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IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED

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RICHARD R. ROBERTSON, JR.

[Signature]

Case No. 09C2008

Jury Demand

TENNESSEE MEDICAL ASSOCIATION,
WILLIAM GOODMAN, M.D., and
MARY KEOWN, M.D.

Plaintiffs.

v.

HEALTH RESEARCH INSIGHTS, INC.,
METROPOLITAN GOVERNMENT OF
NASHVILLE DAVIDSON COUNTY,
TENNESSEE by and through
METROPOLITAN BOARD OF
PUBLIC EDUCATION, and
BLUECROSS BLUESHIELD OF
TENNESSEE, INC.

Defendants.

COMPLAINT

1. This is a complaint seeking injunctive, declaratory and monetary relief relating to defamatory accusations by Defendant Health Research Insights, Inc. ("HRI") that Plaintiff Physicians and other physicians overbilled for their medical services provided to patients enrolled in the MBPE medical benefit plan administered by BCBST in 2006 and 2007.

I. Parties.

2. Plaintiff, Tennessee Medical Association ("TMA") is a Tennessee not-for-profit corporation organized and existing under the laws of Tennessee since 1830, with its headquarters located at 2301 21st Avenue South, Nashville, Tennessee. TMA represents over 7,500 members in Tennessee, including licensed physicians, medical interns and residents, and medical students.

Many TMA members have provided medical services to patients enrolled in the MBPE medical benefit plan administered by BCBST

3. Plaintiff, William Goodman, M.D. ("Plaintiff Physician") is a physician practicing the specialty of ophthalmology in Nashville, Davidson County, Tennessee.

4. Plaintiff, Mary Keown, M.D. ("Plaintiff Physician") is a physician practicing the specialty of pediatrics in Nashville, Davidson County, Tennessee.

5. Defendant, Health Research Insights, Inc. ("HRI") is a Tennessee corporation whose principal place of business is at 381 Riverside Drive, Suite 300, Franklin, Williamson County, Tennessee 37064. It has conducted business in Nashville, Davidson County, Tennessee. Its agent for service of process is Theodore L. Perry, Chief Executive Officer, 381 Riverside Drive, Suite 300, Franklin, Tennessee 37064.

6. Defendant Metropolitan Board of Public Education and Metropolitan Government of Nashville Davidson County, Tennessee, ("MBPE") are governmental entities created by charter. The agent for service of process is Sue Cain, Director, Metro Nashville Law Department, Metro Courthouse, Suite 108, Nashville, Tennessee 37201.

7. Defendant BlueCross BlueShield of Tennessee, Inc. ("BCBST") is an "insurance entity" as defined in TENN. CODE ANN. § 56-7-109 and 56-7-110. BCBST conducts business and maintains offices in Nashville, Davidson County, Tennessee. Its headquarters is located in Chattanooga, Hamilton County, Tennessee. Its agent for service of process is William E. Young, Senior Vice President of Risk Management and General Counsel, 801 Pine Street, Chattanooga, Tennessee 37402.

II. Venue.

8. Venue is proper because the cause of action arose in Davidson County, Tennessee.

9. Venue is proper in Davidson County, Tennessee also because Defendant Metropolitan Board of Public Education and Metropolitan Government of Nashville Davidson County, Tennessee are located in Davidson County, Tennessee, and because BCBST maintains offices and conducts business in Davidson County, Tennessee. Defendant HRI conducts business in Davidson County.

III. Factual Allegations.

10. This lawsuit arises out of defamatory accusations made by HRI in April, 2009 that Plaintiff Physicians overcharged and were overpaid for medical services provided in 2006 and 2007 to patients enrolled in the MBPE medical benefit plan administered by BCBST (the "Questioned Services").

A. The Contractual Relationships.

1. The BCBST/ Physician Agreements.

11. In 2006 and 2007, Plaintiff Physicians provided medical services to patients enrolled in the MBPE medical benefit plan administered by BCBST. At the request of the patients, Plaintiff Physicians submitted claims for payment to BCBST, which paid a discounted fee for the services.

12. Prior to providing the Questioned Services in 2006 and 2007, Plaintiff Physicians had entered into contracts with BCBST ("BCBST/ Physician Agreement"). The Physician Agreement addressed the terms by which claims would be submitted by Plaintiff Physicians and

payment would be made by BCBST for medical services provided to BCBST enrollees. (Pertinent parts of the contract language are attached as Exhibit A).

13. In negotiating and entering into the Physician Agreement, BCBST represented to Plaintiff Physicians that it was authorized to act on behalf of its enrollees and the self-funded employer plans with which BCBST had contracted in matters relating to submission and payment of medical claims to member/patients, and with regard to resolution of disputes regarding such claims.

14. The BCBST/Physician Agreement specifies the terms applicable to disputes relating to the submission of and payment for claims for medical services, including the procedures to be followed in the event a dispute should arise relating to the claims.

15. The obligation of BCBST to make payment for medical services provided by Plaintiff Physicians' patients arose pursuant to either (1) insurance contracts with patients or medical plans or (2) third party administrator (TPA) contracts with employers under self-funded medical benefit plans for employees and dependents. Consequently, BCBST is an "insurance entity" as defined in TENN. CODE ANN. § 56-7-109 and 56-7-110(c).

16. In consideration for BCBST's express and implied representations and agreements in conjunction with the BCBST Physician Agreement, and made on behalf of those with whom BCBST had contracted, Plaintiff Physicians agreed to discount the charges that they would accept for providing medical services to BCBST enrollees, and to abide by other contract terms.

17. Pursuant to the Physician Agreement, Plaintiff Physicians provided medical services and submitted claims to BCBST, including the Questioned Claims, and accepted the discounted payments as payment in full for the services.

18. The BCBST/Physician Agreement included a Dispute Resolution Procedure for resolving any questions or disputes relating to claims payment, including alleged overpayments, and expressly provided that BCBST would not raise issues relating to overpayment after the end of the second year after the claims were submitted.

19. The BCBST Physician Agreement thus limits the time within which BCBST could reopen claims that have been paid by BCBST, such that claims submitted in 2006 and 2007 are not subject to reopening by BCBST or those on whose behalf the discounted claims were paid.

20. Further, TENN. CODE ANN. § 56-7-110(c) provides that BCBST, an "insurance entity" as defined in TENN. CODE ANN. § 56-7-110(c), may only demand payment back from a provider within the eighteen months after a payment was made, except in cases of fraud.

21. BCBST has made no assertion that Plaintiff Physicians are guilty of fraud.

22. Plaintiff Physicians were not guilty of fraud in submitting claims for the Questioned Services. There is no basis in fact to support an allegation of fraud.

2. The BCBST/MBPE Contract:

23. On April 14, 2005 (prior to the Questioned Services in 2006 and 2007), MBPE had entered into a contract with BCBST (the "BCBST /MBPE Contract") which provided that BCBST was the sole third party administrator ("TPA") for the medical benefit plan for MBPE employees and dependents. (Pertinent parts of contract are attached as Exhibit B).

24. The BCBST/ MBPE contract, Section 18.2, assigned all of MBPE's rights to pursue recovery of overpayments to BCBST ("contractor"); MBPE retained no such rights to pursue recovery of overpayments:

18.2 Metro Teachers assigns to contractor the right and authority to pursue recovery of overpayments on behalf of Metro

Teachers, including, but not limited to, commencing litigation. Any legal actions initiated to recover overpayments will be at the expense of Metro Teachers, or referred to Metro Teachers for further action.

25. This exclusive right of BCBST ("Contractor") to recover overpayments is further specified in the BCBST/ MBPE Agreement, Section 5.5.5.1:

5.5.5.1 Whenever Contractor becomes aware of an overpayment under the Plan, Contractor shall make a diligent attempt to recover such overpayment.

26. The BCBST/ MBPE Contract otherwise authorized BCBST to act on behalf of MBPE in matters relating to the payment of claims for medical services covered by the Plans.

27. The BCBST/ MBPE Contract, Section 6.8, limits the right of MBPE to perform an audit of BCBST without charge to one "simple audit" (an audit requiring less than fifty person-hours of work). Any larger audit of BCBST that does not fit within this definition requires that MBPE must bear the cost, after negotiation with Contractor [BCBST]. The BCBST/ MBPE Contract gives MBPE no right to a direct audit of BCBST's contracted physicians.

28. The BCBST/ MBPE Contract, Section 6.8.3, separately addresses a "contingent fee audit" performed by MBPE. In the event it is necessary for Contractor [BCBST] to defend its claims adjudication based upon the results of a contingent fee audit, MBPE is obligated to pay the costs incurred in such defense.

29. The BCBST/ MBPE contract contains no authority for MBPE to audit BCBST's physicians or other providers. The BCBST/ MBPE contract does not even give MBPE access to "provider reimbursement or other proprietary information", in the absence of a showing of (1) a "compelling reason", and (2) that MBPE "needs such information to perform its duties in administering the Plan."

30. The BCBST/ MBPE Contract gives MBPE no rights to obtain confidential protected health information directly from physicians who have provided services to members pursuant to a Physician Agreement with BCBST.

