

**IN THE COURT OF COMMON PLEAS OF  
WESTMORELAND COUNTY, PENNSYLVANIA**

**CIVIL ACTION**

<p>MONICA GALLEY-KELLER and COLLEEN ZUFALL, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>v.</p> <p>EXCELA HEALTH,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p><b>Case No.</b></p> <p><b>COMPLAINT – CLASS ACTION</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
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Plaintiffs Monica Galley-Keller and Colleen Zufall (collectively “Plaintiffs”), individually and on behalf of a class of all others similarly situated (the “Class”), bring this Class Action Complaint and alleges the following against defendant Excela Health (“Excela” or “Defendant”), based upon personal knowledge with respect to Plaintiffs and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters.

**Introduction**

1. Excela operates a website for its various medical facilities through which Excela patients search for physicians, specialists, medical information, medical services, pay for medical services, and more. Patients communicate their medical information via the site, including private and confidential information regarding their medical conditions and treatment.

2. Unbeknownst to patients, while using these online services, Excela Health was surreptitiously sharing with Facebook, Meta Platforms, Inc.’s social media application, private health information (“PHI”) and individually identifiable health information (“IIHI”) without their consent, including but not limited to:

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- a. The types of medical treatment patients are seeking;
- b. The name, gender, and specialty of the physician(s) with whom patients are seeking treatment;
- c. The locations where patients are seeking treatment; and
- d. When a patient clicks to make a telephone call to schedule an appointment with a particular doctor through the site.

3. Both Pennsylvania and federal law protect the confidentiality of a patient's private health records and communications, and strictly limit the disclosure of such information without consent. 18 Pa. Cons. Stat. Ann. § 5701 *et seq.*, Pennsylvania Wiretapping and Electronic Surveillance Control Act ("WESCA"); Health Information Portability and Accountability Act ("HIPAA"), Pub. L. No. 104-191 (1996). Regulations promulgated under HIPAA define IIHI as health information that can be linked to a specific person and PHI as IIHI that is transmitted by or maintained in electronic media as well as any other form or medium. *See* 45 CFR 46.160.103.

4. Excela deployed a Facebook analytics tool called "Meta Pixel" throughout its medical website. Meta Pixel is invisible programming code that tracks users' actions as they navigate through the medical website.

5. Meta Pixel enabled Excela to simultaneously share with Facebook the contents of patient communications exchanged with Excela, thereby disclosing the patients' PHI and IIHI.

6. Excela did not obtain patients' consent to share their PHI and IIHI and in fact does not disclose to its patients that it shared this information with Facebook.

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7. Facebook received and stored the contents of patient communications with Excela as they occurred in real time, possibly before the full response from Excela even appeared on the patient's computing device.

8. This contemporaneous sharing of patients' PHI and IIHI violated Plaintiffs' and Class Members' rights as patients and their reasonable expectations of privacy. It also breached the express and implied promises Excela made to patients.

9. Excela's surreptitious sharing of this information with Facebook violated WESCA, 18 Pa. Cons. Stat. Ann. § 5701 *et seq.*, as well as Plaintiffs' and Class Members' right to privacy.

10. Plaintiffs Monica Galley-Keller and Colleen Zufall seek statutory damages on their own behalf and that of a class of similarly situated Pennsylvania residents to remedy Excela's violations of law.

#### Parties

11. Plaintiff Monica Galley-Keller resides in Greensburg, Pennsylvania, and was an Excela patient during the relevant period.

12. Plaintiff Colleen Zufall resides in Scottsdale, Pennsylvania, and was an Excela patient during the relevant period.

13. Excela is a Pennsylvania non-profit corporation with its principal place of business in Greensburg, Pennsylvania.

#### Jurisdiction and Venue

14. This Court has jurisdiction over this action as Defendant operates its medical facilities in Westmoreland County.

15. This Court has personal jurisdiction over Excela pursuant to 42 Pa. C.S. §§ 931 and 5301. Excela is a Pennsylvania non-profit corporation, maintains its principal place of business in Westmoreland County, and conducts substantial business in Westmoreland County.

