conviction, constitute a felony or misdemeanor “is being or has been committed” shall send to the Division of Investigative and Forensic Services, Bureau of Workers’ Compensation Fraud a report or information pertinent to such knowledge/belief and “such additional information relative thereto” as the bureau may require.

REPORTING REQUIREMENT



Penalty-Claimant

440.09(4)(a) An employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims, administrative law judge, court or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the acts described in s. 440.105 or any criminal act for the purpose of securing workers' compensation benefits.



Claimant Fraud Causes Complete Denial Even Benefits Due Before Misrepresentation

Per Alvarez v. Unicco, 958 So. 2d 951 (1st DCA, April 19, 2007) and Leggett v. Barnett Marine, Inc., 167 So.3d 480 (Fla. 1st DCA 2015) the JCC cannot award benefits pre-dating a fraud pursuant to 440.09(4).



Fraud Is An Affirmative Defense



Must be specifically plead



Party asserting has burden of proof

Section 440.105 (4) (b) violation requires a two-part inquiry:

A finding as to whether a false (or fraudulent or misleading) oral or written statement was made by the person; and

A finding as to whether, at the time the statement was made, it was made with the required intent of obtaining benefits. See Cal-Maine Foods v. Howard, 225 So.3d 898 (Fla. 1st DCA 2017).

Prong 1: Statements Don't Have To Be Under Oath

The statements are not required to have been made under oath so long as the claimant knew at the time that the statements were false.

Cal-Maine Foods v. Howard at 903; Village Apartments v. Hernandez, 856 So.2d 1140, 1142 (Fla. 1st DCA 2003).



Prong 1:

Non-Verbal Misrepresentations Alone Do Not Qualify As Fraud

In Dieujuste v. Dodd Plumbing, Inc., 3 So.3d 1275 (Fla. 1st DCA, 2009), the claimant was observed on surveillance presenting himself as injured but did not make false or misleading statements i.e. he walked fine but upon arriving at a doctor's office began to use a crutch that had been prescribed. This is a non-verbal presentation said the appellate court, not a verbal misrepresentation, thus the JCC's denial of benefits was reversed.

Prong 1:

Non-Verbal Misrepresentations Alone Do Not Qualify As Fraud

LSG Sky Chefs/Liberty Mutual v. Gertrudis Santaella, 299 So.3d 1180 (Fla. 1st DCA 2020):
surveillance of the claimant that was inconsistent with her presentation to medical providers and her restrictions was not a written or oral statement. Thus, the Court ruled that the JCC did not err in rejecting E/C's misrepresentation defense.

Prong 2: Truthful Statements Expected

In Village Apartments v. Hernandez, 856 So.2d 1140 (Fla. 1st DCA 2003) the Court noted that the workers' compensation system is designed to be efficient and self-executing, and cannot depend on an adversary's ability to investigate and discover false testimony. The parties have a right to expect that all statements, whether written or oral, are truthful, responsive and complete.

“Honesty is not a luxury to be invoked at the convenience of a litigant.” Baker v. Myers Tractor Servs., Inc., 765 So.2d 149, 150 (Fla. 1st DCA 2000).

Prong 2: For Purpose of Obtaining Benefits

In a workers' compensation case, a claimant's responses to inquiries regarding his prior accidents, current injuries or medical history are made in support of his claim for benefits.

Citrus Pest Control v. Brown, 913

So.2d 754

(1st DCA 2005).



Prong 2: For Purpose of Obtaining Benefits

Any misrepresentation made in support of a claim for benefits is made with the requisite “intent”. See Cal-Maine Foods v. Howard, 225 So.3d 898 (Fla. 1st DCA 2017).



The Claimant's Statements Do Not Have To Be Material In Actuality

“Rather, the relevant inquiry is whether a claimant's misrepresentation—a misrepresentation the claimant thought would have a material impact on his case—was made with the intent to secure benefits.” Arreola v. Admin. Concepts, 17 So.3d 792, 794 (Fla. 1st DCA 2009).



Prong 2:

The claimant's statements do not have to be material in actuality



In Citrus Pest Control v. Brown, 913 So.2d 754 (1st DCA 2005), the court specifically said that once the JCC made the finding that the claimant intended to make misleading statements to advance his claims, it does not matter “whether the IME later opined that the statements at issue had no effect on his determination of a causal connection.”

Prong 2:

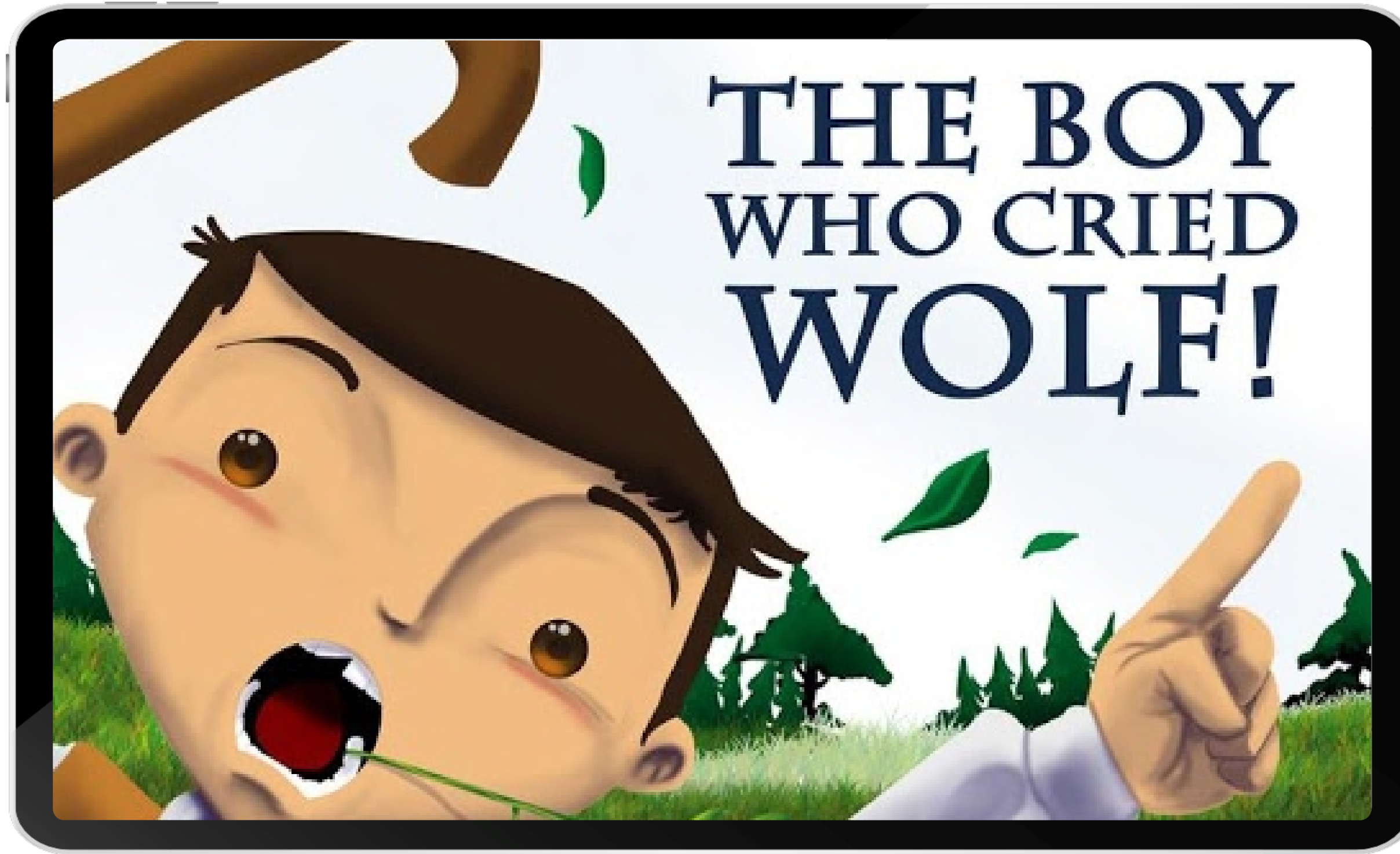
The Claimant's Statements Do Not Have To Be Material In Actuality



In Cal-Maine Foods v. Howard, 225 So.3d 898 (Fla. 1st DCA 2017):
The claimant made misrepresentations about the cause of his head and facial injuries for months. A few days before trial, the claimant dropped the claims related to facial/head injuries and the related medical bill. The JCC ruled the misrepresentations were “moot” and did not terminate the claimant’s benefits.

The First DCA reversed: “A party may not strategically manipulate pleadings to circumvent its sanctions.”

Not Every Misrepresentation Is Fraud



Is This Fraud?



Is This Fraud?



Presenting An Invalid SS Card At Time Of Hire Insufficient for Fraud

In Matrix Employee Leasing v. Leopoldo Hernandez, 975 So. 2d 1217 (Fla. 1st DCA 2008), when the claimant was hired, he presented the employer an apparently valid social security card. The E/C did not find out the card was invalid until the day of the accident. The E/C argued that the claimant's fraudulent obtaining of employment constituted fraud under F.S. 440.105. The DCA held that a claimant must knowingly and intentionally commit a fraud as to the workers' compensation claim and as there was no evidence that the claimant violated F.S. 440.105(4)(b)(9) for the purpose of obtaining workers' compensation benefits, the JCC did not err in awarding him such benefits.



Presenting A False SS Number In Order To Obtain Medical Care Is Fraud

In Arreola v. Administrative Concepts, 17 So.3d 792 (Fla.1st DCA 2009), the claimant gave a false SS number to a pharmacy, to an ambulance attendant during transport and to an investigator during a phone interview.

The same rules apply regardless of lawful immigration status.

Misrepresenting or Personal Leave For Employment Matters Is Not Fraud

In Quiroz v. Health Cent. Hosp., 929 So.2d 563 (Fla. 1st DCA 2006), the claimant's misrepresentations were made for the purpose of preventing his termination from the hospital and not for the purpose of obtaining workers' compensation benefits, therefore the appellate court reversed the JCC's denial of benefits.



Automatic Employer Referral Triggers

- 1 Late reporting
- 2 Monday morning reporting
- 3 New employee
- 4 Vague accident details
- 5 No witnesses
- 6 Reluctance to seek treatment/attend medical appointments
- 7 Disgruntled employees
- 8 Prior work accidents
- 9 Immediate attorney involvement

Automatic SIU Referral Triggers

- 1 Any deception in an effort to obtain benefits
- 2 Medical misrepresentation, including non-disclosure of preexisting injuries
- 3 Surveillance documenting activities beyond claimant's stated abilities
- 4 Claimant receiving non-disclosed secondary income while receiving benefits
- 5 Using false personal data to secure benefits
- 6 Revised doctor's opinions indicating misrepresentation
- 7 Perjury or deception during a deposition, recorded statement or verbal admission

Strategic Tools to Identify and Prevent Fraud

- ✓ ISO
- ✓ Recorded Statements
- ✓ OSINT
- ✓ Background Investigations
- ✓ Field Investigations
- ✓ Medical Canvassing
- ✓ Surveillance (traditional & remote)



Legal and Ethical Considerations



Claimant's do not have a right to privacy when their activities are conducted in a public venue or can be viewed from a public area.



Surveillance is legal and appropriate if done in a reasonable and unobtrusive manner.

How to get the best results...



Communication

Collaborate with the employer, defense counsel, claim adjuster, investigator, etc.



Develop a profile

ISO, social media, background investigation, medical canvass, etc.



Determine the objective

What is the goal of the investigation?



Conduct surveillance (if necessary)

Show a consistent pattern



Create a POA

Be proactive and strategic.



Have high standards, but realistic expectations

THANK YOU!



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