31. In entering into the BCBST/ MBPE Contract, and in its actions since, MBPE accepted the benefits of the terms of the BCBST Physician Agreements with the Plaintiff Physicians, including the discounts given by the Plaintiff Physicians, which had been given by Plaintiff Physicians in reliance upon and pursuant to the terms of the BCBST Physician Agreements.

32. Plaintiff Physicians had a relationship with MBPE through the BCBST contracts that is within the protection of TENN. CODE ANN. § 47-50-109, and the common law of Tennessee.

33. The contract between BCBST and MBPE, combined with the BCBST Physician Agreement between BCBST and Plaintiff Physicians, are an integrated and interdependent program. The contracts established the exclusive mechanism for resolution of issues relating to alleged incorrect payments made by BCBST to physicians who had treated patients enrolled in MBPE's plan.

3. The Contractual Framework.

34. The BCBST/MBPE contract and the BCBST Physician Agreement constitute a integrated and interdependent contractual framework by which (1) discounts from Plaintiff Physicians' charges for medical care were obtained for the benefit of MBPE and its enrollees, and (2) issues relating to payments for those services are to be resolved, including allegations of alleged overpayments.

35. The contractual framework includes provisions that any claims for alleged overpayments (1) must be made within two years; and (2) resolution of any such disputes is to be undertaken by and through BCBST within its contractual limitations and applicable law.

36. Both the BCBST/ MBPE Contract and the BCBST/ Physician Agreement contain provisions relating to who incurs expense relating to disputes relating to payment of claims. There is no such provision relating to direct actions between MBPE and physicians, further demonstrating that such an "end run" effort is a breach of the contractual framework for payment of claims for medical services provided to MBPE plan enrollees.

37. In contracting with BCBST as Third Party Administrator, and accepting discounts that BCBST had negotiated with physicians in its Physician Agreements, MBPE accepted and agreed to be bound by the terms of the BCBST/Physician Agreement regarding the resolution of any payment disputes:

38. If MBPE is permitted to circumvent or ignore its assignment of rights to BCBST Plaintiff Physicians and TMA members will be subjected to the potential of inconsistent and duplicative obligations: i.e., resolution of a claim of overpayment made by MBPE through HRI may or may not relieve Plaintiff Physicians of an identical claim by BCBST.

B. The HRI Interference.

39. HRI is not a party to the BCBST/ MBPE contract or the BCBST Physician Agreement.

1. HRI Representations/ Inducement to MBPE.

40. Notwithstanding the terms in the BCBST/ MBPE contract assigning BCBST overpayment recovery responsibility, and the terms in the BCBST Physician Agreement regarding the method of resolution of any assertions that claims had been overpaid, HRI

misrepresented to MBPE that (1) BCBST had overpaid Plaintiff Physicians, and (2) that MBPE was entitled to seek recovery of overpayments directly from physicians:

41. Notwithstanding the fact that the Physician Agreement and Tennessee law provided a limited timeframe within which overpayments can be recovered, HRI misrepresented to MBPE that it could retain HRI on a contingency basis to seek alleged overpayments from physicians for services beyond these time limits.

42. HRI has further misrepresented that it could determine, and has determined, that Plaintiff Physicians' claims for the Questioned Services were "upcoded" (billed at a higher rate than appropriate), even though it had never even reviewed the medical records relating to the services performed by Plaintiff Physicians.

43. In fact, it is impossible to determine whether a claim for a patient encounter was billed and coded correctly without reviewing the actual medical records.

44. HRI further represented to MBPE and other similar plans that "HRI only targets providers who have persistently and willfully overbilled", and that it thus would not disrupt their provider network with its accusations of overbilling. (See Exhibit C, excerpt from HRI's website, printed on April 15, 2009).

45. HRI has misrepresented the following:

A. That it can determine with an "algorithm" that Plaintiff Physicians have defrauded MBPE, prior to a review of medical records;

B. That it can determine "with ninety percent (90%) accuracy that the claims that are the subject of its audit were overbilled";

C. That HRI's actions will not disrupt the provider network because it "only targets persistent and willful overbillers";

46. HRI misrepresented to self-insured plans such as MBPE that MBPE and HRI could disregard contractual limits on audits because HRI's service was not an "audit". HRI's assertion is a distinction without a difference. (See HRI website, Exhibit C).

47. HRI's misrepresentations, and its use of the BCBST data to accuse Plaintiff Physicians of "persistently and willfully" overbilling, interfered with the relationship between BCBST and the Plaintiff Physicians, and between MBPE and Plaintiff Physicians.