16. Venue is proper in this Court pursuant to Pa. R. C. P. 1006 and 2179(a) because a substantial part of the events, acts, and omissions giving rise to Plaintiffs' claims occurred in, was directed to, and/or emanated from Westmoreland County, Excela is based in Westmoreland County, Excela maintains patients' PHI in Westmoreland County, and has caused harm to Plaintiffs and Class Members residing in Westmoreland County.

**Factual Allegations**

17. Excela Health was established in 2004 via the merger of three hospitals: Frick Hospital in Mount Pleasant, Latrobe Hospital in Latrobe, and Westmoreland Hospital in Greensburg.<sup>1</sup> Excela now claims to serve 700,000 outpatients and employ over 4,300 employees.<sup>2</sup>

18. At all relevant times prior to March 22, 2023, when patients used the Excela website as described above (*see supra* ¶ 2), the website disclosed their IIHI, their PHI, and their Facebook ID ("FID") to Facebook.<sup>3</sup>

19. An FID uniquely identifies an individual's Facebook user account. Anyone who possesses an FID can use it to quickly and easily locate, access, and view its corresponding

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<sup>1</sup> See About Us – Excela Health (available at <https://www.excelahealth.org/about-us/>) (last visited March 6, 2023).

<sup>2</sup> See J. Walzak, Butler Health System and Excela Health finalize merger, *The Leader-Vindicator*, Jan. 5, 2023.

<sup>3</sup> Plaintiffs' investigation of Excela commenced prior to March 22, 2023. All the events described herein occurred during that period. At some point on or after March 22, 2023, Excela evidently removed the Meta Pixel code from its website.

Facebook profile. Simply put, anyone who knows how to use Facebook can access and use the information that Excelsa Health was improperly disclosing to identify a patient as a Facebook user and access his or her confidential medical information.

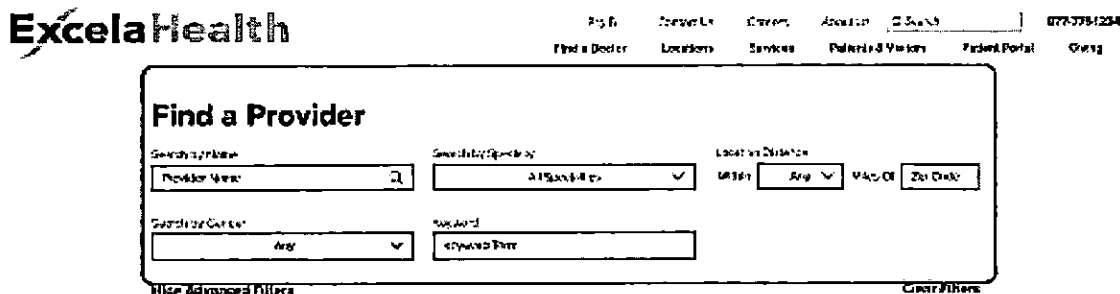
20. Excelsa sent this patient information to Facebook using a Facebook analytics tool called "Meta Pixel," which allows website owners such as Excelsa to track visitors' actions on their website and measure the effectiveness of advertising. Website owners can obtain these services from Facebook by adding Meta Pixel's source code to their websites. Once Meta Pixel is deployed in a website's source code, it redirects to Facebook information regarding certain actions taken by each user of the website, along with their FIDs. By using Meta Pixel, Excelsa was sharing with Facebook its patients' online activity relating to their private medical treatment, along with patient FID's, even though patients did not share or consent to share that information.

21. The following is an example of how patients typically use the Excelsa website, and how the website shared their information with Facebook. Upon accessing the website's home page, patients frequently select "Find a Doctor," as shown below.





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22. After selecting “Find a Doctor,” patients are directed to the “Find a Doctor” page, where they can search for a doctor by name, specialty, zip code, gender, and/or keyword, as shown below.

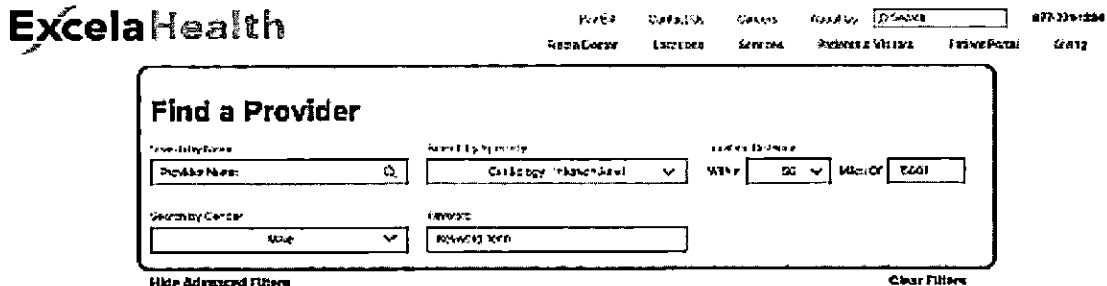


All Providers


 **Ryan K. Abaglen, MD**  
 General Surgery  
 General Surgery  
 30, Parkway, PA  
 ★★★★★ 4.9 (based on 100 reviews)  
 724-225-1122  
[View Profile](#)


 **Cathleen A. Adams, DO**  
 Neurology  
 Neurology  
 30, Parkway, PA  
 724-225-1122  
[View Profile](#)

23. After selecting their search options, patients are directed to the search results page, from which they may select a doctor, as shown below.



All Providers

 **Steven C. Baker, DO, FACC, FSCAI**  
 Cardiology - Interventional  
 Cardiology - Interventional  
 30, Parkway, PA  
 ★★★★★ 4.9 (based on 100 reviews)  
 724-225-1122  
[View Profile](#)

 **Jamn J. Chafin, MD, FACC, FSCAI**  
 Cardiology - Interventional  
 Cardiology - Interventional  
 30, Parkway, PA  
 ★★★★★ 4.9 (based on 100 reviews)  
 724-225-1122  
[View Profile](#)

 **Vinod S. Kudug, MD**

 **Ragoor K. Reddy, MD**

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24. After patients select a doctor, all this information was automatically sent directly to Facebook. As shown in the images below, Excelsa's website transmitted to Facebook the following: that the patient clicked on the profile page of Dr. Navin C. Baker, after searching for a male doctor who specializes in cardiology, with an office located within 50 miles of zip code 15601.

**Nevin C. Baker, DO, FACC, FSCAI**  
Excelsa Health Medical Group Provider

Primary Specialty: Cardiology-Interventional  
Gender: Male

**Affiliations**  
Westchester Hospital, Lehigh Valley, Park Hospital

**Education**  
DO  
Philadelphia Coll of Osteo Med (Pennsylvania)

**Residency**  
Geisinger Medical Center (Duke/PA)

**Fellowship**  
Geisinger Medical Center (Duke/PA)      Washington Hospital Center (Washington, DC)

**Comments**

**Location Information**  
EH Cardiology - Greensburg F  
Medical Center Unit  
518 South Brook Street  
Greensburg, PA 15707  
724-689-0555  
Fax: 724-689-0547  
Get Directions

★★★★★ 4.8 out of 5.0 Rating  
Learn about the rating

25. The code below reflects that an HTTP single communication, including the doctor's name and the patient's FID, was sent automatically from the patient's device to Facebook.

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the images below, when patients clicked the telephone number button to call the doctor's office, the patient's click was shared with Facebook, along with the patient's FID.

NEVIN C. BAKER, DO, FACC, FSCAI

Exeter Health Medical Group Provider

Primary Specialty: Cardiology - Interventional  
Gender: Male


**Affiliations**  
Westmoreland Hospital, UPMC Greengarden, Frick Hospital

**Education**  
DO  
PHD Philadelphia Coll of Podiat Med (Philadelphia)

**Residency**  
Geisinger Medical Center (Danville, PA)

**Fellowships**  
Geisinger Medical Center (Danville, PA)      Washington Hospital Ctr/Washington DC

**Comments**



★★★★★ 4.8 out of 5 (11 Ratings)  
See all about this provider

**Location Information**  
EH Cardiology - Greensburg P  
Medical Center/2nd Floor  
520 South Street 2nd Floor  
Greensburg, PA 15601  
**724 669 1958**  
Fax: 724 669 0247  
Get Directions

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# Site Search

Search by Keyword

HIV

[Clear Filters](#)

## General Content

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### Archive of Donors

</excela-health-foundations/torobe-area-hospital-charitable-foundation/our-donors/archive-of-donors/>

Site Search With Thanks and Gratitude to our Supporters The following individuals, corporations, foundations and organizations contributed to/or ...

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### Archive of Donors

</excela-health-foundations/westmoreland-frick-hospital-foundation/our-donors/archive-of-donors/>

Site Search With Thanks and Gratitude to our Supporters The following individuals, corporations, foundations and organizations contributed to/or ...

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**:authority:** www.facebook.com

**:method:** GET

**:path:** /tr/?id=256394442011842&ev=PageView&dl=https%3A%2F%2Fwww.excelahealth.org%2Fsite-search%2F%3FC%3DHIV%3Fhl=http%3A%2F%2Fwww.excelahealth.org%2Ffind-a-doctor%2Fhoward-a-brumberg-md-facc%2F&if=fa15eats=1671617206567&st=1920&st=1080&v=2.9.90&r=stable&ec=0&o=30&fbp=fb.1.1671534751464.1336750489&it=1671617206014&coo=false&rqm=GET&dt=jwv5z3fleumg36n2evkmmiyutmunhax0

**:scheme:** https

**accept:** image/avif,image/webp,image/png,image/svg+xml,image/\*,\*/\*;q=0.8

**accept-encoding:** gzip, deflate, br

**accept-language:** en-US,en;q=0.9,he-IL;q=0.8,he;q=0.7

**cookie:** sb=f5gPYytpKrPg8I9sVI14W0j6; datr=ctQqYxJmcjGR3Mqez5zuPFzi; **c\_user=10007594**; xs=44%3AeFMSSoCtoYozaA3A2%3A1663751287%3A-1%3A-1%3A%3AAcU2GQ10nK-bt3CyijGn\_smmPTDM7nYRk5Vry7AAwQ; fr=0AGxCQB20QdX4ASy0.AWUwi80Ye44PNPFbej6-MjB2ERY.BjntWT.qe.AAA.0.0.BjntWT.AWkqIwOxa0

**referer:** https://www.excelahealth.org/site-search/?C=HIV

**sec-ch-ua:** "Not?A\_Brand";v="8", "Chromium";v="108", "Google Chrome";v="108"

**sec-ch-ua-mobile:** ?0

**sec-ch-ua-platform:** "Windows"

**sec-fetch-dest:** image

**sec-fetch-mode:** no-cors

**sec-fetch-site:** cross-site

**user-agent:** Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/108.0.0.0 Safari/537.36

**Excelsa Shared Plaintiffs' and Class Members' PHI and IIHI  
with Facebook Without Disclosure or Consent**

30. Excelsa contemporaneously disclosed Plaintiffs' communications, including patient status, PHI and IIHI associated with these communications, as well as their Facebook Profile IDs, to Facebook.

