

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

Burrell Fuller  
2200 East 49<sup>th</sup> Street  
Cleveland, Ohio 44103,

and

Pomerantz and Crosby Co, L.P.A.  
24700 Chagrin Blvd, Ste 309  
Beachwood, Ohio 44122,

Plaintiffs,

vs

University Hospitals Medical Group, Inc.  
c/o Janet Miller  
3605 Warrensville Center Road, MSC 9110  
Shaker Hts., Ohio 44122,

and

University Hospitals Physician Services, Inc.  
c/o Janet Miller  
3605 Warrensville Center Road, MSC 9110  
Shaker Hts., Ohio 44122,

Defendants.

**CLASS ACTION COMPLAINT**  
***(Jury Demand Endorsed Hereon)***

**I. INTRODUCTION**

1. University Hospitals Medical Group, Inc. (“UHMG”) is an Ohio corporation.
2. University Hospitals Physician Services, Inc. (“UHPS”) is an Ohio corporation.
3. University Hospitals Health Systems, Inc. (“UHHS”) is a large medical provider of services throughout Ohio, including University Hospitals of Cleveland (“UH”).
4. UHMG and UHPS are affiliated and perform services for UHHS and UH.
5. UHPS responds to requests for records to UHMG.

6. UHMG doctors regularly treat patients at UH and other facilities and generate medical records.

7. UHMG patients regularly request copies of those records.

8. This class action seeks equitable and monetary relief to remedy UHMG's and UHPS' regular and repeated violation of O.R.C. § 3701.741 in overcharging for copies of medical records and for violation of the Consumer Sales Practices Act.

## **II. STATEMENT OF FACTS**

9. Plaintiffs Burrell Fuller ("Fuller") and Pomerantz and Crosby Co., L.P.A. ("Pomerantz") seek injunctive relief and other equitable relief, as well as an award of appropriate damages, including return of all improperly collected monies, compensatory damages, reasonable attorney's fees, and such other relief as this Honorable Court deems appropriate.

10. On or about May 28, 2017, Fuller was involved in an motor vehicle collision.

11. On that date, he sought medical services at UH main campus.

12. Fuller received treatment and was discharged.

13. Fuller retained Pomerantz to represent him in his claims related to the collision.

14. On or about June 27, 2017, Pomerantz, as Fuller's authorized representative, requested an itemized billing statement from UH and sent a check for \$28.27 as payment for those records.

15. The transaction between Fuller and UHMG and UHPS was a consumer transaction, Fuller is a consumer, and those entities are suppliers pursuant to R.C. § 1345.01(C).

16. A check was sent because UHMG will not even review a request for medical records without first receiving a check.

17. Pomerantz attached an Authorization for Release of Medical Information as required by UHMG and all UH entities, signed by Fuller, requesting that all of Fuller's records be sent to Pomerantz.

18. The Authorization is the same regardless of which UH entity or doctor performs the service or what medical records are requested.

19. The UH website provides: "Easily and securely pay your bill online or ask a question regarding your Hospital bill or University Hospitals Medical Group physician bill."

20. The UH website indicates that charges for copying records and bills will be made in accordance with the allowed amounts under R.C. §3701.741(B)(2).

21. On August 9, 2017, UHPS sent Pomerantz a demand for \$78.78 to be made payable to UHMG in order before he could obtain Fuller's records.

22. UHMG would not and will not produce any records until payment is received for the non-negotiable amount demanded.

23. Pomerantz had no choice but to send a check for that amount to UHMG because his client needed the records in order to pursue his personal injury claim.

24. Pomerantz felt he had no choice but to comply with UHMG's demand in order to fulfill his obligations to his client.

25. Fuller is ultimately responsible for the payment of the cost of obtaining the records.

26. On November 14, 2017, Pomerantz received a facsimile from "University Hospitals" which contained Fuller's records.

27. There were **three (3)** pages.

28. Neither UHPS nor UHMG explained why the production of the three pages cost \$78.78.

29. Under Ohio law, the maximum, amount that could have been charged was \$22.95.

30. Even if the request was considered three separate requests, which it was not, the maximum amount under Ohio law would have been \$61.29.

