



PATIENT BROKERING

2024 Public Law for the Public's Lawyers
UNC School of Government
November 15, 2024

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Presenters

- Steve Mange, Director of Policy & Legislative Affairs, NC DOJ
- Al Johnson, Chief Assistant State Attorney, Palm Beach Florida
- Sara Howe, Executive Director, Addiction Professionals of NC
- Boz Zellinger, Head of Special Prosecutions, NC DOJ



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Agenda

- What is patient brokering? (Al Johnson)
- How and why NC passed a patient brokering law (Sara Howe)
- How to investigate patient brokering (Boz Zellinger)



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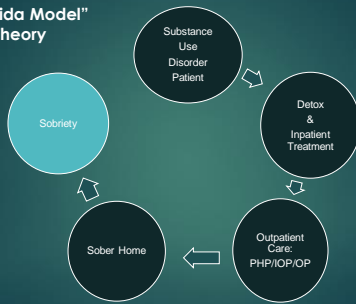
PATIENT BROKERING THE FLORIDA EXPERIENCE

Alan S Johnson, Chief Assistant State Attorney
Palm Beach County, Florida



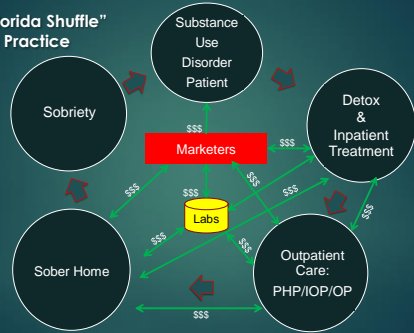
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"The Florida Model" In Theory



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"The Florida Shuffle" In Practice



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2017- 2022 Opioid OD Death Comparison					
Year	PBC	PERCENT	STATE	PERCENT	PER DAY
2017	647		4279		12
2018	401	<38%	3754	<12%	10
2019	476	>16%	4292	>13%	12
2020	604	>21%	6089	>30%	17
2021	519	<14%	6366	>4%	17
2022	431	<17%	6162	<3%	17

*2017 PBC = 15% OF ALL DEATHS STATEWIDE
 2021 PBC = 18% OF ALL DEATHS STATEWIDE
 2022 PBC = 7% OF ALL DEATHS STATEWIDE

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How We Got Here: Access Without Oversight

Parity and ACA opened the floodgates of insurance money for addiction treatment. The FHA and ADA created an unregulated sober homes industry.

Unfortunately, these well-meaning laws did nothing to add any oversight or quality standards to an industry divorced from other healthcare.



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CIVILIAN WORKGROUP

- Clinicians
- Patient Advocates
- Industry Lawyers
- DCF, FBHN, FARR, FCB





Sober Homes Task Force
 State Attorney's Office
 15th Circuit



Grand Jury Presentation & Report to Legislature

LAW ENFORCEMENT

Multi-Agency Investigative Team

- West Palm Beach PD
- Delray Beach
- Riviera Beach PD
- Palm Beach County Sheriff's Office (PBSO)
- Florida Department of Law Enforcement (FDLE)
- SAO Investigators and Forensic Analysts

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Sober Home Task Force Arrests

Since Nov 2016:

- 123 Arrests
- 112 Convictions
- \$2,262,000 Fines
- \$1,558,000 Forfeitures

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ORDINARY SCAMS

Patient Brokering Kickbacks, etc.

- ▶ Provider kickbacks to sober home owners
- ▶ Marketer kickbacks (inducements) to patients
- ▶ Provider and sober home kickbacks to marketers, depending on quality of insurance and level of care
- ▶ Sober home kickbacks to residents: free rent, gift cards, cigarettes, scooters, manicures, X-Box, gym memberships, etc.
- ▶ Lab kickbacks to providers, marketers and sober homes (urinalyses = gold)
- ▶ Unnecessary allergy and genetic testing
- ▶ Soliciting residents/patients ("poaching")
- ▶ Paying for airline tickets
- ▶ Signing a patient up for the ACA insurance exchange and paying the first few premiums.

