



# OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY

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## PALM BEACH COUNTY SOBER HOMES TASK FORCE; 2020 LEGISLATIVE UPDATE

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### BACKGROUND AND SCOPE

**HISTORY.** In 2016, the Florida Legislature requested that Palm Beach County State Attorney Dave Aronberg form a Task Force to “conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry.” As a part of its directive, the legislature asked State Attorney Aronberg to coordinate with local and state law enforcement and regulatory agencies, as well as the Florida Department of Children and Families (DFC), the Florida Alcohol & Drug Abuse Association (FADAA), the Florida Certification Board (FCB), the Florida Association of Recovery Residences (FARR) and recovery residence administrators to “identify statutory clarifications and enhancements to existing law to ensure that communities remain safe and individuals with substance abuse disorders are protected.”

Newspaper and magazine accounts, statistical reports, treatment provider and citizen complaints all pointed to an industry overrun by bad actors engaging in fraudulent practices, victimizing both insurance providers and vulnerable patients suffering from Substance Use Disorder (SUD). At that time, it was widely accepted that the area hardest hit by fraud and abuse was South Florida, and its epi-center, Palm Beach County.<sup>1</sup>

Beginning July 2016, the Palm Beach County Sober Homes Task Force (SHTF) was created. Three separate task forces were formed: two civilian and one law enforcement. The Proviso Task Force (Proviso) included representatives from the entities listed above as mandated by the legislature. Several clinical and legal experts were added to the Proviso and work was begun to review potential changes to the laws and rules currently in effect. A second civilian group was

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<sup>1</sup> According to the 2015 and 2016 Florida Department of Law Enforcement Medical Examiners reports, 305 people died from accidental opioid overdose in 2015, 598 died in 2016.

established consisting of treatment providers, sober home owners, citizen groups, elected officials and other industry professionals to augment the work of the Proviso. The third task force group consisted of law enforcement investigators, state prosecutors and analysts. The purpose of this group was the investigation, and prosecution of law violations in the sober home and treatment industry.

As required by its initial proviso, in January, 2017, the Task Force presented the legislature with a report on the issues surrounding the treatment industry and identified legislative and rule-making proposals to address criminal and regulatory abuses. In part, as a result of these efforts, laws and regulations in Florida have been strengthened, numerous bad-actors prosecuted, rogue facilities and sober homes closed and overdose death rates reduced by 40% in Palm Beach County in 2018. In addition, the Civilian Task Force (now consolidated into one Proviso group funded entirely by the 15<sup>th</sup> Circuit, Office of the State Attorney) has been instrumental in bringing about positive change in the statewide efforts to combat the opioid crisis, through the adoption of its recommended legislation in licensure oversight, marketing, and enhanced patient brokering laws. In fact, legislation enacted in 2017 has become a model for the country in the area of patient protection.<sup>2</sup>

## **PALM BEACH COUNTY SOBER HOMES TASK FORCE: LAW ENFORCEMENT**

Currently, the Law Enforcement side of our task force consists of two state prosecutors, two state attorney investigators, one state attorney analyst and 5 additional detectives from local and state-wide agencies assigned to this effort. Since 2018, the Task Force has been fully funded by the State Attorney's budget. Between October, 2016 and December, 2019, 100 criminal cases have been filed against 87 individuals. Forty Three cases have resolved by way of a plea or trial, and 39 defendants have been convicted. Over \$880,000 in fines have been imposed, in addition to \$40,000 in costs of prosecution and \$170,000 in costs of investigation. Over \$1,350,000 dollars in assets have been seized and \$350,000 forfeited in connection with SHTF cases.

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<sup>2</sup> National Alliance of Model State Drug Laws (NAMSDL) *Model Patient Protection and Treatment Ethics Act*

Our Task Force has partnered with both Federal Agencies and the Florida Attorney General's State-Wide Prosecutor in developing cases across county and state lines. In one instance, SHTF investigators joined with the U.S. Attorney's Office for the Southern District of Pennsylvania, and the Pennsylvania Attorney General to investigate a treatment facility and lab scheme involving both jurisdictions. Multiple defendants were charged in both Pennsylvania and Florida. Likewise, we joined forces with the State-Wide Prosecutor on a racketeering investigation involving a Miami-Dade treatment facility. In 2018, our Task Force investigators and prosecutors received *the Investigation of the Year Award* from the National Health Care Anti-Fraud Association for our work on the Kenny Chapman case with the U.S. Attorney' Office for the Southern District of Florida.

Each year, hundreds of calls have been received on our tip line. Task Force investigators have assisted parents in locating their children and connected addicted individuals and their loved ones with services. Information from tip line complaints have resulted in the arrest and prosecution of a number of bad actors in the sober homes and drug treatment industries.

Our prosecutors have developed and hosted training programs, offered to law enforcement and prosecutors across the state through the Florida Prosecuting Attorneys Association (FPAA).

