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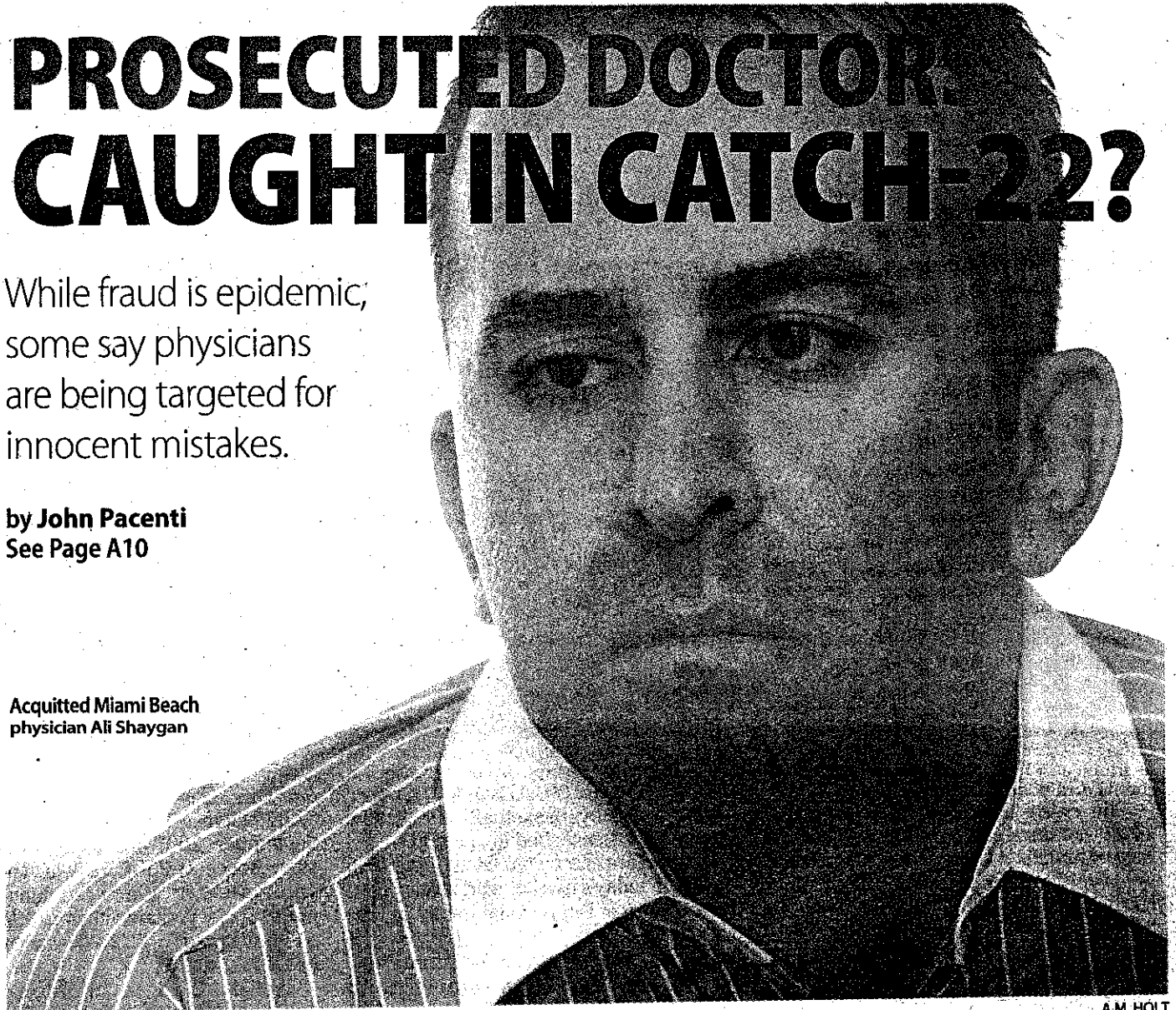
SPECIAL REPORT Health Care Law

PROSECUTED DOCTOR CAUGHT IN CATCH-22?

While fraud is epidemic,
some say physicians
are being targeted for
innocent mistakes.

by **John Pacenti**
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Acquitted Miami Beach
physician Ali Shaygan



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FORECLOSURE DEAL Bank of America was the seller

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SPECIAL REPORT Health Care Law

PROSECUTED DOCTORS: CAUGHT IN CATCH 22?

While fraud is epidemic, some say physicians are targeted for innocent mistakes

by John Pacenti
jpacenti@alm.com

In a sunshine-filled Miami Beach apartment adorned with geodes and crystals, Dr. Ali Shaygan ponders how to put his life back together as New Age music filters from the stereo.

It's hardly the environment of a physician once accused of running a pill mill.

It was only two years ago that the soft-spoken physician seemed to have achieved the dream of many physicians after years of schooling and working long hours. The Iranian-born doctor established a word-of-mouth, hands-on practice focused on family medicine.

If a patient could see Shaygan only on Sunday, then he worked Sunday. He worked holidays, at night, even met patients at his home or their workplace. Many of his patients were minorities.

"I would gladly see patients seven days a week," he said. "My patients really loved me and expressed it. I loved what I did."

Shaygan was treating the son of an established patient on Feb. 11, 2008. The boy had been in a car accident. His mother, who had advanced AIDS, was present. That's when agents from the Drug Enforcement Administration stormed into Shaygan's office to arrest him on charges of illegally prescribing narcotics to a patient who had died of a drug overdose. Shaygan was one of at least 14 doctors who had prescribed painkillers to the man who died.

Agents were shouting, some wore ski masks, others held SWAT shields. All had guns drawn.

"It was just something that was so horrific, it was ludicrous," Shaygan said. "It was as if they were a troop of agents who watched too many Mafia movies and had nothing to do and decided to treat a doctor like a gun-toting organized-crime figure."

The doctor eventually would become a poster child for prosecutorial misconduct, acquitted after a monthlong trial on 141 counts of illegally prescribing narcotics. U.S. District Judge Alan Gold would order the U.S. attorney's office to pay the \$601,000 bill for Shaygan's defense because of the unethical behavior of prosecutors.

Defense attorneys, patient advocates and physicians say his prosecution is indicative of how doctors have been caught in a web thrown by federal and state authorities to capture physicians in drug and insurance fraud.

They concede health-care fraud is a systemic problem perpetrated by criminal networks. But those who represent doctors are quick to say the government will pick up cases pushed by insurance companies and charge doctors



Miami Beach physician Ali Shaygan was arrested on charges of illegally prescribing narcotics to a patient who died of a drug overdose. One of at least 14 doctors who prescribed painkillers to the man, Shaygan was acquitted after a monthlong trial.

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with felonies over what are essentially billing disputes.

"Prosecuting doctors is the new hot trend," said David O. Markus, Shaygan's attorney. "Like we've seen before, the government has cast its net way too wide."

Doctor advocates say physicians are caught in a Catch-22, mandated to treat pain but risk being targeted by authorities when they do. They say doctors by and large are not trained to recognize drug addicts in the act of doctor shopping. Activists say organizations like the American Medical Association have been missing in action on the issue.

Authorities hope a new law will give doctors an important tool in identifying addicts gaming the system. Gov. Charlie Crist signed a law in June to create a

statewide patient prescription database by December 2010. The governor last week also appointed nine new members to the prescription drug task force.

But for every Shaygan, there are physicians who cement Florida's reputation as the nation's pill mill capital, feeding much of the Southeast with illegal prescription drugs. Pain clinics and drug stores populate the landscape, and the DEA has devoted two special units to South Florida pain clinics.

The number of overdose deaths from opioid painkillers, including morphine and codeine, more than tripled from 1999 to 2006 to 13,800 deaths, according to national Centers for Disease Control and Prevention.

Dr. Mario Alberto Diaz of Miami was caught in 2006 doling out more than

Onthefweb

Audio of Shaygan and Bustillo on DailyBusinessReview.com

70,000 painkillers on the internet and was sentenced to a 2½-year prison sentence.

