

Affidavit in Support of Arrest Warrant

Before me, _____ Judge of the Eleventh Judicial Circuit of Florida, appeared Affiant Gene Francar, an 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, Gene Francar, have been employed as a Senior Investigator with the Office of the Attorney General, Department of Legal Affairs, State of Florida, Medicaid Fraud Control Unit, in Miami, Florida since March, 2001 and in this position I conduct investigations related to subjects and entities who submit or cause to be submitted, fraudulent bills to the Medicaid program. I have a Bachelor of Science degree from the University of Wisconsin. As a Federal Agent with the Drug Enforcement Administration and its predecessor agencies for thirty three years, I conducted numerous multi-defendant conspiracy investigations related to international and interstate trafficking of drugs and the movement of the resulting illegal proceeds.

The Agency for Health Care Administration (AHCA) is the State of Florida agency that oversees the Medicaid Program. The Medicaid Program provides medical services for indigent residents of the State of Florida. Affiliated Computer Systems, Inc. (ACS) is the Fiscal agent for the State of Florida that administers program funds to the providers. The Medicaid Fraud Control Unit (hereinafter referred to as MFCU) exists to investigate Medicaid fraud in the State of Florida. The MFCU is under the authority and supervised by the State of Florida, Office of the Attorney General, Department of Legal Affairs.

In November, 2004, based on information developed by AHCA, your affiant was assigned to investigate Victor Ferran, M.D. and Delsa Ferran, M.D. who became suspect when Medicaid suddenly began paying to each of their provider numbers monies in far greater amounts than any billings they had ever previously submitted as Medicaid providers. An examination of these payments disclosed that beginning in January 2004 the Ferrans' provider numbers were billing for the administration of large quantities of the expensive HIV related drug WinRho. These amounts of WinRho were larger than what either Ferran in their joint practice had ever previously billed.

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The AHCA investigators, suspicious of the dramatic increase in the Ferrans' Medicaid billing, met with the two Doctors and conducted a preliminary audit . When AHCA compared the quantity of WinRho billed to the amount of WinRho purchased and discovered a severe lack of invoices to substantiate the amounts of WinRho administered, the matter was referred to MFCU for additional investigation.

As the investigation progressed, it was determined that the fraud involved more than the Ferrans acting on their own to defraud the program. Instead, the investigation uncovered a scheme involving multiple businesses and other subjects conspiring to defraud the Medicaid and Medicare programs through the submission of false and fraudulent claims for medications used in the treatment of HIV/Aids. The criminal model utilized to perpetrate this scheme involves a Physician Practice Management Company (hereinafter called the Management Company). The Management Company solicits physicians licensed to practice medicine in the State of Florida, who will either knowingly or unknowingly participate in the scheme . Additionally, this Physician must be a Medicaid and Medicare provider and dispensing practitioner pursuant to F.S. 4654.0276.

The Management Company provides the physician access to a turnkey HIV infusion clinic, including medical office space, medical staff, administrative staff, equipment, medication, HIV billing services and patients. As an alternative, the Management Company may set up a complete infusion clinic within the physicians own office. In addition to the patients being HIV positive, they are always Medicaid recipients. In the case of the Doctors Ferran, they had a joint private practice at a separate location when they both agreed to accept employment as the physicians at a pre-existing clinic, called Medlife Services. As is common with this model, the Management Company provided the HIV positive patients to the clinic, Medlife Services.

Investigative checks by your affiant fully identified this clinic as Medlife Services, Corp. a now inactive Florida corporation that was formed on 12-03-2003 with an address listed with the State of Florida of Suite S-209, 8890 SW 24 Street, Miami. These same corporate records identify the corporate registered agent and president as Sonia Rivera.

As previously stated, to be successful in perpetuating the fraud, multiple companies are needed.

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One such second business entity is a billing agent. The management company's billing

agent submits claims for the HIV medication to Medicare and Medicaid under the physicians' individual provider numbers. The Medicaid and Medicare payments are deposited into the physician's account and the physician then pays the Management Company a majority percentage of the Medicare and/or Medicaid reimbursement. To succeed, the physician must agree to these terms set by the management company. Both Dr. Delsa Ferran and Dr. Victor Ferran agreed to allow the billing to be conducted through their provider numbers, and then later transfer those funds received from Medicare and Medicaid over to the management company.

