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ATTORNEY GENERAL OF THE STATE OF NEW YORK

MEDICAID FRAUD CONTROL UNIT

Amy Held
Director
September 21, 2021

The Medicaid Fraud Control Unit

“MFCU”

Created in 1975 as a result of abuses in the nursing home industry.

- Part of the Attorney General's Office - Criminal Division



Attorneys

- Prosecutors with expertise in investigating and prosecuting resident abuse.

Detectives

- All MFCU investigators are police officers.
- Trained in abuse and neglect investigations.
- Experienced Special Victims detectives.

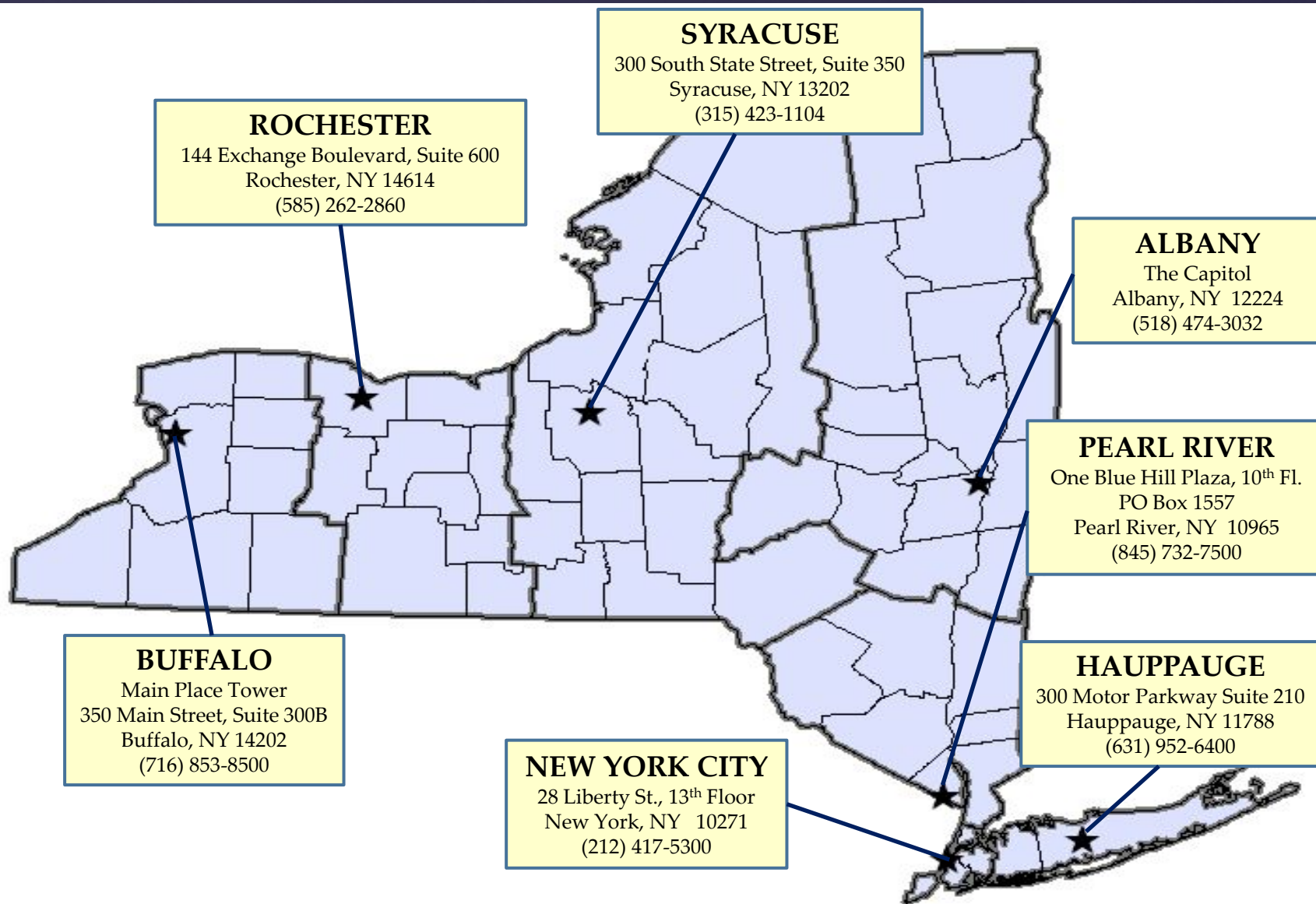
Forensic Auditors

- Accountants trained to review books and records of businesses

Nurse Experts

- Experience includes Director of Nursing, Compliance, Risk Management, Unit Supervisor.
- Worked in hospitals, nursing homes, drug and alcohol clinics, home healthcare.
- Review resident records, staffing, conduct interviews. Define standards of care.
- Review hidden camera recordings.