## **PALM BEACH COUNTY SOBER HOMES TASK FORCE: CIVILIAN PROVISO**

### **2017 LEGISLATION      HB 807**

SUMMARY: In 2017, the Florida legislature unanimously passed landmark legislation addressing rampant abuses in the treatment of Substance Use Disorder. Known as the *Practices of Substance Abuse Service Providers Act*, much of this legislation was proposed and supported by the SHTF Proviso Group. The Act strengthened the Department of Children and Family's (DCF) ability to deny, revoke and fine facilities for putting patients at risk, imposed best practices and accreditation standards, created a framework requiring marketing transparency and enhanced criminal laws to deter and punish treatment providers and marketers who exploit vulnerable patients with substance use disorder. Much of this landmark legislation has been adopted by the National Alliance for Model

State Drug Laws (NAMSDL) as the *Model Patient Protection and Treatment Ethics Act* developed pursuant to a grant awarded by the Office of National Drug Control Policy. Florida's legislative advances are now the model for the country.

Statutory changes included:

- 1- s. 817.0345, *Prohibition of fraudulent marketing practices*, was enacted making it illegal to knowingly and willfully make or provide materially false or misleading statements or information about the identity, products, goods, services, or geographical location of a treatment facility. One of the driving forces behind private sector treatment fraud and abuse involved the fraudulent inducement of out-of-state patients into targeted programs by unscrupulous 3<sup>rd</sup> party marketers. Violation is a 3<sup>rd</sup> degree felony offense.
- 2- s. 397.55, *Prohibition of deceptive marketing practices*, was enacted to further protect disabled consumers of substance abuse treatment from exploitation in the delivery of health care. In addition to prohibiting false and misleading statements by marketers, the statute also addresses advertising materials, other media advertising, websites, call-centers and referrals such as lead-generation for patient placement. Marketers and marketing platforms have added disclosure requirements and are prohibited from engaging in misleading predatory practices. The statute specifically applies to both treatment providers and recovery residences.
- 3- s. 501.605 Licensure of commercial telephone sellers and entities providing substance abuse marketing services.- was amended to require treatment and recovery residence marketers to obtain a license from the department and be registered in the state.
- 4- s. 817.505 Patient brokering prohibited; exceptions; penalties.- was amended to prohibit the offer or payment of any benefit with the intention of inducing or rewarding the referral of patients to or from a treatment facility. Penalties for serial offenders was enhanced<sup>3</sup> and fines were increased to better reflect and more appropriately deter the illegal

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<sup>3</sup> 10 or more patients is punishable as a 2<sup>nd</sup> degree felony; 20 or more patients is punishable as a 1<sup>st</sup> degree felony

trafficking in patients with substance use disorder that was being practiced by rogue actors in the industry.<sup>4</sup>

- 5- s. 16.56 Office of Statewide Prosecution.- was amended to add patient brokering to the list of crimes within the jurisdiction of the Attorney General statewide prosecutors. Criminal enterprises engaging in patient brokering across county lines are now subject to statewide prosecution.
- 6- s. 895.02 Definitions, subsection (8) “Racketeering activity” was amended to include patient brokering as a racketeering predicate offense. This amendment gives both State Attorneys and the Attorney General’s Statewide Prosecutor the ability to prosecute patient brokering offenses as part of a larger racketeering enterprise.
- 7- s. 397.403 License application.- was amended to enhance licensing requirements to include compliance with clinical and treatment best practices; proof of the ability to provide and actually deliver services in accordance with department rules; mandatory accreditation by an accrediting organization that is acceptable to the department. In addition, the department was given the ability to withhold licenses when the health, safety, or welfare of patients are at risk; order a probationary licensee to cease and desist operations if found to be substantially out of compliance with license standards; and deny license renewals submitted fewer than 30 days before the license expires.
- 8- s. 397.410 Licensure requirements; minimum standards; rules.- was amended to impose best practices standards in all areas of licensure, including clinical treatment, qualifications of all personnel, education, credentials, treatment capacity, facility standards and other areas involving the health and safety of individuals with substance use disorder. Additional standards are imposed for administrative, record keeping, referrals, and financial management. The department was given the ability to adopt rules

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<sup>4</sup> Each count is punishable by a mandatory \$50,000 fine; 10 or more patients require a \$100,000 fine and 20 or more patients, \$500,000

to classify isolated, patterned and widespread licensure deficiencies in a tiered system.

- 9- s. 397.411 Inspection; right of entry; classification of violations; records.- was amended to allow the department to conduct announced or unannounced inspections to determine if the provider is in compliance with the statutes and rules. In addition, the department was permitted to place violations into four categories based on the danger to health and safety and require corrective action, and impose fines for certain violations.
- 10- s. 397.415 Denial, suspension, and revocation; other remedies.- was amended to give the department greater power to impose administrative fines, require corrective action plans, impose immediate moratoriums or emergency suspensions, or deny, suspend, or revoke the license of a service provider for giving material false information on a license application, committing an intentional or negligent act materially affecting the health and safety of a patient, violating department rules or otherwise demonstrate deficient performance.
- 11- s. 397.4873 Referrals to or from recovery residences; prohibitions; penalties.- amends the voluntary certification requirement to include the acceptance of treatment referrals from recovery residences, in addition to provider referrals to those homes. In addition, the violation of this prohibition now carries an administrative fine of \$1,000 per occurrence.

