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State of Florida v. John Anthony Rubio

SC06-157

YOU ARE TALKING ABOUT FALSE
CLAIMS MEDICAID FALLS CLAIMS
UNDER ED ME
UNDERED ME CALIED FRAUD -- IT
IS FOR -- 9.202A.
-- [INAUDIBLE]
.
YES, THAT'S -- THAT IS THE
PART OF THE SAME STATUTE THAT
YOU RULED UPON IN HARDIN, THAT
OUR ARGUMENT IS SOMEWHAT
DIFFERENT AND I THINK THE
HARDIN DECISION HAS BEEN
DISTINGUISHED ON AT LEAST
THREE GROUNDS.
FIRST OF ALL, YOUR PROBLEM IN
HARDIN WAS WITH THE SHOULD BE
AWARE LANGUAGE IN DEFINITION
OF THE TERM "KNOWINGLY. "
[INAUDIBLE]
.
RIGHT.
THAT IS CORRECT.
THAT IS CORRECT.
AND YOUR PROBLEM WAS WITH THE
SHOULD BE -- LANGUAGE THERE IS
CASE LAW THAT WE DISCUSSED
EXTENSIVELY IN THE BRIEF ON
WHAT IS KNOWN AS THE WILLFUL
BLINDNESS OR CONSCIOUS AVOID
ANCE DOCTRINE, AND I WOULD
SUBMIT TO THE COURT THAT THAT
IS EXACTLY WHAT THE SHOULD BE
AWARE LANGUAGE INCORPORATES,
THERE ARE UNDER SUBSECTION 2,
THERE RARE SIX SUBSUBSECTIONS
FIEFRN OF THOSE RELATE OR
CONCERN SUBMITTING FALSE
CLAIMS FALSE INFORMATION,
FALSE STATEMENTS TO THE
MEDICAID AGENCY, TO GAIN SOME
BENEFIT THE 6TH ONE IS THE
ANTIKICKBACK PROVISION.
THAT WAS WHAT WAS DEALT
WITH AT HARDIN
YES, SIR.

AND THIS IS UNDER A,
WITH --
RIGHT.
WHICH WAS NOT DEALT WITH IN
HARDIN, AND I SUBMIT TO YOU
THAT IF -- THE QUESTION OF THE
--
-- WILL FULL BLINDNESS
DOCTRINE DOES NOT PERMIT
PROSECUTION OF NEG JENSZ IT
SIMPLY PROHIBITS SOMEONE FROM
PUTTING HIMSELF IN A POSITION
OF NOT KNOWING WHAT HE SHOULD
BE AWARE OF --
WHAT HE SHOULD KNOW --
[INAUDIBLE]
.
SAME SANDARDS --
WELL SHGS, I THINK IT IS I THINK
IT IS VERY CLOSE TO THE SAME,
IF YOU -- IF YOU TAKE OUT --
LET ME LET ME DISCUSS THE
DEFINITION, IF YOU TAKE OUT
THAT SHOULD BE AWARE LANGUAGE
WHERE YOU CONFINE TO IT
INCORPORATING THE WILLFUL
IGNORANCE DOCTRINE WHAT OF YOU
IS A DEFINITION THAT SAYSOI
NOMINGLY MEANS DONE BY A
PERSON HIGHS WAR OF THE IT IN
A IT A -- NATURE OF HIS
CONDUCT THAT HIS OR HER
CONDUCT IS SUBSTANTIALLY
CERTAIN TO CAUSE THE INTENDED
RESULT"
IF YOU ARE AWARE OF YOUR
CONDUCT YOU KNOW IT IS
UNLAWFUL.
WHEN I'M -- BOTHERED BY
WANT TO ASK YOUR OPPONENT TO
SPEAK TO THIS, THIS ON A
MOTION TO DISMISS.
NOW, DID THE STATE RAISE THE
ISSUE WHICH IS RAISE -- BELOW
WHICH IT RAISES NOW NITSZ
BRIEF AS TO WHETHER THIS
SHOULD BE A FACIAL
UNCONSTITUTIONALITY BY REASON
OF PER EMION, OR WHETHER IT
CAN BE DEALT DID WITH ASSIST
APPLIED AND YOU SHOULD GET
DOWN TO THE PROOF.
WAS THAT RAISED --
DON'T THINK IT WAS IN QUITE

SPECIFIC TERMS.
GOING BACK TO --
[INAUDIBLE]
.
WELL, HE I AGREE WITH THAT,
I MEAN WE SHOULD BE GIVEN THE
CHANCE TO PROVE, THAT AND WE
SHOULD NOT BE -- JUST BECAUSE
THERE IS SOMES LANGUAGE IN
HERE THAT MAY BE PROBLEMATIC
WE SHOULD NOT BE PREVENT ED
FROM -- FROM PROVING
WILLFULNESS AS DEFINED.
THAT ARGUMENT, THEN --
CALLS FOR, IN WHICH --
CONSTITUTIONALITY OF THIS
CASE, STANDARD [INAUDIBLE]
.
NONETHELESS WHAT YOU ARE
BEING ASKED TO DO IS HOLD THE
ZWROOT FACIALLY
UNCONSTITUTIONAL DUNLTD HAVE
TO DO THAT OF YOU OBLIGATION
TO CONSTRUE IT
CONSTITUTIONALLY, I TRIED TO
GIVE YOU A BASES ON WHICH YOU
CAN DO THAT, THERE ARE WELL
THERE ARE TWO GROUNDS CAN YOU
DO IT UCAN SAY THAT THAT
SHOULD BE AWARE LANGUAGE
INCORPORATES THE WILL FULL
IGNORE APSZ DOCTRINE OR COULD
YOU JUST DELETE IT FOR
PURPOSES OF THIS CASE, AND SAY
IF THE STATE CAN PROVE UNDER
THAT DEFINITION, INTENT,
WITHOUT YOU KNOW GOING TO
NEGLIGENCE, THEN THE STATE AS
THE RIGHT TO PROCEED.
HOW ABOUT SPEAKING ABOUT
THE WHAT THE FIFTH DISTRICT
HELD WAS THAT THERE WAS AN
INCONSISTENCY IN THE TWO
PANELS AT THE THIRD DISTRICT
IN DECIDEING HARDIN, AND DECIDE
DECIDING WOOLIN, WOOLIN WAS
DECIDED UNDER 2A.
RIGHT SAME --
WAS DECIDED UNDER 2 #E.
RIGHT.
AND I READ THE WOOLIN CASE OUT
OF THE THIRD DISTRICT TO BE
MAKING A DISTINCTION BETWEEN
THOSE TWO, IS THAT --