48. HRI's motivation in making its misrepresentations to MBPE and inducing these breaches of contract was to profit by obtaining revenue by obtaining a contingency arrangement with MBPE, which included HRI receiving 40% of any monies which could be extracted from Plaintiff Physicians.

49. The contract entered into between HRI and MBPE provided that HRI would receive a portion of any payments that HRI could extract from physicians.

2. The MBPE Breach.

50. Based upon HRI's representations, MBPE entered into a contract with HRI, thereby breaching the BCBST/ MBPE Contract and the BCBST Physician Agreements to which it was bound by virtue of its contract with BCBST and acceptance of discounts.

51. MBPE's attempt to circumvent the contractual and statutory time and other limitations applicable to allegations of overpayments from physicians is ineffectual; MBPE is not able to avoid such limitations by contracting with HRI, rather than complying with its contract with BCBST and the related Physician Agreement.

3. The HRI Deceptive Letters and Telephone Calls to Physicians/

Improper Means.

52. In 2009, more than two years after the services were provided by Plaintiff Physicians, HRI sent intimidating letters to Plaintiff Physicians, and to many other physicians in Tennessee, including many TMA members. (A copy is attached as Exhibit D).

53. HRI's form letter sent to Plaintiff Physicians stated as follows:

HRI has been retained to recover funds paid by the TPA [Third Party Administrator: BCBST] as a result of claims submitted with inaccurate or incorrect coding information.

HRI has analyzed claims information that your office submitted to the TPA and determined that medical claims enclosed with this letter were incorrectly billed, resulting in an overpayment.

54. The documents enclosed with the letter further accused the Plaintiff Physicians of "Evaluation & Management Upcoding", a term describing the submission of inflated claims.

55. HRI's letters to the Plaintiff Physicians who treated patients in the MBPE plan demanded that they must either send HRI a payment within fifteen days, or submit confidential medical records. The context of the letter suggested failure to do so would have severe, possibly criminal, consequences:

You must take action as outlined in items (1) or (2) above. Failure to participate in this process may result in further investigation by the Metro Nashville Public Schools benefit plan, the TPA, or appropriate legal authorities.

56. Viewed in conjunction with HRI's website representations that it "only targets willful and persistent overbillers", HRI's letters in essence accused Plaintiff Physicians of fraud.

57. The HRI letter mentions that "BlueCross BlueShield serves as the Third Party Administrator (TPA)", but does not include the fact that under the BCBST/ MBPE contract, MBPE had assigned all overpayment recovery rights to BCBST.

58. The HRI letter included a letter from David Hines, Director, Employee Benefit Services, Metropolitan Nashville Public Schools (“Hines letter”), the language of which appears to have been drafted by HRI:

59. In the Hines letter, it is represented as follows:

The Metropolitan Nashville Public School System is a self-insured entity. Therefore it is exempt from the State Insurance Commissioner’s restriction on the time limitation for analysis, review, and recovery of funds paid through this benefit plan for medical claims.

60. The Hines letter, like the HRI letter, does not inform Plaintiff Physicians that it had assigned any recovery rights to BCBST, the entity with which Plaintiff Physicians have a Physician Agreement.

61. The Hines letter further admits that the recovery effort was not authorized by the Third Party Administrator, BCBST; in fact, it admits that BCBST “is not participating in these efforts.” [emphasis in original].

62. Even though HRI represented that it “only targets willful and persistent overbillers”, many physicians who received letters, including Plaintiff Goodman, were accused of overbilling on only three to five claims over a two year review period, clearly not “persistent”.

63. HRI had no possible way of knowing whether any incorrect billing was done with “willful” intent (even assuming *arguendo* that Plaintiff Physicians’ claims were overbilled, which is denied).

64. The HRI letters do not reflect that any effort was made to determine whether there were any underpayments on claims submitted by Plaintiff Physicians.

65. After sending the letters to Plaintiff Physicians, HRI employees then telephoned physicians who failed to respond to the letters, using high-pressure tactics in an effort to extract payment or records.

66. HRI's own employee stated that "HRI used this strong-arm letter because that's the only way to get physicians to respond".

67. HRI employees told physicians who refused to make payment or supply records that HRI was "like the Internal Revenue Service", and that the provider did not have the option to refuse to submit records or payment.

68. HRI employees stated to Plaintiff Physicians that they "could determine with ninety percent (90%) accuracy that the claims were upcoded". They refused to explain how they could do this without reviewing medical records.

4. HRI's Demand for Protected Health Information.

69. HRI represented that physicians were required to provide confidential Protected Health Information ("PHI"), to HRI, because "HRI maintains a HIPAA-compliant Business Associate Agreement with Metro Nashville Public Schools plan".

70. HRI has refused requests by physicians that it produce any such Business Associate Agreement.

71. HRI failed to adequately explain how a Business Associate Agreement with MBPE would require disclosure of the confidential PHI, when MBPE had assigned its physician audit rights to BCBST by contract, and any audit of physicians could be performed only through BCBST.

72. The HRI/ MBPE contract confers no rights upon HRI to seek overpayments or medical records directly from physicians, because MBPE had retained no such rights for itself.

5. HRI Defamation of Plaintiff Physicians.

73. HRI provided MBPE with the identity of physicians that HRI contended had overbilled, including Plaintiff Physicians, thereby damaging the reputation of Plaintiff Physicians.

74. When HRI represented to MBPE that Plaintiff Physicians “willfully and persistently overbilled”, Defendant HRI had never even reviewed the medical records relating to the allegedly overbilled patient encounters.

75. Defendant HRI’s publication of its accusation that Plaintiffs were guilty of “upcoding” and “willful and persistent overbilling” was made with knowledge of its falsity, or with a reckless disregard for the truth or falsity.

76. Defendant HRI’s representation that Plaintiff Physicians were guilty of “willful and persistent overbilling” was made in an effort to profit by persuading MBPE and other self funded medical plans to disregard contracts with Third Party Administrators, and to independently initiate actions against physicians through HRI.

C. Evaluation and Management Coding.

77. Evaluation and Management (“E&M”) services involve services by a physician in an office or hospital setting, such as office visits and “consultations”. The services are billed pursuant to guidelines contained in the AMA Current Procedural Terminology (“CPT”) publications.

78. Physicians “code” their claims for E&M services pursuant to these CPT guidelines, according to multiple factors stated in the CPT Guidelines, indicating the complexity and intensity of the services, or, alternatively, the face-to-face time spent with the patient in counseling.

79. The medical services are coded with a five-digit code. The first four digits describe the service, and the last digit defines an intensity level, scored between one and five. For example, an office visit with an established patient (9921_) of the highest complexity (5) would be coded 99215. An office visit of the lowest intensity (99211) does not even involve the services of a physician, and reflects a matter handled by a nurse or other non-physician staff.

80. Determining the appropriate code requires a review of the medical records to assess the extent of the physical examination, the patient history, and the complexity of medical decision making ("MDM"), or, alternatively, the counseling time. A level 99215 "office or other outpatient visit (established patient)", for example, would mean that the physician or his staff during the course of the visit performed two of the following three key components: a "comprehensive" history, a "comprehensive" examination, and medical decision-making (MDM) of "high complexity"; -- or, alternatively, that the physician spent forty minutes in face-to-face counseling on a presenting problem that is usually of "moderate to high severity".

81. Due to the element of subjectivity involved in determining the appropriate E&M code, a retrospective third party audit of claims submitted by a physician would likely reveal some percentage of claims that were, in the opinion of the reviewer, coded at a higher level than the code selected by the physician's office, and that some were likely undercoded.

82. Claims may have been underpaid because BCBST claims payment system includes various "edits" that automatically downcode many claims. Claims may also be underpaid at times by BCBST for other reasons, such as lost claims, etc.

83. A complete audit of all claims submitted by a physician would include a random sample of all claims submitted to determine whether there is a net balance owed to either party due to either overpayments or underpayments.

84. A meaningful and fair audit of over- and under-payments would require substantial expense. A valid audit would require random sampling of various claims, assurance that the sample was statistically sound, a review of medical records by qualified, certified coders, and an opportunity for physicians to challenge and defend claims coding. It will require not only an assessment of E&M coding, but would require a review of all BCBST claims processing "edits" which result in denial, downcoding, or other underpayment of claims.

85. The demands for payment of alleged overpayments by Plaintiff Physicians were made without a review of any medical records. An audit performed without a review of medical records is *per se* invalid and indefensible.

86. All of the claims that are involved in the HRI audit are claims for services performed in 2006 and 2007, and are claims billed at CPT "level four" or "level five"; there is no evidence of review of "level three" or lower claims, which are likely to be underbilled.

87. An audit performed without assessing both overpayments and underpayments is flawed and incomplete.

88. Dr. Keown informed HRI by telephone that most if not all of the patients whose claims were questioned were extremely challenging patients due to problems such as developmental delays, ADHD, Down's syndrome, Cri Du Chat chromosomal abnormality, or diabetes. The medical problems of patients such as this are often of high complexity and tend to involve intensive medical services of high and medical decision making.