31. Pomerantz advanced the money and lost the value of that money from the time advanced until reimbursed.

32. Pomerantz and Fuller were overcharged \$55.83 in violation of Ohio law.

### **III. APPLICABLE LAW**

#### **A. Fees For Providing Copies of Medical Records**

33. O.R.C. §3701.741 provides the allowable maximum fees for providing medical records.

34. R.C. §3701.741(B)(2) provides: If the request is made other than by the patient or the patient's personal representative, **total costs for copies and all services related to those copies shall not exceed the sum of the following:** (a) An initial fee of sixteen dollars and eighty-four cents adjusted in accordance with section 3701.742 of the Revised Code, which shall compensate for the records search; (b) Except as provided in division (B)(2)(c) of this section, with respect to data recorded on paper or electronically, the following amounts adjusted in accordance with section 3701.742 of the Revised Code: (i) One dollar and eleven cents per page for the first ten pages; (ii) Fifty-seven cents per page for pages eleven through fifty; (iii) Twenty-three cents per page for pages fifty-one and higher; (c) With respect to data resulting from an x-ray, magnetic resonance imaging (MRI), or computed axial tomography (CAT) scan and recorded on paper or film, one dollar and eighty-seven cents per page; (d) The actual cost of any related postage incurred by the health care provider or medical records company.

35. The current allowed rate is \$19.17 as the initial fee and \$1.26 per page up to 10 pages.

**B. Consumer Sales Practice Act**

36. The Consumer Sales Practices Act (“CSPA”) provides protections for consumer.

37. The act states that “[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction.” R.C. 1345.02(A).

38. R.C. 1345.03(A) provides that “[n]o supplier shall commit an unconscionable act or practice in connection with a consumer transaction.”

39. The act protects a consumer from deceptive and unconscionable acts in a consumer transaction.

40. While transaction between physicians and their patients are excluded, the transaction at issue is an ancillary transaction having nothing to do with the provision of medical care and is therefore covered under the CSPA.

**IV. CLASS ALLEGATIONS**

41. Pursuant to Civ. R. 23 of the Ohio Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a class of persons similarly situated, to remedy the ongoing unlawful, unfair and/or deceptive business practices alleged herein, and to seek redress on behalf of all those persons who have been harmed thereby.

42. The Overcharge Class is defined as all persons who:

- a. Received treatment at any UHHS or UH facility or from any medical professional in the UHMG;
- b. Requested copies of medical records from UHMG through an authorized representative;
- c. Received a demand for payment before they could obtain those records;
- d. Made payment pursuant to that demand for payment;
- e. In the 4 years preceding the filing of this Complaint.

43. The CSPA Class is defined as all persons who:
- a. Received treatment at any UHHS or UH facility or from any medical professional in the UHMG;
  - b. Who requested copies of medical records from UHMG through an authorized representative;
  - c. Received a demand for payment before they could obtain those records that was not in an amount authorized by statute;
  - d. Made payment pursuant to that demand for payment;
  - e. In the 4 years preceding the filing of this Complaint.

44. The class is so numerous that joinder of all members would be impracticable. The exact size of the proposed class and the identity of the members thereof are readily ascertainable from Defendants' business records.

45. There is community of interest among the members of the proposed class in that there are questions of law and fact common to the proposed class that predominate over questions affecting only individual members. These questions include, *inter alia*:

- a. Did they receive treatment from one of the enumerated entities?
- b. Did they request medical records through an authorized representative?
- c. Did Defendants demand payment for those records?
- d. Did the class member pay the amount demanded?
- e. Did Defendants charge more than allowed under R.C. §3701.741(B)(2)?
- f. Did the charge violate R.C. §1345.01 et. seq.?
- g. Was the excessive charge an unjust enrichment to Defendants?
- h. Were Defendants' representations about the amount owed fraudulent?

i. Was the demand for an amount outside the amount allowed under Ohio law a violation of the CSPA?

