



CHIEF POSTAL INSPECTOR
Washington, D.C. 20260

MEDICAL FRAUD

There is probably no scheme with a greater potential for harm than the sale of worthless medicines and therapeutic devices. Because of the danger to human life, the Postal Service through its Postal Inspection Service, makes a special effort to eliminate quackery and fraud in the field of health.

In its attack on quackery, the Postal Service uses the mail fraud and false representation statutes. The origin of these statutes dates back over 100 years to a period when the country was infested with swindlers of all kinds and the medical quack was prominent. Space will not permit a recitation of the fascinating saga of the history of swindling in this country, but from such artifices as the "shell game," "three card monte," the "gold brick," and the "magic health elixer," evolved the more sophisticated swindles of the present.

Congress enacted the first mail fraud statutes in 1872. This was the first federal effort of any kind to protect the public from charlatans and swindlers. It remained the only public protective law until the Federal Food and Drug Act was enacted in 1906 and the Federal Trade Commission was created in 1914.

One need only refer to court cases dating back to the 1870's to see the prominent position medical schemes assumed in the broad spectrum of those prosecuted under the mail fraud statute.

Many individuals possessing alleged medical diplomas were involved, since the strong licensing and other regulatory boards and associations were either in infancy or non-existent in the 1870's.

By 1924, medical postal frauds had become so extensive in volume and variety that a special unit of Postal Inspectors was set up in Washington, DC to deal solely with medical frauds as distinguished from those committed in such other categories as stock promotions, land development deals, insurance, charity frauds, and etc. All complaints of alleged medical fraud are referred from 18 Postal Inspection field divisions to the unit in Washington. Liaison is maintained with the Food and Drug Administration, the Federal Trade Commission and other government agencies within a framework of an excellent working agreement to prevent duplication of efforts.

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In general, the Postal Service handles those cases where the mails play an integral part in the promotion. The Food and Drug Administration is concerned primarily with ingredients and labeling in interstate commerce. The Federal Trade Commission is concerned with all cases of deceptive advertising but gives the Postal Service primary jurisdiction where mail fraud may be involved.

Many complaints are received as a result of medical or health advertisements received through the mail which strike individuals as fraudulent. The same individuals may observe the advertisement several months later and wonder why, in the interim, Postal Inspectors had not placed the scoundrel in jail or at least have stopped his use of the mails. Unfortunately, it isn't quite that simple.

Although the criminal statute provides for heavy penalties, courts and juries will not convict unless the essential element of intent to defraud is abundantly present. It is not merely: were the claims for the product true or false? It is rather, did the promoter know them to be false? This is the crucial issue. The defendant need explain nothing. He is presumed innocent and remains so until the court overcomes this presumption.

Well presented medical testimony is vital, but is rarely sufficient. Jurors are generally laymen of varying degrees of education. Scientific testimony is not always fully persuasive. If the case involves an alleged cure for cancer or rheumatoid arthritis, diseases which are known to be capricious, one well-meaning witness offered as a "living proof" of the cure can effect more jury persuasion than a battery of medical experts. Testimonials and other evidence presented by the promoter can rarely be countered by calling victims upon whom the treatment has not been successful. The quack merely attributes failures to factors other than the curative quality of his product or treatment.

Medical false representation investigations are conducted by the Special Investigations Division of the Postal Inspection Service. The Postal Inspection Service is the oldest federal investigative agency, dating back to the days of Benjamin Franklin when he was appointed to the position of "Surveyor," a forerunner to the position of Postal Inspector.

The investigation of alleged medical frauds is pursued under two Federal statutes: 39 USC 3005 and 18 USC 1341. Title 18, Section 1341 of the U.S. Code deals with criminal prosecution of persons engaged in using the mails in furtherance of a scheme to defraud. Section 3005 of Title 39 U.S. Code deals with administrative investigations of alleged misuse of the mails through false representations. The majority of the work in the Special Investigations Division involves efforts to halt schemes which are in violation of the Fraud Statute, Title 39, Section 3005 USC. Cases of this type are referred to the Consumer Protection Office of the

Law Department, U.S. Postal Service, where action is taken in accordance with the Administrative Procedures Act to quickly stop operation of the schemes involved by obtaining an order that is in effect "cease and desist."