EXACTLY.
YOUR POSITION?
YES IS, THINK YOU CAN YOU
COULD FOLLOW THE WOOLIN -- AND
WHAT THEY SAID WAS IN WOOLIN,
IS THAT IN TERMS OF SUBMITTING
A FALSE CLAIM AND THEY RELIED
ON FEDERAL CASE LAW IT IS
INHERENT IN THAT THAT YOU KNOW
THAT IT IS FALSE, AND SO IT
DID NOT DEAL WITH THE SHOULD
BE AWARE LANGUAGE IT JUST SAID
IF IT IS IF YOU ARE CHARGED
WITH SUBMITTING A FALSE CLAIM
KNOWLEDGE OF FALSITY INHERENT
IN THAT PRESUMABLY THAT IS LA
THE STATE WOULD HAVE TO PROVE.
DIFFICULT UNDERSTAND TO YOU
SAY THAT -- AND IN CONSTRUING
THE DEFINITION OF WILLINGNESS
THAT ONE WOULD I WE COULD
CONSTRUE IT WAS TO JUST KIND
OF WRITE OUT THE LANGUAGE THAT
TALKS ABOUT SHOULD BE AWARE?
THAT'S -- YES IS, MEAN
THERE'S FEDERAL CASE LAW THAT
SAYS IN PREEMPTION CASE YOU DO
NOT INVALIDATE THE STATUTE
FURTHER THAN NEEDS BE TO
DECIDE THE CASE SO IF SHOULD
BE AWARE IS A PROBLEM THAT
COULD BE STRICKEN, WHAT
REMAINING LANGUAGE WOULD
DEFINE THE CRIME THAT IS DONE
WITH KNOWLEDGE THAT IS DONE
KNOWINGLY -- AND KNOWINGLY --
THERE IS NO WILLING NESSNESS --
WILLINGLY IN THE STATUTE DOES
THAT PRESENT A PROBLEM THEY
DON'T THINK SO.
I MEAN, THIS IS -- THE KIND OF
CONDUCT SUBMITTING A FALSE
CLAIM THAT IS PROSECUTED UNDER
FEDERAL LAW IS, MEAN.
HE SO YOU ARE ACTUALLY
ARGUING IF YOU DO IT KNOWINGLY
THEN YOU DID IT WILLINGLY.
YES.
IF YOU KNEW THE NATURE OF YOUR
CONDUCT,THAT IS YOU KNOW THAT
IT IS UNLAWFUL.
THAT IS WITH THE WILFULLY
MEANS IN THE UNDER THE FEDERAL
LAW THAT YOU KNOW IT IS

UNLAWFUL, AND HERE IS THAT
PART OF THE DEFINITION YOU
KNOW THE NATURE OF YOUR
CONDUCT.
THERE'S SEVERAL OTHER ISSUES I
WOULD KIND OF LIKE TO MOVE ON,
THE SECOND ONE IS WHETHER THE
STATE CAN CHARGE A VIOLATION
OF THE PATIENT BROKERING
STATUTE WHICH IS 817.505 AS A
RACKETEERING OFFENSE UNDER
895.02
895.021-A, THE LOWER COURTS
HELD THAT IT COULD NOT BECAUSE
PATIENT BROKERING OR HERE JUST
PAYING FOR PATIENTS DID NOT
INVOLVE A FRAUD.
I WOULD DISAGREE WITH THAT.
THE TOIRM FRAUD"
IS GENERAL IT IS VERY ELASTIC,
WHEN YOU ARE PAYING FOR
PATIENTS ENGAGING IN --
ARRANGEMENT WHEREBY YOUR
SPLITTING A FEE THAT IS NOW
AND ALWAYS HAS BEEN CONSIDERED
A COLLUSIVE DISHONEST
PRACTICE, IT LEADS DIRECTLY TO
THE INFLATION OF HEALTH CARE
COSTS, AND THAT IS WHY THE
LEGISLATURE ENACTED THIS
STATUTE IT IS SIMPLY A
DISHONEST PRACTICE, THAT IS --
YOU KNOW, ACT IS, I MEAN, IF
YOU LOOK AT WE GAVE A BLACK'S
LAW DEFINITION IN OUR BRIEF,
THAT -- AN ACT ONE INVOLVES
BAD FAITH BREACH OF HONESTY
WANT OF INTEGRITY OR MORAL
TURPITUDE.
TURPITUDE.
[INAUDIBLE]
ALLOWS -- [INAUDIBLE]
.
WELL IT'S A OE-- FIRST OF ALL
THIS IS NOT DIVIDING A FEE
BETWEEN PROFESSIONALS AND ONE
OFFICE OR IN SOME PRACTICE
RELATIONSHIP.
IT IS DIVIDING A FEE BETWEEN
TWO DENTISTS AND AN OUTSIDER,
WHO TREKKED IN PATIENTS FOR
THEM TO 12R5E9 STREET
SUPPOSEDLY, WHEN YOU ARE
PAYING AN OUTSIDER OR

REFERRING A PATIENT YOU ARE
NOT MAKING THE MONEY THAT YOU
WOULD MAKE IF THAT IF THESE
PATIENTS CAME TO YOU IN A
NORMAL AND HONEST FASHION --
HOW ABOUT IF BILLING WERE
DONE ON A PERCENTAGE OF
REVENUE BASEIS?
WOULD THAT DEBE DIFFERENT.
IT IS PAYING FOR PATIENTS
IT IS NO DIFFERENT.
WELL, I MEAN THERE ARE
PLACES THAT DO THAT EVERY DAY
IN RETAIL, MARKETING, THAT OF
YOU HE CERTAIN FLAT FEE KIND
OF RENTALS VIRTUALLY EVERY
SHOPPING CENTER PROBABLY US
MR. PERCENTAGE OF REVENUES
OVER CERTAIN AMOUNTS, WOULD WE
COUCH THAT INTO -- BECAUSE
THIS WAS LAST OF A PROPERTY
AND AN OFFICE THE WHOLE THING;
CORRECT?
WASN'T THAT HOW IT WAS
STRUCTURED.
FIRST OF ALL, YOUR HONOR
THERE, WAS NO EVIDENCE OF WHAT
THE AGREEMENT WAS, AND THAT'S
PART OF THE PROBLEM WITH WERE
A HAPPENED BELOW.
I MEAN IF WE HAD SOMEONE
THAT IS IN THE BUSINESS OF A
SMALL COMMUNITY HAS NO MEDICAL
ASSISTANCE THEY ARE GOING TO
SET UP AN OFFICE PRACTICE, A
BUILDING A FACILITY THE QUIP
-- EQUIVALENT WE WOULD
CHARACTERIZE THAT INHERENTLY
FRAUDULENT IF THERE IS A
PERCENTAGE OF REVENUES -- I'M
HAVING DIFFICULT TOOU WITH
THAT ANNOYING CONCEPT IS, CAN
SEE IT THAT COULD BE BUT JUST
BY COUCH EVERYTHING LIKE THAT
UNDER THOSE TERMS IS DANGER --
IF YOU COULD RELATE THE
AMOUNT THAT WAS ACTUALLY
AGREED UPON, AND PAID AND YOU
COULD ESTABLISH THAT THAT
WOULD BE REASONABLE MARKET
RATE FOR WHAT WAS DONE, THAT
WOULD BE ONE THING, HERE --
DOESN'T STATUTE ANSWER THE
QUESTION THE COMMISSION OR

