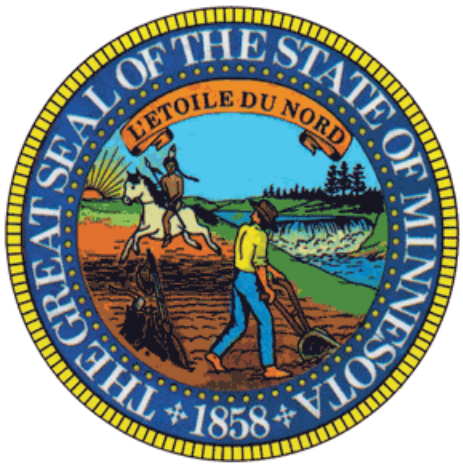
STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

Compliance Review of Fairview Health Services' Management Contracts with Accretive Health, Inc.

Volume 3
The Attorney General Agreement



LORI SWANSON

ATTORNEY GENERAL

April 2012

Review Conducted Pursuant to Minnesota Statutes Chapters 309, 501B, and 317A

VOLUME THREE

THE ATTORNEY GENERAL AGREEMENT

VOLUME THREE

THE ATTORNEY GENERAL AGREEMENT

Executive Summary: A compliance review by the Minnesota Attorney General in 2005 found that the collection activities and expenditures of Fairview Health Services were not consistent with the mission and responsibilities of a Minnesota charitable organization. Fairview entered into a remediation agreement with the Attorney General in 2005, and the agreement was renewed in 2007. Since May, 2010, Accretive Health, Inc. has been the "revenue cycle" manager in charge of collections for Fairview. Accretive has repeatedly violated the Attorney General Agreement, displaying willful indifference to its requirements.

3.1 The Attorney General Agreement. In 2005, the Office of the Minnesota Attorney General undertook a compliance review of Fairview Health Services ("Fairview") pursuant to Minnesota Statutes sections 317A.821, *et seq*., 309.533, *et seq*., and 501B.35, *et seq*. The compliance review found numerous problems with and deficiencies in Fairview's collection activities, billing practices for uninsured patients, and the administration of charity care. In an effort to avoid litigation under the above statutes, Fairview and the Minnesota Attorney General entered into a two-year remedial agreement, which was filed with the Ramsey County District Court ("Attorney General Agreement").

The Attorney General Agreement between Fairview and the Attorney General was reviewed by the Minnesota Hospital Association and, by the end of 2005, all 125 hospitals in Minnesota, had executed similar agreements with the Attorney General relating to their debt collection, charity care, and uninsured billing practices (collectively, "Attorney General Agreements"). The Attorney General Agreements were all for a duration of two years.

In 2007, the Attorney General and all 125 Minnesota hospitals renewed the Attorney General Agreements, this time for a duration of five years. Fairview signed the Attorney

General Agreement in 2007. (Ex. 1.) The Attorney General Agreements were filed in the Ramsey County District Court, with their terms constituting a court order.

In the recitals to the Attorney General Agreement, the hospitals acknowledge their obligations as charitable organizations to meet certain standards of conduct imposed by their charitable mission and that the Attorney General Agreement sets forth appropriate standards for a non-profit hospital. (Ex. 1.) Among other things, the Attorney General Agreements require the hospitals' boards of directors to establish policies regarding and ensure compliance with the following:

1. The boards of directors must monitor the hospitals' debt collection activity and ensure that they abide by the directives of the Attorney General Agreement.

2. The hospitals may not charge an uninsured patient for a particular treatment more than they charge the insurance company that delivers the most revenue to the hospital (and thus receives the steepest discounts).

3. The boards of directors must establish a charity-care program that fulfills the hospitals' charitable mandate by giving patients who lack the ability to pay a reasonable opportunity to receive free or discounted care.

The Attorney General Agreements have been in effect for seven years. They reflect a standard of commercial reasonableness for the collection conduct of a non-profit hospital.

3.2 Fairview Contracts with Accretive Health, Inc., a Licensed Debt Collector, to Manage Its "Revenue Cycle." Accretive Health, Inc. ("Accretive") became licensed with the Minnesota Department of Commerce as a debt collector on January 20, 2011, listing "Medical Financial Solutions" as an assumed name. (*State of Minnesota v. Accretive Health, Inc.*, No. 12-145-RHK-JJK (D. Minn. 2012), First Amended Complaint, ¶ 11.) It became registered as a foreign corporation with the Minnesota Secretary of State in December, 2010. (*Id*.)

Nine months earlier, on March 29, 2010, Accretive entered into a Revenue Cycle Operations Agreement ("RCA") with Fairview. (Ex. 2.) Under the RCA, Fairview provided

Accretive with a copy of the Attorney General Agreement, and Accretive agreed to abide by the Attorney General Agreement in its collection activity. (*Id.*, pp. 2, 14.) The RCA provides that: "Accretive Health shall deliver all Services in accordance with all applicable laws, rules and regulations, *including, but not limited to, [Fairview's] agreement with the Minnesota Attorney General*…." (*Id.*, p. 2, emphasis added.)

3.3 Requirements of the Attorney General Agreement. The Attorney General Agreement requires the hospitals to adhere to numerous collection requirements and to establish detailed collection policies. The Attorney General Agreement makes it clear that the hospital cannot delegate authority or responsibility for its collection activity. Indeed, the Attorney General Agreement requires a ***hospital employee designated by the Board of Directors*** of the hospital—not a collection agency—to administer the collection process. (*See, e.g.*, Ex. 1, ¶¶ 2, 6, 8, 10, 11, 14, 18.) The standards imposed by the Attorney General Agreement include the following:

1. The hospital cannot **collect debt** from a patient unless the applicable insurance company has first been billed and given an opportunity to pay the claim and there is a reasonable basis to believe the patient owes the bill. (Ex. 1, ¶ 17(a) and (b).)

2. The hospital must offer a **reasonable payment plan** to patients who express an inability to pay the full amount in one payment. (*Id.*, ¶ 17(c).)

3. The patient must be given a reasonable opportunity to submit an application for **charity care.** (*Id.*, ¶ 17(d).)

4. The **hospital employees** empowered to carry out the above functions must be so designated by the Board of Directors. (*Id.*, ¶ 18.)

5. A **hospital employee** must authorize any individual garnishment proceeding and make sure that the above steps have been met. (*Id.*, ¶ 10.)

6. The CEO (*id.*, ¶ 15) and board of directors (*id.*, ¶ 38) of the hospital must determine on an **annual basis whether to renew a debt collection agency contract**, and may only do so if the agency has complied with the Attorney General Agreement and the mission of the hospital.

7. Contracts with debt collection agencies must be in **writing** and must require the agency to operate in compliance with the Attorney General Agreement. (*Id.*, ¶ 16.)

8. **Contingency fee arrangements** with collection agencies are permitted only if the hospital has established sufficient controls to monitor the collection agency. (*Id.*, ¶ 21.)

9. The hospital must require its collection agency to **log all complaints** made by patients, and failure to do so may result in termination of the agency's contract. (*Id.*, ¶ 22.)

10. The hospital must require its collection agency to **forward** all patients who object to the collections activity to the hospital and must include a disclosure notice of this right in all of its bills and collection letters. (*Id.*, ¶ 24, 26.)

11. The hospital must **advise patients** of their right to contact the Attorney General if they encounter any problems with billings or the collection agency. (*Id.*, ¶ 26.)

12. The hospital must **train** outside collectors on the principles of the hospital's charity-care policy. (*Id.*, ¶ 25.)

13. Patients may not be reported to a **credit reporting agency** for failure to pay a bill. (*Id.*, ¶ 27.)

14. The collector **must cease collection efforts** if the patient states that: 1) she doesn't owe the bill; 2) a third party payer is obligated to pay the bill, or 3) a patient needs documentation of the bill. (*Id.*, ¶ 30.)

15. The hospital may not refer debt to a collection agency if the patient has made payments in accordance with a payment plan agreed to by the hospital. (*Id.*, ¶ 19.)

16. The hospital must suspend all collection activity if a patient submits a charity-care application until the application has been processed and the patient notified of the decision. (*Id.*, ¶ 20.)

17. The hospital board of directors must adopt a zero tolerance policy for false, deceptive, or misleading collections conduct. (*Id.*, ¶ 37(a).)

3.4 Accretive Incorrectly Summarizes the Attorney General Agreement, and then Ignores Its Own Summary. In April of 2010, Accretive prepared a summary of the Attorney General Agreement. (Ex. 3.) The summary is incomplete and riddled with errors.

Four obvious points required by the Attorney General Agreement, but omitted from the summary, are:

- that a hospital is prohibited from forwarding a patient account to a third-party collector until the applicable insurance policy has provided coverage and paid for its share of the treatment. (*See* Ex. 1, ¶ 17(a) and (b).)
- that if the patient indicates an inability to pay, the hospital must offer a reasonable payment plan. (*Id*., ¶ 17(c).)
- that the patient must be given a reasonable opportunity to submit an application for charity care. (*Id*., ¶ 17(d).)
- that the hospital itself must decide whether to refer an account to a third-party debt collector. (*Id*., ¶ 17.)

Accretive's summary also contains several provisions from the Attorney General Agreement that have nevertheless been ignored by Accretive. For instance, the Attorney General Agreement requires: (1) the collection agency to log all communications made to patients; (2) the collection agency to include a disclosure notice in all patient communications; (3) the hospital to train outside collectors on the principles of the hospital's charity-care policy; (4) the hospital not to report patients to a credit reporting agency for failure to pay a bill; and (5) a collector to cease collection activities if the patient states that she does not owe the bill, that a third-party is obligated to pay the bill or that the patient needs documentation of the bill. (Ex. 3.)

3.5 Medical Financial Solutions Gets Engaged. In July of 2010, Accretive prepared a chart entitled "MFS Overview." (Ex. 4.) "MFS" stands for Medical Financial Solutions, an assumed name for Accretive. The chart contains a variety of collection letters. The letters notify the patient that Fairview believes the patient's bill is past due and that the debt has been assigned to MFS. The letter also states that, if the patient does not contact MFS within 30 days, the collection agency will assume the debt to be valid. The chart includes a variety of scripts in which the collector is told to leave a dunning message on the patient's voicemail.

The chart is problematic in several respects. First, it appears that MFS, not a hospital employee, is determining whether the patient owes a debt. Second, while the MFS letters attached to Exhibit 4 include the federally required "Mini-Miranda" notice (namely, that the letter is an attempt to collect a debt), letters actually utilized by MFS do not contain the "Mini-Miranda" warning. (Ex. 5.) Third, debt collection activity should not be discussed with third parties, something that is likely to occur when a dunning message is left on a voicemail.

The scripts also direct the collector to make the following misstatements:

- "In the long term this account could be passed to an agency that could report to credit bureaus." (The Attorney General Agreement prohibits the reporting of a medical debt to credit bureaus. (Ex. 1, ¶ 27.))

- "[B]y not paying, this account could possibly go to further collection activity." (Ex. 4.) (The debt is already in debt "collection activity" by the time Medical Financial Solutions is involved.)

- The scripts indicate that Medical Financial Solutions will continue to send bills even if there is an insurance claim pending. (Ex. 4.) (The Attorney General Agreement restricts collection activity while an insurance claim is being processed. (Ex. 1, ¶ 17(b).))

- The scripts indicate that if the patient applies for charity care, the collection agency will continue to dun the account. (The Attorney General Agreement restricts collections activity while a charity-care application is being processed.)

Another Accretive chart indicates that MFS will begin calling patients within 17 days after referral (Ex. 6, p. 2), and that, after completion of collection attempts, it will send the patient account to a legal team if the patient's FICO score (a credit score) exceeds 595. (*Id*.) The chart also indicates that MFS will make the determination of the "validation of the debt and review of [the] guarantor's credit information…." (*Id*., p. 4.) The Attorney General Agreement requires a hospital employee appointed by the board of directors—not a collection agency—to make this determination. (Ex. 1, ¶¶ 1, 2, 37.)

On September 2, 2010, Accretive prepared and distributed sample scripts to respond to patient questions. (Ex. 7.) The scripts contain a number of proposed replies for collectors which are in violation of the terms and spirit of the Attorney General Agreement. For instance:

- If the patient says, "I don't have any money on me," the collector is directed to say: "We do accept credit card and checks, if you have your checkbook in your car I will be happy to wait for you…." (*Id*., p. 1.) This statement is often made at a time that the patient is in the emergency room or waiting for treatment.

- If the patient says, "Go ahead and send me to collections," the collector is directed to say: "we do not want our patients to receive letters / calls from [a] collection agency. I hope you understand that once the account is with [a] collection agency that can affect your credit score as well." (*Id*.) The Attorney General Agreement prohibits reporting to a credit bureau.

- If the patient has no insurance, the collector is directed to offer a "cash flat rate" or discount. (*Id*., p. 2.) The script states: "Mrs. Smith, my name is ___ and I'm the Financial Counselor (Admitting Rep) at [Fairview]. As a courtesy, we can offer you a discounted rate of $____ for today's services. We accept cash, check, debit or credit card. How would you like to pay for that?" (*Id*.) The script then indicates: "The discounted rate is only available today and that it is hospital policy that the amount is paid in full prior to receiving services." (*Id*.) This violates the Attorney General Agreement. Uninsured patients are to receive the same discount available to the hospital's "most favored insurer" (*e.g.*, the insurance company that delivers the most revenue to the hospital and therefore has the steepest discounts). The discount rate for uninsured patients under the Attorney General Agreement is not contingent upon same-day payment.

- The script indicates that the offer of a hospital payment arrangement should be the last option, and that a collector should never offer a hospital payment plan unless the patient does not have credit or debit cards. (*Id*., p. 4.) This violates the Attorney General Agreement, which requires the hospital to offer and enter into a reasonable payment plan with patients who indicate an inability to pay the full amount in one payment.

In November of 2010, Accretive modified the chart, including several additional references to the Attorney General Agreement. (Ex. 8.) The chart states that MFS will closely monitor compliance with the Attorney General Agreement. (*Id*., p. 9.) The chart again notes that the MFS legal team will complete the *initial* scoring and debt validation of all accounts for attorney placement. (*Id*., p. 10.) As noted above, the Attorney General Agreement requires that

a hospital employee designated by the hospital's board of directors make the determination as to debt validation and referral of a patient's account to a collections attorney.

3.6 Multiple Violations of the Attorney General Agreement. Five months later, on March 28, 2011, Fairview notified Accretive that the Minnesota Hospital Association had met with the Attorney General, who indicated that there were increased complaints about collection attempts in violation of the Attorney General Agreement. (Ex. 9.) The notice emphasized that:

> "We need to make sure that our processes are following the AG agreement to the letter."

(*Id*.)

Thereafter, on April 5, 2011, Fairview asked the Accretive collectors to execute a form attesting that they read and understood the Attorney General Agreement. (Ex. 10.) The next day, Thomas Merritt, an Accretive manager, doused cold water on the attestation by telling the collectors:

> "Very little of this will drive collector behavior – it's just so we can say we have it."

(Ex. 11.)

Approximately one month later, Fairview prepared a "Partnership Issues Log" that delineated problems with Accretive. (Ex. 12.) The "log" notes the following problems:

- MFS statements do not mention Fairview's financial assistance and payment arrangement programs.
- MFS statements do not include the required contact information for the Attorney General's Office.
- Patients with active payment arrangements with Fairview have received collection calls from MFS threatening to send the patient to bad debt collections.
- Patients with active payment arrangements have erroneously been sent to bad debt collections.
- MFS refuses patients' requests for itemized statements.

- MFS waited three months before sending Fairview a backlog of patient requests for itemized statements.

- MFS referred 6,000 accounts to bad debt collections without ever having sent the patients a letter for collection.

- Another 4,500 accounts were sent to bad debt collections after the patients received only one "welcome" letter.

- MFS sat on 300 payments and did not advise Fairview of the payments, resulting in artificially high statements sent to patients.

- MFS does not send patient disputes and complaints to Fairview and does not maintain a complaint log.

- The Attorney General Agreement is not understood by the MFS staff.

(*Id*.)

3.7 May, 2011 Negative Fairview Audit Report. On May 5, 2011, Fairview issued an audit report of Accretive's compliance with the Attorney General Agreement. (Ex. 13.) The audit indicates that the following issues were identified:

- MFS staff, including the manager, stated that they were not familiar with the Attorney General Agreement.

- MFS staff, including the manager, stated that they were not familiar with Fairview's charity-care policy.

- MFS did not maintain a patient complaint log.

- MFS did not cease collection efforts when insurance claims were pending.

- Patients were referred to bad debt without proper patient identification.

- MFS collection notices did not contain disclosure language required by the Attorney General Agreement.

- MFS did not forward patient complaints to Fairview.

(*Id*.) While the above items were highlighted in the audit report, several other deficiencies were noted in its attached schedule. (*Id*.)

On May 10, 2011, an Accretive employee perhaps best exemplified the attitude of Accretive about the Attorney General Agreement. His response:

> "What is the Attorney General Agreement?"

(Ex. 14.) He followed up this e-mail with another question:

> "Could you please explain what is meant by 'violation of attorney general agreement?' What is/is not happening and how does it affect the client?"

(Ex. 15.)

On the same day, Andrew Crook, the Accretive executive in charge of the Fairview revenue cycle, noted that Fairview was upset about MFS's conduct and that Accretive was at risk of having the contract terminated. (Ex. 16.) He specifically referred to Accretive's violations of the Attorney General Agreement. (*Id*.)

3.8 Fairview Distances Itself from Accretive and MFS. On September 23, 2011, Fairview notified Mr. Crook that MFS continued not to follow the checklist of items required by the Attorney General Agreement. (Ex. 17.)

On September 30, 2011, Fairview warned Mr. Crook that the vendor who undertook collection efforts prior to MFS was terminated for performance issues, and that the problems with MFS were substantially worse. (Ex. 18.) The memorandum notes that MFS failed to comply with the Attorney General Agreement or with the hospital's community (charity) care policies. Fairview again advised Accretive that patients in active payment arrangements continued to improperly receive collection notices and phone calls. (*Id*.)

In November, 2011, Accretive prepared a presentation concerning the complaints by Fairview. (Ex. 19.) It noted the following problems:

- MFS does not respond with appropriate diligence.
- MFS has not been open with complaints, as evidenced by patient lawsuits against MFS for Fairview collection activity that it did not disclose to Fairview.

- MFS placed Fairview at risk for Attorney General-related complaints due to its ignorance of the Attorney General Agreement.
- MFS has contacted patients in active payment arrangements, through calls and letters.
- MFS is unable to find a viable solution to fulfill the requirements of the Attorney General checklist.
- Fairview employees are concerned that they will be investigated for their patient collections activity due to *Star Tribune* articles about debt collection practices.
- Unions representing Fairview employees posted items critical of Accretive.
- Fairview employees are dissatisfied with the degradation in the revenue cycle.
- Theft of the Accretive laptop continues to cause ripples in the Fairview community.
- Matt Doyle (the Accretive employee whose laptop was stolen) should not have had access to patient data.
- The stolen laptop of another Accretive employee (Brandon Webb) was not reported to Fairview.

(*Id*.)

Again, on October 3, 2011, Accretive sent to Mr. Crook a performance chart which noted that:

- MFS continues to call and send letters to patients who have active payment arrangements with Fairview.
- MFS fails to timely notify Fairview of disputes from patients.
- MFS's practices are viewed by Fairview as those of a "bad debt collection agency" and that MFS needs to refine its scripts.

(Ex. 20.)

On October 10, 2011, Mr. Crook was notified of another patient current on a payment arrangement who received a letter from Accretive requesting payment. (Ex. 21.) Fairview noted that "no breach or lapse in the payment arrangement…would create a reason for MFS to generate

a letter to the patient requesting payment." (*Id*.) The same day, Mr. Merritt of Accretive received another notice from Fairview that a patient making regular payments on a payment arrangement had received a collection letter from MFS that the patient found to be "embarrassing, a slap in the face" and that "he did not appreciate the letter in the least." (Ex. 22.)

On October 11, 2011, Accretive received yet another memo from Fairview noting that MFS had demanded payment from a patient even though no payments had been missed on his account. (Ex. 23.) The Fairview staff noted: "I have to call this gentleman back and apologize. No payments have been missed…." (*Id*.)

In late October of 2011, another chart was prepared noting the following Fairview concerns:

- Any deviation from the Attorney General guidelines will result in strict sanctions from the Attorney General.
- MFS continues to call and send letters to patients with active payment arrangements with Fairview.
- Consistent reminders are needed to have MFS notify Fairview of disputes from patients.

(Ex. 24, p. 3.)

On October 24, 2011, an exchange between Fairview and Accretive let it be known that some of the Accretive collection procedures should not be set out in charts because they might be picked up as a violation of the Attorney General Agreement. (Ex. 25.) What is noteworthy about the e-mail is that the issue wasn't whether anyone should follow the Attorney General Agreement; the issue was how to avoid it.

3.9 December, 2011 Audit of Accretive. On December 30, 2011, Fairview issued another audit report concerning Accretive's compliance with the Attorney General Agreement.

(Ex. 26.) The draft states that "[w]e identified potential violations, on the part of MFS, of various regulatory standards including Health Insurance Portability and Accountability Act (HIPAA), Fair Debt Collections Practices Act (FDPA), Payment Card Industry (PCI), and Minnesota State Statutes." (*Id*., p. 2.) The draft stated that the control over the collection process was unsatisfactory, and that Accretive employee dissemination of patient health and credit card information over the internet was conducted in an unsecure manner. (*Id*., p. 3.)

3.10 Termination of Accretive by Fairview. On January 6, 2012, Fairview notified Accretive of the December 31, 2011 audit results, which were "not favorable." (Ex. 27.) On January 10, 2012, Fairview notified Accretive that the audit revealed poor customer satisfaction, inappropriate handling of accounts, potential regulatory violations, and noncompliance with multiple regulatory standards. (Ex. 28.) The notice stated that Fairview was transitioning the business away from Accretive effective January 31, 2012. (*Id*.) On February 23, 2012, Mr. Crook, who was involved in almost all of the substantive correspondence described in this volume, responded to a report about the Attorney General Agreement on February 23, 2012, by saying:

> "Here is the audit from earlier this year – by the way, I wish I had this earlier this year."

(Ex. 29.)

After the Attorney General filed a lawsuit against Accretive on January 19, 2012, the collection office of Accretive, located in Kalamazoo, Michigan, ceased any further collection activity with Fairview. (Ex. 30.) Accretive was in violation of Minnesota debt collection laws for, among other things, engaging in unlicensed activity. Accretive signed a Consent Order in February of 2012 in which it agreed to cease any further collection efforts in Minnesota. (Ex. 31.)

Conclusion. The conduct of Accretive constitutes multiple separate violations of the Attorney General Agreement, whose terms are ordered by a court of law. Accretive engaged in a series of willful and deceptive acts in violation of the terms of the Attorney General Agreement. The cavalier and indifferent actions of Accretive, repeated time and again over a two-year period, show a blatant disregard for the law.

AG: #2991480-v1