89. HRI has represented that it has been involved in E&M evaluations in the Medicare (CMS) Recovery Audit Contractor (RAC) program that is presently being rolled out by Medicare. In fact, the Demonstration Medicare RAC program involved only limited E & M

audits. Moreover, Medicare has stated that it will not audit E & M coding in the RAC program without first obtaining the input of the American Medical Association:

Yes, the review of all evaluation and management (E & M) services will be allowed under the RAC program. The review of duplicate claims or E & M services that should be included in a global surgery were available for review during the RAC demonstration and will continue to be available for review. The review of the level of the visit of some E & M services was not included in the RAC demonstration. CMS will work closely with the American Medical Association and the physician community prior to any reviews being completed regarding the level of the visit and will provide notice to the physician community before the RACs are allowed to begin reviews of evaluation and management (E & M) services and the level of the visit.

90. Moreover, Medicare/CMS does not even permit a determination of overpayment without a review of medical records, except in two circumstances not applicable to the

Questioned Claims:

RACs may use automated review (where NO medical record is involved in the review) ONLY in situations where there is certainty that the claim contains an overpayment. Automated review must:

- a) have clear policy that serves as the basis for the overpayment ("clear policy" means a statute, regulation, National Coverage Determination, coverage provision in an interpretive manual, or Local Coverage Determination that specifies the circumstances under which a service will ALWAYS be considered an overpayment); or
- b) be based on a medically unbelievable service.

D. BCBST Involvement.

91. HRI persuaded MBPE to demand that BCBST turn over claims payment data to HRI, by representing that from this data it (HRI) could identify physicians who had "persistently and willfully overbilled".

92. HRI obtained the BCBST claims payment data and represented to MBPE, based upon this BCBST claims data but without any review of Plaintiff Physicians' medical records, that Plaintiff Physicians had overcharged MBPE.

93. Despite the fact that direct actions by MBPE through HRI would constitute a violation of the BCBST/Physician Agreement regarding how billing issues are to be resolved with contracted physicians, BCBST took no effective action to stop such efforts by MBPE prior to HRI's letters to Plaintiff Physicians.

94. BCBST is an indispensable party to this action.

E. Interest of Tennessee Medical Association.

95. Many of the physicians who have received letters from HRI are members of TMA. As a result of the deceptive acts and practices of HRI on behalf of MBPE, TMA members have been affected and have incurred loss. These members have contacted TMA, which has been required to expend its resources in addressing the issues raised by HRI's practices and acts. As such, TMA has been affected by HRI and MBPE's violation of the TCPA, and brings this action for a declaratory judgment that the HRI acts and practices violate the TCPA, and to enjoin HRI from such conduct pursuant to TENN. CODE ANN. § 47-18-109(b).

IV. Causes of Action.

A. Procurement of Breach of Contract Pursuant to TENN. CODE ANN. § 47-50-109.

96. By representing to MBPE that MBPE was entitled to directly pursue providers for alleged overpayments, and informing MBPE that the Plaintiff Physicians had overbilled, and other acts specified, Defendant HRI caused MBPE to breach the BCBST/MBPE contract, that makes BCBST the exclusive representative for matters relating to submission and payment of

medical claims by the plaintiff physicians to MBPE's enrollees. TENN. CODE ANN. § 47-50-109 provides as follows:

It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

97. HRI's actions also violated TENN. CODE ANN. § 47-50-109 by causing a breach of the contractual framework and the BCBST/Physician Agreement regarding the resolution of issues or disputes relating to alleged overpayments of claims.

B. Tortious Interference with Business and Contractual Relationships.

98. HRI tortiously interfered with the business relationships between Plaintiff Physicians and MBPE and BCBST: (1) There was an existing business relationship between these parties, both existing and prospective; (2) HRI was aware of this relationship; (3) HRI intended to cause the breach of this relationship by inducing MBPE to disregard the terms of the BCBST/MBPE contract and the BCBST/Physician Agreement; (4) HRI utilized improper means and was motivated by the desire to provide from such breach; and (5) Plaintiff Physicians were damaged by this interference.

