

4. According to the terms of 63 P.S. Section 625.102, chiropractors are limited in their professional responsibility and authority to the treatment, by means of adjustment and manipulation, of the spine and its immediate junctions (i.e., articulations) between the spine and other bones of the skeleton.

5. Chiropractors are limited in the type of medical care they may provide to the detection, location, adjustment and correction of vertebral subluxations, that is, any misalignment of one or more articulations of the spinal column or its immediate weight-bearing articulations. The correction of subluxations is not considered to be a specific cure for any particular symptom or disease.

6. The Pennsylvania Medicaid Program ("Medicaid") was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b), in that Medicaid was a public plan affecting interstate commerce under which medical benefits, items and services are provided to individuals. Established by Title XIX of the Social Security Act, the Medicaid Program provides medical assistance for certain individuals and families with low incomes and resources. The program became law in 1965 and is jointly funded by Federal and State governments. Medicaid is the largest program providing medical and health related services to America's poorest citizens.

7. The Medicaid Program was a federally-funded health care benefit program established under the laws of the United States.

8. The Medicaid Program was designated to provide, affordable, high-quality medical care to low income Americans.

9. The Medicaid Program was administered by the Health Care Financing Administration ("HCFA"), a department and agency of the United States Government.

10. The Pennsylvania Department of Public Welfare was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b), in that the Department of Public Welfare, on behalf of the United States and the Commonwealth of Pennsylvania, oversees and supervises health insurance plans affecting interstate commerce under which medical benefits, items and services are provided to individuals.

11. In its supervision and regulation of the Pennsylvania Medicaid Program, the Pennsylvania Department of Public Welfare provides payment for specific chiropractors' services rendered to eligible Medicaid recipients by chiropractors enrolled as Medicaid providers. The Pennsylvania Medicaid Program covers only the following chiropractors' services:

- a. Evaluation by means of examination of the patient.
- b. Treatment by means of manual manipulation of the spine to adjust misaligned or displaced vertebrae.

No other forms of chiropractic treatment are covered by Medicaid.

12. The Commonwealth of Pennsylvania, State Board of Chiropractic, is a Department and Agency of state government which is responsible for providing the licensing of chiropractors and the regulation of chiropractic.

13. In its regulation of chiropractic, the Commonwealth of Pennsylvania, State Board of Chiropractic, defined chiropractic as a branch of the healing arts dealing with the relationship between the articulations of the vertebral column, as well as other articulations, and the neuro-musculo-skeletal system and the role of these relationships in the restoration and maintenance of health. Chiropractic shall not include the practice or use of drugs (63 P.S. Section 625.102). The Pennsylvania Chiropractic Practice Act also requires that chiropractors refer a patient to a licensed practitioner of another branch of the healing arts for consultation or treatment when a diagnosis of such patient indicates that such a referral is appropriate (63 P.S. Section 625.506(a)(19)).

14. In addition the Pennsylvania Chiropractic Act prohibits chiropractors from engaging in the following practices:

- a. Making misleading, deceptive, untrue or fraudulent representations in the practice of chiropractic (63 P.S. Section 625.506(a)(2));
- b. Committing unprofessional conduct (63 P.S. Section 625.506(a)(all)), which is defined to include any departure from, or failure to conform to, the standards of acceptable and prevailing chiropractic practice. These standards are reflected in the Practice Guidelines for Straight

Chiropractic published by the World Chiropractic Alliance and include:

- (i) The responsibility to refrain from offering advice, diagnosis, prognosis or treatment for non-chiropractic findings;
- (ii) When, during the delivery of chiropractic care, a chiropractor encounters findings which are outside his/her professional area of scope, responsibility or authority to address, that chiropractor has a responsibility to report such findings to the patient, record the existence of the finding, advise the patient that the particular finding is outside the areas where chiropractic is competent to offer advice, and refer the patient to a physician for appropriate treatment.

15. Kimberly Strohecker was a recipient of and covered by the Pennsylvania Medicaid Program, a health care benefit program as that term is defined by Title 18, United States Code, Section 1347.

16. The defendant **JOANNE M. GALLAGHER** was a health care provider for the Pennsylvania Medicaid Program.

17. From on or about October 17, 1998 through on or about April 29, 1999, Medicaid beneficiary Kimberly Strohecker went to the defendant **JOANNE M. GALLAGHER** for treatment. During this same period, the Pennsylvania Medicaid Program was billed for approximately forty (40) chiropractic procedures purportedly provided to Kimberly Strohecker by the defendant **JOANNE M. GALLAGHER**. The Medicaid claim forms which the defendant **JOANNE**

M. GALLAGHER caused to be submitted to Medicaid represented that the following chiropractic services had been provided:

- a. Procedure rendered: W9960 - Manipulation of Spine by Chiropractor.
- b. Diagnosis codes: 739.0 Occipital/Cervical; 839.01 1st Cervical Subluxation; 839.02 2nd Cervical Subluxation; 723.1 Cervicalgia (pain in neck region).

18. The Medicaid claims contained false information in that the defendant JOANNE M. GALLAGHER did not provide Kimberly Strohecker chiropractic treatment authorized by Medicaid. Instead, the defendant JOANNE M. GALLAGHER had represented to Kimberly Strohecker that she (GALLAGHER) could cure Kimberly Strohecker of her uncontrolled epilepsy/seizure disorder and make her drug free.

19. In the course of purportedly treating Kimberly Strohecker for her epilepsy/seizure disorder, the defendant JOANNE M. GALLAGHER convinced Kimberly Strohecker to discontinue her taking of anti-convulsive medication, repeatedly telling her that she (Strohecker) was taking too much medicine for her own good and assuring her that once she stopped taking her medication, she would experience approximately three (3) days of seizures, would fall into a deep sleep and would wake up healed of her epilepsy/seizure disorder. This advice was outside of the scope, authority and competence of the field of chiropractic and was the direct cause of Kimberly Strohecker's death.

20. Upon ceasing to take the anti-convulsive medication, Kimberly Strohecker began to experience violent seizures. Some of these seizures occurred in the presence of the defendant JOANNE M. GALLAGHER, who took no steps to seek proper medical treatment for Kimberly Strohecker, notwithstanding the fact that Kimberly Strohecker could no longer walk, was forced to wear diapers, was severely dehydrated, and, shortly before her death, was unconscious. From April 26, 1999 through April 29, 1999, Kimberly Strohecker was taken by family members to the defendant JOANNE M. GALLAGHER, who characterized Kimberly Strohecker's seizures as "normal", that they were "supposed to happen" and that Kimberly Strohecker was merely getting the drugs out of her system. The defendant JOANNE M. GALLAGHER warned Kimberly Strohecker's fiancé and other friends that, if they took Kimberly Strohecker to a hospital, the hospital personnel would give her anti-convulsive drugs, that she would not be able to handle the drugs and that she could die if the drugs were administered. The defendant JOANNE M. GALLAGHER assured Kimberly Strohecker's fiancé and his family that she (GALLAGHER) had expected these seizures to occur and that this was a normal manifestation of the healing process.

21. On April 29, 1999, Kimberly Strohecker was pronounced dead in the emergency room at the Good Samaritan Regional Medical Center in Pottsville, Pennsylvania. The cause of death was

uncontrolled epilepsy and complications thereof, including severe dehydration and aspiration of the contents of her stomach with bronchopneumonia secondary to the withdrawal of anti-convulsive medications.

22. At the same time that the defendant **JOANNE M. GALLAGHER** was advising Kimberly Strohecker on how to cure her epilepsy/seizure disorder and at the same time that Kimberly Strohecker was having severe epileptic seizures, the defendant **JOANNE M. GALLAGHER** was billing and causing to be billed Medicaid for these services, falsely characterizing them as manipulation of the spine, as set forth in paragraph 17, above, notwithstanding the fact that the defendant **JOANNE M. GALLAGHER** was well aware that she had not performed any of the procedures for which she had billed Medicaid.

23. The billings for Kimberly Strohecker's "treatment" were sent and caused to be sent by the defendant **JOANNE M. GALLAGHER** via the U.S. Mails to the Medicaid program located in Harrisburg, Dauphin County, Pennsylvania, using Health Insurance Claims Forms (Form HCFA-1500). The "treatments" for which the defendant **JOANNE M. GALLAGHER** charged Medicaid occurred in Hazleton, Luzerne County, Pennsylvania.

24. The defendant **JOANNE M. GALLAGHER** fraudulently billed and caused to be billed Medicaid in connection with the delivery of and payment for the health care benefits and services that

ultimately killed Kimberly Strohecker. The defendant **JOANNE M. GALLAGHER** not only caused Medicaid to be fraudulently billed before Kimberly Strohecker's death, but after Kimberly Strohecker's death, the defendant **JOANNE M. GALLAGHER** again caused Medicaid to be billed a second time for the same services.

COUNT ONE

THE GRAND JURY CHARGES:

1. The Grand Jury incorporates by reference, as though fully set forth herein, each of the allegations contained in the Introduction portion of this Indictment.

