

Why Are Over 400 Chiropractors in Litigation with PMA*?

Editorial Staff

*This figure is an approximation based on the number of lawsuits filed by PMA, and PMA clients. Since the beginning of 1989, PMA has filed suit against over 240 of its clients. In that same period of time, approximately 170 PMA clients have filed suit against PMA. Some of these lawsuits may in fact include two lawsuits between the same parties.

Unfortunately, it is almost impossible to know the exact number of PMA clients who are in litigation with PMA. A total of only 391 PMA clients entering litigation with PMA since January 1, 1989 would equate to one lawsuit involving PMA and a PMA client being filed every single day of a normal work week for the entire 18-month period. At this rate of litigation, PMA could very well be the first company in chiropractic history to be in court with over one percent of the chiropractors in the United States.

A group of LACC students and a number of DCs have asked "What SPECIFICALLY are PMA clients claiming that PMA did?"

Probably the best example of what PMA clients are complaining about can be found in the details of a lawsuit that has been filed by Attorney Larry Beard. Mr. Beard has filed lawsuits against PMA for over 60 chiropractors in the state of Illinois.

Lawsuits between DCs and PMA are not only occurring in Illinois, but also in the following states: Arkansas, Alabama, Arizona, California (several large group suits pending), Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, New Jersey, New York, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming. A total of 42 states have DCs involved in litigation with PMA.

What follows is a summary of a suit filed against PMA, the first of which was filed on June 21, 1990 taken directly from the complaint:

COUNT I

VIOLATION OF THE ILLINOIS FRANCHISE ACT

24. Defendants have violated one or more of the following provisions of the Illinois Franchise Act, Ill. Rev. Stat. Ch 121 1/2 1705 (1989):

a) The sale of and subsequent servicing of franchises in Illinois by PRACTICE MANAGEMENT ASSOCIATES, INC., which is not registered with the Attorney General of the State of Illinois to sell franchises, as required by the Ch 121 1/2 sec. 1705 (1) (1989).

b) The sale of franchises in the State of Illinois by PRACTICE MANAGEMENT ASSOCIATES, INC., without delivering to Plaintiffs a disclosure statement as required by the Illinois Franchise

Disclosure Act, in violation of Ch. 121 1/2 sec. 1705 (2) (1989).

c) The making of franchise sales presentations, and the counseling and advising of Plaintiffs to purchase franchise contracts by Defendants, Dr. PETER G. FERNANDEZ, Dr. WILLIAM D. BROWN, XAVIER FERNANDEZ, Dr. GILLES BRUNEL, RALPH MENENDEZ, KEN SHEMWELL, STEVE SULLIVAN, MICHAEL McKINLEY, Dr. RORY PIERCE, GEORGE B. SHAW, Dr. CARL TAUCCI, and ALAIN CARBONNEAU, who are not registered as franchise brokers with the Attorney General of Illinois, as required under the Illinois Franchise Disclosure Act. Ill. Rev. Stat. Ch. 121 1/2, sec. 1705 (3) (1989).

d) Defendants used a multitude of illegal schemes to defraud and entice Plaintiffs to attend the Chicago sales seminars including: offering free trips to the sales seminars which are advertised as professional training seminars, inducing of college instructors to recommend attendance of chiropractic students at the sales conferences, offering free supplies or reductions in the price of their franchise fee for Plaintiffs who sign other chiropractors up with PMA under what is known as the "Bonus Bucks Program," in violation of the Illinois Franchise Disclosure Act. Ill. ev. Stat. 121 1/2 sec. 1706 (a).

e) The acts, practices, and courses of business which Defendants have operated as fraud upon Plaintiffs, by claiming to be "independent consultant" while directing Plaintiffs to purchase all products and services from PMA companies and affiliated companies in violation of the Illinois Franchise Disclosure Act, Ill. Rev. Stat. Ch. 121 1/2 sec. 1707 (b).

