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SIXTH CIRCUIT RULES MEDICAL DEBT COLLECTOR HAD "PRIOR EXPRESS CONSENT" FOR AUTODIALED CALLS

On February 12, 2016, the U.S. Court of Appeals for the Sixth Circuit held that patients' provision of their cell phone numbers to a hospital as part of their hospital admissions constituted "prior express consent" to received autodialed calls from the debt collector of the hospital's anesthesiology provider. *Baisden v. Credit Adjustments, Inc.*, No. 15-3411, 2016 WL 561735 (6th Cir. Feb. 12, 2016).

As part of their hospital admission, the patients signed patient consent authorization forms which covered "all medical and surgical care" and permitted the hospital to release the debtors' health care information for a list of reasons, including "billing and payments." The patients received anesthesiology services from a third party medical provider during their hospitalization. When the patients failed to pay for these services, the anesthesiology provider transferred the patients' delinquent accounts to its debt collector. The debt collector used an automatic dialing and announcing device to place calls to the cell phone numbers that the patients provided to the hospital.

The patients claim that the collection calls violated the Telephone Consumer Protection Act because the patients never gave their cell phone numbers directly to the debt collector or the anesthesiology provider. The district court granted the debt collector's motion for summary judgment finding that the patients had given their "prior express consent" to the debt collection calls by providing their contact information to the hospital.

The Sixth Circuit affirmed the district court's ruling citing in support (i) the Federal Communications Commission's ("FCC") interpretative guidance on "prior express consent" and (ii) *Mais v. Gulf Coastal Collection Bureau, Inc.*, an Eleventh Circuit case involving an autodialed call regarding a debt for radiology services provided by a physician's group during the plaintiff's emergency room visit.

The Sixth Circuit agreed with the *Mais* court that the FCC's 1992 Order and 2008 Ruling stand for the proposition that consent to be called at a number in conjunction with a transaction extends to a wide range of calls regarding the transaction. The scope of the consent is determined based on the facts of each situation. The

Sixth Circuit reasoned that "if one provides a cell phone number to a health organization seeking medical treatment and a provider affiliated with the health organization treats that person for the same ailment, it is normal, expected and desired to interpret that provision of the cell phone number as an invitation for an entity affiliated with the organization to call for something arising out of one's treatment."

Like the *Mais* court, the Sixth Circuit rejected the patients' argument that the 2008 Ruling, which permits autodialed collection calls to cell phone numbers when the consumer provides the number, applies only if a consumer provides his or her cell phone numbers to the creditor (here, the anesthesiology provider). In rejecting this argument the Sixth Circuit cited the FCC's 2014 *GroupMe* Declaratory Ruling which held that a consumer's prior express consent can be obtained through an intermediary. In its 2015 Order, the FCC noted that neither the FCC's rules nor its orders require any specific method by which a caller must obtain prior express consent. Since the hospital obtained prior express consent through the patient consent authorization form, the hospital could convey prior express consent to the anesthesiology provider. Thus, the Sixth Circuit concluded that the debt collector acting on behalf of the anesthesiology provider had "prior express consent" to make calls regarding the patients' medical debt.

Baisden is a welcomed decision because the Sixth Circuit refused to read the FCC's "prior express consent" guidance narrowly. While *Baisden* validates a common approach to obtain consent for medical debt collection calls, the Sixth Circuit emphasized that the scope of consent is fact dependent. Before placing an autodialed call companies should assess their methods for obtaining prior express consent from consumers. □

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