United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**CRIMINAL NO.** CR-H-05-426
	§	
IYAD ABU EL HAWA	§	
MARTHA DENISE GONZALES	§	

INDICTMENT

THE UNITED STATES GRAND JURY CHARGES THAT:

INTRODUCTION

At all times material herein:

1. **IYAD ABU EL HAWA**, defendant herein, also commonly called Eddie, was a foreign national living and working in Houston, Texas. El Hawa's formal training, education and work experience was in the food service industry. El Hawa had no formal training, education, work experience or license for any position involving prescribing or dispensing medicine, or dealing with issues related to the prevention of communicable diseases, including the use of vaccines to immunize large segments of the United States population. El Hawa owned, controlled and was associated with the following businesses that offered various medical services: Comfort & Caring Home Health, America Home Health Care Services, Universal Home Healthcare Services, and Universal Wound Care, all in Houston, Texas; and, America Home Health Care Services in Baytown, Texas;

2. **MARTHA DENISE GONZALES**, defendant herein, commonly called Denise, lived and worked in Baytown, Texas. Gonzales did not possess a license for any position that

involved prescribing or dispensing medicine, or dealing with issues related to the prevention of communicable diseases, including the use of vaccines to immunize large segments of the United States population. Gonzales's day-to-day work was in a physician's office in a non-medical position. Gonzales also worked with and performed services for El Hawa and his various home health care businesses, including marketing services on behalf of these entities, particularly offering the sale and supply of inoculations for communicable diseases, including influenza vaccinations.

3. **MEDICARE and MEDICAID**: Medicare is a federally funded health insurance program designed to provide medical care to individuals over age 65 and individuals with disabilities. The Medicare payment system comprises two divisions: Medicare Part A (hospital insurance) and Medicare Part B (medical insurance). Medicare Part A helps pay for inpatient hospital stays, skilled nursing facility services, home health services and hospice care. Medicare Part B helps pay for physician services, outpatient hospital services, medical equipment and supplies, ambulance transportation services and other health care services and supplies, including flu shots. Medicaid is a similar program that is administered through state governments largely to provide primary and preventative health care benefits and services to indigent persons.

4. **ExxonMobil**: One of the world's largest energy and petrochemical companies, formed by the combination of two large energy companies: Exxon and Mobil. The now-combined company owns and operates a large petrochemical refinery and related business facility in Baytown, Texas. As part of its organizational employee benefit program, the company offered its Baytown employees access to health care professionals through a procedure commonly

referred to as a "health fair." As part of this health fair, ExxonMobil contracted with individuals and companies alleged to be in the health care industry to offer its employees, among other things, inoculations against common communicable diseases, including injections of the vaccine for influenza manufactured for the strains of influenza expected to be common during the 2005-06 disease cycle. ExxonMobil paid for this health fair through corporate funds earned through the world-wide sale of energy and petrochemical products. Some of the ExxonMobil employees seeking such inoculations traveled from, or were scheduled to travel to, various other states and countries for purposes of furthering the business of ExxonMobil, and were scheduled to so travel within the prospective time period of protection commonly expected for inoculations offered at this health fair.

COUNT 1
THE CONSPIRACY

5. The Grand Jury adopts, realleges, and incorporates herein the allegations in the Introduction Section of this Indictment.

6. Beginning in or about the summer of 2004, the exact time being unknown to the grand jury, and continuing through the latter part of October 2005, in the Southern District of Texas and elsewhere,

IYAD ABU EL HAWA
and
MARTHA DENISE GONZALES

defendants herein, did knowingly, intentionally, and willfully combine, conspire, confederate and agree with each other, and other persons known and unknown to the grand jury, to commit and aid and abet in the commission of certain offenses against the United States, as follows:

(a) to knowingly and intentionally, in a matter within the jurisdiction of an agency and

department of the United States, did make false, fraudulent, and fictitious material statements and representations to an agent of the federal government, in violation of Title 18, United States Code, Section 1001 (material false statements to agent of the federal government);

(b) to knowingly and intentionally devise and intend to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations, from United States insurance companies and plans, well knowing at the time that the pretenses and representations were false when made, and, in furtherance of the scheme and artifice to defraud, used and caused the use of United States Postal Service mail, in violation of *Title 18, United States Code, Section 1341* (mail fraud);

(c) to knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud a health care benefit program and to obtain money by means of false and fraudulent pretenses and representations from health care benefit programs, including United States insurance companies and plans and Medicare and Medicaid, well knowing at the time that the pretenses and representations were false when made, in connection with the delivery or payment for health care benefits, items and services, in violation of *Title 18, United States Code, Section 1347* (health care fraud);

(d) with reckless disregard for, and extreme indifference to, the risk that another person would be placed in danger of death or bodily injury, and under circumstances manifesting extreme indifference to such risk did tamper and attempt to tamper with the container for a consumer product that affects interstate and foreign commerce, in violation of *Title 18, United States Code, Section 1365(a)*; and, as further set forth hereafter:

MANNER AND MEANS

7. The manner and means of the conspiracy and (the various schemes to defraud) included, but was not limited to, the following:

A. It was a part of the conspiracy that the defendants and others would and did devise various means to obtain payments from individuals, companies, including insurance companies and insurance plans, and government programs known as Medicare and Medicaid and related reimbursements, in exchange for providing fraudulent medical treatments, including injections of substances purported to be influenza virus vaccine, commonly referred to as a "flu shot", when in truth and fact, no such vaccine was given.

B. It was a further part of the conspiracy that the defendants and others would and did set up home health care office fronts, often in the name of a third-party, to conduct the fraudulent medical treatments scheme, including such fronts in Houston and Baytown, Texas, and did use these fronts to market medical services to companies and individuals in and around Texas, and in the states of Louisiana, Ohio and Colorado;

C. It was a further part of the conspiracy that the defendants and others would and did set up home health care office fronts called Comfort & Caring Home Health; America Home Health Care Services; Universal Home Healthcare Services; Universal Wound care, all in Houston, Texas; and, America Home Health Care Services in Baytown, Texas;

D. It was a further part of the conspiracy that the defendants and others would and did and did staff these fronts with individuals that did not possess proper medical licenses and authorizations to practice and administer medicine in the state of Texas, and did employ licensed and unlicensed nursing and other office staff, to lend a name, title, credibility, and appearance of legitimacy to these home health care office fronts;

E. It was a further part of the conspiracy that the defendants and others would and did utilize the home health care office fronts to recruit companies and individuals seeking medical treatments, including those seeking large-scale preventive medical treatments and health care services held at events typically called "health fairs" in Texas and in other states, including soliciting doctors, churches, senior residential or nursing homes, pharmacies and pharmacy sales agents that might typically be involved in offering or receiving such services at "health fairs", and in performing such marketing of these fronts did utilize the United States mail, interstate telecommunications facilities, and other instrumentalities of interstate commerce to communicate during these marketing efforts;

F. It was a further part of the conspiracy that the defendants and others would and did use and cause the use of the United States mail, interstate commercial carriers, such as United Parcel Service, interstate telecommunications facilities, and other instrumentalities of interstate commerce to communicate and place orders with various suppliers of medical products, including syringes and vials of water manufactured as a sterile product fit for injection in the human body, and did receive such medical products through the described means of interstate commerce, and did create fraudulent invoices and lot numbers purporting to detail actual purchases of influenza vaccine from reputable manufacturers, all in an effort to lend credibility and the appearance of legitimacy to vaccinations for communicable diseases offered by these home health care office fronts;

G. It was a further part of the conspiracy that the defendants and others would and did utilize alleged doctors and nurses, occasionally using licensed nurses and other properly licensed health care workers on a per-contract, temporary basis to administer health care

procedures at events such as "health fairs", including knowingly administering injections of substances that purported to be lawful vaccines, when in truth and in fact, such injections contained some other substance which had not been loaded in the syringe in a process and under conditions that were hygienic and sanitary;

