

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES-
WASHINGTON; SWEDISH HEALTH
SERVICES; SWEDISH EDMONDS;
KADLEC REGIONAL MEDICAL
CENTER; OPTIMUM OUTCOMES, INC.;
and HARRIS & HARRIS, LTD.,

Defendants.

NO. 22-2-01754-6 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER, having come before the undesigned judge for trial on February 22, 2024. The Plaintiff, the State of Washington (State), appeared by and through Assistant Attorneys General Bob Hyde, Lucy Wolf, and Will O'Connor. Defendant Optimum Outcomes, Inc., appeared by and through Maureen L. Mitchell, Paul Richard Brown, and Jon S. Bogdanov of Fox Rothschild LLP. Courtney Daniel attended trial as the representative of Defendant Optimum. The Court heard testimony Courtney Daniel. The Court additionally reviewed portions of transcripts and video portions of the deposition of:

1. CR 30(b)(6) deposition of Defendant Optimum Outcomes – Transcript of Deposition dated Dec. 19, 2023; video played February 22, 2024.

The Court admitted the following exhibits: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 18, 19, 20, 23, 24, 30, 34, 36, 37, 39, 102, 103, 105, 108, 109, 114, 115, 116, 117, 118, and 120.

Based upon the files and records herein and the evidence and testimony presented at trial, the Court makes the following Findings of Facts and Conclusions of Law.

I. FINDINGS OF FACT

1.1 Providence Health & Services-Washington, Swedish Health Services, Swedish Edmonds, and Kadlec Regional Medical Center (collectively, Providence) is a nonprofit health system that does business in Washington.

1.2 Optimum is a debt collection agency with its headquarters in North Carolina.

1.3 Optimum has been a licensed debt collection agency in Washington State since at least 2017.

1.4 Optimum entered into a collection services agreement (CSA) with Providence for the collection of medical debt in Washington State.

1.5 Before Optimum began collecting debt for Providence, Optimum engaged in a “ramp-up period”, which allowed Optimum staff to work with Providence staff, to train Optimum employees, and to take steps to implement collection processes. This onboarding process took about four months and included frequent dialogue between Optimum and Providence.

1.6 Medical and hospital debt can be confusing and complicated for the consumers. The industry is highly regulated.

1.7 To collect debt from Providence customers, Optimum initially contacted them with a written notice.

1.8 Optimum sent 82,729 “first” written notices to consumers on behalf of Providence.

1.9 Each of the 82,729 first written notices that Optimum sent to patients of Providence’s Washington facilities was based upon the same erroneous letter template.

1.10 Of the 82,729 first written notices Optimum sent to Providence patients none contained a written statement informing the debtor of the debtor's right to request the original or redacted account number assigned to the debt, the date of last payment, and an itemized statement. This information should have been included in the notice, as required under RCW 19.16.250(28)(b).

1.11 Additionally, none of those letters included a notice informing the debtor that the debtor may be eligible for charity care from the hospital or provided contact information for the hospital.

1.12 Optimum's failure to include this information was significant insofar as Optimum knew the industry was highly regulated, knew that consumer debtors were in a different position than commercial or non-medical debtors (given that the medical debt linked to the debtor's health and well-being).

1.13 Optimum had internal staff and outside consultants to help it prepare its debt collection letters. This included a team of three regulatory compliance specialists and an in-house general counsel. However, Optimum never retained a Washington lawyer to ensure compliance with Washington law during this time period.

1.14 Optimum's proposed notice went through multiple internal and external review stages without anyone working for Optimum catching the notice's omissions and shortcomings with respect to Washington State law. It is worth noting that these laws are not invitations to comply – they are compulsory. Washington's legislature has demanded strict compliance with these laws because of the precarious position that debtors can find themselves in with medical debt and the Legislature has acted to protect Washington residents (while not overlooking an otherwise legal obligation for them to pay for services they have incurred). Compliance with the law is a cost of doing business in Washington State.

1.15 At the time of trial, nearly all of the Optimum employees associated with the defective notices had been reassigned or had left the company.

1.16 Optimum has the ability to comply with the Collection Agency Act, RCW 19.16.

1.17 Additionally, during this same period (while collecting debt), Optimum failed to procure and maintain the proper in-state license per Washington law.

1.18 Optimum also failed to maintain a regular place of business in the state that was open to the public during regular business hours and managed by a Washington resident.