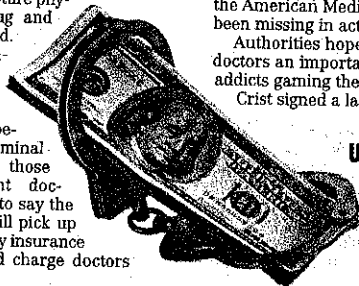
Dr. Douglas Randall Smith of Delray Beach made headlines for prescribing 120 oxycodone, 60 Xanax and 60 methadone tablets to a 22-year-old man after one visit in 2005. The patient died of an overdose the next day. Smith wasn't charged. He was fined \$20,000 by the Florida Board of Medicine.

Medicare fraud in South Florida is even more blatant. The Miami U.S. attorney's office issues press releases almost weekly on the latest medical scam that has resulted in an indictment or criminal sentence.

In October, Dr. Manuel Barbeite of Miami was sentenced to six years in prison and ordered to pay \$3.5 million in restitution for billing Medicare and Medicaid

U.S. attorney's war on health care fraud

Year	2005	2006	2007	2008	2009
Defendants charged	53	68	120	159	167
Fraud value	NA	\$138M	\$638M	\$794M	\$952M





Drug Enforcement Administration arrests of doctors

As many as 790,000 doctors are registered with the DEA.

2008	83 arrests
2007	85 arrests
2006	73 arrests
2005	68 arrests
2004	47 arrests
2003	35 arrests

through an HIV/AIDS infusion clinic. He fabricated records indicating he was treating AIDS patients for a rare illness associated with the disease.

FOCAL POINT

Health care fraud has been a focal point for federal authorities in South Florida for years.

On the prescription fraud front, 391 physicians have been convicted of drug-related charges since 2003. Twenty-four doctors who practiced in Florida have been convicted of prescription fraud since 2005. Sentences have ranged from probation to life in prison.

"The scope of prescription drug abuse is significant," said DEA spokeswoman Dawn Dearden in Washington. "The number of new initiates for just pain relievers alone rivals that of marijuana."

Recreational use of prescription drugs costs health insurers up to \$72.5 billion a year in bogus claims involving narcotics abuse.

Private health insurers lose up to \$24.9 billion annually, according to "Prescription for Peril," a 2007 report by the Coalition Against Insurance Fraud, a Washington-based nonprofit representing insurance, consumer groups and government agencies.

Dearden said teenagers and young adults mistakenly believe prescription medications are safer than illegal drugs.

"When these individuals abuse these substances, they often take them with other substances and/or alcohol, which is a dangerous if not deadly combination," she said. "Many of our youth also have the mistaken impression that pain relievers are not addictive."



BRUCE R. BENNETT/PALM BEACH POST

West Palm Beach defense attorney Richard Lubin represented a Boynton Beach cancer specialist acquitted last year of defrauding an insurance company.

Prescriptions for controlled substances must meet a two-pronged standard and must be issued by a practitioner for a legitimate medical purpose in the usual course of professional conduct, Dearden said.

"When a practitioner does not take any steps to discern the legitimate medical needs of the patient but merely asks the patient what drug to write on the prescription and repeats this process dozens of times a day, then the practitioner is not meeting either standard," she said.

'FALL GUYS'

The Shaygan case fired up a national debate on pain relief and who is responsible for the illegal spread of prescription narcotics like Oxycontin, hydrocodone and methadone. Physician advocates say the DEA's bullish prosecution of doctors like Shaygan has cast a chill over the profession as physicians refuse to prescribe narcotics, leaving their patients in pain and needlessly suffering.

"What we are finding is that doctors are now reluctant to prescribe scheduled drugs. They are afraid of their own patients because of fraud investigations," said doctor advocate Ronald Libby said. "They are suspicious of the government. That has to be a chilling environment to practice medicine."

Libby is a political scientist at the University of North Florida in Jacksonville, is married to a physician and last year published a book, "The Criminalization of Medicine: America's War on Doctors."

Never before has practicing medicine been so dangerous to a physician's freedom. Besides having to walk a fine line on prescriptions, doctors could find themselves prosecuted for fraud of all types.

With the U.S. health-care system in the midst of a legislative overhaul, doctors are a natural target, defense attorneys say.

"Often, physicians become the fall guys for all of the problems in our health-care system today," said West Palm Beach defense attorney Richard Lubin, who represented a Boynton Beach cancer specialist acquitted last year of defrauding an insurance company.

"Doctors have been getting a raw deal for years," said attorney Anthony Vitale, who runs a Miami health law and consulting practice.

The Coalition Against Insurance Fraud said doctors need to police their own if they want federal authorities to stop pursuing insurance and prescription fraud.

"If the medical profession wants to reduce the criminal prosecution of its own members, then its licensing boards should take swift and decisive actions against their own brethren who clearly

are acting illegally, immorally and unethically," said coalition spokesman James Quiggle.

Federal prosecutors have had plenty to crow about on the health-care fraud front. Numerous doctors have been caught fleecing taxpayers by running Medicare scams. The most common place fraud for doctors in Miami is writing prescriptions for wheelchairs and other medical equipment that was never delivered, not needed or was intended for nonexistent patients. Investigators have found other doctors involved in blood infusion clinics, a favorite ruse of Medicare scammers.

MIAMI MODEL

The U.S. attorney's office in South Florida has taken a national lead in exposing Medicare fraud, which rooted itself in the Miami area to the point that it almost was considered an economic engine.

Federal prosecutions in Miami increased from 98 defendants in 2006 to 227 in the year ended Sept. 30. The U.S. attorney's office identified \$950 million fraud in the last year.

The model for fighting Medicare fraud in South Florida has been copied in Los Angeles, Houston and Detroit. Nearly

ing the government less than \$100, advocates say.

Dr. Jane Orient, executive director of the Association of American Physicians and Surgeons in Tucson, Ariz., encourages doctors to stay away from subsidized federal and state health-care programs, saying it's not worth becoming a government target for paperwork mistakes. They would be better off treating the patient for free, she said.

"These are doctors whose lives were ruined when they were just trying to do a good job," Orient said. "There is definitely a lot of fraud by organized crime or fly-by-night outfits. Then there are physicians who are caught in what is a billing dispute."

Too often the government brings cases against physicians for what they should have known in the 110,000 pages of Medicare regulations, Libby wrote. Doctors are left bankrupt and their reputations ruined even after successfully fighting cases. "Medical fraud can be unintentional or accidental," Libby said in a chapter titled "Medical McCarthyism."

INSURANCE INTERESTS

Attorneys who make their living defending doctors in civil and criminal matters say one, if not the biggest, threat to



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Anthony Vitale, who runs a Miami health law and consulting practice, says insurers bully doctors about billing and will try to build a criminal case if a physician doesn't go along. "Malicious prosecutions are their trademark," he said.

two dozen physicians have been charged with Medicare fraud in South Florida in the past two years, but many operations simply use stolen patient and doctor identification.

Assistant U.S. Attorney Eric Bustillo, chief of the economic crimes unit at the U.S. attorney's office, said his unit is careful about charging a physician.

"Our job is not to get into the nuances of medical judgment. That's not what we do as prosecutors," he said.

Bustillo said it's rare to even target physicians for so-called up-coding, where legitimate medical services are provided but the paperwork submitted to Medicare or private insurers shows a higher level procedure than the patient received.

"The magnitude of the fraud here is such that you don't even have to get to those cases," he said.

Elsewhere in the country, though, cases have been documented in which doctors were prosecuted for overcharg-

physicians is not the DEA or the U.S. attorney's Medicare fraud strike force but private insurance carriers.

Insurers bully doctors about billing and will try to build a criminal case if a physician doesn't go along, Vitale said. Industry investigators have received extraordinary powers from Congress to assist state and federal prosecutions.

"The built-in conflict is that these private investigators — they call themselves 'special agents,' just like the FBI — answer to the insurance companies, not to the public," Vitale said. "Malicious prosecutions are their trademark."

Lubin said specialists are particular targets because they charge more for their services. Lubin's client, Boynton Beach oncologist Dipnarine Maharaj, was targeted by the FBI in 2006 after he tussled with Gainesville-based insurance carrier AvMed after pioneering the

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SPECIAL REPORT Health Care Law

FRAUD: Lawyers maintain many doctor prosecutions are unfair

first outpatient bone marrow transplant center. Maharaj's clinic was raided, his bank accounts were seized, and his case lasted for two years before he was acquitted at trial.

Insurance carriers "spend huge amounts of money putting together an investigation against a doctor. They put it in a box and wrap it up with a nice ribbon and hand it to law enforcement," Lubin said. "Law enforcement traditionally loves it when someone does all the work and hands them what looks like a packaged deal."

Vitale said the war on doctors started in the mid-1990s, when President Clinton made it a mandate to reduce health-care fraud. The FBI started investigating health-care fraud and billing disputes with Medicare, and private insurance carriers suddenly ended up as felons.

"That's when they started criminalizing things that used to be handled as civil matters, not treated as fraud," he said.

Quiggle said it's undeniable that doctors have been repeatedly implicated in rings that have ripped off taxpayers and insurance companies with fake claims that reach into the billions of dollars every year.

"This class of physician deserves very little mercy," he said. "The gray area is very debatable. I can't say whether it's hyperbole to make a point. Where is the data? If there's data, bring it forward and expose it to the glare of light and scrutiny."

EASY MARK

Defense attorneys say some federal investigators seem to resent doctors because of the money some of them make.

"There is real common thread in all of these things, and it comes down to

having an attitude if a doctor is making money that he must be doing something wrong," Lubin said.

Orient said the government sees doctors as "fat cats" and an easy source of money. The FBI reported in 2007 that health care fraud cases netted \$1.12 billion in court-ordered restitution, \$4.4 million in recoveries, \$34 million in fines and 308 seizures valued at \$61.2 million in medical fraud cases.

When Shaygan was interrogated by the DEA, he said the lead agent repeatedly referenced how much money he made.

Dr. Andrea Trescot is a professor at the University of Washington in Seattle who testifies in criminal cases involving doctors for both the prosecution and defense. While prosecuting pill mills is a good thing, she said prosecuting doctors like Shaygan is not. She considers him an easy mark — a physician not trained to detect addicts.

But investigators should have noticed his naiveté, she said. During one visit,



Shaygan discovered a wax buildup in an undercover agent's ear and cleaned it out.

"Now that's a drug dealer for you," she said sarcastically.

Siobhan Reynolds, president of the Pain Relief Network, an organization that fights for the rights of chronic pain patients and their doctors, said the switch to prosecuting doctors who prescribe narcotics was a product of DEA failures in the war on drugs.

"To get measurable results to preserve their piece of the pie, they changed their entire focus of the drug war to physicians," Reynolds said.

The Cape Cod, Mass., activist is a thorn in the side of the Justice Department. She became a patient and doctor advocate after her husband died. Reynolds attributes his death to not being able to get pain medication to treat a congenital connective tissue disorder after his doctor was prosecuted.

She is the subject of a grand jury investigation into possible obstruction of justice for her support of a Wichita, Kan., doctor charged with 34 counts of unlawfully prescribing painkillers.

"It's shocking," she said. "It's a great indicator that we are really on to something, but it's also so frightening."

Libby, the author, said the pursuit of Reynolds illustrates government overreaching.

"To even silence dissent, to say you can't even criticize the government, I think that is a serious constitutional issue," he said.

CROSSED THE LINE

Shaygan had no criminal record but spent a month after his arrest in the federal detention center in Miami because prosecutors said he was a flight risk as a native of Iran. He was allowed out on \$4.5 million bond and two forms of monitoring — an ankle bracelet and a GPS tracking device.

Shaygan's undoing was James "Brendan" Downey, a patient who died of an overdose from multiple medications, including methadone. His defense experts testified Downey died of a cocaine overdose, not methadone.

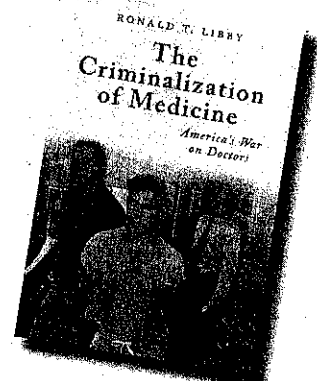
Shaygan said he felt sorry for Downey, who had foot surgery after an accident. He had seen 14 other doctors, all of whom prescribed drugs, Shaygan said.

"Unbeknownst to me, he was seeing other doctors," he said. "For some reason, they targeted me."

Shaygan was originally charged with 26 counts of illegally prescribing narcotics. The number went up to 141 counts shortly after he filed a motion to suppress statements made to investigators after his arrest. Shaygan had asked for an attorney repeatedly.

Lead prosecutor Sean Cronin told Shaygan's attorneys there would be a "seismic shift" in the case if they pursued the motion, according to court documents. After Shaygan won the suppression issue, Cronin and co-counsel, Andrea Hoffman, launched a witness tampering investigation that included taping the defense team of Markus, Marc Seitles and Robin Kaplan.

A trial witness audiotaped phone con-



Physician advocate Ronald Libby wrote "The Criminalization of Medicine" last year.

versations with Markus and a defense private investigator. The invasion of the defense camp was revealed during trial testimony.

After Shaygan was acquitted, Gold publicly reprimanded the Miami U.S. attorney's office, and ordered it to pay \$601,000 in defense bills and court costs. He forwarded his order to the bar associations in the states where Cronin, Hoffman and their supervisor, Karen Gilbert, are licensed.

Gold's order is on appeal by the Justice Department, Cronin and Hoffman.

Dr. Richard Rauck, an expert witness and professor at Wake Forest University in North Carolina, said he is seeing prosecutors increasingly take an all-or-nothing approach with physicians accused of prescription peddling.

"In my opinion, they have crossed the line in some cases," he said.

Shaygan, meanwhile, has just finished his résumé and is getting ready to look for work.

"I, for one, will be very reluctant to treat another patient with any controlled substance," he said.

"It took me a very, very long time to even feel safe enough to practice medicine again."

Trescot, the University of Washington professor, suggested Shaygan should talk to interns about how easy it is for a physician

to come under DEA scrutiny. "He could be a very positive voice," she said. "He could tell them, 'This is why you have to pay attention: This is why you need to be aware of the signs.'"

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Florida doctors convicted of prescription fraud

Name	City	Year	Sentence
Carlos Manjel Barrera	Miami	2006	3 years probation
Megaly S. Bethencourt	Miami	2005	2 years probation
Agustín Castellanos	Palm Beach Gardens	2006	3 years prison
Mario Alberto Díaz	Miami	2006	2 1/2 years prison
Jean C. Dominique	Tampa	2006	5 years probation
John Q. Durrett	Panama City	2007	20 years prison
Janardhana Durgappa	Coral Springs	2008	1 year probation
Mary Jane Ficher	St. Petersburg	2007	3 years probation
Lawrence Frides	St. Augustine	2008	10 years prison
Juan Oscar Gonzalez	Miami	2006	2 years probation
Rene Guerra	Miami Lakes	2007	1 1/2 years prison
Juan Ibanez	Haines City	2008	4 1/2 years prison
Robert Ignasiak	Freeport	2009	24 1/2 years prison
Sharon Johnson	Naples	2008	2 1/2 years prison
Gerardo Klug	Palm Beach	2009	2 1/2 years prison
Peter Lopez	Miami	2008	4 1/2 years prison
Seraphin Manfredonia	North Palm Beach	2007	3 years probation
Rogelio Martinez	Pensacola	2009	6 years prison
Thomas Merrill	Apalachicola	2006	Life in prison
Safraz Mirza	Melbourne	2007	2 years community control
Eric Ressler	Palm Beach Gardens	2006	4 years prison
Armando Solis	Miami Beach	2005	18 years prison
David Wang	Orlando	2008	5 years probation
Fred Williams	Panama City	2004	Life in prison



Markus



Seitles