

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA                    )  
  )  
COUNTY OF PALM BEACH\_\_\_\_)\_\_\_\_\_

\_\_\_\_\_

**PROBABLE CAUSE AFFIDAVIT**

**BEFORE ME**, an authorized Notary Public with the State of Florida, appeared Affiant David M. Gainsborg, a Law Enforcement Investigator II for the Medicaid Fraud Control Unit of the Office of Attorney General, who first being duly sworn, deposes and states as follows:

Your Affiant has been employed as a Law Enforcement Investigator II with the Office of the Attorney General, Department of Legal Affairs, State of Florida, currently assigned to the Medicaid Fraud Control Unit (hereinafter referred to as “MFCU”) since August 05, 2005. Prior to being with the MFCU, your Affiant was a Police Officer with the Boynton Beach Police Department for 18½ years and the Palm Beach County School District for 4½ years. During your Affiant’s career in law enforcement at the Boynton Beach Police Department he spent 3 years assigned to the Uniformed Division as a Patrol Officer, 6 months as a Vice and Narcotics agent, 7 years assigned to the Detective Bureau investigating Property Crimes and Economic Crimes, 2 years as a Detective Sergeant supervising Property and Persons Crimes, and 6 years as a Sergeant in the Uniform Services Division. At the Palm Beach County School District Police Department, your Affiant served as a school based Police Officer for 4½ years. Your Affiant has conducted and/or participated in all types of criminal investigations, including Homicides, Robberies, Sexual Batteries, Burglaries, Thefts, Fraud, and Exploitation and Abuse of the Elderly.

The Agency for Health Care Administration (hereinafter referred to as “AHCA”) is the State of Florida Agency that oversees the Medicaid program to provide medical services for indigent recipients. Affiliated Computer Systems is the fiscal agent for the State of Florida that administers program funds to the providers. The MFCU exists to investigate Medicaid fraud occurring in Florida. The MFCU is also empowered to investigate abuse, neglect and exploitation of the elderly. The MFCU is under the authority and supervision of the Office of the Attorney General of the State of Florida.

## INVESTIGATION

This Affidavit details an investigation by the MFCU into the abuse of an elderly person residing at Sutton Place Center, located in Palm Beach county, Florida. The abuse was inflicted on the elderly person by one of the staff members, Babette Briner. She is the subject of this probable cause affidavit. In furtherance of the investigation, your Affiant interviewed an eyewitness to the abuse, several staff members at the facility, and the suspect. The result of your Affiant's investigation follows:

1. The victim, R.W., is a 91-year-old Medicaid recipient who suffers from dementia, depression, anxiety, A-Fib, hypertension and other infirmities of aging as manifested by advanced age to the extent that her ability to provide adequately for her own care or protection is impaired. R.W. resides at the Sutton Place Care Center, a nursing home, located at 4405 Lakewood Road, Lake Worth, Palm Beach county, Florida. She has been a resident of the Sutton Place Care center since January 13, 1995.
2. Babette Maser Briner is licensed by the Florida Department of Health as a Certified Nursing Assistant. She was employed in this capacity by Sutton Place Care Center during the incident in question.
3. Conny Silva is employed by Sutton Place Care Center as a housekeeper. Your Affiant received sworn testimony from her that on October 8, 2005, approximately between the hours of 10:00am and 10:30am, she went into room 213; the residence bedroom of R.W. Conny Silva advised that she noticed R.W. sitting on her bed clad only in an adult diaper. R.W. asked Conny Silva if she could help R.W. get dressed. Conny Silva advised R.W. that as a housekeeper, Conny Silva could not dress R.W., but that Conny Silva would go get help. Conny Silva walked to the nurses station to seek help for R.W. but did not find anyone. Conny Silva then returned to the room of R.W. to inform her of this and noticed the door to her room partially closed. Conny Silva stated that she could hear R.W. from inside the room saying words such as "OW, leave me alone, I don't want you to dress me, you always do this to me" and other words to this effect. Conny Silva stated she then gently knocked on the door and pushed it open to see inside. It was at this time Conny Silva stated she saw Babette Briner, who was facing away from Conny Silva, holding R.W. by the shoulders and violently shaking her back and forth. Conny Silva then advised she observed Babette Briner, using her right fist, punch R.W. on the upper back several times. Conny Silva advised she then made a shuffling noise with her feet so that her presence

would be known to Babette Briner. It was at this time Conny Silva stated that Babette Briner turned around, and upon seeing Conny Silva, told her to get help because Babette Briner was having a problem with R.W. Conny Silva then stated she left the room again and located nurse Diana Drake in the hallway and told her that she was needed in R.W.'s room.

4. On October 19, 2005, at approximately 3:00pm, your Affiant, along with Law Enforcement Investigator II Paul Valerio, went to the residence of Babette Briner, located at 4654 Lucerne Lakes Blvd. E., Apt. #106, Lake Worth, Palm Beach county, Florida, 33467. During a non-custodial interview with Babette Briner that took place in the dining room area, Babette Briner stated to your Affiant that on the date and time of the incident in question, she went to R.W.'s room to assist her to the bathroom. According to Babette Briner, R.W. was sitting on her bed clad in a nightgown. Babette Briner stated that R.W. was attempting to get out of bed to go to the bathroom on her own. Babette Briner further stated that she attempted to keep R.W. from getting out of the bed by gently pushing her back down by placing her hands on R.W.'s shoulders, but denied shaking her violently. Babette Briner did acknowledge that R.W. was being combative with her and when asked if she ever struck R.W. on the back, she denied this allegation. Your Affiant asked Babette Briner why Conny Silva would state she saw Babette Briner with her hand behind R.W.'s back, and Babette Briner stated that maybe Conny Silva saw Babette Briner brushing R.W.'s hair from her shoulder as sometimes after Babette Briner brushes R.W.'s hair, loose hair falls to her shoulder. Babette Briner's description of the events surrounding this incident are sketchy. She told your Affiant that the incident occurred very fast, yet estimates it took about 20 minutes to unfold. She stated several times during the interview she doesn't remember exactly what happened and was not sure who came to assist her with R.W. Although denying all allegations of abuse, Babette Briner's statement as to what occurred in R.W.'s room is vague at best. Overall, Babette Briner's recollection of the details surrounding the incident, only 11 days after the fact, are distorted and vague.

5. In the course of this investigation your Affiant also interviewed Diana Drake, who indicated she came to assist Babette Briner after being notified by Conny Silva. Diana Drake stated that when she got to R.W.'s room, Diana Drake observed R.W. was sitting on her bed clad only in an adult diaper; not a nightgown as described by Babette Briner. Diana Drake indicated that R.W. was calm and both Diana Drake and Babette Briner assisted R.W. to her wheelchair.

6. On October 17, 2005, your Affiant attempted to interview R.W., but was unable to due

to her current mental condition.

**SUMMARY**

Based upon the totality of the circumstances, your Affiant has probable cause to believe and does believe that on or about October 8, 2005, Babette Briner did commit the offense of *Abuse of an Elderly Person* by an intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person, to wit: by shaking R.W. back and forth and/or striking R.W. on or about her back, in violation of Florida Statutes § 825.102(1)(b).

\_\_\_\_\_  
Affiant  
David M. Gainsborg, Law Enforcement Investigator II  
Medicaid Fraud Control Unit.

**Sworn and Subscribed** before me this \_\_\_\_\_ day of \_\_\_\_\_ ,  
2005 by the Affiant who is personally known to me and who did take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

My commission Expires: \_\_\_\_\_