

RESOLUTION 10-03-2013

DIGEST

Workers' Compensation: Criminal Penalties for Making a False Statement

Amends Insurance Code section 1871.4 to permit prosecution of a first offense of making a knowingly false or fraudulent material statement as a misdemeanor.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Insurance Code section 1871.4 to permit prosecution of a first offense of making a knowingly false or fraudulent material statement as a misdemeanor. This resolution should be disapproved because the statute already provides for misdemeanor prosecution and it could cause confusion as to whether subsequent offenses must be prosecuted as felonies.

The proponent contends this resolution is needed to give the court and prosecutor discretion to treat a first violation as either a felony or a misdemeanor. In that respect, the resolution is unnecessary. The statute currently provides that a person who violates it “shall be punished by imprisonment in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, for two, three, or five years, or by a fine . . . or by both that imprisonment and fine.” By definition, it is thus a “wobbler” under Penal Code section 17, subdivision (b). Indeed, it is possible that by providing for misdemeanor punishment for a first offense, the amendment could be interpreted as excluding—or at least discouraging—felony prosecution for even aggravated first offenses, or misdemeanor prosecution for subsequent offenses.

The other changes in the resolution provide limited benefit. It would reduce the maximum fine from \$150,000 to \$100,000 for a first offense. However, since the amount of the fine is within the discretion of the sentencing court, there is no reason to believe a first-time offender would be given the maximum fine absent aggravating circumstances. The resolution would also limit restitution “to the extent the knowingly false or fraudulent statement caused additional treatment or benefits to be provided.” The purpose of restitution is to make the victim whole for economic losses incurred as a result of the offender’s conduct. As such, the existing provision for restitution impliedly is already limited to the cost of treatment or benefits provided solely as a result of the false or fraudulent statements.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Insurance Code section 1871.4, to read as follows:

- 1 § 1871.4
- 2 (a) It is unlawful to do any of the following:

3 (1) Make or cause to be made a knowingly false or fraudulent material statement or
4 material representation for the purpose of obtaining or denying any compensation, as defined in
5 Section 3207 of the Labor Code.

6 (2) Present or cause to be presented a knowingly false or fraudulent written or oral
7 material statement in support of, or in opposition to, a claim for compensation for the purpose of
8 obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

9 (3) Knowingly assist, abet, conspire with, or solicit a person in an unlawful act under this
10 section.

11 (4) Make or cause to be made a knowingly false or fraudulent statement with regard to
12 entitlement to benefits with the intent to discourage an injured worker from claiming benefits or
13 pursuing a claim.

14 For the purposes of this subdivision, "statement" includes, but is not limited to, a notice,
15 proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test
16 results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of
17 loss, injury, or expense, or payment.

18 (5) Make or cause to be made a knowingly false or fraudulent material statement or
19 material representation for the purpose of obtaining or denying any of the benefits or
20 reimbursement provided in the Return-to-Work Program established under Section 139.48 of the
21 Labor Code.

22 (6) Make or cause to be made a knowingly false or fraudulent material statement or
23 material representation for the purpose of discouraging an employer from claiming any of the
24 benefits or reimbursement provided in the Return-to-Work Program established under Section
25 139.48 of the Labor Code.

26 (b) Every person who violates subdivision (a) shall be punished by imprisonment in a
27 county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, for
28 two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars
29 (\$150,000) or double the value of the fraud, whichever is greater, or by both that imprisonment
30 and fine. Restitution shall be ordered, including restitution for any medical evaluation or
31 treatment services obtained or provided. The court shall determine the amount of restitution and
32 the person or persons to whom the restitution shall be paid. A person convicted under this section
33 may be charged the costs of investigation at the discretion of the court.

34 (c) The People may charge a first offense of this section as a misdemeanor consistent
35 with subdivision (b)(4) of Section 17 of the Penal Code, and the court may, pursuant to
36 subdivision (b) of Section 17 of the Penal Code, reduce a conviction for a first offense of this
37 section to a misdemeanor. If charged or reduced to a misdemeanor, the person who violates
38 subdivision (a) shall be punished by imprisonment in a county jail for a period of up to one year,
39 or by a fine not exceeding one hundred thousand dollars (\$100,000) or double the value of the
40 fraud, whichever is greater, or by both that imprisonment and fine. Restitution, including
41 restitution for any medical evaluation or treatment services obtained or provided, shall be
42 ordered, but solely to the extent the knowingly false or fraudulent statement caused additional
43 treatment or benefits to be provided. The court shall determine the amount of restitution and the
44 person or persons to whom the restitution shall be paid. A person convicted under this section
45 may be charged the costs of investigation at the discretion of the court.

46 ~~(d)~~ (d) A person who violates subdivision (a) and who has a prior felony conviction of
47 that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of

48 the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the
49 sentence provided in subdivision (b).

50 The existence of any fact that would subject a person to a penalty enhancement shall be
51 alleged in the information or indictment and either admitted by the defendant in open court, or
52 found to be true by the jury trying the issue of guilt or by the court where guilt is established by
53 plea of guilty or nolo contendere or by trial by the court sitting without a jury.

54 ~~(d)~~ (e) This section may not be construed to preclude the applicability of any other
55 provision of criminal law that applies or may apply to a transaction.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law makes it a felony to make a false material statement in relation to a claim for workers compensation benefits. The problem is that current law does not give prosecutors or the courts discretion to treat a first offense for making a false or fraudulent material statement as a misdemeanor even though the facts and circumstances may warrant a charge less than a felony and/or fine or restitution less than currently called for by the statute. The problem particularly occurs where one physician advises an applicant that it is alright to participate in an activity at a reduced level and statements made related to participation in such activity may be construed as a material misstatement.

This Solution: This resolution would amend Insurance Code section 1871.4 to give the prosecutor the discretion to charge a first violation as either a felony or a misdemeanor, give the court discretion to reduce a conviction for a first offense to a misdemeanor, and would modify terms of sentencing, fines and restitution where charged or reduced to a misdemeanor. Prosecutors and courts should be granted the discretion to charge a first offense of this statute at a level that fits the potential culpability and reprehensibility of the false or fraudulent misstatement. For example, physician A advises the applicant that he or she can walk in a previously scheduled running event and applicant walks in the event. Later physician B asks the applicant if he or she participated in any running event to which the applicant states "no." Under current law, the latter statement may be charged and found to be a violation of this statute with the minimum penalty being a felony. As amended under this Resolution, the prosecutor would have the discretion to charge the offense as a misdemeanor or the court could reduce to a misdemeanor. This Resolution also makes appropriate reductions to the upper limit of a potential monetary fine as part of a first conviction and ties the amount of fine in relation to the knowingly false statement leading to the receipt of additional benefits.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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