

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. _____
) Violations: Title 18, United
) States Code, Sections 2, 371,
) 1341, 1343, and Title 21,
JOHN FROELICH)
DIANA SMOOT)
PAUL KOCOUREK)
FRANK KOCOUREK)
JOEY REYES)
THEODORE ZEGARSKI)
ROBERT TULLY)
EDGAR VARGAS)
ORANU IBEKIE)
HARTLEY THOMAS)

COUNT ONE

The SPECIAL SEPTEMBER 2005 GRAND JURY charges:

1. At times material herein:

The Individual Defendants and AIA

a. Defendant JOHN FROELICH ("Froelich"), a resident of Illinois, was a nurse licensed by the State of Illinois, but not by the States of Indiana or Arizona.

b. Beginning in or about early 2000 and continuing through early 2007, Froelich controlled and operated American Institute of Allergy, Inc.; American Institute of Allergy of Indiana, Inc.; American Institute of Allergy of Illinois, Inc.; American Institute of Allergy of Arizona, Inc.; Support Services of Illinois, Inc.; New Horizons, Inc.; and Progressive Care of Illinois, Inc. (hereinafter collectively referred to as "AIA"). AIA operated in Chicago, Illinois, in northwest Indiana, and in Phoenix, Arizona.

c. Froelich, doing business as AIA, claimed to provide allergy testing and allergy treatment, involving allergy shots.

d. AIA solicited individuals to sign up for its purported services at numerous locations in Illinois, Indiana, and Arizona, including at private gyms, firehouses, and other public and private locations.

e. Although the companies identified above were incorporated separately, they were operated as a single on-going business, generally using the same offices, business records, computers, clients, personnel, bank accounts, phone numbers, locations, protocols, and business operations.

f. AIA's main office was located at 5351 W. Lawrence Avenue, Chicago, Illinois. AIA employees prepared allergy shots there. AIA did not maintain any facility or equipment for testing blood.

g. AIA obtained undiluted antigens, which AIA employees used to prepare allergy shots. Between approximately 2000 and 2002, the labels on the bottles containing the undiluted antigens carried a warning that said: "Caution: U.S. Federal Law Prohibits Dispensing Without Prescription". Thereafter, the labels included the symbol "Rx", indicating the antigens were prescription drugs. The undiluted antigens were shipped to Chicago in interstate commerce from outside of Illinois.

AIA Representatives and Employees

h. Defendant DIANA SMOOT ("Smoot") worked for AIA recruiting individuals to have blood tests and allergy shots. She also supervised and trained AIA personnel to recruit patients, draw blood, and give allergy shots. Smoot held herself out as the Director of Services for AIA, and as a National Account Representative for AIA. Smoot had no medical background or education. Smoot worked with AIA from in or about early 2002 through October 2005.

i. Defendant PAUL KOCOUREK handled billing and administrative work for AIA, and, at times, held himself out as the owner or manager of AIA. Paul Kocourek worked with AIA from at least early 2000 through early 2007.

j. Defendant FRANK KOCOUREK handled billing for AIA, and worked for AIA from at least in or about early 2000 through in or about July 2004. Frank Kocourek and Paul Kocourek were brothers.

k. Defendant JOEY REYES ("Reyes") prepared allergy shots for AIA. Reyes, who was a licensed pharmacy technician, was not authorized to fill prescriptions, which included preparing allergy shots, without direct supervision by a pharmacist or doctor on the premises. Reyes worked for AIA, provided services to AIA, and received checks from AIA, from at least in or about early 2000 through in or about at least the summer of 2006.

l. Defendant THEODORE ZEGARSKI ("Zegarski") prepared allergy shots for AIA. Zegarski, who was a licensed pharmacy technician, was not authorized to fill prescriptions, which included preparing allergy shots, without direct supervision by a pharmacist or doctor on the premises. Zegarski worked for AIA from in or about March 2002 through in or about August 2004.

Doctors

m. Defendant DR. ROBERT TULLY ("Tully") was a doctor, licensed in Arizona. Dr. Tully was the medical director for AIA in Arizona for approximately 18 months, from approximately August 2000 through approximately March 2002.

n. Dr. Edgar Vargas ("Vargas") was a doctor, licensed in Illinois. Dr. Vargas was the medical director for AIA in Illinois for approximately 6 months, from approximately October 2001 through approximately April 2002.

o. Defendant DR. ORANU IBEKIE ("Ibekie") was a doctor, licensed in Indiana. Dr. Ibekie was the medical director for AIA in Indiana for approximately 6 months, from approximately April 2003 through October 2003.

p. Defendant DR. HARTLEY THOMAS ("Thomas") was a doctor, licensed in Indiana and Illinois. Dr. Thomas was the medical director for AIA in Indiana for approximately 18 months, from approximately in or about June 2005 through in or about the end of 2006.

q. AIA also had other medical directors in Illinois and Indiana, including doctors hereinafter referred to as Dr. AD and Dr. RC. Dr. AD died in December 2002. Dr. RC died in November 2005.

The Victims

r. AIA submitted claims to health care insurance programs (hereinafter referred to as "Insurance Victims") throughout the United States, including but not limited to Blue Cross and Blue Shield of Illinois, Anthem Blue Cross and Blue Shield, Cigna Insurance Company, United Healthcare Insurance Company, Midwest Operating Engineers Health & Welfare Fund, and Gilsbar Insurance Services.

s. Insurance Victims that received claims from AIA ordinarily authorized payment for allergy tests and allergy shots only if the tests and shots were medically necessary, that is, the tests and shots were needed to help treat the Individual Victims.

t. Insurance Victims that received claims from AIA ordinarily paid for allergy testing and allergy shots only if those services were actually provided, and only after those services were provided.

u. Many of the Insurance Victims that received claims from AIA ordinarily required that patients pay deductibles and co-payments, and prohibited a blanket waiver of those deductibles and co-payments by providers.

v. Numerous individuals (hereinafter referred to as "Individual Victims") allowed AIA to draw blood so that the blood could be submitted for allergy testing. Many of the Individual Victims subsequently received allergy shots from AIA personnel in order to treat allergies identified through allergy testing. The Individual Victims provided insurance information to AIA, which AIA used to submit claims to the Insurance Victims.

Laws, Regulations, and Accepted Standards

w. Under accepted medical standards, allergy testing and allergy shots should be ordered only after a doctor has done an appropriate history and physical examination of a patient; a doctor should examine a patient, and determine an appropriate course of treatment, before writing a prescription, including a prescription for allergy shots.

x. Under accepted medical standards, allergy shots should be administered or supervised by professionals who are capable of responding to emergency situations, including anaphylactic shock; appropriate medical equipment should also be available.

y. The Federal Food, Drug, and Cosmetic Act ("the Drug Act") defines a "drug" as, among other things, an article (1) that is intended for use in the cure, mitigation, treatment, or prevention of disease in humans, or (2) that is intended to affect the structure or function of the human body. 21 U.S.C. §

321(g)(1)(B) and (C). Antigens used to treat allergies are drugs, regulated by the Drug Act.

z. Under the Public Health Service Act ("Health Act"), "biological products" included therapeutic serum, vaccines, and allergenic products applicable to the prevention, treatment, or cure of a disease or condition of human beings. Antigens used to treat allergies are biological products.

aa. Many products, including antigens used to treat allergies, met the definitions of both drugs and biological products and were regulated both as drugs and biologics. Antigens were prescription drugs. The Drug Act prohibited dispensing of prescription drugs without a prescription issued by a doctor licensed by law to administer such drug.

bb. Under the Drug Act, the act of dispensing a drug without a valid prescription resulted in the drug being misbranded. 21 U.S.C. 353(b).

cc. Under the Drug Act, any vial or package containing a prescription drug had to be properly labeled, which included listing the "Rx" symbol on the labeling, identifying the full name and place of business of the manufacturer, packer, or distributor that prepared the drug, providing an accurate statement of the quantity of the contents in terms of weight and measure, identifying the established name of the drug, and providing adequate directions for use.

dd. Under Indiana, Illinois, and Arizona law, a prescription was not valid unless it included certain specified information which included the name, address, and signature of the physician who was writing the prescription, the name and address of the patient, the name, strength, and quantity of the drug ordered, and directions for using the drug being prescribed.

ee. Arizona law required that a doctor dispense drugs only to the doctor's own patients. Arizona law also required that a doctor provide direct supervision of medical assistants, nurses, and attendants involved in the dispensing of a drug, which meant that the doctor had to be present and had to make the determination as to the suitability of the drugs being dispensed based on the patient's physical condition.

2. Beginning no later than in or about early 2000, and continuing until in or about at least early 2007, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN FROELICH,
DIANA SMOOT,
PAUL KOCOUREK,
FRANK KOCOUREK,
JOEY REYES,
THEODORE ZEGARSKI,
ROBERT TULLY,
ORANU IBEKIE, and
HARTLEY THOMAS,

defendants herein, together with Dr. Vargas, and others, devised and intended to devise, and participated in, a scheme and artifice to defraud the Insurance Victims, and the Individual Victims, and

to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

Overview

3. It was part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, and Dr. Thomas, and others, ("the co-schemers") knowingly and intentionally defrauded and attempted to defraud the Individual Victims and the Insurance Victims by making false and fraudulent representations and omitting material information, by the following means, among others:

a. Co-schemers obtained blood samples and medical insurance policy information from more than 500 Individual Victims, for the stated purpose of conducting allergy testing and providing allergy shots, and made false representations concerning the cost of the testing and shots, the involvement of doctors in connection with the testing and shots, and the benefits to be gained by the Individual Victims, and by falsely promising that allergy test results would be promptly sent to the Individual Victims.