1.19 Optimum obtained the proper, in-state license and secured a Washington-based place of business in July 2021 after a consumer filed a complaint with the Department of Licensing. Larry Kasoff, an attorney who was not the subject of its collection activities and who did not appear on Optimum's lists of Providence accounts sent Optimum a complaint about its practices.

1.20 Mr. Kasoff's letter, which he addressed to Providence and the State of Washington Department of Licensing, also alerted Optimum of the changes to RCW 19.16.250(28) and (29) that took effect on July 28, 2019. These were changes in Washington law for which Optimum was responsible in knowing and complying.

1.21 Optimum ceased all proactive collection activity for its Providence account placements a short time after receiving the complaint. Optimum still collected passive payments from Washington debtors (debtors, for example, who signed up for a payment plan). It is unclear from the record how many passive payments Optimum collected, how much it collected, and what the reason(s) were for the debtor submitting the payments (e.g., was it Optimum's letter or something else that prompted the debtor to reach out?).

1.22 After the complaint arose, Providence stopped referring its Washington-based accounts to Optimum.

1.23 Via letter dated October 23, 2021, Grace Hamilton, on behalf of the Washington State Department of Licensing Collection Agencies Board, informed Optimum that it had reviewed Mr. Kasoff's complaint and determined "that there was no violation of Washington State law or rule." However, this notice had no impact on Optimum's operations in Washington

(it had already stopped them) and it issued separately and without consultation from other executive branch-entities (e.g., the Attorney General’s Office).

1.24 Optimum ultimately collected \$3,311,264.14 from patients of Providence’s Washington facilities and obtained \$376,678.70 in commissions from Providence. The amounts Optimum collected constitute gross revenue, without accounting for the costs Optimum incurred to onboard the Providence accounts, mail notices, and implement the CSA.

1.25 For the 12-month period ending December 31, 2022, Optimum had total revenue of \$3,018,095 and total operating expenses of \$2,809,636.

1.26 The State received no complaints from anyone who received an Optimum collection notice related to Optimum’s noncompliance with RCW 19.16.250(28) and RCW 19.16.250(29). However, it is more likely than not that some amount of the \$3,311,264.14 Optimum collected from patients of Providence’s Washington facilities came from low-income and charity care eligible consumers.

1.27 At the start of litigation, when Optimum became aware or concerned of the Attorney General’s interest in it, Optimum provided some information to the State voluntarily. An Assistant Attorney General wrote to Optimum’s outside counsel, “We appreciate Optimum’s cooperation to this point and its willingness to send charity care information to Providence patients.”

1.28 The State sued Optimum for violating state law.

1.29 After the commencement of litigation, the parties engaged in what this Court views as relatively straightforward litigation. Neither party committed misconduct or took a facially unreasonable position in their litigations stances. While the entry of a protection order resulted in the payment of attorneys’ fees, this was overall routine pre-trial positioning. This was not conduct designed to undermine the State’s authority.

1.30 On January 18, 2024, the State stipulated with Optimum that the State would not seek civil penalties of more than \$2,000 per CPA violation against Optimum in this lawsuit.

Optimum admitted liability for sending the defective letters to Washington debtors.

1.31 Based upon the evidence and testimony at trial, Optimum has the ability to pay the civil penalties ordered herein.

II. CONCLUSIONS OF LAW

The Court has jurisdiction over this matter under the provisions of the Consumer Protection Act, RCW 19.86, and the Collection Agency Act, RCW 19.16.

There are essentially two phases in which this Court is analyzing the imposition of sanctions. The first phase is Optimum's conduct when issuing the defective and illegal letters. The second phase is how Optimum conducted itself during litigation, once the Attorney General sued it on behalf of Washington residents. The following includes an analysis of the applicable statutes under which Optimum is liable and that the Court can impose a monetary sanction for its admitted violations.

1.32 As a collection agency doing business in Washington State, Optimum is required to comply with the requirements of Collection Agency Act, RCW 19.16.

1.33 When seeking to collect a medical debt, Optimum must comply with RCW 19.16.250(28)(a), which requires a collection agency to include within in first written notice a statement that informs the debtor of the debtor's right to request the original account number or redacted original account number assigned to the debt, the date of the last payment, and an itemized statement as provided in RCW 19.16.250(28)(b).

1.34 When seeking to collect a hospital debt, Optimum must include within its first written notice to the debtor a notice that the debtor may be eligible for charity care from the hospital, together with the contact information for the hospital. RCW 19.16.250(29)(a).

1.35 Of the 82,729 first written notices Optimum sent to patients of Providence's Washington facilities, none of those notices contained the disclosures required by either RCW 19.16.250(28)(a) or RCW 19.16.250(29)(a).

1.36 Because Optimum sent all of these notices for the purpose of collecting either

non-hospital or hospital-based medical debt, each one of Optimum's first written notices violated RCW 19.16.250(28).

1.37 Any act or practice by a debt collection agency that violates RCW 19.16.250 is an unfair act or practice in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act, RCW 19.86.

1.38 Collection practices prohibited by the CAA satisfy the public interest impact element of a CPA claim.

1.39 During the time that Optimum collected on behalf of Providence's Washington-based facilities, Optimum failed to maintain a regular place of business in the state that was open to the public during regular business hours and managed by a Washington resident, in violation of the CAA.

III. REMEDIES

A. Optimum is Liable for 82,729 CPA Violations

1.40 The CPA mandates that "[e]very person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than \$7,500 for each violation." RCW 19.86.140.

1.41 By order dated February 6, 2024, the Court ruled that Optimum is liable for 82,729 total CPA violations. Dkt. #240. This is one violation per first written notice Optimum sent under its CSA with Providence.

B. Civil Penalties

1.42 In determining the amount of civil penalties, Washington courts have considered the following, non-exclusive factors: (1) whether defendants acted in bad faith, (2) injury to the public, (3) defendants' ability to pay, (4) desire to eliminate any benefits derived by the defendants from the violation, and (5) the necessity of vindicating the authority of the law enforcement agency. *LA Investors*, 2 Wn. App. 2d at 546 (citing *United States v. Reader's Digest Association, Inc.*, 662 F.2d 955, 967 (3d Cir. 1981)).

1. Optimum acted in bad faith

1.43 Optimum is a debt collector that operates nationwide.

1.44 Optimum focuses on and specializes in the medical field, collecting only medical debt.

1.45 Optimum had a compliance team that consists of three employees, an in-house general counsel, and outside counsel to ensure that it complies with applicable laws, regardless of in what state it operated.

1.46 Optimum failed to comply with Washington's Collection Agency Act, RCW 19.16, at any point during the pre-collection ramp-up period, or during the 17-month period Optimum collected on behalf of Providence's Washington-based facilities.

1.47 Optimum had no credible explanation of how—despite specializing in medical debt collection—it failed to review and apply the relevant state law to its medical debt collection notices. Optimum's actions, and lack of action, was unreasonable, however sincere Optimum may now be in acknowledging its shortcomings doing business in Washington State.

1.48 Its failure to take basic compliance steps during the pre-collection ramp-up period, or during the 17-month period Optimum collected on behalf of Providence's Washington-based facilities, demonstrates a reckless (but not willful) disregard for Washington law, despite having internal and external review teams for its correspondence. It is worthwhile to note that Optimum reviewed and was quite clear on how *it* was to receive funds from Washington residents (e.g., it told people correctly where to send Optimum money) but apparently was on 'auto pilot' for its compliance with Washington law. While Optimum admitted this mistake, its explanation was essentially a shoulder-shrug – 'we don't know how this happened.'

1.49 Optimum had other failures following the CAA. It failed to obtain the correct license, failed to maintain an office in the state, and failed to include the mandatory disclosures on medical and hospital debt.

1.50 Optimum had the resources on how to perform basic compliance tasks.

1.51 Optimum's pre-litigation conduct amounts to bad faith for the following reasons: it chose to do business in Washington; it failed to comply with Washington's laws, without evidence it did an even rudimentary check of them; it offered no plausible explanation as to how it missed this important detail compared to other important details it got right (like where to send money); and its actions presumptively harmed Washington residents (a presumption that Optimum did not overcome).

2. A penalty would serve as a deterrent

1.52 A penalty is necessary to deter future debt collectors from unlawful conduct more generally. The CAA is a substantive code of conduct intended to strictly regulate the debt collection industry. RCW 19.16.250's requirements are laws, not options, and collection agencies doing business in Washington must understand that the CAA's protections are not optional. Thus, a penalty amount significantly above the amount Optimum earned in commission (\$376,678.70) is appropriate here.

1.53 The Court does not believe Optimum needs to be deterred from violating Washington law prospectively. The Court has considered the testimony of its witness, its admission of liability, and the fact that it is agreeing to all of the State's proposed injunctive language.

3. Optimum has the ability to pay the State's requested judgment

1.54 As discussed above, Defendant Optimum has the means to pay judgment in this case.

1.55 Optimum remains in business as of the date of trial. And it has sufficient monetary assets. Optimum did not introduce evidence sufficient to show that it lacked funds to satisfy the penalty imposed herein.

4. Optimum's illegal debt collection notices caused public injury

1.56 Optimum sent 82,729 collection letters that violated the CAA—a statute the

Supreme Court has expressly held impacts the public interest. A failure to provide the disclosures in RCW 19.16.250(28) and (29) causes public injury.

1.57 Although proof of consumer harm is not required to establish public injury, some amount of the \$3,311,264.14 Optimum collected from patients of Providence's Washington facilities came from low-income and charity care eligible consumers. Dkt. #237. This further establishes public injury.

1.58 Optimum's error of omitting salient information to debtors was not harmless.

5. The Attorney General's authority to enforce this law has not been materially challenged

1.59 The Attorney General has independent authority to enforce the CAA. RCW 19.16.460.

1.60 Optimum expressed belief (perhaps hope) that this matter could be resolved administratively. That belief was wrong, but it did not amount to Optimum disregarding or disrespecting the Attorney General's Office or disrespecting the laws of this state.

1.61 Optimum's litigation practice was not rebellious (in the sense that it attempted to undercut or ignore the Attorney General's authority) nor was it contemptuous of the Court process or ultimately its obligations.

C. Injunctive Relief

1.62 RCW 19.86.080 authorizes the Court to enter injunctive relief to prevent Defendants from engaging in unfair and deceptive practices.

1.63 Optimum's objection to injunctive relief here was more performance than substantive. It conceded it will follow Washington law prospectively and also conceded it did not dispute the contents of the State's proposed injunction.

1.64 A permanent injunction is appropriate, enjoining Optimum as follows:

1.64.1 When collecting medical debt, Optimum shall in any first written notice to a debtor include a statement that informs the debtor of their right to request

the original account number or redacted original account number assigned to the debt, the date of the last payment, and an itemized statement as described in RCW 19.16.250(28)(b).

1.64.2 When collecting hospital debt, Optimum shall in any first written notice to a debtor include a statement informing the debtor that they may be eligible for charity care from the hospital, together with the contact information for the hospital where the patient was treated.

1.65 For all these reasons, the Court imposes a civil penalty of **\$10.00** per violation or a total of \$827,290.00.

D. Attorneys' Fees and Costs

1.66 By order dated February 6, 2024, the Court determined that the State was the prevailing party in this litigation and entitled to its reasonable attorneys' fees and costs.

1.67 The State shall submit a petition for fees and costs within 30 days of entry of this Order.

DATED this ____ day of _____, 2024.

JUDGE SEAN P. O'DONNELL

CERTIFICATE OF SERVICE

I certify that I caused a copy of the forgoing to be served on the following parties via the following methods:

Maureen L. Mitchell
Paul Richard Brown
Jon S. Bogdanov
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4400
Seattle, WA 98154-1192
mmitchell@foxrothschild.com
paulbrown@foxrothschild.com
JBogdanov@foxrothschild.com

- Legal Messenger
- U.S. Mail, Postage Prepaid
- Certified Mail, Receipt Requested
- Facsimile
- Email

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

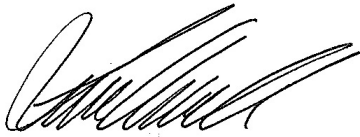
DATED this 26th day of February, 2024, at Seattle, Washington.

/s/ Bob Hyde
BOB HYDE
Assistant Attorney General

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-01754-6
Case Title: STATE OF WASHINGTON VS PROVIDENCE HEALTH &
SERVICES ET AL
Document Title: FINDINGS OF FACT AND CONCLUSIONS OF LAW

Signed By: Sean O'Donnell
Date: March 19, 2024



Judge: Sean O'Donnell

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: DFBA79008AE82785C07B22DCA30A860ED32A38FA
Certificate effective date: 1/3/2024 4:29:31 PM
Certificate expiry date: 1/3/2029 4:29:31 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Sean O'Donnell:
5nS87IJv7hG6RZCCcjRXTQ=="