

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JAMES F. SMITH and JOHN E. SMITH, as Co-Executors and on behalf of the **ESTATE OF DONALD E. SMITH** and all others similarly-situated,

PLAINTIFFS,

v.

CAMDEN-CLARK MEMORIAL HOSPITAL CORPORATION, and **RECORDS IMAGING & STORAGE, INC.**,

DEFENDANTS.

CIVIL ACTION NO.: _____

JUDGE: _____

CLASS ACTION COMPLAINT

Plaintiffs James F. Smith and John E. Smith, as Co-Executors of the Estate of Donald E. Smith and on behalf of all others similarly-situated, bring this class action complaint, pursuant to West Virginia Rule of Civil Procedure 23, against Defendants Camden-Clark Memorial Hospital Corporation and Records Imaging & Storage, Inc., and hereby aver as follows:

1. Plaintiff James F. Smith is a resident of Wood County, West Virginia.
2. Plaintiff John E. Smith is a resident of Mineral County, West Virginia.
3. Plaintiffs serve as the Co-Executors of their father's estate, the Estate of Donald E. Smith. Hereinafter, Plaintiffs James F. Smith and John E. Smith shall be referred to either as "Plaintiffs" or "Class Representatives."
4. Camden-Clark Memorial Hospital Corporation is a West Virginia corporation with its principle place of business in Wood County, West Virginia ("Camden-Clark"). Camden-Clark is also known by its registered trade name as Camden Clark Medical



BORDAS
AND
BORDAS

ATTORNEYS, PLLC

1358 National Road
Wheeling, WV 26003
t 304-242-8410
f 304-242-3936

106 East Main Street
St. Clairsville, OH 43950
t 740-695-8141
f 740-695-6999

bordaslaw.com

Center. For purposes of this lawsuit, "Camden-Clark" includes both Camden-Clark's Memorial Campus and St. Joseph's campus, which operated independently of Camden-Clark Memorial Hospital Corporation, Inc. under the trade name St. Joseph's Hospital as part of St. Joseph's Healthcare System, Limited Partnership, until it was merged into the operations of Camden-Clark in 2011.

5. Upon information and belief, Camden-Clark, or its affiliates, assumed all of the debts and liabilities of St. Joseph's Healthcare System, Limited Partnership at the time of the merger.

6. Records Imaging & Storage, Inc. is a West Virginia corporation, with its principle place of business in Wood County, West Virginia.

7. Jurisdiction and venue are appropriate in this court.

CLASS REPRESENTATION ALLEGATIONS

8. Plaintiffs hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 7 of Plaintiffs' Class Action Complaint.

9. Pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, Plaintiffs bring this claim on behalf of the Estate of Donald E. Smith and on behalf of all persons who: (1) requested copies of medical records from Camden-Clark at any time during the five (5) years preceding the filing of this lawsuit and (2) paid the fees charged by Defendants to obtain medical records.

10. This Class consists of: former patients or patient representatives who requested copies of medical records from Defendant Camden-Clark at any time during the five

(5) years preceding the filing of this lawsuit and paid the fees charged by Defendants to obtain their medical records.

11. Plaintiffs allege, upon information and belief, that the number of class members is so numerous that joinder of all of them is impractical. Plaintiffs' beliefs are based on the fact that: (1) according to U.S. News & World Reports¹, more than 15,000 patients are admitted to Camden-Clark annually and (2) upon information and belief, that each time a patient of Defendant Camden-Clark requests copies of his/her medical records either directly or through a representative, he/she is overcharged for his/her medical records in violation of West Virginia law and public policy.

12. The members of this Class will be easily ascertained from the records of the Defendants when discovery commences herein.

13. Class Representatives' claims raise questions of law and fact that are common to claims of each member of the Class. Specifically, the central issue raised by this action is whether the Defendants overcharged for the production of medical records in violation of W. Va. Code § 16-29-1 et seq., the public policy of this state, and an implied contract to produce these documents for a reasonable fee.

14. The claims of the Class Representatives are typical of the claims of each member of the Class. The Class Representatives' claims are based upon violations of W. Va. Code § 16-29-1 et seq., West Virginia public policy, and an implied contract to produce these documents for a reasonable fee. All purported members of the class make the same allegations.

15. The common issues involved in this lawsuit predominate over any separate issues that may exist among individual plaintiffs.

