Exhibit B

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

PRESENTMENT OF THE PALM BEACH COUNTY GRAND JURY

REPORT ON THE PROLIFERATION OF FRAUD AND ABUSE IN FLORIDA'S ADDICTION TREATMENT INDUSTRY

FALL TERM A.D. 2016

* *

DAVE ARONBERG
State Attorney

ALAN JOHNSON
Chief Assistant State Attorney

JUSTIN CHAPMAN
Assistant State Attorney

December 8, 2016

TABLE OF CONTENTS

INTRODUCTION

In the midst of the growing national health crisis involving opioid addiction, Dave Aronberg, State Attorney for the Fifteenth Judicial Circuit of Florida, called for this Grand Jury to investigate how government agencies are addressing the proliferation of fraud and abuse occurring within the addiction treatment industry. This Grand Jury was further asked to make appropriate findings and recommendations on how these agencies can better perform their duties to ensure that communities remain safe and individuals with substance use disorders are protected.

"[A] grand jury may investigate the actions of public bodies and officials concerning the use of public funds." *In re Grand Jury Invest. of Fla. Dept. Health & Rehab. Servs.*, 659 So. 2d 347, 350 (Fla. 1st DCA 1995). Such a grand jury has the "right to express the view of the citizenry with respect to public bodies and officials in terms of a 'presentment,' describing misconduct, errors, and incidences in which public funds are improperly employed." *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518, 522 (Fla. 1977). As explained in *Kelly v. Sturgis*, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984):

> Grand juries have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike, and to return indictments when warranted. As *Marko* notes, grand juries also have a lawful and proper function to consider the actions of public bodies and officials in the use of public funds and

> report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public offices and public monies. 352 So. 2d at 522. *See also Appeal of Untreiner,* 391 So. 2d 272 (Fla. 1st DCA 1980).

Kelly v. Sturgis, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984).

In accepting this important assignment, the Grand Jury reviewed five major areas of concern in regulatory oversight and enforcement: (1) marketing, (2) commercial group housing designed for persons in recovery (also known as recovery residences, sober homes, or halfway houses), (3) the ability of the Department of Children and Families to take action, (4) the strength and clarity of the patient brokering statute, and (5) law enforcement's ability to take action.

The Grand Jury heard testimony and received evidence from a wide range of sources, including the Department of Children and Families (DCF), Florida Association of Recovery Residences (FARR), Florida Certification Board (FCB), Florida Alcohol and Drug Abuse Association (FADAA), Florida Attorney General's Office of Statewide Prosecution, Palm Beach County Fire Rescue, the insurance industry, law enforcement, treatment industry professionals (including a psychiatrist, a licensed clinical social worker, and a marketing director), parents of children victimized by abuses like patient brokering, a City Commissioner, owners of recovery residences, private and municipal attorneys who extensively litigated treatment and recovery housing issues over the past decade, and residents from local communities impacted by the proliferation of recovery residences.

In this report, we discuss the economic, statutory, and regulatory forces that make Florida the premier medical tourism destination for substance abuse treatment and recovery housing. We identify the main types of fraud and abuse occurring within the treatment industry and how bad actors have managed to avoid detection for so long. We then explain what tools DCF, FARR, and local law enforcement agencies need to provide meaningful oversight in this industry. Finally, we make recommendations on how to clarify and enhance criminal laws to more effectively address the increase in patient brokering, which is one of the most common, damaging, and lucrative ways that this vulnerable class of consumers is being exploited.

OVERVIEW

Over the past decade, federal laws have collectively impacted the substance abuse treatment industry in ways that could not have been predicted. First, the Mental Health Parity and Addiction Equity Act of 2008 (Parity Act) placed behavioral health on a par with physical health, which resulted in a drastic increase in coverage for substance abuse treatment. *See* 29 U.S.C. § 1185a (2009). Subsequently, the Patient Protection and Affordable Care Act (ACA) allowed young adults to stay on their parents' policies until age 26, eliminated exclusions for pre-existing conditions, and required treatment for mental health and substance abuse to be included on every insurance policy. *See* 124 Stat. 119 (2010). These laws inadvertently created a lucrative opportunity for bad actors to exploit a vulnerable class of young adults suffering from addiction.

Addiction is also recognized as a disability under the Americans With Disabilities Act (ADA) and Fair Housing Act (FHA). *See* 42 U.S.C. § 12101 (2008); 42 U.S.C. § 3602 (2016). Over the past decade, bad actors have been using these laws to hide their exploitation of the very people that these laws were meant to protect. This is especially true in the business of recovery housing, where many unregulated homes have become unsafe and overcrowded "flophouses" where crimes like rape, theft, human trafficking, prostitution, and illegal drug use are commonplace.

While there is no way to accurately assess the number[1] of these unregulated businesses in Florida, one indication is the number of reasonable accommodation requests made by recovery residences to avoid local zoning restrictions. In one municipality alone, there have been 550 requests by recovery residences for reasonable accommodation. Unfortunately, the most common way of identifying a house as a recovery residence occurs during calls for service. These calls range from overdoses, crimes committed inside the house, or general complaints from the community. These unregulated businesses not only harm their residents directly, but indirectly harm others in recovery by perpetuating a negative stigma. The Grand Jury finds that the problem is the unregulated businesses that house these residents, not the residents themselves.

The average substance use disorder (SUD) patients in Florida are young adults from out-of-state with little to no independent source of income.[2] This demographic has proven to be a critical component of "the Florida model," which is loosely defined as outpatient treatment coupled with recovery housing. The model has proven to be extremely lucrative given the ease of setting up and operating an outpatient treatment center (which can be opened in any strip mall) while warehousing patients off-site in unregulated homes.

---

[1] DCF Recovery Residence Report, p.8 (Oct. 1, 2013).
[2] Optum White Paper: *Young adults and the behavioral health system*, p.4 (2014).

The problem is that most of these young adult patients from out-of-state cannot afford housing while in treatment. Without a consistent form of patient housing, this model would not work. Currently, patient housing is often paid by treatment providers in exchange for illegal patient referrals.

Out-of-state patients are targeted by Florida treatment providers because they typically have out-of-network plans. In a recent Optum report, it was estimated that reimbursement for out-of-network treatment was, on average, three times the amount paid for the same in-network services.[3] Additionally, SUD patients of this demographic are generally unwilling or unable to cooperate with law enforcement. These characteristics, coupled with impractical privacy restrictions on oversight, make this patient population exceptionally vulnerable to patient brokering and other forms of exploitation.

The Grand Jury finds that the main criminal and regulatory violations occurring within Florida's substance abuse treatment industry involve deceptive marketing, insurance fraud, and patient brokering. It begins with the deceptive marketing that draws in this vulnerable class of consumers. Online marketers use Google search terms to essentially hijack the good name and reputation of notable treatment providers only to route the caller to the highest bidder, which could

[3] Optum White Paper: *Young adults and the behavioral health system*, p.4 (2014).

simply be another referral agency. Parents acting out of desperation and ignorance are easily convinced to send their young adult children far from home in hopes of effective treatment. The evolution of technology has far surpassed the few laws that exist to govern such conduct.

Insurance fraud is another major problem in Florida's substance abuse treatment industry. For example, a point of care (POC) urinalysis (UA) test kit is readily available over the counter and costs under ten dollars. On the other hand, confirmatory and quantitative testing at a lab involves sophisticated instruments, tests for specific and collateral drugs (panels), and results in charges that can exceed five thousand dollars per test. In many cases, confirmatory and quantitative tests are ordered by treatment providers multiple times per week.

Doctors may sign off on such testing as being medically necessary. There are many instances, however, where no prior authorization is required before a claim is paid. As one major insurance carrier explained: claims for confirmatory testing and other treatment are paid without prior doctor authorization based on "access to care" requirements found in federal law. In other words, clinical care is routinely billed and paid without any proof of medical necessity. Some providers bill for services never rendered and others submit falsely labeled samples. Even when confirmatory tests are ordered by a doctor, many are never reviewed, evincing the lack of medical necessity in the first place.

Although insurance companies generally only pay a percentage of the billed amount for out-of-network services, it is not unusual for treatment providers to receive hundreds of thousands of dollars in insurance payments for confirmatory tests for a single patient over the course of treatment. In one example shown to the Grand Jury, a well-known treatment provider billed a single patient's insurance over $600,000, mainly for drug tests, in just a seven-month period.[4]

In addition to deceptive advertising and insurance fraud, patient brokering is a major problem in this industry as well. The Grand Jury heard testimony that the average patient referral fee to a recovery residence from a treatment provider is $500 per week per patient. The more the treatment provider bills, the more the provider can pay in kickbacks to obtain more patients. This leads patients away from quality treatment providers to businesses that are only concerned with billing as much as possible. The amount of patient brokering that occurs in one area can actually be used as a yard-stick to measure the other forms of fraud and abuse occurring within the industry. Meanwhile, treatment suffers and overdose rates continue to rise.[5]

---

[4] The 24-year-old Ohio-native who came to Florida to receive this "treatment" died after that seven-month period from a Carfentanil overdose.

[5] Delray Beach Overdose Statistics (2016); Lake Worth Overdose Statistics (2016); Boynton Beach Overdose Statistics (2016); Zack McDonald, *Bay County battles to keep opioid epidemic at bay*, Panama City News Herald, Oct. 8, 2016.

According to the most recent national statistics, an opioid-related death occurs every 19 minutes. The introduction of Fentanyl, one hundred times more potent than morphine, and Carfentanil, an elephant tranquilizer one thousand times more potent than morphine, have made heroin even deadlier. FDLE recently reported a dramatic increase in opioid-related deaths throughout the state[6], and there have been 406 opioid related overdose deaths in Palm Beach County alone through October of this year. Palm Beach County Fire Rescue reported more than 3,000 instances where Narcan, an opioid antidote, was deployed.[7]

The Grand Jury finds this type of epidemic to be devastating to local resources. The average cost of a Palm Beach County Fire Rescue response to an overdose is between $1,000 and $1,500. Additionally, Palm Beach County Fire Rescue spent $55,725 on Narcan for the 2015 fiscal year, and another $182,900 in 2016. First responders have also reported higher rates of post traumatic stress disorder (PTSD) based on having to deal with multiple overdose deaths on a daily basis.

To combat the proliferation of fraud and abuse in the treatment industry during the current heroin epidemic, the Grand Jury recommends a number of

---

[6] FDLE, 2015 Annual Report, *Drugs Identified in Deceased Persons by Florida Medical Examiners* (Sept. 2016).
[7] Palm Beach County Fire Rescue Narcan Use Statistics (1/1/16 – 10/24/16).

legislative and regulatory changes. The Legislature has the ability to act on these recommendations. When it comes to the business of health care, the Legislature has already made statements of intent on its ability to regulate:

> [S]uch professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when: (a) **Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation**. (b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation. (c) Less restrictive means of regulation are not available.

§ 456.003(1), (2)(a)-(c), Fla. Stat. (2016) (emphasis added).

We find that the unregulated practices within the substance abuse treatment industry and connected business of recovery housing have harmed and endangered the health, safety, and welfare of the public and persons suffering from SUDs. We find that the potential for such harm is recognizable and clearly outweighs any anticompetitive impact that may result from regulation. We also find that the public has clearly not been protected by other means, and less restrictive means are not available. This Grand Jury has identified five (5) areas in need of legislative and regulatory change.

First, deceptive marketing should be strictly prohibited, and willful, intentional, and material misrepresentations should be punished with criminal

sanctions. Treatment providers should be held accountable for the conduct of the marketers they employ. Advertising for substance abuse treatment should be held to a higher standard like advertising in other health care fields, and should provide consumers with important information in the form of upfront disclaimers. Marketing and admissions personnel who have direct contact with this vulnerable class of consumers should also be licensed and/or certified to ensure they possess minimum education, training, and experience.

Second, there should be oversight on businesses designed to provide housing and other services for persons in recovery. At the very least, oversight is needed on businesses that engage in commerce with treatment providers. This can be accomplished by: (1) requiring FARR certification and DCF licensing for certain types of commercial recovery housing, (2) prohibiting treatment providers from referring patients to any uncertified recovery residences, and (3) prohibiting treatment providers from accepting referrals from uncertified recovery residences.

Third, DCF should be adequately funded and staffed to take action against violators and perform inspections with greater depth and frequency. This can be accomplished by treating licenses as a privilege rather than a right, and by providing DCF with the resources it needs to regulate this massive industry. The Grand Jury finds that this can be done in a state revenue neutral manner by raising license and service fees.

Fourth, the patient brokering statute should be clarified and strengthened. Given the great lengths to which patient brokers have gone to creatively disguise their kickbacks as legitimate activities, the patient brokering statute should be amended to prohibit the solicitation or receipt of any "benefit" in exchange for patient referrals or acceptance of treatment. Moreover, serious crimes should have serious consequences. The Grand Jury finds that patient brokering is a very serious crime, with potentially deadly results. Penalties for patient brokering should be enhanced, especially when it involves large-scale brokering. Minimum fines should also be reflective of the outrageous profits made by patient brokers. Additionally, the Florida Attorney General's Office of Statewide Prosecution should be given concurrent jurisdiction with the State Attorney's Offices to assist in the prosecution of patient brokering.

Finally, the Grand Jury recommends that law enforcement be given better tools to deal with the current types of fraud and abuse. This would include reducing impractical privacy restrictions that prevent legitimate investigation, and promoting more education among local law enforcement agencies on both state and federal privacy laws. The Grand Jury finds that this can be achieved through better collaboration between government agencies and private business, especially insurance companies.

FINDINGS AND RECOMMENDATIONS

I. MARKETING

The Grand Jury finds that people suffering from addiction and their families are often in an extremely vulnerable position while seeking treatment services. This vulnerable class of consumers is more prone to being victimized by deceptive marketing practices that are harmful to the recovery process. Neither DCF nor any regulatory agency, however, currently provides adequate oversight of the marketing practices of treatment providers. There is even less oversight for online marketing, which is one of the most common methods of marketing used by an industry that draws a majority of its patients from other states.

The Grand Jury has found that a number of harmful marketing practices have become standard practice in Florida's private substance abuse treatment industry. The main abuses consist of: (1) false representation of services, (2) false representation of location, and (3) real-time auctioning of patients through clearing houses, also known as "lead generators." We heard testimony from industry professionals with extensive experience in online marketing of addiction treatment services. One witness demonstrated how online marketers use Google search terms to essentially hijack the name and reputation of notable treatment providers only to route the caller to another referral agency.

For example,[8] a person looking for treatment in Seattle types the following search terms into a Google search bar: "Drug Rehab Seattle." A marketer's listing appears in the search results as "Drug Rehab Seattle." The listing purports to be a treatment center in Seattle. But when the person calls the number listed, the marketer silently routes the call to one of five different customers of the marketer. Some of those customers are simply other call centers or referral services. Others might be good or bad treatment centers in Florida that have paid the marketer for the referral.

One of the problems with this practice is the monetary conflict of interest created once a "lead" is already paid for. For example, when a treatment center pays $1,000 for a lead, they are compelled to convince that caller to go to *their* treatment center, regardless of what the caller says or whether that particular treatment is in the caller's best interest. The level of care recommended will also be influenced by this monetary incentive. A person calling about outpatient treatment may be urged to get more intensive (and expensive) treatment under this scenario. The Grand Jury finds that deceptive marketing practices like these are detrimental to a patient's chances of receiving quality care and the appropriate level of care. These practices are also harmful to the reputation of quality

[8] Deceptive Marketing Exhibit #1, p.1 (2016).

treatment providers who have worked hard to establish their reputation. Accordingly, we make the following recommendations:

A. Prohibit deceptive advertising

The Grand Jury recommends that materially deceptive advertising for substance abuse treatment be punishable by criminal sanctions. We also recommend that treatment providers be held accountable for the actions of the marketers they employ. A provider should not simply pay a flat fee to a marketing company and then look the other way while that company engages in improper conduct like patient brokering. If a marketing agent or entity violates the law, the provider who benefits from such service should be liable as well.

B. Provide disclaimers and other useful information

The Grand Jury recommends that a marketing entity or agent must be upfront and truthful about who they are, what they do, and where they are located. At the very least, disclaimers should be made to notify patients about material information and other potential conflicts of interest. Material information would include where to report fraud and abuse (as most out-of-state consumers may not even realize that DCF is the agency that regulates substance abuse treatment in Florida) and where to find success rates on providers and recovery residences. We recommend that providers continue to keep consumers informed throughout the continuum of care by making such information readily accessible.

C. Require licensing for marketing and admissions

Given the vulnerability of this class of consumers, the Grand Jury finds that marketers and admissions personnel that have direct contact with current and future patients should have minimum education, training, and experience. Marketers and admissions personnel should be licensed by DCF or certified by a credentialing agency like interventionists who provide similar services,[9] and they should be prohibited from diagnosing or recommending specific levels of care without the appropriate license or certification to do so. At the very least, marketing entities operating in Florida should be licensed by a Florida consumer protection agency and have a registered agent located in Florida.

II. PATIENT HOUSING

The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards.[10] One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate

---

[9] Carey Davidson, *Navigating the Maze of Addiction Treatment*, TogetherAZ Blog: An Ethical Compass, Oct. 31, 2016.
[10] NARR/FARR Overview; NARR Quality Standards (July 15, 2015).

in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.

In contrast, the Grand Jury has seen evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they could go back into detox, some were sexually abused, and others were forced to work in labor pools.[11] There is currently no oversight on these businesses that house this vulnerable class. Even community housing that is a part of a DCF license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.

The Grand Jury also received extensive testimony about many patients' financial need for housing during treatment. Detox, residential treatment, partial hospitalization (PHP), and intensive outpatient (IOP) are time-consuming levels of care, and are not conducive to working normal hours. Even after finishing inpatient treatment, most out-of-state, young adult patients don't have local jobs lined up or the resources to afford housing. As a result, patients receiving these levels of care are often unable to afford housing during such treatment.

Given this reality, some type of financial assistance for housing is needed.

---

[11] Susan Taylor Martin, *Addicts say recovery program stole their money*, Tampa Bay Times, Nov. 18, 2012.

Currently, this financial assistance for housing is typically paid through patient brokering. A treatment provider pays a patient's rent at a recovery residence in exchange for referring the resident to the provider for treatment. Alternatively, a provider will refer the patient to housing owned by the provider after being discharged from inpatient treatment. Both treatment providers and recovery residences offer incentives such as gym memberships, scooters, cigarettes, clothes, and gift cards to keep patients at a particular provider or recovery residence. Brokers known as "body snatchers" approach patients and convince them to move to other recovery residences and/or providers that offer "better stuff." The Grand Jury finds that it would be difficult, if not impossible, to eliminate these practices altogether without addressing the legitimate need for financial assistance with patient housing. Therefore, the Grand Jury makes the following recommendations:

A. Require DCF licensure and FARR certification of commercial recovery housing, especially when connected to treatment

The Grand Jury recommends that commercial[12] recovery residences be licensed by DCF and certified by FARR. At the very least, commercial recovery residences that contract with treatment providers should be licensed by DCF and certified by FARR. Allowing providers to contract with unregulated sober homes

[12] Unlike the traditional "Oxford" model that has become a rarity in Florida, commercial recovery residences are for-profit businesses operated by a third party.

is like allowing hospitals to contract with unlicensed food vendors. The safety concerns for patients are obvious. A similar law already exists that prohibits treatment providers from referring clients to non-certified recovery residences. *See* § 397.407(11), Fla. Stat. (2016). If a treatment provider is prohibited from *referring* a patient to a non-certified home, it should certainly be prohibited from *hiring* a non-certified home as an independent contractor to provide housing and other treatment-related services for the patient.

One way to accomplish the oversight needed while also addressing patients' need for financial assistance with housing would be to create a new DCF license that allows treatment providers to assist PHP and IOP patients with housing by providing a limited, needs-based scholarship for rent. The first and most important requirement for this license would be FARR certification of the housing component in addition to periodic inspections by DCF. This requirement could be waived for publicly funded providers under contract with a Managing Entity.[13]

The limitations on this license would also have to be clear and strictly enforced. Patients would have to apply for the scholarship based on financial need. The scholarship would be paid directly to the licensed/certified recovery residence, would be capped at $200 per week for a maximum of 12 weeks, and could only be

[13] According to DCF, treatment providers that contract with the Managing Entities for public funds are held to higher standards.

used for rent. This is not only to promote self-sufficient reintegration, but to avoid the strong economic motive to promote a cycle of unnecessary treatment and/or relapse. The Grand Jury heard testimony about countless patients who have fallen prey to this cycle of dependence and its devastating impacts on recovery. It is not uncommon for a person to be in this cycle of treatment/relapse for years.

Ultimately, the scholarship amount and time limits could be periodically changed by DCF based on the standard length of time that IOP treatment is designed to last and the fair market value of rent in the area. The Grand Jury finds that this license would properly regulate commerce between the business of recovery housing and treatment while protecting the health, safety, and welfare of the patients in recovery. The Grand Jury finds that the Legislature already requires mandatory licensure for similar group housing for disabled individuals, and the reasoning behind such licensure equally applies to recovery residences.[14] The

---

[14] "'Assisted living facility' means any building . . . which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator." § 429.02(5), Fla. Stat. (2015). "'Personal services' means . . . supervision of the activities of daily living and the self-administration of medication and other similar services . . ." § 429.02(17), Fla. Stat. "'Supervision' means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities." § 429.02(24), Fla. Stat. "'Activities of daily living' means functions and tasks for self care . . ." § 429.02(1), Fla. Stat.

purpose of the Assisted Living Facilities Act is:

> to promote the availability of appropriate service for . . . **adults with disabilities** in the least restrictive and most homelike environment, to encourage the development of facilities that promote dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents . . ., to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents . . . through the efforts of [AHCA] [DCF], [DOH], assisted living facilities, and other community agencies.

§ 429.01(2), Fla. Stat. (2014) (emphasis added). The Grand Jury believes that disabled individuals living in recovery residences deserve the same type of protection as those living in Assisted Living Facilities or Adult Family Care Homes.

B. Eliminate loophole that allows for patient referrals to uncertified recovery residences owned by a provider

As discussed above, the Grand Jury finds that there is a need for oversight on patient housing during PHP and IOP treatment, which most often takes place immediately after discharge from inpatient treatment. Accordingly, the Grand Jury finds that the Legislature should eliminate the loophole found in Florida Statute section 397.407(11) that allows treatment providers to refer patients to uncertified recovery residences that they own.

This loophole only benefits treatment providers who can afford to own patient housing in addition to an inpatient treatment center, and allows them to refer patients to non-certified recovery residences which have no DCF or FARR oversight. In other words, it allows providers to send patients to unverified and unregulated recovery residences while those patients are in their most vulnerable state of recovery (during or immediately after inpatient treatment).

This is contrary to the purpose of recently enacted section 397.407(11), which was designed to protect patients from being referred to unregulated recovery residences. The fact that the provider happens to have an ownership interest in the uncertified recovery residence does nothing to protect this vulnerable class of disabled consumers. Therefore, we recommend that this loophole for provider-owned referrals be closed.

C. Prohibit patient referrals from uncertified recovery residences to treatment providers

Additionally, the Grand Jury heard testimony on how patient brokering most often occurs as referrals from the recovery residences to the treatment providers. As a result, we recommend that referrals from uncertified recovery residences to treatment providers be prohibited. The Grand Jury recommends amending section 397.407(11), Fla. Stat. as follows:

> Effective July 1, ~~2016~~ 2017, a service provider licensed under this part may not refer a prospective, current or discharged patient to,

or accept a referral from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in 397.4871 ~~or the recovery residence is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary~~. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence. This section shall not apply to publicly funded treatment providers, licensed by the Department and under contract to a Managing Entity.

III. ENABLE DCF TO TAKE ACTION

The Grand Jury heard testimony from a number of industry professionals on the inability of DCF to take swift and reasonable action when faced with blatant violations of both DCF regulations and criminal law. Expensive and time-consuming procedures like a Chapter 120 administrative hearing are required before DCF can suspend or revoke a license. At best, a treatment provider found in violation of regulations will negotiate a voluntary withdrawal of their license, but then be able to immediately reapply for a new license with no time limit or higher level of scrutiny. We find that DCF's difficulties in taking reasonable action stems from the fact that a license to provide substance abuse treatment is treated as a right, rather than a privilege. This prevents DCF from acting efficiently for the benefit of the patients who are being exploited and abused across the board. We believe a license for substance abuse treatment should be treated the

same as a license in other health care fields.

The Grand Jury also received extensive testimony and evidence about DCF's lack of resources.[15] As of August 31, 2016, there were 931 substance abuse treatment providers licensed in Florida, holding 3,417 separate component licenses. The Southeast Region (Palm Beach, Broward and the Treasure Coast) had 321 licensed providers, holding 1,307 component licenses. From April-July, 2016, the Southeast Region alone received 241 Provider Application Packets for the licensure of 606 program components (63 from new providers).

The Southeast Region currently has only 9 licensing specialists. The total number of licensing specialists in the 6 state regions combined is 25. Licensing specialists also have the duty and obligation to perform any monitoring of programs in addition to processing licenses and license renewals. The Grand Jury also heard testimony that these same licensing specialists routinely leave DCF to make more money by working for treatment providers. The Office of Inspector General (OIG) is tasked with providing support, but they also have inadequate resources. Overall, DCF is grossly understaffed and underfunded to regulate this billion-dollar industry. Therefore, the Grand Jury makes the following recommendations:

---

[15] DCF Response to Sober Homes Task Force Request (Sept. 13, 2016).

A. Treat license as a privilege instead of a right

The Grand Jury recommends treating the issuance of a license for substance abuse treatment a privilege, rather than a right. This can be done by adopting the language used in the Assisted Living Facilities Act, which states: "The principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration [AHCA] to enforce this part." § 429.01(3), Fla. Stat. (2016).

Doing so would allow DCF to adopt a system similar to that used by AHCA, with greater ability to monitor as well as license. For example, anyone can open a substance abuse treatment center. If licenses were treated as a privilege, DCF could require reasonable qualifications for ownership and administration of treatment facilities. Treating licenses as a privilege would also allow DCF greater flexibility to deny or delay the issuance of licenses where there are compliance concerns. The Grand Jury further recommends whenever a license is revoked or surrendered, re-application should require a minimum waiting period and greater scrutiny.

Finally, the Grand Jury heard testimony that an unlimited number of treatment providers have been allowed to open in a given geographical location which has created a supply of treatment services that far outweighs demand. The

Grand Jury heard testimony about how this imbalance in supply and demand encourages patient brokering, poaching, and other forms of abuse by bad actors in the industry. If licenses were treated as a privilege, DCF could counteract this problem by requiring a certificate of need for new treatment facilities to open. The Grand Jury finds that this practice is already done in other health care fields and would be beneficial to the substance abuse treatment industry as well.

B. Provide better resources by raising licensing and service fees

The Grand Jury finds that DCF's current resources for regulating the substance abuse treatment industry are grossly inadequate. Given the volume of providers, DCF clearly needs more staff and training to achieve meaningful oversight. This can be accomplished in a revenue neutral way. Licensing and service fees should be increased to reflect the lucrative profit margin of a typical treatment provider. Likewise, the Grand Jury has received evidence that FARR, much like DCF, is grossly underfunded and understaffed to accommodate the needed oversight of recovery residences throughout the State of Florida. Therefore, we recommend that FARR be adequately funded as well by increasing certification and service fees. Alternatively, if raising fees for both DCF and FARR are unable to adequately fund the oversight needed for this industry, we urge the Legislature to consider appointing another health agency such as DOH or AHCA to regulate substance abuse treatment.

IV. STRENGTHEN PATIENT BROKERING STATUTE

Anti-kickback statutes like Florida's patient brokering statute are designed to prevent healthcare fraud and abusive practices resulting from provider decisions that are based on self-interest rather than cost, quality of care, or necessity of services. *See United States v. Patel*, 778 F.3d 607, 612 (7th Cir. 2015). These statutes are also designed to "protect patients from doctors whose medical judgments might be clouded by improper financial considerations." *See id.*

The Grand Jury heard testimony from victims and families who have been devastated by patient brokering. The Grand Jury also heard testimony from a number of industry professionals who have seen the negative impacts of patient brokering on recovery. We find that patient brokering is extremely harmful to recovery, and such practices during the current heroin epidemic have contributed to the exhaustion of public resources, an increase in overdoses, and death. The public has a vested interest in eliminating patient brokering and making sure persons with SUDs are treated successfully.

The Grand Jury also heard testimony from industry professionals who have openly stated that patient brokering is the standard, not the exception, in Florida's substance abuse treatment industry. Over the years, different ways of covering up kickbacks have been developed, such as "case management" contracts between treatment providers and recovery residences. Brokers hide kickbacks in many

different ways, such as luxurious amenities, cigarettes, plane flights, scooters, vacations, and gift cards. To combat this elusive and devastating practice, the Grand Jury makes the following recommendations:

A. Prohibit the solicitation or receipt of any "benefit"

The Grand Jury recommends that Florida's patient brokering statute, § 817.505, Fla. Stat. (2016), be amended to prohibit the solicitation or receipt of any "benefit" in exchange for referring patients to, or accepting treatment from, a particular treatment provider. This would put both patient brokers and legitimate industry professionals on notice that any inducement or reward for the referral or acceptance of patients is clearly prohibited.

B. Increase criminal penalties and minimum fines

Currently, patient brokering is a third degree felony of the lowest level under the Criminal Punishment Code with no minimum fine. *See* 817.505(4), Fla. Stat. Given the devastating effects of this crime, the Grand Jury recommends that patient brokering be raised from a level 1 to a level 5 felony. The Grand Jury also recommends that offenders be ordered to pay minimum fines that reflect the high profits of patient brokering.

Between California and Florida[16], the average referral fee for a new patient can easily run up to $5,000. A typical patient broker can make up to $500 per week for every patient sent to a provider. Brokers with multiple recovery residences make up to $10,000 per week. Currently, there is no minimum fine for patient brokering, no matter how many counts are charged. Meanwhile, there is currently a minimum $500,000 fine for unlawfully possessing 25 grams or more of oxycodone. *See* § 893.135(1)(c)3.c., Fla. Stat. (2016). Minimum fines like this should be mandated to provide enough financial deterrent to those who make hundreds of thousands of dollars a year from brokering multiple patients.

C. Create penalty enhancement for large-scale brokering

For large-scale patient brokering, involving 10 or more patients at a time, the penalty should be increased to a second degree felony, level 7. For large-scale brokering, involving 20 or more patients, the penalty should be increased to a first degree felony, level 8. Recidivist brokers who continue to broker patients should likewise face enhanced penalties. Similar penalty enhancements can also be found in the identity theft statute. *See* § 817.568, Fla. Stat. (2016).

D. Add brokering to Statewide Prosecution's jurisdiction

Currently, patient brokering is not defined as racketeering activity under the

[16] According to one out-of-state industry professional, Palm Beach International Airport is infamous for having patient brokers trolling for new arrivals.

RICO statute. *See* § 895.02(8)(a), Fla. Stat. (2016). As discussed above, however, patient brokering routinely involves fraud (in disguising kickbacks) and is utilized by those committing other forms of healthcare fraud. As recently observed by the Eleventh Circuit, defendants commit fraud, like falsifying records to justify ordering more than what is necessary to enhance the amount of kickbacks. *See United States v. Vernon*, 723 F.3d 1234, 1241 (11th Cir. 2013). Specifically, the Grand Jury received evidence on how kickbacks are increased by billing for unnecessary UA confirmatory and quantitative testing.

The Grand Jury heard testimony from the Florida Attorney General's Office of Statewide Prosecution, which is designed to handle prosecutions of multi-county organized fraud schemes such as this. Statewide Prosecution, however, currently does not have jurisdiction to prosecute patient brokering despite the resources and desire to do so. Accordingly, we recommend that the RICO statute be amended to include patient brokering as a predicate offense, and to amend Florida Statute section 16.56, to give the Office of Statewide Prosecution concurrent jurisdiction with the State Attorney's Offices over patient brokering so that they can assist local law enforcement agencies in the investigation and prosecution of these fraudulent criminal enterprises throughout the state.

V. ENABLE LAW ENFORCEMENT TO TAKE ACTION

The Grand Jury heard testimony from law enforcement with extensive experience in the field of health care fraud. One of the biggest hurdles to investigations in this industry is that the victims of patient brokering (the patients themselves) rarely report these crimes. In many cases, patients are complicit because they receive free rent, amenities, and other benefits from engaging in the crime. Moreover, many out-of-state young adult patients have a mistrust of police to begin with.

We also heard that state officials, along with members of the FBI and United States Attorney's Office, have conducted investigations into a number of treatment providers and recovery residences. In doing so, they found that there are privacy laws specific to mental health and substance abuse treatment that are extremely burdensome and impractical in their application. Law enforcement officers face criminal penalties for violating these laws. *See* 42 C.F.R. § 2.4. One of the most onerous restrictions requires notification for the disclosure of patient records, which could compromise the integrity of ongoing investigations.

As a general matter, confidentiality is paramount to the integrity of an ongoing criminal investigation. When criminals realize they are being investigated, they take measures to evade prosecution. Thus, notification of an investigation to the suspected criminals or to persons that would likely advise those

criminals of the investigation is harmful to the investigation itself. Currently, courts have full discretion whether or not to require patient notification. 42 C.F.R. § 2.66(b).

Under state law, the timing of patient notification is less clear. Section 397.501 states that protected parties must be given "adequate notice" whenever disclosure is sought. *See* § 397.501(7)(h), Fla. Stat. (2016). "Adequate notice" is not defined anywhere in Chapter 397. The State has argued that section 397.501 incorporates the federal confidentiality regulations found in 42 C.F.R. §§ 2.1-2.67, and under those federal confidentiality regulations, "adequate notice" does not mean "prior notice." At least one Palm Beach County judge has rejected this argument and refused to authorize disclosure of records without first notifying all protected parties. As a practical matter, the State cannot give notice to patients before the State knows who those patients are, and the State would be violating privacy rights by seeking out information that identified anyone as a patient without prior authorization. Accordingly, the Grand Jury makes the following recommendations:

A. Reduce impractical privacy restrictions on investigation

The Grand Jury recommends that section 397.501(7)(h) expressly permit disclosure of patient records without prior notification under the same circumstances found in section 42 C.F.R. § 2.66(b). This strikes a fair balance

between the privacy rights of patients and the need for law enforcement to investigate crimes that are being committed against those same patients.

B. Promote education and inter-agency collaboration

The Grand Jury also finds that most local law enforcement agencies are lacking in education on how to navigate the many federal and state privacy laws in this industry. Therefore, the Grand Jury recommends more training and education of local law enforcement on how to properly comply with federal and state privacy laws in the course of their investigations. Agencies like DCF, DOH, AHCA, FARR, and local law enforcement need to have better protocols in place for sharing information and working together on these types of investigations in the substance abuse treatment industry.

CONCLUSION

The Grand Jury finds a compelling and urgent need for both increased oversight and enforcement in Florida's substance abuse treatment industry. The problems outlined in this report exist throughout our state and continue to spread throughout the country. Although there is no simple answer to these complex problems, we believe our recommendations provide a step in the right direction and can be implemented without any negative fiscal impact on state resources. The Grand Jury strongly urges the Legislature to consider the recommendations in this report and take appropriate action before these problems worsen.

SUMMARY OF RECOMMENDATIONS

- Prohibit deceptive advertising and punish with criminal sanctions.
- Require disclaimers that notify patients and families about material information.
- Require marketers and admissions personnel to be licensed.
- Require DCF license and FARR certification for commercial recovery residences, especially those that contract with treatment providers.
- Eliminate loophole that allows for patient referrals to uncertified recovery residences owned by a treatment provider.
- Prohibit treatment providers from accepting patient referrals from uncertified recovery residences.
- Treat license as a privilege rather than a right.
- Require credentials such as a background check for owning a treatment center.
- Require certificate of need for new treatment providers.
- Provide adequate resources to DCF and FARR by raising fees.
- Amend § 817.505, Fla. Stat. to prohibit the solicitation or receipt of any "benefit" in exchange for referrals or treatment.
- Increase criminal penalties and minimum fines for patient brokering.
- Create penalty enhancements for large-scale patient brokering.
- Enable the Office of Statewide Prosecution to prosecute patient brokering.
- Amend § 397.501(7)(h), Fla. Stat. to allow disclosure of patient records without prior notification under the same circumstances as found in 42 C.F.R. § 2.66(b).
- Educate local law enforcement on privacy laws and promote better inter-agency collaboration.

EXHIBIT LIST

LEGAL AUTHORITY

CASES PAGE(S)

STATUTES

DISTRIBUTION REQUEST

The Grand Jury requests this Presentment and Report be furnished to the following:

1. Honorable Rick Scott, Governor
2. Honorable Jeff Atwater, Chief Financial Officer
3. Honorable Pam Bondi, Attorney General
4. Honorable Joe Negron, Senate President
5. Honorable Richard Corcoran, House Speaker
6. Honorable Jeff Clemens, State Senator
7. Honorable Bobby Powell, State Senator
8. Honorable Kevin Rader, State Senator
9. Honorable Ray Rodrigues, House Majority Leader
10. Honorable Joseph Abruzzo, State Representative
11. Honorable Lori Berman, State Representative
12. Honorable Bill Hager, State Representative
13. Honorable Al Jacquet, State Representative
14. Honorable MaryLynn Magar, State Representative
15. Honorable Rick Roth, State Representative
16. Honorable David Silvers, State Representative
17. Honorable Emily Slosberg, State Representative
18. Honorable Matt Willhite, State Representative
19. Honorable Mary Lou Berger, Palm Beach County Major
20. Honorable Gary R. Nikolits, Palm Beach County Property Appraiser
21. Honorable Ric L. Bradshaw, Palm Beach County Sheriff
22. Honorable Ken Lawson, Dept. of Business & Professional Regulation Secretary
23. Honorable Mike Carroll, Dept. of Children and Families Secretary
24. Honorable Drew Breakspear, Office of Financial Regulation Commissioner
25. Honorable Dr. Celeste Philip, Dept. of Health Surgeon General
26. Honorable Justin Senior, Agency for Health Care Administration Interim Secretary
27. Honorable David Altmaier, Office of Insurance Regulation Commissioner
28. Honorable Rick Swearingen, Florida Dept. of Law Enforcement Commissioner
29. Honorable Barbara Palmer, Agency for Persons with Disabilities Executive Director
30. Verdenia C. Baker, Palm Beach County Administrator
31. Richard Radcliffe, Palm Beach County League of Cities Executive Director
32. Christina Henson, Palm Beach County Criminal Justice Commission