2. From on or before October 17, 1998 up to on or about April 28, 1999 in Dauphin County, Pennsylvania and within the Middle District of Pennsylvania, and elsewhere, the defendant

JOANNE M. GALLAGHER

knowingly and willfully executed, attempted to execute and caused to be executed a scheme and artifice:

- a. To defraud the Pennsylvania Medicaid Program, a federally-funded health care benefit program, and
- b. To obtain, by means of false and fraudulent pretenses, representations and promises, money owned by and under the custody and control of the Pennsylvania Medicaid Program,

in connection with the delivery of and payment for health care benefits, items and services, during which and as a direct result thereof, Kimberly Strohecker died.

All in violation of Title 18, United States Code, Sections 1347 and 2.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

1. The Grand jury hereby incorporates by reference, as though fully set forth herein, each of the allegations contained in the Introduction portion of this Indictment.

2. Gina Piccotti, born May 1, 1992, was a patient of the defendant **JOANNE M. GALLAGHER**.

3. Gina Piccotti was born with Down's Syndrome, a congenital disorder marked by mental retardation, a short flattened skull and slanting eyes.

4. Gina Piccotti, through her parents, was a Blue Cross of Northeastern Pennsylvania subscriber. As such, Gina Piccotti's health benefits were covered by Blue Cross of Northeastern Pennsylvania's Major Medical Plan, a health care benefit program as that term is defined by Title 18, USC, Section 1035.

5. From on or about September 19, 1997 through June 14, 1999, Gina Piccotti went to the defendant for treatment for Down's Syndrome. The defendant

JOANNE M. GALLAGHER

caused Blue Cross of Northeastern Pennsylvania to billed for approximately ten (10) chiropractic procedures purportedly provided to Gina Piccotti by the defendant. The claim forms were received by Blue Cross of Northeastern Pennsylvania from on or

about January 21, 1998 through August 27, 1999. The claim forms, which the defendant

JOANNE M. GALLAGHER

caused to be submitted to Blue Cross of Northeastern Pennsylvania, represented the following information:

- a. Procedure rendered: W0803 - Manipulation/
Mobilization of one or more region(s) of the spine
- A2000 - Manipulation of Spine by Chiropractor
- S8903 - Manipulation/Mobilization of one or more region(s) of the spine
- b. Diagnosis Codes: 739.00 - Occipitocervical Region
- 839.01 - First Cervical Vertebrae
- 839.02 - Second Cervical Vertebrae
- 723.1 - Cervicalgia (Pain in Neck)
- 723.2 - Cervicocranial Syndrome
- 723.3 - Cervicobrachial Syndrome
- 722.4 - Brachial Neuritis

6. The Blue Cross of Northeastern Pennsylvania claims contained false information in that the defendant did not provide Gina Piccotti chiropractic treatments authorized by Blue Cross of Northeastern Pennsylvania. Instead, the defendant told Gina Piccotti's mother that her treatments would increase Gina Piccotti's intelligence and functioning levels. The defendant also told Gina Piccotti's mother that, over time and with continued treatments, Gina Piccotti's facial features would become more normal in appearance and that Gina Piccotti's "slanted eyes would fade away."

7. From on or about January 21, 1998 through August 27, 1999, in Luzerne County, Pennsylvania and within the Middle District of Pennsylvania, and elsewhere, the defendant,

JOANNE M. GALLAGHER,

in a matter involving a health care benefit program, that is, Blue Cross of Northeastern Pennsylvania, knowingly and willfully used and caused to be used materially false, fictitious and fraudulent writings and, knowing the same to contain materially false, fictitious and fraudulent statements and entries in connection with the delivery of and payment for health care benefits, items and services relating to the treatment of Gina Piccotti. Specifically, the defendant,

JOANNE M. GALLAGHER

having represented to Gina Piccotti's parents that she, the defendant, could cure their daughter of Downs Syndrome, proceeded to bill Blue Cross of Northeastern Pennsylvania for chiropractic treatments that were neither requested by the parents, warranted by Gina Piccotti's physical condition nor performed by the defendant, **JOANNE M. GALLAGHER.**

All in violation of Title 18, United States Code, Section 1035(a) and (2).

COUNTS THREE THROUGH NINE

THE GRAND JURY FURTHER CHARGES:

1. The Grand Jury hereby incorporates by reference, as though fully set forth herein, each of the allegations contained in the Introduction and in Counts One and Two of this Indictment.

2. From on or before September 1997 and continuing up to on or about May, 1999, in Dauphin County, Pennsylvania and within the Middle District of Pennsylvania and elsewhere, the defendant,

JOANNE M. GALLAGHER

devised and intended to devise a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses, representations and promises.