f) The sale by Defendants of franchises under a program whereby new members would receive a discount on services or merchandise if they refer other chiropractors to sign up with PMA under a pyramid sales scheme entitled the "Bonus Bucks Program". "Bonus Bucks," which have a picture of Defendant, PETER G. FERNANDEZ on them, are given to new members who bring other students with them when they join or soon after they join the PMA program. Under this program new members are given discounts or trips to Hawaii or other prizes if they talk other students or chiropractors into joining the PMA program. The "Bonus Bucks" program operates as a device to defraud Plaintiffs in violation of the Illinois Franchise Disclosure Act, Ill. Rev. Stat. Ch 121 1/2 sec. 1706 (a).

g) the Defendants made the following use of untrue statements of material facts, and/or omitted to state material facts in order to defraud Plaintiffs in conjunction with the sale of Franchises in Illinois in violation of the Illinois Franchise Disclosure Act, Ill. Rev. Stat. 121 1/2 sec. (b):

1. Defendants falsely maintained to Plaintiffs that 99.5 percent of all of the PMA clients were successful;
2. Defendants falsely maintained to Plaintiffs that average PMA clients earned \$254,000 their first year of practice.
3. Defendants falsely stated the PMA had a team of 146 experts who were readily available to assist the client;
4. Defendants failed to disclose the fact that many PMA clients were unsuccessful in their first year of practice;
5. Defendants failed to disclose the fact that several hundred PMA clients were in litigation with PMA over the PMA contract;
6. Defendants failed to disclose that the PMA counselors had little or no prior training in

business and were professionally unqualified to assist PMA clients in opening a chiropractic office;

7. Defendants failed to disclose to PMA clients that PMA received a kickback for all purchases made by PMA clients from companies referred to them by PMA counselors.
8. Defendants stated to PMA clients that the PMA computer system was the "Rolls Royce" of the industry when, in fact, the PMA computer systems consist of overpriced software which is so defective that a substantial portion of the individuals who have purchased the software have attempted to return it to PMA COMPUTER COMPANY, INC..
9. Defendants failed to inform PMA clients that PMA uses and releases information gained from the confidential relationship between PMA and its clients to make additional profits from outside leasing companies.

COUNT II

ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

23. That Defendants violated the Illinois Consumer Fraud and Deceptive Business Practices Act, Ill. Rev. Stat. 121 1/2 sec. 276, by committing one or more of the following acts with the intent that Plaintiffs would rely upon said deception, fraud, false pretenses, false promises, or misrepresentations:

- a) Defendants falsely represented to Plaintiffs that Plaintiffs' income would be five times the national average for chiropractors in their first year of practice if they joined the PMA System. A copy of the advertisement is attached hereto and marked "Exhibit R."
- b) Defendants mailed to new potential members a card which stated that: "You have made the right choice because PMA Practice Starters earn: \$16,000.00 in their first month, not the \$3,000.00 the average DC earns... \$250,000.00 in their first year, not the \$70,000.00 the average doctor earns." A copy of the card is attached hereto and marked "Exhibit S."
- c) Defendants made false representations that: "Nearly 99.5% of all Practice Starters doctors succeed when they follow our directions." A copy of the advertisement is attached hereto and marked "Exhibit T."
- d) Defendants falsely represented to Plaintiffs that they would receive practical, useful, legal and ethical advice and assistance regarding: (1) all practice problems which would occur during their first year of practice, (2) location selection, (3) chiropractic equipment at an affordable price, (4) chiropractic computer systems to simplify insurance billing, (5) advertising and outdoor sign guidelines proven to bring in new patients, and (6) financial and legal consultations. Further, Plaintiffs were promised over \$80,000.00 in "free services and products" to open their practice. A copy of the advertisement is attached hereto and marked "Exhibit U."
- e) Defendants represented that PMA would provide plaintiffs with a personal qualified counselor who would be assisting Plaintiff with all aspects of setting up and operating a practice. In truth, many of the "counselors" employed by PMA had absolutely no background or training in the field of chiropractic or management and were not qualified for employment as problem-solving consultants for new chiropractors.
- f) Defendants represented that PMA would provide backup assistance, expertise, and advice through a team of 146 full-time professional counselors in the following fields: advertising,

