



New York State Insurance Fund

Writer's Direct Telephone:
(212) 587-5507

Underwriting Department

August 11, 2006

Harry's Nurses Registry Inc
88-25 163rd Street
Jamaica, NY 11432

Re: Policy # 14466643 Harry's Nurses Registry Inc

Dear Policyholder:

I am writing as a follow-up to our conversation on August 8, 2006. At that time I notified you that we would be amending your policy to include all of your 1099 workers and this would result in a substantial increase in premium. This decision was made based on our auditor's review of your records. Under separate cover you will be receiving the new bill for the policy year 02/07/06-02/07/07.

At your request please find a brochure enclosed that should help with your next audit.

If you have any questions about your account you may contact me at the above number.

Very truly yours,

Lauren Hill
Underwriter I

cc: file

Policyholder Services
199 Church Street New York, NY 10007
(212) 312-9000

DAVID A. PATERSON
GOVERNORSTATE OF NEW YORK
WORKERS' COMPENSATION BOARD
OFFICE OF THE FRAUD INSPECTOR GENERAL
20 PARK STREET
ALBANY, NY 12207(518) 473-4839
Fax (518) 402-1059ZACHARY S. WEISS
CHAIR

February 2, 2010

Office of the District Attorney for Queens County
Att: Assistant District Attorney Rosemary Buccheri,
12501 Queens Boulevard
Kew Gardens, NY 11415Re: Harry's Nurses Registry and Harry Dovieliien
Case: IG # 37534

Dear ADA. Buccheri:

We are referring the above-referenced case to your office for possible criminal prosecution pursuant to New York State Penal Law, Sections 155.40 (Grand Larceny in the 2nd Degree); 190.65 (Scheme to Defraud in the First Degree); and New York State Workers' Compensation Law, Section 31 (Illegal Contribution) and for such other charges as you may deem appropriate.

Harry's Nurses Registry (Harry's) is a duly incorporated New York State corporation that provides nurses and other health care personnel for home health service. Harry Dovieliien is the President of the corporation and controls the daily operation which includes directing and supervising the placement of health care personnel in particular job assignments and overseeing the hours that they work. Dovieliien provides his employee with necessary supplies and requires each nurse or home health personnel to submit reports on forms provided by Harry's.

In February 2006, Harry's obtained state mandated workers' compensation coverage through New York State Insurance Fund (SIF). The policy obtained by Harry's only covered office personnel and did not cover the aforementioned home health personnel. By leaving these healthcare workers without coverage, Dovieliien sought to impermissibly reduce his premium below what was otherwise required if the health care workers were counted as employees. An audit by SIF, in 2006, discovered the additional workers and Harry's insurance premiums were increased to include the additional personnel.

Commencing in July 2006, Dovieliien and Harry's deducted \$1 per hour from the payroll checks of each of its home healthcare personnel to purportedly pay the additional premium cost for the workers' compensation coverage. When Harry's personnel complained of the deductions, Dovieliien misinformed his employees that the deductions were mandated by the Workers' Compensation Board. In fact, the exact opposite was true in that an employer may not collect the cost of the premium from his/her employees even if the employee agreed to the deduction. Workers Compensation Law, Section 31, provides in relevant part that:

No agreement by an employee to pay any portion of the premium paid by his employer ... shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee ... shall be guilty of a misdemeanor.

Here, there was no agreement, only Dovieliien's fraudulent misrepresentations. Collecting money under the guise of paying for increased premiums, Dovieliien and Harry's, over the period from August 2006 through November 2007, fraudulently collected deductions from their healthcare workers totaling more than \$300,000. Evidence of these collections gathered by this office includes payroll checks for the respective periods and interviews with various home healthcare employees of Harry's who uniformly confirmed the illegal deductions.

Please inform us as to your acceptance of the case and, if accepted, its assignment. If not accepted, please return the file to us so that we may pursue alternative remedies. If you have any questions or need any additional information in this matter, please contact Special Assistant Effie McCartney-Donaldson at 718-802-6907 who developed the case for prosecution.

Thank you for your cooperation in this matter.

Very truly yours,

William Gurin
Inspector General
New York State Workers' Compensation Board

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART: K-6

THE PEOPLE OF THE STATE OF NEW YORK

**Omnibus Motion and
Response to CPL 30.30
Motion**

Ind No. 1709/2010

-against-

HARRY DORVILIER and
HARRY'S NURSES REGISTRY, INC.
Defendants

State of New York)

ss.:

County of Queens)

I, Rosemary Buccheri, being an attorney at law admitted to practice in the Courts of this State and an Assistant District Attorney of the County of Queens, of Counsel to RICHARD A. BROWN, DISTRICT ATTORNEY of the County of Queens, attorney of record for the People of the State of New York, do hereby affirm the statements herein to be true under the penalties of perjury, except such as are made upon information and belief, which matters I believe to be true.

