

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

AFFIDAVIT IN SUPPORT OF AN ARREST WARRANT

BEFORE ME, _____, a Judge of the Circuit Court of the First Judicial Circuit of Florida, personally appeared Michael W. Buckley, Law Enforcement Investigator, Medicaid Fraud Control Unit, Office of the Attorney General, State of Florida, who being by me first duly sworn, deposes and says that he has probable cause to believe that beginning on or about October 1, 2005, Fannie Finkley, a black female, born on June 23, 1947, whose last known personal and work address is 7667 Kipling Street, Pensacola, Florida, 32514, committed violations of § 429.08(1)(a), F.S., Operating An Unlicensed Assisted Living Facility; and § 825.102(3)(a)(1), F.S., Elder Neglect. These crimes were committed in Escambia County.

Your AFFIANT has been employed as a State Law Enforcement officer for twenty-five years. For the last 7 years, your AFFIANT has served in the capacity of an investigator conducting environmental crimes investigations for the Department of Environmental Protection. For the last 2 years, your AFFIANT has investigated patient abuse, neglect, and exploitation cases with the Office of Attorney General's Medicaid Fraud Control Unit (hereinafter, "MFCU"). Your AFFIANT has been the affiant on numerous search and arrest warrants. Your AFFIANT has conducted numerous criminal investigations and made numerous arrests. Your AFFIANT has received formal and informal training and education in the field of criminal investigations.

Your AFFIANT has participated in various aspects of this investigation. Your

AFFIANT has reviewed the reports and documents in this investigation and personally interviewed Investigator Mercer, the lead investigator. Investigator Mercer is no longer employed with the MFCU and has returned to employment with the Department of Children and Families' Adult Protective Services Unit.

Your AFFIANT further states that the facts and reliable evidence supporting this affidavit and establishing probable cause that the aforesaid felonies have been committed, are as follows:

I. Operating An ALF Without A License

During this investigation your AFFIANT determined that this facility, located at 7667 Kipling Street, Pensacola, Florida, 32514, is known as "Loving Care", "Angels of Love" and "House of Love." For the purposes of this affidavit, it will be referred to as "Loving Care."

On February 14, 2006, the Pensacola MFCU office received HomeSafenet Abuse Report 2006-325404-01. That report was first received by Adult Protective Services (hereinafter, "APS") on February 13, 2006. The complaint indicated that "Loving Care" Assisted Living Facility (hereinafter, "ALF") had approximately 10 persons in residence. The complaint alleged that residents were suffering from inadequate care and supervision, inadequate food, and medical neglect.

Your AFFIANT learned the following information: Loving Care lost its ALF license in September of 2005. Fanny Finkley was issued a license by the Hotel and Restaurant Commission for a "Rooming House" on October 14, 2005. The license number is 2705800. It was issued for "The House of Love." The Hotel and Restaurant Commission also issued the Loving Care Retirement Center a license for food service (license number 2705932) on November 22, 2005.

On February 17, 2006 Lt. Edward Burke of the MFCU Pensacola Field Office called Patti McIntyre, a Registered Nurse Consultant for Area 1 & 2 for the Agency for Health Care

Administration (hereinafter, "AHCA"). She advised him that Fannie Finkley had voluntarily surrendered her license for operating Loving Care as an ALF in July of 2005. She also stated that the operators of Loving Care had been facing a significant fine and that it had been waived due to the surrender of the ALF license.

On February 20, 2006, your AFFIANT and Lt. Burke visited the "House of Love". Upon entering the facility, we observed a black female seated at a table in the dining area. There was a large box of medications on the table and she had some of the medications which were in blister packs on the table in front of her. We introduced ourselves by informing her that we were law enforcement officers with the Medicaid Fraud Control Unit. The lady produced a Florida drivers license identifying her as Etta Louise Millender of 231 E Barker St, Pensacola, Florida, 32514. The D/L number was M453-212-57-836-0.

Ms. Millender advised us that she was ordering prescription medications for some of the residents. She said that she was ordering them from "RX Advantage", 2556 B West Nine Mile Rd., Pensacola, and that their telephone number was 478-7923. Ms. Millender told us that she is a "Med Tech" at the facility. She advised us that she gives out medications to the residents two times per day (morning and night). She explained how they keep the medications locked up because some of the residents may take them when they are not supposed to. She indicated that she supervises the people when they get their medications. Ms. Millender further stated that her responsibilities at the facility included cleaning and cooking as well as supervising the medications. She told us that the list she had of the residents was accurate except that two new people had just moved in that day; their names were Robert Dunn and Brittany Dunn (A.K.A. Brittany Newburn). Ms. Millender told us that the Dunns were on Medicaid.

On May 17, 2006, Investigator Mercer interviewed Stephen Claus, an investigator for APS. He responded to a Hotline report dated February 13, 2006. He made contact with the

facility owner, Fannie Finkley; employee, Etta Millender; and several residents on February 13, 2006. Their statements and his observations are noted in the Home Safenet report, 2006-325404. He confirmed, in the latter part of 2005, that Finkley lost her license to operate this facility as an ALF. The following information is, in part, a summary of his findings.

On February 13, 2006, Fannie Finkley told Stephen Claus the facility was a boarding house, as opposed to a licensed ALF. Stephen Claus observed prescription medications belonging to the residents located in a locked cabinet. Fannie Finkley told him she kept the medications there to prevent theft. Etta Millender told Stephen Claus she had a key to the cabinet and she dispensed the medications to the residents. Etta Millender also told Stephen Claus on one occasion she prevented a resident, Valerie Roschel, from taking too many of her prescribed muscle relaxers. The other residents he interviewed confirmed their medications were in the locked cabinet and they relied on Etta Millender or Fannie Finkley to dispense them. This activity is indicative of ALF operations.

Mr. Claus was told by residents that they give their monthly income checks to Fannie Finkley and she, in turn, gives them back \$54 allowance per month. This is indicative of ALF operations.

On May 17, 2006, Investigator Mercer interviewed APS Investigator Jeananne Szymanski. She responded to a hotline report (Home Safenet number 2006-382389) concerning this facility on May 16, 2006. She also was told by residents who currently live in the facility that they are required to give the owner, Fannie Finkley, their monthly income checks to cover the cost of rent. Ms. Finkley gives them \$54 allowance per month.

On May 19, 2006, Investigator Mercer received a copy of AHCA's reports concerning a complaint that Fannie Finkley continues to operate this facility as an unlicensed ALF. On April 25, 2006, AHCA notified Ms. Finkley in writing that it is apparent she is operating an

unlicensed ALF and that they intended to take appropriate legal action. The reports note that the primary indicator that Ms. Finkley is continuing to operate as an ALF is that residents' medications are being kept in a locked cabinet and administered to them by staff.

Investigator Mercer completed a telephone interview on May 23, 2006, with APS Investigator Dawn Shumaker. She confirmed that she was at Loving Care on April 23, 2006. While there, she observed the residents' medications contained in a locked cabinet along with several other food items. Her observations indicate that Fannie Finkley continues to operate this facility as if it were a licensed ALF.

On June 12, 2006, Investigator Mercer made contact with APS Investigator Brenda Bartow regarding her Home Safenet report, number 2006-392560. This report involved a resident at Loving Care. Although there were no apparent issues of abuse, neglect or exploitation involving this case, her interview with the alleged victim, Antuan Fountain, brought relevant information to the investigation. Mr. Fountain informed Investigator Bartow that, on a given date specified in the report, Ms. Finkley took his SSI check and was supposed to give him \$54 cash but only gave him \$20 cash. This activity supports the fact that Ms. Finkley continues to operate as an assisted living facility. Investigator Mercer obtained a copy of the lease agreement signed by Mr. Fountain which reflected that the current name of the facility is House of Love.

Norma Endress, an AHCA surveyor, was interviewed by Investigator Mercer on June 28, 2006. She confirmed that she completed an assessment at Loving Care on April 11, 2006, and that Fannie Finkley lost her license to operate as an ALF in 2005. During her April 11 visit, she found all of the residents' medications were kept in a locked cabinet and the facility staff assisted the residents with medication administration. Ms. Endress advised that it is unlawful for Fannie Finkley to continue this activity without an ALF license.

Your AFFIANT believes that the information established above, at a minimum, constitutes probable cause that Fannie Finkley is operating an assisted living facility without a license.

II. Neglect

Prior to April 7, 2006, Investigator Mercer was employed by APS as an investigator. During that time, Investigator Mercer completed an investigation concerning Josephine Bullard, a resident from Loving Care. The Home Safenet report, number 2006-330290, contains details about the APS investigation and supports the above information.

The following schedule references when and why Ms. Bullard was sent by ambulance from Loving Care to a hospital:

February 6, 2006 - Ms. Bullard sent to Baptist Hospital after two days of feeling weak and not talking. Returned to Loving Care.

February 7, 2006 - Ms. Bullard sent to Baptist Hospital after being found on the floor. Returned to Loving Care after Ms. Finkley takes Bullard back to the facility completely aware of her current debilitated state.

February 14, 2006 - Ms. Bullard sent to West Florida Hospital after choking and not being able to breath. West Florida would not return Bullard to Loving Care.

* * * * *

On February 14, 2006, Investigator Mercer observed Ms. Bullard at West Florida Hospital. She was in critical condition. She was suffering from dehydration, new onset diabetes and urosepsis. She had a stage three decubitus ulcer on her coccyx and the skin on both of her heels was black and hard. Karen Whiddon, a registered nurse, and Dr. Jack I. Haj Obeid, both employed by West Florida Hospital, determined Ms. Bullard needed

nursing home care.

Ms. Whiddon discovered that Loving Care was unlicensed and made arrangements for Ms. Bullard to be transferred to Baptist Manor Nursing home instead. Kathy Stanley, a registered nurse practitioner for Baptist Manor nursing home, indicated to me that Ms. Bullard's physical and mental condition did not occur overnight and may have been the result of a lack of care.

On June 21, 2006, Investigator Mercer interviewed Nichole Robeson, a social worker from Baptist Hospital. She confirmed Josephine Bullard was admitted to Baptist Hospital on February 7, 2006. Prior to the hospital admission, Ms. Bullard resided at Loving Care. Nichole Robeson made contact with Fannie Finkely regarding Ms. Bullard's needs. Ms. Robeson told Ms. Finkely that Ms. Bullard was bed bound and required total care. Ms. Finkely came to the hospital to evaluate Ms. Bullard. Ms. Finkely later called Ms. Robeson and confirmed she and the staff at Loving Care could take care of Ms. Bullard.

On June 26, 2006, Investigator Mercer reviewed copies of the Emergency Medical Service (hereinafter, "EMS") reports concerning Josephine Bullard on February 6, 7, and 14, 2006. On February 6, 2006, at 4:57 p.m., EMS arrived at Loving Care in response to a call from a staff member. The report indicates Ms. Bullard had been getting weaker over the past two days and was not talking. EMS transported her to Baptist Hospital. Later that evening, around 10 p.m., EMS transported Ms. Bullard back to Loving Care. The report indicates that she was nonambulatory at that time. No other specific details were provided.

A second EMS report dated February 7, 2006, indicates EMS responded to Loving Care at 8:31 a.m. after Ms. Bullard was found on the floor by staff. She did not appear injured but was transported to Baptist Hospital.

A third EMS report dated February 14, 2006, indicates EMS responded to Loving Care at 7:49 p.m. No staff members were present. EMS was greeted by residents of the

facility who reported Ms. Bullard was “choking and couldn’t breathe.” The report notes EMS found her gurgling and fluid was pooled in her airway. She was unresponsive. EMS transported her to West Florida Hospital.

Investigator Mercer interviewed Karen Whiddon on May 4, 2006. She is a discharge planner at West Florida Hospital. She explained the following details: Josephine Bullard was admitted to the hospital on February 14, 2006, in guarded condition. Ms. Bullard was emaciated, nonverbal and unable to care for herself. Prior to her admission, Ms. Bullard resided at Loving Care. After several phone calls to the Department of Elder Affairs, AHCA and APS, Ms. Whiddon discovered Loving Care was no longer an ALF but rather a boarding house. She determined, along with Dr. Obeid, the attending physician, that Ms. Bullard needed a higher level care which constituted placement in a nursing home. She contacted Ms. Bullard’s son, however, he desired for Ms. Bullard to return to Loving Care. Ms. Whiddon’s responsibility as a discharge planner was to ensure a safe discharge for Ms. Bullard. She did not think Loving Care would provide a safe environment for Ms. Bullard so she requested assistance from Adult Protective Services. APS investigated the situation and obtained a court order to place Ms. Bullard in a nursing home.

Dr. Obeid was interviewed by Investigator Mercer on October 30, 2006. He treated Josephine Bullard during her admission to West Florida Hospital beginning February 14, 2006. Prior to her hospitalization, Ms. Bullard was a resident at Loving Care. According to Dr. Obeid, upon admission, she showed signs of neglect. He told Investigator Mercer that Ms. Bullard was dehydrated, unresponsive and experiencing renal failure. He advised that Ms. Bullard had aspirated and was suffering from pneumonia. Although he did not know exactly the chain of events that occurred, it appeared that she was not swallowing normally due to her dementia.

Dr. Obeid stated that he observed Ms. Bullard’s arms to be contracted. He said that

this condition probably took a few weeks or longer to develop and could be the result of a lack of mobility. Upon Ms. Bullard's February 14th admission, hospital staff detected a stage three decubitus on her buttocks. Dr. Obeid indicated this probably took a few months to develop and most likely worsened when she became dehydrated and went into renal failure. He explained that the decubitus was the result of constant pressure being placed on that particular area likely resulting from Ms. Bullard being bed bound for a significant amount of time. Dr. Obeid said that, in his opinion, Ms. Bullard's condition was not monitored closely by those who were caring for her prior to the hospital admission on February 14th. He indicated that her condition was the likely result of neglect.

Ms. Bullard is an elderly person as defined by § 825.101(5), Fla. Stat. (2005).

Steve Metzler, an environmental supervisor with the Escambia County Health Department's Environmental Health unit, sent Investigator Mercer copies of inspection reports of Loving Care on April 26, 2006. The reports indicate that the facility has a history of code violations including cleanliness issues, refrigerator temperature and structural repairs. The last visit made by the Environmental Health unit's staff was completed on March 30, 2006. At that time, the facility was classified as a boarding house and would be monitored thereafter by the Department of Business and Professional Regulation.

Based on the above information, there is probable cause to be believed that Fannie Finkley owns, operates and maintains an assisted living facility without a valid license and that said practice poses a threat to the health, safety and welfare of the residents, thereby committing a violation of § 429.08(1)(a), Florida Statutes.

Furthermore, there is probable cause to believe that Fannie Finkley committed the crime of Neglect of an Elderly or Disabled Adult in violation of § 825.102(3)(a)(1) based on

her failure to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult.

FURTHER AFFIANT SAYETH NAUGHT.

Michael Buckley, AFFIANT
Law Enforcement Investigator II
Medicaid Fraud Control Unit

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ OF MARCH, 2007.

Circuit Court Judge
First Judicial Circuit of Florida