

INTRODUCTION

2. PHCS is a preferred provider organization (“PPO”) in the business of, among other things, selling, renting or leasing health care provider networks. Capella is a medical discount card company (“DCC”) that sells consumer-memberships in a program that purports to provide consumers with discounts from a network of health care providers. This class action is brought against PHCS and Capella on behalf of physicians whose agreements to participate in provider networks and charge patients discounted fees to be paid by third-party payors were unlawfully sold, rented or leased by PHCS to Capella and other DCCs that have not contracted to pay for such medical services. PHCS and Capella have been wrongfully enriched by this practice at the expense and to the detriment of Plaintiffs, who have not consented to nor authorized the transactions complained of herein.

3. Plaintiffs seek a judicial declaration that the Defendants’ conduct as alleged herein is unlawful, and an injunction preventing the same. Additionally, the above-named Plaintiffs seek money damages on behalf of the Plaintiff Class.

THE PARTIES

4. Plaintiff William Rivell, M.D., is a family physician. Plaintiff Alan B. Whitehouse is a physician with an ear, nose and throat (ENT) specialty. The named Plaintiffs, and all members of the Plaintiff Class, are residents and citizens

of Georgia.

5. Plaintiff Medical Association of Georgia (“MAG”) is a non-profit, voluntary professional association of Georgia physicians. MAG was founded in 1849, is an affiliate of the American Medical Association, and is the largest physician association in Georgia. Presently, MAG has over 8,000 members -- more than 5,000 of whom are physicians actively practicing medicine in the State of Georgia. MAG was founded to promote the art and science of medicine and the improvement of public health. With these ends in mind, MAG actively works to advocate physician and patient positions in the United States Congress, the Georgia General Assembly, before state and federal courts, and in the private sector with large health plans, hospitals and other entities that significantly affect patient care. MAG is participating in this lawsuit to protect the interests of its members. Many members of MAG do not have the time or financial resources to follow or pursue the claims at issue in this litigation and may be concerned about retribution by the Defendants if they were to participate as named plaintiffs. MAG opposes the Defendants’ conduct at issue in this litigation and, on behalf of its membership, seeks injunctive and declaratory relief where such relief is warranted.

6. PHCS is a Delaware corporation with its principal place of business located at 1100 Winter St., Waltham, Massachusetts 02451-1427. PHCS is registered to transact business in the State of Georgia, and maintains a registered

office at 40 Technology Pkwy South, #300, Norcross, Georgia 30092. Pursuant to Fed. R. Civ. P. 4(h) and O.C.G.A. § 14-2-504(a), PHCS may be served with process by service upon its registered agent, Prentice Hall Corporation, located at 40 Technology Pkwy South, #300, Norcross, Georgia 30092.

7. Capella is a Texas corporation with a principal place of business located at 2040 N. Hwy 360, Grand Prairie, Texas 75050. Capella is registered to transact business in the State of Georgia, and maintains a registered office at 40 Technology Pkwy South, #300, Norcross, Georgia 30092. Pursuant to Fed. R. Civ. P. 4(h) and O.C.G.A. § 14-2-504(a), Capella may be served with process by service upon its registered agent, Corporation Service Company, located at 40 Technology Pkwy South, #300, Norcross, Georgia 30092.

JURISDICTION; VENUE

8. For purposes of federal jurisdiction, PHCS is a citizen of Delaware and Massachusetts, Capella is a citizen of Texas, and each of the named Plaintiffs is a citizen of Georgia.

9. Subject matter jurisdiction of this action is proper in this Court pursuant to 28 U.S.C. § 1332(a), as there exists complete diversity of citizenship among the Defendants and Plaintiffs, and the total amount in controversy, exclusive of interest and costs, exceeds \$75,000.

10. Defendant PHCS transacts business in the State of Georgia, maintains

sufficient contacts with this State and judicial District, and is subject to the jurisdiction of this Court. PHCS transacts business in this State and District by, among other things, entering into and performing network agreements with medical provider groups located in and providing health care services within the District.

11. Capella transacts business in the State of Georgia, maintains sufficient contacts with this State and judicial District, and is subject to the jurisdiction of this Court. Capella transacts business in this State and District by, among other things, entering into contracts with PHCS regarding networks of health care providers located in and providing health care services within the District and through the marketing, sale and delivery of medical discount cards within the District.

12. A substantial part of the events or omissions giving rise to the claims alleged by Plaintiffs herein occurred within this judicial District, and thus venue of this action is proper in this Court under 28 U.S.C. §§ 1391(a) and (c).

FACTUAL BACKGROUND

13. The named Plaintiffs and all members of the Plaintiff Class are physicians who regularly provide health care services to persons entitled to receive health care benefits (“Covered Person”) under a group health benefit contract or plan (“Health Plan”) pursuant to which a third-party payor (“Payor”), such as an

insurance company, has contracted to pay and is financially responsible for some or all of the costs of the Covered Person's covered medical care.

14. A PPO, such as PHCS, is a network of health care providers, such as doctors, pharmacies and laboratories (collectively, "Providers"), organized to offer medical services at discounted rates. In exchange for access to a higher volume of patients whose covered care is paid for by a Payor, Providers promise discounted fees upon rendering specific medical services ("Provider Discounts") based on an agreed fee schedule. Payors, in turn, direct or "steer" patients to network Providers who have agreed to Provider Discounts, and Payors pay the bills for medical services Covered Persons receive pursuant to the applicable Health Plan. Thus, a PPO acts as a middleman or vendor between Providers in a network and Payors.

15. From time to time the named Plaintiffs and all members of the Plaintiff Class individually execute "participating provider agreements," "network agreements," or similarly denominated agreements ("Network Agreement") with a physician practice group, physician-hospital organization, insurance company network, or similar organization ("PHO"). Such Network Agreements are intended to facilitate doctor participation in larger Provider networks available through PPOs, health maintenance organizations, employers and other similar organizations that offer Health Plans under which Payors pay the costs of covered medical care. PHOs, in turn, may assign Network Agreements "upstream" pursuant

to contracts with PPOs such as PHCS (“PHO/PPO Contracts”). Typically, PHO/PPO Contracts permit a PPO to sell, rent or lease Provider Discounts to insurance companies and other Payors who have contracted to pay the costs of Covered Persons’ covered medical claims.

16. Capella is a DCC. The DCCs referenced throughout this Complaint are not Payors that have contracted to pay for the costs of Covered Persons’ medical care (“Non-Payors”). DCCs sell a non-insurance product commonly referred to as a “health discount card,” “medical discount card” or other similarly denominated product or membership program (collectively referred to as “Medical Discount Cards”) that offers members purported access to Provider Discounts. Capella describes its Medical Discount Card product as a “consumer healthcare savings membership.” Medical Discount Cards are typically sold to persons who lack health insurance and desire discounted health care services. Rather than contracting directly with Providers, Capella and other DCCs purchase, rent, or lease from PPOs Network Agreements or other access to Provider Discounts, then market and sell purported Provider Discounts to consumers by way of a Medical Discount Card.

17. Each of the named Plaintiffs, and all members of the Plaintiff Class, executed one or more Network Agreements that was assigned to PHCS by a PHO pursuant to a PHO/PPO Contract, or otherwise utilized by PHCS. Plaintiffs did

not, in the Network Agreements or otherwise, authorize PHCS to sell, rent, or lease Plaintiffs' Network Agreements to Non-Payors, including Capella and other DCCs, nor did Plaintiffs authorize Capella to sell Medical Discount Cards that purport to grant Provider Discounts offered by the Plaintiffs to consumers.

18. PHCS sold, rented or leased the Plaintiffs' Network Agreements to Non-Payors, including Capella and other DCCs, pursuant to contracts between PHCS and those entities (collectively, "PHCS/DCC Leases"). Capella and other DCCs have utilized, and continue to utilize, the Plaintiffs' Network Agreements and Provider Discount information purchased, rented or leased from PHCS pursuant to PHCS/DCC Leases for the purpose of marketing and selling Medical Discount Cards purporting to grant holders access to Provider Discounts from the Plaintiffs. Upon information and belief, Capella and other DCCs have paid, and continue to pay, substantial fees to PHCS for access to the Plaintiffs' Network Agreements and Provider Discount information for the purpose of marketing and selling Medical Discount Cards. Upon information and belief, Capella has derived substantial revenues by selling Medical Discount Cards purporting to grant holders access to Provider Discounts offered by the Plaintiffs.

19. None of the subject Medical Discount Cards sold by Capella or other DCCs is authorized under a separate contract with each of the Plaintiffs. Capella's Form 10-K filed with the U.S. Securities and Exchange Commission for the fiscal

year ending December 31, 2005 states “[w]ith respect to our healthcare savings membership programs, we do not contract with any medical providers directly.” Upon information and belief, other Medical Discount Cards marketed and sold by DCCs utilize Plaintiffs’ Network Agreements and Provider Discounts purchased, leased or rented from PHCS without Plaintiffs’ consent or authorization and without a separate contract between the DCC and each of the Plaintiffs.

20. The Plaintiffs did not consent to or authorize PHCS to sell, rent or lease their Network Agreements and Provider Discount information to Capella or any other DCC, and did not authorize Capella to sell Medical Discount Cards that purport to grant holders Provider Discounts by Plaintiffs.

CLASS ALLEGATIONS

21. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23 on behalf of the Plaintiff Class, consisting of:

(a) all physicians in the Private Health Care Systems, Inc. (“PHCS”) network as to whom PHCS sold, rented or leased a provider network agreement to Capella or other medical discount card company; and

(b) all physicians included in Capella's list of participating providers.

Excluded from the Plaintiff Class are any physicians who signed a direct contract with Capella authorizing Capella’s sale of provider discounts to consumers.

22. The specific allegations necessary to satisfy the criteria of Fed. R. Civ. P. 23(b)(1) and 23(b)(2) are as follows:

(a) as to each member of the Plaintiff Class, PHCS sold, rented or leased the member's Network Agreement and Provider Discount information to Capella or other DCCs;

(b) no member of the Plaintiff Class authorized PHCS to sell, rent or lease to Capella and other DCCs the member's Network Agreement and Provider Discount information, nor did any member consent to such sale, rental or lease;

(c) no member of the Plaintiff Class executed an agreement with Capella regarding the sale or acceptance of Provider Discounts;

(d) no member of the Plaintiff Class authorized Capella to sell Medical Discount Cards that purport to bind the Plaintiffs to honor Provider Discounts;

(e) there are thousands of physicians included in the PHCS network, and upon information and belief most, if not all, are members of the Plaintiff Class by virtue of PHCS's sale, rental or lease of their Network Agreements and Provider Discount information to Capella and other DCCs;

(f) based upon public filings of its corporate parent, Capella pays millions of dollars annually to PHCS for access to and use of Plaintiff Class members' Network Agreements and Provider Discount information;

(g) upon information and belief, other DCCs pay substantial fees to PHCS for access to and use of Plaintiff Class members' Network Agreements and Provider Discount information;

(h) if this lawsuit is not allowed to proceed as a class action, numerous and varied individual actions in state or federal court would be necessary to recover damages and for other relief in connection with the Defendants' unlawful conduct, as alleged herein;

(i) separate actions by members of the Plaintiff Class would create a risk of inconsistent or varying adjudications with respect to such members, or a risk of adjudications with respect to individual members that as a practical matter would be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(j) a multitude of litigation producing conflicting results as to the legality of the Defendants' conduct would establish conflicting and incompatible standards of conduct for the Defendants, who would therefore lack sufficient guidance with respect to their conduct.

23. Members of the Plaintiff Class are so numerous as to make it impracticable to name or join each member as a party to this action. To require a separate suit by each physician aggrieved by the Defendants' conduct would result

in an unnecessary multiplicity of suits. Further, it would be unjust and inequitable to permit the Defendants to escape liability due to economic the difficulties and inefficiencies of filing and prosecuting individual actions.