BILL OF PARTICULARS

The function of a bill of particulars is to define more specifically the crimes charged in the indictment. People v. Raymond G., 54 A.D.2d 596 (4th Dep't 1976). Thus, it is not to be used as a discovery device. People v. Davis, 41 N.Y.2d 678 (1977). The defendant has the right to be informed of the conduct which forms the basis for the accusation against him. People v. Fitzgerald, 45 N.Y.2d 574, 597-90 (1978).

The People herewith provide a bill of particulars, keeping in mind these additional principles: (a) the People are not required to include matters of evidence relating to how they intend to prove any factual information included in the bill of particulars, C.P.L. § 200.95; (b) the request for a bill of particulars is not to be used as a fishing expedition; C.P.L. § 200.95, Bellacosa, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 11A, CRIM. PROC. LAW § 200.95, p. 546 (1992); and (c) the test is not whether the information sought may be "useful" to the defendant, but whether such is "necessary" to adequately prepare to conduct the defense, and the burden is upon the defendant to demonstrate such. Hence, a bare statement of need is insufficient. C.P.L. § 200.95, Practice Commentary at 546, Bellacosa, J. (McKinney 1982).

1. The substance of the defendant's conduct encompassed by the charges which the People intend to prove at trial on their direct case is as follows:
Upon information and belief, the source being police reports, records that were obtained, kept and maintained by the Workers' Compensation Board, Office of the Inspector General, and based upon

conversations of each of the LPNs and RNs that were employed by the defendants', and based upon conversations with Specialist Assistant Effie McCartney-Donaldson with the New York State Workers' Compensation Board, Office of the Inspector General, and Paul Celentano, an attorney with the Division of Regulatory Affairs, Bureau of Compliance, workers' Compensation Board, State of New York, that on or about and between August 9, 2006 and December 26, 2007, approximately twenty-one LPNs (Licensed Practical Nurses and/or RNs (Registered Nurses), who filed complaints, were employed by the defendants acting in concert with each other with defendant Dorvilier as President and owner of the corporate defendant, Harry's Nurses Registry, Inc. at the defendant's place of business located at 88-25 163rd Street, County of Queens, State of New York. Each of these 21 employees were given their individual assignments from the defendants and reported to different locations and provided care each day to their patients as specified by the defendants. Furthermore, each of these individuals were responsible to take and maintain nursing notes for each patient, which notes were given to them by the defendants to be filled out daily, and that they were required to turn these notes into the defendants in order to be paid. In addition, these LPNs and RNs were also required to keep time sheets that were signed by the patients and/or family member if the patient was a minor and that the LPNs and RNs were also required to submit these signed time sheets to the defendants in order to get paid. Furthermore, each of these complainants' were paid in check form from the defendants based upon the number of hours worked and the rate was determined based upon the type of patient-adult, elderly and/or minor. These complainants' noticed that on the memo line of their paychecks, during the above-mentioned time period, that they received from the defendants that the defendants deducted a \$1.00 per hour for workers' compensation. These individuals did not authorize or give the defendants permission or authority to deduct a \$1.00 per hour from their paychecks.

According to Paul Celentano, workers' compensation insurance is solely the responsibility of the employer. In order to determine if an individual is considered an employee or an independent contractor, the State developed a seven point test to decide this fact such as the method of payment, whether the individuals are self-employed, and the nature of the work and the controlling the work. In this case, the complainants, did not have their own businesses and received there assignments directly from the defendants and were also paid by the defendants based upon the submission of time sheets to the defendants as well as the nurses notes that were submitted to the defendants. Therefore, based upon the criteria established by the Workers' Compensation Board, the complainants would be considered employees of the defendants and it would be the sole responsibility of the defendants to pay for workers' compensation insurance and not the individual employees (the LPNs and RNs).

In addition, each of the complainants sustained a loss due to the defendants' unauthorized deduction of \$1.00 per hour from their pay checks as follows: Muriel Phillip from on or about January 24, 2007 through November 28, 2007 sustained a loss in excess of \$1,000.00, approximately \$2,666.00; Pearline Dryer from on or about March 21, 2007 through December 26, 2007, sustained a loss in excess of one thousand dollars, approximately \$1,307.50; Kim Rampersad from on or about October 4, 2006 through November 14, 2007, sustained a loss of approximately \$407.50; Meryl Danneels from on or about August 22, 2007 through November 14, 2007, sustained a loss of approximately \$407.00; Norma Formoso from on or about September 6, 2006 through May 2, 2007 sustained a loss in excess of \$1,000.00 approximately \$1,398.00; Sandra Devarel from on or about September 6, 2006 through November 27, 2007, sustained a loss in excess of \$1,000.00, approximately \$2,764.00; Bandy Pierre-Joseph from on or about January 10, 2007 through December 26, 2007, sustained a loss in excess of \$1,000.00, approximately \$1,866.00; Gina Osse-Prophete from on or about August 9, 2006 through November 27, 2007 sustained a loss in excess of \$1,000.00 approximately \$2,900.00; Lucille Hamilton from on or about September 6, 2006 through November 27, 2007, sustained a loss of approximately \$747.50; Linda Dei-Baning from on or about January 24, 2007 through July 11, 2007 sustained a loss of approximately \$527.00; Elaine Diaz from on or about February 21,

