

case 1-429-047
April 26, 2010

Joe Stoddard Medical Marketing and Personal Privacy

Joe Stoddard was a certified public accountant. He was in good health. He was an avid runner, exercised regularly, and went for regular health testing. His company offered a comprehensive health plan through Amalgamated Medical Services, and he spent extra premiums for full health coverage for himself and his wife and two children. He considered himself to be conscientious and responsible about health matters.

One day, he received a letter addressed generically to “Amalgamated Medical Services Member.” The letter (see **Exhibit 1**) was an invitation to learn more about Amalgamated’s “support and information about cardiac conditions.” As he read further, he became more alarmed at what he saw as an invasion of his privacy. The letter explained that “Your Care Specialist will build a personalized care plan for your special circumstances so that you can better understand your condition.” The words *your condition* leaped off the page at him. This was not a generic letter, he realized. Amalgamated Medical Services had targeted him specifically. “It was news to me that I even had a ‘condition,’” he ranted to his wife. “The only condition I have is to be quite concerned about why I was being targeted by my health plan.”

Joe was furious. He pieced together a plausible chronology. About eight months earlier he had requested a stress test as a precaution for a new workout program. He had begun to ramp up his running regimen toward the goal of running in the Boston Marathon — a lifelong dream of his. A prior employer had required that all employees take such tests regularly, so he felt it was a good idea to continue this practice. When taking the test, he had signed a standard release form, which he thought gave permission to the doctor to release information to the health plan, but only for the purposes of obtaining reimbursement for the medical services provided. Then again, he admitted, he had never read all the fine print in the release form. He guessed that the test had been used as the basis for the marketing of this “service,” although he was having trouble calling it such.

He started making phone calls to the health plan management company, to the firm to which the health plan had outsourced certain services, and to his employer. First, he obtained a copy of the release form he signed at the doctor’s office. It read: