



Cori H. Loomis, Director
Healthcare Practice Group Member
cori.loomis@crowedunlevy.com

Chairs

Karen S. Rieger, Transaction, Director
karen.rieger@crowedunlevy.com

Kevin D. Gordon, Litigation, Director
kevin.gordon@crowedunlevy.com

Members

Sarah B. Edwards, Associate
sarah.edwards@crowedunlevy.com

Jordan K. Field, Associate
jordan.field@crowedunlevy.com

Eric S. Fisher, Director
eric.fisher@crowedunlevy.com

Laura Brookins Fleet, Of Counsel
laura.brookins@crowedunlevy.com

Matthew B. Hickey, Associate
matthew.hickey@crowedunlevy.com

James H. Holloman, Jr., Director
james.holloman@crowedunlevy.com

Alison M. Howard, Director
alison.howard@crowedunlevy.com

Michael S. Laird, Director
michael.laird@crowedunlevy.com

James W. Larimore, Director
james.larimore@crowedunlevy.com

Kenni B. Merritt, Of Counsel
kenni.merritt@crowedunlevy.com

Brooke S. Murphy, Director
brooke.murphy@crowedunlevy.com

Jessica L. Perry, Associate
jessica.perry@crowedunlevy.com

Gary C. Rawlinson, Director
gary.rawlinson@crowedunlevy.com

Telephone Act Changes May Impact Debt Collection Process for Hospitals as of October 16, 2013

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As of October 16, 2013, entities utilizing automated voice systems for telemarketing or debt collection calls to patients' cellular phones must comply with the new "prior express *written* consent" requirement imposed by the Federal Communication Commission (FCC) under the Telecommunication Consumer Protect Act (TCPA). Although hospitals may not make such calls or communications directly, they may contract with other entities to do so on their behalf. Therefore, many hospitals are receiving requests from their contracted debt collection agencies to include language in Admission documents to obtain the consent of the patient to contact them on their cell phones. In order to facilitate the debt collection process, hospitals may want to accommodate the debt collection agency's request.

Background on Issue

The TCPA prohibits any non-emergency calls and text messages to cell phones using automated systems or artificial or pre-recorded voice unless the call or text is "made with the prior express consent of the party[.]" 47 U.S.C. § 227(b) (1). Since 1992, the FCC has interpreted "prior express consent" to mean that "persons who knowingly give their phone number have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary." *In re Rules and Regulations Implementing the TCPA*, 7 FCC Rcd. 8752, 8769 (Oct. 16, 1992). On June 11, 2012, the FCC published a *new* interpretation of "prior express consent" for telemarketing and debt collection calls that will go into effect on October 16, 2013. The FCC's new interpretation requires "prior express *written* consent" in order to avoid violating the TCPA. 47 C.F.R. § 64.1200(f)(8) (*emphasis added*).

Under the new rule, prior express written consent means "an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered." *Id.*

Reason This is Important

There has been a proliferation of civil and class action lawsuits brought against companies alleging violations of the TCPA. The courts currently appear to be split on whether the FCC had the authority to narrowly define "prior express consent" as it has in the 2012 rule. Nevertheless, it would be prudent to include language in Admission documents addressing the "prior express written consent" requirement in the rule change. The following sample language may

[Timila S. Rother](#), Director
timila.rother@crowedunlevy.com

[N. Georgeann Roye](#), Associate
georgeann.roye@crowedunlevy.com

[Elizabeth Ann "Libby" Scott](#), Director
elizabeth.scott@crowedunlevy.com

[Roger A. Stong](#), Director
roger.stong@crowedunlevy.com

aid in complying with the new rule:

- "I hereby consent to receive autodialed and/or pre-recorded debt collection calls from or on behalf of [DEBT COLLECTION AGENCY] at the telephone number provided above. I understand that consent is not a condition of purchase."
- A checkbox indicating whether the telephone is a landline or cellular phone.
- The checkbox and phone number should not be pre-populated.
- The patient's number should appear on the same page as consent.

If you have any questions about the upcoming changes to the TCPA or need assistance updating your Admissions documents, please contact Cori H. Loomis or any other member of Crowe & Dunlevy's Healthcare Practice Group.

Contact:

Cori H. Loomis
405.234.3238
cori.loomis@crowedunlevy.com

About Crowe & Dunlevy

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Oklahoma City
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
405.235.7700

Tulsa
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103
918.592.9800

crowedunlevy.com