BONUS OR KICKBACK HAS TO BE TO
INDUCE THE REFERRAL OF
PATIENTS OR PATRONAGE FROM A
HEALTH CARE PROVIDER --
RIGHT.
FACILITY, SO THAT HAS
NOTHING TO DO WITH PATIENTS
FOR MONEY THAN IT IS OKAY
UNDER THE STATUTE?
GENERALLY I THINK I WOULD
YEAH THE KEY THING IS THAT --
THEY WNTEREN'T -- THESE, THIS
RUBIO WAS BRINGING IN
PATIENTS, THAT IS WHAT THEY
WERE CHARGED WITH.
[INAUDIBLE]
.
YES THAT IS EXACTLY, THAT
IS OE--
UNDER -- [INAUDIBLE]
IS THAT THAT IS NOT INHERENTLY
A FRADULENT PRACTICE, IT AISIS A
-- LEGAL PRACTICE -- THAT IS
ANOTHER ISSUE ABOUT --
MULTIPLE ACTS, -- IT IS NOT AN
INHERENT
INHERENTLY --
THINK IT IS INHERENTLY
FRAUDULENT, IN THIS PATIENT
WORKING STATUTE IS JUST NOT
LIMITED TO MEDICAID.
PRACTICES.
IT IS ALL MEDICAL PRACTICES,
IF YOU PAY SOMEONE TO BRING IN
A PATIENT YOU ARE LOSING
MONEY, YOU'VE GOT TO MAKE THAT
UP.
HOW DO YOU YOU MAKE IT UP?
YOU CHARGE EVERYBODY YOU
CHARGE EVERYBODY MORE.
IN OTHER WORDS, WHEN YOU OE--
PATIENT, STATUTE YOU, DON'T
HAVE TO PROVE A PERSON --
[INAUDIBLE]
YOU EXPECT TO PROVE IT WAS
RELATIONSHIP
RELATIONSHIP.
THAT IS RIGHT.
SO WHY IS THAT WHY SHOULD THAT
-- THAT IS ONE OF THE ISSUES
WHAT YOU ARE SAYING, THAT IS.
HE BECAUSE WHAT THE
LEGISLATURE WANTED TO DO BROOS
HIB THAUT ARRANGEMENT PERIOD,

BEFORE IT EVER GETS TO THE
POINT OF SUBMITTING FRAUD IT
IS?
WE UNDERSTAND, BUT --
ALSO, BE PREDICATE ACT FOR
THAT -- [INAUDIBLE]
.
WELL THAT IS O ALSO THE
ISSUE WHETHER THE PATIENT
BROKERING ACT IS
UNCONSTITUTION
UNCONSTITUTIONAL EVEN
REGARDLESS OF --
-- I THINK IT IS --
I WAS DISCUSSING THE
PREDICATE OFFENSE, YES, OKAY.
RIGHT, AND THEE -- IF WHAT THE
LEGISLATURE SAID AND IT AND
ITS RELATING TO LANGUAGE IN
THE RICO CHAPTER WERE A -- WAS
IT REFERRED IT SAYS, ANY CRIME
WHICH IS CHARGEABLE BY
INDICTMENT OR INFORMATION
UNDER THE FOLLOWING MROOFRGSS
OF THE FLORIDA STATUTES IS
RACKETEERING ACTIVITY, CHAPTER
817 RELATING TO FRAUDULENT
PRACTICES FALSE PRETENSES
FRAUD GENERALLY CREDIT CARD
CRIMES THAT IS THE IT TOO HE
EL OF THE CHAPTER TITLE --
TITLE OF THE CHAPTER TITLE OF
THE FIRST THREE SUP PARTS TWO
SUBPARTS.
SUBPARTS.
SO IN -- ANY -- ANYTHING
UNDER THAT CAN BE CHARGED.
[INAUDIBLE]
WHETHER FRAUD IS OE--
[INAUDIBLE]
.
YEAH I WANTED TO GET TO
THAT.
I MEAN PARTICULAR IT -- THE
COURT WAS CONFUSED WHEN THEY
STARTED TALKING ABOUT THIS
LEASE ARRANGEMENT OF WHICH
THERE WAS NO EVIDENCE, AND THE
COURT ASSUMED THAT WELL OKAY
THERE WAS AN AGREEMENT AND ITS
INTERPRETATION WAS IF YOU HAVE
AN AGREEMENT, THEN YOU CAN
SPLIT FREES NOW UNTIL THE END
OF TIME, AND YOU WILL HAVE ONE

