

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

GREENWOOD LEFLORE HOSPITAL

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 4:15-cv-00174-SA-JMV

**STANLEY “STAN” M. BEATY; ALCON
CORPORATION; ALCON, INC.;
HEALTHCARE CONTRACT SERVICES,
INC.; AND JOHN DOES 1-6**

DEFENDANTS

MOTION FOR PRELIMINARY INJUNCTION AND EXPEDITED HEARING

Greenwood Leflore Hospital (“GLH”), through its undersigned counsel, pursuant to Rule 65 of Fed. R. Civ. P., moves the Court for a Preliminary Injunction restraining and prohibiting the Defendant Stanley “Stan” M. Beaty together with the apparently defunct businesses of Alcon, Inc., Alcon Corporation and Healthcare Contract Services, Inc. (collectively, “Defendants”) (1) from destroying, deleting, altering or otherwise disposing of hard copies, writings and electronic records, however stored, of debt collection letters, patient information and all other records sent to past due patient accounts of GLH; and (2) to preserve and to protect and refrain from using, selling, altering, destroying or electronically manipulating in any fashion that certain IBM AS/400 mainframe computer system, including all electronic data stored in the system and associated back-up tapes, discs and electronic storage devices and software, passwords and other access codes and information, previously used by Defendants in connection with providing debt collection services to GLH, and in support of this motion shows as follows:

1. Prior to filing this Motion for Preliminary Injunction and Expedited Hearing (the “Motion”), GLH has filed a Verified Complaint for Injunctive Relief and Damages (“Complaint”), which is incorporated by reference into this Motion. As described in the Complaint, Defendant Beaty, through his alter ego Alcon, Inc. and Alcon Corporation provided

“soft” debt collection services on past due patient accounts to GLH from 2003 to July 2015. Pursuant to the contract with GLH, Defendants retained the documentation of its debt collection services and prior to July 2015 provided designated documentation to GLH upon request. The documentation was (and is) critical to GLH’s compliance with Medicare rules and regulations to maintain such records in order to substantiate patient bad debt write-off on GLH’s annual Medicare cost report. The unavailability of this documentation of collection efforts will result in a loss to GLH of hundreds of thousands of dollars in Medicare reimbursement.

2. As discussed in detail in the Memorandum in Support of Motion for Preliminary Hearing (“Memorandum”), in late July 2015, GLH was alerted that since 2008 Beaty and other Defendants’ had been fraudulently overbilling GLH. Initially, Beaty acknowledged the overbilling and promised to repay it with interest. After stalling GLH with empty promises, Beaty ceased communications without making any promised repayment.

3. Also in July 2015 while pretending to cooperate with GLH, Beaty was vacating his only office. At the time his business was experiencing financial problems and GLH was his only business customer. Without notice to GLH, Beaty vacated the office and stored some records and equipment in a storage building.

4. On September 2, 2015, GLH formally terminated its contract and demanded Beaty and his alter ego businesses to provide all past due patient account collection records to GLH. Beaty and his alter ego businesses have refused and failed to provide to GLH the documentation for debt collection services and patient information. Rather, Beaty has ceased his collection business, vacated the business office and made himself incommunicable.

5. On or around November 18, 2015, local law enforcement of Shelby County executed a search warrant of a storage facility in the Memphis, Tennessee area where some of Beaty and Alcon’s business records were stored. Although records were seized, they did not

include written documentation of debt collection efforts on behalf of GLH. More importantly here, the IBM AS/400 mainframe computer system in which such debt collection documentation and patient information are electronically stored was not in the storage building. The IBM AS/400 mainframe computer system is the only known source for these patient debt collection records which contain protected patient information.

6. GLH will prevail on the merits of its claim for access to debt collection records related to patient accounts referred to Beaty and Alcon. In the past, both as a matter of practice and contract, Beaty and other Defendants routinely provided to GLH when requested past due patient account collection records. As Beaty has ceased his bill collection business and vacated his office, there can be no legitimate use of these records to him or his business. Since these records contain protected health information, any future use or sale of information by Beaty would be illegal.

7. There can be no significant injury to Defendants, not even inconvenience, by granting a preliminary injunction to preserve the status quo on all written and electronic records of debt collection services on behalf of GLH and patient information. As noted above, the financial and regulatory harm to GLH is not fully quantifiable but includes the loss of hundreds of thousands of dollars of Medicare reimbursement. Clearly, the harm to GLH from both the misuse and the loss of these records is clear and so substantial as to jeopardize GLH's financial stability.

8. The unavailability of the documentation of Defendants' debt collection efforts on behalf of GLH will in fact cause irreparable harm to GLH. First, GLH will be out of compliance with Medicare program rules and requirements. Secondly, there is no adequate remedy at law since Beaty and the now apparent defunct businesses have no ability to pay funds owed to GLH, much less hundreds of thousands of dollars in losses that will be incurred as a

result of GLH's inability to document reasonable collection efforts for past due patient accounts.

9. Third, as set out in the Complaint from late 2008 through July 2015, Beaty has systematically overbilled GLH by an amount in excess of \$380,000. When questioned about the overbilling, Beaty acknowledged overbilling at least \$159,000 and promised to repay all overbillings with interest, starting at the end of August 2015. In fact, Beaty made no repayment. As noted, Beaty has now vacated his only business office, moved records and equipment to a different location and ceased collection business operations. It is obvious, therefore, both Beaty and the other Defendants have no intention and no ability to repay the overbillings, much less Medicare reimbursement liability incurred by GLH as a result of the lack of debt collection documentation.

10. Lastly, issuance of a Preliminary Injunction will not disserve the public interest. Indeed, it is in the public interest to help ensure regulatory compliance by GLH and preserve essential Medicare

11. There is a substantial likelihood that without an immediate injunction, the Court will not be able to fashion appropriate relief and risks the destruction or other disposability of the IBM AS/400 mainframe computer system in which the critical debt collection letters and records are stored.

12. In support of its Motion for Preliminary Injunction, GLH relies on the following documents, as well as its Memorandum in Support of Motion for Preliminary Injunction:

- A. Affidavit of Dawne Holmes attached as Exhibit A;
- B. Affidavit of Eva Hensley attached as Exhibit B;
- C. Affidavit of Deborah Lea attached as Exhibit C;
- D. Plaintiff's Verified Complaint for Injunction Relief and Damages ("Complaint") [Dkt. 1] incorporated by reference; and

E. Extended Business Office Agreement attached to Complaint as Exhibit A [Dkt. 1] incorporated by reference;

Relief

For reasons set out here, in the accompanying Memorandum in Support of Preliminary Injunction and in the Verified Complaint for Injunctive Relief and Damages, GLH respectfully requests this Court issue a Preliminary Injunction restraining and prohibiting Beaty and the other Defendants from destroying, altering, abandoning, or otherwise disposing of any written and electronic records wherever located and stored of debt collection services undertaken on past due patient accounts of GLH and ordering Defendants to specifically retain, preserve, hold and otherwise protect from any disposition, destruction, corruption, electronic tampering, deletion or any other manipulation that certain IBM AS/400 mainframe computer system, together with associated back-up tapes, discs and electronic storage devices used in connection with debt collection services provided to GLH. GLH further requests the Court grant an expedited hearing due to the unknown location of the computer, critical importance of patient debt collection records and highly sensitive nature of the protected health information contained therein which is subject to sale or other misuse.

Expedited Hearing

The Court is requested to set this matter for expedited hearing. Beaty has placed the IBM AS/400 mainframe computer system in an unknown location. Beaty has demonstrated he is unreliable, cannot be trusted and capable of devious plotting and misuse of his control. The AS/400 computer contains the patient debt collection records which is both critical to GLH's financial stability and contains the protected health information of GLH's patients.

Respectfully submitted,

PHELPS DUNBAR, LLP

/s/ Frank W. Trapp

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**ATTORNEYS FOR GREENWOOD LEFLORE
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CERTIFICATE OF SERVICE

I certify that a copy of this motion has been served via United States mail, postage-prepaid to the following:

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THIS the 4th day of December, 2015.

/s/ Frank W. Trapp
Frank W. Trapp