b. Co-schemers convinced the Individual Victims to agree to have a series of allergy shots, by falsely representing that the shots were medically necessary, when in fact the co-schemers knew that they were acting without regard to the Individual Victims' actual medical need for allergy shots, and

knowing that no doctor had determined that allergy shots would be beneficial for the Individual Victims.

c. Co-schemers attempted to reassure the Individual Victims who agreed to shots, by falsely representing that the shots were safe, and failing to warn the Individual Victims of potential health risks associated with the shots.

d. Co-schemers attempted to persuade the Individual Victims and the Insurance Victims that the blood tests and allergy shots were medically necessary by creating the appearance that doctors were writing valid prescriptions - in the form of Doctor's Order Forms - when, in fact, the doctors signed those purported prescriptions without knowing whether the Individual Victims needed the blood tests or allergy shots. Moreover, the prescriptions did not meet state statutory requirements and failed to identify what allergy shots were to be given or the strength of the shots, leaving the selection of the contents and strength of the shots to individuals who were unqualified to make such decisions.

e. Co-schemers attempted to make the Individual Victims and the Insurance Victims believe that the allergy shots were legitimately and appropriately prepared by professionals, when in fact, the allergy shots were mixed and prepared in office space that was not sanitary, and did not have proper ventilation, by AIA personnel lacking proper training and certification for such work. Certain antigens used in the shots had passed the expiration date set for those antigens.

f. Co-schemers attempted to obtain payment from the Insurance Victims by causing the submission of false and fraudulent insurance claims relating to allergy tests and allergy shots, including claims for medically unnecessary blood tests and allergy shots, claims for services that were not provided, and claims that included false information concerning the name of the physician, the location of the services, the existence of a diagnosis, and the work that AIA performed.

g. Co-schemers fraudulently submitted claims under the names of Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. Thomas, and other medical directors, even though those doctors did not provide, supervise, or participate in the services being billed.

h. Co-schemers submitted false and fraudulent documents to Insurance Victims, including fraudulent Doctor's Order Forms and progress notes, to convince Insurance Victims to pay claims submitted by AIA.

i. Co-schemers submitted claim forms to the Insurance Victims falsely representing that AIA itself had conducted blood testing, even though all blood testing was performed by a laboratory that was not operated or owned by AIA, and by submitting claims for certain blood tests even though those blood tests had not been performed. As a result of this scheme, the Insurance Victims paid AIA more than \$1.5 million for blood testing and allergy shots.

Marketing and Describing AIA

4. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Zegarski, Reyes, and others promoted and described, and caused others to promote and describe, AIA's allergy treatment program through the following means, among others:

a. AIA representatives fraudulently solicited Individual Victims to participate in AIA's program, and convinced Individual Victims to provide blood to be tested for allergies, without regard to whether allergy testing was medically necessary, and without regard to whether the Individual Victims had symptoms and complaints related to allergies.

b. AIA representatives falsely represented that they were acting at the direction and under the auspices of a doctor, even at times when AIA did not employ a doctor, and even though a doctor did not examine the Individual Victims, make a diagnosis, prepare a plan of treatment, draw blood, give shots, monitor patients, or directly supervise AIA representatives.

c. In some instances, AIA representatives, including Smoot and others, falsely represented to Individual Victims that the allergy blood tests and shots would be free, when, in fact, AIA submitted bills to Insurance Victims for the tests and shots. AIA ordinarily billed approximately \$1600 for each allergy blood test.

d. In order to induce Individual Victims to participate in the AIA program, AIA routinely waived all co-payments and deductibles required by the Insurance Victims, but intentionally failed to disclose such waivers to the Insurance Victims.

e. Smoot and others told Individual Victims that the allergy shots could cure their allergies, when, in fact, allergy shots cannot do so.

f. In order to convince Individual Victims to have blood drawn, Froelich, Smoot, Paul Kocourek, and others acting at their direction falsely represented that test results would be sent to the Individual Victims shortly after the blood was drawn, even though AIA repeatedly failed to provide test results to Individual Victims.

g. Froelich, Smoot, Zegarski, Reyes, and others told Individual Victims that they should have allergy shots because of the results of their blood tests, without explaining to the Individual Victims that the shots required a prescription from a doctor, based on a physical exam and a determination by a doctor that such shots constituted appropriate treatment. They also failed to discuss the health risks associated with allergy shots.

h. Froelich, Smoot, Zegarski, Paul Kocourek, Frank Kocourek, and others falsely represented that the AIA program involved a doctor, during periods of time when AIA did not have any doctor associated with the program. Moreover, Froelich, Smoot,

Frank Kocourek, Dr. Ibekie, and Dr. Thomas falsely represented to Insurance Victims and Individual Victims that AIA medical directors, including Dr. Vargas, Dr. Ibekie, Dr. Thomas, and Dr. AD, were examining Individual Victims, reviewing test results, and actively supervising and participating in the AIA program.

i. Various doctors - including Dr. Tully, Dr. Vargas, Dr. Ibekie, and Dr. Thomas - signed employment agreements designed to create the false appearance that those doctors were supervising and actively participating in AIA's allergy program.