H. It was a further part of the conspiracy that the defendants and others would and did fraudulently induce and manipulate individual patients into consenting to the administering of substances alleged to be actual vaccines, by intentionally failing to perform what is called "informed consent" in the practice of medicine and state statutes concerning the practice and administering of medicine, and did fraudulently withhold from these consenting patients medically necessary facts that patients use to make medical decisions prior to such procedures, including intentionally withholding the fact that the substance in the syringe being administered was not a vaccine and had not been loaded in the syringe in a process and under conditions that were hygienic and sanitary;

I. It was a further part of the conspiracy that the defendants and others would and did submit, and attempt to submit, in whole or part, various charts and records as support for bills requesting payment for fraudulent medical services and procedures administered to various individuals (often at a company "health fair"), either directly to a company holding such an event, or to private insurance companies or the governmental programs known as Medicare and Medicaid, and in doing so, did utilize the United States mail, interstate telecommunications facilities, and other instrumentalities of interstate commerce to communicate billing information for medical treatments and procedures known by the defendants to have been fraudulent in origin, and in turn did receive through the United States mail, interstate telecommunications

facilities, and other instrumentalities of interstate commerce, checks, wire transfers and other reimbursements for these fraudulent medical treatments and procedures;

J. It was a further part of the conspiracy that the defendants and others would and did receive, and attempt to receive, payment from various individuals and companies, including insurance companies, and checks and reimbursements from Medicare and Medicaid, often through the United States mail, based on the submission of claims and records for fraudulent influenza virus vaccines administered to various individuals;

K. It was a further part of the conspiracy that the defendants and others would and did receive checks and other forms of payment from individuals and companies based on the submission of claims and records for fraudulent influenza virus vaccines administered to various individuals, and did convert these payments into United States currency and into other forms by use of financial institutions engaged in interstate commerce, and did divide these funds between each other and other conspirators; and,

L. It was a further part of the conspiracy that the defendants and others would and did utilize the funds obtained to pay the expenses and employees of the home health care office fronts, and did utilize the funds obtained to finance their lifestyles, to purchase and acquire assets, and to pay various other personal and business expenses.

OVERT ACTS

8. In furtherance of the conspiracy and to effect the objects thereof, the following Overt Acts, among others, were committed in the Southern District of Texas, and elsewhere:

(1) In or about late summer 2005, the defendants agreed to market health care services, including inoculations of influenza vaccine to companies and individuals in Texas and

other states.

(2) In or about late August to early September 2005, defendant Gonzales stated to an individual employed by a pharmaceutical company, that she had available influenza vaccine that could be sold and shipped to medical providers, including in the state of Colorado.

(3) In or about September 2005, defendant Gonzales prepared for an Ohio company a proposal for influenza vaccine that could be sold and shipped for injections for this company's Ohio-based employees.

(4) On or about October 7, 2005, defendant Gonzales informed a pharmacist, who owned and operated a pharmacy in Baytown, Texas, that she had access to 100,000 (one hundred thousand) units of influenza vaccine.

(5) On or about October 15, 2005, defendant Gonzales, through an intermediary, sold 50 syringes of what she purported to be influenza virus vaccine, to a physician in Baytown, Texas.

(6) On or about October 17, 2005, defendant Gonzales spoke with individual employed at the Baytown ExxonMobil facility about providing inoculations of influenza virus vaccine for an upcoming health fair at the facility.

(7) On or about October 18, 2005, defendant Gonzales caused a facsimile transmission to be sent to a physician in Baytown, Texas that purported to be an invoice as authentication for 50 syringes of influenza virus vaccine previously sold to this physician.

(8) On or about October 18, 2005, the defendants agreed to prepare what appeared to be inoculations of influenza virus vaccine to be used at a health fair at the Baytown ExxonMobil facility.