The billing agent used by Medlife Services has been identified as R&I Medical Billing. Sonia Rivera, owner of Medlife Services sought to maximize reimbursements by falsely over stating the quantity of the drug administered. This was accomplished by inflating the number of units of the drug administered, which if done as claimed, greatly exceeded the manufacturer's recommended level, and posed a danger to the patients.

Based upon information provided by a cooperating witness, your Affiant learned that starting on January 9, 2004 and continuing through July 30, 2004, the Medicare and Medicaid programs were billed for the WinRho D immune globulin drug and related supplies using the provider numbers of the Doctors Ferran and that these payments were well in excess of the amount which should have been billed. The cooperating witness indicates that this amount was actually one hundred times the amount which should have been billed.

Additionally, the cooperating witness has advised your affiant that the above referenced billings were for amounts far in excess of the normal dose per patient of the medication as properly administered, and that the Medicare program was being billed too often using the same billing codes for the same Medicaid patients. The Medicaid program was responsible for and did pay the "cross over payments", which were the portions of the billed amounts not covered by the Medicare program. Records show that for these "cross over" payments, Medicaid paid a total of \$73,232.44, of which \$40,551.61 was

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attributed to Dr. Victor Ferran and the remaining \$32,680.83 to Dr. Delsa Ferran.

Your affiant reviewed subpoenaed checks from the Medlife Services account and found eighteen separate checks made out to R&I Medical Billing, all signed by Sonia Rivera, all dated

between February 2004 through August 2004, all for a total of \$54,549.48, which represents the amount Sonia Rivera had agreed to pay the billing company as its share of the billing she caused to be fraudulently submitted.

Thus, the drug injectable Win Rho D immune globulin, was being billed to the Medicare and Medicaid Programs as 300 international units being infused when the appropriate units should have been 3 units. Therefore the medication was essentially being billed to the Medicare and Medicaid Programs at one hundred times more than the appropriate units and, by using the Ferrans, Sonia Rivera was able to obtain reimbursement at a rate one hundred times more than the amount actually administered.

In April 2005, your affiant interviewed Dr. Delsa Ferran and her husband, Dr. Victor Ferran. Both related how they had been solicited by a former acquaintance, Sonia Rivera, to accept employment with Rivera in a clinic Rivera had initiated. They explained to your affiant that although they were secure in their own private practice, after repeated offers from Sonia Rivera, they finally agreed to accept the offer and began work at Medlife Services in early January 2004.

The Ferrans explained that based on their review of the patient files, soon after accepting employment at Medlife Services they became suspicious of the operation. They noted that all patients received the same regimen, all billing reports appeared similar and the lab reports gave the appearance of being derived from a template. Their concerns escalated when the two Doctors learned of the large deposits being made by Medicaid and Medicaid into the Ferran's joint checking account. Both Doctors advised your affiant they were subsequently required to write checks to Sonia Rivera for most of these deposits and were only allowed to keep their agreed upon Medlife salary. To substantiate this claim, the Ferrans provided your affiant with copies of all these related checks and account deposits.

The first of the deposits to the Ferrans' account was received in late January 2004. These

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deposits were far in excess of any payments they had ever in their careers received from Medicare and Medicaid. Troubled over this, both Ferran's gave Sonia Rivera notice of their intent to resign their positions at the clinic, which they did in February 2004. However, based on Rivera's threat to sue the Ferrans and initiate action for patient abandonment, about ten days later they agreed to

return and stay until Rivera secured a replacement for them. They finally severed all employment with Medlife during the second week of March 2004.

Subsequent to leaving Medlife, the Ferrans' were interviewed by AHCA investigators, who requested copies of their drug purchase invoices. They explained that as employees, they did not buy the clinic supplies, and therefore had no invoices. The Ferrans contacted Sonia Rivera who eventually gave them copies of what she claimed were the missing invoices. Included in the documents the Ferrans' provided to your affiant were copies of these drug invoices provided to the Ferrans by Sonia Rivera. They reflected purchases from three different vendors, one of which does not exist. The second is known to be involved in the sale of diverted drugs. The third company, Health Coalition, is considered to be legitimate. However, when Health Coalition personnel researched the invoices in question, they determined those invoices to be altered and fraudulent.

