

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
AGNES P. FRANCISCO,)
aka: AGNES PENTECOSTES FRANCISCO,)
DOB: 3/23/1959)
APSIN ID: 7059553)
DMV NO. 7070953 AK)
ATN: 114-356-601) Case No. 3AN-14- CR.
)
ANALIZA YUMUL PENTECOSTES,)
DOB: 8/22/1971)
APSIN ID: 7066606)
DMV NO. 7167593 AK)
ATN: 114-356-619) Case No. 3AN-14- CR.
)
PHILIP CARL FRANCISCO,)
aka: PHILLIP PENTECOSTES FRANCISCO,)
aka: PHILLIP C. FRANCISCO,)
aka: PHILLIP FRANCISCO,)
DOB: 9/14/1989)
APSIN ID: 7169704)
DMV NO. 7133366 AK)
ATN: 114-356-628) Case No. 3AN-14- CR.
)
ANCHORAGE ADULT DAY SERVICES,)
ATN: 114-356-592) Case No. 3AN-14- CR.
)
Defendants.)
_____)

COMPLAINT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990:

Count I - AS 47.05.210(a)(7)
Medical Assistance Fraud
Agnes P. Francisco - 001
Analiza Yumul Pentecostes - 001
Philip Carl Francisco - 001
Anchorage Adult Day Services - 001

THE COMPLAINANT CHARGES:

Count I

That on or about July 2013 through January 2014, at or near Anchorage in the Third Judicial District, State of Alaska, PHILIP CARL FRANCISCO, ANALIZA YUMUL PENTECOSTES, AGNES P. FRANCISCO, and ANCHORAGE ADULT DAY SERVICES, violated a regulation adopted under AS 47.07.

All of which is a class B misdemeanor offense being contrary to and in violation of AS 47.05.210(a)(7) and against the peace and dignity of the State of Alaska.

1. I, James Drayton, the undersigned affiant (hereinafter Affiant), an Investigator with the Quality Assurance Unit , Alaska Department of Health & Social Services, Division of Senior & Disabilities Services, state on oath that this complaint is based upon Affiant's review of business documents, Owner testimony, Medicaid billing documentation and Affiant's investigation as outlined below.

2. Affiant is a Health Program Manager II/Investigator with the Division of Senior and Disabilities Services being appointed in November 2012. Affiant's duties include the investigation of Medicaid Regulatory Compliance of providers and programs billing for services under the Alaska Medicaid Waiver, Medicaid fraud, abuse and neglect and financial exploitation of Medicaid recipients and/or individuals living in assisted living homes. Prior to Affiant's appointment as an HPMII/Investigator with the Department of Senior and Disabilities Services, Affiant

worked for 11 years as a Medical Administrator in both Alaska and California as well as a P.O.S.T. Certified, Reserve Sheriff's Deputy in California.

3. The Department of Health and Social Services (DHSS) Division of Senior and Disabilities Services (SDS), collectively known as the Department, is the state agency responsible for certifying home and community based waiver providers in the State of Alaska. To be certified by the Department as a provider of home and community based waiver services, the provider must meet the applicable criteria, including provider qualifications and program standards set out in the Department's Home and Community Based Waiver Services certification application packet. See 7AAC 130.220(a), 7AAC 160.900. Home and community based waiver services include adult daycare facilities. See 7AAC 130.220(b)(1)(B), 7AAC 130.250.

4. Alaska Administrative Regulations provide that an eligible provider shall enroll with the Department before billing the Department for covered services. See 7AAC 105.210(a). To be enrolled, a provider must comply with the requirements of AS 47.05.300-390 and 7AAC 10.900-990. See 7AAC 105.210(b)(6). Alaska Statute 47.05.300(a) provides that the criminal history provisions of AS 47.05.300-390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the Department or that is eligible to receive payments, in whole or in part, from the Department. Alaska Statute 47.05.300(b) expressly states that the provisions of AS 47.05.300-390 apply to home and community based waiver service providers and individuals. All providers of Medicaid must be enrolled with the State of Alaska Medicaid program. See 7AAC 105.210. The statutory authority for 7AAC 105.210 can be found at AS 47.07.030 and AS 47.07.040. Alaska Statute 47.05.210(a)(7) provides that a person commits the crime of medical assistance fraud if the person violates a regulation adopted under AS 47.07. Alaska law defines a "person" as a natural person and when appropriate, an organization, government or government instrumentality. See AS 11.81.900(46). Alaska Statute 12.55.035(c)(1)(C) provides that a violation of a class B misdemeanor by an

organization is punishable by a fine not exceeding the greatest of \$75,000 or three times the pecuniary gain.

5. The criminal history provisions of Alaska law further prohibit any individual from owning an entity that provides home and community based waiver services, or being an officer, director, partner, member or principal of such an entity if the individual was convicted of a crime that is inconsistent with the provisions or standards for licensure or certification established by the Department in regulation. See AS 47.05.310(a). Alaska law further prohibits the entity from allowing any individual from operating the entity, being retained by the entity as an employee, independent contractor or volunteer or even being present in the entity if the individual will have contact with Medicaid recipients. See AS 47.05.310(a)(1-4). Finally, Alaska Statute 47.05.310(h) provides that an individual service provider is subject to the provisions of Alaska Statute AS 47.05.310(a)-(g) as if the individual service provider were the entity subject to those provisions.

6. Alaska regulations establish standards, requirements and procedures for dealing with barrier crimes and conditions, criminal history checks and the centralized registry applicable to any entity or individual service provider seeking licensure, certification or approval or a finding of eligibility to receive payments from the Department. See 7AAC 10.900(a)-(b). Applicable regulations provide that any individual who is to be associated with any entity or provider in the manner described in 7AAC 10.900(b) must have a valid criminal history check under 7AAC 10.900-990 if the individual is a service provider or an employee with regular contact to recipient files, access to personal or financial information maintained by the entity. See 7AAC 10.900(b). Alaska regulation further requires a valid background check for anyone that is an officer, director, partner, member, or principal of the business organization that owns an entity if the individual has regular contact with recipients of services, access to personal or financial records maintained by the entity, or control over the impact of the financial well-being of a recipient's services. See 7AAC 10.900(b)(4).

7. On or about December 27, 2013, Affiant made an unannounced visit to Anchorage Adult Day Services, LLC. Anchorage Adult Day is a home and community based waiver service provider that bills Medicaid for providing adult daycare services in Anchorage. Affiant was reviewing staffing levels and background clearances for employees of Anchorage Adult Day.

8. Affiant observed Phillip Francisco on the premises of Anchorage Adult Day and asked Phillip directly if he had a valid background check. Phillip admitted that he did not have a valid background check. Phillip stated he could not get a background check because he needed a variance and admitted that he had just not gotten around to applying for a variance. Phillip denied dealing with patients and stated that he just did payroll for Anchorage Adult Day. Phillip further admitted to having previously applied for variances in the past for other agencies. A review of Phillip's criminal history revealed that he was previously adjudicated for conduct that would constitute a felony had he been convicted as an adult, which constitutes a barrier offense for purposes of Medicaid. Alaska Administrative Regulation 7AAC 10.905(a)(2) provides that crimes listed under 7AAC 10.905 include adjudications as a minor. Phillip applied for a variance on December 27, 2013 and the Department denied the request on January 7, 2014.

9. A variance is required when an individual has a criminal history that will result in the individual not passing a background check. See 7AAC 10.930(a). The request for a variance must be submitted to the department with a comprehensive rationale for the variance, a demonstration of how the health, safety and welfare of the recipients will be adequately protected. See 7AAC 10.930(b). If granted, the entity must post a copy of the variance in a location that is visible and can be readily reviewed by interested individuals. See 7AAC 10.940.

10. Affiant's investigation revealed that Phillip Francisco began working for Anchorage Adult Day on or about July 25, 2013. Contrary to Phillip's statement, he was not just doing payroll, but was responsible for submitting bills to Medicaid for services provided by Anchorage Adult Day. On November 15, 2013, a

2014 Biennial Report for Anchorage Adult Day filed with the State of Alaska, Department of Commerce, Community and Economic Development noted that Phillip Francisco was a 77% owner of Anchorage Adult Day. The filing was certified under penalty of perjury that the information contained in the electronic filing was true.

11. Affiant observed that the office used by Phillip was located in a back office. To access the office, Phillip needed to walk through the front door and reception circle and through two treatment rooms. It would be impossible for Phillip to avoid contact with Medicaid recipients based on the location of the office. Moreover, in order to submit billing to Medicaid, Phillip would be required to review patient documents with respect to the services provided to the recipients as billing requires proof of services provided. This process results in Phillip having direct access to financial and medical information associated with Medicaid recipients. In total, Phillip billed a total of \$175,293.64 for services provided by Anchorage Adult Day.

12. Affiant interviewed co-owner Agnes Francisco about Anchorage Adult Day. Agnes admitted that the business was originally opened by Agnes, Analiza Pentecostes and Jerlyn Odron. Agnes stated that Jerlyn Odron left in July 2013 and that she asked Phillip if he wanted to take over as owner and transferred ownership to Phillip. Agnes admitted that he stopped being involved following Affiant's contact with Phillip in December 2013.

13. Agnes Francisco is Phillip's mother and knew about her son's prior conviction. Moreover, Agnes was a co-owner of Good Faith Services, a personal care attendant agency in Anchorage where Phillip previously worked as a biller. Phillip previously applied for a variance in order to work in that position. An investigation conducted by the Medicaid Fraud Control Unit resulted in the Department suspending Good Faith from receiving Medicaid payments. Phillip transferred from Good Faith to Anchorage Adult Day shortly after 27 individuals with Good Faith were charged with Medicaid fraud.

14. Affiant interviewed owner Analiza Pentecostes about Phillip's involvement with Anchorage Adult Day. Analiza Pentecostes stated that Phillip was a

stubborn kid and that she asked him for the variance, but he ignored her and kept ignoring her. Analiza stated she began asking him in July to get a variance, but he never got one. The agency terminated Phillip in January 2014 following the visit by Affiant in December 2013. Analiza Pentecostes was also a co-owner of Good Faith Services and an owner of numerous assisted living home in Anchorage and was aware of the background check and variance requirements. Moreover, the change of ownership was never reported to SDS, which is a requirement of certification. The change was only discovered as part of the investigation by the Affiant.

BAIL INFORMATION

According to APSIN, Defendant Phillip Carl Francisco has the following prior convictions in the State of Alaska:

CONV COURT	CONV DATE	CONVICTING CHARGE	COURT DOCKET	POS ID	FEL	ATN
DAN	4/29/03	Reckless Driving	3AN-03-3336	Y	N	108115308

DATED at Anchorage, Alaska this ____ day of April, 2014.

James Drayton, Investigator
 Department of Health and Social Services
 Senior and Disability Services

SUBSCRIBED AND SWORN TO before me this ____ day of April 2014, at Anchorage, Alaska.

Notary Public in and for Alaska
 My Commission Expires: End of Hire