

RETURN DATE: AUGUST 17, 2004

STATE OF CONNECTICUT	:	SUPERIOR COURT
<i>Plaintiff</i>	:	
v.	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	AT BRIDGEPORT
	:	
CHARLES D. GIANETTI, M.D.	:	JULY 7, 2004
<i>Defendant</i>	:	

COMPLAINT

FIRST COUNT

Parties

1. The plaintiff, State of Connecticut, represented by Richard Blumenthal, Attorney General of the State of Connecticut, acting at the request of Edwin R. Rodriguez, Commissioner of Consumer Protection, brings this action pursuant to the Connecticut Unfair Trade Practices Act (“CUTPA”), Chapter 735a of the Connecticut General Statutes, and more particularly, Conn. Gen. Stat. §§ 42-110m and 42-110o, for the purpose of seeking appropriate relief for violations of Conn. Gen. Stat. § 42-110b(a).

2. Defendant CHARLES D. GIANETTI, M.D. is a natural person residing in and with a principal place of business in the State of Connecticut.

Defendant’s Course of Conduct

3. The defendant has, during all times relevant to this complaint, engaged in the trade or commerce of the practice of medicine and surgery in the State of Connecticut, including the

entrepreneurial aspects of such practice such as submitting claims for payment for such professional services.

4. In the course of the aforementioned trade or commerce, at the time he rendered professional services to patients, the defendant has been a participating provider in many managed care plans, including, but not limited to, Physician's Health Service ("PHS"), in which he was enrolled as a provider as early as 1979.

5. Under the terms of the participating provider agreements with managed care plans, the defendant provided covered services for patients who were subscribers in the plans. According to the terms of these agreements, the defendant was required to accept the amount paid by the plan as full compensation for his services. The agreements prohibited the defendant from attempting to collect from subscribers or enrollees, any additional balance over this amount, other than the copayments and deductibles established by the plans, a practice known as "balance billing".

6. On information and belief the defendant has on numerous occasions directly billed and received payments from patients who were subscribers in managed care plans for professional services above and beyond the copayments and deductibles established by the plans, or sued them in court if they would not pay.

7. One illustrative example in which the defendant billed for such services was in the matter of *Charles D. Gianetti, M.D. v. Glenn and Laura Siglinger and Foster Young, Esq.*, No. CV98-0349830, Judicial District of Fairfield at Bridgeport. In that matter the defendant, having already been paid by PHS for professional services performed on the minor daughter of Glenn and Laura Siglinger, filed a civil suit seeking to collect an amount other than a copayment or deductible,

representing the difference between the amount that PHS paid the defendant and the price that the defendant billed.

8. In a Memorandum of Decision in *Gianetti v. Selinger*, dated April 26, 2004, the Superior Court (Rush, J.) not only determined that defendant's practice of balance billing constituted an unfair trade practice, but also found that defendant was an active pro se litigant in 45 active or pending cases in the Judicial District of Fairfield, and approximately 146 inactive or disposed of cases, some of which may present similar balance billing issues. A copy of this Memorandum of Decision is incorporated herein as Exhibit A.

9. In the course of trade or commerce, at the time he rendered professional services to patients, the defendant also has been a participating provider in Medicaid, in which he was enrolled as a provider as early as 1977. Federal law prohibits the defendant, as a Medicaid provider, from knowingly pursuing payment for an item or service in excess of the amount permitted to be charged by a State agency agreement or State plan under Title XIX and imposes civil and criminal sanctions for such conduct. 42 U.S.C. § 1320a-7a(a)(2), 42 U.S.C. § 1320a-7b(d). Under 42 C.F.R. §447.15, a state Medicaid agency is required to limit its providers to those "who accept, as payment in full, the amounts paid by the agency plus any deductible, co-insurance or co-payment required by the plan to be paid by the individual."

10. As a Medicaid "vendor", the defendant is subject to the federal and state laws, rules and regulations governing the Medicaid program. Specifically, the defendant is prohibited under State law from accepting from any person or source other than the State, additional compensation in

excess of the amount authorized by law for services performed for any Medicaid beneficiary. R.C.S.A. §17-83k-3(4).

11. On information and belief the defendant has on numerous occasions directly billed and received payments from patients who were Medicaid recipients for professional services above and beyond the copayments and deductibles authorized by the State Medicaid program, or sued them in court if they would not pay.

12. One illustrative example in which the defendant billed for such services was in the pending matter of *Charles Gianetti v. Stanton Lesser, et al.*, No. CV99-0364852, Judicial District of Fairfield at Bridgeport. In that matter, having already been paid by Medicaid for professional services performed on a child of one of the individuals sued, the defendant filed a civil suit seeking to collect an amount other than a copayment or deductible, representing the difference between the amount that Medicaid paid the defendant and the price that the defendant billed. On information and belief defendant has improperly billed Medicaid recipients on other occasions.

Defendant's Violations of CUTPA

13. By engaging in the practice of balance billing, the defendant has made or caused to be made, directly or indirectly, explicitly or by implication, representations that patients who were subscribers of managed health plans, or who were Medicaid recipients, owed the defendant sums for professional services rendered which are above and beyond the copayments and deductibles allowed by law.

14. In truth and in fact, and contrary to the defendant's representations, the managed care and Medicaid patients who were subjected to the defendant's balance billing did not owe the sums that

were claimed, as the defendant was legally prohibited from billing or accepting payments for these sums.

15. As a direct result of the defendant's misrepresentations, patients have paid to the defendant sums that were not due to the defendant and/or suffered the expense and inconvenience of having to defend against the defendant's collection efforts.

16. The defendant's misrepresentations, as alleged herein, have been and are material and likely to mislead and, therefore, constitute deceptive acts or practices in violation of Conn. Gen. Stat. §42-110b(a).

SECOND COUNT

1. – 16. Paragraphs 1 through 16 of the First Count are hereby made paragraphs 1 through 16 of the Second Count as if fully set forth.

17. Defendant has violated Conn. Gen. Stat. §42-110b(a) willfully.

THIRD COUNT

1. – 12. Paragraphs 1 through 8 and paragraphs 13 through 16 of the First Count are hereby made paragraphs 1 through 12 of the Third Count as if fully set forth.

13. The defendant, through his practice of balance billing subscribers of managed health care plans, has violated Conn. Gen. Stat. § 20-7f(b).

14. The defendant's conduct constitutes an unfair trade practice and a per se violation of Conn. Gen. Stat. §42-110b(a).

FOURTH COUNT

1. – 14. Paragraphs 1 through 14 of the Third Count are hereby made paragraphs 1 through 14 of the Fourth Count as if fully set forth.

15. Defendant has violated Conn. Gen. Stat. §42-110b(a) willfully.

FIFTH COUNT

1. – 7. Paragraphs 1 through 3 and paragraphs 9 through 12 of the First Count are hereby made paragraphs 1 through 7 of the Fifth Count as if fully set forth.

8. Defendant's conduct violates the public policy set forth in 42 U.S.C. § 1320a-7a(a)(2) and 42 U.S.C. § 1320a-7b(d) which prohibits Medicaid providers from knowingly pursuing payment for an item or service in excess of the amount permitted to be charged by a State agency agreement or State plan under Title XIX. Said conduct further violates the public policy set forth in 42 C.F.R. §447.15 which requires a state Medicaid agency to limit its providers to those "who accept, as payment in full, the amounts paid by the agency plus any deductible, co-insurance or co-payment required by the plan to be paid by the individual."

9. Defendant's conduct violates the public policy set forth in Conn. Gen. Stat. §53a-290 and R.C.S.A. §17-83k-3(4) which prohibit Medicaid vendors from accepting from any person or source other than the State, additional compensation in excess of the amount authorized by law for services performed for any Medicaid beneficiary.

10. Defendant's course of wrongful conduct is immoral, unethical, oppressive, and unscrupulous.

11. Defendant's course of wrongful conduct has caused substantial injury to patients who have paid to the defendant sums that were not due to the defendant and/or suffered the expense and inconvenience of having to defend against the defendant's collection efforts.

12. The defendant's conduct constitutes an unfair trade practice in violation of Conn. Gen. Stat. §42-110b(a).

SIXTH COUNT

1. – 12. Paragraphs 1 through 12 of the Fifth Count are hereby made paragraphs 1 through 12 of the Sixth Count as if fully set forth.

17. Defendant has violated Conn. Gen. Stat. §42-110b(a) willfully.

DEMAND FOR RELIEF

WHEREFORE, pursuant to Conn. Gen. Stat. §§42-110m, 42-110o, the State of Connecticut requests the following relief:

1. A finding that the defendant has engaged in trade or commerce;
2. A finding that the defendant has engaged in unfair or deceptive acts or practices in the course of trade or commerce which constitute violations of the Connecticut Unfair Trade Practices Act;
3. An order preliminarily and permanently enjoining the defendant from the use of acts or practices that violate the Connecticut Unfair Trade Practices Act, including, but not limited to, the unlawful acts and practices pleaded in this Complaint;
4. An order preliminarily and permanently enjoining the defendant to take whatever actions are necessary to abate the use of acts or practices that violate the Connecticut Unfair Trade

Practices Act, including, but not limited to, the unlawful acts and practices pleaded in this Complaint;

5. An order requiring the defendant to pay restitution to each and every person or entity of any sort that made payments to the defendant that were excessive as a result of the acts or practices that violate the Connecticut Unfair Trade Practices Act, as alleged herein;

6. An order requiring the defendant to submit to an accounting;

7. An order requiring the defendant to pay a civil penalty in an amount not to exceed \$5000 per violation for each willful violation of the Connecticut Unfair Trade Practices Act;

8. An order requiring the defendant to pay the costs for the investigation and prosecution of this action, including reasonable attorneys' fees;

9. Such other relief as is just and equitable to effectuate the purposes of this action.

Dated at Hartford, Connecticut, this day of July, 2004.

**PLAINTIFF
STATE OF CONNECTICUT**

BY:

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