



News

Carlos Ortiz Analyzes in ARM Compliance Digest: Judge Denies MTD in Case Over Healthcare Provider's Billing Practices

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In the February 1, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner Carlos Ortiz reviews a case in Ohio in which a healthcare provider had its motion to dismiss a class-action suit alleging its billing practices violated state law denied, after arguing that the law exempts transactions between physicians and their patients:

In *Van Brakle*, an Ohio state court denied a motion to dismiss an amended complaint that included a putative class claim. The case arose out of the plaintiff's visit to one of defendant's facilities for radiology testing. According to the plaintiff, she paid \$25 towards the cost of the testing, but was not provided a receipt. Plaintiff also alleged that the defendant did not provide her with an estimate for the cost of the testing. In addition, Plaintiff complained that additional payments she made to defendant were not applied towards the balance for the testing, but instead were allocated towards other balances Plaintiff had with the defendant. The plaintiff claimed that no physician was involved in administering the radiology testing. Plaintiff sued the defendant alleging violations of the Ohio Consumer Sales Practices Act.

In its motion to dismiss, the defendant made several unsuccessful arguments. First, the defendant argued that it was exempt from the Act because it is inapplicable to transactions involving physicians and patients. The court disagreed holding that the defendant did not meet the plain and ordinary definition of a physician. Second, the defendant argued that medical imaging services are not subject to the Act. In disagreeing with this argument, the court reviewed the Act and found that it expressly requires medical service providers to notify a patient of his/her right to request that the service provider offer a good-faith estimate of what it will charge the patient. Third, the defendant asserted that it was not possible to provide the plaintiff with a good-faith estimate because it was unclear what services would be provided to a patient over the course of treatment. The court refused to look at this as a course of treatment situation and reasoned that the plaintiff requested a routine radiology test, and the cost of that test was within the knowledge of the defendant. Next, the defendant attempted to attack the putative class claim arguing that it was without the requisite notice that failure to provide plaintiff with a receipt for the \$25 payment she made equated to a deceptive act. The court, again,

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disagreed and held that the state attorney general had adopted a rule that prohibited what Plaintiff alleged the defendant had failed to do.

This case underscores the difficulty in prevailing on a motion to dismiss. It also highlights the dilemma that many defendants are faced with in litigation. Should they settle early into the case or invest in defending the case in order to provide the court with a record to support summary judgment? The former provides certainty and peace, but may come with some buyer's remorse. The latter involves risk and uncertainty, but can come with much satisfaction if summary judgment is granted. This is always a very tough call.

[Read the full February 1, 2021 edition of the AccountsRecovery.net Compliance Digest.](#)