

Dynamic Chiropractic



NEWS / PROFESSION

American Whole Health Faces Potential Legal Fees Award in Excess of \$100,000

Editorial Staff

On Dec. 12, 2005, an Orange County Superior Court jury in Santa Ana, Calif., found American Whole Health (AWH), a managed care company, liable for damages of \$210,000 for the unauthorized taking and use of names and addresses of providers from the Web site of MPA Media, the publishers of *Dynamic Chiropractic*.¹

In the first part of 2004, MPA Media received a mailing piece from AWH to one of its "seed names." MPA Media plants seed names with the U.S. Postal Service on all of its Web site provider locators to prevent practitioners from receiving unwanted solicitations and being added to junk mail lists. Upon receiving the mailing piece, MPA Media immediately sent a cease-and-desist letter to AWH. The company responded by claiming that it was entitled to use the names, and MPA Media received three additional mailings.



MPA Media responded by filing a lawsuit in California Superior Court, asking for an injunction, damages and legal costs. Interestingly enough, there were no more mailings to the seed names once the lawsuit was filed.

On Feb. 3, 2006, American Whole Health argued that it should not be prohibited from using MPA Media's database, even though the managed care company's legal counsel stated that it didn't have the list. While a judge granted the AWH motion, MPA Media's attorney proposed the following question: "If they don't have the list, why are they arguing against the injunction?"

Having been found to have taken the names from MPA Media's database, AWH now faces paying MPA Media's legal fees. MPA Media is requesting that AWH pay all legal fees per the "Terms of Use" agreement it violated when the company took the names from MPA Media's Web site. This would require AWH to pay over \$100,000 plus its own legal fees, which are estimated to be a similar amount. This would make the total liability for taking the names upwards of \$400,000.

While AWH was thought to be a stable company, Douglas Byrd, the organization's vice president and

general counsel, admitted that it was "financially distressed" when the incident occurred. He added that at one point, he was "operating out of [his] living room."

While the saga of taking names from MPA Media's database has proven quite expensive for American Whole Health, it is not over. MPA Media is planning on taking the case to the appeals level in order to prevent any additional uses of its misappropriated mailing list.

Reference

1. Jury hits American Whole Health for \$210,000 judgment. Company engaged in unauthorized use of database to send junk mail. *Dynamic Chiropractic*, Jan. 15, 2006.
www.chiroweb.com/archives/24/02/10.html.

APRIL 2006