Allergy Tests

5. It was further part of the scheme that Froelich, Smoot, Zegarski, Reyes, Paul Kocourek, Dr. Ibekie, Dr. Thomas, and others caused certain laboratories to conduct medically unnecessary allergy tests on Individual Victims' blood, by the following means, among others:

a. Froelich, Smoot, Paul Kocourek, Reyes, Zegarski, Dr. Ibekie, and Dr. Thomas caused allergy tests to be performed on blood drawn from the Individual Victims, even though the Individual Victims had not been examined by a doctor, and no diagnosis or plan of treatment had been made, and without regard to whether the Individual Victims had symptoms or complaints. Dr. Ibekie, Dr. Thomas, Dr. RC, and Dr. AD failed to examine Individual Victims before ordering the allergy tests to determine whether such tests were medically necessary and would help in establishing an appropriate course of treatment.

b. Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Ibekie, and Dr. Thomas caused claim forms to be submitted to the Insurance Victims, seeking payment for allergy tests, even though those individuals knew that: (1) ordinarily the Insurance Victims would not pay for allergy tests unless the tests were medically necessary, that is, the tests were needed to help determine the appropriate course of treatment for Individual Victims who had been diagnosed by a doctor as having allergies; and (2) the Individual Victims were not examined or diagnosed by a doctor, and the tests were not needed to help determine the appropriate course of treatment.

c. Froelich, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Smoot, and others, caused blood tests to be performed, and claims to be submitted to the Insurance Victims for the blood testing, even though the blood tests had not been ordered by a doctor.

d. Froelich, Paul Kocourek, and Frank Kocourek, and others caused claim forms to be submitted to the Insurance Victims falsely representing that AIA had performed the allergy blood testing, and had done so without the involvement of an outside laboratory; in fact, AIA did not own or control any equipment to test blood, and all of the allergy tests were performed by outside laboratories.

e. Froelich, Smoot, Paul Kocourek, Frank Kocourek, and Zegarski repeatedly caused AIA to submit to the Insurance Victims claims for payment for blood testing before the testing was done. In many instances, blood tests were not performed even after Insurance Victims paid for those tests, because the blood was too old to be tested, or Froelich believed that the amount paid by the Insurance Victim was too low.

f. Froelich, Smoot, Paul Kocourek and others represented, and caused other AIA employees to represent, to Individual Victims that the blood drawn from them would be tested and that they would be provided with the results of those tests. In fact, AIA held the blood until AIA learned whether the Insurance Victims would pay for the allergy test, and frequently discarded the blood - without notice to the Individual Victim - when an Insurance Victim refused to pay, or the amount it paid was not deemed adequate by AIA.

g. Moreover, because AIA delayed testing the blood until payment was secured from an Insurance Victim, at times, as the defendants knew, the blood had become too old to be reliably tested for allergies because the red blood cells had broken down, or hemolyzed, before AIA submitted it for testing. In some instances, those test results were provided to patients without disclosing that the test results were not reliable. In one instance, shots were prepared and administered based on results obtained from hemolyzed blood.

Allergy Shots

6. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, and others caused allergy shots - which required a valid doctor's prescription - to be given to Individual Victims without a valid prescription, and caused Individual Victims to be given medically unnecessary allergy shots, by the following means, among others:

a. Individual Victims were given allergy shots even though they had never been examined by a doctor, and no diagnosis or treatment plan had been made by a physician. Generally, Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. AD, and Dr. RC failed to advise Individual Victims that they should be examined by a doctor before getting shots, and that they should be monitored by a doctor when the shots were given.

b. AIA medical directors, including Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. AD, and Dr. RC, signed Doctor's Order Forms authorizing allergy shots without having personally examined the Individual Victims and without knowing whether the Individual Victims needed treatment.

c. AIA medical directors, including Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. AD, Dr. RC, and others failed to create individualized treatment programs for Individual Victims, failed to

discuss risks and benefits of treatment with Individual Victims, failed to adequately supervise shots being given to Individual Victims, failed to monitor the effect of the series of allergy shots given, and failed to provide appropriate follow-up care. Froelich and Smoot hired physicians for the limited purpose of having the physicians sign Doctor's Order Forms.

d. The Doctor's Order Forms used to order allergy shots failed to meet the state statutory requirements for a valid prescription, in that those documents failed to include the doctor's address, the patient's address, the name of the drug, the strength of the drug, and directions for the use of the drug.

e. Although Froelich knew that allergy shots could cause anaphylactic shock and other adverse reactions that would require immediate emergency medical treatment, Froelich administered allergy shots, and caused other AIA personnel to administer allergy shots, to Individual Victims without having appropriate emergency medical services, medical professionals, and medical equipment available.

f. AIA's medical directors, including Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. AD, and Dr. RC, authorized that allergy shots be administered to Individual Victims, without ensuring that appropriate emergency medical services were available to treat Individual Victims who were to be given allergy shots ordered by those doctors. Although Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr.