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Toolbox

- ▶ **Patient Brokering Statute §817.505, Florida Statutes**
 - ▶ Unlawful to offer, pay, solicit or receive, a commission, benefit, bonus, rebate, kickback, bribe or engage in any split-fee arrangement, to induce the referral of, or in return for referring, a patient or patronage to or from a health care provider or health care facility. (includes aiding, abetting or participating)
 - ▶ Certain exceptions apply (Federal Anti-Kickback safe harbors)
 - ▶ Penalties:
 - ▶ Under 10 patients – 3rd degree felony, mandatory \$50,000 fine
 - ▶ Between 10-20 – 2nd degree felony, mandatory \$100,000 fine
 - ▶ Over 20 patients – 1st degree felony, mandatory \$250,000 fine

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Toolbox II

- ▶ **Deceptive Marketing Practices §817.0345**
 - ▶ Marketers cannot misrepresent products, goods, services, or geographic location – including media and on-line.
- ▶ **Insurance Fraud/Money Laundering**
- ▶ **Voluntary Certification Statute §397.4873**
 - ▶ Referrals to and from sober living homes and treatment facilities require that the sober home must be certified by FARR or be an Oxford House, to protect the vulnerable residents of the house from exploitation and abuse.
- ▶ **Local Zoning/Reasonable Accommodation**
 - ▶ Developing zoning ordinances requiring Sober Homes to be certified, licensed or otherwise adhere to national standards (Oxford House) in order to obtain a reasonable accommodation to house unrelated adults in excess of the number allowed in residential and multi-family districts.

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SHTF/SAART LEGISLATION

- ▶ **SHTF/SAART SPONSORED LEGISLATION**
 - ▶ 2017 Passed unanimously
 - ▶ 2019 Passed unanimously
 - ▶ 2020 Passed unanimously
 - ▶ 2021 Passed unanimously
 - ▶ 2022 Passed unanimously
 - ▶ 2023 Passed unanimously
 - ▶ 2024 Passed unanimously
- ▶ The Florida statutory scheme was adopted as model legislation by the National Association of Model State Drug Laws (NAMSDL) and Legislative Analysis and Public Policy Association (LAPPA)

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Certification of Sober Homes 101: Florida Model



- ▶ Legislature tasks state agency to designate a certifying entity, setting forth general standards. (FARR -NARR affiliate)
- ▶ Referrals to and from treatment providers are illegal unless the sober home holds a valid certification.
- ▶ Sober Homes that do not refer or accept referrals are not required to be certified.
- ▶ Certain exemptions are recognized (e.g., Oxford House)

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Safe, Sober, Living

Currently there are over 9500 FARR certified recovery residence beds, and over 1900 Oxford House beds, in Florida.

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About APNC



As the professional trade association for NC substance use professionals and providers, APNC sits at the nexus of the substance use and mental health industries to provide a collective voice with a cohesive message in all matters that affect individuals, providers, and the people they serve.



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The SAFE Act



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Truth in Marketing Standards

- Providers must include specific and accurate information about their services
- Providers who have separate licensed businesses/facilities (i.e., outpatient treatment and recovery housing) must advertise the two businesses/facilities as separate entities and disclose any conflicts of interest.
- Prohibits providers from misrepresenting their businesses in certain ways, like making false or misleading statements regarding their offered services or inclusion in insurance networks.
- Prohibits any **person or provider** from misrepresenting addiction services in certain ways, like providing false or misleading information about providers or redirecting consumers to unaffiliated websites.



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NC Patient Brokering Law

- NCGS § 90-113.152. Patient brokering & Kickbacks . . .
- It is a Class G Felony . . .
- For any person or entity, including a treatment provider, treatment facility, recovery residence, or third party acting on their behalf . . .
- To do any of the following:



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NC Patient Brokering Law

(1) Knowingly offer or pay anything of value, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a treatment provider or laboratory.



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NC Patient Brokering Law

(2) Knowingly solicit or receive anything of value, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a treatment provider or laboratory.



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NC Patient Brokering Law

(3) Knowingly solicit or receive anything of value, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility.



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NC Patient Brokering Law

(4) Knowingly aid or abet any conduct that violates subdivisions (1) through (3) of this subsection.



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Investigating Patient Brokering



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