## **2019 LEGISLATION      HB 369**

In 2019, the legislature unanimously passed HB 369, *The Substance Abuse Services Act*. This legislation was proposed by the Proviso Group to follow up on the successes of HB 807 by expanding the peer recovery work force, enabling Oxford Houses to locate in the state, expanding the program of voluntary certification of sober homes to include residences attached to licensed treatment components, increasing penalties for treatment providers and their personnel who willfully and intentionally falsify material information on a license or employment application, and correcting glitches in the marketing and patient brokering laws.

## **PALM BEACH COUNTY SOBER HOMES TASK FORCE PROVISO GROUP ONGOING ACTIVITIES:**

The Proviso Group will continue to meet bi-monthly to study and recommend innovative ways to improve delivery of services to those suffering from substance use disorder. During the past three plus years the group has evolved and currently includes members representing county, state and national organizations and interests. State Attorney Dave Aronberg is committed to both the law enforcement and civilian side in the ongoing battle to abate the opioid crisis.

Future legislative and administrative rulemaking recommendations may include the adoption of the American Society of Addiction Medicine (ASAM) guidelines for private payer decisions on best practices, a blueprint for mandatory certification or the imposition of other national standards for all recovery residences in Florida, support for state-wide emergency room participation in the warm hand-off of opioid overdose patients to peer specialists and medical providers offering both abstinence and medical assisted treatment, and identification and support for other promising local, state-wide and national innovations in all areas involving the opioid crisis.

In addition to its collaboration with national and statewide stakeholders to find and import promising model programs, the Proviso Group has provided a forum whereby local officials, government agencies, drug treatment and medical providers, and citizen groups can discuss, debate and collaborate in creating effective programs within Palm Beach County, including a syringe exchange, hospital emergency room warm hand-offs, medication assisted treatment (MAT) and other harm reduction measures, and MAT provided to county jail inmates suffering from opioid use withdrawal. While these programs are created independently of the SHTF, progress on these local collaborations is shared and discussed. One such collaboration between the Palm Beach County Government, Palm Beach County Health Care District, JFK Hospital, the Southeast Behavioral Healthcare Network and local treatment provider, Rebel Recovery, led to the creation of an addiction stabilization unit providing much needed centralized resources to timely help those suffering substance use disorder throughout Palm Beach County. We highly recommend that other communities facing the same

issues create a task force or commission comprised of diverse groups of stakeholders, in order to bring together individuals and entities who might otherwise act as single silos. The power of such a group is magnified and its effectiveness becomes greater than the sum of its parts.

## **PALM BEACH COUNTY SOBER HOMES TASK LAW ENFORCEMENT ONGOING ACTIVITIES:**

The law enforcement section of the task force is ongoing. Additional cases of fraud and abuse are being investigated and we anticipate a significant number of arrests in the coming months. We continue in our efforts to work alongside our federal and state-wide partners by sharing criminal intelligence, working joint investigations and offering manpower to assist upon request.

According to municipal and other local contacts, the work of the SHTF has contributed to the reduction of rogue sober homes and treatment facilities in Palm Beach County. In some cases, these bad actors have packed up and opened up for business in other areas, both within Florida and out-of-state. Data from the Florida Department of Law Enforcement showed a nearly 40% decrease in opioid overdose deaths in Palm Beach County in 2018.<sup>5</sup> None of the other 24 Districts in Florida experienced such a significant decrease, and some Districts saw increases of up to 20%.

We continue to offer our knowledge and expertise in the areas of patient brokering, marketing and insurance fraud. To that end, we have offered to partner with the Attorney General in an effort to help train law enforcement and prosecutors state-wide. In addition, the SHTF has submitted proposals for the 2020 legislative session which have been filed by Representative Caruso and Senator Harrell as HB 649 and SB 1120. The proposed legislation will relax the background check requirements for non-clinical treatment personnel who have committed low level crimes in the past. This enactment will help augment the work-force and ease the shortage of qualified persons to help fill the demand in the treatment industry. The legislation further amends the patient brokering safe

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<sup>5</sup> Drugs Identified in Deceased Persons by Florida Medical Examiners; 2018 Annual Report (November 2019)



harbor provisions in keeping with the 2019 clarification issued by the 4<sup>th</sup> District Court of Appeals in *State v. Kigar*.

Much has been accomplished since the inception of both the law enforcement and civilian sides of the SHTF. However, there remains much work to be done, both in Palm Beach County and throughout the state. Too many of our citizens continue to die from opioid overdose.<sup>6</sup>

The law enforcement task force will continue to investigate cases of sober homes, labs, medical and treatment provider corruption within Palm Beach County, and will continue to collaborate with federal, state and other local agencies in this effort. The civilian Proviso Group will continue to vet, develop and share ideas and solutions to the opioid crisis we continue to face.

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<sup>6</sup> In 2018, there were 3,754 opioid overdose deaths (avg. 10/day) *Florida Department of Law Enforcement, 2018 Medical Examiners Commission Drug Report*.