Most of the investigations relate to body ailments, cosmetics, hypnotism, weight reduction, and sexual items. The items coming under the foregoing heading run the gamut from arthritis to fertility, voodoo dolls and X-ray glasses. Because of the nature of items involved, it is most important that the sellers be put out of operation as soon as possible. For instance, if a person, suffering from cancer which might be curable, gets involved with a quack doctor or voodooism, treatment could be delayed beyond the time when a malignancy might be excised.

In conducting medical fraud investigations, leads originate from complainants and from subscriptions to many magazines, periodicals, and newspapers. Advertisements are scanned and when claims and representations appear to be fraudulent, a test purchase is initiated and the usual investigative procedures are followed, i.e., tests are made, information is developed on the operator, laboratory analysis is made where warranted, and medical opinions are obtained. It is then decided if action can be taken against the claims. If the seller's claim cannot be supported medically or otherwise, the file is referred to the Law Department for possible action to obtain a fraud order.

It is the current policy of the Law Department to send what is known as a Precitation Letter to the firm involved citing reasons why 39 USC 3005 is being violated. The firm addressed is given the opportunity to sign a compromise agreement agreeing to discontinue the business. If the compromise offer is signed and returned within the ten-day limitation stated in the letter, the case is returned to the Special Investigations Division, and the file is closed.

If, on the other hand, the compromise is not signed, a complaint is filed with the Docket Clerk charging the enterprise cited with violation of 39 USC 3005. The complaint lists the various claims and representations which are considered false and misleading. The respondent has a chance to answer. A hearing date is set before an Administrative Law Judge.

The Inspector's testimony, for the most part, relates to introduction of exhibits such as the advertisement, test purchase, etc. The Postal Service then calls one or more experts in the medical specialty involved. The defendant's main efforts are usually directed toward breaking down the doctor's direct testimony. Cross-examination of the Postal Service medical witnesses is usually lengthy and grueling.

Several years ago, we received complaints concerning a chiropractor who was operating a health clinic in midtown Manhattan. An investigation was begun. When sufficient evidence was obtained, a search was made of the premises where the chiropractor and his staff were conducting their scheme. The size of the operation can be judged by the fact that over 30 telephones were installed in the clinic. The chiropractor was preying on the ignorant, gullible, and the poor class of immigrants of this country by offering a free health consultation. He advertised by mail, in newspapers, and television and radio. In addition, he used the telephones to make contact with people, principally immigrants, leading them to believe the United States Public Health Service was calling and it was required by the Government that they report for health consultation. Generally, patients were persuaded on the first visit to have a spinal X-ray taken and were told treatment was required for which a future appointment was made. The X-ray charges (\$50-\$60) had to be paid at so much per week and the cost of subsequent visits were added to the balance. The patient was a treadmill, paying continuously but never reducing his indebtedness. Several defendants in this case were convicted of mail fraud after a trial that lasted over three weeks, and were subsequently sentenced by a U.S. District Judge.

Each month approximately 35 new investigations of alleged medical fraud violations are opened. Of these new cases, approximately one-half of the operators will be found violating either the civil/administrative or criminal statutes. By investigating the businesses and getting their agreement to cease and desist or by holding the hearings and obtaining fraud orders, it is estimated savings to the public of at least \$1,000,000 monthly are realized. In addition to the monetary savings, an even greater value is being obtained. Many seriously ill persons are securing needed medical attention rather than relying upon voodooism, nostrums, and simple vitamin pills which have no curative power for cancer, sugar diabetes, coronary deficiencies, etc.

18 USC 1341

Section 1341. Frauds and Swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

39 USC 3005

Section 3005. False Representations

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, or is engaged in conducting a gift enterprise, or scheme for the distribution of money or of real or personal property, by chance, or drawing of any kind, the Postal Service may issue an order which --

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender; and

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note.

(b) The public advertisement by a person engaged in activities covered by subsection (a) of this section, that remittances may be made by mail to a person named in the advertisement, is prima facie evidence that the latter is the agent or representative of the advertiser for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency in any other legal way satisfactory to it.

(c) As used in this section, and section 3006 of this title, the term 'representative' includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.



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