3. It was a part of the scheme and artifice to defraud that the defendant

JOANNE M. GALLAGHER

intended to deprive the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Northeastern Pennsylvania of the intangible right of honest services in the following ways, among others:

- a. Unbeknownst to the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Northeastern Pennsylvania, the defendant held herself out as competent to address, treat and heal medical conditions outside of the field of chiropractic, including, but not limited to, epilepsy and Downs Syndrome;

- b. The defendant made misleading, deceptive, untrue and fraudulent representations in the practice of chiropractic;
- c. The defendant committed unprofessional conduct by departing from and failing to conform to the standards of acceptable and prevailing chiropractic practice;
- d. The defendant offered advice, diagnosis, prognosis and treatment for non-chiropractic findings, including epilepsy and Downs Syndrome, among others;
- e. The defendant failed to advise her patients that the treatment of epilepsy and Downs Syndrome were outside the area where chiropractic is competent to offer advice;
- f. The defendant failed to refer the patient to a physician for appropriate treatment;
- g. The defendant caused to be submitted to Pennsylvania Medicaid and to Blue Cross of Northeastern Pennsylvania representations that she had treated Kimberly Strohecker and Gina M. Piccotti for chiropractic complaints when, in fact, she had treated them specifically for epilepsy and Downs Syndrome, respectively.

4. By the aforementioned acts, the defendant

JOANNE M. GALLAGHER

deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Northeastern Pennsylvania of certain intangible rights, including:

- a. Of and concerning their right to pay only for strictly defined treatments authorized by the Pennsylvania Chiropractic Act;
- b. Of and concerning their right to require chiropractors licensed to practice in Pennsylvania to conform to the standards of acceptable and prevailing chiropractic practice;

- c. Of and concerning their right to truthfulness, honesty and integrity on the part of chiropractors licensed to practice in Pennsylvania;
- d. Of and concerning their right to have chiropractors licensed to practice in Pennsylvania avoid making misleading, deceptive, untrue and fraudulent representations when seeking compensation in connection with their treatment of patients covered by Pennsylvania Medicaid and by Blue Cross of Northeastern Pennsylvania;
- e. Of and concerning the right to have its citizens not placed at risk of death or serious bodily harm when seeking treatment from chiropractors licensed to practice in Pennsylvania.

5. From on or before September, 1997 up to on or about May 1999, in Dauphin and Luzerne Counties, Pennsylvania and within the Middle District of Pennsylvania and elsewhere, the defendant

JOANNE M. GALLAGHER

having devised the above-described scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, for the purpose of executing and in order to effect the scheme and artifice, did knowingly cause to be sent, delivered and moved by the United States Postal Service, the following mail matter. In the case of each mailing, the claim forms for both Kimberly Strohecker and Gina Piccotti were prepared in the office of the defendant,

JOANNE M. GALLAGHER,

bearing her signature. Kimberly Strohecker's claim forms were mailed from the defendant's office at 1749 East Broad Street, Hazleton, Pennsylvania 18201. Gina Piccotti's claim forms were

given to Gina Piccotti's parents and mailed by them to the health care provider.

<u>COUNT</u>	<u>DESCRIPTION OF MAILING</u>	<u>DESTINATION OF MAILING</u>	<u>DATE OF MAILING</u>	<u>PATIENT NAME</u>
THREE	Blue Cross of Northeastern Pennsylvania Major Medical Claim Form #9806510102600	Blue Cross of Northeastern Pennsylvania, P.O. Box 3100, Wilkes-Barre, PA 18773	On or about March 6, 1998	Gina Piccotti
FOUR	Blue Cross of Northeastern Pennsylvania Major Medical Claim Form #9923910137100	Blue Cross of Northeastern Pennsylvania, P.O. Box 3100, Wilkes-Barre, PA 18773	On or about August 27, 1999	Gina Piccotti
FIVE	Medicaid Claim Form #9090620360	Department of Public Welfare P.O. Box 8194, Harrisburg, PA 17105	On or about March 31, 1999	Kimberly Strohecker
SIX	Medicaid Claim Form #9223600840	Department of Public Welfare P.O. Box 8194, Harrisburg, PA 17105	On or about August 11, 1999	Kimberly Strohecker
SEVEN	Medicaid Claim Form #9223601142	Department of Public Welfare P.O. Box 8194, Harrisburg, PA 17105	On or about August 11, 1999	Kimberly Strohecker
EIGHT	Medicaid Claim Form #8349601324	Department of Public Welfare P.O. Box 8194, Harrisburg, PA 17105	On or about December 15, 1998	Kimberly Strohecker
NINE	Medicaid Claim Form #9098610480	Department of Public Welfare P.O. Box 8194, Harrisburg, PA 17105	On or about April 8, 1999	Kimberly Strohecker

All in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

A TRUE BILL

Stephen J. Edgren
FOREPERSON

2-26-03
DATE

T. A. Marino
THOMAS A. MARINO
UNITED STATES ATTORNEY