Thomas, Dr. AD, and Dr. RC, knew that AIA personnel did not have the ability to provide appropriate emergency medical treatment, those doctors failed to supervise the allergy shots, and failed to take steps to reduce the risk to Individual Victims.

Preparation of Allergy Shots

7. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, and others caused allergy shots, which were prescription drugs, to be selected and prepared by unqualified individuals, in conditions that were not sanitary, without appropriate prescriptions or supervision, by the following means, among others:

a. Reyes, Zegarski, and others, acting at Froelich's direction, prepared and mixed the allergy shots for the Individual Victims without supervision or participation by a pharmacist or doctor. Reyes, Zegarski, and other AIA personnel decided the contents of the shots that would be given to the Individual Victims, and selected the strength of those shots, even though Froelich, Reyes, and Zegarski knew that the content and the strength of the shots had to be determined by a physician and set forth in a prescription written by the physician. Zegarski, Reyes, and others based their decisions solely on the blood test results, without reviewing a history or physical, and without knowing the Individual Victim's age, weight, medications, or physical condition. The doctors who ordered the shots did not know what

shots would be given to the Individual Victims. Reyes and Froelich failed to advise the doctors concerning what shots had been prepared and dispensed.

b. Froelich, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, and others knew that the allergy shots were prepared in an office space that was not sanitary and lacked adequate ventilation.

c. Froelich, Zegarski, and Reyes used, and caused to be used, in preparing the allergy shots, certain antigens which had passed the expiration date. Some antigens were years out of date.

d. Froelich, Smoot, Zegarski, Reyes, Paul Kocourek, and Frank Kocourek concealed from and failed to disclose to Individual Victims and Insurance Victims that Zegarski and Reyes, and other unqualified AIA personnel, were solely responsible for selecting the type and contents of the Individual Victims' allergy shots, and that the shots were being prepared in an environment that was not sanitary and sometimes included expired antigens.

e. Froelich, Zegarski, Reyes, and others failed to properly label, or cause to be properly labeled, the vials and boxes that contained the allergy shots. Those shots were frequently shipped from Illinois to Indiana and Arizona.

f. Froelich, Reyes, Zegarski, and others, at times prepared shots, and caused shots to be prepared, even when the shots had not been ordered by a doctor.

Insurance Claims

8. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. Thomas, and others, fraudulently caused insurance claims containing false information to be submitted to the Insurance Victims, by the following means, among others:

a. Claim forms included false diagnoses, intended to fraudulently justify the tests, shots, and services being billed. Although claim forms indicated that Individual Victims had been diagnosed with having allergies, no doctor had made such a diagnosis because the Individual Victims had not been examined by a doctor.

b. Dr. Tully, Dr. Vargas, Dr. Ibekie, and Dr. Thomas each allowed AIA to submit claims under his name, even though those doctors had not examined or talked to the Individual Victims, and had no personal knowledge as to whether the Individual Victims had problems relating to allergies, and whether testing or shots were medically necessary.

c. Froelich, Paul Kocourek, and Frank Kocourek used, and caused to be used, incorrect diagnosis codes to fraudulently avoid having claims for allergy tests and allergy shots denied as routine screenings or preventative care, which were not covered by some health plans.

d. Claim forms contained false information concerning where services had been rendered, in order to conceal the fact that AIA was drawing blood and giving shots at gyms and other locations, instead of at a doctor's office. Many claim forms falsely listed Smoot's home address as the place where services had been rendered.

e. Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, and Zegarski caused claim forms to be submitted for services provided by certain doctors after those doctors stopped working for AIA, including for services allegedly provided by Dr. Ibekie, Dr. Vargas, Dr. AD, and Dr. MB. Claim forms were submitted for services allegedly rendered by Dr. Vargas for approximately two years after Dr. Vargas stopped working for AIA. Claim forms were submitted naming Dr. AD as the physician, even though Dr. AD had died. Claim forms were submitted naming another doctor ("Dr. MB") as the physician, even though Dr. MB never worked for AIA, and never provided services to any Individual Victims.

f. Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. Thomas, and others, caused claim forms to be submitted seeking payment for services that were not actually provided, including allergy tests, allergy shots, office visits, and other services that had not been performed or provided.

g. In order to mislead and deceive Insurance Victims, Froelich, Smoot, Paul Kocourek, Frank Kocourek, and others caused

certain claims to be submitted under the name of New Horizons in order to obtain payment from Insurance Victims that were refusing to pay claims submitted by AIA.

