



*Our Santa Barbara Office has **MOVED!**
New address: 1610 State St. (cross street is Arrellaga)*

The Connection

Prepared Exclusively for FCN's Clientele

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AUTOMATED CALLS TO WIRELESS NUMBERS

Recent Telephone Consumer Protection Act (TCPA) Class Action litigation has been filed throughout the country in state and federal courts based upon calls to cell phones made by debt collectors. Judges may order \$500 per violation or actual damages whichever is greater for each call. The new suits are a reminder to collection agencies to secure express consent from consumers before allowing automated calls to cell phone numbers. It is the creditor who is responsible for proving the consumer provided prior express consent if the number is provided at the time of assignment as a way to contact the consumer.

Creditors and debt collectors must communicate to develop a comprehensive strategy to ensure compliance with the TCPA and the Federal Communications Commission (FCC) declaratory ruling on January 4, 2008.

The FCC's ruling was by no means an absolute clarification on the TCPA and the application of the prior express consent provision. Courts will weigh

in on this issue. As an overview, the FCC's ruling clarifies the following:

1. A creditor, debt collector, or asset buyer is not prohibited by the TCPA from manually placing a call to a consumer's wireless number in connection with a debt.



2. A creditor, debt collector, or asset buyer is permitted to make autodialed and prerecorded message calls to a consumer's wireless number in connection with an existing debt so long as the consumer provides prior express consent to that calling party.
3. A consumer who gives prior express consent to the creditor similarly

gives such consent to the debt collector calling on behalf of the creditor.

4. **What is Prior Express Consent?** A consumer gives prior express consent for a debt collector or creditor to contact his/her wireless number via autodialer or prerecorded message if: the consumer knowingly releases his/her wireless number and the wireless number is provided during the transaction.

Persons who knowingly release their phone numbers have in effect given permission to be called at the number which they have given, absent instructions to the contrary. This permission does not have to be in writing. A consumer providing his/her wireless number on a credit application is an example of a manner in which a calling party can receive prior express consent to make autodialed and prerecorded message calls to a consumer's wireless number. Creditors should include language in documents initiating a transaction with a consumer that the consumer consents

AUTOMATED CALLS TO WIRELESS NUMBERS

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to receiving autodialed and prerecorded message calls from the creditor or its third party debt collector if the consumer provides a wireless number as a way to be contacted.

Any party can receive prior express consent directly from the consumer to make calls to the wireless number under TCPA. Calls placed by a third party collector on behalf of the creditor are treated as if the creditor itself placed the call.

The FCC ruling explicitly states the creditor has the burden of proving the consumer provided prior express consent to ensure that creditors and debt collectors call only those consumers who have consented to receive autodialed and prerecorded message calls. Given the creditor is also responsible for the actions of the debt collector we are planning to provide additional information as soon as it is available.



Action Items for our Clientele:

At the time of this publication, we are researching examples of proper language to include in your credit applications, conditions of admission form, or whatever document you utilize that creates the obligation of the consumer. We will be providing this information as soon as possible. Be watching for an "ALERT" document in upcoming monthly reports.

FCNet™ Update

Remember User Security is important! If you have a user that no longer needs access to FCNet™ please notify FCN by sending an email with the user ID you wish to deactivate, by clicking on the Support link on the left side bar or by giving your FCN Sales or Customer Care Specialist a call.

Book Review:



Choosing to See Beyond Life's Storms Written by: **Michelle Sedas**

As we prepare material for this newsletter we keep hearing more overwhelmingly negative statistics about America's economy and the state of the world. Rather than add to the numbers you may be hearing, we'd like to share a small book that made a powerful impact on our team. *Welcome The Rain* is a scant 121 pages so don't put off learning one of life's secrets. The author has gathered quotes and stories from great figures in history and artists regarding responding to pain, chaos, adversity, stress, disaster and more seemingly negative circumstances that will make you think and help you cope. Her heartfelt stories from her family history demonstrate the choices she and her family made to make the very best of what others would see as negatives.