collections, public relations, leasing, equipment, computers, office design, real estate, financial planning, taxes, patient management, investments, courtroom testimony, motivation, associate doctor practice, the building of existing practice, staff and time management, C.A. training, and other areas of practice. When Plaintiffs attempted to contact these consultants it was learned that the consultants and the experts were not available to Plaintiffs or were only available at an extra fee of up to \$200.00 per hour. A copy of this misleading advertisement is attached hereto and marked "Exhibit V."

g) Defendants represented to Plaintiffs that the secret PMA marketing system was ethical. However, Plaintiffs discovered that as part of the PMA marketing system they would be required to engage in deception and unethical practices with patients, insurance companies, prescribing treatment which is medically unnecessary and excessive, and constantly making false statements to clients.

25. That as a direct and proximate result of Defendants' violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, Plaintiffs have suffered financial losses.

COUNT III

VIOLATION OF THE ILLINOIS MEDICAL PRACTICES ACT

27. That the contracts between Plaintiffs and PMA required that a payment of a percentage of each fee received by the chiropractor for professional services be paid to PMA on a weekly basis. These contracts are in direct violation of the Illinois Medical Practice Act which prohibits chiropractors from fee splitting.

28. That the contracts between Plaintiffs and PMA are illegal and that Plaintiffs hereby declare the contracts void.

COUNT IV

PMA CONTRACTS ARE VOID AS AGAINST PUBLIC POLICY

23. That the contracts between Plaintiffs, and PRACTICE MANAGEMENT ASSOCIATES AND PETER G. FERNANDEZ PRACTICE STARTER FOUNDATION are represented to Plaintiffs as contracts for consultant services which are designed to assist chiropractors and chiropractic college graduates to open and maintain chiropractic offices. Contrary to this representation, the PMA contract is designed to generate litigation which creates revenue for PMA, and for the law firm which is associated with PMA and which is owned by the Defendant, XAVIER FERNANDEZ. The contracts are more valuable and useful in generating income for PMA in breach, which is encouraged by PMA by the failure of PMA to provide any meaningful service to clients. The use of the acceleration clause and choice of venue clause of the contract allows PMA to claim, through litigation, many times the amount of contractual payments from clients with little cost or services provided by PMA.

26. That PMA officers and salesmen who sell the "Secret Marketing Program" are privy to certain statistics regarding the percentage of PMA clients who 1) default on their contractual payments, 2) seek to rescind their contracts when they discover that the annual income generated by their participation in the program is far below the \$254,000 which they were promised by PMA, 3) seek to rescind their contracts when they learn that the counselor provided by PMA is not trained or competent to assist them.

27. That the activity of signing college students and chiropractors to PMA contracts takes place in

the state of Illinois and it is against the strong public policy of the state of Illinois to engage in the activity of signing contracts with the intention or purpose of litigating these contracts to generate revenue.

28. That Plaintiffs have suffered damages as a direct result of these actions of PMA.

When asked about this lawsuit, Mr. Beard commented, "As a former university administrator at major universities across the country, I'm outraged that Dr. Peter Fernandez would take advantage of recent college graduates. I sincerely hope that chiropractic colleges across the country will take notice of the problem of proper preparation of chiropractic students for the transition from student to working professional.

"Since we have become involved with PMA, we have heard from over 100 DCs from across the nation. The recurring theme of all their communication is that PMA has been a disaster for them. I would encourage any DC who is experiencing problems with PMA to contact their alumni association and their State Attorney General's office for assistance with this problem. You're not alone in your struggle against PMA."

This is a sample of one case. Other cases filed by other groups of PMA clients raise other issues. This will hopefully clarify the fact that these DCs are not just 'deadbeats trying to get out of their contracts,' but are chiropractors who have very legitimate complaints.

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