24. Pursuant to Fed. R. Civ. P. 23(b)(3), questions of law or fact are common to all members of the Plaintiff Class predominate over any questions affecting only individual members, making a class action superior to all other available methods for the fair and efficient adjudication of the controversy. Such common questions of law and fact:

(a) whether PHCS's practice of selling, renting or leasing Plaintiff Class members' Network Agreements and Provider Discount information to DCCs without their authorization is unlawful;

(b) whether PHCS should be temporarily and permanently enjoined from selling, renting or leasing Plaintiff Class members' Network Agreements and Provider Discount information to Capella or any DCC;

(c) whether the Plaintiff Class is entitled to recover damages from PHCS for unlawfully selling, renting or leasing Plaintiff Class members' Network Agreements and Provider Discount information to Capella or any DCC;

(d) whether Capella's practice of selling Medical Discount Cards that purport to bind Plaintiffs to honor Provider Discounts without a separate contract between Capella and each Plaintiff and otherwise without Plaintiffs' authorization

is unlawful;

(e) whether Capella should be temporarily and permanently enjoined from selling Medical Discount Cards that purport to bind the Plaintiffs to honor Provider Discounts without a separate contract between Capella and each Plaintiff and otherwise without Plaintiffs' authorization; and

(f) whether the Plaintiff Class is entitled to recover damages from Capella for selling Medical Discount Cards that purport to bind the Plaintiffs to honor Provider Discounts without a separate contract between Capella and each Plaintiff and otherwise without Plaintiffs' authorization.

25. The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff Class within the meaning of Fed. R. Civ. P. 23(a)(3). The claims of the Plaintiffs and Plaintiff Class members arise out of the same wrongful conduct of the Defendants, and thus the same case or controversy. The individual injuries suffered by the Plaintiffs arise directly from the same violations charged and the same core wrongful acts and omissions alleged which are common to each member of the Plaintiff Class.

26. The named Plaintiffs are adequate representatives of the Plaintiff Class, and will fairly serve and protect the interests of the Plaintiff Class in this action within the meaning of Fed. R. Civ. P. 23(a)(4). The named Plaintiffs will fairly and adequately represent and protect the interests of the class. The Plaintiffs'

claims as class representatives are typical of the claims of all members of the Plaintiff Class.

27. Specific facts upon which Plaintiffs base their contention that their claims are typical of claims of Plaintiff Class members and that they are adequate representatives of the Plaintiff Class include:

(a) PHCS sold, rented or leased to Capella and other DCCs the Plaintiff Class members' Network Agreements and Provider Discount information;

(b) Capella and other DCCs to whom PHCS has sold the Plaintiff Class members' Network Agreements and Provider Discount information have sold Medical Discount Cards to consumers by falsely representing that class members participate in their medical discount card programs;

(c) none of the Plaintiffs authorized PHCS to sell, rent or lease to Capella and other DCCs their Network Agreements and Provider Discount information, nor did they consent to such sale, rental or lease;

(d) none of the Plaintiffs authorized Capella to sell Medical Discount Cards that purport to bind Plaintiffs to honor Provider Discounts to card holders;

(e) the Plaintiffs have been harmed in substantially the same manner as other members of the Plaintiff Class have been harmed in that PHCS sold, rented or leased to Capella and other DCCs their Network Agreements and Provider Discount information without the Plaintiffs' authorization or consent, and

Capella sold Medical Discount Cards that purport to bind the Plaintiffs without their authorization or consent; and

(f) all of the Plaintiffs' claims arise out the wrongful conduct of the Defendants, as do the claims of Plaintiff Class members.

28. Certification as a class action is also proper because the Defendants have acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Plaintiff Class as a whole pursuant to Fed. R. Civ. P. 23(b)(2).

COUNT I
(Appropriation of Plaintiffs' Names for Financial Gain)

29. The Plaintiffs hereby incorporate all of the allegations of the above paragraphs.

30. The appropriation and use by PHCS and Capella of Plaintiffs' names in connection with the sale of Medical Discount Cards, without the consent of Plaintiffs and for the financial gain of Defendants, constitutes a tort for which PHCS and Capella are liable to Plaintiffs for damages.