In our industry there are some days that you dream about: people that call wanting to pay and ready with their tax refund on a MasterCard just waiting for us to take the digits. Days like that do not make us great collectors. Early in this book the author describes freedom as not allowing yourself to be controlled by circumstances. She most likely wasn't thinking of debt collectors but it truly applies as people with many different

types of problems communicate with our agency frustrated; angry; impatient; sad and confused. If we allowed ourselves to respond emotionally to each circumstance we would leave unhappy every day but great collectors learn they have to control their attitude and continue to love helping people no matter how unreceptive consumers may be. The most challenging consumers make collectors become more resourceful; more courteous and more driven to create win-win situations.

As you face the news and the changes in your life do you believe things will be better on the other side of this situation? Do you believe you will become stronger; more resourceful; in control of your responses to situations rather than letting situations control you? If you can not change what is happening to you, according to *Welcome The Rain*, for your happiness you must change your response to find the blessing in disguise. Even if you are not optimistic enough to believe the difficulties you face now will make you better, this book has many stories and images you can hold onto to keep afloat; keep your head above water until the toughest challenges pass because ultimately it isn't about circumstances happening it is about your view of those circumstances.



***We want your
ideas!***

If you send us your ideas for a newsletter and it is used in a future newsletters we will send you a gift card!

-LEGAL FLASH-

California Supreme Court Ruling—Balanced Billing

The California Supreme Court recently addressed the question of whether a patient who received emergency medical services and is obligated to pay the reasonable and customary fees for the services provided, may be billed directly for a “balance” due when there is a dispute between the medical provider and the patients’ health care service plan.

The basic facts in *Prospect Medical Group v. Northridge/St. John’s Emergency Specialists* (January 8, 2009) are that the patient was insured by an HMO. The patient received emergency medical services from a provider which was not in contract with the patient’s HMO. A dispute arose between the HMO and the emergency medical services providers as to what were the reasonable and customary amounts owed to the provider for the services rendered. When the HMO refused to pay the amounts asserted to be reasonable and customary by the provider, the patient was billed directly for the unpaid balance in dispute.

As you are aware, the Department of Managed Care enacted regulations in the Fall of 2008 which made it unfair practice for a medical provider to bill a patient for an amount in dispute between the healthcare service plan and the provider of emergency medical services. In this decision, the Supreme Court was not considering the regulation, but the state of California law under the Knox-Keene Act.

The California Supreme Court concluded that an HMO (as a statutorily defined health care service plan, Health & Safety Code §1345) has a statutory obligation to pay the provider of emergency medical services the reasonable and customary fees for the services rendered. Emergency care providers have a statutory obligation to provide emergency services without regard to a patient’s ability to pay. Further, Knox-Keene requires HMOs (health care service plans) to reimburse “providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee...” Finally, under Knox-Keene emergency room doctors (a subset of the covered providers of

emergency services) are allowed to sue HMOs (health care service plans) directly to recover the reasonable and customary fees for emergency medical services.

The Supreme Court noted that of the three parties, the one least knowledgeable about what constitutes the reasonable and customary fees for emergency medical services is the patient. Reviewing *Knox-Keene* as a whole, the statutory scheme led the Supreme Court to conclude that the patient cannot be billed for any amount (which has to be paid as a matter of law by the health care service plan) in dispute between the health care service plan and the provider of the emergency medical services. Factoring into this analysis was the consideration that the patient (or patients’ employer) has paid for the health care service plan which has the obligation to pay the full amount (less any deductible or co-pay) of the customary and reasonable emergency medical services. The patient has done everything possible to provide for the payment of the reasonable and customary fees. There is no useful purpose to be served under *Knox-Keene* to keep the less informed patient in the middle of the health care service plan – medical provider fight.

