

**AFFIDAVIT IN SUPPORT OF ARREST WARRANT**

Before me, \_\_\_\_\_ Judge of the Eleventh Judicial Circuit of Florida, appeared Affiant Celena M. Cutts, a Law Enforcement Investigator with the Medicaid Fraud Control Unit of the Office of the Attorney General who first being duly sworn, deposes and states as follows:

I have been employed as an Investigator with the Medicaid Fraud Control Unit of the Attorney General, Department of Legal Affairs, State of Florida, since April 9, 2004. Prior to being with the Medicaid Fraud Control Unit your Affiant has been employed in the capacity of a Law Enforcement Officer, duly certified by the States of Florida and Georgia for approximately 10 years. During my career in law enforcement, I have attended numerous schools in criminal investigations and have also attended specialized training and seminars. In addition, I have supervised, conducted and/or participated in all types of criminal investigations, including, environmental crimes, child and elderly abuse, narcotics, and thefts. My most notable experience comes from the positions held as a Special Agent with the Florida Department of Environmental Protection (DEP) and Child Abuse Investigator with the Broward Sheriff's Office (BSO). During this time, I participated and/or conducted numerous investigations and/or the arrest of numerous individuals for violating environmental and child abuse related crimes.

The Medicaid Fraud Control Unit (MFCU), is under the authority and supervision of The Office of the Attorney General of the State of Florida, and conducts investigations on Medicaid recipients which have been victims of abuse, neglect, and exploitation. These investigations are conducted based on complaints which are generated by other State Agencies such as the Department of Children and Families (DCF), The Agency for Health Care Administration (AHCA), and general individual complaints. These investigations are directly enforced through Florida State Statute 825 (FSS 825); "Abuse, Neglect and Exploitation of Elderly Persons and Disabled Adults."

On May 9, 2004, at 11:06 p.m., the Florida Department of Children and Families, Abuse Hotline, received a telephone complaint ,(FAHIS Abuse Report #2004-012668). The complaint, was

centralized in the nature of the injuries received by the victim, G.H., a resident at The Gardens of Kendall (Assisted Living Facility), 8820 S.W. 79<sup>th</sup> Ave. Miami Florida.

On May 10, 2004 at 10:18 a.m. an additional complaint was called into the Department of Children and Families Abuse Hotline (#2004-012668-02) on the same victim, Ms. G.H.. The allegation narrative on this report stated that the victim had sustained considerable injuries to her left leg at around 10:30 a.m., but she was not taken to the hospital until 5:00 p.m. The Department of Children and Families, Adult Protective Services, initiated an investigation. The investigator assigned to this complaint was Ms. Susan Stocker.

On May 12, 2004, your Affiant, Lt. Celena Cutts, began an investigation, based on the abuse/neglect complaints received on the victim, Ms. G.H., through the Department of Children and Families HomeSafeNet, under Case #0151-04; “The Gardens at Kendall (ALF).”

The Florida Department of State, Division of Corporations, shows “The Gardens at Kendall, Corp.”, with a principal address of 8820 S.W. 79 Ave. Miami, Florida 33156. The registered agent, owner, and president is Mayra Del Olmo. It is also registered and licensed as an Assisted Living Facility with the Agency for Health Care Administration(AHCA), State of Florida, license #AL9632.

On May 9, 2004 at 5:10 p.m., Miami Dade Police and Fire complaint desk position #3, received an emergency call from Mrs. Julia Rodriguez, the victim’s daughter-in-law, requesting emergency medical response at The Gardens of Kendall, 8820 S.W. 79 Ave., Miami, Florida. This call was made by Mrs. Julia Rodriguez after she found the victim, Ms. G.H., in bed with apparent injuries in her left upper leg after she sustained a fall in the shower earlier in the day. Mrs. Julia Rodriguez had arrived at the facility that day in order to take the victim to dinner since it was Mother’s Day. According to Mrs. Rodriguez’s statement to Miami Dade Rescue during that call, the victim was unresponsive, with apparent injuries to her leg. A short time after 5:10 p.m., Miami Dade Fire Rescue #14, arrived at the facility and the victim, Ms. G.H. was transported to South Miami Hospital, emergency room. The responding Paramedic/Firefighter was Lt. John Flynt.

Upon arrival at South Miami Hospital, the victim Ms. G.H., a 74-year-old female, was given emergency medical care and placed in the critical intensive care unit. The initial impression/diagnosis of the victim at the emergency room was “sepsis (infection) of the left leg with arterial occlusion (blockage of artery; blood vessel),” as stated on the emergency room records. Dr. Steven Kang, vascular surgeon on duty at the time, proceeded to operate on the victim that same day. Ms. G.H. expired on May 11, 2004 due to complications from the fall injury, two days after the incident.

On July 26, 2005, Law Enforcement Investigator Eladio Padron, from the Medicaid Fraud Control Unit (Patient Abuse, Neglect and Exploitation Unit “PANE”), took a sworn statement from Mrs. Julia Rodriguez, the victim’s daughter-in-law. Mrs. Rodriguez stated during the interview that she received a call from Mrs. Mayra\_Del\_Olmo on May 9, 2004 at approximately 10:15 a.m. to 10:30 a.m. advising her that Ms. G.H. had fallen in the shower, but everything was under control and it was not an emergency. Mayra\_Del\_Olmo stated to Julia Rodriguez that G.H. had a “hematoma” on her leg or a little bruise. According to her statement, later on during the day, she (Rodriguez), her husband and her daughter, went to pick up the victim at the facility, in order to take her out to dinner for Mother’s Day. When she arrived, she found the victim laying in bed, with the swollen bruised leg, and unresponsive. Mrs. Rodriguez also stated that she found food in the victim’s mouth, which she removed. She then called Miami Dade Fire Rescue.

On July 28, 2005, Investigator Eladio Padron interviewed Lt. John Flynt, Paramedic/Firefighter for the Miami Dade Fire Department. Lt. John Flynt has been employed with the Miami Dade County Fire Department for 24 years and is a State Certified Paramedic. Lt. Flynt stated that he responded to The Gardens of Kendall, with his squad, on May 9, 2004 shortly after 5:00 p.m. in the afternoon. That when he arrived at the facility, he had confused Julia Rodriguez as being the person in charge of the facility. That later on he learned that no responsible person was at the facility upon his arrival. The only person at the facility, was a lady (unknown) that didn’t speak English and only stayed at the facility on weekends. That the female at the facility was not assisting him at all, and he couldn’t find anyone in charge of the facility. Lt. John Flynt did an assessment on the victim, Ms. G.H. He observed the bruises on the victim’s leg and observed that it did not appear to be recent. According

to Lt. Flynt, once a bruise turns black and blue they are not fresh, because it takes a while to develop. Lt. Flynt also stated that the victim's vitals indicated that she was in need of emergency medical services, and that she was transported to South Miami Hospital.

On August 2, 2004, Investigator Eladio Padron interviewed Ms. Susan Louise Stocker, Adult Protective Services Investigator with the Department of Children and Families. Ms. Susan Stocker stated that on May 9, 2004 she received a case involving the victim, Ms. G.H. and was assigned the latter. ( Ms. Stocker on her reports stated that the victim, Ms. G.H., is considered to be a vulnerable adult as per Florida State Statutes, and in need of supervision due to her Alzheimer's disease). She then responded to South Miami Hospital and pursued the investigation at the time of the incident. She visited the victim at the intensive critical care unit and found the victim in very poor condition. According to Ms. Stocker, the victim had recently undergone a thrombosis surgery. While at the hospital, Ms. Stocker and took photographs and interviewed Dr. Steven Kang, the vascular surgeon who performed the emergency operation on Ms. G.H. Dr. Kang clearly stated to her that the injury was sustained due to "pressure inflicted in the upper thigh area for a prolonged period of time" causing a blocking of the femoral artery. Ms. Stocker responded to the facility "The Gardens at Kendall," and interviewed Ms. Nora Huaman, an employee at the facility. Ms. Huaman stated that she found the victim around 9:30 a.m. inside the bathroom and couldn't open the door because the victim's body was blocking the door. Ms. Huaman further stated to Ms. Stocker that she then called the facility owner and administrator, Ms. Mayra Del Olmo and she responded to the facility with her husband. Ms. Huaman clearly stated that the facility administrator and owner Ms. Mayra Del Olmo was notified of the incident at 9:30 a.m. and observed the victim's injuries. Ms. Stocker further stated that the allegations of medical neglect were substantiated on her report, due to the fact that there was a lack of prompt medical attention given to the victim after the fall.