(9) On or about October 18, 2005, defendant El Hawa instructed an employee of one of his companies to fill approximately 1600 syringes with a water-based substance.

(10) On or about October 19, 2005, defendant El Hawa caused the transportation of approximately 1600 syringes filled with a water-based substance to the Baytown ExxonMobil facility.

(11) From on or about October 19, 2005 through on or about October 20, 2005, personnel employed by defendant El Hawa administered by syringe injection, inoculations of a solution alleged to be influenza virus vaccine to at least 1100 individuals attending a health fair held at the Baytown ExxonMobil facility.

(12) On or about October 20, 2005, defendant Gonzales transferred, through an intermediary, a document purporting to be lot numbers as authentication for 50 syringes of influenza virus vaccine previously sold to a Baytown physician.

(13) On or about October 21, 2005, personnel employed by defendant El Hawa administered by syringe injection, inoculations of a solution alleged to be influenza virus vaccine to at least 14 individuals at a LaPorte senior citizen residential home.

(14) On or about October 21, 2005, defendant El Hawa falsely informed federal agents that he had been a plastic surgeon in Israel.

(15) On or about October 21, 2005, defendant Gonzales falsely answered federal agents when asked if she had telephoned defendant El Hawa at any point during that day to inform defendant El Hawa of her knowledge that a federal investigation had begun into the flu shots administered at ExxonMobil's Baytown facility.

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

COUNTS TWO THROUGH 14
(Tampering with a Consumer Product - 18 U.S.C. §§1365 and 2)

10. On or about the dates listed below, in the Southern District of Texas,

IYAD ABU EL HAWA
and
MARTHA DENISE GONZALES

defendants herein, aided and abetted by each other, and by others known and unknown to the grand jury, with reckless disregard for, and extreme indifference to, the risk that another person would be placed in danger of bodily injury, and under circumstances manifesting extreme indifference to such risk, did knowingly and intentionally tamper and attempt to tamper with the container, labeling and contents for a consumer product that affects interstate and foreign commerce, by placing water or a similar water-based substance into syringes under conditions that were not hygienic and sanitary, then purporting that these syringes contained influenza virus vaccine, a drug defined in *section 201* of the *Federal Food, Drug, and Cosmetic Act*, and did cause the injection of the contents of these syringes containing a substance other than influenza vaccine as claimed, to the following individuals:

COUNT	DATE	RECIPIENT INITIALS	PROCEDURE TO BE PAID BY	LOCATION
Two	October 19, 2005	D.G.D.	ExxonMobil	"A"
Three	October 19, 2005	V.K.C.	ExxonMobil	"A"
Four	October 19, 2005	C.L.B.	ExxonMobil	"A"
Five	October 19, 2005	A.D.H.	ExxonMobil	"A"
Six	October 20, 2005	D.T.B.	ExxonMobil	"A"
Seven	October 20, 2005	R.K.H.	ExxonMobil	"A"

COUNT	DATE	RECIPIENT INITIALS	PROCEDURE TO BE PAID BY	LOCATION
Eight	October 21, 2005	I.T.	Medicare/Medicaid	"B"
Nine	October 21, 2005	J.K.	Medicare/Medicaid	"B"
Ten	October 11, 2005	J.C.	Medicare/Medicaid	"C"
Eleven	October 18, 2005	N.I.	Medicare/Medicaid	"D"
Twelve	October 17, 2005	R.E.	Medicare/Medicaid	"E"
Thirteen	October 18, 2005	J.D.	Medicare/Medicaid	"F"
Fourteen	October 18, 2005	P.W.	Medicare/Private Insurance	"F"

In violation of *Title 18, United States Code, Section 1365(a).*

A TRUE BILL,

CHUCK ROSENBERG
UNITED STATES ATTORNEY

LARRY EASTEPP
ASSISTANT U.S. ATTORNEY

[redacted]
FOREPERSON OF THE GRAND JURY

SUZANNE BRADLEY
SPECIAL ASSISTANT U.S. ATTORNEY