

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

08 CR 10.2.8.2 MLW

UNITED STATES OF AMERICA)	Crim. No.
v.)	Violations:
HOWARD P. RICHMAN,)	18 U.S.C. §1503
Defendant.)	(Obstruction of Justice)

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. At times material to the allegations contained in this Indictment, Defendant HOWARD P. RICHMAN ("RICHMAN") served as Senior Vice-President of Regulatory Affairs and Operations and Vice-President of Regulatory Affairs and Compliance at the Biopure Corporation ("Biopure"), a biopharmaceutical company with headquarters in Cambridge, Massachusetts. Biopure's principal product was a synthetic blood substitute called Hemopure that had not been approved for human use by the United States Food and Drug Administration ("FDA").

2. Beginning on or about September 14, 2005, the United States Security and Exchange Commission ("SEC") instituted federal civil proceedings in a case captioned Securities and Exchange Commission v. Biopure Corporation, Thomas Moore, Howard Richman, and Jane Kober, Civ. No. 05-11853-PBS ("Biopure Litigation"), alleging that Biopure and several of its officers

and directors (collectively "Biopure Defendants") engaged in a fraudulent scheme to misrepresent and conceal from investors the truth about its applications for FDA approval of Hemopure.

3. Based on its view that RICHMAN was one of the Biopure Defendants most deeply involved in the fraudulent representations to investors, the SEC sought substantial civil penalties and an administrative debarment against RICHMAN in connection with the Biopure Litigation.

4. Beginning no later than March, 2006, the SEC and the Biopure Defendants were engaged in settlement negotiations. However, in or about April, 2006, the SEC's settlement negotiations with RICHMAN broke down based, in part, on RICHMAN's representations that he was unwilling and unable to pay the civil penalty sought by the SEC.

5. By not later than October 6, 2006, the SEC began to intensify its discovery in preparation for a possible trial against RICHMAN and the remaining Biopure Defendants. In connection with this discovery, the SEC noticed the deposition of several witnesses, including RICHMAN.

THE OBSTRUCTION

6. Recognizing that the SEC would not settle the Biopure Litigation without him paying a substantial fine, RICHMAN concocted a scheme to derail the SEC's federal law suit against him. As detailed herein, RICHMAN caused his lawyers to falsely report to the Court that he had colon cancer and could not

meaningfully participate in the pending federal law suit. However, as RICHMAN well knew, he did not have colon or any other form of cancer. In fact, he fabricated the cancer diagnosis in order to prevent the SEC from further taking his deposition, to prevent the Biopure Litigation from proceeding any further against him, and to obtain a favorable settlement with the SEC, including avoiding having to pay the civil penalty sought by the SEC.

7. In particular, on or about October 26, 2006, RICHMAN caused his attorneys to file a Motion to Sever and Stay ("Motion to Sever") the on-going Biopure Litigation with respect to him. In support of the Motion to Sever, RICHMAN caused his attorneys to file a memorandum stating that RICHMAN was unable to participate meaningfully in his defense due to his "grave medical condition." Specifically, RICHMAN caused his counsel to report to the Court that RICHMAN had been diagnosed with Stage III Colon-Rectal Cancer and that the colon cancer had spread to his stomach and invaded his abdominal cavity.

8. To perpetuate his lie and to thwart the Court's proceedings, RICHMAN provided his lawyers with a letter that purported to be from his treating physician, an individual known to the grand jury and hereinafter referred to as "Dr. RAS", and caused this letter to be furnished to the Court as evidence in support his Motion to Sever. This letter, which purported to be written by Dr. RAS, stated that as of June, 2006 RICHMAN had been

diagnosed with Stage III Colon Rectal Cancer and that he was being treated with surgery and chemotherapy.

9. As RICHMAN well knew, the letter was a forgery. Dr. RAS never wrote the letter or otherwise authorized it to be written.

10. As further part of his efforts to thwart the Biopure Litigation from proceeding against him, RICHMAN caused his attorney to make false oral representations at a November 2, 2006 hearing before the Honorable Patti B. Saris. Specifically, RICHMAN caused his counsel to report to the Court that she had spoken with RICHMAN's doctor by phone and was advised that RICHMAN's cancer had spread to his abdominal cavities and lymph nodes and that he was under active chemotherapy. RICHMAN further caused his lawyer to report that RICHMAN's physician opined that, although "miracles can happen," RICHMAN was not well enough to participate in the proceedings and that he could not be deposed.

11. These representations were false and were completely fabricated by RICHMAN himself. In reality RICHMAN's lawyers never spoke with RICHMAN's treating physician.

12. Based on the representations RICHMAN caused to be made, the Court entered a November 2, 2006 Order granting RICHMAN's Motion to Sever and Stay the Biopure Litigation with respect to him, temporarily relieving RICHMAN from further participation in the discovery in the case.

