



INTEROFFICE MEMORANDUM

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TO: Mr. John Perikles  
Deputy Chief Assistant for Special  
Prosecutions, Economic Crimes, Insurance Fraud  
and Worker's Compensation Unit, Elder and  
Vulnerable Adult Task Force

DATE: 5/23/2023

DEFT NAME: Christi Olson, Ryon Vazquez, Leonel  
Aguiar, Leonardo Alfonso, Mercedes  
Linares

CASE NO: F23007341A,B,C,D,E

RE: Basis for No Action

FROM: Mr. Michael Spivack  
Assistant State Attorney  
Insurance Fraud/Worker's Comp Unit

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THE INTRODUCTION

This memorandum explains the decision to no action the charges against the above defendants. In sum, the defendants worked for a pediatric dental company. The gravamen of the prosecution was that: (1) the defendants intentionally use the personal identification information of six dentists, without their approval, to submit bills for services that had been actually rendered; and (2) the defendants inflated some of the bills by claiming that all patients under the age of six exhibited poor behavior while receiving dental treatment, and therefore additional charges were warranted.

The following is the sum of the evidence which the lead detective's investigation had revealed to support the charges. In addition to providing this summary, each arrest affidavit is attached to this memorandum.

Dentists, Ania Caberizo and Jose Mellado, were husband and wife. They owned two dental practices together. One dental practice was located in Little Havana and the other was located in Hialeah. These two practices were incorporated as ANIA CABERIZO DMD PA and AC ORTHO PLLC.

Dr. Caberizo and Dr. Mellado entered into an agreement with a venture capital company, BOYNE CAPITAL. As a result of this agreement a new company was created, ACPDO MANAGEMENT INC. DBA ONECARE PEDIATRIC DENTAL. In sum, the doctors would continue to run the clinical side of the business and the management company would run all other aspects of the business. A falling out later occurred which resulted in both doctors being terminated from their employment with the dental practices and a civil lawsuit between the doctors on the one hand and the venture capital company and its owners on the other hand was commenced. This lawsuit remains active.

THE CRIMINAL MISUSE OF PERSONAL IDENTIFICATION OF ANOTHER

The lead detective's investigation revealed that, despite no longer being employed by the dental practices, Dr. Caberizo's personal identification information was continually used on thousands of bills to various insurance companies. This use would take the form of misrepresenting in bills that Dr. Caberizo had supervised dental procedures that had been performed on patients. The investigation did not reveal that the patients had not received the treatment. Nor did the investigation show that the treatment had not been supervised by a licensed dentist. This misuse of Dr. Caberizo's personal identification information continued for five months. This misuse of Dr. Caberizo's personal identification information was not terminated until the



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misuse was brought to the attention of the management company by an insurance company who had been processing the bills.

The lead detective's investigation further revealed that the identification information of five additional dentists, who worked for the dental practices, was also used on billing without those dentists' knowledge nor consent, although the dentist had in fact actually supervised the dental procedures.

Based upon the above, it was appropriate to arrest the defendants for the charges arising from the misuse of the dentists' personal identification information. However, further information has come to light which calls into question whether the State can meet the high burden of proof of establishing all the necessary elements for the crime of misuse of the personal identification of another beyond and to the exclusion of every reasonable doubt.

The attorneys for the defendants were provided with the opportunity to present evidence and argument against the prosecution of this matter. I have carefully considered the information provided by the defense team. I am of the opinion that a jury would have a reasonable doubt as to that portion of the State's case the gravamen of which is the willful and fraudulent misuse of the personal identification information of another.

The defense presented the following arguments First, the defense has witnesses who will testify that before Dr. Caberizo was fired, her personal identification information was routinely and automatically entered as the dentist who supervised the services to the patients, despite the fact that other dentists had in fact performed the supervision. As long as Dr. Caberizo was physically in the building at the time of the procedures, this process was automatically followed. I have verified with the representative of one of the victim insurance companies that such practice, if it did in fact occur, was not in violation of the law. Second, the defense asserts that there is no motive for any misuse, as the personal identification information for the dentists who actually performed the supervisions could have been properly used. The defense has presented the employment contracts for the five dentists whose personal identification information was used. These contracts arguably enabled the use of the dentist identification information without any prior verbal approval by the dentists. In addition, the defense presented documentation that supports that these other dentists did in fact perform the necessary supervision. I have verified with the Chief Legal Counsel for the Florida Dental Board and with the investigative agent for the Liberty Insurance company that if the personal identification information of the dentist who actually performed the supervision had been used, then no fraud would have occurred.

Instruction 20.13 is the standard jury instruction for the misuse of the personal identification information of another. The instruction requires that the acts be both "willfully" and "fraudulently" done. "Willfully" is defined as intentionally, knowingly, and purposely done. "Fraudulently" is defined as purposely or intentionally suppressing the truth or perpetrating a deception or both.

If the jury is presented with the above evidence and witnesses, it is my considered opinion that the State cannot meet its burden of proving beyond all reasonable doubts that the actions of the defendants were committed both "willfully" and "fraudulently."

#### THE PADDING OF THE BILLS WITH THE IMPROPER ADDITION OF BEHAVIORAL CHARGES

The lead detective's investigation revealed that a witness had been instructed to routinely add an additional charge to each bill for all patients six years old or younger for alleged poor behavior of the patient during services. Based on this information, an arrest for such conduct was warranted.

However, the defense has provided evidence that, while there may or may not been isolated activity of this nature, there was no blanket policy to always include a charge for the poor behavior of the patient. Specifically, the defense presented a graph based upon the bills submitted for a period of approximately two years. This two year period included time both before Dr. Caberizo's employment was terminated and after her employment was terminated. The graph clearly shows variable increases and decreases in the inclusion of charges for the poor behavior of patients, both before Dr. Caberizo's employment was terminated and after Dr. Caberizo's employment was terminated. Such variations in the inclusion of a charge for poor behavior of the patient is inconsistent with a position that the billing for all patients under the age of six included a charge for poor behavior of the patient. In addition, the defense presented an internal email which established that once such isolated activity was discovered it was terminated.

Again, it is my considered opinion the State cannot meet its burden of providing its case beyond and to the exclusion of all reasonable doubts.



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## CONCLUSION

I have carefully considered the information provided to me by the lead detective, provided over numerous meetings, as well as the information provided to me by multiple witnesses on behalf of a possible prosecution. I have carefully considered the information provided by the defense, which was presented in multiple meetings with both the defense team as a whole and individual defense attorneys. It is my opinion that after the presentation of all the evidence by both the prosecution and the defense, and after the presentation of arguments by both the prosecution and the defense, a Miami-Dade County jury would have a reasonable doubt as to the whether or not the State had met its burden and therefore a prosecution should not be pursued. I base my opinion having tried over 300 jury trials in South Florida, over the span of 37 years, having appeared in both state and federal court.



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