“Calling All Cell Phones With Express Permission”

June 24th, 2014
Kenlyn T. Gretz
President and CEO of...
Law360, New York (May07, 2014, 8:55PM ET – Tenet Healthcare Corp. and its debt collection subsidiary were slapped with a putative class action Tuesday alleging they violated the Telephone Consumer Protection Act by using auto dialers to leave unauthorized debt collection messages. Sheryl Freeman filed suit in Georgia federal court, accusing Texas-based Tenet and Conifer Health Solutions LLC of using dialing software to make robocalls to her cellphone without obtaining consent. The calls were placed to collect a medical debt her husband allegedly owed to the Tenet-run Spalding Regional Hospital in suburban Atlanta.

“Both Conifer and Tenet knew they did not have the ‘prior express consent’ to call members of the class for debt collection purposes, but did so anyway in spite of such knowledge,” the complaint says. “The telephone calls are an invasion of privacy and violate the privacy interests that the TCPA was intended to protect.”
Additionally, Freeman alleges that while she doesn’t know how Tenet obtained her cell phone number, it seems likely that Tenet improperly obtained it from either a third party or the emergency medical contact portion of her husband’s hospital forms, the suit says.
Not legal advice or contract wording!
91% of American Adults Own A Cell Phone

How Americans use their cell phones (activities):

<table>
<thead>
<tr>
<th>Cell phone activities</th>
<th>The % of cell phone owners who use their cell phone to...</th>
</tr>
</thead>
<tbody>
<tr>
<td>send or receive text messages</td>
<td>81</td>
</tr>
<tr>
<td>access the internet</td>
<td>60</td>
</tr>
<tr>
<td>send or receive email</td>
<td>52</td>
</tr>
<tr>
<td>download apps</td>
<td>50</td>
</tr>
<tr>
<td>get directions, recommendations, or other location-based information</td>
<td>49</td>
</tr>
<tr>
<td>listen to music</td>
<td>48</td>
</tr>
<tr>
<td>participate in a video call or video chat</td>
<td>21</td>
</tr>
<tr>
<td>“check in” or share your location</td>
<td>8</td>
</tr>
</tbody>
</table>
Percentage of Adults Living in Wireless-Only Households

By age bracket

- Age 65+: 12.6%
- Age 45-64: 29.8%
- Age 35-44: 44.5%
- Age 25-29: 54.3%
- Age 18-24: 65.6%
- Age 30-34: 30.6%
- Age 30-34: 27.9%

Year: '07, '08, '09, '10, '11, '12, '13
What % of your accounts are cell!

54%
68%
75%
Hannah 19 years old
Americollect Outbound Survey

OUTBOUND CALLS PICKED UP!

Right Party Only.

77% have caller ID.

75% say they look at caller ID before picking up the phone.

90% of the consumers who picked up the phone didn’t know it was Americollect calling.
INBOUND CALLS RETURNED.

Right Party Only.

75% of calls came from a left message.

Of the 75%, only a little more than HALF (53%) actually listened to the message.

Of the 75%, 33% of them just hit RETURN dial.

Of the 75%, 14% returned the call because somebody left a paper note with a message to call back.
Americollect Inbound Survey

» INBOUND CALLS RETURNED.
» Right Party Only.

» 25% called us with no message. Either notice or a No Answer from Caller ID.

» 61% of the 25% said they knew it was Americollect they were calling. We expect that to mean they had a notice in front of them.

» The rest, 39%, just returned the call by hitting RETURN CALL.
Ring The Phone!

<table>
<thead>
<tr>
<th>Inbound Calls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason For Return</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
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<td></td>
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</tbody>
</table>
The Telephone Consumer Protection Act of 1991 (TCPA) prohibits the use of any auto dialers and predictive dialers or an artificial or prerecorded voice to place calls to any wireless number except for emergency purposes or with the called party’s express consent.

» Intent:
» Telemarketers dialing:
» 312-111-1111, 312-111-1112, 312-111-1113
Penalty

$500 per phone attempt or $1500 for willful violation.
Set A Google Alert On TCPA

Search query: "TCPA Class Action"
TCPA Allows:

» You can transfer cell phones to a business partner as long as the cell phone was obtained at the time the credit was established or if you have their express permission later.

» Skip Tracing Services: Then transfer, no.
» Pulling a credit report: Then transfer, no.
» Updated from Next of Kin: Then transfer, no.

» A business partner can always MANUALLY dial a cell phone number and then get express permission.
You Don’t Have A Dialer?

Really?

What about your business partners?

What about your day to day life?
Do you contract with companies that do this for you?

If you don’t have EXPRESS permission, you put them at risk and therefore drive up costs of doing business with that outsourcing partner and therefore your expenses.

