

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

Court File No.: _____

In the Matter of St. Paul Radiology, P.A.

**MEMORANDUM IN SUPPORT OF
STATE'S MOTION TO COMPEL
RESPONSES TO A CIVIL
INVESTIGATIVE DEMAND**

INTRODUCTION

The State brings the present motion seeking an Order compelling complete responses to interrogatories and document requests served on respondent St. Paul Radiology ("SPR") through a Civil Investigative Demand ("CID"). The respondent has refused to provide information requested by the State in response to a lawfully issued CID that is necessary to allow the State to investigate complaints it has received concerning respondent's allegedly unlawful health care billing and collection practices. As explained fully below, the State has information suggesting that respondent has engaged in improper health care billing practices and has unlawfully pursued patients for debt collection despite having failed to timely file medical claims with the patients' insurance companies. The requested information is relevant to SPR's allegedly wrongful conduct, and its failure to provide the information is impeding the State from conducting a full investigation into SPR's practices.

FACTUAL BACKGROUND

Medical Debt Collection Practices

Medical billing and debt collection is an area ripe for abuse. *See Ex. A to Affidavit of Jennifer DeKarske ("DeKarske Aff.")*. In 2005, for example, the Minnesota Attorney General's

Office conducted a compliance review of Fairview Health Services (“Fairview”), which operates numerous hospitals and clinics in Minnesota. The compliance review found that Fairview and its outside debt collection agencies and attorneys engaged in improper and unlawful practices in billing patients and collecting medical debt. DeKarske Aff. Ex. B. For example, Fairview regularly failed to bill patients’ insurance companies in a timely fashion and then attempted to collect the debt from the patient, even though the agreement between Fairview and the insurance company prohibited Fairview from pursuing a patient if it failed to properly bill the insurer. DeKarske Aff. Ex. B at p. 34. The Fairview compliance review also found that Fairview sent patients to debt collectors who did not owe any money or had insurance that should have been billed but was not, and would not correct its known billing errors. *See id.* at pp. 29-37. The Fairview compliance review ultimately resulted in an agreement with Fairview to reform its health care billing and debt collection practices. DeKarske Aff. Ex. C. Every hospital in Minnesota has since entered into a similar agreement. DeKarske Aff. Ex. D.

St. Paul Radiology

SPR provides medical imaging services to patients throughout the Midwest. It employs 90 physicians, and serves six outpatient imaging centers and eleven hospitals. SPR radiologists provide services at Children’s Hospital-St. Paul, HealthEast Midway Outpatient Center, HealthEast St. John’s Hospital, HealthEast St. Joseph’s Hospital, Regions Hospital, Shriners Hospital for Children, United Hospital, and Woodwinds Health Campus, among others.

St. Paul Radiology’s Billing and Debt Collection Practices

The State received written information about a number of abusive and improper billing and collection practices that SPR allegedly engaged in, which are potentially unlawful. *See* DeKarske Aff. at ¶ 6.

A former employee described a number of allegedly fraudulent and deceptive practices. For example, the employee had observed that SPR would turn patients over to collection agencies who had insurance at the time they received radiology services from SPR, after SPR failed to bill the insurance company within the timely filing period. *See* Affidavit of Venus Branson (“Branson Aff.”) at ¶ 7. SPR had been sitting on some of the claims as long as two years. *Id.* at ¶ 5.

Christine Muller, who lives in West St. Paul, reported that this situation happened to her. In 2002, Ms. Muller, who has worked as a head cook and caterer, received radiology services from SPR, and she verified before receiving the services that her insurance would pay for them. *See* Affidavit of Kristen M. Olsen (“Olsen Aff.”), Ex. A at ¶ 4. About three years later -- for the first time -- she started receiving bills for over \$1,000 from SPR for those services. *See id.* Her account was eventually sent to collections. *See id.* at ¶ 5.

The former employee reported that she was instructed by her supervisor to untruthfully tell patients who complained about their bills that they were responsible for the charges as a result of not providing the correct insurance information, when SPR had the insurance information all along. *See* Branson Aff. at ¶ 9. On one occasion, a supervisor told her essentially to “let [the collections agency] harass them.” *Id.* at ¶ 13.

The State also has information suggesting that SPR tried to bill patients who were on government insurance programs such as Medical Assistance and Medicare. *See id.* at ¶ 13. Christopher Darveaux, a shift manager at a fast food restaurant, was billed \$950 for radiology services he received while he was on Medical Assistance. *See* Olsen Aff. Ex. B at ¶¶ 2-3. SPR eventually started garnishing 25 percent of his wages. *See id.* at ¶ 5. Similarly, Cynthia Munn, whose husband has a disability and is covered by Medicare, believes that SPR billed him without

submitting the claims to Medicare for payment. *See* Affidavit of Cynthia Munn at ¶¶ 2-3. Mrs. Munn's husband was referred to a collection agency. *See id.* at ¶ 4. Federal law limits a provider's ability to try to collect from a patient who is on Medical Assistance or Medicare. *See* 42 U.S.C. § 1395cc (a)(1), (2); 42 C.F.R. §§ 489.21 and 447.15.

