

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

Case No.

06021050

DAVID M. SORIA, M.D., on behalf of,
himself and all others similarly situated,

Plaintiffs

v.

CLASS REPRESENTATION

INPHYNET CONTRACTING
SERVICES, INC., and
TEAM HEALTH, INC.,

Defendants.

02

A TRUE COPY
HOWARD C. FORBES
CLERK OF CIRCUIT COURT
DEC 22 2006

CLASS ACTION COMPLAINT

Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class Representative on behalf of all others similarly situated, by and through their undersigned counsel, file this class action complaint against Defendants, INPHYNET CONTRACTING SERVICES, INC., a Florida corporation, and TEAMHEALTH, INC., a Tennessee corporation, and state:

Jurisdiction and Venue

1. This is an action for damages in which each cause of action exceeds Fifteen Thousand Dollars (\$15,000), exclusive of attorneys' fees, interest, and costs.
2. Venue is appropriate in Broward County, Florida, because it is where these causes of action accrued. Defendant, INPHYNET CONTRACTING SERVICES, INC., is a domestic corporation, maintaining its principle place of business and having an office for transaction of its customary business in Broward County. Defendant, TEAMHEALTH, INC., is a foreign corporation with an agent or representative in Broward County. §§ 47.011, 47.051, Fla. Stat. (2005).

Parties

3. Plaintiff, DAVID M. SORIA, M.D. (also referred to individually as “Dr. Soria”), is an individual residing in Palm Beach County, Florida, who is *sui juris*. At all times material hereto, Dr. Soria was and is a licensed physician providing emergency room medical services at Wellington Regional Medical Center in Wellington, Florida (“Wellington Regional”). Dr. Soria was previously employed by Defendants.

4. Defendant, INPHYNET CONTRACTING SERVICES, INC. (“InPhyNet”), is a corporation organized and existing under the laws of the State of Florida with its principal place of business located at 14050 NW 14th Street, Fort Lauderdale, Florida. InPhyNet is also a wholly-owned division of Defendant, TEAMHEALTH, INC., and conducts business under the fictitious name of TeamHealth Southeast.

5. Defendant, TEAMHEALTH, INC. (“Team Health”), is a foreign corporation organized and existing under the laws of the State of Tennessee. At all times material hereto, Team Health engaged in substantial and not isolated activities in the State of Florida in its own right, as sole shareholder of InPhyNet, and/or through its regional “division,” InPhyNet / TeamHealth Southeast.

Nature of the Dispute

6. According to Team Health, it is “structured to serve [its] physician and hospital clients from regional offices strategically located throughout the country,” which enables it to offer its clients the benefit of “affiliating with a strong, financially sound national organization.”

7. Team Health features itself as the nation’s largest provider of hospital-based clinical outsourcing. Team Health, through its divisions such as InPhyNet, employs more

than 5,000 physicians, mid-level providers, and nurses to provide its hospital-based staffing services.

8. As Team Health's regional division, InPhyNet is engaged in the business of contracting with hospitals and other medical facilities throughout the State of Florida to provide emergency room staffing services. InPhyNet had previously contracted with Wellington Regional for this purpose as well as other facilities throughout Florida, including Broward, Miami-Dade, and Palm Beach counties.

9. In order to provide its staffing services, Team Health and InPhyNet employ physicians, nurse practitioners, and physician assistants. With respect to physicians, Team Health and InPhyNet enter into written Employment Agreements, which reflect, among other things, the compensation to be paid to the physician.

10. As a material term of employment, and as an inducement for physicians to become employed by Team Health and InPhyNet, Defendants offered to its physicians additional compensation referred to as a Physician Incentive Plan. A representative example of Defendants' Physician Incentive Plan is attached as Exhibit "A."

11. Under the Physician Incentive Plan, Dr. Soria and the other class members were entitled to receive as incentive compensation a percentage of the profits from Defendants' contract with the respective facilities, including Wellington Regional. The additional incentive compensation was due and paid on a quarterly basis.

12. Defendants have failed to pay Dr. Soria and the other class members their proper incentive compensation in violation of the terms of his employment and the Physician Incentive Plan.

13. Upon information and belief, Defendants have artificially and improperly

inflated the alleged expenses incurred at its contracted facilities, including Wellington Regional, by creating a fictitious or unsubstantiated accounting category identified as "physician benefits" or "other physician benefits." The designed effect of Defendants' scheme was to reduce the stated gross profits from the facility, thereby reducing Dr. Soria's incentive compensation.

14. Dr. Soria has engaged the undersigned law firm and is obligated to pay reasonable attorneys' fees in connection with this matter.

15. In addition to any other basis set forth herein, Dr. Soria is entitled to an award of his attorneys' fees and costs pursuant to the Employment Agreement.

Class Representation Allegations

16. Dr. Soria brings this action as a class action on his own behalf and on behalf of all others similarly situated.

17. The Class is identified as every physician previously employed by Team Health and / or InPhyNet in the State of Florida within the past five (5) years who participated, or was eligible to participate, in what has been identified as Defendants' Physician Incentive Plan or substantially similar incentive compensation plan.

18. Excluded from the Class are: (1) all physicians previously employed by Team Health and/or InPhyNet in the State of Florida within the past five (5) years who, prior to the date of filing this Complaint, have asserted their own respective claims against Defendants arising under the Physician Incentive Plan, (2) all persons who timely opt out of this proceeding, and (3) all persons who, prior to the filing of this Complaint, have given valid releases releasing Defendants from claims based upon, or arising from, the Physician Incentive Plan.

19. This action is properly maintained as a class action pursuant to *Fla.R.Civ.P.*

1.220(a) in that it satisfies the pre-requisites of numerosity, commonality, typicality, and adequacy.

Numerosity

20. The Class is so numerous that individual joinder of all its members is impractical. The precise number of Class Members, as identified and described herein, is not known at this time, but it is estimated that there are not less than 250 members.

Commonality

21. The claims of Dr. Soria as Class Representative raise questions of law or fact common to the questions of law or fact raised by the claims of each Class Member, namely:

- a. Whether Defendants instituted a Physician Incentive Plan or the substantial equivalent at each facility where Defendants previously provided emergency room physician staffing services,
- b. Whether Defendants artificially and improperly inflated the alleged expenses incurred at those facilities maintaining a Physician Incentive Plan by creating a fictitious or unsubstantiated accounting category identified as "physician benefits" or "other physician benefits,"
- c. Whether Defendants, as a result of their practices, breached the terms of the Physician Incentive Plan and the covenant of good faith and fair dealing owed to each of the Class Members,
- d. Whether Defendants, as a result of their practices, engaged in an unfair and deceptive trade practice under Section 501.2105, Florida Statutes, *et seq.*
- e. Whether Defendants, as a result of their practices, breached the fiduciary duty owed to each Class Member and otherwise committed constructive

fraud,

- f. Whether Defendants, as a result of their practices, were unjustly enriched,
- g. Whether Defendants, as a result of their practices, converted funds that were the rightful property of each Class Member, and
- h. Whether Plaintiffs have been damaged as a result of the Defendants' conduct.

Typicality

22. Dr. Soria's claims are typical of the claims of the other Class Members. Dr. Soria and each Class Member have sustained damages arising out of Defendants' course of conduct giving rise to this action, particularly with respect to Defendants' implementation and administration of the Physician Incentive Plan, which, upon information and belief, is typical, if not identical, for each Class Member.

Adequacy

23. Dr. Soria, as the Class Representative, will fairly and adequately protect and represent the interests of the Class Members. In particular:

- a. Dr. Soria's claims are co-extensive with, and not antagonistic to, the Class Members' claims,
- b. Dr. Soria's claims are typical of the claims of the Class Members in that they arise from the same course of conduct and are based upon the same legal theories,
- c. Dr. Soria and each Class Member have a mutual interest in prevailing on the same legal claims and in seeking the same or similar damages against Defendants,
- d. Dr. Soria has sufficient resources to prosecute and maintain this action, and

e. Dr. Soria is represented by competent and experienced counsel who have thus far vigorously prosecuted this action and will continue to prosecute this action to a successful conclusion.

24. This action is maintainable on behalf of a class pursuant to *Fla.R.Civ.P.* 1.220(b)(3). As reflected in Paragraph 21 of this Complaint, the questions of law or fact common to the Class predominate over those affecting individual members of the Class.

25. Class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

26. Class representation is desirable in this particular forum given the location of the Class Representative, the location of the anticipated number of Class Members, the location of Defendants (including the principle place of business of InPhyNet), and the location of any anticipated third party witnesses. There are no anticipated difficulties which will likely be encountered in the management of these claims on behalf of a class.

27. Dr. Soria, individually and as Class Representative, has performed all conditions precedent for the filing of this action, or they have otherwise been waived or excused.

Count I
Claim for Breach of Contract and Breach of Implied Covenant of
Good Faith and Fair Dealing

28. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 27 as though set forth in full herein.

29. Defendants were obligated to perform all of their obligations in accordance with the terms of the Plaintiffs' Employment Agreements and addenda or amendments thereto, including the Physician Incentive Plan. These obligations included, but were not limited to, Defendants' obligation to properly account for the revenue and expenses from

the respective facilities and the concomitant obligation to pay Plaintiffs their respective incentive compensation.

30. Defendants have materially breached the terms of the Agreements by, *inter alia*, failing to properly account for the revenue and expenses from the respective facilities and by failing to pay Plaintiffs their incentive compensation.

31. Defendants' performance under the agreements was also governed by the implied covenant of good faith and fair dealing attendant to every contract under Florida law.

32. Defendants have materially breached the implied covenants of good faith and fair dealing owed to the Plaintiffs as a result of the foregoing and, in particular, by creating a fictitious accounting category of non-existent expenses, depriving Plaintiffs of the compensation to which they were rightfully entitled.

33. As a direct result of Defendants' breaches, Plaintiffs have been significantly damaged.

WHEREFORE, Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class Representative on behalf of all others similarly situated, demand judgment against Defendants, INPHYNET CONTRACTING SERVICES, INC. and TEAM HEALTH, INC., for compensatory damages, interest, costs, attorneys' fees, and such further relief as may be deemed appropriate.

Count II
Claim for Violation of the Florida Deceptive and Unfair Trade Practice Act

34. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 27 as though set forth in full herein.

35. Plaintiffs are consumers as that term is defined in Section 501.203(7), Florida

Statutes. See also, *Beacon Property Management, Inc. v. PNR, Inc.*, 890 So. 2d 274 (Fla. 4th DCA 2004).

36. Defendants' conduct constitutes an unconscionable act or practice and /or unfair or deceptive actions in violation of Section 501.204, Florida Statutes, and contrary to the purposes of the Florida Deceptive and Unfair Trade Practices Act.

37. Defendants' deceptive and unfair trade practices have caused actual damages to the Plaintiffs.

38. Plaintiffs are also entitled to recover their reasonable attorneys' fees and costs pursuant to Section 501.2105, Florida Statutes.

WHEREFORE, Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class Representative on behalf of all others similarly situated, demand judgment against Defendants, INPHYNET CONTRACTING SERVICES, INC. and TEAM HEALTH, INC., for actual damages, interest, costs, attorneys' fees, and such further relief as may be deemed appropriate.

Count III
Claim for Breach of Fiduciary Duty and Constructive Fraud

39. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 27 as though set forth in full herein.

40. Defendants owed a legal, contractual, moral, and social duty to Plaintiffs to perform their duties and obligations and to act in the best interests of the Plaintiffs.

41. Due to Defendants' control and maintenance of the accounting and financial information with respect to the profits derived at the facilities, Defendants were in a superior position to that of the Plaintiffs to ensure that the incentive compensation to which Plaintiffs were entitled was and is stated correctly.

42. Plaintiffs reasonably relied upon Defendants to discharge these duties owed and otherwise had no reason to believe Defendants would misstate and inflate the alleged expenses incurred at the respective facilities, thereby depriving Plaintiffs the compensation to which they were and are entitled.

43. Defendants' conduct in this regard is a breach of the fiduciary duties owed to Plaintiffs and constitutes constructive fraud.

44. As a result of Defendants' breach of fiduciary duties and constructive fraud, Plaintiffs have been significantly damaged.

WHEREFORE, Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class Representative on behalf of all others similarly situated, demand judgment against Defendants, INPHYNET CONTRACTING SERVICES, INC. and TEAM HEALTH, INC., for compensatory damages, interest, costs, and such further relief as may be deemed appropriate.

Count IV
Claim for Unjust Enrichment

45. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 27 as though set forth in full herein.

46. Plaintiffs have complied with their obligations under the parties' agreements and have conferred a benefit upon Defendants.

47. Defendants accepted and retained the benefit conferred by Plaintiffs, but have failed to properly compensate them.

48. Under the circumstances presented, it would be inequitable for Defendants to retain the benefits conferred by Respondents without paying the value thereof.

WHEREFORE, Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class

Representative on behalf of all others similarly situated, demand judgment against Defendants, INPHYNET CONTRACTING SERVICES, INC. and TEAM HEALTH, INC., for compensatory damages, interest, costs, and such further relief as may be deemed appropriate.

Count V
Claim for Conversion

49. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 27 as though set forth in full herein.

50. By misrepresenting and improperly inflating the alleged expenses incurred at the respective facilities, Defendants have reduced the incentive compensation to which Defendants were entitled and thereby increasing the amounts retained by Defendants.

