

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**NHS SYSTEMS, INC.,**

a Pennsylvania corporation, also d/b/a  
National Healthcare Solutions and  
National Health Net Online, and

**HARRY F. BELL, JR.,**

individually and as an officer or principal  
of NHS Systems, Inc., and

**PHYSICIAN HEALTH SERVICE, LLC,**

a Missouri limited liability company, also  
d/b/a American Health Benefits On Line,  
and

**DONNA NEWMAN,**

individually and as an officer or principal  
of Physician Health Service, LLC, and

**JOHN E. BARTHOLOMEW,**

individually,

Defendants.

Civ. Action No.

*08cv 2215*

**FILED UNDER SEAL**

**COMPLAINT FOR  
INJUNCTIVE AND OTHER  
EQUITABLE RELIEF**

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATE: **MAY 15 2008**

ATTEST: *Steve Tomos*

DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Plaintiff Federal Trade Commission ("FTC" or "Commission") for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 - 6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for

defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).
3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

### **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 - 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.
5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

### **DEFENDANTS**

6. Defendant NHS Systems, Inc. ("NHS Systems") is a Pennsylvania corporation with its principal place of business at 555 2<sup>nd</sup> Avenue, Suite H-100, Collegeville, Pennsylvania 19426. NHS Systems transacts or has transacted business in this District. NHS Systems also

has done business using the names National Healthcare Solutions and National Health Net Online.

7. Defendant Harry F. Bell, Jr., is the President of NHS Systems. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of NHS Systems, including the acts and practices set forth in this complaint.
8. Defendant Physician Health Service, LLC (“Physician Health”) is a Missouri limited liability company with its principal place of business in Florida. Physician Health also has done business using the name American Health Benefits On Line.
9. Defendant Donna Newman is the President of Physician Health. She is a resident of Florida. In connection with the matters alleged herein, she has transacted business in this District. At times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of NHS Systems and Physician Health, including the acts and practices set forth in this complaint.
10. Defendant John E. Bartholomew is a resident of Florida. In connection with the matters alleged herein, he has transacted business in this District. At times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of NHS Systems and Physician Health, including the acts and practices set forth in this complaint.

#### COMMERCE

11. At times material to this Complaint, Defendants NHS Systems, Bell, Physician Health, Newman, and Bartholomew (“Defendants”) have maintained a substantial course of trade in

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the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### DEFENDANTS’ BUSINESS ACTIVITIES

12. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.
13. Since February 2007, NHS Systems and, subsequently, Physician Health (collectively, the “Corporate Defendants”) have fraudulently marketed one or more discount health care programs. At various times, each of the individual Defendants – Bell, Newman, and Bartholomew – has formulated, directed, controlled, or participated in the marketing of these programs.
14. The Corporate Defendants have used third-party agent telemarketers to sell the programs to consumers. During sales calls, Corporate Defendants’ telemarketers have led consumers to believe that they are from or affiliated with United States government agencies, including the Social Security Administration, the Internal Revenue Service, and Medicare.
15. Typically, Corporate Defendants’ telemarketers have promised consumers they will receive substantial deposits into their accounts if they provide their bank account or credit card information. These deposits typically have been pitched as grants, tax refunds, or tax rebates that never have to be repaid by the consumers.
16. In numerous instances, the callers tell consumers that they have been selected for these grants, tax refunds, or tax rebates with no conditions.
17. In some instances, after persuading consumers that they are affiliated with the United States government and are offering to deposit money into consumers’ bank accounts, the callers

have mentioned a health care program. However, in such instances the callers typically downplay this aspect of the call by indicating that the consumer is agreeing only to receive information about the program, or that the program carries a small fee that will be charged only after the consumer has received the promised substantial deposit.

18. In other instances, Corporate Defendants' telemarketers have represented to Medicare beneficiaries that the beneficiaries are required to provide their financial account information to continue their Medicare benefits.
19. In numerous instances, Corporate Defendants' telemarketers use deceptive tactics to attempt to obtain recorded "verification" of consumers' authorization to charge the consumers' accounts. In numerous instances, Corporate Defendants have created false verification recordings.
20. Moreover, in numerous instances Corporate Defendants have charged consumers' financial accounts without any notice to the consumers and without the consumers' authorization.
21. When consumers complain about Corporate Defendants' charges appearing on their account statements, Corporate Defendants typically claim that the charges were authorized. Corporate Defendants have made such claims even in instances where no recorded authorization was available or when the recorded authorization was in a voice that was not the consumer's.
22. In numerous instances, Corporate Defendants have charged consumers who have not authorized charges against their accounts or who have been deceived into authorizing charges against their accounts. Typically, these charges have been in the amounts of \$29.95, \$299.95, or both.

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23. Since February 2007, Corporate Defendants have attempted more than 15,000 unauthorized charges against consumer accounts.

**COMMONALITIES AMONG THE CORPORATE DEFENDANTS**

24. In addition to their common business practices, there are further specific points of commonality between NHS Systems and Physician Health.
25. Defendant Newman, the President of Physician Health, has acted on behalf of NHS Systems to retrieve mail from the mail drop box in Miami, Florida, that NHS Systems has used as the primary address for its National Healthcare Solutions and National Health Net Online identities.
26. Defendant Newman has opened an additional National Health Net Online mail drop box in Springfield, Missouri. Contemporaneously, Defendant Newman opened a mail drop box at the same facility for Physician Health's American Health Benefits On Line identity. In the "Business Address" fields on the application forms for each of these mail drop boxes, Defendant Newman supplied her home address. She supplied the same "Business Telephone Number" on each application, as well.
27. NHS Systems's website at [www.nationalhealthnetonline.com](http://www.nationalhealthnetonline.com) has appeared nearly identical to Physician Health's website at [www.americanhealthbenefitsonline.com](http://www.americanhealthbenefitsonline.com).
28. Several consumers who have complained to different Better Business Bureaus concerning National Health Net Online and American Health Benefits On Line have received nearly identical form response letters from the two entities, purportedly signed on behalf of each entity by "Susanne Bestman."
29. Bartholomew has provided substantial services to both NHS Systems and Physician Health.

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**VIOLATIONS OF SECTION 5 OF THE FTC ACT**

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”
31. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

**Count I**  
**Deceptive Claims of Government Affiliation**

32. In numerous instances in connection with the marketing of a purported discount health care program, Defendants have represented, directly or indirectly, expressly or by implication, that they represent or are affiliated with United States government agencies.
33. In truth and in fact, Defendants do not represent and are not affiliated with United States government agencies.
34. Therefore, Defendants’ representations as set forth in Paragraph 32 of this Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count II**  
**Deceptive Claims to Offer Government Grants, Tax Refunds, or Tax Rebates**

35. In numerous instances in connection with the marketing of a purported discount health care program, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who provide their financial account information to Defendants will thereby receive substantial government grants, tax refunds, or tax rebates.

36. In truth and in fact, consumers who provide their financial account information to Defendants will not thereby receive substantial government grants, tax refunds, or tax rebates.
37. Therefore, Defendants' representation as set forth in Paragraph 35 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count III**  
**Deceptive Claims Regarding Cost**

38. In numerous instances in connection with the marketing of a purported discount health care program, Defendants have represented, directly or indirectly, expressly or by implication, that they do not charge consumers who provide Defendants with their account information or that any charges are more than offset by substantially greater sums that Defendants cause to be deposited into the consumers' accounts.
39. In truth and in fact, Defendants do charge consumers who provide Defendants with their account information, and Defendants' charges are not offset by any greater sums that Defendants cause to be deposited into the consumers' accounts.
40. Therefore, Defendants' representations as set forth in Paragraph 38 of this Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count IV**  
**Unfair Unauthorized Charges**

41. In numerous instances, Defendants have debited consumers' accounts without authorization.



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42. Defendants' practice of debiting consumers' accounts without authorization causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by benefits to consumers or competition.
43. Therefore, Defendants' practice as set forth in Paragraphs 41-42 of this Complaint constitutes an unfair act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### VIOLATIONS OF THE TELEMARKETING SALES RULE

44. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.
45. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).
46. The TSR prohibits sellers and telemarketers from failing to disclose truthfully in a clear and conspicuous manner, before a customer pays for goods or services, among other things the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i);
47. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:
- a. The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(i);

- b. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii);
- c. A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

48. The TSR prohibits any seller or telemarketer from causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the customer's express verifiable authorization, except when the method of payment used is a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205. When an audio recording of the customer's express oral authorization is used to satisfy this requirement, the TSR requires that the recording must evidence clearly the customer's authorization of payment for the goods or services that are the subject of the telemarketing transaction and the customer's receipt of all of the following information, among other information:

- a. the number of debits, charges, or payments (if more than one);
- b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;
- c. the amount(s) of the debit(s), charge(s), or payment(s); and
- d. a telephone number for customer inquiry that is answered during normal business hours. 16 C.F.R. § 310.3(a)(3)(ii).

49. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**Count V**  
**Misrepresenting Total Cost**

50. In numerous instances, in the course of telemarketing one or more purported discount health care programs, Defendants have misrepresented, directly or by implication, the total cost that will be charged to consumers who provide Defendants with their account information.
51. Defendants' practice as alleged in Paragraph 50 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. § 310.3(a)(2)(i).

**Count VI**  
**Misrepresenting Nature of Services**

52. In numerous instances, in the course of telemarketing one or more purported discount health care programs, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the goods or services they sell, including that consumers who provide their financial account information to Defendants will thereby receive substantial government grants, tax refunds, or tax rebates.
53. Defendants' practice as alleged in Paragraph 52 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

**Count VII**  
**Misrepresenting Affiliation with Government**

54. In numerous instances, in the course of telemarketing one or more purported discount health care programs, Defendants have misrepresented, directly or by implication, that they are

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calling from, on behalf of, or are otherwise affiliated with one or more United States government entities.

55. Defendants' practice as alleged in Paragraph 54 is a deceptive telemarketing practice that violates Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

**Count VIII**  
**Lack of Express Verifiable Authorization**

56. In numerous instances, in connection with telemarketing one or more purported discount health care programs, Defendants have caused billing information to be submitted for payment using a payment method other than a credit card subject to the protections of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a debit card subject to the protections of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205, without the consumer's express verifiable authorization.
57. Defendants' practice as alleged in Paragraph 56 is a deceptive telemarketing practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3).

**CONSUMER INJURY**

58. Consumers in the United States have suffered and will continue to suffer injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT'S POWER TO GRANT RELIEF**

59. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.
60. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts, and the refund of money.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to,

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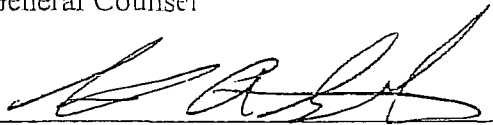
rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLIAM BLUMENTHAL  
General Counsel

Dated: May 13, 2008

  
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