

FILED
12-04-2018
John Barrett
Clerk of Circuit Court
2018CV009940
Honorable Jeffrey A.
Conen-30
Branch 30

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

DAPHNE SMITH

3739A N. 49th Street
Milwaukee WI 53216

Individually and on behalf of a class of others similarly
situated,

Plaintiff,

v.

Case No.:

Case Code: 30301

PARATECH AMBULANCE SERVICE, INC.

c/o Registered Agent - Robert Rauch
9401 W Brown Deer Rd
Milwaukee , WI 53224-2009

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, 901 North Ninth Street,

Milwaukee, Wisconsin 53233 and to Welcenbach Law Offices, S.C., Plaintiff's attorney, whose address is 933 N. Mayfair Rd., Suite 311, Milwaukee, Wisconsin 53226. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee, Wisconsin this 3rd day of December, 2018.

WELCENBACH LAW OFFICES, S.C.
Attorneys for Plaintiff

/s/: Electronically signed by Robert J. Welcenbach
Robert J. Welcenbach – SBN: 1033091

P.O. Address

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**CLASS ACTION COMPLAINT
&
REQUEST FOR JURY TRIAL**

Plaintiff Daphne Smith ("Smith" or "Plaintiff"), through her undersigned counsel files this Class Action Complaint and Request for Jury Demand on her individual behalf and on behalf a class of all similarly situated persons against Defendant and says in support:

I. PARTIES

1. Plaintiff, DAPHNE SMITH, is an adult resident of the State of Wisconsin who resides at the address captioned above.
2. That PARATECH AMBULANCE SERVICE, INC. (“PARATECH”) is a Wisconsin corporation and whose registered agent is captioned above.
3. That PARATECH is a corporation that has acted and acts as an ambulance service provider as that term is contemplated by Wis. Stat. §146.81(1) et seq.. That PARATECH is a “health care provider” as that term is contemplated by Wis. Stat. §146.81(1) et seq..

II. BACKGROUND

4. The Citizens of Wisconsin have valid interests in obtaining copies of their medical records. They may want them to provide to their health care providers, for further evaluation, to pursue legal claims for injuries or simply to maintain the records out of personal concerns. Whatever the reason, the records must be made available for them to obtain.
5. While the citizens may want to obtain copies of their health care records, the health care providers do not want to bear the expense of providing copies of the records to their patients.
6. The Wisconsin Legislature has addressed the respective wants and needs of both patients and the health care providers by enacting a statute, Wis. Stat. §146.83, that establishes the patient’s rights to copies and sets the maximum compensation that the health care providers who provide the records may charge.
7. At this time, the production of copies of electronically stored information can be accomplished at minimal cost. The copy cost by a third party, such as Staples, starts at \$.02 per page for black and white and \$.11 per page for color copies.

8. The rates allowed by the Wisconsin law are substantially more than the costs of obtaining copies from third parties. Under Wis. Stat. §146.83, the charges may be as follows:

(b) Except as provided in sub. (1f), a health care provider may charge no more than the total of all of the following that apply for providing the copies requested under par.

(a):

1. For paper copies: \$1 per page for the first 25 pages; 75 cents per page for pages 26 to 50; 50 cents per page for pages 51 to 100; and 30 cents per page for pages 101 and above.

2. For microfiche or microfilm copies, \$1.50 per page.

3. For a print of an X-ray, \$10 per image.

4. If the requester is not the patient or a person authorized by the patient, for *certification* of copies, a single \$8 charge.

5. If the requester is not the patient or a person authorized by the patient, a single *retrieval* fee of \$20 for all copies requested.

6. Actual shipping costs and any applicable taxes.

9. A patient or a “person authorized in writing by the patient” who pays the fee is entitled to copies at the statutory rate and the “health care provider” must provide them pursuant to that rate under Wis. Stat. §146.83(3f).

10. If health care records are released without the patient's authorization under Wis. Stat. 146.82(2), the provider may charge an \$8.00 certification fee and a \$20.00 retrieval fee (as adjusted over time).

11. This action arises because the Defendant, has attempted to enhance its profits that it can make off the already generous allowable legislative per copy charge by also routinely

charging patients or persons authorized by the patient, a base fee, an 8.00 certification fee, a 20.00 retrieval fee, processing, basic or other fees not authorized by the statute.

12. On May 4, 2017, the Wisconsin Supreme Court issued its decision in Smith v. Healthport Technologies, et. al, 2017WI 45 (2017) and held that neither a health care provider nor any of its agents, including a healthcare records copy service (often self-styled as a “release of information service”) may charge a patient or a person authorized by the patient in writing a certification, basic, processing or retrieval fees for producing a copy of the patient’s records. The person authorized in writing acts as the agent for the patient and is a known principal.
13. A copy of the decision is attached hereto as Exhibit A.
14. The Plaintiff, Daphne Smith, is one of many persons who the Defendant charged illegal fees contrary to Wis. Stat. §146.83.
15. The Plaintiff also seeks to represent herself and the other persons who are similarly situated to her because the relatively low dollar amount of the illegal charges by the Defendant make it an appropriate situation for a class to be certified under Wis. Stat. Sec. §803.08.
16. Whether or not the Defendant charged in excess of the generous amounts allowed by Wisconsin law is a common issue for the Plaintiff and any person who has been charged by the Defendant or who may deal with the Defendant in the future.
17. Plaintiff’s claims are typical because she has been charged fees in excess of those allowed by Wisconsin law.
18. The number of persons who have been charged these fees by the Defendant are so numerous that joinder of all in a single action is impractical.

19. The Plaintiff is an adequate representative of the proposed class below.
20. Plaintiff's counsel are adequate and best suited to represent Plaintiff and the class in this matter based on their knowledge of the legal issues involved and their experience in representing classes before both state and federal courts.
21. The members of the class are easily ascertained from the Defendant's own records. The Defendant issues invoices which provide the name of the class members and the amounts they were illegally charged. These records are admissible in any proceeding as they are statements made the Defendant.
22. The common issue identified for the Plaintiff and the class is also the predominant issue.
23. A class action is superior to requiring many repetitive individual actions that will raise the same issue and ask for the same relief against the Defendant. The amount of actual damages make individual actions unlikely and Plaintiff is unaware of any individual actions that have been pursued by Wisconsin residents to address these illegal charges made by the Defendant. In the absence of a class, the state's limit on fees that may be charged will not be enforced and the Defendant will retain an illegal windfall.
24. The Plaintiff should be permitted to proceed to sue for the benefit of the following class:

PARATECH Class:

All persons in Wisconsin:

- (i) who were a patient of PARATECH and requested their own health care records or authorized another person in writing to obtain the patient's health care records from PARATECH; and
- (ii) were charged a base, basic, retrieval, certification or other fee by PARATECH in violation of Wis. Stat. §146.83(3f)(b)(4) - (5);

(iii) during the 6 year period preceding the commencement of this action through the date of trial.

The Class specifically excludes the following persons or entities: (i) Defendant, any predecessor, subsidiary, sister and/or merged companies, and all of the present or past directors, officers, employees, principals, shareholders and/or agents of the Defendant; (ii) any and all Federal, State, County and/or Local Governments, including, but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, councils and/or any other subdivision, and any claim that such governmental entities may have, directly or indirectly; (iii) any currently-sitting Wisconsin state court Judge or Justice, or any federal court Judge currently or previously sitting in Wisconsin, and the current spouse and all other persons within the third degree of consanguinity to such judge/justice or (iv) any law firm of record in these proceedings, including any attorney of record in these proceedings; and (v) anyone person who would otherwise belong to the class but who Defendant can identify as being charged a fee, either directly or indirectly through a person authorized in writing, but said fee was not collected or paid to Defendant by anyone.

III. JURISDICTION & VENUE

25. This Court has jurisdiction over Defendant in that Defendant is headquartered in Milwaukee County, conducts substantial business in Milwaukee County and is registered in this State to conduct business. This transaction further arose in Milwaukee County.
26. Venue is also appropriate in this County because Defendant conducts substantial business in Milwaukee County.

IV. FACTS

27. Daphne Smith was injured in a car accident on May 21, 2014.
28. Ms. Smith retained Welcenbach Law Offices as her attorneys who processed her personal injury claim.
29. Ms. Smith signed HIPAA releases authorizing the release of medical information to her attorneys.
30. Ms. Smith 's attorneys sought certified health care records and billings from Defendant, PARATECH as the health care provider.

A. Certified Health Care Request

31. That Ms. Smith 's attorneys wrote and requested certified health care records, including records and bills, from PARATECH on October 3, 2014, December 1, 2014 and December 23, 2014 and provided a written consent in the form of a HIPPA release signed by Ms. Smith.
32. That PARATECH responded to the health care records request and charged the sum of \$37.27 for the certified records request on Invoice #14-43901.
33. That on or about January 27, 2015, Welcenbach Law Offices paid the \$37.27 charge by Check No. 9839 to PARATECH to obtain the certified health care records for Ms. Smith.
34. That PARATECH charged a base, basic, certification, processing, retrieval and/or other fees to Ms. Smith contrary to Wis. Stat. §146.83 to obtain her certified health care records.
35. That Defendant has knowingly and willfully charged these fees contrary to the statute.

36. Alternatively, the Defendant negligently charged these fees contrary to the statute.

**V. VIOLATION OF WIS. STAT. §146.83
ON BEHALF OF PLAINTIFF AND CLASS MEMBERS**

37. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.

38. That Smith ultimately settled her personal injury case and reimbursed Welcenbach Law Offices for all charges incurred from Defendant.

39. That Smith incurred damages.

40. That Defendant PARATECH is liable for damages to Plaintiff and the Class Members.

41. In Wisconsin, access to patient health care records is governed by Wis. Stat. § 146.83.

Wis. Stat. §146.83(3f)(a) provides in pertinent part:

Except as provided in sub. (1f) or s. 51.30 or 146.82 (2), if a person requests copies of a patient's health care records, provides informed consent, and pays the applicable fees under par. (b), the health care provider *shall* provide the person making the request copies of the requested records.

Wis. Stat. §146.83(3f)(a) (Emphasis added.)

42. Wis. Stat. §§146.83(3f)(b)(1) - (6) set out the maximum charges that may be charged and collected for medical records and provides:

Except as provided in sub. (1f), a health care provider may charge no more than the total of all of the following that apply for providing the copies requested under par. (a):

1. For paper copies: \$1 per page for the first 25 pages; 75 cents per page for pages 26 to 50; 50 cents per page for pages 51 to 100; and 30 cents per page for pages 101 and above.
2. For microfiche or microfilm copies, \$1.50 per page.
3. For a print of an X-ray, \$10 per image.
4. ***If the requester is not the patient or a person authorized by the patient***, for certification of copies, a single \$8 charge.
5. ***If the requester is not the patient or a person authorized by the patient***, a single retrieval fee of \$20 for all copies requested.
6. Actual shipping costs and any applicable taxes.

Wis. Stat. §146.83(3f)(b)(1) - (6) (emphasis added.)

