

Viatical Clients Begin to Plead Guilty

By Norm Kent

At least eight of the fifteen men charged with viatical fraud last Spring have now pled guilty to acquiring insurance by fraudulent means. They have been convicted of first degree felonies, placed on extensive periods of probation, and forced to pay back hundreds of thousands of dollars in stolen funds.

Advertisements will be appearing in gay publications, including the *Express*, to help start public awareness. The ad campaign warns of the foolhardiness of falsely acquiring insurance policies to sell off illegally.

Cheryl Aleman, an Assistant Statewide Prosecutor stated, "We want people to understand how serious a crime this is, and how we are going to prosecute those people who have fraudulently and improvidently benefited from this illegal scheme."

The typical situation had AIDS patients, knowing they were ill with HIV, apply for life insurance policies through different insurance agents. Each of the applications contained specific questions concerning the health of the insured. Questions were asked if the individuals had been diagnosed with Acquired Immune Deficiency Syndrome, (AIDS), AIDS Related Complex, (ARC). Those accused of an organized scheme to defraud answered "No" to these questions.

The business of viatical settlements involves the selling of a life insurance policy death benefit by a terminally ill person (viator/insured) to a third party or viatical settlement provider (purchaser), through a viatical settlement broker, for a portion of the value of the life insurance policy.

Based on the answers to the health questions and the information provided in the life insurance applications, which were signed by the accused, insurance companies

issued life insurance policies, and the total face amount of the policies differed for each of the individuals.

According to Aleman, those prosecuted thus far are at the upper echelon of the chain, having viaticated as many as five, six, or more policies, receiving funds sometimes in excess of \$300,000. But Lisa Porter, the Assistant Statewide Prosecutor who has supervised the investigation from the outset, has previously made public statements to the effect that the "criminal investigation is continuing at all levels." Previously, law enforcement efforts identified as many as 89 persons who viaticated local policies, and the Department of Insurance has indicated the investigation is looking into "thousands of policies."

As early as November of 1999, patients who were suspected of criminality received letters from the Statewide Prosecutor indicating they were investigating a fraud, and that they were seeking to review their medical records, which, under typical circumstances, would be protected and inviolate under Florida Statute.

In a hearing in January 2000, State Circuit Judge James Cahn empowered law enforcement agents to unseal and review the records if it was for the legitimate public purpose of "ferreting out criminal activity."

The life insurance policies were marketed to viatical settlement providers and were then again sold to investors who were eventually listed as the beneficiaries on the policies. The refunds now being paid to the Florida Department of Insurance may one day protect their investment.

How are the criminal cases made? Insurance Representatives from the insurance companies are contacted by Florida Department of Insurance investigators, who

then acquire affidavits stating that had the true health condition of patients actually been disclosed accurately when the original life insurance policies were applied for, then the life insurance policies would not have been issued. Thus, the state claims the policies were fraudulently acquired.

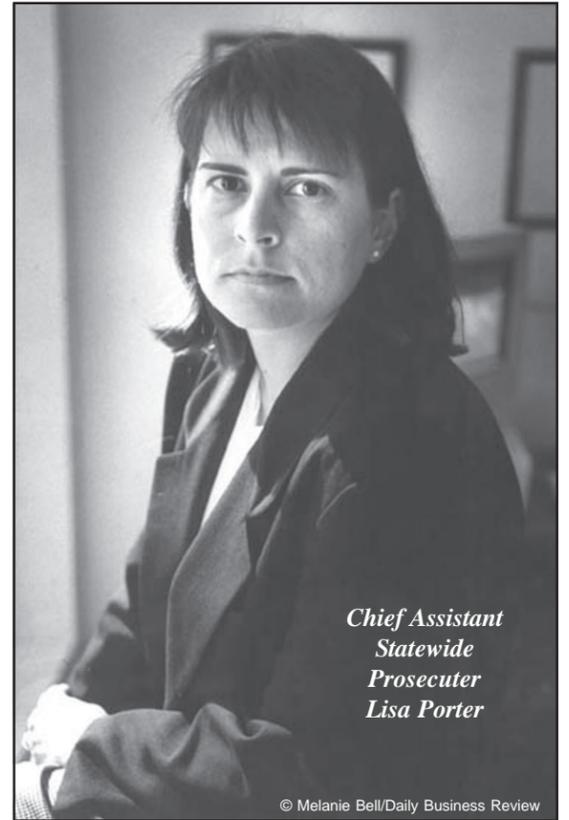
In those instances where individuals systematically acquired multiple policies over a period of time, they were then charged with an organized scheme to defraud, a first degree felony, the most serious, in the State of Florida. Under Florida sentencing guidelines, these are crimes that would carry minimum sentences of state prison time.

By paying back the monies they illegally acquired, Statewide Prosecutors are allowing some of the defendants, under limited circumstances, to avoid prison and be placed on probation. Each case is different.

In one case, for example, a defendant is being required to create a website designed to stop viatical fraud, and the individual will write articles and go on radio to warn patients of the risks associated thereto. One such article appeared in the April 23, issue of the *Express*.

The arrests are part of a national prosecution effort, with cases now being made by Federal Prosecutors in the Northeast, and Statewide prosecutors in California, Texas, New York and Florida.

The 'scandal' was first documented in the inaugural issue of the *Express* in January



Chief Assistant Statewide Prosecutor Lisa Porter

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of 2000, when Circuit Judge James Kahn overruled defense objections and allowed prosecutors the right to seize the medical records of HIV patients who had acquired these policies.

Since then, the Washington Blade, Southern Voice, and then mainstream publications such as the Washington Post and New York Times began writing about the issue as well. All this followed a Statewide Grand Jury investigation in the State of Florida warning that the industry was in jeopardy due to 'rampant fraud.'

Law enforcement officials expressed concern that these prosecutions would minimize further illegal acts.

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