On 03-24-2006 a subpoena for records relative to Medlife Services was served on Sonia Rivera. On 04-17-2006 Rivera, through her attorney, provided this office copies of what was claimed to be all the records available. In response to point 18 of the subpoena, which requested "All invoices for medication purchases from any medical wholesaler or drug supply house for the period from December 1, 2003 to September 31, 2005; such records to also include all order credits and returns.", the subpoena response stated, "Attached are all invoices for medication received by Medlife Services for the treating physician as part of Medlife's services to the doctors." The submitted invoices identified the supplying wholesale vendors as Health Coalition, Prescription Care Pharmacy, Worldwide Medical Supply & Pharmaceuticals, Inc and N.A.S.Y.D. Pharmaceuticals.

Of the Rivera provided invoices claiming Health Coalition to be the supplier, ten invoices indicate

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that the receiver is Medlife Services Corp. Mr. Jay Edelson of Health Coalition reviewed their files and informed your affiant that Health Coalition had no records of ever dealing with Medlife Services Corp. or Sonia Rivera.

Similarly, your affiant reviewed Rivera supplied invoices for an alleged pharmaceutical supplier located, as per the invoices, at 10900 North Andrews Avenue, Palmetto Bay, Florida 33079. On invoice number 901 dated 02-12-2004 and invoice number 1902 dated 02-20-2004,

“Drs Ferran” is listed in addition to Medlife. These two invoices also identify the vendor as N.A.S.A.Y.D. The rest of the Andrews Avenue invoices identify the company as NASYD (without the second “A”).

A check of the Dade County Occupational License records failed to locate such an address. A check of the US Postal Service records indicated that 33079 is not a valid Palmetto Bay Zip Code. A check of the Florida corporate records failed to locate any company with either the name “NASAYD” or “NASYD.”

Also included with the Rivera provided documents were copies of Medlife checks made payable to NASYD and dated between March 2004 to July 2004. No other data further identifying NASYD was on the checks obtained from Rivera. Through a separate subpoena of the bank records for these checks, copies of the checks’ backs were later obtained. On the backs of the checks the endorsing party for the NASYD checks was identified as the National Synapse Diagnostic System. Additional checks showed the company to be a Florida corporation with an occupational license identifying it as a non-invasive testing facility. These facts concerning the alleged Andrews Avenue vendor indicates to your affiant that the NASYAD/NASYD invoices and the Health Coalition invoices are fraudulent and were used as a means to try to alter the findings of the AHCA audit or any other investigative action.

Further, the owner of Prescription Care Pharmacy was interviewed regarding the invoices from that company. The owner was shown the questioned invoices and confirmed that they were fraudulent. The only invoice provided from Worldwide Medical Supply & Pharmaceuticals, Inc. was for a small amount of a different drug, Carimune and was insufficient to justify any of the fraudulent billings.

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Based upon the foregoing, your affiant has probable cause to believe, and does believe that beginning on or about January 9, 2004 and continuing on through to or about July 30, 2004, the Defendant Sonia Rivera did knowingly engage in an **Organized Scheme to Defraud** and did thereby obtain property belonging to the State of Florida Medicaid Program and/or the Consultec Corporation and/or the State of Florida Agency for Health Care Administration (AHCA in violation of FS 817.034 (4)(a) (in excess of \$50,000.00), a 1st degree felony and, further, did commit **Grand Theft**, by knowingly and feloniously obtaining, using or endeavoring to obtain and use U.S. currency valued at more than \$5,000.00 (Five Thousand Dollars) but less than \$10,000.00 (Ten Thousand Dollars), said currency being the property of the State of Florida Medicaid Program and/or its fiscal agent(s), the Affiliated Computer Systems Corporation (ACS), formerly Consultec Corporation and/or Unisys Corporation, and/or the State of Florida Agency for Health Care Administration (AHCA), with the intent to either temporarily or permanently deprive the same of a right to the U.S. Currency, in violation of Florida Statute §812.014(1)and (2) (b) (1).

Sworn and subscribed on this _____ day of _____ 2006.

Gene Francar, Senior Investigator
Medicaid Fraud Control Unit
Office of the Attorney General

Circuit Court Judge
Eleventh Judicial Circuit of Florida

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