31. The Plaintiffs are entitled to recover damages from PHCS and Capella, jointly and severally, in an amount equal to the commercial value to Defendants of the appropriation, as measured by all revenues obtained by each

Defendant as a result of their unlawful appropriation and use of Plaintiffs' names, as well as all profits earned thereon.

JURY DEMAND

The Plaintiffs hereby demand a trial by jury of this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

(a) that pursuant to Fed. R. Civ. P. 23(b)(1), 23(b)(2) and 23(b)(3), as the Court deems appropriate, the Court enters an order or orders certifying this action as a class action brought by the named Plaintiffs as representatives of the Plaintiff Class identified herein;

(b) that the Plaintiffs and members of the Plaintiff Class have judgment against the Defendants in an amount sufficient to fully compensate the Plaintiffs and members of the Plaintiff Class for all damages suffered as a result of the wrongful conduct of Defendants and not less than the amount by which the Defendants have been unjustly enriched by the wrongful conduct alleged herein;

(c) that the Court enter an Order permanently restraining and enjoining Defendants from continuing to engage in the conduct made the subject of this lawsuit;

(d) that the Court grant the Plaintiffs and members of the Plaintiff Class declaratory relief pursuant to 28 U.S.C. § 2201 et seq. and Fed. R. Civ. P. 57 that:

(i) PHCS may not lawfully sell, rent or lease the Plaintiffs' Network Agreements and Provider Discount information to Capella, DCCs or other Non-Payers without Plaintiffs' authorization or consent;

(ii) Capella may not sell Medical Discount Cards that purport to grant Provider Discounts from the Plaintiffs without Plaintiffs' authorization and consent; and

(iii) Plaintiffs are not bound to honor the terms of Capella's Medical Discount Cards where Plaintiffs do not have a direct contract with Capella and did not otherwise authorize Capella to sell Medical Discount Cards.

(e) that the Court award to Plaintiffs and members of the Plaintiff Class their costs and attorneys' fees in pursuing this litigation;

(f) that the Court award to Plaintiffs and members of the Plaintiff Class punitive damages in an amount to be determined by the enlightened conscious of the jury;

(g) that the costs of this action be taxed against Defendants; and

(h) that the Plaintiffs and members of the Plaintiff Class have such other and further relief as this Court deems just and proper.

DOFFERMYRE SHIELDS CANFIELD KNOWLES &
DEVINE, LLC

Kenneth S. Canfield
Ga. Bar No. 107746
Kim Johnson
Ga. Bar No. 687678
1355 Peachtree Street, Suite 1600
Atlanta, Georgia 30309
404.881.8900

BROWNSTEIN NGUYEN & LITTLE LLP

Jay D. Brownstein
Georgia Bar No. 002590
2010 Montreal Road
Tucker, Georgia 30084
770.458.9060

/s/ Kevin S. Little, Esq.
Kevin S. Little
Georgia Bar No. 454225
400 Colony Square, Suite 200
1201 Peachtree Street NE
Atlanta, Georgia 30361
404.685.1662

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have electronically filed the foregoing SECOND AMENDED CLASS ACTION COMPLAINT with the Clerk of Court using the CM/ECF system, which automatically sends e-mail notification of such filing to the following attorneys of record registered for electronic filing:

David P. Dekle ([ddekke@fulcherlaw.com](mailto:ddekle@fulcherlaw.com))

David D. Hudson (dehudson@hullfirm.com)

Andrew W. Holliday (aholliday@fulcher.com)

James Christopher (Driver@hullfirm.com)

Marjorie A. Farris (mfarris@stites.com)

Christopher E. Parker (cparker@mflaw.com)

John L. McKinley, Jr. (jmckinley@mflaw.com)

Ronald J. Stay (rstay@stites.com)

This 15th day of August, 2008.

/s/ Kevin S. Little, Esq.

Kevin S. Little

Ga. Bar No. 454225