C. Tennessee Consumer Protection Act Violation.

99. HRI's conduct, including without limitation the representations that:

- A. HRI was able to determine that an overpayment had been made on various claims;
- B. Plaintiff Physicians "must" send payment or medical records to HRI; and
- C. HRI was "like the Internal Revenue Service";

D. The failure to respond would justify a complaint to “legal authorities”; constituted deceptive acts and/or practices that were deceptive to Plaintiff Physicians and other physicians, and violated the Tennessee Consumer Protection Act (“TCPA”) [including, without limitation, TENN. CODE ANN. § 47-18-104(a) and § 47-18-104(b)(27)], which proscribes the following conduct:

Unfair or Deceptive Acts Prohibited –

- (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.
- (b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:
* * *
- (27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

100. The actions of HRI affect the conduct of the delivery of medical services to patients, by needlessly increasing the cost of providing those services, and reducing the willingness of physicians to provide medical services to patients who are BCBST enrollees as a result of a contract with a self-funded plan.

101. As a result of the violation of the TCPA by HRI, Plaintiff Physicians have sustained damages and incurred expenses, and bring this private right of action pursuant to TENN. CODE ANN. § 47-18-109(a), to recover their actual damages and treble damages.

- (a) Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person, of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually to recover actual damages.

102. Plaintiff Physicians and Plaintiff TMA also bring this action pursuant to TENN. CODE ANN. § 47-18-109(b) for a declaratory judgment that the HRI practices and acts violate the Tennessee Consumer Protection Act, and to enjoin HRI and MBPE from continuing the deceptive conduct relating to its demand for payments and/or records from physicians who have received payment for claims submitted to BCBST. TENN. CODE ANN. § 47-18-109(b) provides as follows:

- (b) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to § 47-18-107 or § 47-18-108.

D. Breach of Contract by MBPE.

103. MBPE's actions in contracting with HRI to send demand letters to Plaintiff Physicians, even though it had assigned to BCBST all rights to pursue such overpayments, constitutes a breach of its contract with BCBST, and, consequently, also constitutes a breach of the contract between BCBST and Plaintiff Physicians relating to payment of claims for services provided to those in the MBPE medical benefit plan.

E. Defamation.

104. By publishing that HRI "only targets persistent and willful overbillers" and does not target those who make an occasional mistake, and that Plaintiff Physicians had overbilled by upcoding their claims, Defendant HRI thereby defamed Plaintiff Physicians.

105. As a result of the defamation by HRI, Plaintiff Physicians have been damaged.

F. Mistake and Misrepresentation in the Inception of the BCBST/ Physician Agreement.

106. BCBST's express and implied representations that the BCBST/ Physician Agreement would be followed in disputes relating to payment of claims were rendered untrue if MBPE is permitted to circumvent the contractual framework.

107. Should the Court find that BCBST did not have the authority to act for self-funded plans such as Metro in entering into Physician Agreements, then such representations by BCBST were untrue and constitute a failure of consideration given for the BCBST/ Physician Agreement. This requires a return of discounts given as a result of these representations.

108. The actions of HRI on behalf of MBPE, if permitted, indicate that there was a mistake in the inception and formation of the BCBST/Physician Agreement, such that discounts given by Plaintiff Physicians were given in error.

109. If the Court finds that there was mutual mistake and failure of consideration, Plaintiff Physicians are entitled to, and hereby seek, a return of the discounts offered in conjunction with the BCBST/ Physician Agreement relating to services provided to BCBST enrollees in the MBPE benefit plan.

110. If there was a failure of consideration and mistake in the formation of the BCBST/ Physician Agreement, Plaintiff Physicians are not bound by limitations in the BCBST/ Physician Agreement, including, without limitation, the dispute resolution procedure and the time limits for seeking a return of claim underpayments.

V. **Relief Sought.**

Wherefore, Plaintiffs seek, without limitation, the following relief:

A. **Declaratory Relief.**

Plaintiff Physicians and Plaintiff TMA seek an Order declaring the following:

- 1) That the BCBST/MBPE contract gives BCBST the exclusive right to raise disputes, demand copies of medical records, and seek overpayments from Plaintiff Physicians and other physicians whose claims were paid pursuant to the BCBST/Physician Agreement;
- 2) That the BCBST/Physician Agreement prohibits MBPE and its contractors from seeking overpayments or demanding records on claims paid by BCBST more than two years from the date the claim was paid;
- 3) That TENN. CODE ANN. § 56-7-110(c) prohibits MBPE or its contractor, HRI, as well as BCBST from seeking alleged overpayments from physicians on claims paid by BCBST on behalf of MBPE more than eighteen (18) months after the claim was paid in the absence of fraud by the physician;
- 4) That the claims that are the subject of the HRI letters are beyond the limits for seeking overpayment pursuant to the BCBST Physician Agreement and TENN. CODE ANN. § 56-7-110(c), both of which limit any efforts to recover alleged overpayments either directly by BCBST or indirectly by MBPE, and therefore such efforts by MBPE through HRI are time-barred;
- 5) That HRI is not entitled to demand medical records from physicians;

