



Fax to Consumer's Attorney Not Actionable under the FDCPA

Letter to consumer did not require time-barred debt notice.
***Plumb v. Prof'l Account Servs., Inc.*, No. 3:19-CV-00085-SLG,**
2020 WL 2476752, at *9 (D. Alaska May 13, 2020), click here:
<https://tinyurl.com/y8xr7s3n>

By Laura Dadd, Compliance Analyst, ACA International

The consumer incurred medical debts, which in time were transferred to the debt collector. The debt collector sent the consumer's attorney a fax which stated:

"I am contacting your office on behalf of Mat-Su Regional Medical Center ... I am checking on the status of the case for [the consumer] ... The patient/client treated on 12/17/14 and has an outstanding balance with the hospital of \$5,121.64 ... I spoke with Allstate and I was advised that the claim/case settled with the patient in June 2017 ...

Please verify if the patient needs to be contacted for the balance or is the case still ongoing with your office?"

Roughly a month later, the debt collector sent the consumer a letter titled "RE: Mat-Su Regional Medical Center," and stating, "Per your request, this is to advise you that your current balance is \$5121.64." The letter added in bold font: "This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose."

The consumer filed suit against the debt collector claiming three violations of the FDCPA between the two communications: (1) false or misleading

representations; (2) failure to disclose; and (3) time-barred debt collection.

The consumer alleged that the fax sent to his attorney falsely claimed that the debt collector was working on behalf of the creditor and that the fax failed to disclose it was from a debt collector. The debt collector argued that the fax was not actionable under the FDCPA because it was a communication directed to the consumer's attorney. The consumer countered the debt collector's argument by stating that, "where a communication otherwise directed only to a debtor's attorney is accompanied by 'any threat to contact the debtor,' it is actionable."

The court agreed with the debt collector's argument and found that the fax was not actionable under the FDCPA, "[b]ecause the recipient and the content of the communication are not disputed." The court stated that, "[the fax] does not suggest future menace or harm, nor any intent to take action to make contact with the debtor absent confirmation from counsel."



The consumer also claimed that the letter sent to him by the debt collector was false and misleading because it demanded payment on a time-barred debt without informing the consumer that, "no legal action could be undertaken to attempt to recover the [d]ebts" or that "any partial payment by [the consumer] may result in the revival" of the debt.

The court was not persuaded by the consumer's argument. The court stated that, "Although the Letter does not include an express disclaimer about the legal status of the debt, read as a whole, the Letter does not misrepresent the legal character of the debt, and does not falsely imply it is enforceable in court."

This piece was originally published as a "Daily Decision," powered by ACA's Compliance and Litigation Advocacy Team.

COVID-19: Working in a New Environment

At home or in the office – either way COVID:19 is expected to have a lasting impact on our world.

There's no question that the COVID-19 crisis has presented many unforeseen challenges and opportunities that could become the "new normal" as we flatten the curve and transition back into the office environment. In this episode of ACA Cast titled, "COVID-19: Working in a New Environment," Michael Lamm, managing partner at Corporate Advisory Solutions, and Kim Coghill, vice president of communications at ACA International, discuss the impact the crisis has had on the debt collection industry along with tips for working in the post-pandemic world. This riveting podcast is packed with information designed to prepare you for heading back to the office -- or extending your remote work arrangements. Here's an excerpt:

ML: The industry, Kim, has been in turmoil with everything going on at the state level. But it doesn't all need to be bad, right, because I think this has been a wakeup call for the industry around business continuity planning. I go into agencies all the time, our agencies, debt buyers, and law firms, and it's kind of like you dust off a shelf and you're like, "Oh, there's my business continuity plan." Now I think people have dusted that off and have kept it on their desk and will be keeping it close as this pandemic continues. When you think about it, I don't think anybody ever thought that operationally, we would just be sitting working at home, especially in debt collection.

Kim, I wrote an article about work-at-home models in 2006 and people said to me, "Michael, that's a great concept, but in consumer debt collection, it's never going to happen." And it's crazy how the world changes. It's probably the best way to say it.

KC: No question at all. So, for those people working at home, how do you keep them motivated?

ML: I've been finding that keeping communication channels open, whether it's email, text, chat, or Zoom works. I feel like most companies today, if they really kind of focused on productivity and efficiency and keeping that morale up, they're doing a lot via Zoom right now. And they're trying to communicate, especially with their key people around them, Kim, every single day, one to two times a day, just to make sure they're having touch points.

Another thing that our companies are doing is they're having individual calls or Zoom meetings visually so they can really talk and get to know their staff during these difficult times, because it can be a lonely environment for people, especially those who do not have family or kids. That could be a good or a bad problem, depending on who you talk to. But there is a feeling for those that don't have that family or children connection, that loneliness feeling. And the best way of alleviating that is by communicating regularly with your staff and talking to them, not just about business, but about what they're doing personally for mental health purposes. And I think that's something that we're seeing many companies in the industry spending time on and trying to make sure that they're interfacing with the staff regularly.

KC: Right. And I actually work in DC and we're taking baby steps back to the office; I think the date that restrictions are scheduled to be

lifted is June 8th, which is a couple of weeks away. So, for companies that are transitioning back to the office, what are some of your tips?

ML: It's definitely going to be different. We're based in Philly and our order was extended to June 4th. So, assuming it doesn't change, the world's going to be different when you go back to the office. I think there should be obviously a plan, a coordinated plan on how you bring staff back. You're not flipping a light switch here. It's going to take time. And you've got to really speak to your staff and understand how you're going to deal with this social distancing and health related things that come up, which they absolutely will once you start bringing all the staff back into the office.

ACA International's library of podcasts includes a variety of health care, legal and regulatory topics. To learn more, visit ACA's website at www.acainternational.org and click the "ACA Cast" logo.



Almost One-Third of Respondents Reported Falling Behind on Monthly Bills

Grim results may take time to reverse as many consumers struggle with health care costs and other dilemmas attributed to the COVID-19 pandemic.

Some Americans are having trouble paying their monthly bills as they suffer from depression due to lack of human contact while facing other challenges brought on by the lingering COVID-19 crisis, according to a May 2020 health tracking poll conducted by the Kaiser Family Foundation.

Financially, the poll found:

- Three in 10 adults (31%) say they have fallen behind in paying bills or had problems affording household expenses like food or health insurance coverage since February due to the coronavirus outbreak.
- One in four Americans (26%) say they or someone in their household has skipped meals or relied on charity or government food programs since February, including 16% who say this was due to the impact of coronavirus on their finances. The share who say they have skipped meals or relied on charity or government food programs due to coronavirus is higher among those in households that have lost a job or income due to coronavirus (30%) and among Black adults (30%) and Latinos (26%).

Meanwhile, at a time when many newly unemployed Americans may turn to Medicaid for health insurance coverage:

- Most adults (55%) say Medicaid is important to them and their families.
- One in four adults (23%) who are not currently on Medicaid say it is likely they or a family member will turn to Medicaid for health insurance in the next year, the poll said. This share increases to 31% among those who lost income or whose spouse lost income due to the coronavirus outbreak.

And, speaking of Medicaid, nearly half of adults reported that they or a family member delayed medical care due to the virus outbreak.

- 48% say they or someone in their household postponed or skipped medical care due to the coronavirus outbreak, including a higher share of women than men (54% vs. 42%).
- 11% of adults overall say their or their family member's condition worsened as a result of postponing or skipping medical care due to COVID-19.

It is worth noting that many hospitals and medical care providers closed for non-emergency services and many patients with non-emergency conditions postponed or cancelled appointments, therefore the decision to delay treatment could have caused by facility closures.

The poll also found that women continue to be more likely than men to say coronavirus has had a negative impact on their mental health (46% vs 33%). Similarly, those who live in urban (46%) and suburban (38%) areas are more likely than those who live in rural areas (28%) to say coronavirus has had a negative impact on their mental health. Among those living in households that experienced income or job loss since the coronavirus outbreak, 46% say the pandemic has had a negative impact on their mental health, including 13% who say it has had a "major impact."

Source: KFF Health Tracking Poll - May 2020, <https://tinyurl.com/y7m2h5xb>

NEWS & NOTES

Partnership Ended

Southeast Michigan's Beaumont Health is ending partnership plans with Akron, Ohio based Summa Health.

The two organizations had been working over the last year to create a partnership, signed a definitive agreement in December 2019 and later received all necessary state and federal regulatory approvals. The organizations are now finalizing details and next steps to end the planned partnership. Additional information may be obtained here: <https://tinyurl.com/y8sgomr3>

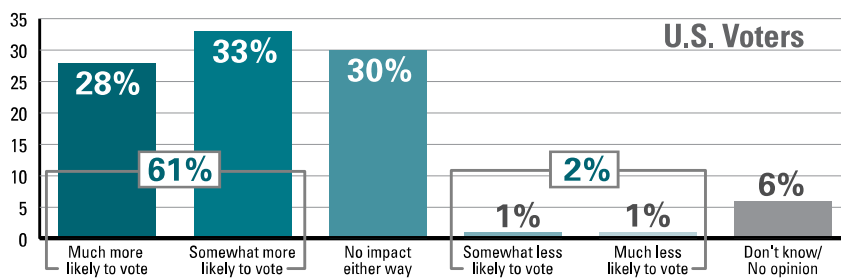
Health Systems Opening Hospitals

Becker's Hospital Review in May reported on seven health systems opening new hospitals. The list includes a plan by Austin, Texas-based Dell Children's Medical Center to invest \$700 million in the next three years to expand in the state. Additional information may be obtained here: <https://tinyurl.com/yc4yssvo>

For more health care collections news, visit ACA's Healthcare Collections page at www.acainternational.org/pulse.

Access to Rural Health Care Viewed as Troublesome by Likely Voters

Three in five voters (61%) would be more likely to vote for a candidate in the 2020 election cycle who says he or she will address access to health care in rural America. Would you be more or less likely to vote for a candidate in the 2020 election cycle who says he or she will address access to health care in rural America, or would it have no impact on your vote either way?



Source: Bipartisan Policy Center https://bipartisanpolicy.org/wp-content/uploads/2020/04/WEB_BPC_Rural-Health-Care-Report.pdf