

# MEDICAL COLLECTIONS COMPLIANCE

## MARCH 2009 UPDATE

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### FTC 2009 Annual Report on FDCPA

*This article is a summary of the report*  
Worth 2 CEUs



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**It is difficult to believe that debt collectors would violate consumers rights to the extend reported by the FTC in 2008. In our challenging economic times, collectors, including medical collectors, can be frustrated. Adding the stress of meeting in our attempts to meet collection goals of our providers or clients, we could inadvertently behave in a manner which does not flatter the health care industry.**

**In our Certified Medical Collector (CMC) course, we teach students to abide by the FDCPA whether the rule applies to their office or not. The FDCPA is fair and mandates appropriate action be taken by collectors.**

**In upholding a higher standard in health care, AIHC advocates implementation of the FDCPA rule in your office. If you utilize a third-party medical billing company, the rule applies! When you outsource accounts to “collection”, the rule applies. Applying the rule during the in-house collection process is just good business!**

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#### Overview

The Fair Debt Collection Practices Act (FDCPA or “ACT”) is governed by the Federal Trade Commission (FTC). The FTC release an annual report to congress summarizing the administrative and enforcement actions it has taken during the past year regarding the FDCPA.

**The FDCPA prohibits deceptive, unfair, and abusive practices by third-party collectors. *For the most part*, creditors are exempt when they are collecting their own debts.**

**However, AIHC advises health care providers to follow the FDCPA rules regardless.**

The FDCPA permits reasonable collection efforts that promote repayment of legitimate debts, and the Commission's goal is to ensure compliance with the Act without unreasonably impeding the collection process.

Based on the Commission's experience, it is clear that many consumers never file a complaint with any organization other than the debt collector itself. Others complain only to the underlying creditor or to enforcement agencies other than the FTC. Some consumers may not be aware that the conduct they have experienced violates the FDCPA or that the Commission enforces the Act. The total number of consumer complaints the FTC receives therefore may understate the extent to which consumers have concerns about the practices of debt collectors.

Hundreds of thousands of consumers contact the FTC every year about all kinds of consumer protection issues. With respect to debt collection, the Commission receives both consumer inquiries and complaints. The FTC's Consumer Response Center ("CRC") makes every effort to distinguish between these two categories of contacts. The data presented here include only consumer contacts that the CRC has identified as complaints. When this report refers to "complaints," the term refers solely to complaints that consumers have filed directly with the Commission.

In 2008, consumer complaints to the FTC about third-party debt collectors ("FDCPA complaints") increased in absolute terms, but decreased as a percentage of all complaints<sup>7</sup> that consumers filed directly with the Commission.

The FTC received 78,838 FDCPA complaints in 2008. This represents 18.9% of all complaints received directly from consumers in 2008.

FDCPA complaints, representing 20.8% of the complaints received directly from consumers that year. The FTC does not count any identity theft and Do Not Call Registry complaints that may involve debt collection in determining the total number of debt collection complaints.

In 2008, the FTC received 26,598 complaints about in-house collectors, representing 6.4% of all complaints the Commission received.

Combined, complaints about *third-party debt collectors* and *in-house collectors* in 2008 totaled 104,661 complaints and accounted for 25.2% of all complaints the Commission received. This represents an increase in absolute terms from the 2007 figure, and a slight decrease as a percentage of total complaints: in 2007, the agency received 89,934 complaints, accounting for 26.4% of all complaints to the Commission.

## COMPLAINTS BY CATEGORY

In addition to evaluating the total number of complaints about third-party debt collectors, it also is instructive to consider the specific types of debt collection practices about which consumers complain. Because consumers frequently complain about more than one debt collection practice, the CRC historically has assigned many complaints more than one

code. Thus, if one adds together all the complaints for each of the fourteen debt collection codes each year, the total exceeds the number of FDCPA complaints the FTC actually received in that year.

### **DEMANDING A LARGER PAYMENT THAN IS PERMITTED BY LAW:**

This category includes *two different FDCPA law violation codes*.

***First***, the FDCPA prohibits debt collectors from **misrepresenting the character, amount, or legal status of a debt**. The types of complaints that fall in this category include, for example, reports that a collector is attempting to collect either a debt the consumer does not owe at all or a debt larger than what the consumer actually owes. Other complaints in this category state that collectors have sought to collect on debts that have been discharged in bankruptcy. In 2008, there was a decrease in the number and percentage of complaints of this law violation compared to 2007. This was the second most common category of FDCPA complaint in 2008: 32.5%, or 25,644 FDCPA complaints, described this conduct.

In 2007, 38.6% of FDCPA complaints, or 27,434 complaints, reported that collectors engaged in these practices, making this the most common category of FDCPA complaint in that year.

***Second***, the FDCPA prohibits debt collectors from **collecting any amount unless it is “expressly authorized by the agreement creating the debt or permitted by law.”**

In 2008, 7.5% of FDCPA complaints, or 5,942 complaints, asserted that collectors demanded interest, fees, or expenses that were not owed (such as collection fees, late fees, and court costs), significantly up from 2.3% of FDCPA complaints in 2007.

### **HARASSING THE ALLEGED DEBTOR OR OTHERS:**

This complaint category encompasses four distinct law violation codes. Under the FDCPA, **debt collectors may not harass** consumers to try to collect on a debt. In 2008, 34.7% of FDCPA complaints the Commission received, or 27,382 complaints, claimed that *collectors harassed the complainants by calling repeatedly or continuously*.

This was the most frequent law violation about which consumers complained during 2008. These figures are significantly up from 2007, when 19.7% of FDCPA complaints the Commission received, or 14,006 complainants, stated that collectors harassed them by calling repeatedly or continuously. Also in 2008, 10,610 complainants, or 13.5% of FDCPA complaints, claimed that a collector had used obscene, profane, or otherwise abusive language.

Five thousand, four hundred seventy-three complaints (5,473), or 6.9% of 2008 FDCPA complaints, said that *collectors called before 8:00 a.m., after 9:00 p.m., or at other times that the collectors knew or should have known were inconvenient to the* consumer. One

thousand, one hundred eighty-six complaints, or 1.5% of 2008 FDCPA complaints, reported that *collectors used or threatened to use violence if consumers failed to pay*. As proportions of total FDCPA complaints, the complaint levels increased substantially from 2007 for all these categories.

### **THREATENING DIRE CONSEQUENCES IF CONSUMER FAILS TO PAY:**

The FDCPA *bans debt collectors from making threats* as to what might happen unless the collector has the legal authority and the intent to take the threatened action. Among other things, collectors threaten to initiate civil suit or criminal prosecution, garnish wages, seize property, cause job loss, have a consumer jailed, or damage or ruin a consumer's credit rating.

In 2008, 15% of FDCPA complaints, or 11,787 complainants, reported that *third party collectors falsely threatened a lawsuit or some other action that they could not or did not intend to take*, more than double the 6.5% of complaints that reported the same conduct in 2007.

Also in 2008, 8.1% of FDCPA complaints, or 6,404 complaints, alleged that such collectors falsely threatened arrest or seizure of property, which was treble the 2.7% of FDCPA complaints reporting such conduct in 2007.

### **IMPERMISSIBLE CALLS TO CONSUMER'S PLACE OF EMPLOYMENT:**

Under the FDCPA, a *debt collector may not contact a consumer at work if the collector knows or has reason to know that the consumer's employer prohibits such contacts*. By continuing to contact consumers at work under these circumstances, debt collectors may put the consumers in jeopardy of losing their jobs. In 2008, 10.3% of FDCPA complaints, or 8,092 complaints, related to calls to consumers at work, compared with only 5.9% of FDCPA complaints in 2007.

### **REVEALING ALLEGED DEBT TO THIRD PARTIES:**

The FDCPA generally prohibits third party contacts for any purpose other than obtaining information about the consumer's location. Collectors calling to obtain location information also are prohibited from revealing that a consumer allegedly owes a debt.

Improper third-party contacts typically embarrass or intimidate the consumer who allegedly owes the debt and are a continuing aggravation to the third parties. Contacts with consumers' employers and co-workers about consumers' alleged debts also may jeopardize continued employment or prospects for promotion.

**Relationships between third-party contacts:** In some cases, collectors reportedly have used *misrepresentations as well as harassing and abusive tactics* in their communications with third parties, or even have attempted to collect from the third party.

In 2008, 8.8% of all FDCPA complaints, or 6,949 complaints, reported that debt collectors illegally disclosed a purported debt to a third party, up considerably from 3.8% of FDCPA complaints in 2007.

The third parties contacted include employers, relatives, children, neighbors, and friends. This past year, 16.1% of complaints, or 12,695 complainants, claimed that collectors called a third party repeatedly to obtain location information about the complainant, up from 13.2% of FDCPA complaints in 2007.

### **FAILING TO SEND REQUIRED CONSUMER NOTICE:**

The FDCPA requires that debt collectors send consumers a written notice that includes, among other things, *the amount of the debt, the name of the creditor to whom the debt is owed, and a statement that, if within thirty days of receiving the notice the consumer disputes the debt in writing, the collector will obtain verification of the debt and mail it to the consumer.* Many consumers who do not receive the notice are unaware that they must dispute their debts in writing if they wish to obtain verification of the debts. Last year, 15.7% of the FDCPA complaints, or 12,365 complaints, reported that collectors did not provide the required notice, up considerably from 3.1% of all FDCPA complaints in 2007.

### **FAILING TO VERIFY DISPUTED DEBTS:**

The FDCPA also mandates that, if a consumer submits a dispute in writing, the collector must cease collection efforts until it has provided written verification of the debt. Many consumers complained that collectors ignored their written disputes, sent no verification, and continued their collection efforts.

Other consumers reported that some collectors continued to contact them about the debts between the date the consumers submitted their dispute and the date the collectors provided the verification. Last year, 8.0% of all FDCPA complaints, or 6,340 complainants, claimed that collectors failed to verify disputed debts, up from 2.6% of all FDCPA complaints in 2007.

### **CONTINUING TO CONTACT CONSUMER AFTER RECEIVING “CEASE COMMUNICATION”**

**NOTICE:** The FDCPA *requires debt collectors to cease all communications with a consumer about an alleged debt if the consumer communicates in writing* that he or she wants all such communications to stop or that he or she refuses to pay the alleged debt.

This “cease communication” notice does not prevent collectors or creditors from filing suit against the consumer, but it does stop collectors from calling the consumer or sending dunning notices. In 2008, 6.3% of FDCPA complaints, or 4,992 complainants, reported that collectors ignored consumers’ “cease communication” notices and continued their collection attempts, up from 4.9% of total FDCPA complaints in 2007.

## ENFORCEMENT

The FTC's debt collection program has three prongs.

### **The first prong is vigorous law enforcement.**

The FTC's FDCPA enforcement actions begin with investigations of debt collectors identified through complaints and other sources. If an investigation reveals FDCPA violations, the Commission proceeds in one of two ways. Through its own attorneys, the FTC can file suit in federal court seeking preliminary and permanent injunctive relief, restitution for consumers, disgorgement of ill-gotten gains, and other ancillary relief under Section 13(b) of the FTC Act.

Alternatively, the Commission may request that the Department of Justice file suit in federal court on behalf of the FTC, seeking a civil penalty, other monetary relief, and injunctive relief that would prohibit the collector from continuing to violate the Act. The Commission currently is conducting a number of non-public investigations of debt collectors to determine whether they have engaged in violations of the FDCPA or the FTC Act. The agency has also filed and settled a number of public law enforcement actions.

Recently, the Commission surpassed its 2007 record for the largest amount of civil penalties obtained in a single FDCPA case, **obtaining \$2.25 million from a company and its principal**. In addition, between March 2008 and February 2009, the Commission (or the Department of Justice on its behalf) filed two new law enforcement actions alleging FDCPA violations; filed one new law enforcement action alleging Section 5 claims against creditors collecting debts; and announced a settlement in a previously filed case.

In a recent settlement, the Commission obtained the largest amount of civil penalties ever in an FDCPA case. Academy Collection Service, Inc. ("Academy") and its owner, Keith Dickstein, agreed in November 2008 to pay \$2.25 million in civil penalties to settle charges that they violated the FDCPA and Section 5 of the FTC Act.

The complaint alleged that those defendants and two other corporate officer defendants, Albert Bastian and Edward Hurt III, had "formulated, directed, participated in, controlled, or had the authority to control" the following acts by Academy collectors:

- (1) Misleading, threatening, and harassing consumers;
- (2) Depositing postdated checks early;
- (3) Falsely threatening or implying that the company would garnish consumers' wages, seize or attach their property, or initiate lawsuits against the consumers if they failed to pay;
- (4) Making unfair and unauthorized withdrawals from consumers' bank accounts;

- (5) Communicating impermissibly with third parties about consumers' alleged debts; and
- (6) Engaging in harassing or abusive behavior, such as threatening the use of physical violence, using obscene or profane language, and repeatedly or continuously causing the telephone to ring.

In addition to requiring Academy and its owner to pay civil penalties, the consent decree enjoins them from violating the FDCPA in the future and requires them to clearly and conspicuously notify consumers of their rights under the FDCPA. Litigation in this case continues against defendants Bastian and Hurt.

## **CONSUMER AND INDUSTRY EDUCATION**

The Commission's consumer and industry education efforts are the second prong of the FDCPA program. Consumer education informs consumers nationwide of their rights under the FDCPA and the requirements that the Act places on debt collectors.

With this knowledge, consumers can determine whether collectors are violating the FDCPA and exercise their rights under the statute. An informed public that enforces its rights under the FDCPA operates as a powerful mechanism for deterring law violations. Industry education informs collectors on various FDCPA issues. With this knowledge, industry members can take all necessary steps to comply with the Act.

### **TOOL FOR BOTH CONSUMERS AND INDUSTRY:**

The Staff Commentary on the FDCPA is useful in both the consumer and industry education initiatives. The Commentary, issued in 1988, provides the staff's detailed analysis of every section of the Act and gives guidance to consumers, their attorneys, courts, and members of the collection industry.

The Commentary is available on the Commission's FDCPA web page, located at <http://www.ftc.gov/os/statutes/fdcpajump.shtm>. Members of the public accessed the web page 223,032 times in 2008. The number of times this page was accessed averaged approximately 7,000 times per month from January through March, and then increased substantially to approximately 22,000 times per month for the remainder of 2008.

### **TOOLS SPECIFICALLY FOR CONSUMERS:**

The Commission informs consumers about their rights and responsibilities under the FDCPA by means of written materials, one-to-one guidance, and speeches and presentations.

*First*, the FTC provides written materials, including a "Facts for Consumers" brochure entitled "Fair Debt Collection," which explains the FDCPA in plain language. In 2008, the Commission distributed 110,900 paper copies of the brochure to consumers in

response to inquiries to the FTC and through non-profit consumer groups, state consumer protection agencies, Better Business Bureaus, and other sources of consumer assistance. In addition, online users accessed the brochure on the Commission's website 386,647 times in 2008.

**Second**, the Commission provides consumer education through its Consumer Response Center, whose highly trained contact representatives respond to telephone calls and correspondence (in both paper and electronic form) each weekday from consumers. A toll-free number, 1-877-FTC-HELP, makes it very easy for consumers to contact the CRC. As discussed above, a large percentage of consumer contacts with the Commission relate to debt collection. For those consumers who complain about the actions of third party collectors, the CRC contact representatives provide essential information about the FDCPA's self-help remedies, such as the right to obtain written verification of the debt and the right to demand that the collector cease all communications about the debt.

**Third**, the Commission extends the reach of its consumer education initiatives through public speaking engagements to groups across the country. In all types of venues, including local talk shows and consumer fairs, the FTC informs consumers of their rights under the FDCPA and other consumer finance statutes, and responds to a wide range of questions and concerns.

#### **TOOLS SPECIFICALLY FOR THE COLLECTION INDUSTRY:**

The Commission also delivers speeches and participates in panel discussions at industry conferences throughout the year. In addition, the FTC staff maintains an informal communications network with the leading debt collection trade associations and consumer groups, which permits staff members to exchange information and ideas and discuss problems as they arise. The Commission also provides interviews to general media and trade publications. These interviews serve as yet another vehicle to make positions known to the nation's debt collectors.

#### **ADVISORY OPINIONS:**

The Commission, where appropriate, responds to requests for formal advisory opinions regarding the application or interpretation of the FDCPA. In May 2008, the FTC issued an advisory opinion regarding whether debt collectors in the foreclosure context would violate the Act if they communicate with consumers about possible settlement options that may assist consumers to avoid foreclosure. The FTC's advisory opinion concluded that debt collectors do not commit a per se violation of the FDCPA when they provide such information to consumers, provided that the information is truthful and non-misleading.

## **ENFORCEMENT:**

The third prong of the Commission's FDCPA enforcement program is research and policy initiatives. As mentioned above, the FTC has undertaken a comprehensive assessment of the debt collection industry and its legal framework. In connection with a two-day public workshop held in October 2007, the Commission examined important changes in the debt collection industry since the 1977 enactment of the FDCPA (most centrally, those involving the collection marketplace and technological advances), as well as the chief current concerns of consumers and industry. The Commission solicited public comments and research in connection with this endeavor, and carefully reviewed all of the information submitted in connection with the workshop.

These efforts have culminated in the Commission's issuance of a workshop report in conjunction with this report. The workshop report offers recommendations addressing several areas central to the debt collection process: the flow of information in the debt collection system; new technologies; collection litigation and arbitration; and FDCPA rulemaking and enforcement. Such recommendations include specific legislative proposals for the consideration of the Congress, designed to better protect consumers while not overburdening industry. The Commission plans to continue its policy work, in particular by hosting regional roundtables relating to debt collection litigation and arbitration issues over the course of 2009.

## **CONCLUSION**

Through its debt collection program of enforcement, education, and policy initiatives, the Commission encourages collectors who comply with the law to continue to do so, and provides strong incentives.

For those not complying, FTC warns them to conform future practices according to the rule. Vigorous federal and state law enforcement in this area is essential to stop those debt collectors who fail to follow the FDCPA.

FTC "**Fair Debt Collection**" brochure is accessible at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre18.shtm> .

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## **CEU Information**

**For CMC, MCMC or CHA professionals, reading this article, accessing the full FTC report at <http://www.ftc.gov/os/2009/02/P094804fdcpareport.pdf> and adding additional information not provided in the summary above can earn you 2.0 CEUs.**

**Directions: Draft your paper utilizing information above and include information from the full report (not in the summary above) addressing WHY the FDCPA rule should be followed in your medical office. 3 -5 page, 12 font. Submit to CEU**

**department (in subject line) with your name, certification and send to [info@aihc-assn.org](mailto:info@aihc-assn.org) for approval and certificate for CEUs.**