51. Defendants' conduct constitutes a wrongful act of dominion over Plaintiffs' interest in the incentive compensation.

52. As a result of Defendants' conversion, Plaintiffs have been significantly damaged.

WHEREFORE, Plaintiffs, DAVID M. SORIA, M.D., individually, and as Class Representative on behalf of all others similarly situated, demand judgment against Defendants, INPHYNET CONTRACTING SERVICES, INC. and TEAM HEALTH, INC., for compensatory damages, interest, costs, and such further relief as may be deemed appropriate.

Demand for Jury Demand

Plaintiffs demands a trial by jury on all issues so triable as a matter of right.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail and U.S. Mail on this 22nd day of December, 2006, upon: Peter Goldman, Esq., BROAD AND CASSEL, P.O. Box 14010, Fort Lauderdale, Florida 33302.

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PHYSICIAN INCENTIVE PLAN

Facility: Wellington Regional

THIS ADDENDUM dated ^{August 18th} ~~September 1, 2004~~, shall further amend and modify the Agreement dated August 18 ~~September 1, 2004~~, by and between INPHYNET CONTRACTING SERVICES, INC. ("We", "Us", or "Our") and David M. Soria, M.D. ("You", "Your", or "Yourself")

I Introduction:

We maintain Physician Incentive Plans on a facility-by-facility basis. All facility plans must be approved by Our affiliate CEO and are subject to revision without notice to You or Your approval. Amounts to be placed in the bonus pool for any facility shall be at Our sole discretion. To the extent a bonus pool is established for a facility, eligibility and payment shall be in accordance with the criteria set forth below.

II General Eligibility Requirements:

1. All physicians who meet Our definition of "full-time" are eligible to participate in the facility bonus program. Currently, We define "full-time" as working a minimum of 130 hours each month on a regular basis at the designated facility.
2. You must have a fully executed and effective Agreement and must not be in breach of that Agreement as of the bonus distribution date.
3. You must be working on a full-time basis at least 90 days prior to the end of the bonus period to be eligible to participate in that period's bonus distribution.

III Criteria

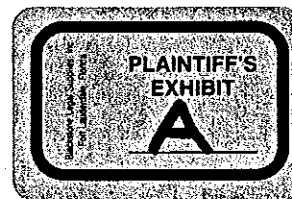
1. Productivity Factor: [Fifty Percent (50%) of Bonus Pool]

Productivity is measured by calculating Your Relative Value Units (RVU) (as defined by Us from time-to-time) per hour worked during the covered period. This portion of the pool is to be distributed by Us based on Your RVU's per hour divided by the total RVU's per hour, multiplied by the pool available:

2. Performance Factors: [Remaining Fifty Percent (50%) of the Bonus Pool]:

- a. Documentation: [Twelve and a half Percent (12.5%)]:

You are eligible for a distribution from this portion of the bonus pool upon meeting Our downcoding goal of five percent (5%) or less for the period. All eligible physicians at the facility will split this portion of the pool equally. If no one achieves the goal, the pool will be carried forward to the next reporting period subject to the facility contract performance of that period. If the goal is not made within the calendar year, the pool is forfeited for that calendar year.



b. Practice Development / Teamwork [Twenty-Five Percent (25%)]

Components of this portion of the bonus pool shall be determined by the Medical Director based on aligning goals with Us and the hospital. Each component is worth one point and points are totaled and distributed as a percent of the overall total. Components may include, but are not necessarily limited to:

- Customer Satisfaction
- Risk Management
- Completion of Compliance Training
- Meeting Attendance
- Schedule flexibility

c. Length of Service [Twelve and a half Percent (12.5%)]

Seniority is calculated based on Your start date or adjusted start date if applicable with Us. If You should terminate and return to a regular full-time status within six (6) months from the termination date, Your original start date will be reinstated. Individual points are calculated and divided by total points for a percentage of the pool.

0-1 yr = 0 > 1-2 yrs = 1 > 2-5 yrs = 2 > 5 yrs = 3

IV. **Payment:**

Bonus payments will be made three (3) times a year. Payment for the financial reporting period 1-5 (covering January through May) will be distributed in July. For periods 6-10 (covering billings from June through October), payment will be distributed in December. The balance for periods 11 and 12 (covering billings from November through December) will be distributed in February.

Period	Covers Reporting Period	Bonus Distribution Month	Hire Date to be eligible for period bonus
1-5	Jan. 1 – May 31	July	March 1
6-10	June 1 – Oct. 31	December	August 1
11-12	Nov. 1 – Dec. 31	February	October 1

V. **Termination & Modification:**

Your Physician Incentive Plan participation ends if You are no longer working at the designated facility on a full-time basis on the date of the bonus distribution. Notwithstanding anything to the contrary in the Agreement, this Addendum may be modified by Us at any time without Your consent.

Acknowledgment:

The undersigned Physician acknowledges receipt of this Addendum.

