

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

HEATHER L. WALLING; DALLAS E. SMITH;)
K.Q., a minor by and through his Mother)
and Next of Kin, CINDY MILLIGAN;)
MICAH PATRICK; and KRISTY WICKS,)

Plaintiffs,)

Case No.: CJ-2014-874-W

vs.)

STATE OF OKLAHOMA)
CLEVELAND COUNTY) S.S.
FILED In The
Office of the Court Clerk

NORMAN REGIONAL HEALTH SYSTEM,)
A Public Trust, and EMERGENCY)
MANAGEMENT MIDWEST, INC., d/b/a)
TEAMHEALTH MID-AMERICA,)

Defendants.)

NOV 25 2014

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Rhonda Hall, Court Clerk

DEPUTY

FIRST AMENDED PETITION (CLASS ACTION)

Plaintiffs, Heather L. Walling, ("Walling"), Dallas E. Smith, ("Smith"), K.Q., ("KQ") a minor, by and through his mother and next of kin, Cindy Milligan, ("Milligan"), Micah Patrick, ("Patrick") and Kristy Wicks ("Wicks"), for their causes of action against Defendant Norman Regional Health System ("NRH") and Emergency Management Midwest, Inc. d/b/a TeamHealth Mid-America ("EMM"), allege and state:

CLASS ACTION ALLEGATIONS

1. This is a class action and on behalf of all individuals that have been arrested and taken by law enforcement agencies to Defendant Norman Regional Health System for blood testing and billed for those services by Defendants NRH and EMM.
2. Plaintiffs bring this action under 12 O.S. §2023 on behalf of themselves and of all other arrestees taken by law enforcement agencies to Defendant NRH for blood testing and billed by Defendants NRH and EMM for those services.
3. The class is defined as all arrestees have been arrested by law enforcement agencies, taken to Defendant NRH, blood tested in NRH at the request of the arresting law enforcement agencies and billed for blood testing by Defendant NRH and EMM.

4. There are several questions of law and in fact common to all members of the class, including, among others:
 - A. Whether 47 O.S. §752(G) specifically requires that law enforcement agencies taking arrestees to Defendant NRH bill the law enforcement agency for blood testing services rendered by Defendant NRH and EMM and not the arrestees.
 - B. Whether Defendant NRH and EMM have violated 47 O.S. §752(G) by billing arrestees and collecting from arrestees for blood testing requested by law enforcement agencies.
 - C. Whether Defendant EMM has breached a fiduciary duty of utmost good faith and loyalty to arrestees by billing blood tested arrestees for professional services without ever examining or treating the arrestees taken to Defendant NRH by law enforcement agencies.
5. All members of the proposed class have been arrested by law enforcement agencies, taken to Defendant NRH for blood testing, and have been billed by Defendants NRH and Defendant EMM for the blood testing.
6. Plaintiffs' are typical of the class members' and all class members are similarly affected by the conduct of Defendants NRH and EMM.
7. All members of the proposed class were arrested by law enforcement agencies and taken to Defendant NRH for blood testing that was requested by the arresting law enforcement agencies, and billed by Defendant NRH and EMM for blood testing that has been performed at Defendant NRH.
8. This action will fairly and adequately protect the interests of the class since their claims are typical and similar to those of the other class members.
9. Plaintiffs have retained competent counsel to prosecute this class action.
10. Plaintiffs have no interests that are adverse or antagonistic to those of the class.
11. A class action is superior to other available means for the fair and efficient adjudication of the controversy. Few, if any, of the class members could practically enforce their statutory rights or seek legal redress for the wrongs complained of in this petition because of the complexity and the numerosity of the claims.

12. Execution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class and would establish incompatible standards of conduct for the parties opposing the class and would lead to repetitious trials on numerous identical common questions of law and fact.

THE PARTIES

13. At all relevant times herein mentioned, Plaintiff Walling was and now is a resident of Oklahoma City, Oklahoma.
14. At all relevant times herein mentioned, Plaintiff Smith was and now is a resident of Norman, Oklahoma.
15. At all relevant times herein mentioned, Plaintiff K.Q. and his mother and next of kin were and now are residents of Norman, Oklahoma.
16. At all relevant times herein mentioned, Plaintiff Patrick was and now is a resident of Oklahoma City, Oklahoma.
17. At all relevant times herein mentioned, Plaintiff Wicks was and now is a resident of Shawnee, Oklahoma.
18. Defendant NRH at all relevant times was and now is a public trust of the City of Norman and is an acute healthcare facility that operates, *inter alia*, an emergency medicine department.
19. Plaintiffs are informed and believe and thereon further allege that Defendant NRH contracted with Defendant EMM to provide emergency medical services to the patients and clientele of Defendant NRH.
20. Plaintiffs are further informed and believe, and thereon further allege that Defendant EMM doing business as Teamhealth Mid-America since on or about August, 2010, and has provided emergency medical services to Defendant NRH and uses the name Norman Emergency Physicians.
21. Plaintiffs are informed and believe, and thereon further allege that Defendant EMM is a Oklahoma for profit entity that operates emergency medicine facilities in the State of Oklahoma and does business under the name of Teamhealth Mid-America.

22. Plaintiffs are informed and believe, and further allege that Defendant EMM has continued to perpetuate the acts and practices of its predecessor Morning Star Emergency Physicians in that it has billed and continues to bill arrestees taken to Defendant NRH's emergency medicine department by law enforcement arresting agencies.
23. Defendant EMM at all relevant times was and now is an entity that contracts with Defendant NRH to provide emergency medicine services to those patients presenting and treated at Defendant NRH's emergency medicine department.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action and personal jurisdiction of the parties hereto.
25. Venue is properly laid in this Court by 12 O.S. §134 and the acts complained of herein arose and occurred in Cleveland County, State of Oklahoma.

FACT ALLEGATIONS

1. Each of the Plaintiffs was arrested on suspicion of an alcohol and/or drug related criminal offense.
2. Each of the Plaintiffs pursuant to 47 O.S. §752 was taken by the arresting law enforcement agency to Defendant NRH for blood testing at the State's request to determine the blood and/or drug levels.
3. Each of these Plaintiffs was blood tested but none was seen or examined by a physician at Defendant NRH.
4. Each of the Plaintiffs was subsequently sent a statement for services rendered by Defendant NRH and Norman Emergency Physicians ("EMM").
5. Each of the Defendants NRH and EMM demanded payment by Plaintiffs for alleged professional services rendered.
6. Unless Plaintiffs paid these statements for services purportedly rendered by Defendants NRH and EMM, they were sent to collection and/or otherwise had their credit impaired through the collection processes.

7. Defendant NRH billed Plaintiffs for its hospital-related professional services and Defendant EMM billed Plaintiffs for professional services as physicians without seeing or examining Plaintiffs, and breached their fiduciary duties of good faith and fair dealing owed to Plaintiffs as their alleged patients.
8. Defendants NRH and EMM knew or should have known that it is the statutory obligation of the arresting agency and not these Plaintiff arrestees to pay for services rendered in performing law enforcement directed blood testing.
9. Despite their actual or constructive knowledge of the provisions of 47 O.S. §752(G), Defendants NRH and EMM have continued to engage in collection efforts and to collect for their services from Plaintiff arrestees rather than to bill and collect from the law enforcement agencies who caused Plaintiffs to be blood tested.

FIRST CAUSE OF ACTION FOR DECLARATORY JUDGMENT

10. Plaintiffs incorporate by reference paragraphs 1 through 9 as though set forth in full herein.
11. An actual dispute and controversy has arisen between Plaintiffs and Defendants in that:
 - A. Plaintiffs assert and contend that as arrestees 47 O.S. §752(G) is clear and unambiguous and by its express language and provisions requires the arresting law enforcement agency requesting the State's blood test to be responsible financially for all blood testing services rendered;
 - B. Plaintiffs have no statutory or other obligation to pay for the blood testing services directed by law enforcement agencies;
 - C. Plaintiffs should be reimbursed for all monies unlawfully collected by the Defendants together with prejudgment and post judgment interest thereon.
12. On the other hand, Defendants ostensibly contend and assert that they do not have to comply with the provisions of 47 O.S. §752(G), or that somehow this statute allows Defendants to bill Plaintiff arrestees for the blood testing services that these arrestees have not requested.
13. A judicial determination is necessary and appropriate to resolve, adjudicate, and determine this dispute that has arisen between Plaintiffs and Defendants.

14. This action is brought pursuant to 12 O.S. §1651, et seq.

WHEREFORE, Plaintiffs pray for a declaration determination that:

1. 47 O.S. §752(G) be construed and determined to be facially unambiguous and to further determine that this statute requires an arresting law enforcement agency requesting a blood test of an arrestee, and not the arrestee, to be the responsible financial party for costs and any professional services rendered in the blood testing process;
2. Defendants NRH and EMM have wrongfully and unlawfully charged Plaintiff arrestees for services requested by an arresting agency;
3. Defendants NRH and EMM be required to disgorge and repay Plaintiff arrestees for all charges collected in violation of 47 O.S. §752(G) together with interest, both prejudgment and post judgment;
4. Defendants NRH and EMM be enjoined and restrained from any further actions that are in violation of 47 O.S. §752(G) and compelled to comply with this statute for all future law enforcement requested blood draws;
5. For their costs;
6. For a reasonable attorney's fees; and
7. For such other and further relief as the Court deems just, equitable, and proper.

SECOND CAUSE OF ACTION – MONEY HAD AND RECEIVED

15. Plaintiffs incorporate by reference paragraphs 1 through 14 as if fully set forth in full herein.
16. Defendants NRH and EMM have received and now have money rightfully belonging and owing to Plaintiffs.
17. Defendants NRH and EMM should be required to pay over to Plaintiffs all monies had and received by them that were collected by Plaintiffs and obtained as a result of law enforcement agencies requesting blood testing.
18. As a direct result of the Defendants collecting and receiving these monies that were obtained from Plaintiffs as a result of the blood testing requested by the law enforcement agencies following Plaintiffs' arrest, Plaintiffs have been damaged in at least the amount of those monies that have been collected and received by Defendants.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For all monies actually had and received by Defendants from Plaintiffs;
2. For interest thereon as allowed by law, both prejudgment and post judgment;
3. For their costs;
4. For a reasonable attorney's fee; and
5. For such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION FOR UNJUST ENRICHMENT

19. Plaintiffs incorporate by reference paragraphs 1 through 18 as though set forth in full herein.
20. Defendants have been unjustly enriched by their billing and collection practices from Plaintiff arrestees in violation of 47 O.S. §752(G) and should be ordered to disgorge, turn over, and deliver to Plaintiff arrestees those monies received in violation of 47 O.S. §752(G).
21. As a direct result of Defendants' actions of unlawfully and improperly collecting from Plaintiff arrestees monies for alleged services rendered for the law enforcement agency requested blood draws, Plaintiffs have been damaged in those amounts that have been collected by said Defendants and Defendants have been unjustly enriched by the sums that they are being requested to be disgorged and paid over.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For all monies had and received by Defendants as a result of billing and collection practices in violation of 47 O.S. §752(G);
2. For interest thereon, both prejudgment and post judgment, as allowed by law;
3. For their costs; and
4. For such other and further relief as the Court deems just and proper.

**FOURTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANT EMM**

22. Plaintiffs incorporate by reference paragraphs 1-21 as though full set forth herein.
23. Defendant EMM owes to its patients a fiduciary duty of utmost good faith and fair dealing.

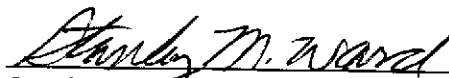
24. Although Plaintiffs were never seen by a physician on those occasions when taken to Defendant NRH for blood testing by law enforcement agencies, Plaintiffs were invoiced by Defendant EMM for emergency department visits that further list on the billing invoices the names of the ghost physicians who allegedly provided such medical services.
25. These invoices for phantom medical services also provide that payments are to be made to Defendant EMM's Post Office Box in Cincinnati, Ohio.
26. Defendant NRH and Defendant EMM acted in concert to consummate and perpetuate this billing scheme and practice to charge Plaintiffs for ghost medical services and are in *pari delicto* although Defendant NRH did not owe Plaintiff a fiduciary duty as did Defendant EMM and no relief is sought against Defendant NRH based on this cause of action.
27. As a direct result of Defendant EMM's breach of its fiduciary duty owed to Plaintiffs by failing to provide medical care and billing for services not performed, Plaintiffs have been damaged in a sum in excess of \$75,000.00.
28. Plaintiffs further seek punitive and exemplary damages against Defendant EMM to punish and set an example for others not to engage in similar or like opprobrious misconduct.

WHEREFORE, Plaintiffs pray for judgment against Defendant EMM as follows:

1. For actual damages in a sum in excess of \$75,000.00 and in accordance with the proof at the time of trial;
2. For punitive and exemplary damages in a sum in excess of \$75,000.00 and as determined by the jury at the time of trial;
3. For interest thereon, both prejudgment and post judgment, as allowed by law;
4. For their costs; and
5. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF MAILING

I certify that on this 25TH day of November, 2014, I mailed a true and correct copy of the above and foregoing to the following:

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