EXPRESS permission does not have to be in writing BUT IT IS BEST to have it in writing. A call and documentation.
Executive Overview:

In May 2013, Papa John's International, Inc., agreed to pay $16.5 million in damages to resolve a nationwide class action lawsuit alleging that it unlawfully advertised its pizzas by sending unwanted SMS text messages to customers in violation of the Telephone consumer Protection Act (TCPA). Although this federal law has been in place since 1991, new rules became effective on October 16, 2013 that prohibit companies from contacting consumers with telemarketing phone calls or text messages without their prior express written consent.
A 2008 Federal Communications Commission (FCC) Ruling clarified that: A consumer who gives prior express consent to the creditor, similarly gives such consent to the debt collector calling on behalf of the creditor.
Update your contracts giving you permission to use:

Texts
Emails
Phone numbers
Cell numbers
Class Action Defense

It only takes one named plaintiff claiming she did not provide consent for the calls to anchor the start of a class action law suit.

Advertise to your patients that you have this in your agreements. Don’t hide it. Tell the world.

How would you prove that you had “express verbal consent”?
The Costs Are Staggering!

<table>
<thead>
<tr>
<th>Outbound Attempts</th>
<th>$500 Per Violation</th>
<th>$1500 Per Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>$250,000.00</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>1,000</td>
<td>$500,000.00</td>
<td>$1,500,000.00</td>
</tr>
<tr>
<td>2,000</td>
<td>$1,000,000.00</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>4,000</td>
<td>$2,000,000.00</td>
<td>$6,000,000.00</td>
</tr>
<tr>
<td>8,000</td>
<td>$4,000,000.00</td>
<td>$12,000,000.00</td>
</tr>
<tr>
<td>16,000</td>
<td>$8,000,000.00</td>
<td>$24,000,000.00</td>
</tr>
<tr>
<td>32,000</td>
<td>$16,000,000.00</td>
<td>$48,000,000.00</td>
</tr>
<tr>
<td>64,000</td>
<td>$32,000,000.00</td>
<td>$96,000,000.00</td>
</tr>
<tr>
<td>128,000</td>
<td>$64,000,000.00</td>
<td>$192,000,000.00</td>
</tr>
</tbody>
</table>
» Do your Errors and Omissions cover this?

» How much?

» Do they cover class actions?
Be aggressive in wording for the use and acquisition of the data.

We will only share with business partners what we use for the maintenance of your account.
If at any time I, or a person I am responsible for, provides contact information (a wireless or landline telephone number, address, email) at which I may to be contacted, I consent to receive communication in any manner, including but not limited to; automated emails, voice mails, written statements, texts, autodialed calls and pre-recorded messages, which could result in charges to me.
Sample Wording!

This healthcare provider may pass this right on to its successors and assigns, other medical providers used during the course of treatment, affiliates, agents, and independent contractors, including, but not limited to, servicers and collection agents.
Sample Wording!

This contact information may be used for treatment, payment, and operations. I acknowledge that I am an authorized user of this contact information and that I have permission to use said contact information from the actual current subscriber of the information. It is my responsibility to update this healthcare provider with new and updated contact information and that, if I fail to update this information, I will hold the healthcare provider harmless for untimely notifications. I understand that I can change my mind by notifying update@healthcareprovider.com.
Terms and Conditions

Weiss Memorial Hospital

Patient Portal Terms and Conditions

These terms and conditions constitute a binding agreement between you and Weiss Memorial Hospital ("we," "us," or "our").

The Patient Portal is an Internet service that allows our patients to: communicate with us; access their health records; request or reschedule appointments; view and update personal information; request prescriptions; receive test results; read patient educational material; view statements; pay bills; and access related services and content.

The Patient Portal is provided on behalf us and our physicians, employees, managers, officers, directors, agents, and representatives and powered by athenahealth, Inc. (all of the foregoing, collectively the "Practice Entities")
Our Contract With You!

Principal agrees to have received express permission from the debtor to communicate in any manner with all phone numbers and emails related to the debtor’s account. Principal acknowledges and transfers that permission to Independent Contractor.
Other Medical Providers

» Radiologists
» Labs
» Anesthesiologists
» Pathologists

You must make sure that the hospital’s contract covers you!
Gain New Cell Phones

“I noticed we don’t have a cell phone for you. What is your cell phone with area code first please.”

“I prefer that you don’t call my cell phone because I have a land line and it costs money.”

“We ask for the cell phone because many people eventually disconnect their land lines and it saves them the time of notifying us of the new cell number. What is your cell phone?”
Transfer Data

» Review your phone numbers.

» Are you sending all of the phone numbers to your agency and business partners?

» Review the data files.

» Send a piggy back file.
Why More Numbers?

More revenue because we will collect more.

An agency should be more willing to charge less per account if you sent them better “right party phone numbers”.
What We Do?

» If you give us a cell number, we call it.
» If we get a number from a data source from skip tracing or a third party, we scrub it to see if it is a cell phone.
» If it is NOT a cell phone, we autodial it with our predictive dialer.
» If it IS a cell phone, we manually dial it to get permission.

» Less productive
» Dialed less often
» More expensive because of labor
Scrubbing Service
Every Call Permission

On every call:

"Is this a good number to reach you at in the future?"

- Verbal permission on every call.
- We document and add the date.
### Run Action: KG - MCS

**Debtor:** CHECKERS, JOHNNY & LYN (xx1120971-10A)

**Action:** **P35 - EXPRESS PERMISSION**

<table>
<thead>
<tr>
<th>Action</th>
<th>Number</th>
<th>Date Given Perm. to Dial</th>
<th>Date Perm to Dial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>111-111-1111</td>
<td>11/04/2013</td>
<td>11/04/2013</td>
</tr>
<tr>
<td>2</td>
<td>222-222-2222</td>
<td>01/20/2014</td>
<td>01/20/2014</td>
</tr>
<tr>
<td>3</td>
<td>333-333-3333</td>
<td>12/31/2013</td>
<td>12/31/2013</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>01/01/1900</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>01/01/1900</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>01/01/1900</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>01/01/1900</td>
</tr>
</tbody>
</table>

**Note:**
- **IN THE FUTURE**

**Run Action**
Data Back And Forth

If our client gets new data, how do you systematically update the collection agency?

If we get new data, how do we systematically update the client?

We have solutions for this. Just call us.
Wrong Number Suits!

In addition, in *Soppet v. Enhanced Recovery Company LLC*, the Seventh Circuit Court ruled that consent from a previous subscriber is inadequate and companies need to confirm that the person who gave consent still owns the phone number.
Eleventh Circuit Affirms Their Previous Decision That Wrong Party Calls Violate the TCPA


On June 9, 2014, the Eleventh Circuit Court of Appeals vacated its original opinion in *Breslow v. Wells Fargo, --- F. 3d ----*, 2014 WL 2523091 (11th Cir. Jun. 5, 2014). The original opinion seemed to expand TCPA liability to the subscriber or the user of the phone for wrong party calls. However, *Breslow* vacated its original opinion and now just holds that a "called party" under the TCPA means the subscriber of the cell phone.

Defendant made multiple calls using an ATDS to a cell phone number subscribed to by the plaintiff. Plaintiff did not consent to the defendant’s use of autodial calls. At the time the calls were made, Plaintiff was subscriber for the cell phone number, but she was not the primary user of the phone. Defendant argued that it had consent of the "called party" because it intended to contact a debtor who had listed the phone number on an account application. Defendant argued that it was unaware that the phone number no longer belonged to its former customer, and that the former customer was the intended recipient — the "called party." The district court granted the plaintiff’s motion for partial summary judgment because it found that the "called party" (for purposes of 47 U.S.C. 227(b)(1)(A)(iii)) was not the intended recipient but rather the subscriber.

On June 5, 2014, the Eleventh Circuit issued an opinion in this matter holding that "called party" meant the subscriber to the cell phone service or user of the cell phone called. However, days later the Court vacated their opinion because during the pendency of the *Breslow* appeal, another panel of the Eleventh Circuit set precedent on the issue that a "called party" under the TCPA is the subscriber. *See Osorio v. State Farm Bank, F.S.B.,* 746 F.3d 1242, 1251 (11th Cir. 2014). *Breslow* found that Osorio was presented with the same issue and Osorio held that "called party," means the subscriber to the cell phone service. Therefore, the *Breslow* court vacated its original opinion, and now simply follows Osorio, which stands for the proposition that a "called party" means the subscriber to the cell phone service and not the intended recipient under the TCPA.
What Should You Do Today?
Update Your Admissions Agreements Today! Today! Today! Today!
Create a TCPA adherence policy so that you don’t get hit with a willful violation!
Congressional Sample Letter to FCC.

www.aaham.org
www.hfma.org
Our Next Webinar!

Under Payment?
Missed A Payment?
Added Balances?

Develop A Program To Handle These Issues

Tuesday, August 12th, 2014
1:00 PM - 1:45 PM CST

If you would like to sign up, send an email to sales@americollect.com
We will also be sending a reminder email.
Thank You.

sales@americollect.com

FIVE time winner of Inc Magazine’s Fastest Growing Private Company!
2009 – 2013

FIVE time winner of Inside ARM Best Places to work in Collections.