In this decision, the Supreme Court determined the existing law for an individual’s liability for emergency medical services when the patient has his/her health insurance through a health care service plan must be upheld. Though the Supreme Court did not expressly state the application of this ruling, normal rules of judicial construction have it apply to all outstanding amounts due for emergency medical services which have not yet been reduced to a judgment. The date the service was provided does not determine whether the patient is obligated for the disputed balance, so a collection agency and emergency service provider need to go back through their accounts receivable and determine which accounts represent a disputed balance between a health care service plan and the emergency service provider. These accounts then need to be moved to a commercial collection status against only the health care service plan.



It also needs to be remembered that under *Knox-Keene* and the Department of Managed Care regulations, each health care service plan must have in place a process to determine the reasonable and customary amount due to the provider of emergency services. The Department of Managed Care has its own program under the Regulations adopted in the Fall of 2008 for making that determination. The program is a modified baseball arbitration where the provider of the emergency services and the health care service plan submit what they compute the reasonable and customary fee to be and the basis for that fee. The panel then picks one of the two numbers.

It may well be that collection agencies expand their client services, and some may want to get into the commercial collection business of processing these claims in the Department of Managed Care arbitration process. Once the arbitration award is obtained, the collection agency can then proceed to have it entered as a judgment and enforced against the health care service plan (if not promptly paid after the reasonable and customary fees are determined in the arbitration).

This legal flash is provided for informational purposes only and not as legal advice by the author, Hefner, Stark & Marois, LLP, or the California Association of Collectors, Inc.

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GOING GREEN

Disposable vs. Refillable Pens

It's probably safe to say most businesses are looking for ways to save money these days and it's a bonus when it saves the environment as well. So, do you buy disposable or refillable pens? Here is some staggering info on disposable pens: Each pen is approximately 5.5 inches long; Multiplied by 100 billion = 8,680,555 miles; The circumference of the earth at the equator is 24,900 miles; 100 billion pens laid end to end would circle the earth 348 times. The US uses approximately 106 billion pens a year. Once disposable pens are discarded they end up in landfills and waterways. Additionally, most are made of plastic, so do not break down easily in our environment. A good refillable pen, however, can last a lifetime and most cartridges are metallic, so they can be recycled. You can pick up refillable pens for \$10.00 or so, the refills run about \$5.00; you can get 12 disposables for about \$5.00, but they don't last as long as a good refillable pen. Recyclable disposable pens may be on the horizon, but until then, you might check with local schools to see if they can use the plastic for arts and craft or other school projects.

Submit your ideas to Venita Jourdan at vjour@fcnetwork.com and watch the "Connection" to see your ideas published.

Inside FCN

2008

Best Place to Work in Collections!



Financial Credit Network, Inc. was recently named the first place winner in the *Best Places to Work*

in *Collections* award program. This program was created by insideARM.com and Best Companies Group.

This survey and award program was designed to identify, recognize and honor the best places of employment in the collections industry, benefiting the nation's economy, its workforce and businesses. The *Best Places to Work in Collections* list is made up of 25 companies divided into three size categories: Small (15-74 employees), Medium (75-249 employees) and Large (250+ employees).

To be considered for participation, companies had to fulfill the following eligibility requirements:

- * Be a for-profit or not-for-profit business;
- * Be a publicly or privately held business;
- * Have a facility in the United States;

- * Have at least 15 employees in the United States;
- * Must be in business a minimum of 1 year;
- * Must be a Collection Agency/Collection Law Firm or Vendor to the Collection Industry.

Companies from across the country entered the two-part survey process to determine the *Best Places to Work in Collections*. The first part consisted of evaluating each nominated company's workplace policies, practices, philosophy, systems and demographics. The second part consisted of an employee survey to measure the employee experience. The combined scores determined the top companies and the final ranking. Best Companies Group managed the overall registration, survey and analysis process and determined the final rankings.

We are honored to have won this award and thank our staff for their drive and dedication. Their passion for making a difference in the lives of the consumers we service is what makes FCN the Best Place to Work in Collections!



Welcome

Emma Grace Miller!

As some of you know, Andrea Miller, Account Executive, is on maternity leave. We are proud to announce the



arrival of Emma Grace, born January 20, 2009. Emma weighed 7 lbs, 13 oz and was 20 inches long.

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