



CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

RICHARD C. BALDWIN
JUDGE

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October 4, 2005

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Re: Turner, Et Al v. Legacy Health System, Et Al.
Case No. 0412-12483
Plaintiffs' Motion For Class Certification - Opinion Letter Allowing Motion

Dear Counsel:

The Court has now had an opportunity to thoroughly review Plaintiffs' Motion For Class Certification. The Court concludes that plaintiffs' have demonstrated an adequate basis for class certification of their claims.

Plaintiffs Helen and John Turner are uninsured individuals billed approximately \$59,000 for medical services provided by Legacy following Mr. Turner's heart attack. Plaintiff Linda Renn, the widow of David Renn, was billed approximately \$55,000 for uninsured medical services provided due to Mr. Renn's lung cancer. Defendant Legacy Health System includes Legacy Good Samaritan Hospital and Medical Center, Legacy Mount Hood Medical Center, and Legacy Emanuel Hospital and Health Center, all Oregon non-profit corporations. Plaintiffs seek to certify a class in excess of 30,000 uninsured patients provided medical services by Legacy and billed for those services.

Plaintiffs have alleged that Legacy "has breached its contractual obligations to plaintiffs and the proposed class . . . by charging uninsured patients its highest, undiscounted rates far in excess of what it charges its patients who are covered by private health insurance or Medicare.

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Plaintiffs further allege that this practice by Legacy . . . and its concealment of that practice from plaintiffs and the proposed class, are unfair and deceptive acts in violation of the Oregon Unfair Trade Practices Act, ORS 646.605 et seq." Plaintiffs' Motion for Class Certification at page 2. Plaintiffs have asserted several additional claims for relief based on the same alleged practices.

Plaintiffs have established that defendant has billed plaintiffs and proposed class members at their highest rates for medical services without disclosing those rates until after medical services are provided. The parties have routinely entered into contracts for medical services with an open price for services. Under state contract law, such fees must be reasonable under the circumstances then existing. See, e.g., *Brown & Co. V. John P. Sharkey Co.*, 58 Or 480 (1911). Whether Legacy's highest rates are reasonable fees under these circumstances presents a fact question for determination by a jury.

Whether Legacy's failure to disclose to plaintiffs and class members that the fees charged will be Legacy's highest rates presents a fact question for determination under the Unlawful Trade Practices Act, ORS 646.606 et seq. Where, as here, medical services are provided by a non-profit hospital to uninsured patients on a highest rate basis, the practice complained of may violate the Unlawful Trade Practices Act. See ORS 646.608 (1) (e), (1) (k), (1) (s), and (1) (u). See also, *Caldwell v. Pops Homes, Inc.*, 54 OR App 104 (1981) (failure of seller of used mobile home to inform buyer that value reduced because mobile home park being sold presented basis for claim under UTPA).

Legacy urges the Court to consider its charitable policies resulting in the discount and waiver of fees for numerous low-income uninsured patients making application after notice of such opportunity. Out of 33,697 uninsured patients served in 2004, Legacy provided financial assistance to 4,466 patients. Supplemental Declaration of Mary Kjemperud. Last year, Legacy collectively provided more than \$87 million in care to the uninsured and Medicare and Medicaid recipients without receiving compensation. Legacy's records also indicate it provided \$23 million in medical education and research, community health programs and donations last year. See Kjemperud Declaration. Further, Legacy points to instances where collection of unpaid accounts for some uninsured patients were suspended. However, notwithstanding these salutary practices, the vast majority of proposed class members are billed at Legacy's highest rates without discount or waiver. As indicated below, the Court does not deem it appropriate to certify as class members any individuals who have received a charitable discount or waiver from Legacy.

The Court finds that plaintiffs have satisfied all requirements for class certification set forth in ORCP 32 with respect to their claims. See *Alsea Veneer v. State*, 117 OR App 42 (1992), aff'd in part, rev'd in part on other grounds, 318 OR 33 (1993). Specifically, the Court finds 1) the class is so numerous that joinder of all members is impracticable; 2) there are

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questions of law and fact common to the class; 3) plaintiffs claims are typical of the claims of class members; 4) plaintiffs will fairly and adequately protect the interests of the class; 5) plaintiffs have complied with the notice provisions of ORCP 32 H; and 6) proceeding as a class action in this case is superior to other available methods to fairly and efficiently adjudicate this controversy.

As previously mentioned, the Court certifies a narrower class of individuals than proposed by plaintiffs. The class certified does not include class members who have received any discount or waiver in fees under Legacy's charitable policies. However, the class includes patients who have been afforded only a suspension in collection activity. The Court declines to make an individual determination of liability where Legacy has made a charitable discount or waiver. See, e.g., *Bernard v. First National Bank of Oregon*, 275 OR 145 (1976). The Court does not find that a class action is a superior method for adjudication of such claims. See ORCP 32 B. Moreover, the Court finds that the chances of individuals prevailing on such claims "appear so minimal they should be precluded from proceeding as a class action". *Newman v. Tualatin Development Company*, 287 OR 47, 51 (1979).

At oral argument, counsel for Legacy suggested that plaintiffs have broadly challenged Legacy's overall performance as a non-profit in this class action. Counsel has emphasized Legacy's extensive record of public service as a non-profit. However, the legal issues raised in this litigation are narrow. Plaintiffs and class members have asserted colorable contract and consumer claims as former Legacy patients. Legacy's overall performance as a non-profit is not at issue in this proceeding.

Plaintiffs' counsel should submit an appropriate form of Order consistent with the Court's findings and conclusions. After an Order is approved by the Court, respective counsel should confer and discuss case management including a reasonable schedule for completion of discovery. A conference with the Court should later be scheduled for adoption of an overall case management plan.

Sincerely,



RICHARD C. BALDWIN
Circuit Court Judge