False Documents, Misrepresentations, and Concealment

9. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Zegarski, Reyes, and others created false documents and made false representations concerning AIA's doctors and business operations, by the following means, among others:

a. Froelich, Reyes, Zegarski, Paul Kocourek, Frank Kocourek, and others caused false documents to be created to make it appear that a doctor was ordering allergy tests, and allergy shots, when, in fact, no doctor was doing so. This included creating documents that had photocopies of doctors' signatures, even though the doctors were no longer working with AIA, and had not signed those documents.

b. Doctors working with AIA, including Dr. Vargas and Dr. Thomas, signed Doctor's Order Forms which were blank or partially blank. Froelich caused the doctors to sign those blank forms. Dr. Thomas also signed insurance claim forms which were blank. Froelich, Frank Kocourek, Reyes, Zegarski, and others subsequently added, and caused to be added, additional information on the forms, above the doctor's signature, in order to create the false appearance that the doctor had ordered allergy shots or

tests, even though the doctor had not done so. Froelich and others copied, and caused others to copy, blank forms signed by doctors, and filled in information on those forms.

c. Froelich and Smoot prepared and caused others to prepare false progress notes to support claims submitted to Insurance Victims.

d. Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, and others, falsely represented, and caused others to falsely represent, to Insurance Victims, Individual Victims, and others that AIA was working with a doctor during periods of time when AIA did not have a doctor, which included: (i) a period of approximately 2 years, between 2002 and 2004, after Dr. Vargas quit, when AIA did not have an Illinois doctor; (ii) a period of approximately 4 months after Dr. AD died; and (iii) a period of approximately 8 months between October 2003 and July 2004, after Dr. Ibekie quit.

e. Dr. Ibekie made false representations to a representative of Blue Cross and Blue Shield, and to an undercover federal agent. Specifically, Dr. Ibekie falsely represented that: (i) he oversaw the general treatment of AIA's patients and ensured that AIA met the criteria for the care of patients; (ii) he spoke with the AIA nurses concerning each patient; (iii) before he ordered a blood test for anyone, he went through a list of questions that he asked AIA concerning that patient; and (iv) he

saw all of the laboratory test results, and reviewed those results to determine whether the person needed shots.

f. Dr. Ibekie made false representations to two undercover federal agents who were posing as the parents of "Jane Sullivan", a fictitious child. Dr. Ibekie falsely represented that all of the Individual Victims' blood tests were sent to Dr. Ibekie. Moreover, Dr. Ibekie falsely represented that he had been seeing Individual Victims for about three months, and that he was fully involved in what AIA was doing. Froelich and Zegarski caused shots to be prepared for Jane Sullivan, and caused those shots to be produced to the undercover agents, without having a doctor examine Jane Sullivan, and without obtaining a medical history.

10. It was further part of the scheme that Froelich, Smoot, Paul Kocourek, Frank Kocourek, Reyes, Zegarski, Dr. Tully, Dr. Vargas, Dr. Ibekie, Dr. Thomas, and others did misrepresent, conceal, hide and cause to be misrepresented, concealed and hidden the purposes of and acts done in furtherance of this scheme.

Wire Fraud: Allergy Test Results From a Tennessee Laboratory

11. On or about February 18, 2002, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK,
JOEY REYES, and
ROBERT TULLY,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did

knowingly cause to be transmitted in interstate commerce from Phoenix, Arizona to Chicago, Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: a telefax from AIA's office in Phoenix, Arizona to AIA's office in Chicago, Illinois, providing allergy test results relating to an Individual Victim, Ca. Car.;

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT TWO

Wire Fraud: Fax from Dr. Tully to AIA

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about March 15, 2002, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK,
JOEY REYES, and
ROBERT TULLY,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Phoenix to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: a telefaxed copy of three Doctor's Order Forms, signed by Dr. Tully, sent from the AIA office in Phoenix Arizona, to the AIA office in Chicago, Illinois, prescribing allergy shots for Individual Victims Bran. Husk., El. War., and Marg. Will.;

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS THREE THROUGH FIVE

Wire Fraud: Allergy Test Results for Arizona Individual Victims

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK,
JOEY REYES, and
ROBERT TULLY,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Tennessee to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: telefaxes from a Tennessee laboratory to AIA's office in Chicago, Illinois, with each fax having the results of allergy testing for an Individual Victim from Phoenix, Arizona:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>
THREE	3/1/02	Bry. Mab.
FOUR	3/21/02	Se. Yo.
FIVE	3/28/02	Je. Krou.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS SIX THROUGH EIGHT

Wire Fraud: Allergy Test Results For Illinois Individual Victims

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK, and
JOEY REYES,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Tennessee to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: telefaxes from a Tennessee laboratory to AIA's office in Chicago, Illinois, with each fax having the results of allergy testing:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>
SIX	2/25/02	Jo. Conn.
SEVEN	2/27/02	Val. Sprin.
EIGHT	3/12/02	Jo. Mor.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS NINE THROUGH ELEVEN

Mail Fraud: Insurance Payments To AIA

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK, and
JOEY REYES

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause envelopes to be delivered by mail from Blue Cross/Blue Shield of Illinois to AIA in Chicago, Illinois, according to the directions thereon, each envelope containing a check that included payment for claims submitted by AIA, for the Individual Victims identified below, which envelopes were sent by mail, to AIA's Post Office box in Chicago, Illinois:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>	<u>Check Number</u>
NINE	2/25/02	Je. Lun.	82463320
TEN	3/04/02	Marv. Jo.	82583095
ELEVEN	7/29/02	D. Lom.	85493301

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS TWELVE THROUGH SIXTEEN

Wire Fraud: Allergy Test Results for Indiana Individual Victims

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK, and
ORANU IBEKIE,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Tennessee to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: telefaxes from a California laboratory to AIA's office in Chicago, Illinois, with each fax having the results of allergy testing for Individual Victims from Indiana:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>
TWELVE	4/27/03	Cher. Jon.
THIRTEEN	5/5/03	Aus. Co.
FOURTEEN	5/26/03	Li. Kib.
FIFTEEN	5/30/03	Vic. Raf.
SIXTEEN	6/16/03	Ly. Bont.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT SEVENTEEN

Wire Fraud: Fax from a Laboratory, Listing Blood Tests Performed

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about January 9, 2004, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK,
FRANK KOCOUREK, and
DIANA SMOOT,
THEODORE ZEGARSKI

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from California to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: a fax from a laboratory in California to John Froelich at the AIA office in Chicago, Illinois, which identified more than 200 Individual Victims whose blood had been tested by the California laboratory between March and December 2003;

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS EIGHTEEN THROUGH TWENTY

Mail Fraud: Blood Sent to a Laboratory For Allergy Testing

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK, and
FRANK KOCOUREK,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause packages to be delivered by FedEx, a commercial interstate carrier, according to the directions thereon, which packages were sent by AIA from the Chicago, Illinois office, with each package containing vials of blood from Individual Victims to be tested for allergies by a laboratory in California, and AIA identified Dr. Ibekie as the physician who had ordered the blood tests, even though Dr. Ibekie no longer worked with AIA, and, in fact, there was no AIA doctor:

<u>Count</u>	<u>Date</u>
EIGHTEEN	1/12/04
NINETEEN	1/27/04
TWENTY	2/10/04

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS TWENTY-ONE THROUGH TWENTY-FIVE

Wire Fraud: Allergy Test Results From a California Laboratory

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK, and
HARTLEY THOMAS,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from California to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: telefaxes from a California laboratory to AIA's office in Chicago, Illinois, with each fax having the results of allergy testing on an Individual Victim's blood:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>
TWENTY-ONE	8/26/05	Dan. Stron.
TWENTY-TWO	8/31/05	Ter. VanAr.
TWENTY-THREE	9/21/05	Lin. Tut.
TWENTY-FOUR	10/5/05	Jul. Ter.
TWENTY-FIVE	10/12/05	Le. Trev.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS TWENTY-SIX THROUGH THIRTY

Wire Fraud: Allergy Test Results From a New Jersey Laboratory

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraphs 1 through 10 of Count One of this indictment are realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

JOHN FROELICH,
PAUL KOCOUREK, and
HARTLEY THOMAS,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from New Jersey to Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: telefaxes from a New Jersey laboratory to AIA's office in Chicago, Illinois, with each fax having the results of allergy testing on Individual Victims' blood:

<u>Count</u>	<u>Date</u>	<u>Individual Victims</u>
TWENTY-SIX	10/26/06	8 Individual Victims
TWENTY-SEVEN	11/2/06	15 Individual Victims
TWENTY-EIGHT	11/3/06	1 Individual Victim
TWENTY-NINE	11/7/06	1 Individual Victim
THIRTY	11/8/06	7 Individual Victims

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT THIRTY-ONE

Conspiracy: Misbranding of Drugs

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraph 1 of Count One of this indictment is realleged and incorporated as though fully set forth herein.

2. Beginning in or about April 1999 and continuing until in at least in or about August 2006, in Chicago, in the Northern District of Illinois and elsewhere,

JOHN FROELICH, and
JOEY REYES,

defendants herein, together with Theodore Zegarski, Dr. Tully, Dr. Vargas, and Dr. Ibekie, conspired, and agreed with each other, and with others known and unknown to the grand jury, to commit offenses against the United States, namely, violations of Title 21, United States Code, Sections 331(a) and (k), and 333(a)(2).

3. It was a part of the conspiracy that Froelich and Reyes, together with others, with the intent to defraud and mislead, caused to be prepared, compounded, processed, held for sale, dispensed, and delivered for introduction into interstate commerce, allergy shots that were misbranded, within the meaning of Title 21, United States Code, Sections 352, and 353(b)(1), in violation of Title 21, United States Code, Sections 331(a) and (k), and 333(a)(2), in that Froelich and Reyes caused the labeling on the allergy shot containers to be misbranded in the following manner, among others:

a. The allergy shots were prescription drugs that were dispensed without obtaining valid prescriptions from a doctor authorizing the administration of the allergy shots.

b. The labeling failed to identify the allergy shots as being prescription drugs.

c. The labeling did not identify the name of the drug.

d. The labeling did not provide an accurate statement of the quantity of the contents in terms of weight and measure.

e. The labeling did not have adequate directions for use.

f. The labeling did not include the full name and place of business of the manufacturer, packer, or distributor of the drugs.

Overt Acts

4. In furtherance of the conspiracy and to effect the objects and purposes thereof, Froelich and Reyes committed and caused to be committed the following overt acts, among others, within the Northern District of Illinois and elsewhere:

a. On or about February 19, 2002, Reyes caused a document to be prepared identifying the contents of allergy shots designed for an individual, Ca. Car.

b. In or about March 2002, Reyes trained Zegarski to prepare allergy shots and the labeling for those shots.

c. In or about August 2004, Reyes trained another individual to prepare allergy shots and the labeling for those shots.

In violation of Title 18, United States Code, Section 371.

COUNTS THIRTY-TWO THROUGH THIRTY-THREE

Misbranding of Drugs: Allergy Shots for "Jane Sullivan"

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraph 1 of Count One of this indictment is realleged and incorporated as though fully set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, in Chicago, in the Northern District of Illinois and elsewhere,

JOHN FROELICH,

defendant herein, together with others, did dispense, and cause to be dispensed, prescription drugs without a valid prescription, contrary to the provisions of Title 21, United States Code, Sections 353(b)(1), while the drugs were held for sale after shipment in interstate commerce, namely, allergy shots for Individual Victim Jane Sullivan, a fictitious child, with the intent to defraud and mislead Jane Sullivan's insurance provider, as well as Jane Sullivan's parents - who were, unbeknownst to Froelich, federal agents acting in an undercover capacity - in that, Froelich caused 10 vials of allergy antigens to be dispensed to Jane Sullivan's parents, on each of the dates set forth below, which resulted in those drugs being misbranded;

<u>Count</u>	<u>Date</u>
THIRTY-TWO	7/10/03
THIRTY-THREE	9/4/03

In violation of Title 21, United States Code, Sections 331(k) and 333(a)(2), and Title 18, United States Code, Section 2.

COUNT THIRTY-FOUR

Dr. Edgar Vargas - Conspiracy

The SPECIAL SEPTEMBER 2005 GRAND JURY further charges:

1. Paragraph 1 of Count One of this indictment is realleged and incorporated as though fully set forth herein.

2. Beginning in or about August 2001 and continuing until in or about April 2002, in Chicago, in the Northern District of Illinois and elsewhere,

EDGAR VARGAS,

defendant herein, together with John Froelich, conspired, and agreed with each other and with persons known and unknown to the grand jury, to commit offenses against the United States, namely, violations of Title 21, United States Code, Sections 331(a) and (k), and 333(a)(1).

3. It was a part of the plan and purpose of this conspiracy that Dr. Vargas, Froelich, and other co-conspirators caused to be prepared, compounded, processed, held for sale, dispensed, and delivered for introduction into interstate commerce allergy shots that were misbranded, within the meaning of Title 21, United States Code, Section 353(b)(1), in that the allergy shots were prescription drugs that were dispensed without a valid prescription, in violation of Title 21, United States Code, Sections 331(a) and (k) and 333(a)(1).

Overt Acts

4. In furtherance of the conspiracy and to effect the objects and purposes thereof, the defendant committed and caused to be committed the following overt acts, among others, within the Northern District of Illinois and elsewhere:

a. On or about October 16, 2001, Dr. Vargas signed a Letter Agreement, in which he agreed to act as AIA's Illinois Physician, and to oversee AIA's allergy testing and treatment service in Illinois. Dr. Vargas agreed to review AIA's allergy program for medical appropriateness and to serve as the Illinois physician for billing purposes. The Letter Agreement stated that AIA would pay Dr. Vargas between \$12,000 and \$36,000 per year, depending on the number of patients that AIA had.

b. On or about October 16, 2001, Dr. Vargas ordered allergy shots for Individual Victims, without examining those individuals, by signing documents entitled Doctor's Order Forms, which resulted in AIA preparing allergy shots that were misbranded as described above. Dr. Vargas knew that those documents were not valid prescriptions because they did include the type of medication or the dosage to be given, and that they were not specific concerning the frequency of the shots.

b. On or about January 8, 2002, Dr. Vargas signed an Addendum to the Letter Agreement, which was entitled Additional Compensation Table Addendum. The Addendum stated that AIA would

pay Dr. Vargas between \$12,000 and \$240,000 per year, depending on the number of Individual Victims that AIA had.

c. On or about January 8, 2002, Dr. Vargas ordered allergy shots for Individual Victims, without examining those individuals, by signing documents entitled Doctor's Order Forms, including some forms which were blank, which resulted in AIA preparing allergy shots that were misbranded as described above. Dr. Vargas knew that those documents were not valid prescriptions because they did include the type of medication or the dosage to be given, and that they were not specific concerning the frequency of the shots.

In violation of Title 18, United States Code, Section 371.

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY