

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT
FEBRUARY TERM, 2012

STATE OF NEW HAMPSHIRE)
Plaintiff,)
)
v.)
)
CAITLIN RAYMOND INTERNATIONAL,)
REGISTRY, INC. and UMASS)
MEMORIAL HEALTH VENTURES, INC.)
Defendants.)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

1. Attorney General Michael A Delaney, on behalf of the State of New Hampshire, brings this civil action against Defendants UMass Memorial Health Ventures, Inc. (UMMHV) and Caitlin Raymond International Registry, Inc. (CRIR) for violating the New Hampshire Consumer Protection Act (NHCPA), pursuant to New Hampshire Chapter RSA 358-A.
2. This civil law enforcement proceeding is brought in the name of the State of New Hampshire, in its sovereign capacity, by and through Michael A. Delaney, Attorney General pursuant to the NHCPA and the Attorney General's authority at common law.
3. The Attorney General has reason to believe that the above-named Defendants have violated the NHCPA by, among other things, withholding information from consumers or providing deceptive information to consumers about the cost to their insurance company

for human leukocyte antigen (HLA) testing for the purpose of being listed on a national bone marrow registry.

4. The Attorney General has reason to believe that this action is in the public interest.
5. This Complaint is being filed concurrently with a Consent Judgment /Agreed Final Judgment. The Defendant has agreed to accept and expressly waives any defect in connection with service of process issued to the Defendant by the Plaintiff.

JURISDICTION AND VENUE

6. The Hillsborough County Superior Court has jurisdiction over the subject matter of this complaint and the parties pursuant to RSA 358-A:4. Venue as to all matters between the parties relating to these alleged unfair and deceptive practices shall be in Hillsborough County.

THE PARTIES

7. Plaintiff, Michael A. Delaney, Attorney General, State of New Hampshire, is charged with enforcing the New Hampshire Consumer Protection Act, RSA 358-A, which prohibits unfair or deceptive acts or practices affecting the conduct of trade or commerce. Pursuant to RSA 358-A:4, the Attorney General may initiate civil law enforcement proceedings in the name of the State to stop violations of the NHCPA and to secure such equitable and other relief as may be appropriate in each case. The State of New Hampshire brings this action to secure a permanent injunction, attorneys' fees, civil penalties, and other equitable relief against the Defendants for engaging in unfair or deceptive acts or practices in connection with recruitment and billing practices related to the activities of their bone marrow registry.

8. The Defendant, UMMHV is a charitable corporation under the laws of the Commonwealth of Massachusetts and Section 501(c)(3) of the Internal Revenue Code and is located in Worcester, Massachusetts.
9. The Defendant, CRIR, is a subsidiary of UMMHV. Also located in Worcester, Massachusetts, CRIR is a 501(c)(3) tax-exempt organization and a Massachusetts Chapter 180 charitable corporation.

NOTICE

10. Defendants have waived the notice required by RSA 358-A:5.

GENERAL ALLEGATIONS

11. From 2001 until December 2010, UMMHV and CRIR organized and sponsored bone marrow donor outreach efforts by conducting bone marrow recruitment activity at a variety of locations in New England, listed donors on the worldwide bone marrow registry and coordinated donor-recipient matching. UMMHV and CRIR sponsored numerous bone marrow donor recruitment events within the State of New Hampshire, including various sporting events and at kiosks located in shopping malls in Salem, Nashua and Manchester. Approximately 20,000 donors were processed in New Hampshire between 2008 and 2011.
12. At all times relevant to this Complaint, UMMHV and CRIR have conducted trade or commerce in the State of New Hampshire. Such trade or commerce involved the solicitation of bone marrow donors, who were asked to consent to the submission of a DNA sample to UMass Memorial Labs for human leukocyte antigen (HLA) testing for the purpose of being listed as a donor on a national bone marrow registry. By such operations, UMMHV and CRIR are subject to New Hampshire laws and regulations

pertaining to the conduct of trade or commerce in this State, including but not limited to the NHCPA, RSA Chapter 358-A.

13. In furtherance of the public policy interest in increasing the number of potential bone marrow donors, New Hampshire law requires insurers cover the laboratory fee arising from human leukocyte antigen testing for utilization in bone marrow transplantation. During the time of the acts underlying this Complaint, New Hampshire law did not restrict the amount of the laboratory fee, allowing labs and insurance carriers to independently negotiate and agree upon a fee.
14. UMMHV entered into contracts with insurance companies for payment of claims related to HLA testing for bone marrow registry purposes. The amounts paid by insurance companies varied widely, but were generally in the range of \$700.00 to \$1,100.00, with a few insurers paying as much as 4,336.00 per test, an amount that far exceeded the actual cost for that test. Those amounts were not disclosed to prospective donors.
15. At all times relevant hereto, CRIR had in place written Standard Operating Procedures (“SOP”) governing the practices of its recruitment staff working on donor recruitment drives that required its recruiting staff to provide each donor a copy of the CRIR Marrow Donor Registration and Consent Form (the “Consent Form”), and to request each donor to read each section of the form and to sign it to acknowledge its terms. The Consent Form stated in bold that “For medically insured donors – Your medical insurance will be billed for this testing.” Although each member of the CRIR recruiting staff was trained to ask each donor “Do you understand that your medical insurance company will be billed for the HLA Testing?” in some instances recruitment staff did not comply with those procedures and there is no indication that senior CRIR management took remedial

steps to investigate or correct those violations of policy when they became aware of them.

16. CRIR's policy and practice was to not collect copayments or any other form of payment or personal liability directly from the prospective donor. CRIR routinely confirmed that there would be no personal liability when consumers contacted CRIR with questions about the Explanation of Benefits form ("EOB") provided to the donor by his or her insurance company in connection with the HLA testing.
17. The Consumer Protection and Antitrust Bureau of the Attorney General's Office received 37 complaints between December, 2010 and September, 2011, against UMMHV/CRIR involving the donor recruitment and billing practices related to bone marrow testing.
18. UMMHV and CRIR adopted a policy to seek only minimal insurance information from donors at the time of recruitment, recognizing that many donors might not have immediate access to complete insurance information, and then employed staff to supplement incomplete donor insurance information by searching commercial databases, importing that missing data onto the consent form and submitting those claims to insurance companies without further consent from the donor. CRIR staff would access the commercial databases only if the donor had provided a consent signature indicating understanding of the "insurance coverage" provisions of the consent form. If the donor had not signed consent in the section entitled "Insurance Coverage for HLA Testing for Donor Registration" on the consent form, CRIR would not access the insurance information databases.

19. UMMHV and CRIR informed some of the prospective donors that the HLA test would result in either no claim being filed with their insurance company or a minimal claim being filed on their behalf.
20. UMMHV and CRIR directed that employees or subcontractors who appeared at CRIR recruitment events wear lab coats with the UMass Labs insignia, giving the impression to prospective donors that they were dealing with medical professionals.
21. Prospective donors were, on occasion, given insufficient time to review and consider the CRIR consent form and were induced to sign that form by hired models and offers of lucrative raffles that required no purchase by the participants/prospective donors in the raffle.
22. The above acts constitute unfair or deceptive acts or practices in the conduct of trade or commerce, and are prohibited by RSA 358-A:2.

SPECIFIC ALLEGATIONS

23. Many of the consumers who filed complaints with the Consumer Protection and Antitrust Bureau of the Attorney General's Office expressed concern at the unexpectedly high charge for the HLA test and their confusion about any personal liability after receipt of an explanation of benefits form (EOB) that showed a charge for as much as \$4,336.00. Others consumers relayed that they were misled by CRIR recruiters to believe the HLA test would result in a minimal or no charge to their insurance company, that they were lured into donating by models and lucrative raffles, and that they felt rushed to sign the consent form. Examples of the consumer complaints received by the Attorney General include the following:

24. Consumer #1 resides in Raymond, New Hampshire and was shopping with his wife on November 18, 2010 at the Mall of New Hampshire in Manchester. He noticed individuals passing out brochures regarding the bone marrow registry. His wife took a brochure and suggested they sign up. They approached the booth and someone from behind the booth said they needed insurance information. The consumer was hesitant but was told that it would cost his insurance company very little; in the range of \$100 to \$200 dollars. Based on that representation, he provided his insurance information. His insurance was charged \$4,336.00 for the test and paid UMMHV \$700.00, pursuant to the negotiated contract between the lab and the carrier.
25. Consumer #2 resides in Goffstown, New Hampshire and went with her husband to the Mall of New Hampshire in Manchester on September 16, 2010. They were approached by CRIR employees trying to solicit donors to be listed on the registry. One female recruiter was wearing a blue wig and a lab coat. The recruiters stated explicitly that there was no charge and the test would be absolutely free. The consumer questioned the need for insurance information and they were, once again, reassured that the tests were absolutely free. Later, upon receipt of the EOB, the consumer was shocked when she realized how much had been billed to their insurance company - \$4,065.00. Her insurance company paid \$1,457.39, pursuant to the negotiated contract between the lab and the carrier.
26. Consumer #3 resides in Nottingham, New Hampshire. She became aware of CRIR on January 23, 2011 while assisting her husband with a display for her husband's employer at a home show held at the Center of New Hampshire, Radisson Hotel, Manchester. She noted the bright wigs and commented on the short skirts worn by the female recruiters.

She also noted that recruiters promoted the raffle of a flat screen television to encourage people to provide their insurance information. The recruiters stated on a few occasions that there were only 125 names entered in this raffle, making it more enticing for people to sign up. By the end of the day the television was packed up and put back into the box and she did not see them pull a name of a winner. The consumer and her husband decided to donate and were told that a nominal fee would be charged to their insurance. Their EOBs reflected charges in excess of \$4,000 for each test.

27. Consumer #4, from Laconia, New Hampshire, went with his wife to a concert at Gillette Stadium during the summer of 2010. They came in contact with recruiters at a CRIR booth staffed by young, healthy-looking people, who were approaching people asking them to submit to a mouth swab in order to volunteer for the registry and help save a life. They both agreed to participate. They were asked for their insurance information and were told not to worry because CRIR would bill the insurance company. The consumer noticed that the recruiters wore lab coats. He felt rushed by the recruiters to review the consent form. Later, he was shocked when he received his EOB reflecting the cost of the procedure. He called CRIR and asked if this was a bill and he was told that in certain states insurance companies were mandated to cover whatever they charged for this test.
28. Consumer #5 resides in Manchester, New Hampshire and went to the Mall of New Hampshire on November 29, 2011 with his son. He noticed the sign for the bone marrow registry when he went into the mall but they were on a specific shopping mission and did not stop. Upon passing the kiosk again, he saw a young woman with green or pink hair and a white lab coat. He decided to donate. He filled out the paperwork and was told that the law required insurance companies to pay for the test. He was not surprised that

the insurance company was charged for the test, but he was shocked by the actual amount of thousands of dollars that was charged - \$4,336.00. His insurance company paid \$2,748.15, pursuant to the negotiated contract between the lab and the carrier.

29. Consumer #6 resides in Salem, New Hampshire and went to the Rockingham Mall in Salem on December 3, 2010. A pretty young woman wearing a white smock and a blue wig approached him. She stated that she was recruiting people to sign up for the registry. She directed him to the CRIR booth, where a recruiter reviewed the consent form and documents prior to taking a cheek swab. He had a discussion with the representative regarding payment for the testing and he was informed of agreements with insurance companies. He was further told that the insurance company would pay for the full cost. When he saw the news media reports he decided to check on his EOB and called the human resource coordinator for the Town of Salem. The consumer was concerned about increases to the town's insurance rates, as he is a retired law enforcement officer and pays a considerable amount for his insurance.
30. Consumer #7 resides in Londonderry, NH and went to the Mall of New Hampshire in Manchester on July 18, 2010 with his children. A woman with funny hair approached him and asked him to be a donor. He responded that he was already on the registry as he had done a blood draw some time ago. She told him that he would need to do a cheek swab, as the prior test was no longer valid. He felt that it was the charitable thing to do as he had been a cancer survivor, so he completed the paperwork and had his cheek swabbed. Within a short period of time he had received a telephone call from CRIR requesting his insurance information. He was told by the CRIR representative not to

worry, that it was not going to cost him anything. He was surprised at the charge listed on the EOB, \$4,065.00.

31. Consumer #8 resides in Londonderry, New Hampshire. He and his wife agreed to be donors at the Mall of New Hampshire in October, 2010. As soon as he received their EOBs he called UMASS and requested a copy of any consent form or any paperwork that his wife may have signed. The person with whom he spoke told him that he would have to call a different number and she proceeded to give him a number that was not in service.
32. Consumer #9 resides in Manchester, New Hampshire and was at the Mall of New Hampshire on November 7, 2010 with her daughter. They noticed the models with the blue wigs and lab coats recruiting potential donors and directing them towards the CRIR booth. She had always wanted to be listed on a registry and felt this was the right time to do it. She asked the CRIR representative about the cost and was told that there would be no out of pocket costs to her and was further told that they bill her insurance company and they take care of it. She had no idea that the cost for this test was going to be so high - \$4,336.00.
33. Consumer #10 was at a blood drive on August 24, 2010 when he was approached about being a donor for the bone marrow registry. He agreed to donate and but had not brought along his insurance card. He recalled that he was told there would be no out of pocket cost for the test. He assumed a charge of \$75 to \$100 to his insurance plan. He remembered being hounded by CRIR for his insurance information and he did provide it to CRIR. He was surprised at the amount listed on his EOB - \$4,065.00.

34. Consumer #11 resides in Londonderry, New Hampshire. He was at the Mall of New Hampshire on October 8, 2010 and had contact with CRIR recruiters, which he described as young college students aggressively attempting to get donors for the bone marrow registry. When he told the recruiters that he was already on a registry, they responded that his prior registration expired and that he would need to do it again. It had probably been ten to twelve years since he last registered. He asked the CRIR staff about payment for the test and was told not to worry because the charge was covered by his insurance. When he asked what would happen if his insurance failed to pay, a recruiter responded that they were required to pay. The consumer was shocked when he later learned how much they charged for this test - \$4,065.00.
35. Consumer #12 resides in Bow, New Hampshire and had contact with CRIR recruiters at the Pheasant Lane Mall in Nashua approximately two years ago. He noticed a number of women outside a kiosk attempting to get people to donate. He believed that at least one wore a brightly colored wig and a lab coat. The women stated that the test cost nothing, that it took minutes to donate and that someone could save a life. The consumer passed by the women and the kiosk to shop, but on a second pass by the kiosk he was again solicited and agreed to stop. He did complete some paperwork, but the recruiter did not say anything to him about billing his insurance company. If he had known the actual cost, he would not have donated. The recruiters were very clear that there was no cost to him.
36. Consumer #13 resides in Hopkinton, NH and went to a trade show in November, 2010. CRIR had a booth at the show. He saw what he described as two suggestively dressed women with blue wigs in front of the booth. The women directed him to the booth where

a man in a lab coat continued the recruitment efforts. The women left to pursue other prospective donors. The consumer had no recollection of the recruiters asking for his insurance information or discussing the cost of the test. He did complete a form. It was not until later when he received an EOB that he learned the amount of the claim UMMHV submitted for this test - \$4,351.83.

37. Consumer #14 resides in Peterborough, New Hampshire. She attended the Cheshire Fair in August, 2010 and approached the CRIR booth. She was very interested in making a donation and asked about the procedure. She was told that they would have some paperwork for her to fill out and then they would do a mouth swab. The paperwork requested her insurance information and she informed the recruiter that she did not have her insurance card with her. The recruiter stated that they could still proceed, but that she should write down the name of her insurance company and her social security number. The consumer then asked if there would be a charge either to her or to her insurance company. She was told that she would not be charged and that "this was all on them." When she asked why they needed her insurance information, the recruiter said it was needed for legal matters. Several months later, she learned that her insurance company was billed at an amount of \$1,020.52, pursuant to the negotiated contract between the lab and the carrier. The consumer called CRIR and asked for a copy of the consent form she signed, but never received a copy of that from them.
38. Employees of UMMHV and CRIR were interviewed in the course of the Attorney General's investigation and provided the following information: UMMHV and CRIR developed a strategy to aggressively market the HLA testing services of UMass Labs.

They engaged the services of a professional modeling agency in Boston and an employee of UMMHV personally selected the models to be employed at CRIR recruiting functions. That same employee gave specific instructions about the mandatory attire for those models, to include a white lab coat with the UMass Labs insignia, black skirt, white blouse and black-heeled shoes.

39. UMMHV and CRIR began using lucrative raffles as a way to draw potential donors to the recruiting booths. Items raffled included flat screen televisions, a John Deere tractor, and golf clubs. Some recruiters reported feeling rushed when registering donors, especially at crowded events. Recruiters were given daily quotas for the number of people with insurance they were expected to register.
40. UMMHV and CRIR also established an employee commission structure as an incentive to employees to sign up donors with insurance. A select number of employees, mostly upper management, received thousands of dollars in commissions each month, based on the number of insured bone marrow donors.
41. Other employees reported receiving calls from donors complaining that recruiters informed them this HLA test would result in no cost to them or their insurance company. A record of those calls was kept and reports made to senior management at CRIR.
42. CRIR employed a number of people whose primary job it was to review donor consent forms and attempt to obtain missing insurance information on those forms. A substantial number of untested donor samples were held at CRIR offices while those attempts were made. Employees were authorized to call the donors and, if unsuccessful, search commercial insurance databases. Once found, insurance claims were filed without further consent from the insurer. If employees could not locate the information, those

donor samples were referred to management. Some of those donor samples were destroyed if insufficient information was available to contact the donor or if the donor was screened as ineligible based on clinical criteria, instead of being tested and the donors listed in the registry.

VIOLATIONS OF LAW

NEW HAMPSHIRE CONSUMER PROTECTION ACT

43. The State incorporates by reference and re-alleges each allegation contained in paragraph 1-39.
44. Defendant's conduct as alleged in the Complaint occurred in "trade" or "commerce" and constitutes the offering of, or providing of goods and/or services as defined in RSA 358-A:1 and A:2.
45. The acts and practices engaged in and employed by the Defendants as alleged herein, are unfair or deceptive acts or practices affecting the conduct of trade or commerce in New Hampshire, which are declared unlawful by RSA 358-A:2.
46. Each and every unfair or deceptive act or practice engaged in by the Defendant as recited above constitutes a separate violation of the New Hampshire Consumer Protection Act.
47. By misinforming consumers that the HLA test would result in minimal or no charge to their insurance company, the Defendants have violated RSA 358-A:2 with each such false representation.
48. By concealing from consumers the amount UMass charged insurance companies, the Defendants have violated RSA 358-A:2 with each representation.
49. By adopting a policy to obtain only minimal insurance information from consumers at the time of recruitment, only to later search commercial data bases to obtain that missing

information in order to submit a claim based only on the donor's consent to the Insurance Coverage for HLA Testing for Donor Registration provisions of the consent form and without further consulting with the consumer, the Defendants have violated RSA 358-A:2 with each representation.

50. By the use of models outfitted in UMass lab coats, given the false impression that those individuals were medical professionals employed by UMass, instead of highly paid models employed by a modeling agency, the Defendants have violated RSA 358-A:2 with each representation.
51. All of the acts and practices engaged in and employed by Defendant as alleged herein are deceptive or unfair to the consumer or other persons in violation of RSA 358-A:2.
52. Defendants knew or should have known that its conduct was unfair or deceptive.

PRAYER FOR RELIEF

WHEREFORE, Michael A. Delaney, Attorney General for the State of New Hampshire, pursuant to the New Hampshire Consumer Protection Act, the Attorney General's general statutory authority, the Attorney General's authority at common law and this Court's equitable powers, prays:

- A. That this Court adjudge and decree that the Defendants have engaged in the aforementioned acts or practices which violate the New Hampshire Consumer Protection Act.
- B. That pursuant to RSA 358-A:4, this Court permanently enjoin and restrain the Defendants from engaging in the aforementioned acts or practices which violate the New Hampshire Consumer Protection Act.

- C. That this Court enter judgment against the Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees and costs, expert and other witness fees, as provided by RSA 358-A:4, and other state law and that the Court impose civil penalties in the amount of \$10,000.00 per violation.
- D. That all costs in this case be taxed against the Defendants.
- E. That no costs be taxed to the State.
- F. That this Court grant the State such other and further relief as this Court deems just and proper.

Respectfully submitted,

Michael A. Delaney
Attorney General

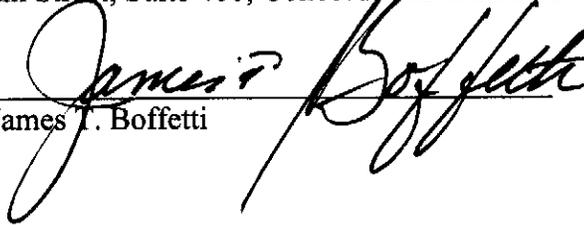


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Dated: February 2, 2012

Certificate of Service

A copy of this complaint was mailed this 2nd day of February, 2012 to Douglas Brown, Esq., Senior Vice President and General Counsel, UMass Memorial Health Care, Inc., One Biotech Park, 365 Plantation Street, Worcester, MA 01605-2376, and Michael J. Connolly, Esq. Hinckley, Allen & Snyder, LLP, 11 South Main Street, Suite 400, Concord, NH 03301-4846


James T. Boffetti