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### The Name Game

**Creditors must collect consumer debt in their own names or risk an FDCPA violation.**

When Congress enacted the Fair Debt Collection Practices Act (FDCPA), it intended to exclude creditors from the purview of the Act. Because there is a business relationship between a creditor and its customers, it was thought a creditor would take measures in line with the FDCPA to preserve goodwill with consumers.

Section 803 of the FDCPA both grants and restricts exemption from the Act to "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." In this way, if a creditor creates the appearance that a third party is involved with collection efforts, the exemption is lost and the creditor is subject to all provisions of the FDCPA.

Although not routinely tested in court, this issue recently reached the Seventh Circuit Court of Appeals with *Catencamp v. Cendant Timeshare Resort Group-Consumer Finance Inc.*, No. 06-2030, 2006 WL 3627182 (7<sup>th</sup> Cir. 2006).

In this case, a consumer purchased a timeshare interest that was assigned from the original creditor to the defendant creditor without notifying the consumer. The new creditor sent a letter to the consumer that stated: "[The original creditor] has referred your account to us for collection." The

letter was from the collection division of the finance division of the current creditor; however, the complex relationship was not evident to the consumer.

The court decided the conduct of the creditor was misleading and created the impression of a third party collecting the debt. In its communications with the consumer, the creditor used unfamiliar acronyms and various business names, and stated it was collecting the debt for the original creditor. The relationship between the original creditor and the creditor to whom it was assigned seemed to be deliberately clouded and could mislead an unsophisticated consumer. The court felt the creditor lost its FDCPA exemption and must be treated as a debt collector subject to the provisions of the Act.

This decision serves as a reminder that creditors do not have carte blanche to collect their debts by any means. Instead, creditors must collect consumer debt in their own names without misleading consumers. This decision-coupled with previous guidance-gives creditors sound boundaries in which to operate.

*Credit World*

By American Collector Assoc. Compliance Dept.

### The Twelve "P's" to Luck

Northeast Mississippi's Alumni Class of "Success Skills" was presented the question "How do you make your own Luck?" In response to the question, the Alumni class grouped together to develop the Twelve "P's" to Luck.

**Perspective:** Keep a positive attitude. Feed yourself with positive thoughts. Surround yourself with positive people. Are you a cup half empty or half full person?

**Priorities:** Keep focused, work on the big rocks, and don't sweat the small stuff.

**Preparation:** Find out what it takes to achieve your goal, keep learning to bring new opportunities.

**Participation:** Put yourself out there. You cannot be successful by living in a box.

**Problem-Solving:** Are you part of the problem or part of the solution? Get out of the problem and into the solution.

**Planning:** If you fail to plan then you plan to fail. Planning motivates you to progress. Set a deadline and be open to opportunities along the way.

**Pushing Past:** Don't sabotage yourself. If barriers appear, push past or find a way around. Learn from your mistakes. Remember, a failure is just one way it can't be done, find another.

**People:** You can't do it alone. Communicate with others. Ask for help. You won't know the resources available if you keep to yourself.

**Perseverance:** Celebrate the small steps, keep the end in mind, and never give up.

**Prayer:** Remember your spirit, a spirit not fed is a spirit that dies.

**And remember, "Progress" not "Perfection"!**

*From the Success Skills of North Mississippi Alumni group*

### Medical Debt Sales Hold Both Obstacles and Opportunities for Providers

As the healthcare debt buying marketplace continues to grow, concerns from hospitals continue to surface. Tom Gavinski, who at the time of his presentation was vice president of Patient Financial Services at Allina Hospitals and Clinics in Minneapolis and is now vice president of Healthcare at I.C. System in St. Paul, offered his expertise from a provider's perspective at ACA International's Fall Forum 2006 Conference.

At the session, "Buying Medical Debt: Challenges and Opportunities," Gavinski discussed how the high volume of healthcare debt has fueled interest in the industry today. With the many thousands of dollars of debt on hospital books across the nation, healthcare administrators are starting to realize debt buyers might be willing to purchase, sell and eventually collect that debt.

But while patient debt continues to rise, so do hospital concerns. According to Gavinski, healthcare administrators can be wary to sell due to lack of understanding and comfort.

The key to helping hospitals feel more comfortable with the process is educating them about the purchase and sale agreement, what kind of collection activity will be taking place on the accounts and whether the hospital wants a resale clause included in the purchase agreement.

Loss of control has also been a main concern for Gavinski. Hospitals fear resale by the debt buyer once the account is out of their hands, he said. In addition to the risk of resale, hospitals fear losing their nonprofit status, which is frequently questioned regardless of debt sales.

However, with capital such a big concern for hospitals, it's important to point out they can use debt sales as a way to pay for new equipment and technology.

Hospitals are also looking for socially responsible initiatives. ACA's Healthcare Debt Sales and Collection Services Task Force, which was put into place to create standards for industry conduct, has been working on this issue.

Gavinski said the biggest fear for hospitals is getting unwanted attention in the press. "Hospitals are very vulnerable right now," he said. "They don't want to end up on the front page."

More hospitals will begin to sell their debt as they become savvy about the industry as a whole and their concerns continue to be met. "The two biggest issues are control and public relations," Gavinski said.

*Acainternational.org*

### ACA International Fast Fact

Counting third-party collectors and creditors' in-house collectors together, the accounts receivable management industry employs 456,000 collectors and is expected to add 18 to 26 percent to staffing roles by 2014, according to the Bureau of Labor Statistics.