



Express Consent Flows to Other Health Care Providers in TCPA

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Express Consent For TCPA Can Be Given to “Other Health Care Providers” in Hospital Admission

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In the case of *Baisden v. Credit Adjustments, Inc.* the US District Court for the Southern District of Ohio reviewed the issue of the application of the Telephone Consumer Protection Act (“TCPA”) to “other health care providers” in the context of hospital admission and subsequent collection.

In the case, Baisden sought medical care from a local hospital. As part of his admission, Baisden signed a “Patient Consent and Authorization” form that contained a standard Release of Information provision. The provision entitled the hospital to release the patient’s “health information” for various reasons including insurance, billing, other health care providers, and other various reasons. In conjunction with his hospital stay, Baisden also received services from the hospital’s anesthesia provider. The anesthesiologists subsequently billed Baisden for the services provided and Baisden failed to pay as required. The anesthesiologists then transferred Baisden’s account to Credit Adjustments to collect upon the unpaid balance. Credit Adjustments made numerous phone calls to Baisden in an attempt to collect the anesthesiologist’s bill. Baisden then sued Credit Adjustments claiming violations of the TCPA for contacting him on his cellphone using an automated dialing system. Credit Adjustments claimed that it received prior consent from Baisden due to the completed consent and authorization forms that Baisden signed upon admission to the hospital.

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The court addressed two issues, 1) whether the hospital forms signed by Baisden also applied to the anesthesiologist and the anesthesiologist's third party debt collector and 2) whether the signed form actually provided express consent under the TCPA.

The patient consent form signed by Baisden included language regarding the release of information and stated, "I authorize Mount Carmel to receive or release my health information... to such employees, agents, or third parties as are necessary for these purposes..." The list of purposes included "billing and collecting moneys due from me." Baisden argued that this transfer of "health information" did not include his cellular telephone number or any permission derived to call it. Citing favorably to the Eleventh Circuit opinion in *Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110 (11th Cir. 2014), the Court determined that the cellphone number provided on the hospital admission form was part of the record from the visit and was the contact information given by Baisden related to billing. The Court further examined the HIPPA definition of "health information" which includes, "any information ... created or received by a health care provider" that "relates to ... the past, present or future payment for the provision of health care to an individual." Finding that "health information" included the cellular telephone and the consent to contact it, the Court further noted that the anesthesiologist was easily one of the "other health care providers" that served the hospital and the consent was transferred to them and their attempts to collect the outstanding bill.

The Court also addressed the issue regarding the signed form providing express consent as required under the TCPA. Again citing favorably to the *Mais* decision the Court took the same approach and also performed a similar analysis under the 2008 FCC Declaratory Ruling which provides that prior express consent exists when a cell phone subscriber makes the number available to the creditor regarding the debt. The court also looked to a 2014 FCC Order in *In re GroupMe, Inc./Skype Commc'ns S.A.R.L. Petition*, 29 FCC Rcd. 3442, 3447 (March 27, 2014) which provided that "the TCPA does not prohibit a caller from obtaining consent through an intermediary." Using these two rulings along with the *Mais* decision, the court found that a cellular phone subscriber can provide their number to a creditor, like the anesthesiologists in this case, by affirmatively giving an intermediary (the hospital) permission to transfer the number to the anesthesiologist for use in billing. By providing the number at the time of service, Baisden agreed to be contacted at that number. The court thereby found that prior express consent had been given to call Baisden's cellphone.

Accordingly the Court granted summary judgment in favor of Credit Adjustments and denied Baisden's TCPA claims. Baisden has recently appealed this decision to the 6th Circuit.

The Full Text of the Opinion May Be Found [HERE](#)

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