OFFENSE ONE-THIRD DEGREE
FELONY THAT IS NOT AGREEMENT
IS NOT WHAT THE STATUTORY
LANGUAGE SAYS IT SAYS ENTERING
INTO AN ARRANGEMENT FOR THE
REFERRAL THAT CONTEMPLATES
THAT EVERYTHING WAS DONE FROM
THE BEGINNING, TO THE TIME YOU
GET THE FEE AND SPLIT IT.
THAT IS WHAT WE CHARGE BELOW
THAT IS WHAT PROSECUTOR
EXPLAINED TO THE COURT EVERY
TIME THEY SPLIT THE FEE THAT
IS THE UNIT OF PROSECUTION.
I WILL.
HE -- THANK YOU.
ALL RIGHT.
MAY IT PLEASE THE COURT
RICHARD FOR THE APELLEYS.
TURNING FIRST TO THE
PREEMPTION ARGUMENT ON THE
FALSE STATEMENT PRONG OF THE
MEDICAID FROM AED STATUTE WE
BELIEVE THE HARDIN CASE DOES
CONTROL FOR A NUMBER OF
REASONS THE FIRST IS IN THE
PARALLEL FEDERAL STATUTE, IT
IS ALWAYS BEEN WILLFULNESS FOR
THE FALSE STATEMENT.
YOU WOULD AGREE HARDIN THIS
CORT NOR DID THE THIRD DEAL
WITH THIS ISSUE OF WHETHER
THERE IS A THIS CAN BE A
FACIAL ATTACK OR AN AS APPLIED
ATTACK, IN VIEW OF THE FACT
THAT WE ARE HERE ON A MOTION
TO DISMISS.
CORRECT, AND I WOULD --
NUMBER OF RESPONSES TO THAT
THE FIRST ONE THE STATE WAIVED
ANY CHALLENGE.
THE CIRCUIT COURT MADE SOME
FACTUAL STATEMENTS IN ITS
ORDER THAT STATE NOT MOVE TO
RECONSIDER WHEN IT APPEALED TO
THE 50 CA ITS INITIAL BRIEF
DID NOT RAISE A CHALLENGE TO
THE USE OF THE IN FACT IN ITS
RE
REPLIBRIEF IN 5th DCA STATE
ITSELF ON PAGES 5 AND 6 REPLY
BRIEF DECIDED TO THE PROBABLE
CAUSE AFFIDAVIT AND SOME OF
THE DEFENSE --

.
STATE OE-- UNTIL [INAUDIBLE]
.
FOR THE REASON I THINK THAT
WE HAVE STANDING IS BECAUSE
THE INFORMATION DESPITE WHAT
THEY ARE SAYING THEY ARE
WILLING TO GO ON, THE
INFORMATION THAT IS CHARGED IN
THIS CASE, CHARGES KNOWINGLY
DOES NOT CHARGE WILFULLY.
IF THEY HAD CHARGED WE WOULD
HAVE A STANDING PROBLEM IF THE
STATES INFORMATION, HAD
CHARGED WILLFULNESS AT A TIME
WHEN THE STATUTE DID NOT
REQUIRE IT.
AND WE WOULD HAVE -- COME HERE
SAY STATUTE IS
UNCONSTITUTIONAL BECAUSE THE
STATUTE ONLY REQUIRES NEG
INTELLIGENCE WHEN INFORMATION
ITSELF CHARGED WILLFULNESS
THEY DID NOT CHARGE IT THAT
WAY THEY CHARGED THE KNOWLEDGE
COMPONENT.
SO I THINK THAT GIVES US THE
STANDING THE CHALLENGE THAT
NOW -- A LOT A LOT OF THE
ARGUMENTS I THINK THE COURT
DOESN'T HAVE TO REACH HERE
BECAUSE AS THE COURT KNOWS IN
2 # 0 # 0 # 4, THE LARGE --
LEGISLATURE AMENDMENTED THE
STATUTE INCLUDED WILLFULNESS
FOR ALL PARTS OF THE STATUTE.
SO REALLY, WE DON'T HAVE THE
COURT DOESN'T HAVE TO DECIDE
WHETHER FEDERAL FALSE CLAIMS
STATUTE SHOULD BE ANALOGIZED
TO OR NOT, BECAUSE THERE IS NO
FEDERAL STATUTE EITHER FALSE
CLAIM STATUE OR FEDERAL
MEDICAID FROM AED STATUTE THAT
HAS A NEGLIGENCE STANDARD.
WHICH IS WHAT THE OLD VERSION
OF THIS STATUTE REQUIRED.
AND THAT BRINGS US TO THE
STATE'S AN ALLEY TO DELIBERATE
IGNORANCE DOCTRINE ON PAGE 28
OF OUR INITIAL BRIEF, WE CITE
3ED OR 4 FEDERAL CASES THAT
DISTINGUISH BETWEEN THE

DELIBERATE IGNORANCE DOCTRINE
AND NEGLIGENCE.
SO THE TWO STANDARDS ARE NOT
THE SAME.
AND SO.
GUESS WHAT I'M CONCERNED
ABOUT, AND MAYBE -- STATE
BOISH VERSUS HARDIN DEALS WITH
THIS ISSUE MY CONCERN IS
SIMPLY BECAUSE THE STATUTE
REQUIRED -- REQUIRES ONLY
NEGLIGENCE, DOESN'T
NECESSARILY MEAN IT IS
PREEMPTED UNLESS IT COPFLICTS
WITH THE POLICY BEHIND THE
FEDERAL LAW, I MEAN, THERE CAN
BE LAW STATE LAWS THAT REQUIRE
ONLY NEGLIGENCE, AND THAT ARE
NOT PREEMPTED EVEN THOUGH THE
FEDERAL LAW REQUIRES MORE.
WHY WHAT PRONG FULFILL OF THE
PREEMPTION DOCTRINE SO THAT IT
WOULD BE UNCONSTITUTIONAL.
I THINK IT IS THE SAME
DISCUSSION IN HARDIN WOULD
APPLY THAT THE FEDERAL
GOVERNMENT HAD SPECIFIC INTENT
BECAUSE THIS IS A VERY
COMPLICATED REGULATORY FIELD
THAT HE HE CERTAIN
ARRANGEMENTS ARE LEGITIMATE,
AND THAT OF YOU YOU SHOULD
HAVE WILLFULNESS,NEWS AN
EXAMPLE IN THIS CASE, THE
STATE HAS CHARGED ON 2 # 2
OCCASION
OCCASIONS THE AGENT WENT BY
CLINIC IT WASN'T OPEN WHEN
THEY BILLED FOR THOSE DAYS.
WHAT IS 2A?
WHAT DOES IT PROHIBIT?
IT PROHIBITS FILING FALSE
INFORMATION, FALSE STATEMENT.
THERE IS A 2B SECTION THAT
IS FALSE CLAIMS BUD THEY DID
NOT CHARGE --
UNDER 2A.
RIGHT SO YOU ARE CHARGED
WITH FILING FALSE INFORMATION.
FALSE STATEMENTS, CORRECT.
FALSE STATEMENTS IN THE
PARALLEL FEDERAL STATITY.
SO ANOTHERED TO -- IN ORDER
TO, WOOLINS SAID SOMETHING