The former employee further alleged a number of other practices that she believed were fraudulent and deceptive, including collecting from both the patient and the insurance company and then failing to issue refunds when SPR was overpaid. *See* Branson Aff. at ¶ 15. Some patients unfairly paid the amount that SPR said they owed, simply to avoid having their bill sent to a collections agency. *See id.* at ¶ 17. Patricia Sargent reported that SPR improperly billed her instead of her insurer. Ms. Sargent, who lives in St. Paul with her family, received a bill from SPR for over \$1,000 for services received while she was covered under her insurance plan with her employer, a school district. *See* Affidavit of Patricia L. Sargent at ¶¶ 2-3. To her knowledge, SPR never tried to submit the claims to the insurance company. *See id.* at ¶ 3. She, too, was referred to a collections agency. *See id.*

Bruce Witter, who lives in St. Paul with his fiancée, reported that SPR sent him to collections on a bill for services that SPR submitted to the wrong insurance company, even though he had provided the correct insurance information to United Hospital when he received the services. *See* Affidavit of Bruce Witter at ¶¶ 1-2, 6-8. Although he called SPR to inform it of the error and again provided the correct insurance information, Mr. Witter continued receiving collection notices until SPR was paid by the correct insurance company. *See id.* at ¶¶ 5-9.

From June 2004 to February 2007, the State received at least a dozen written complaints about SPR related to billing and/or debt collection issues, a number of which appear to involve practices similar to what the former employee reported observing. DeKarske Aff. at ¶ 6. For

example, one patient received a bill from SPR for services provided one and a half years prior to his receipt of a bill. When the patient refused to pay the untimely bill, it was referred to a collection agency. *See DeKarske Aff. Ex. E.* SPR has utilized J.C. Christensen, a collection agency, and Richard Seierstad to collect debts for them. These are the same debt collectors whose improper practices were outlined in the Fairview compliance review described above. *See DeKarske Aff. Ex. B.* One patient received a Notice and Notice of Intent to Garnish Earnings from the attorney Richard Seierstad, on behalf of SPR, related to a bill for which SPR claimed the patient was not insured, even though the patient was insured at the time of the services. *See DeKarske Aff. Ex. E.* Yet another patient complained that Richard Seierstad, on behalf of SPR, was attempting to collect on a bill for services covered by Medical Assistance. *See id.*

The State's Investigation

On June 6, 2007, the State issued a Civil Investigative Demand ("CID") to SPR. *See DeKarske Aff. Ex. F.* The narrowly tailored CID included just seven interrogatories and eight document requests, which sought documents and information from the time period beginning January 1, 2002 through the present. *See id.* The CID requested information sufficient to allow the State to fully investigate the allegations it received concerning SPR's allegedly unlawful billing and debt collection practices. Among other things, the CID requested SPR to identify all the patients it had referred to a collection agency during the time period specified in the CID. For each such patient, the CID asked SPR to identify the date of service; the service provided; the date the patient was billed; the amount billed to the patient; any responsible third-party payer; the date the third-party payer was billed; the amount billed to the third-party payer; the amount paid, if any, by the third-party payer; if the claim was denied by the third-party payer; the reason for such denial; and the result of the collection effort. The CID defined the term "identify" to

include “(1) the person’s full name; (2) the person’s present or last known address; and (3) the person’s present or last known telephone number.” *See id.*

St. Paul Radiology’s Refusal to Comply with the State’s CID

On June 18, 2007, SPR requested, and the State granted as a matter of professional courtesy, an 11-day extension to respond to the CID, until July 10, 2007. *See DeKarske Aff.* at ¶ 9. On July 10, 2007, SPR produced four boxes of documents in response to the CID, along with written answers to the interrogatories. *See id.* The documents included a number of separate spreadsheets in paper format, totaling more than 7,000 pages. *See id.* Several of the spreadsheets did not appear to be organized in any particular order useful to an investigator (by patient name, date of service, etc.). *See id.* Moreover, none of the spreadsheets identified the patient’s last known address or last known phone number, as required by the CID. *See id.* Patient addresses and phone numbers are essential for the State to contact and interview the potential victims of SPR’s conduct.

On July 23, 2007, an Assistant Attorney General telephoned SPR’s counsel and left a voice mail message pointing out that SPR had failed to provide patient addresses and phone numbers as the CID required. *DeKarske Aff.* ¶ 11. The State’s attorney also requested that the spreadsheets, including the addresses and phone numbers, be provided in electronic format. *DeKarske Aff.* ¶¶ 10-11.

In a letter dated July 25, 2007, SPR refused to provide the requested information, citing supposed concerns about the “sensitive nature” of the information requested. *See DeKarske Aff. Ex. G.* The letter characterized the State’s request as “supplemental.” *See id.*

In response, on July 26, 2007, the State sent SPR’s counsel a letter explaining that the patient addresses and phone numbers that SPR was refusing to provide were not in fact part of a

“supplemental” request but rather were required by the terms of the original CID served on June 6, 2007. *See DeKarske Aff. Ex. H.* The letter further explained that the terms of the original CID also required the production of the information in a searchable electronic format. *See id.*

In a letter dated July 26, 2007, SPR again refused to provide the requested information in electronic format. *See DeKarske Aff. Ex. I.* SPR’s July 26, 2007 letter did not set forth any legal basis for refusing to provide the information. *See id.* Instead, SPR refused to turn over the information based upon its supposed fear that the data would not be secure:

[I]nformation maintained in electronic format, such as e-mails, word documents, PDF’s, or information stored on DVD’s, is difficult to control, and it is virtually impossible to ensure that this extraordinarily sensitive patient information is inaccessible to other employees or staff not involved in the inquiry, or is otherwise protected against being accessed over the Internet by hackers. Moreover, there is the risk that this electronic information on a DVD or laptop could be misplaced or stolen.

See DeKarske Aff. Ex. I.

In a letter dated July 27, 2007, the State informed SPR that its July 26, 2007 letter was nonresponsive to the CID and that it was required to provide patient names and addresses as required, along with spreadsheets in a searchable electronic format such as Excel. *See Olsen Aff. ¶ 4 and Olsen Aff. Ex. C.* The State also pointed out that there was no legal basis for withholding the information. *See id.* The State noted that it routinely receives electronic document production in its investigations and there was no foundation for the security concerns. *See id.* The State informed SPR’s counsel that it expected a full and complete response to the CID by the close of business on August 1, 2007. *See id.*

In a letter faxed to the State at 4:43 p.m. on August 1, 2007, SPR again refused to provide patient names and addresses as required by the June 6, 2007 CID and to provide the spreadsheets in a searchable electronic format. *See Olsen Aff. Ex. D.* SPR did not set forth any legal grounds

for refusing to provide the other information but merely reiterated its supposed concerns about security.

SPR's failure to comply with the terms of the CID is impeding the State from carrying out its investigation.

LEGAL ARGUMENT

The request for which the State seeks a compelled response is the present or last known addresses and telephone numbers for SPR patients referred to a collections agency during the time period specified in the CID. Additionally, the State requests that the patient information requested in Interrogatory Number 6 be provided in a searchable electronic format in order to facilitate a timely and comprehensive investigation.

I. THE ATTORNEY GENERAL HAS BROAD AUTHORITY TO ISSUE CIVIL INVESTIGATIVE DEMANDS IN CONNECTION WITH AN INVESTIGATION OF VIOLATIONS OF MINNESOTA LAWS PERTAINING TO UNLAWFUL PRACTICES IN BUSINESS, COMMERCE, OR TRADE.

Under Minn. Stat. § 8.31, subd. 1 (2006), the State has broad authority to investigate violations or suspected violations of Minnesota laws “respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade” Minnesota courts have noted the broad authority of the Attorney General under this statute. *See State ex rel. Hatch v. American Family Mut. Ins. Co.*, 609 N.W.2d 1, 3 (Minn. Ct. App. 2000) (noting the expansive statutory powers of the attorney general and citing Minn. Stat. § 8.31 in particular). The Minnesota Supreme Court has discussed the importance of the Attorney General's investigatory CID authority, stating:

This precomplaint procedure was created because other methods of obtaining information had proved unsatisfactory. The voluntary cooperation of the party being investigated was not always forthcoming. Nor did it seem fair for the state to file a bare-bones complaint, as it could do, and then undertake discovery in an adversary setting to ascertain if it had a case. Experience has indicated that the precomplaint investigative procedure, somewhat akin to a state's visitatorial powers over corporations, is often the best and fairest manner in which to proceed.

Kohn v. State by Humphrey, 336 N.W.2d 292, 296 (Minn. 1983).

Minnesota statutes broadly define the scope of the Attorney General's authority to investigate unlawful practices in business, commerce, or trade. While Minn. Stat. § 8.31, subd. 1 (2006) specifically lists some Minnesota statutes that fall within its general "business, commerce, or trade" framework, including the Prevention of Consumer Fraud Act, the statute also expressly and unequivocally states that this enumerated list is not exclusive. See Minn. Stat. § 8.31, subd. 2 (2006). ("attorney general shall have power to investigate . . . and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes specifically mentioned . . . or any other laws respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade." (emphasis added)). Accordingly, the State has the authority to investigate a violation or suspected violation of any state law, provided the law pertains to "business, commerce, or trade."

The present action is clearly within the scope of the Attorney General's CID authority. Indeed, the State has already aggressively investigated similar practices by other health care providers. The State's investigation directly involves SPR's business practices as they relate to billing and debt collection procedures, and the State has reasonable grounds to believe that those practices violate Minnesota consumer protection statutes.

II. THE ATTORNEY GENERAL HAS REASONABLE GROUNDS TO BELIEVE THAT SPR ENGAGED IN UNFAIR, DISCRIMINATORY, AND OTHER UNLAWFUL PRACTICES IN BUSINESS, COMMERCE, OR TRADE, INCLUDING BUT NOT LIMITED TO VIOLATIONS OF MINN. STAT. §§ 325D.44 AND 325F.69 (2006).

The Minnesota Attorney General may issue a CID pursuant to Minn. Stat. § 8.31 upon a "reasonable ground to believe" that a person is or may be violating Minnesota law. See Minn. Stat. § 8.31, subd. 2 (2006). The Minnesota Supreme Court has emphasized the preliminary and investigatory nature of a CID, noting that the State must only make a minimal "reasonableness" showing to overcome a CID recipient's challenge to the CID. In particular, "[i]t is enough to

show, on the basis of information the Attorney General already has, that it is reasonable for the investigation to continue.” *Kohn*, 336 N.W.2d at 296.

The Minnesota Supreme Court expressly recognized that the purpose of a CID is “not to prove pending charges, but to ascertain whether there is any substance to the customer complaints so that charges should or should not be brought.” *Id.* at 296 (citing *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 201 (1946)).

The State’s basis for issuing its CID to SPR clearly satisfies this legal standard. The State has information from a former SPR employee who observed first-hand over a period of more than two years SPR’s billing and debt collection practices. Moreover, the State has independently received and reviewed complaints from patients that are consistent with the former employee’s allegations. Thus, the State has a reasonable basis for requiring the information in the CID.

III. THE COURT SHOULD COMPEL SPR TO PRODUCE THE REQUESTED INFORMATION IN ACCORDANCE WITH THE REQUIREMENTS OF MINN. STAT. § 8.31 (2006).

Minnesota Statute § 8.31 (2006) gives the Attorney General the authority to “obtain discovery from any person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the pending investigation” Minn. Stat. § 8.31, subd. 2 (2006). Courts have noted that the “[t]he scope of the inquiry must be within the authority of the Attorney General, the information requested must be ‘reasonably relevant,’ and the demand for documents ‘not too indefinite.’” *Minnesota Twins Partnership v. State ex rel. Hatch*, 592 N.W.2d 847, 851 (Minn. 1999) (citing *Kohn*, 336 N.W.2d at 297; *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)).

Access to the contested information is necessary for the State to investigate whether SPR violated Minnesota’s consumer protection laws. The State’s CID is narrowly tailored, specific,

and provides a clear time frame outlining the scope of the discovery requests. As discussed above, the State has the authority to request the contested information which is not only “reasonably relevant,” but essential to the State’s investigation. The State needs patient addresses and phone numbers in order to contact and interview any potential victims it identifies in the course of its investigation. A searchable electronic format is necessary in order for the State to locate patients within large, disorganized spreadsheets, and to conduct an analysis of the billing information. For example, the State needs to identify which insured patients were billed for services after the timely filing period had expired and determine whether SPR had tried to collect from the insurer prior from trying to collect from those patients. By failing to comply with the State’s information requests, SPR attempts to hide the full extent of its illegal conduct.

This court is empowered with the authority to compel the release of the requested information. Minnesota law governing the failure to comply with CIDs issued by the Attorney

General states:

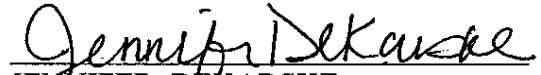
If any person fails or refuses to answer interrogatories, to produce materials, or to be examined under oath, as required by the provisions of subdivision 2, the attorney general may apply to a district court, upon notice, and the court, on a showing by the attorney general of cause therefor, may issue such order as may be required to compel compliance with the discovery procedures authorized by this section.

Minn. Stat. § 8.31, subd. 2a (2006).

Accordingly, in the interest of protecting Minnesota citizens and promoting justice for those already harmed, the State respectfully requests this Court to grant its motion to compel full and complete responses to the State's June 6, 2007 CID.

Dated: August 10, 2007

Respectfully submitted,



JENNIFER DEKARSKE
Assistant Attorney General
Atty. Reg. No. 0332203
(651) 215-1564

KRISTEN M. OLSEN
Assistant Attorney General
Atty. Reg. No. 030489X

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 296-2921 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR
STATE OF MINNESOTA