



Prosecutors May Testify In \$1B Fla. Health Care Fraud Case

By Carolina Bolado

Law360, Miami (July 18, 2017, 9:53 PM EDT) -- A Florida magistrate judge indicated Tuesday she would allow limited questioning of federal prosecutors as part of a bid to disqualify them by a Florida businessman fighting a \$1 billion health care fraud case.

At a hearing in Miami, U.S. Magistrate Judge Alicia Otazo-Reyes said she would issue an order allowing some testimony of more than a dozen government witnesses that attorneys for defendant Philip Esformes want to question at an upcoming evidentiary hearing on his bid to disqualify the prosecution team for allegedly violating attorney-client privilege through improper collection of documents and communications.

In particular, the magistrate judge said she would allow the defense to question government agents who seized the allegedly privileged information during a search of an assisted living facility Esformes owned about any protocols used to prevent the prosecution from being tainted by improperly collected materials. Esformes' attorney Howard Srebnick of Black Srebnick Kornspan & Stumpf PA told the court the government had failed to provide any documentation of a protocol.

Judge Otazo-Reyes will also allow the defense team to ask additional questions of the prosecutorial team beyond what has already been stated in affidavits.

Federal prosecutor Allan J. Medina told Judge Otazo-Reyes that the defense is trying to "use government witnesses to establish their burden" in their move to disqualify the prosecution and said the government will appeal the orders allowing the questioning of prosecutors to the federal judge overseeing the case, U.S. District Judge Robert N. Scola.

The indictments against Esformes and two other Miami-area residents, alleging a complex scheme and featuring charges for payment of kickbacks, obstruction of justice, money laundering and wire fraud, represented the largest criminal health care fraud case the DOJ had brought against individuals, prosecutors said when they announced the charges last July.

The case targets Esformes, Odette Barcha and Arnaldo Carmouze. Esformes, who could face life imprisonment if convicted, was allegedly the ringleader, operating a network of 30 nursing homes and assisted living centers where medically unnecessary services were allegedly routinely supplied.

The indictments claimed the alleged scheme resulted in \$1 billion in false billing and that Medicare and Medicaid shelled out at least \$464 million in improper reimbursement.

Among the thousands of people cycled through the allegedly fraudulent network were drug addicts who were prescribed opioids in order to entice them to stay in facilities where they didn't belong, the DOJ claimed.

The alleged misconduct included paying kickbacks to attract patient referrals and receiving kickbacks in exchange for steering patients to other health care providers. The kickbacks were sometimes disguised as charitable donations, payments to female escorts and payments to a basketball coach for Esformes' son, according to the indictment.

The government previously argued successfully that Esformes was a flight risk, and he is being held in custody pending his trial, which is scheduled for September.

The United States is represented by Daniel Bernstein, Elizabeth Young, Alison Whitney Lehr, Allan J. Medina, Anthony Erickson-Pogorzelski, Daren Grove and Drew Bradylyons of the U.S. Department of Justice.

Esformes is represented by Roy Black, Howard M. Srebnick, Jackie Perczek and G. Richard Strafer of Black Srebnick Kornspan & Stumpf PA, Michael Pasano of Carlton Fields and Marissel Descalzo of Tache Bronis Christionson & Descalzo PA.

The case is U.S. v. Esformes et al., case number 16-cr-20549, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Nathan Hale and Jeff Overley. Editing by Alanna Weissman.