ALONG A COMMON SENSE LINE TO
ME, AND THAT IS HOW CAN UYOU
NEGLIGENTLY KNOWINGLY FILE A
FALSE STATEMENT?
AND
AND, BECAUSE IF YOU KNOW IT IS
FALSE, THEN THAT IS WHAT THE
STATUTE PROHIBITS?
THE STATUTE DEFINES
KNOWINGLY AS INCLUDING AS A
DEFINITION SHOULD HAVE KNOWN,
SO --
THAT BRINGS US BACK TO THE
FACT THAT THEY CHARGED YOU
WITH KNOWING, IF IT GETS TO A
POINT IN WHICH THE PROOF IS
THAT YOU IT WAS ONLY NEGLIGENT
THEN YOU GOT A DIFFERENT
ISSUE, BUT --
THE STATE DOES NOT HAVE TO
CHARGE THE DEFINITION OF AN
ELEMENT WHEN IT CHAJZ
INFORMATION IT CHARGES THE HE
WILL --MENT IS KNOWINGLY THE
STATITY ITSELF THEN THE
DEFINES KNOWINGLY TO INCLUDE
NEGLIGENCE BUT IN PLEADING,
THE STATE ONLY HAS TO PLEAD
KNOWINGLY.
IT COMES UP AT THE JURY
INSTRUCTION STAGE WHEN YOU
DEFINE THE ELEMENT THE
DEFINITION IN THE STATUTE
INCLUDES NEGLIGENCE AND --
[INAUDIBLE]
KNOWINGLY DOES NOT -- SHOULD
HAVE KNOWN -- INTENTIONAL
[INAUDIBLE]
.
I WOULD JUST COMMENT IN
BRADFORD WHEN THE ISSUE OF
WHAT WAS THE INTENT IN --
SOLICITATION STATUTE CAME UP,
THE COURT DECLINED TO READ
INTENT TO DEFRAUD IN THE
STATUTE, TO CONSTITUTIONALITY
SAID LEGISLATURE USED THIS
TERM WE ARE NOT GOING TO
CHANGE IT THEY USED THAT TERM.
SO I THINK THE STATUTE AS
WRITTEN IS UNCONSTITUTIONAL
THE LEGISLATURE NOW HAS
CHANGED IT GO ALONG WITH
HARDIN'S RATIONALE.

DO YOU GEE THAT IF THE
STATUTE WOULD HAVE PROVIDED
FOR KNOWINGLY WITHOUT THEN
SETTING OUT THAT THE
DEFINITION IS WAS AWARE OR
SHOULD BE AWARE DIDN'T CONTAIN
THAT LANGUAGE WE COULD
INTERPRET IT AS REQUIRING
ACTUALLY KNOWLEDGE KNOWING.
IN ANY CRIMINAL CASE IN THE
YOU CHARGE THE ELEMENTS NOT
THE DEFINITIONAL LANGUAGE OF
WHAT IT MEANS AND THAT THE
DEFINITION COMES INTO PLAY --
I'M SAYING AS WE ARE -- WE
ARE USUALLY LIKE TO INTERPRET
STATUTES ANOTHERED TO -- IN
ORDER TO GRANT CONSTITUTIONAL
MEANING SO ABSENT THIS CLEAR
LANGUAGE THAT THEY WANT SHOULD
BE AWARE, IN THERE, WE COULD
SAY YOU KNOW WE INTERPRET
KNOWINGLY AS MEANING
INTENTIONAL KIND OF ACT BUT
WITH THAT LANGUAGE IN THERE I
THINK WE CAN'T CHANGE THE
LANGUAGE, IN ORDER TO GIVE IT
A CONSTITUTIONAL
INTERPRETATION.
I AGREE IF THE COURT WERE
GO DOWN THAT ROAD THEN IT
WOULD HAVE TO THEN DECIDE
WHETHER KNOWING, KNOWLEDGE IS
ENOUGH OR WHETHER WILL
FULLNESS LIKE IN FEDERAL
STATUTE IS REQUIRED.
MY OE--
I KNOW --
GENERALLY INTENT IS KNOWING
THAT YOU ARE DOING THE CONDUCT
RATHER THAN ACCIDENTLY OR
NEGLIGENTLY DOING IT.
WILLFUL CONDUCT IS YOU DO
IT WITH KNOWING YOU ARE
VIOLATING THE LAW.
EITHER WAY IT --
[INAUDIBLE]
.
WELL THERE'S -- THERE IS A
DIFFERENCE IN THE -- IN THE
DEFINITIONS OF THOSE TERMS,
AND THE WAY THE CHARGES
WRITTEN IS KNOWINGLY NOW IF
THEY WANT TO GO BACK SUPERSEDE

WITH WILFULLY, THEY COULD HAVE
DONE THAT, INSTEAD OF SAYING
WE ARE ONLY GOING PROCEED ON
WILLFULNESS THEORY, WE STUCK
HERE ON WHAT'S IN INFORMATION,
AS CHARGED.
AND I THINK -- THE FEDERAL
FALSE STATEMENTS STATUTE
ALWAYS HAS HAD WILL FULLNESS.
--
OPPORTUNITY TO FINISH
JUSTICE CANTERO'S QUESTION
WITH REGARD TO PREEMPTION YOU
WERE GIVING THE ELEMENTS
DISCUSSING THAT, BUT ARE
YOU --
I JUST BELIEVE THAT THE
SAME DISCUSSION IN THE HARDIN
PIN AS TO WHY WILLFULNESS IS
NECESSITIES APPLIES TO BOTH
PROVISION, AND WOES ONE SENSE
OF THAT IS BECAUSE CONGRESS
ALWAYS HAD WILLFULNESS FOR
THEETHE
FALSE STATEMENT PRONG.
THE KICKBACK PROVISION HAD
LESSER STANDARDS INITIALLY AND
THEN WERE RAISED TO THE
WILLFULNESS STANDARD BUT FOR
FALSE STATEMENTS,IT WAS ALWAYS
WILLFUL SO I THINK THAT --
HE'S -- HE VINCE CONGRESSIONAL
INTENT THAT EVINCES
CONGRESSIONAL INTENT THAT WAS
IMPORTANT TO CONGRESS.
LET ME TURN TO PATIENT
BROKERING STATUTE FAUMCH
ISSUES WERE RAISED I WILL
FIRST -- TURN TO -- I TKHINK
JUSTICE PARIENTE HAD THE WAS
ON THE RIGHT APPROACH, AS I
UNDERSTAND THE ISSUE, THAT
THERE IS A FUNDAMENTAL
DIFFERENCE BETWEEN THE FEDERAL
AND STATE RICO STATUTES THE
FEDERAL RICO STATITY WHEN IT
DEFINES OFFENSES THAT ARE PART
OR CAN BE A PATTERN OF
RACKETEERING ACTIVITY POINT TO
SPECIFIC STATUTES, THE FLORIDA
STATUTE,HOWEVER, ONLY POINTS
TO CHAPTERS,OF THE LAW, AND
WITHIN CHAPTER 817 THERE ARE
DOZENS OF OFFENSES SOME WHICH

OF.
THAT IS YOUR CONSTRUCTION
OF THE RELATING TO --
CORRECT, AND THE ONE.
THAT WE HAVE SAID THAT?
HAVE.
PARDON.
HAVE WE EVER SAID THAT?
NO CHLT.
YOUR OPPONENT MAKES A
COGENT ARGUMENT THAT THAT
REFERENCE IN SUBSECTION 27
RELATING TO IS SIMPLY A
RECITATION OF THE TITLE OF 817
WHICH SAYS FRAUDULENT PRACTICE
FALLS WILL -- FALSE PRETENSES
FALLS GENERALLY CRANED CARD --
YES, I THINK THAT THAT IS
THE POINT THAT JUSTICE
PARIENTE WAS MAKE HAG THAT IN
THE BRADFORD CASE, THIS COURT
HELD THAT THE ARRANGEMENT IN
CLASSIFICATION OF LAWS FOR
PURPOSES OF CODIFICATION AND
FLORIDA STAT YOOULTS IS AN
ADMINISTRATIVE FUNCTION OF THE
JOINT LEGISLATIVE MANAGEMENT
COMMUNITY OF THE FLORIDA
LEGISLATURE CLASSIFICATION OF
A LAW OR PART OF A LAW AND IN
PARTICULAR TITLE OR CHAPTER,
OF FLORIDA STATUTES, IS NOT
DETERMINATIVE ON THE ISSUE OF
LEGISLATIVE INTENT.
YEAH THAT MAY BE TRUE IT IS
NOT DETERMINATIVE BUT IT IS
CERTAINLY ONE ITEM TO
CONSIDER.
YES.
THAT YOU WILL MEANS JUST
BECAUSE CHAPTER 2817 THE TITLE
SAYS FRAUDULENT PRACTICE FALSE
PRETENSES THAT DOESN'T
NECESSARILY MEAN THAT NVRG THE
STATUTE ITSELF RELATES TO
FRAUD.
BUT WHEN WE ARE DETERMINE
WHATTING THE LEGISLATURE MEANT
IN SUBSECTION 27, WHEN IT
SAYS, CHAPTER 18 RELATING TO
FRAUDULENT PRACTICES
CERTAINLY, EVIDENCE IN PRETTY
PERSUASIVE EVIDENCE THAT THE
TITLE OF THAT CHAPTER THEN

INCLUDES THOSE SPECIFIC ITEMS.
WE BELIEVE THE ELEMENT --
ONLY INCLUDES THOSE ITEMS THAT
ACTUALLY HAVE FRAUD AS AN
ELEMENT.
OR INTENT TO DEFRAUD AS AN
ELEMENT.
DIDN'T THE 11th CIRCUIT IN
A VERY SIMILAR ANALOGOUS
CIRCUMSTANCE SAY EXACTLY THAT
WELL THIS RELATES TO
EVERYTHING IN THE STATUTE AND
NOT JUST THE --
WELL, AGAIN THAT GOES BACK
TO THE DIFFERENCE IN THE WAY
THE FEDERAL AND STATE STATUTES
RICO STATS -- STATUTES ARE SET
UP THE FEDERAL STATUTE DOES
SPECIFICALLY POINT INCLUDE
SPECIFIC STATUTES, NOT OLD
CHAPTER -- NOT WHOLE CHAPTERS
THAT IS DISTINCTION WE BELIEVE
THAT IS DISTINCTION THE FOURTH
BCA MADE IN THEIR CASES.
.
--
DCA MADE IN THEIR CASES.
.
[INAUDIBLE]
.
.
I DISAGREE, MAYBE THE FACTS
AN EXAMPLE OF THE FACTS HERE,
FROM THE PROBABLE CAUSE
AFFIDAVIT ONE OF THE
ALLEGATION S
ALLEGATIONS IS ON 2 # 2 DAYS
THEY WERE BILLING, BILLINGS
WERE MADE WHEN THE OPERATION
OF THE ENTERPRISE WAS CLOSED.
THE STATE HAS NOT ALLEGED
HOWEVER THAT THOSE BILLINGS
WERE NOT MADE ON OTHER THAT
THEY WERE NOT IN FACT BILLED
OR THAT CONDUCT THAT WAS
BILLED WAS NOT IN FACT
PROVIDED THAT IT WAS MEDICALLY
NECESSITIES AND EVERYTHING
ELSE WAS LEGAL WAS JUST THE
WRONG DAY, IT COULD BE
NEGLIGENT.
--.

NECESSARY, [INAUDIBLE]

.
BECAUSE IT HAS NO, IT
DOESN'T REQUIRE PROOF OF
FRAUD.
IT CAN BE SIMPLY BY MISTAKE.
--
IN[INAUDIBLE]
.
CORRECT.
WELL
WELL.
YOU MAY FILE FALSE
STATEMENT NOT BE --
[INAUDIBLE]
YEAR AFTER YEAR --
LET ME GIVE THE COURT AN
EXAMPLE THE PATIENT BROKERING
STATUTE SPECIFICALLY --
CONDUCT THAT IS LEGAL UNDER
THE FEDERAL MEDICAID FRAUD
STATUTE IN REGULATION,
SUBSECTION 3 INCORPORATES BY
REFERENCE THE FEDERAL STATITY
AND SAFE HARBORS, ONE OF THOSE
SAFE HARBORS, IS
ADMINISTRATIVE SERVICES, --
[INAUDIBLE]
ONE EXAMPLE IS THAT THE SAFE
HARBOR REQUIRES THE ARRANGE
ARRANGEMENT -- IN THE CIRCUIT
COURT HERE IT WASN'T IN
WRITING.
NOW --
[INAUDIBLE]
IF THERE'S A VIOLATION OF
[INAUDIBLE]
CONSTITUTIONAL -- ACT, IS
CURRENT
CURRENTLY -- [INAUDIBLE]
.
I GUESS WE HAVE TO READ
FRAUD INTO -- THE AS AN
ELEMENT MIND SUGGESTION IS
THAT AS WRITTEN IT CAN THE
PROVISION -- VIOLATED, AS IN
MY EXAMPLE BY NOT HAVING THE
ARRANGEMENT IN WRITING.
BUT THE OTHERWISE, COULD BE
LEGAL.
SO THERE IS CERTAINLY
CIRCUMSTANCES WHERE THE YOU
CAN VIOLATE THE PATIENT
BROKERING STATUTE NOT --
HARBOR BUT BE CLOSE ENOUGH