13. In or about March, 2007 and July, 2007, RICHMAN caused his lawyers to provide additional false information to the Court

concerning his medical condition in an effort to further forestall discovery and an impending trial date. In particular, RICHMAN caused his lawyers to inform the Court that, in light of his "grave medical condition" and because he was about to undergo a more aggressive treatment regimen for his cancer, RICHMAN remained unable to participate in his defense. He further caused his lawyers to file an affidavit which purported to be from Dr. RAS. That affidavit stated that RICHMAN's cancer had progressed from Stage III to Stage IV and that he was being treated with chemotherapy, radiation, and excision of multiple tumors. The affidavit further opined that RICHMAN's form of cancer had a 8-15% survival rate and that it was not advisable to expose RICHMAN to the stress of a lawsuit because it would detrimentally affect his treatment and prognosis.

14. As RICHMAN well knew, these representations were false. In fact, the affidavit RICHMAN provided to lawyers and caused to be filed with the Court was a forgery.

15. On or about March 5, 2007, based on RICHMAN's representations, the Court agreed to postpone a scheduled trial date in the case. Moreover, on or about July 17, 2007, the Court entered an order Staying Entry of Final Judgement in the case. That Court Order effectively ended the Biopure Litigation against RICHMAN without RICHMAN being further deposed by the SEC. The order further canceled an impending trial date against RICHMAN.

COUNT ONE
(Obstruction of Justice)
(18 U.S.C. §1503)

16. The Grand Jury realleges and incorporates by reference paragraphs 1 through 15 of this Indictment and further charges that:

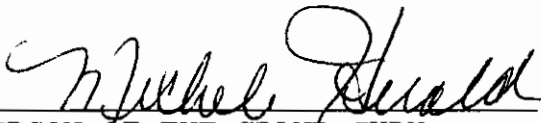
17. On or about no later than October 26, 2006 and continuing through at least July 17, 2007, at Boston in the District of Massachusetts, the defendant,

HOWARD P. RICHMAN,

did corruptly endeavor to influence, obstruct, and impede the due administration of justice, to wit, causing false representations concerning his medical condition to be made to the United States District Court for the District of Massachusetts, in the case captioned Securities and Exchange Commission v. Biopure Corporation, Thomas Moore, Howard Richman, and Jane Kober, Civ. No. 05-11853-PBS.

All in violation of Title 18, United States Code, Section 1503 and 2.

A TRUE BILL




FOREPERSON OF THE GRAND JURY



JAMES P. DOWDEN
ASSISTANT U.S. ATTORNEY

DISTRICT OF MASSACHUSETTS; September 24, 2008 @ 12:04 pm
Returned into the District Court by Grand Jurors and filed.



DEPUTY CLERK

Criminal Case Cover Sheet

U.S. District Court - District of Massachusetts

Place of Offense: Boston Category No. II Investigating Agency FBI

City Boston Related Case Information: 10283 MLW

County Suffolk Superseding Ind./ Inf. _____ Case No. _____

Same Defendant _____ New Defendant _____

Magistrate Judge Case Number _____

Search Warrant Case Number _____

R 20/R 40 from District of _____

Defendant Information:

Defendant Name Howard P. Richman Juvenile Yes No

Alias Name _____

Address 2122 Rushing Spring Drive, Pearland, TX 77584

Birth date (Year only): 1951 SSN (last 4 #): 8111 Sex M Race: White Nationality: U.S.

Defense Counsel if known: Thomas E. Dwyer, Jr., Esq. Address: Dwyer & Collora, LLP, 600 Atlantic Ave., Boston, MA

Bar Number: _____

U.S. Attorney Information:

AUSA James P. Dowden Bar Number if applicable 647539

Interpreter: Yes No List language and/or dialect: _____

Victims: Yes No If Yes, are there multiple crime victims under 18 U.S.C. §3771(d)(2) Yes No

Matter to be SEALED: Yes No

Warrant Requested Regular Process In Custody

Location Status:

Arrest Date: _____

Already in Federal Custody as _____ in _____

Already in State Custody _____ Serving Sentence Awaiting Trial

On Pretrial Release: Ordered by _____ on _____

Charging Document: Complaint Information Indictment

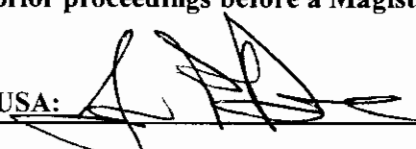
Total # of Counts: Petty _____ Misdemeanor _____ Felony 1

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: September 24, 2008

Signature of AUSA: _____



District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Howard P. Richman

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense</u>	<u>Count Numbers</u>
Set 1	<u>18 U.S.C. sec 1503</u>	<u>Obstruction of Justice</u>	<u>1</u>
Set 2	_____	_____	_____
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: