

PMA on Trial in California

JURY RENDERS VERDICT -- JUDGE TO DECIDE ENFORCEMENT OF PMA CONTRACTS

Editorial Staff

In January of 1989, 43 chiropractors filed suit against PMA in the U.S. District Court for the Northern District of California. Since that time, 37 of the chiropractors have had their cases dismissed or settled out of court.

Practice Management Associates (PMA) and the remaining six chiropractors are nearing the end of their long battle. After a three week court battle, a jury has made the following decision in the Barry Canty, DC, et al., vs. PMA, Inc., et al., class-action suit. (Editor's note: Canty et al., vs. PMA was consolidated with the Montgomery vs. PMA suit).

We the jury find that Barry Canty has proven by a preponderance of the evidence that his contract with PMA must be rescinded because of a material failure of consideration caused by PMA.

YES ___ NO X ___

We the jury find that Barry Canty has proven by a preponderance of the evidence that PMA made statements which were untrue or misleading, which by the exercise of reasonable care PMA should have known were untrue or misleading, and which were likely to result in the deception of a chiropractic patient.

YES X ___ NO ___

If you answered "yes" to the previous question, describe that statement you found to be untrue or misleading. If you find that more than one statement made by PMA was untrue or misleading, number and describe each statement.

1. Under the topic in the manual, "Basic Ways to Increase Income," the doctor should utilize x-rays to increase income.
2. "In this state, it is illegal to adjust without an x-ray."
3. To increase fees, tell the cash patients that the old equipment broke and the new one costs more.

PMA's Practice Starter program charges its DC clients 10 percent of their gross income for their first two years in practice. Most of the clients signed their contracts while still in chiropractic college and were therefore unfamiliar with the realities of chiropractic practice. The students, however, were responsible adults, able to make decisions and bind themselves by law. Indeed many chiropractic students did sign

contracts with PMA; some 350 lawsuits between the client DCs and PMA have resulted.

From PMA's perspective, some of the lawsuits were viewed as attempts to prevent PMA from collecting the money they were rightfully due.

Reactions from the Attorneys

Statement from G. Emmett Raitt Jr., Esq., PMA Attorney

PMA believes that the rulings by the court and the jury in the Montgomery action vindicates the content and validity of the PMA Practice Starter program. The majority of the plaintiff's claims -- that PMA induced them to enter their contract by fraud and concealed facts from them, that PMA violated the RICO statutes, that PMA had violated the Seller Assisted Marketing Plan and Franchise statutes, that PMA breached its fiduciary duty to them, and that PMA concealed facts from them -- were properly rejected by the court because the plaintiffs had no facts to support them.

The plaintiffs' contention that PMA failed to honor its contract with the plaintiffs, and that they were entitled to rescind their contracts for an alleged "failure of consideration," was rejected by the jury.

In over 1,500 pages of PMA materials reviewed by the jury, only three statements were found to be objectionable. None of those statements were taught by PMA in any of their seminars, and PMA believes that none will result in any judgment against PMA once the court hears that issue on November 24, 1993. PMA believes that the trial of its counter claims will confirm that the plaintiffs are obligated to honor their contracts with PMA, just as PMA has honored its contracts with them.

Statement from Edwin Frey, Esq., Plaintiffs' Attorney

The jury made findings of fact that are very favorable to the plaintiffs' case, and set the stage for the judge's crucial decisions. The jury rejected PMA's strategy of claiming that the PMA manuals didn't actually represent the PMA program. The jury found, to the contrary, that the advice in the manuals to use x-rays as a tool for making money was bad advice and likely to lead to the cheating of patients. PMA's advice to "x-ray all new patients" and to "x-ray all patients before they are dismissed," and other similar advice, was designed to exploit the patient in the interest of increasing the doctor's gross income, which of course, directly increases PMA's income. The jury also took exception to PMA's advice that it is illegal to treat the patient without first taking a x-ray.

Finally, the jury found that PMA's advice as to how to introduce a fee increase, i.e., by buying new equipment and telling the patient that the "old one broke," was also likely to deceive the patients. From the factual background, the judge must now decide whether it is in the public interest to enforce the PMA contracts against the chiropractors. Additionally, the judge must decide whether the contracts are legal or not under the California unfair competition statute (Bus. & Prof. Code 17200).

Finally, assuming that the judge finds in PMA's favor on the first two questions, he must decide whether PMA entered into this litigation with "unclean hands," i.e., whether PMA is guilty of conduct which involves moral turpitude in connection with the contracts. Given the comprehensive scheme of chicanery and deception which the evidence laid out during the trial, the judge's decision seems but a mere formality. It is inconceivable that the PMA course of conduct is in the public interest.

Dr. Peter Fernandez disclaimed all responsibility for the contents of his book, A Thousand and One Ways to Attract New Patients, which advises young chiropractors to go out and deceive the public in any number of ways, even while he boasted that the book is in virtually every chiropractic school library and available to chiropractic students everywhere.

The jury has rendered its verdict, finding that the plaintiff DCs did not prove their contracts with PMA should be rescinded, yet noting that PMA "made statements which were untrue or misleading..." The question before the judge is to decide if the contracts with PMA should stand, despite the PMA statements "which were untrue or misleading..." What do you think?

NOVEMBER 1993