43. The phrase “person authorized by the patient” is defined in Wis. Stat. § 146.81(5) to mean “any person authorized in writing by the patient.” This language is unambiguous and clear and would obviously exempt anyone with a HIPAA compliant medical records release.
44. Ms. Smith filed this suit because she was wrongfully charged a base, basic, certification, processing or retrieval fee by the Defendant in violation of Wis. Stat. §146.83(3f)(b)(4) - (5).
45. That the Defendant PARATECH charged the Plaintiff a base fee, certification fee, processing fee, basic, retrieval fees or other illegal fees although the request was made by the plaintiff or a person authorized in writing by the Plaintiff, namely, her attorneys.
46. That all invoices issued from Defendant to Plaintiff were paid.
47. The Defendant has charged other Wisconsin residents a base, retrieval, basic, processing, certification and/or other fee although the request for the health care records was made by the patients themselves or persons authorized in writing by them.
48. The Defendant was not entitled to charge the Plaintiff or the Class Members a base, basic, processing, certification, retrieval or other fees when they request their own records or through authorized by them in writing has requested their records.
49. The Defendant has charged fees in excess of the amounts allowed by Wisconsin law.
50. The Defendant has violated the provisions of Wis. Stat. §146.83.
51. The Plaintiff and the Class Members who have been charged a base, basic, processing, retrieval certification or other fee when that person or a person authorized by them in writing has requested their own records, is entitled to recover the fees charged by the Defendant.

52. That Defendant knowingly and willfully violated Wis. Stat. §146.83 by charging base fees, retrieval fees, certification fees or other inappropriate fees.
53. That the violation of Wis. Stat. §146.83, subjects Defendant to exemplary damages of between \$1.00 and \$25,000.00 per violation, plus costs and reasonable actual attorney fees pursuant to Wis. Stat. §146.84(1)(a).
54. That Plaintiff and the Class Members have incurred actual damages due to Defendant's knowing and willful violation of Wis. Stat. §146.83.
55. That Plaintiff and the Class Members are entitled to recover their damages, plus exemplary damages of between \$1.00 and \$25,000.00 per violation, plus costs and reasonable actual attorney fees from Defendant for the knowing and willful violation of Wis. Stat. §146.83.
56. That, alternatively, Defendant negligently violated Wis. Stat. §146.83 by charging basic, processing, retrieval, certification or other fees.
57. A negligent violation of Wis. Stat. §146.83, subjects Defendant to exemplary damages of between \$1.00 and \$1,000.00 per violation, plus costs and reasonable actual attorney fees pursuant to Wis. Stat. §146.84(1)(b).
58. That Plaintiff and the Class Members have incurred actual damages due to Defendant's negligent violation of Wis. Stat. §146.83.
59. That Plaintiff and the Class Members are alternatively entitled to recover their damages, plus exemplary damages of between \$1.00 and \$1,000.00 per violation, plus costs and reasonable actual attorney fees from Defendant for a negligent violation of Wis. Stat. §146.83.

VI. UNJUST ENRICHMENT - DISGORGEMENT

60. Plaintiff incorporates all preceding paragraphs as if set forth fully herein.

61. Defendant knew the monies charged were unlawful.

62. Defendant appreciated and received the benefit of the monies they charged illegally.

63. Defendant's retention of said benefit is inequitable and unjust and it should be required to return said monies and disgorge all illegal charges, profits and interest earned on same.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment in favor of

Plaintiff and the Class Members and against the Defendant as follows:

- 1) Certify the Proposed Class, appoint the Plaintiff as Class Representative and appoint her counsel as Class Counsel;
- 2) For compensatory damages in an amount to be determined at trial by a jury;
- 3) For exemplary damages up to \$25,000.00 per violation, plus costs and reasonable actual attorney's fees incurred by Plaintiff(s);
- 4) For the return of all monies, profit, interest and pre-judgment interest on all sums illegally collected;
- 5) For such other and further relief as this court finds necessary and proper.

PLAINTIFF REQUESTS A TRIAL BY JURY

Dated at Milwaukee, Wisconsin this 3rd day of December, 2018.

WELCENBACH LAW OFFICES, S.C.
Attorneys for Plaintiff

/s/: Electronically signed by Robert J. Welcenbach
Robert J. Welcenbach – SBN: 1033091

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