THAT IN THE FEDERAL STATUTE IT
WOULD HAVE TO BE PROVEN TO BE
WILLFUL.
THAT GOES AGAIN TO THE
CONSTITUTION
CONSTITUTIONAL ARGUMENT THAT
WE HAVE RAISED THAT THE
PATIENT BROKERING STATUTE
LEAST AS APPLIED AS IT IS HERE
TO THE MEDICAID SYSTEM THE
STATUTE ITSELF APPLIES TO
OTHER PRIVATE INDUSTRY AS WELL
BUT IN THIS CASE IT IS
APPLYING IT TO THE MEDICAID
SYSTEM.
AND IT IS NO DIFFERENT FROM A
KICKBACK, IN FACT, THE STATE'S
IM -- RE-- BRIEF SAYS ONLY
REASON THEY DIDN'T CHARGE IT
UNDER THE OTHER STATUE WAS
BECAUSE OF THE HARDIN CASE,
YET IN HARDIN, THIS COURT HELD
THAT MER NEGLIGENCE ON A KICK
BACK MYLATION TO BE PREEMPTED
BY FEDERAL LAW, THIS --
IF I CAN CAPTURE THE
QUESTION AGAIN, THE -- ALL
AROUND IT THE QUESTION IS IN
THE -- OF A FEE SPLITTING OR
THE WORD YOU WANT TO USE YOU
ARE GIVING A PERCENTAGE OF
SOMETHING, FOR WHAT --
INHERENTLY FRAUDULENT
PRACTICE, IF THAT IS --
DON'T THINK INHERENTLY
FRADULENT.
BUT THE STATE SEEMS TO BE
AARPINGING.
YES AND THEY DID THAT IN
HARDIN THEY ARGUED THAT THE --
FEE WAS ALWAYS PER HE HAD FEE
ILLEGAL.
EMPLOYEES OTHER ISSUE.
RIGHT.
HERE DIFFERENT SEENIO WHAT
IS YOUR RESPONSE TO THAT.
MY RESPONSE IS IF THERE IF
THEE SERVICES ARE RENDERED THEY
ARE NOT YELLING -- THAT THEY
ARE MEDICAID ELIGIBLE THE
SERVICES ARE RENDERED THE FEE
CHARGED IS A REASONABLE FEE,
IN THE INDUSTRY, THAT THAT THE
FACT THAT IS -- [INAUDIBLE]

FOR A PATIENT RATHER THAN
INDUCING PATIENTS BY
ADVERTISING IN DIFFERENT WAY,
SHOULDN'T BE CRIMINALIZED
UNLESS THERE IS INTENT.
THAT IS OE-- [INAUDIBLE]
.
PUBLIC IN THE FRAUDULENT
CLAIM --
CORRECT.
WHAT DOES THAT YOUR
ARGUMENT ON THE
CONSTITUTIONALITY, --
[INAUDIBLE]
AND I THINK TO SIMPLIFY THE
ISSUE I THINK THAT -- IS THAT
-- AS APPLIED -- TO THE FRAUD,
KICKBACK, WILLFULNESS, BECAUSE
OTHERWISE IT CONFLICTS WITH
HARDIN, THE MY EXAMPLE SHOWED,
IF THERE IS A SAFE HARBOR AND
THE FEDERAL EXCEPTIONS OF THE
FEDERAL MEDICAID STATUTE -- BY
ROUGHINS IN THE PATIENT
BROKERING LAW SO IF YOU FIST
ONE OF THOSE IT IS LEGAL, IF
YOU JUST BARELY MISS, IF YOU
DON'T -- AGREEMENT IN WRITING,
IT IS ORAL BUT YOU COULD BE,.
IN THIS STATUTE THERE IS --
AND HARDIN --
--.
WHEN ABLE TO ARGUE ON THAT,
BEFORE YOU OE-- THAT IT SEEMS TO
ME HIS MAKES IT UNLAW FULFUL TO
SOLICIT OR -- ANY COMMISSION
BONUS REBATE KICKBACK OR BRIBE
OR TO ENGAGE IN -- SPLIT FEE
ARRANGEMENT SO WHY DOESN'T THE
STATUTE -- UNIT OF PROSECUTION
EACH PAYMENT COMMISSION, BONUS
RELATE OR KICK BACK OR BRIBE?
TO THE PLAIN LANGUAGE THE
50 CA BASICALLY RELIED ON THE
PLAIN LANGUAGE WITH THE
ARRANGEMENT MEANS, AN
AGREEMENT WHICH IS LIKE A
CONSPIRACY.
IN WHICH IS INTERESTING
BECAUSE THE STATUTE DOES NOT
HAVE A CONSPIRACY.
COMPONENT IT ONLY HAS AIDING A
BETING.
ON THAT SCORE, I MEAN,

AGAIN, -- AND, THE ACTUAL
INFORMATION, THAT BETWEEN
ENGAGE IN ANY -- ARRANGEMENT,
ARRANGEMENT -- PROOF SHOWS
THAT TO BE IS ONE THING.
BUT WHY ISN'T THIS SUFFICIENT
ALLEGATION THAT BETWEEN THOSE
DATES THERE WAS A SPLIT FEE
ARRANGEMENT?
BECAUSE THEY ARE ACTUALLY,
THEY ARE CHARGING EACH PAYMENT
AS VIOLATION.
CHARGING BETWEEN IT SAYS,
THAT IT IS BETWEEN JULY 24,
AND AUGUST 1.
2002.
-- COUNT 92.
THAT IS THOSE WHAT I READ THAT
TO MEAN IS THAT THIS WAS AN
ARRANGEMENT THAT CAUSED THERE
TO BE AT FEE SPLITTING FOR
SERVICES RENDERED DURING THOSE
TWO DATES.
WELL, AS THE 50 CA
FORWARDED THE PROSECUTOR
DURING THE HEARING, WHAT THAT
PERIOD INCLUDES IS WHEN A
CLAIM IS SUBMITTED TO MEDICAID
PROGRAM, IT IS INCLUDEING
SERVICE PERFORM OVER A PERIOD
OF TIME, IT ISN'T INDIVIDUAL
DAYS, THERE RARE GROUPED AND
THAT FORM IS THEN SUBMITTED.
THEY CHARGE YOU FOR EACH
INDIVIDUAL GROUP.
THEY WERE CHARGING FOR EACH
SUBMISSION OF A CLAIM FORM
ESSENTIALLY, AND, OUR THEORY
IS THAT IT IS ARRANGEMENT NOT
THE CLAIM IF IN FACT IF IT WAS
THE CLAIM, THE -- LEGISLATURE
KNOWS HOW TO CHARGE THAT
BECAUSE IN CHAPTER 409 THEY
HAVE A SUBSECTION FOR FILING
FALSE CLAIMS.
BUT IN THE STATE DOESN'T WANT
TO USE THAT STATUTE BECAUSE OF
THE CONSTITUTIONAL PROBLEM.
BUT I DON'T THINK THEY SHOULD
BE ABLE TO AVOID IT AND OTHER
ASPECTS OF THE PROSECUTION I
SEE MY TIME IS UP.
YES.
OUR ASSISTANCE WE EXTENDED

WELL BEYOND YOUR TIME AND I
KNOW WE HAVE MANY ISSUES, AND
SOMEWHAT COMPLEX BUT WE DO
THANK YOU FOR YOUR ENLIGHTENED
ARGUMENT.
.
JUST ONE OR TWO POINTS, AS
TO THE MEDICAID FRAUD STATUTE
AND WHEN WE HAVE TO PROVE
WILLFULNESS I SAID THAT IT
THINK IT IS INHERENT IN THE
DEFINITION IF YOU -- DELETE OR
OTHERWISE DISTINGUISH THERE
SHOULD BE AWARE LANGUAGE
PROSECUTING UNDER THAT
LANGUAGE THE ULTIMATE QUESTION
HERE AND PREEMPTION ARGUMENT
IS WHEN -- WHETHER DOING THIS
TWO FRUSTRATE SOME PURPOSE OF
CONGRESS, THAT IS THE ULTIMATE
PREEMPTION QUESTION.
AND CLEARLY TO PROSECUTE THIS
CONDUCT UNDER THE DEFINITION
WE HAVE, WITH THE SHOULD BE
AWARE SHOULD BE AWARE LANGUAGE
SET ASIDE OR WE FOLLOW THE
ROLL -- WOOLIN CASE YOU ARE
NOT FRUSTRATING ANYTHING THAT
CONGRESS WANTED TO ACHIEVE, IN
THE FEDERAL STATUTES, AS TO
THE RICO QUESTION, -- AND THE
PREDICATE ACT QUESTION, IF YOU
LOOK AT THAT STATUTE, YOU WILL
SEE I THINK AT PRESENT THERE
ARE SOME 4 # 4
SUB-SUB-SUBPARTS TO IT WITH
RELATING LANGUAGE, SOME OF
THESE ARE ACTUALLY PINPOINT
CITATIONS EITHER TO SPECIFIC
SECTION OR EVEN A SUBSECTION
OF A STATUTE AND THEN IT SAYS
RELATING TO.
SO I THINK VERY CLEARLY, THE
PURPOSE OF ALL THE RELATING TO
LANGUAGE WAS SIMPLY TO ASSIST
IN THE IDENTIFICATION OF THE
VIOLATION THAT THE PROSECUTOR
WANTED TO CHARGE.
AND WHEN OF YOU VARIATION IN
SOME CASES OF YOU PINPOINT
STATUTES IN OTHERS RELATING TO
LANGUAGE IS AS HERE RELATING
TO FRAUDULENT PRACTICE FALSE
PRESENCES ET CETERA WHICH ARE

CHAPTER TITLES I TKHINK CLEARLY
THE INTENT OF LT.URE WAS TO
AUTHORIZE PROSECUTION ANY OF
ACT IN THAT CHAPTER OR TITLE.
THAT IS JUST A COMMONSENSE
INTERPAPPROPRIATION OF WHAT
WAS -- RELATING TO LANGUAGE
WAS INTENDED TO ACCOMPLISH.
IN REGARDS TO WHEN OR NOT
THE UNIT OF PROSECUTION ISSUE
THE YOUR OPPONENT SAYS THAT
THAT "OR"
LANGUAGE DEMSTREETS BASICALLY
THAT YOU CAN ONLY DO --
DEMONSTRATES BASICALLY CAN YOU
DONL THE ARRANGEMENT BUT DOES
THAT LANGUAGE MEAN THAT YOU
CAN CHARGE THAT THERE WAS AN
ARRANGEMENT, AND EACH
SOLICITATION, EACH TIME YOU
GET A CHECK, FOR IT, --
LET ME EXPLAIN WHAT I THINK
IT MEANS THE LANGUAGE IS
ENGAUGE, ENGAGE AND THEN
SPLITS THE ARRANGEMENT IN ANY
FORM WHATSOEVER IN TURN -- IN
RETURN FOR REFERRING PATIENTS,
NOW I THINK YOU ENGAGE IN
SOMETHING, WHEN YOU DO WHAT
THEY DID, OF YOU TO ARRANGE A
TIME FOR EVERYBODY TO BE
THERE.
MR. RUBIO HAS TO AGREE TO
BRING IN PATIENTS, THE
DENTISTS HAVE TO AGREE TO COME
UP FROM MIAMI, TREATY THE
PATIENTS, THEY SUBMIT, A CLAIM
AND THEN THEY SPLIT THE FEE
THAT IS ENGAGING IN A SPLIT
FEE ARRANGEMENT.
AND THEN.
WHAT HAPPENS.
THEY GOOT ONE FOR EACH TIME
THEY GOT ONE.
EACH TIME A PATIENT COMES
OF YOU --
WELL, I'M NOT SAYING, THAT
I'M SAYING EACH -- THAT IS NOT
WHAT WE CHARGED.
WHAT WE CHARGED WAS THIS
ARRANGEMENT THEY ENTERED INTO
WHERE THEY WENT THROUGH THIS
DRILL PERIODICALLY FOR THEY
CAME UP FOR A COUPLE OF DAYS,

TREATED PATIENTS, SUBMITTED
BILLS FOR THAT PERIOD OF TIME,
GOT WHAT A I WOULD THINK WOULD
BE ONE CHECK FOR THAT CLAIM,
AND THEN SPLIT IT.
THAT IS THE UNIT OF
PROSECUTION.
WITH OUR ASSISTANCE OF YOU
NOW EXHAUSTED YOUR TIME THANK
YOU BOTH PARTIES FOR ARGUMENT
THE COURT WILL MAKE -- TAKE
ITS MORNING RECESS.