IN THE TRUMBULL COUNTY COURT
CENTRAL DISTRICT
CORTLAND, OHIO

GARY R. GIBSON, M.D., F.A.,	)	CASE NO. 06-CVF-106
	)	
Plaintiff,	)	JUDGE THOMAS A. CAMPBELL
	)	
vs.	)	
	)	
MEDCO HEALTH SOLUTIONS of COLUMBUS NORTH, LTD.,	)	
	)	
	)	DECISION and
Defendant.	)	JUDGMENT ENTRY

This matter was tried to the court on August 10, 2007. The court apologizes for its delay in issuing this decision.

This is an unusual case. The question is when a medical insurance administrator requests information from a medical professional, is the medical administrator liable for the cost of that medical professional's time required to respond to that inquiry?

There is no direct contractual relationship between the plaintiff and defendant here. The defendant here does not provide insurance itself, rather it provides management services for various health plans.

The defendant in this case provided a mail service pharmacy on behalf of some of the health plans it covers. In this capacity, the defendant has made a number of inquires to the plaintiff physician, regarding prescriptions he has issued for his patients.

It is clear that each of the inquiries presented to the court for consideration required the attention of the physician himself, and could not be adequately or reasonably performed by the physician's support staff. It is also clear that some of the inquiries required significant time and effort from the physician to adequately respond to the inquiries.

From the evidence presented, it is clear that all of the inquiries were designed to examine whether or not the prescribed medication was the most economical for the insurance provider. None of the evidence offered suggested that these inquiries were related to issues of patient safety.

The plaintiff acknowledges that he has received communications from pharmacists regarding prescriptions he has written in the past, and that he did not charge anyone for his time to respond to such inquiries However, plaintiff indicates that the vast majority of those past inquiries were for patient safety issues; and that these inquiries

are much more frequent now; and further that they all require much more of physician's time and expertise to adequately respond to them.

Defendant acknowledged that these inquiries have greatly expanded in the last ten years. The defendant now sends out Forty Thousand (40,000) such inquires in the same time period that it would send out Seven Hundred (700) such inquiries ten years ago.

Why should the physicians who must respond to these inquiries be expected to bear the burden of this expanded effort? – especially when the inquiries are designed for the benefit of the defendant, either directly or indirectly?

The defendant correctly notes that plaintiff is not required to respond to its inquiries. However, if the plaintiff does not, then defendant will simply refuse to fill the patient's prescription – not much choice to a physician sworn to assist his patients.

Likewise, defendant suggests that plaintiff could charge back the cost of his time to patient after the fact. However, as the entire exercise appears to have been for the benefit of the insurance provider (and their manager), it is hard to see why the patient should pay.

The court finds it significant that when the defendant receives an inquiry regarding the most cursory information, it demands payment of Seventy-Five Dollars ($75.00) processing fee. Such requests do not require the involvement of a professional, simply a clerk who is familiar with the correct key-stroke to print a list which is no-doubt conveniently stored in a computer. However, the defendant does correctly note that it gives prior notice of the intent to charge.

While no formal contractual relationship exists between the plaintiff and defendant, defendant should expect to pay for the reasonable value of plaintiff's time to respond to defendant's inquiries, since they were solely intended for the benefit of the defendant, or for the benefit of parties for whom the defendant was serving as agent.

However, the court will only apply liability upon defendant for all reasonable charges after the plaintiff first notified defendant of the intent to charge for such inquiries. The court finds that plaintiff first reasonably notified defendant on December 5, 2005.

Therefore, the court awards judgment to plaintiff against defendant, in the amount of One Hundred Eighty-Seven Dollars and Fifty Cents ($187.50), plus eight percent (8%) annual interest thereon, and costs of this action.

IT IS SO ORDERED.

DATED: 3-6-08

THOMAS A. CAMPBELL, JUDGE