¹ See <http://health.usnews.com/best-hospitals/area/wv/camden-clark-memorial-hospital-6350600/details>

16. The Class Representatives are West Virginia residents who will fairly and adequately protect and represent the interest of each member of the Class. Additionally, the Class Representatives are fully cognizant of their responsibilities as Class Representatives, and have retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

17. The questions of law or fact common to Class Representatives' claims and the claims of each member of the Class predominate over any question of law or fact affecting only individual members of the Class. Additionally, the amount in controversy for each Class member's claim would make individual lawsuits economically unfeasible, if not impossible. Class representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I – VIOLATION OF STATUTE

18. Plaintiffs hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 17 of Plaintiffs' Complaint.

19. West Virginia Code § 16-29-1 mandates that health care providers, including Defendant Camden-Clark, and its delegatee, Records Imaging & Storage, Inc., furnish a copy of a patient's medical records when requested by the patient, his/her authorized agent, or his/her authorized representative.

20. West Virginia Code § 16-29-2 sets forth the maximum reimbursement that may be charged to a patient, a patient's authorized agent, or a patient's authorized representative.

21. The relevant subsection for purposes of this lawsuit is West Virginia Code § 16-29-2(a), which states as follows:

(a) The provider shall be reimbursed by the person requesting in writing a copy of the records at the time of delivery for all reasonable expenses incurred in complying with this article: Provided, That the cost may not exceed seventy-five cents per page for the copying of any record or records which have not already been reduced to written form and a search fee may not exceed ten dollars.

(Emphasis added). The statute only allows Defendants to charge the reasonable expenses incurred in producing each patient's medical records.

22. Plaintiffs' father, Donald E. Smith, was a patient of Defendant Camden-Clark in 2011 and 2012, where he died on January 11, 2012.

23. In July of 2012 and September of 2013, Plaintiffs, as Co-Executors of the Estate of Donald E. Smith, by and through their attorneys, requested medical records maintained by Defendant related to the care and treatment provided to their father prior to his death.

24. Upon information and belief, Defendant Camden-Clark has contracted with Defendant Records Imaging & Storage, Inc. to produce patient medical records when they are requested pursuant to West Virginia Code § 16-29-1 et seq.

25. Regardless of whether the health care provider, in this case Defendant Camden-Clark decides to subcontract with a third-party to produce a patient's medical records upon request, the reimbursement limitations set forth in West Virginia Code § 16-29-2(a) are still applicable to the health care provider and its third-party delegatee to produce the patient's medical records.

26. With regard to Plaintiffs' request for medical records in July of 2012, Defendant Records Imaging & Storage, Inc. responded via an invoice dated July 9, 2012,

stating that payment of \$793.41 was due as a result of Defendants providing copies of Mr. Smith's medical records.

27. Defendants demanded \$0.75 / page to produce Mr. Smith's medical records, plus a \$10.00 search fee. Because Mr. Smith's medical records contained 964 pages, Defendants charged a total of \$793.41 for Plaintiffs to obtain copies of their father's medical records, including the \$10.00 search fee and \$723.00 for the per page reproduction cost.

28. With regard to Plaintiff's second request for medical records in September of 2013, Defendant Records Imaging & Storage, Inc., responded via an invoice dated September 17, 2013, stating that payment of \$961.16 was due as a result of Defendants providing copies of Mr. Smith's medical records.

29. Defendants demanded \$0.75 / page to produce Mr. Smith's medical records, plus a \$10.00 search fee. Because Mr. Smith's medical records contained 1,189 pages, Defendants charged a total of \$961.16 for Plaintiffs to obtain copies of their father's medical records, including the \$10.00 search fee and \$891.75 for the per page reproduction cost.

30. Defendants violated W. Va. Code § 16-29-1 et seq. by demanding \$0.75 / page of medical records plus the \$10.00 search fee.

31. Upon information and belief, Defendants are able to produce patient medical records via electronic format for a more reasonable cost than the cost of producing paper records.

32. Upon information and belief, the \$0.75 / page charged by Defendants is not related to the actual "expenses incurred" by Defendants in producing copies of its patients' medical records.

33. Upon information and belief, other similarly-situated individuals who requested copies of their medical records from Defendants during the five years preceding this lawsuit, were \$0.75 / page, plus a \$10.00 search fee, to obtain copies of their medical records from the Defendants which did not represent “the reasonable expenses incurred” in compliance with W. Va. Code § 16-29-1 et seq.

34. Defendants violated W. Va. Code § 16-29-1 et seq. by sending an invoice for charges exceeding the amount permitted under W. Va. Code § 16-29-2.

35. Defendants unlawfully benefited by charging more money for the Plaintiffs’ medical records than they were entitled to receive pursuant to W. Va. Code § 16-29-1 et seq.

36. As a direct and proximate result of the unlawful conduct of the Defendants, Camden-Clark, and its delegatee, Records Imaging & Storage, Inc., the named Plaintiffs, as well as all other similarly-situated individuals who requested copies of their medical records from Defendants during the five (5) years preceding this lawsuit, suffered damages by being forced to pay more than the amount permitted by statute to obtain their medical records.

**COUNT II – FRAUD & VIOLATION OF WEST VIRGINIA CONSUMER CREDIT
PROTECTION ACT**

37. Plaintiffs hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 36 of Plaintiffs’ Complaint.

38. To the extent that Defendants Camden-Clark, and its delegatee, Records Imaging & Storage, Inc., engaged in such scheme and artifice to misrepresent to Plaintiffs, and all other similarly-situated individuals, of the availability of a more reasonable cost of receiving

their medical records, or by producing the medical records in electronic format while charging an excessive fee, such acts and omissions violated West Virginia law.

39. By producing paper copies, and charging Plaintiffs, and all others similarly-situated, at a “per page” rate, when electronic copies were able to be provided at a more reasonable cost, Defendants Camden-Clark, and its delegatee, Records Imaging & Storage, Inc., committed fraud.

40. Defendants concealed, suppressed, and omitted material facts to the Plaintiffs, and all others similarly-situated, with the intent that the Plaintiffs, and all others similarly-situated, would rely upon the same in connection with the sale of goods and services, which conduct is prohibited by the West Virginia Consumer Credit Protection Act.

41. The conduct and acts of the Defendants, Camden-Clark, and its delegatee, Records Imaging & Storage, Inc. violated the common law, West Virginia Statutory law, including, but not limited to, W. Va. Code §16-29-2, and West Virginia §46A-6-101 *et seq.*

42. As a direct and proximate result of the unlawful conduct of the Defendants, Camden-Clark, and its delegatee, Records Imaging & Storage, Inc., the named Plaintiffs, as well as all other similarly-situated individuals who requested copies of their medical records from Defendants during the five (5) years preceding this lawsuit, suffered damages by being forced to pay more than the amount permitted by statute to obtain their medical records.

COUNT III – VIOLATION OF PUBLIC POLICY

43. Plaintiffs hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 42 of Plaintiffs’ Complaint.

44. It is the public policy of this State that residents of West Virginia should have access to their own medical records.

45. This public policy furthers the public good by allowing and encouraging residents of West Virginia to participate in their own medical care and by creating a methodology whereby healthcare providers or others may be held accountable for potential wrongdoing.

46. Defendants violated the public policy of this State by overcharging Plaintiffs to obtain copies of their deceased father's medical records.

47. Upon information and belief, Defendants violated the public policy of this State by overcharging other similarly-situated individuals who requested copies of their medical records from Defendants during the five (5) years preceding this lawsuit, to obtain copies of their medical records.

48. Each of the Class plaintiffs involved in this lawsuit suffered damages as a result of Defendants' violations of the public policy of this state in overcharging them to obtain copies of their medical records.

COUNT IV – BREACH OF IMPLIED CONTRACT

49. Plaintiffs hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 48 of Plaintiffs' Complaint.

50. Plaintiffs' father, Donald E. Smith, sought medical care from Defendant Camden-Clark. In doing so, he entered into an implied contract wherein Camden-Clark would document the care provided to him in his medical records, and would provide copies of those records to him, or his representatives, upon request for a reasonable fee.

51. Upon information and belief, all members of the Class involved in this lawsuit sought medical care from Defendant Camden-Clark. In doing so, each one entered into an implied contract wherein Defendant would document the care provided to them in their medical records, and would provide copies of those records to them, or their representatives, for a reasonable fee.

52. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, allege that Defendants breached the terms of an implied contract by refusing to produce copies of requested medical records for a reasonable fee.

53. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, allege that Defendants charging \$0.75 / page was not a reasonable fee.

54. Defendants breached the implied contract it had with Plaintiffs' deceased father and all members of the proposed Class by charging more than a reasonable fee to obtain copies of their medical records.

55. Plaintiffs and all members of the proposed Class involved in this lawsuit suffered damages as a result of Defendants' breaches of the implied contract to document the care provided and contained in the requested medical records and to provide copies of those records to its patients upon request for a reasonable fee.

COUNT V – DECLARATORY JUDGMENT

56. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, hereby adopt verbatim as if set forth herein each of the allegations and averments set forth in Paragraphs 1 through 55 of Plaintiffs' Complaint.

57. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, bring this action pursuant to West Virginia Code § 55-13-1 et seq., known as the West Virginia Uniform Declaratory Judgment Act.

58. The parties hereto are appropriate parties to maintain a declaratory judgment action pursuant to W. Va. Code § 55-13-2.

59. The West Virginia Uniform Declaratory Judgment Act is remedial in nature and should be liberally construed to achieve its benevolent goals. W. Va. Code § 55-13-12.

60. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, ask the Court to declare that West Virginia Code § 16-29-1 et seq. limits the amounts that Defendants can charge patients, or patient's representatives, for copies of medical records to the reasonable expenses actually incurred in producing the records, plus a \$10.00 search fee.

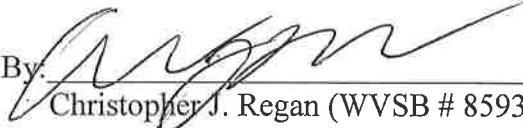
61. Plaintiffs, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, ask the Court to declare that Defendants are precluded from charging patients additional money it may cost to locate records, based upon where and how the Defendants choose to store patients' records, beyond the \$10.00 search fee authorized by statute.

WHEREFORE, Plaintiffs James F. Smith and John E. Smith, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, demand judgment in an amount sufficient to fully compensate them and all members of the proposed Class for all damages they have suffered as a result of the Defendants' violations of statute, breaches of contract, violations of public policy, or other wrongful and/or illegal

conduct. Plaintiffs James F. Smith and John E. Smith, as co-executors and on behalf of the Estate of Donald E. Smith and all members of the proposed Class herein, further seek pre-judgment and post-judgment interest, costs, and attorney fees associated with the filing and prosecution of this suit as permitted by statute and the common law.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

JAMES F. SMITH and JOHN E. SMITH,
as Co-Executors and on behalf of the
ESTATE OF DONALD E. SMITH and all
others similarly-situated, Plaintiffs

By: 
Christopher J. Regan (WVSB # 8593)
BORDAS & BORDAS PLLC
1358 National Road
Wheeling, WV 26003
(304) 242-8401

and

David E. Goddard (WVSB #8090)
Edmund L. Wagoner (WVSB #10605)
GODDARD & WAGONER
333 East Main Street
Clarksburg, WV 26301
(304) 933-1411
Counsel for Plaintiff

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

In the Circuit Court, Wood County, West Virginia

I. CASE STYLE:

Plaintiffs

Case # _____

James F. Smith and John E. Smith, as
Co-Executors and on behalf of the Estate
of Donald E. Smith and all others
similarly-situated

Judge _____

vs.

Defendants

Days to
Answer

Type of Service

Camden Clark Memorial Hospital
Corporation

C/O Michael A. King
800 Garfield Ave.

Parkersburg, WV 26101

30

Secretary of State

Records Imaging & Storage, Inc.

C/O Mr. Edward K. Curry

12 Meadowcrest Drive

Parkersburg, WV 26101

30

Secretary of State

Original and 5 copies of Complaint furnished herewith.

PLAINTIFF: James F. Smith and John E. Smith, as Co-Executors and on behalf of the Estate of Donald E. Smith and all others similarly-situated

CASE NUMBER:

DEFENDANT: Camden Clark Memorial Hospital Corporation and Records Imaging & Storage, Inc.

II. TYPE OF CASE:

<u>TORTS</u>	<u>OTHER CIVIL CASES</u>	
☐ Asbestos	☐ Adoption	☐ Appeal from Magistrate Court
☐ Professional Malpractice	☐ Contract	☐ Petition for Modification of Magistrate Sentence
☐ Personal Injury	☐ Real Property	☐ Appeal of Administrative Agency
☐ Product Liability	☐ Mental Health	☐ Miscellaneous Civil
☐ Auto	☒ Other	

III. JURY DEMAND ☒ YES ☐ NO

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR) 03/2015

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMODATIONS DUE TO DISABILITY OR AGE? ☐ YES ☒ NO

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the haring impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other _____

Attorney Name: **Christopher J. Regan**

Representing:

Firm: Bordas & Bordas, PLLC

☒ Plaintiff ☐ Defendant

Address: 1358 National Road
Wheeling, WV 26003

☐ Cross-Complainant ☐ Cross-Defendant

Telephone: 304-242-8410

Dated: March 21, 2014


Signature