

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

PHARMACY PROVIDERS OF	)	
OKLAHOMA, INC., an Oklahoma Corporation	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. <u>CIV-22-247-JD</u>
	)	
MEDI BROTHERS, LLC dba	)	
BEST CARE PHARMACY	)	
a Texas Limited Liability Company and	)	
HENRY NGUYEN, an individual.	)	
	)	
Defendants.	)	

**COMPLAINT**

Pharmacy Providers of Oklahoma, Inc. (“PPOk”) for its causes of action against Medi Brothers, LLC dba Best Care Pharmacy (“Best Care”), and Henry Nguyen alleges and states as follows.

PPOk acts as an intermediary between Best Care and Caremark pursuant to an Agreement between Best Care and PPOk. Part of the services PPOk provided included receiving and distributing payments from payors, such as Caremark, to Best Care and other pharmacies. Such payments are called “Central Payments.” In exchange, Best Care agreed that if a payor ever recouped or withheld money from any Central Payments because of Best Care, then Best Care would immediately reimburse PPOk for such recoupment or withholding. Best Care has refused to reimburse PPOk for over \$600,000 that Caremark recouped from Central Payments and thus has breached its agreement with PPOk.

**PARTIES, JURISDICTION AND VENUE**

1. PPOk is a corporation organized under the laws of the State of Oklahoma, with its principal place of business in Edmond, Oklahoma.

2. Best Care is a limited liability company organized under the laws of the State of Texas, with its principal place of business in Houston, Texas and all of its members are residents of Texas.

3. Henry Nguyen is an individual who is a resident of Texas.

4. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

5. As there is complete diversity of citizenship between PPOk and the Defendants, and the requisite amount in controversy, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

6. A substantial part of the events and omissions giving rise to the claims herein occurred in Oklahoma County. Additionally, PPOk and Best Care agreed in the Pharmacy Services Agreement at issue in this litigation that the venue of any legal action arising from this Agreement shall be in Oklahoma County, Oklahoma and agreed that PPOk and Best Care waived any right of venue that either may otherwise have. Therefore, venue is proper in this court under 28 U.S.C. § 1391.

**BACKGROUND AND GENERAL ALLEGATIONS**

7. At all times relevant to this action, PPOk administered a network of independent pharmacies.

8. Best Care is a pharmacy which provides pharmacy services in Texas.

9. Upon information and belief, Henry Nguyen is the sole member of Best Care.

10. Effective June 1, 2019, PPOk and Best Care entered into a Pharmacy Services Agreement, including all Addendum to that agreement (the “Network Agreement”) whereby Best Care agreed to comply with PPOk’s network participation standards and requirements for being a member of the network administered by PPOk. A true and correct copy of the Network Agreement is appended as Exhibit A.

11. Under the Network Agreement and payor agreements, PPOk receives a weekly lump sum payment from payors that includes all amounts owed by the payors to all providers participating in PPOk’s network (such payments hereinafter “Central Payments”).

12. Caremark is a Pharmacy Benefit Manager and is one of the payors that made payments to PPOk via Central Payments for amounts due to providers participating in PPOk’s network, including Best Care.

13. Section 2.1 of the Addendum A to the Network Agreement provides that if a payor, such as Caremark, withholds a payment due to Best Care, advises PPOk of its intent to withhold or recoup payments previously made through the Central Pay Process, or PPOk determines, at its sole discretion, that such withholding or recoupment may occur, PPOk may (a) withhold funds owed to Best Care, (b) debit Best Care’s bank account for the negative amount due from Best Care, or (c) invoice Best Care for the amount owed, and the sum on such invoice will be due and payable within five business days following the date of PPOk’s invoice.

14. Section 3.2 of Addendum A of the Network Agreement provides that if Caremark or another payor withholds, or there is apparent risk of Caremark withholding all or any portion of a Central Payment amount due to Best Care, resulting in a negative balance due, Best Care must immediately make funds available in its bank account designated for Central Payment Services and must allow PPOk to recoup all monies due from Best Care by electronic funds transfer.

15. Thus, under the Network Agreement, Best Care is required to reimburse PPOk if Caremark or any other payor recoups or withholds any amount from payments owed to PPOk due to Best Care, regardless of whether Best Care disputes the action of Caremark.

16. Best Care may dispute Caremark's audit and other findings pursuant to Caremark's appeal procedures.

17. However, any such appeal is between Caremark and Best Care, it does not affect Best Care's unconditional obligation to immediately reimburse PPOk for money recouped or withheld by payors such as Caremark.

18. Moreover, upon information and belief, Best Care has exhausted all appeals with Caremark and has not filed any arbitration seeking to overturn Caremark's findings.

19. Under Section 3.3 of Addendum A to the Network Agreement, Best Care agreed to comply with the terms of Payor Plans and Provider Manuals, which would include Caremark's Plans and Provider Manuals. Further Best Care agreed that amounts payable to Best Care for pharmacy services may be forfeited or withheld to the extent such services are not in accordance with the terms of said Payor Agreements and Provider Manuals.

20. Section 6.1 of the Network Agreement provides that Best Care agrees to indemnify, defend, and hold PPOk harmless from and against any and all claims, liabilities, losses, damages, causes of action or injuries, together with costs and expenses, including reasonable attorneys' fees, arising out of or resulting from Best Care's failure to comply with the obligations set forth in the Network Agreement.

#### **CAREMARK'S AUDIT OF BEST CARE**

21. On June 2, 2021, Caremark recouped \$531,143.53 from Central Payments due to an audit of claims it had paid to Best Care.

22. Caremark states the audit determined that Best Care had routinely failed to collect co-pays for high-cost medications dispensed to Caremark's members, which was a violation of Caremark's Plan and Provider Manual, and thus Best Care had been overpaid for the claims where it waived co-pays.

23. Routinely waiving co-pays is a form of insurance fraud.

24. On December 9, 2021, Best Care sent a letter to Caremark stating it accepted the audit finding that it had waived co-pays.

25. In the same letter, Best Care asserted that the overpayment and administrative fees recouped by Caremark alleged was approximately \$320,000 too much.

26. Thus, Best Care admits it owes PPOk at least \$202,000.

27. In addition to the amounts recouped based on Best Care waiving co-pays, approximately \$85,370.10 was withheld from payments to PPOk due to Best Care's failure to satisfactorily meet requirements under Caremark's contract provisions regarding Direct and Indirect Remuneration, reversed claims, and other recoupments by Caremark.

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