2007 through November 27, 2007, sustained a loss of approximately \$458.00; Yelva Cadet from on or about August 9, 2006 through November 28, 2007, sustained a loss in excess of three thousand dollars, approximately \$3,022.00; Sulaiman Ali-El from on or about September 8, 2006 through November 28, 2007 sustained a loss in excess of \$3,000.00, approximately \$3,024.00; Alyson Hanson from on or about August 22, 2007 through November 28, 2007 sustained a loss of approximately \$704.00; Natasha Duncan from on or about October 4, 2006 through July 11, 2007, sustained a loss in excess of \$1,000.00, approximately \$1,080.00; Janet Davis from on or about September 8, 2006 through November 14, 2007, sustained a loss in excess of \$1,000.00 approximately \$1,026.00; Vanessa Reynolds from on or about September 8, 2006 through November 28, 2007 sustained a loss in excess of \$1,000.00 approximately \$1,875.00; Rita Byas from on or about January 24, 2007 through November 24, 2007 sustained a loss in excess of \$1,000.00 approximately \$1,368.00; Immacula Augustin from on or about September 6, 2006 through November 28, 2007 sustained a loss of Approximately \$650.00; Stephanie Edwards from on or about August 9, 2006 through November 27, 2007, sustained a loss in excess of \$1,000.00 approximately \$1,103.00; Sheena Wallerson from on or about August 9, 2006 through December 26, 2007, sustained a loss of approximately \$515.00. Each of these 21 witnesses did not give the defendants permission or authority to deduct a \$1.00 per hour from each of their pay checks. Furthermore, the defendants engaged in a systematic course of conduct with the intent to defraud and to obtain property in excess of \$1,000.00 from Yelva Cadet, Sulaiman Ali-El, Gina Osse-Prophete, Muriel Phillip, Pearline Dryer, Norma Formoso, Sandra Devarel, Janet Davis, Bendy Pierre-Joseph, Natasha Dunca, Vanessa Reynolds, Rita Byas and Stephanie Edwards which are in excess of ten individuals.

2. The People intend to prove that the defendants acted as: principals acting in concert with each other.

The People oppose defendant's further requests because they are evidentiary in nature and beyond that which is required to be provided pursuant to C.P.L. § 200.95. In addition, some of the requested material is provided below pursuant to the Demand for Discovery.

DEMAND FOR DISCOVERY

The People herein, pursuant to Section 240.20 of the Criminal Procedure Law, disclose to the defendant and make available for inspection, photographing, copying or testing, the following property:

- a. Any written, recorded, or oral statement of the defendant, and of a co-defendant to be tried jointly, made, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him (C.P.L. §240.10(1)(a)):

None known exist at this time.

- b. Any transcript of testimony relating to the criminal action or proceeding pending against the defendant given by the defendant or by a codefendant to be tried jointly, before any Grand Jury (C.P.L. §240.20 (1)(b)):

None known to exist at this time.

c. Any written report or document or portion thereof, concerning a physical or mental examination, or scientific test or experiment relating to the criminal transaction which was made by, or at the request or direction of, a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial or which the people intend to introduce at trial (C.P.L. § 240.20(1)(d)):

The following reports are attached hereto:

3 pages of the Omniform System- Arrests

d. Any photograph or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial (C.P.L. §240.20(1)(d)):

None known to exist at this time.

e. Any photograph, photocopy or other reproduction made by or at the request of a police officer, peace officer, or prosecutor of any property prior to its release pursuant to the provisions of Section 450.10 of the Penal Law, irrespective of whether the People intend to introduce at trial the property or the photograph, photocopy or reproductions (C.P.L. § 240.20 (1)(e)):

None known to exist at this time.

f. Any property obtained from the defendant or from a codefendant to be tried jointly (C.P.L. §240.20 (1)(f)):

None known to exist at this time.

g. Any tapes or other electronic recordings which the prosecutor intends to introduce at trial, irrespective of whether such recording was made during the course of the criminal transaction. (C.P.L. §240.20 (1)(g)):

None known to exist at this time.

h. Anything required to be disclosed, prior to the trial, the defendant by the prosecutor, pursuant to the constitution of this State or of the United States(C.P.L. §240.20 (1)(h)):

The People are not now in possession of, or aware of, any Brady material.

The People acknowledge their continuing obligation to provide Brady material should the same become known to us.