46. Plaintiffs' claims are typical of those of the class they seek to represent, and they will fairly and adequately represent the interests of the class.

47. Plaintiffs are represented by counsel competent and experienced in both consumer protection and class action litigation.

48. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual class members may be relatively small compared to the expense and burden of litigation, it would be impracticable and economically infeasible for class members to seek redress individually. The prosecution of separate actions by the individual class members, even if possible, would create a risk of inconsistent or varying adjudications with respect to individual class members against Defendants, and would establish incompatible standards of conduct for Defendants.

### **FIRST CLAIM FOR RELIEF**

#### **(Breach of Contract)**

49. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

50. The terms of R.C. §3701.741 are incorporated into any agreement between a patient and the records provider for any treating physician or hospital.

51. UH specifically holds out that it will abide by the terms of the statute.

52. Defendants overcharged for medical records.

53. As a direct and proximate result, Plaintiffs and members of the class suffered actual damages in the amount of the overcharge.

54. As a direct and proximate result, Plaintiffs and members of the class are entitled to disgorgement of any amounts paid in excess of the allowed amount.

**SECOND CLAIM FOR RELIEF**  
**(Violation of the CSPA)**

55. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

56. Fuller is a consumer under the CSPA.

57. Defendants are suppliers.

58. Defendants committed deceptive and unconscionable acts by misrepresenting the amount owed for medical records.

59. As a direct and proximate result, Plaintiffs and members of the class are entitled to actual damages, statutory damages and treble damages.

60. As a direct and proximate result, Plaintiffs and members of the class are entitled to disgorgement of any amounts paid in excess of the allowed amount.

61. As a direct and proximate result, Plaintiffs and members of the class are entitled to non-economic damages and attorneys' fees.

**THIRD CLAIM FOR RELIEF**  
**(Violation of R.C. § 3701.741)**

62. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

63. Defendants charged more than allowed under R.C. §3701.741.

64. As a direct and proximate result, Plaintiffs and members of the class suffered actual damages in the amount of the overcharge.



65. As a direct and proximate result, Plaintiffs and members of the class are entitled to disgorgement of any amounts paid in excess of the allowed amount.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Fraud)**

66. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

67. Defendants represented that a fee was required in excess of the amount owed under the statute.

68. Defendants knew that these statements were false.

69. Plaintiffs and members of the class justifiably relied on Defendants' misrepresentations.

70. As a direct and proximate result, Plaintiffs and members of the class suffered actual damages.

71. As a direct and proximate result, Plaintiffs and members of the class are entitled to disgorgement of any amounts paid in excess of the allowed amount.

72. As a direct and proximate result, Plaintiffs and members of the class are entitled to punitive damages and attorney's fees.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Unjust Enrichment)**

73. Plaintiffs reallege and incorporate by reference the allegations contained in each of the preceding paragraphs as though expressly restated herein.

74. Defendants committed deceptive and unconscionable acts by misrepresenting the amount owed for medical records.

75. Defendants have been unjustly enriched by retaining monies to which they are not entitled under Ohio law.

76. As a direct and proximate result, Plaintiffs and members of the class are entitled to actual damages.

77. As a direct and proximate result, Plaintiffs and members of the class are entitled to disgorgement of any amounts paid in excess of the allowed amount.

WHEREFORE, Plaintiffs and members of the class demand judgment against Defendants, jointly and severally, for:

- a. Actual damages suffered;
- b. Disgorgement of any monies collected over the amount allowed by statute;
- c. Punitive damages;
- d. Statutory damages under the CSPA;
- e. Treble damages under the CSPA;
- f. Attorneys' fees;
- g. An injunction prohibiting the unlawful conduct; and
- h. Any other relief the Court deems just and appropriate.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury.

Respectfully submitted,

/s/James S. Wertheim

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