- 6) That MBPE cannot, by contracting with HRI, circumvent the provisions of the MBPE/ BCBST contract including provisions regarding expenses relating to contingent fee audits;
- 7) That the BCBST/ Physician Agreement and BCBST/MBPE contract precludes HRI from demanding records and payments in violation of the BCBST Physician Agreement and BCBST/MBPE Contract, and requires that expenses resulting from the breach of this contract be borne by MBPE (or alternately HRI);
- 8) That the representations and conduct of HRI constituted deceptive conduct pursuant to the TCPA;
- 9) That HRI had no reasonable basis upon which to assert that Plaintiff Physicians had "willfully and persistently" upcoded their claims.
- 10) That if BCBST did not have the authority to enter into the Physician Agreement on behalf of MBPE, as it represented to Physicians, that Plaintiff Physicians are entitled to a return of discounts given in reliance upon such representations.

B. Injunctive Relief.

Plaintiff Physicians and Plaintiff TMA seek an order granting an injunction against HRI and MBPE with the following provisions:

- 1) That HRI and MBPE are enjoined from any further demands or further actions to make physicians submit payment or medical records to HRI arising out of claims for medical services provided to BCBST enrollees through the MBPE plan, or beyond statutory and/or contractual time limits;

- 2) That HRI and MBPE shall mail a written communication to each physician to whom a demand for alleged overpayments was sent, informing such physicians that HRI had no authority to demand such records or payments pursuant to its contract with MBPE;
- 3) That HRI and MBPE must, at its expense, return to physicians who submitted medical records to HRI all such information, retaining no paper, digital, or other form of such information, and advising whether such information has been disclosed to any third party;
- 4) That HRI and MBPE shall not make any representation, expressed or implied, that it is associated with any governmental entity;
- 5) That HRI and MBPE shall immediately return any funds received from physicians pursuant to HRI's demand letters made on behalf of MBPE, and provide an accounting for such return;
- 6) That HRI send a letter, to all physicians to whom it sent a demand letter, in which HRI retracts any suggestion that contractual or statutory time limitations on recovery of alleged overpayments are inapplicable;
- 7) That MBPE mail a letter to each physician to whom HRI sought overpayment retracting its representation that its demands are exempt from time limitations for recovery of funds paid through the MBPE benefit plan for medical claims;
- 8) That HRI and MBPE are enjoined from any further efforts to seek alleged overpayments directly from physicians enrolled in the BCBST network.

C. Monetary Relief.

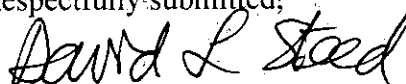
Plaintiff Physicians seek judgment against HRI, MBPE and BCBST for the following elements of damages:

- 1) Compensatory and punitive damages from HRI and MBPE for expenses incurred by Plaintiff Physicians as a result of violation of the TCPA by HRI and breach of contract by MBPE, including without limitation, compensation for physician and staff time and other expenses incurred due to time spent in responding to the HRI demands, reviewing medical records relating to the alleged overpayments, seeking legal and other advice regarding the demands for overpayment and records, attorneys fees, and any other expenses directly incurred as a result of the unauthorized demands by HRI;
- 2) Compensatory and punitive damages resulting from HRI's defamation;
- 3) Compensatory and punitive damages resulting from HRI's intentional interference with business relationships;
- 4) If BCBST did not have MBPE authority to enter into the BCBST/ Physician Agreement on behalf of MBPE, a monetary award against BCBST and MBPE representing the amount given by Plaintiff Physicians as discounts from charges for medical services provided to MBPE enrollees in the BCBST network in 2006 and 2007, in that such discounts were given as consideration for the promise that in the event of an alleged overpayment, Plaintiff Physicians would not be subjected to multiple audits and overpayment claims by various "contingency contractors" for the self funded plans represented by BCBST;

- 5) For an award of treble damages against HRI pursuant to TENN. CODE ANN. § 47-50-109 resulting from or incident to the procurement of MBPE's breach of its contract with BCBST, and the breach by BCBST of its Physician Agreement;
- 6) For an award of damages resulting from assertions of alleged overpayments not being handled pursuant to the requirements of the BCBST Physician Agreement;
- 7) For all expenses, including attorneys fees, for all costs relating to this action.

WHEREFORE, Plaintiffs demand a jury as to all matters properly determined by a jury, and seek judgment for the relief sought above or such other relief as is appropriate, with costs taxed to Defendants.

Respectfully submitted,



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