Medicaid Fraud Control Unit

- Separate and Distinct from Dept of Health
- Main NYS Agency Counterpart:
Office of Medicaid Inspector General (OMIG)
- MFCU Also Works Closely with Dept of Health on Medicaid Program Integrity and Nursing Home Abuse and Neglect Investigations

MFCU Jurisdiction

Financial Fraud – MFCU conducts proactive investigations and prosecutions of enrolled providers who defraud Medicaid.

Patient Protection – MFCU oversees nursing homes and other residential health care facilities to protect residents from abuse, neglect, mistreatment and the theft of property.





Over ~~100,000~~ 90,000 residents in 600 nursing homes, & residents of board and care facilities Statewide



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MFCU Regulatory Authority

HIPAA

- Covered health care providers are permitted to disclose protected information to “health oversight agencies.”

45 CFR 164.512(d)(1)

- **MFCU is a “health oversight agency.”**

45 CFR 164.501(6)(v)

MFCU Regulatory Authority

Any entity that fails to grant **immediate access** upon reasonable request to a State MFCU for the purpose of conducting its activities may be excluded from any federal health care programs, including Medicaid and Medicare.

42 U.S.C. § 1320a-7(b)(12)

What Are MFCU's Tools?

• Criminal Prosecutions

Penal Law

--Provider Fraud

--Patient Abuse/Neglect

Public Health Law § 2803

Patient abuse and neglect

Social Services Law §366-d, f

- Kickback arrangements

Education Law § 6512(1)

- Unauthorized practice

• Civil Enforcement

False Claims Act -- State
Finance Law §189, 190

- Social Services Law §145-b
- Executive Law §63(12)
- Executive Law §63-c
- Common law claims:
unjust enrichment,
payment by mistake,
fraud

Crimes in Medicaid Fraud Cases

Grand Larceny

Health Care Fraud

Forgery

Falsifying Business Records

Offering a False Instrument for Filing

Drug Diversion

Conspiracy

Enterprise Corruption

Illegal Kickbacks

Unauthorized Practice

11



Common Fraudulent Schemes

- Falsifying records of services allegedly provided
- Double-Billing for services included with provider rate
- Illegal Kickback arrangements for referrals
- Upcoding



Unacceptable Practices

18 NYCRR § 515.2

- ✂ False claims
- ✂ False statements
- ✂ Failure to disclose
- ✂ Conversion
- ✂ Bribes and kickbacks
- ✂ Unacceptable recordkeeping
- ✂ Employment of sanctioned persons
- ✂ Receiving additional payments
- ✂ Client deception
- ✂ Conspiracy
- ✂ Excessive services
- ✂ Failure to meet recognized standards
- ✂ Unlawful discrimination
- ✂ Factoring
- ✂ Solicitation of clients
- ✂ Verification of MA eligibility
- ✂ Denial of services
- ✂ Other prohibited acts



Patient Abuse is One of the Most Underreported Crimes in the Nation

Victims often:

- cannot physically defend themselves,
- do not have the ability to communicate,
- are unable to recall the abuse,
- may be reluctant to report due to fear of retaliation.

That is why the law has special protections for institutionalized patients.



Nursing Homes Have Legal Duties to Residents:

“A license to operate a nursing home carries with it a special obligation to the residents who depend upon the facility to meet every basic human need.”

10 NYCRR § 415.1(1)(a) (emphasis added).



Obligation re: Quality of Life and Medical Care

- A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life. 42 CFR § 483.10(a)(1); 10 NYCRR 415.12.
- Each resident shall have the right to:
 - adequate and appropriate medical care . . . 10 NYCRR § 415.3. *See also* 42 CFR § 483.10(d)(2).

Nursing Homes Must Have Sufficient Staff

The facility shall provide services by sufficient personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans. 10 NYCRR § 415.13(a).

Staff qualifications and personnel management. The nursing home shall employ on a full-time, part-time or consultant basis a **sufficient number of professional staff members** who are educated, oriented and qualified to carry out the provisions of this Part and to assure the health, safety, proper care and treatment of the residents. 10 NYCRR §415.26(c)

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure. . .the well-being of each resident. 42 CFR § 483.35.



Facility Must Provide Activities of Daily Living

The facility must provide care and services. . .for the following activities of daily living:

- (1) Hygiene - bathing, dressing, grooming, and oral care,
- (2) Mobility - transfer and ambulation, including walking,
- (3) Elimination - toileting,
- (4) Dining - eating, including meals and snacks.

Limitation on Admissions: Ability to Provide Care

(1) The nursing home shall: (ii) accept and retain only those nursing home residents for whom it can provide adequate care . . .

See 42 CFR §483.25 / 10 NYCRR § 415.26



Complete & Accurate Comprehensive Care Plans

10 NYCRR § 415.11(c)

- **Doctor's Orders** - directing what medications, treatments and other care RNs and LPNs are required to administer.
- **Resident Profile Cardex** - specifying the duties that CNAs must perform for the resident.
- **Medication Administration Record and Treatment Administration Record** - delivering oral care, turning and positioning a patient, range of motion, toileting, changing briefs, etc.
- Each of these records are to be “completely” and “accurately documented” pursuant to **10 NYCRR §415.22(a)**



Resident Bill of Rights

The right to receive courteous, fair and respectful treatment.



Attorney General's Nursing Home Report January 2021

<https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf>

- Preliminary Findings, e.g.:
- Nursing homes that entered the pandemic with low U.S. Centers for Medicaid and Medicare Services Staffing ratings had higher COVID-19 fatality rates.
- Nursing homes' lack of compliance with infection control protocols put residents at increased risk of harm
- State reimbursement model for nursing homes gives a financial incentive to owners of for-profit nursing homes to transfer funds to related parties (ultimately increasing their own profit) instead of investing in higher levels of staffing and PPE
- **Regulatory Framework Section sets forth New York and Federal law on Nursing Home Duties to Residents (pp. 43-47).**
- Appendix B discusses Focus Prosecution and Parallel Civil Settlement through AOD (pp. 63-67).



NYS LTC Ombudsman

- Investigates and resolves complaints made by or on behalf of residents.
- Promotes the development of resident and family councils.
- Informs government agencies, providers and the general public about issues and concerns impacting residents of long-term care facilities.



Does Resident Abuse Happen?



- 2014 federal report found that one-third of nursing facility patients harmed in treatment.
- Hospital re-admission costs from patients in study: \$208,000,000
- 6% of those patients died from neglect.

Respect for Caregivers & Residents

- Everyone has the right to feel safe at home.
- We respect for the very difficult work that caregivers in residential care facilities do. We appreciate the patience, dedication, and tolerance required for the job.
- Mistakes, accidents, or errors in professional judgment happen.
- **The criminal law focuses on those who knowingly violate the law and physically abuse, neglect or mistreat a resident within their care.**



WILFUL RESIDENT “ABUSE” IS A CRIME

- ANY person who commits a wilful act of:
 - 1) Physical abuse,
 - 2) Neglect,
 - 3) Mistreatment, or
 - 4) Who fails to report such an act
- is subject to one year in jail and/or a \$10,000 fine.

Public Health Law § § 12-b(2), 2803(d)(3), 2803(d)(7) & 10 NYCRR 81.1



ABUSE

Any inappropriate physical contact with a patient, which harms or is likely to harm the resident, including:

- Striking
- Pinching
- Kicking
- Shoving
- Sexual molestation



NEGLECT

Failure to provide timely, consistent, safe, adequate and appropriate services, treatment or care to residents.

This includes:

- Nutrition
- Medicine
- Therapy
- Sanitary Clothing
- Other Activities of Daily Living

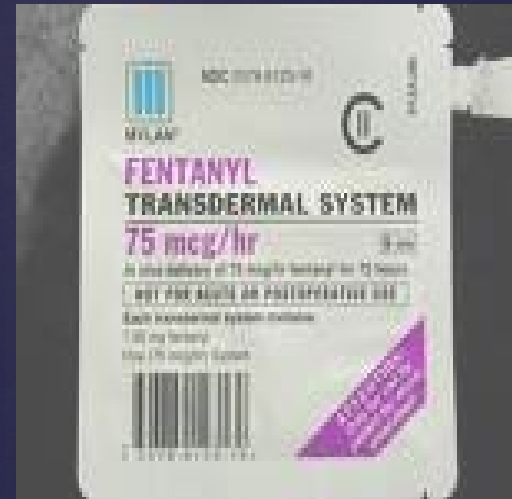


MISTREATMENT

- Inappropriate use of medication
 - Chemical restraints
- Physical restraints
- Inappropriate Isolation
- Any restraint applied without a doctor's order is MISTREATMENT.



What is a Chemical Restraint?



Mandatory Reporting

- Wilful failure to report resident “abuse” is as serious as the underlying neglect or abuse.
 - Who must report?
 - Any employee of a nursing home upon “reasonable cause.”
 - Timing Requirement:
 - Immediately by phone, and
 - In writing within 48 hours.
- PHL § 2803-d(3)



How do you report abuse, neglect or mistreatment?

- NYS Department of Health:
 - 1-888-201-4563
- NYS Attorney General Medicaid Fraud Control Unit:
 - www.AG.NY.Gov
 - Toll Free Hotline: 1-866-697-3444
 - NYC Office: 212-417-5300



Worker are sometimes afraid that they will lose their job if they report.

- Both federal and state law prohibit an employer from harassing, denying an employee benefit or otherwise retaliating against any person who makes a report of resident abuse or neglect.
 - Knowing retaliation could be a crime.
 - PHL §§ 2803-d(8) and 12-b(2).
 - Facility could be subject to a fine of up to \$200,000 and exclusion.
 - 42 USC 1320b-25(d)(1).

Also, an employee's cover up to try to help the facility usually results in the employee being held accountable.



Two-Person Transfers/Care

Dangerous & illegal when one person does two-person transfer:

When a care plan that requires “a two-person assist,” and a nursing home employee attempts to transfer or care for a resident by themselves.

Examples:

- Falls While Toileting = Serious Injury
- Falls While Showering = Serious Injury
- Hoyer Lift Falls = Death

Injuries from illegal transfers are avoidable. Too often they result from facility operating with insufficient staffing.



What can employee do?

- Ask for help.
- If they can't get help, report it!
 - Change the culture.
- Understaffing? REPORT IT TO DOH!

The resident deserves proper and safe care and treatment and health care workers deserve the support they need to do their job safely.

Anything short of proper and safe treatment is unlawful.



Report Understaffing

Direct care workers **MUST** receive the necessary support to be able to do their job and carry out their duties properly.

If they do not have appropriate support (*e.g.*, inadequate staff or supplies), they should do their job BUT report the incident to:

- Their Supervisor,
- Their Union Representative – “Protest of Assignment Forms,” and
- DOH, or
- The Attorney General MFCU.



Just because a person reports an incident does not mean that someone is getting arrested.



MFCU Prosecutions and Civil Remedies to Address Resident Abuse and Neglect, and Provider Fraud



Medford Multicare

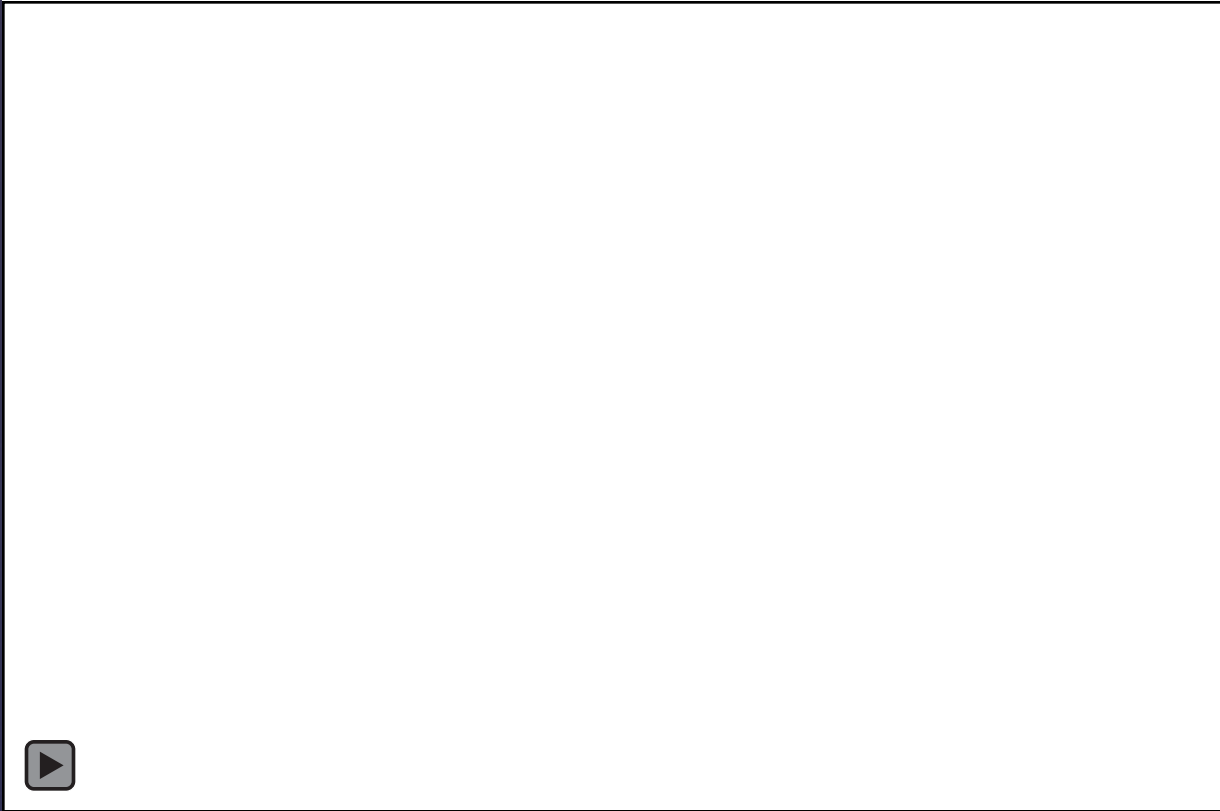
9 arrests made in death of Auriela Rios at Medford Multicare Center for Living

Updated February 11, 2014 5:56 PM



Police say the suspects ignored the overnight alarm of a 72-year-old Auriela Rios who was suffering from complications from pneumonia and required to be on a ventilator at night. (February 11, 2014 6:39 PM)





While she was dancing someone was dying.



LONG ISLAND

5 Ex-workers at Medford Nursing Home Get Jail Time in Patient's Death

October 28, 2015



AOD With Medford Owners;

Parallel Prosecution of RT, & 2 RNs for Criminally Negligent Homicide/ Endangering and of Administrator, Facility, RT and 2 LPNs for Cover-Up of Neglect Resulting in Death

- Higher Levels of Care & Staffing
- Care Consultant
- Resident Care Fund of \$6M
 - Independent Financial Monitor
- Repayment of \$10M to Medicaid
- Governing Body
- Limit on Agency Staffing
- Full-time Compliance & Risk Management officer
- Training and New Policies
- Mandatory Extension of Agreement
- Terms Continue to Bind New Owners



Criminal and/or Civil Remedies Based on Evidence:

Focus – for profit, Cooperstown

2014 cuts causing understaffing & failure to remedy, despite notice of risk of harm

2015-16 neglect of 3 residents

2015 prosecution of caregivers

2018 felony EWIPDP charges against owner, manager & home; misdemeanor convictions

AOD with Owner, Manager & Facility:

- \$1M restitution
- Divestment of all interest in healthcare providers in NYS
- 5 year Ban from NYS healthcare industry

Mohawk: for-profit, Syracuse

2013 cover-up of medication

administration error and sexual assault

2015 indictment of 2 owners,

Administrator, DON and

Facility for FBR, Eavesdropping,

Conspiracy & WVHL

AOD with Owners & Facility:

- \$1M Restitution to Medicaid
- Monitor: care & compliance
- Reforms to Improve Compliance and Care
- Divestment by Owners
- Ownership Transfer Ban to Related Entities



Highpointe on Michigan Not-for-Profit Kaleida Health

16 month old child's death not reported by facility to DOH or MFCU

- Tracheotomy and Gastric Tube – “Total Dependence for feeding”
- -Goal: to be discharged home
- -no mention of high chair in care plan
- -4 staff on duty 2/18/15, instead of 6
- G-tube feeding begins, child left alone for 67 minutes in high chair
- - no training or policies in place re alarm system

AOD:

-Created Corporate Compliance Officer for accountability

-Increased staffing for Pediatric Unit

-Memorialized Kaleida's \$8M investment in improved policies, staffing

-\$500,000 restitution

-Terms of AOD survives sale



Prosecutions and civil actions that address systemic causes of abuse and neglect improved care for hundreds residents at facilities.



