

## Telemarketers Busted

*Editor's note:* This forum is normally reserved for regional news and authors. "Telemarketers Busted" was first published in our South-Mid Regional Forum (1-12-99), a region that includes Missouri, the state where the telemarketing legislation that is the subject of the article was passed. However, the Missouri legislation has a broader import and will be of interest to many chiropractic state associations. As the author notes: "This act will benefit patients, providers and insurance carriers. I encourage all chiropractors to become active in their states and to support PAC efforts intended to enforce and maintain legislation which advances, not hinders, the practice of chiropractic."

In May 1994, I was contacted by an information service out of St. Louis, Missouri that had intentions of expanding its service to Kansas City, Missouri. I was informed that by subscribing to this service (with an initial fee of \$10,000) I would obtain police reports of car accidents, which would contain the contact information of the victims. I was informed that the service would contact the victims, and that these prospective patients would be directed to my clinics for care. I would also be given the names of attorneys to whom I could refer the patients for making personal-injury claims.

It was my impression, and that of the legal counsel with whom I consulted, that such operations were at best unethical, and possibly illegal. I declined the offer to subscribe to the service.

In February 1997, I noticed that many of my current personal-injury patients were not coming in for their prescribed care. I called the patients to learn why they were not following through on their care. I discovered that 11 patients had been siphoned off in a six-week period by one attorney who worked with this service; several other patients had been siphoned from my clinics by others working for the service.

These diverted patients had been convinced by the lawyers working for the service to go to providers affiliated with the service. When the enormity of the problem hit me, I notified others in the profession and contacted law enforcement agencies.

In September 1997, I was contacted by a representative of an Arkansas corporation at my main clinic. He claimed to be authorized to do business in Missouri to provide investigative information to physicians. He stated he was not a lawyer, nor did he provide legal services, but if I paid a subscription fee of \$10,000, I would obtain lists of motor vehicle accident victims from local police departments.

He advised me that several law firms were allowing him to use their letterhead, which gave the false impression that those law firms were representing the accident victims. But he was actually handling the claims from beginning to end. When the claims settled, he submitted the settlement drafts to the attorneys, who would then sign the drafts. Then, he would distribute funds to the victims and their providers. The representative and the attorneys would split the attorneys' fees, with 2/3 going to the representative and 1/3 to the attorneys. The funds were not placed in attorney trust accounts, as required by both Missouri and Kansas law. Instead, he ran the funds through the corporation's account.

The representative stated that the corporation provided services to several physicians in the Kansas City area. He expressed frustration over the fact that some attorneys now wanted 50% of the fees instead of only 33%. Therefore, he was soliciting other law firms to operate the same scheme that would be satisfied with only 33% of the attorneys' fees. In dismay, he said, "Can you believe it? These guys want half the fees and all they do is sign the drafts!"

He also stated that some of the providers were not handling the cases to his liking, e.g., allowing the service fees to significantly exceed the perceived value of the claim; not handling the claims fast enough; and not giving proper attention to the paperwork. Therefore, he was soliciting additional providers who would pick up this slack and be compliant with the demands of the scheme.

I informed the representative of my position that the scheme was unauthorized, unethical and illegal. He advised me that he was obtaining and distributing accident information within 72 hours of the occurrences. Notwithstanding, the ethical rules of both Missouri and Kansas forbid physicians and attorneys from contacting MVC victims during the 30 days next following accidents, the only exceptions being family members, current patients and patients obtained through general solicitations.

The proscription against the use of his scheme is intended to preclude contact with accident victims at a time when they are most vulnerable. The representative asserted that he was neither a physician nor an attorney. Therefore, the representative felt he was not subject to such rules. Additionally, he claimed that the employment of his service was actually a vehicle by which physicians could circumvent the foregoing rules.

I also informed him that his representations appeared fraudulent, as his use of the attorney's letterheads implied that the corporation provided legal representation. He scoffed at this notion and stated that he did not provide legal representation. To the contrary, he only conducted investigations and provided information I needed from him to properly care for my patients.

Finally, I told him that if he could obtain an opinion from the United States attorney for the Western District of Missouri, Western Division at Kansas City, endorsing the services offered by the corporation, I would give the concept further consideration. I felt secure in the knowledge that the U.S. attorney would never give his imprimatur to such a scheme.

He left my office only to return a short time later, carrying 30-40 files under his arm. He stated that the files represented claims of accident victims he wanted to direct to my clinics. I reiterated my position, and he left the premises.

Notwithstanding my refusal to subscribe to the services offered, he directed several potential patients to my clinics for care. These individuals stated that the corporation's representative was their attorney. My staff refused to offer care to these individuals and advised them that the representative was not an attorney. To my knowledge, none of these individuals were later accepted for care at my clinics.

Simultaneously, we learned from some of our patients what appeared to be an unrelated, but similar, scheme being conducted in our area. Accident victims were being contacted by a group headquartered in Kenner, Louisiana. We confirmed this by calling them on the toll-free number provided to the victims.

Telemarketers employed by them instructed victims in Kansas City that they were to proceed to the offices of a local chiropractor for care. Interestingly, the Louisiana telemarketers told victims that

they also received care from the DC to whom those victims had been referred and that the chiropractor was exceptionally well-qualified to care for them. To my knowledge, the chiropractor is only licensed in Missouri and has not been authorized to practice in Louisiana. Thus far, we have identified in excess of 19 providers, 20 attorneys and 20 "runners" who are involved in these telemarketing schemes in the Kansas City metropolitan area alone.

I subsequently contacted the Office of the Chief Disciplinary Counsel, as well as the Missouri State Board of Chiropractic Examiners. Complaints were filed with each.

For assistance, I also contacted Provider Fraud Consultants, Inc. (hereafter "PFC"), an Ohio corporation. It was suggested that we contact both the local police department and the FBI. A meeting was held in Kansas City, Missouri at which PFC, the local police department, the prosecutor's office and the FBI discussed means by which the telemarketing schemes could be curtailed. Following that meeting, between 15-20 other meetings were held with others interested in shutting the telemarketers down (e.g., FBI, etc.). The Kansas City police department agreed to conduct an investigation into local activities.

A reporter from the *Kansas City Star* contacted us regarding this matter. The reporter and I had at least a dozen meetings to discuss this matter. An article was published in the *Star* on February 2, 1998, titled "Telemarketers Call Accident Victims, Provide Lawyer, Chiropractor Referrals."

Apparently, the article enraged the corporate representative. Shortly thereafter, several individuals reported to me that he had offered them money to "set me up" to do something illegal. One individual gave a statement confirming this, stating that the representative vowed to "get even." I even received a death threat shortly before the article was published.

Beyond that, it was determined that current laws provided little assistance in addressing the problem, as no clear evidence of criminal violations was apparent. In essence, a wait-and-see attitude was recommended.

Although the foregoing efforts resulted in some temporary attenuation, a resurgence of the telemarketing activity was soon noted. It was evident that the law had to be modified to provide a more effective method of reigning in those who flagrantly ignored established law.

I then contacted Representative Henry Rizzo of Kansas City, Missouri. Representative Rizzo suggested a bill be drafted which would prohibit police departments from releasing accident information to anyone other than those who had a need to know (i.e., "interested parties").

The bill to be drafted, it was recommended, should also provide that vehicular accident information would not be released to anyone other than an interested party for 60 days next following the accident dates. A bill expressing the foregoing was drafted and navigated through the House of Representatives by Representative Rizzo and through the Missouri Senate by State Senator Ronnie DePasco, also of Kansas City. The bill codified as House Bill 1095, was signed into law on June 23, 1998 by Missouri Governor Mel Carnahan and became effective August 28, 1998.

This act will benefit patients, providers and insurance carriers. I encourage all chiropractors to become active in their states and to support PAC efforts intended to enforce and maintain legislation which advances, not hinders, the practice of chiropractic.

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