On September 27, 2005 Lt. Celena Cutts and Investigator Eladio Padron, interviewed Dr. Steven Kang at his office. Dr. Steven Kang has been a vascular surgeon for 10 years and is presently working at South Miami Hospital and Baptist Hospital. Dr. Kang stated he was called to the emergency room when the initial diagnosis was made by the emergency room physician. The diagnosis was an occlusion to the femoral artery where the injury had occurred. Dr. Kang further

stated that the “compression of the artery for a prolonged period of time had caused the thrombosis of the femoral artery.” Dr Kang further stated, that upon observation of the injured area, a common prudent person would have noticed the prominence of a large bruise compounded with the swelling. He finalized his statement by punctuating the fact that, if the victim would have obtained prompt medical attention, the recuperation and survival probabilities would have been greatly increased.

The State of Florida Agency for Health Care Administration (AHCA) is the regulatory authority responsible for licensure and enforcement of all applicable statutes and administrative rules governing assisted living facilities, pursuant to Chapter 400, Part III, Florida State Statutes, and Chapter 58-A5, Florida Administrative Code. On May 10, 2004, the Agency for Health Care Administration, also received a complaint from the Miami Dade County Fire Rescue/Elder links. An investigation was initiated into allegations of abuse and neglect at The Gardens of Kendall, and the owner/administrator Ms. Mayra Del Olmo. This investigation was conducted by Gloria Davis, Surveyor, and recorded under AHCA Case #2004007557/DOAH #04-3861.

On October 26, 2004, The Agency for Health Care Administration, filed an Administrative Complaint with the Division of Administrative Hearings. This was based on the investigation conducted by AHCA on The Gardens at Kendall, and the administrator/caregiver Mayra Del Olmo. It was determined ( Count I) that “The Gardens at Kendall failed to provide an environment free from abuse, as per Section 400.428(1), Florida Statutes, (Resident Care Standards), Class I violation. It was determined that the facility failed to provide a safe and decent living environment free, from abuse and neglect.”

A deposition of Mayra Del Olmo was taken on December 16, 2004, by Tria Lawton-Russell, Esquire at the Agency for Health Care Administration. During this deposition, Mayra Del Olmo stated that she was notified by her employee, Ms. Nora Huaman, about the incident involving the victim, Ms. G.H., and that she responded to the facility at approximately 9:00 to 9:15 a.m. She further acknowledged, under oath, that she had observed the victim’s injuries upon arrival at the facility and called the victim’s family and didn’t get medical attention for the victim.

On February 4, 2005, Mayra Del Olmo signed a Stipulation and Settlement Agreement with the Agency for Health Care Administration, and a Final Order, agreeing to a Class I violation and settling for a fine of \$7,500.00.

Based on the foregoing, your Affiant has probable cause to believe and does believe that on May 9, 2005, Mayra Del Olmo, administrator and main care giver at The Gardens at Kendall, an assisted living facility for vulnerable adults, after having knowledge of the injuries sustained by the victim, Ms. G.H., failed to provide medical attention in direct violation of Florida State Statute 825.102(3)(a), "Neglect of an elderly person or disabled adult" means:

1." A care giver's omission to provide an elderly person or disabled adult with supervision, and services necessary to maintain the elderly person's or disabled adult mental health, including, but not limited to, food, nutrition, clothing, shelter, medicines, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult....neglect of an elderly person or disabled adult may be based on repeated conduct or incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult"...

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Lieutenant Celena M. Cutts, Affiant

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Circuit Court Judge, Eleventh Judicial Circuit

Miami-Dade County, Florida