Penal Law Charges - Endangering

- Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree – E Felony
 - knowingly endangering the physical, mental or moral welfare of someone who is unable to care for themselves.
- Endangering the Welfare of a Vulnerable Elderly Person, or an Incompetent or Physically Disabled Person – E or D Felony
 - Applies to caregivers who:
 - intentionally, recklessly, or with criminal negligence cause physical injury to a vulnerable elderly person in their care.
 - Also applies to non-consensual sexual contact, which could exist due to lack of capacity.



CRIMINAL COURT OF THE CITY OF NEW YORK
QUEENS COUNTY: PART AR

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

[REDACTED]

Defendant.

FELONY COMPLAINT

Docket 2017QN0 05023

Arrest Q17 606443-N

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Investigator Stanislav Tabakov, of the Office of the New York State Attorney General, Medicaid Fraud Control Unit (MFCU), located at 120 Broadway, New York, New York, being duly sworn, deposes and says the following:

That on or about April 22, 2016, at 182-15 Hillside Avenue, Jamaica Estates, Queens County, New York, the defendant, [REDACTED], committed the offenses of:

Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree (Penal Law § 260.25) (E Felony)
Wilful Violation of Health Laws (Public Health Law § 12-b[2] (unclassified misdemeanor))

IN THAT THE DEFENDANT, (1) knowingly acted in a manor likely to be injurious to the physical, mental, or moral welfare of a person who is unable to care for himself or herself because of a physical disability, mental disease, or defect; and (2) wilfully subjected a resident of a nursing home to an act of neglect in violation of Section 2803-d(7) of the Public Health Law and a regulation promulgate thereunder, to wit: Title 10 of the Codes, Rules and Regulations of the State of New York, Section 81.1(c) by failing to provide timely, consistent, safe, adequate and appropriate services, treatment and care to a patient and resident of a residential health care facility while such patient and resident is under the supervision of the facility, including but not limited to: nutrition, medication, therapies, sanitary clothing and surroundings, and activities of daily living, to wit:

At the above time and place, the defendant was employed as a Certified Nursing Aide at Hillside Manor Rehabilitation and Extended Care Center, LLC (Hillside Manor) and was an assigned caregiver for "I.F.", a resident of Hillside Manor whose full name is known to me and is unable to care for himself or herself due to physical disability, mental disease or defect, to wit: dementia, schizoaffective



Penal Law Charges – Violent Crimes

- Assault
 - Varying levels of severity – including felony assault of someone over 65 years old
- Homicide – Manslaughter/Criminally Negligent Homicide
- Sexual Abuse
 - Be mindful of the possibility of sexual abuse. It happens.



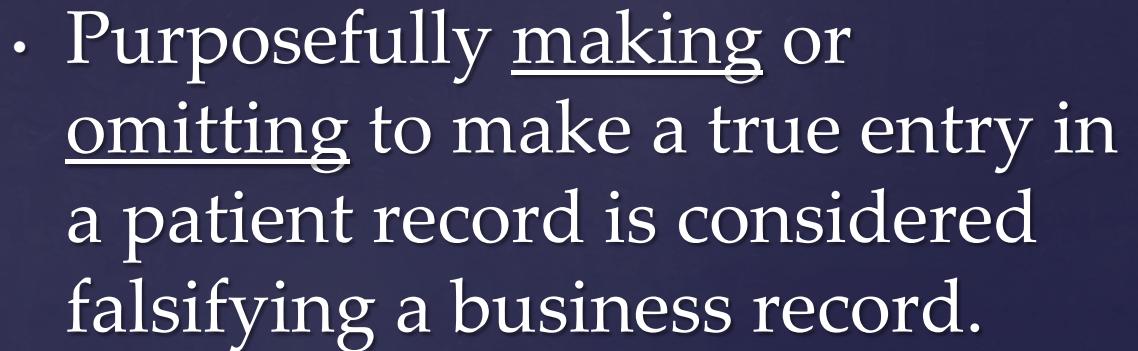
Penal Law Charges – Violent Crimes

Former Ulster County Nursing Home Worker Sentenced to 46 Years for Sexually Abusing Patients;

- Jacky Stanley was convicted of sexually abusing six victims with TBIs at the Northeast Center for Special Care in Lake Katrine, Ulster County.



“The cover up is often worse than the crime”



Falsifying Business Records in the First Degree

- E Felony
- Maximum Jail Penalty: 1 1/3 to 4 years
- Loss of License or Certification
 - DOH / OPD / OMIG Notified



Accurate reporting and charting protects patients and the caregiver

- MFCU reviews charts to see if the resident was getting proper care.
- Incomplete or falsified charts can be attempt to hide that resident did not receive care or treatment.



How Does The AG Uncover Resident Abuse And Neglect??



Who Reports Resident Abuse to MFCU?

- Mandatory Reporters
 - Employees of RHCs
 - Facility Management
 - Directly or through NYS DOH
- Confidential “Whistleblowers”
- Family Members
- Residents Themselves
- Police / EMS
- Hospitals / Funeral Directors / Medical Examiner



It is not permissible for staff to take or share photos or videos of residents.



Photographing or Videoing Patients Violates:

- Patient Privacy – HIPAA
- Patient Bill of Rights
 - “Receive courteous, fair and respectful treatment.”

And is a Crime

Unlawful Surveillance: for no legitimate purpose, intentionally using “an imaging device” to “surreptitiously view” or record a person in a place where a person has a reasonable expectation of privacy.

PL §§ 250.45 and 250.50



Disseminating an Unlawful Image

- It is a crime to:
 - To intentionally give, e-mail, send an image of the “sexual or intimate parts of another person” that you know was obtained unlawfully.
 - If you took the image and disseminated it = Felony
 - If you “Sell” or “Publish” Image = Felony
 - “Publish” means to make it available to 10 or more people or to “post” or otherwise make it available to the public.

PL § 250.55/60



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Crimes by Caregivers Using Social Media

MFCU has prosecuted 7 nursing home employees since 2013 for recording humiliating images of residents for the employees' amusement.

Some images were also posted on the internet via Facebook and SnapChat.

Drug Diversion Ruins Lives

- Our community is in the middle of a deadly prescription drug epidemic.
 - Overdose Deaths in NY
 - 2014 – 2,300
 - 2015 – 2,754
 - 2016 – 2,692
- Recent changes in State law has made it more difficult for those with addictions to get prescription medications via prescription.
- Those with addictions have been forced to street-based narcotics or to stealing narcotics from medical providers, including nursing facilities.



Drug Diversion in Medical Facilities

- User rates among medical professional are high.
- Prevalent due to availability and stressful work.
- Law enforcement across the United States is seeing a spike in narcotic-related arrests of nurses and caregivers. Careers ruined.



Diversion in Medical Facilities is Extremely Dangerous

- Drug diversion in medical facilities often involves theft of pain medications needed for patients.
- Many thefts involve falsifying a resident's chart to indicate that a drug was administered.
 - Falsifying a patient chart to cover-up the theft of narcotics is a felony.



Drug Diversion – Pointers:

1. Assume that anyone can steal controlled substances from the workplace.
2. Effective procedures that are followed can prevent a diverter.
 - a. Secure, document, and inventory carefully and promptly
 - b. Workers should not delegate their responsibilities
3. If they sign off on wasting, etc., they should ensure they actually witnessed it.
4. If things don't make sense, report it immediately.
5. If nurses suspect that a co-worker is struggling with addiction, or that drug diversion is happening in their facility, we encourage nurses to take action.



Get Help Before It's Too Late

- For direct care staff or their friends
- The Attorney General encourages treatment over prosecution
- Preserve licenses / livelihoods / lives



Confidential Programs

- Statewide Peer Assistance for Nurses (SPAN)
 - Hotline – 1-800-457-7261
 - Peer Assistance / Support Groups
- 1199 SEIU Member Assistance Program
 - 646-473-6900



**To Report Medicaid Fraud
or Patient Abuse/Neglect at
Health Care Facility,
call MFCU**

1 800 771 -7755

Stay Vigilant – Stay Passionate

Thank you for all that you do!

Questions?