31. Upon information and belief Facebook compensated Excelsa for the disclosures of Plaintiffs' and Class Members' PHI and IIHI in the form of enhanced marketing and advertising capabilities. Facebook tells potential Meta Pixel customers that “[o]nce you’ve set up the Meta Pixel, the pixel will log when someone takes an action on your website. ... The pixel receives these actions, or events, which you can view on your Meta Pixel page in Events Manager. From there, you’ll be able to see the actions that your customers take. You’ll also have options to reach those customers again through future Facebook ads.”<sup>4</sup>

32. Facebook offers advertisers the option of building “Custom Audiences” of various types.<sup>5</sup> A “website Custom Audience” allows advertisers to “create a Custom Audience from [their] website for any group of visitors that [they would] like to reach with targeted ads.”<sup>6</sup> Upon receiving information from customers such as Excelsa, Facebook incorporates that information into Custom Audiences for those customers. Those customers thereby profited from their sharing of Plaintiffs' and Class Members' PHI and IIHI.

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<sup>4</sup> About Meta Pixel (available at <https://www.facebook.com/business/help/742478679120153?id=1205376682832142>) (last accessed Apr. 10, 2023).

<sup>5</sup> See About Custom Audiences (available at <https://www.facebook.com/business/help/744354708981227?id=2469097953376494>) (last accessed Apr. 10, 2023).

<sup>6</sup> About website Custom Audiences (available at <https://www.facebook.com/business/help/610516375684216?id=2469097953376494>) (last accessed Apr. 10, 2023).

**Monica Galley-Keller**

33. Ms. Galley-Keller has been an Excela patient at all times relevant to this action.

34. Ms. Galley-Keller has used the Excela website to check appointments, see test results, and otherwise exchange communications with Excela relating to her medical providers and medical conditions.

35. Ms. Galley-Keller had no idea that Excela was sharing her PHI and IIHI with Facebook until discovering as much shortly before filing this lawsuit.

36. Ms. Galley-Keller's PHI and IIHI and her medical website history are private and confidential information which no third party has a right to access without her consent.

37. Ms. Galley-Keller used the Excela medical website using the same browser that she uses to log in to Facebook.

38. Upon information and belief Facebook compensated Excela for the disclosures of Ms. Galley-Keller's PHI and IIHI (and that of Class Members) in the form of enhanced marketing and/or advertising services.

39. Excela profited from its sharing of Ms. Galley-Keller's information.

40. Excela violated Ms. Galley-Keller's right to privacy in her personally identifiable, sensitive, confidential medical communications.

**Colleen Zufall**

41. Colleen Zufall has been an Excela patient at all times relevant to this action.

42. Ms. Zufall has used the Excela website to search for physicians, access medical records, and otherwise exchange communications with Excela relating to her medical providers and medical conditions.

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43. Excela contemporaneously disclosed Ms. Zufall's communications, including patient status and personally identifiable information associated with these communications, as well as her Facebook Profile ID, to Facebook.

44. Ms. Zufall had no idea that Excela was sharing her PHI and IIHI with Facebook until discovering as much shortly before filing this lawsuit.

45. Ms. Zufall's PHI and IIHI and her medical website history are private and confidential information which no third party has a right to access without her consent.

46. Ms. Zufall used the Excela website using the same browser that she uses to log on to Facebook.

47. Upon information and belief Facebook compensated Excela for the disclosures of Ms. Zufall's PHI and IIHI (and that of Class Members) in the form of enhanced marketing and/or advertising services.

48. Excela profited from its sharing of Ms. Zufall's information.

49. Excela violated Ms. Zufall's rights to privacy in her personally identifiable, sensitive, confidential medical communications.

**Excela's Unauthorized, Undisclosed Disclosure of PHI and IIHI to Facebook Breaches Its Privacy Policy and Notice of Privacy Practices**

50. Patients' activity on Excela's website, including pages accessed and links clicked, are private communications patients and Excela. By embedding Meta Pixel source code into its website, Excela was disclosing to Facebook the contents of those communications.

51. Although Excela's Privacy Policy discloses that it uses cookies and other tracking technology that collects information regarding pages viewed, links clicked, or content viewed, it fails to mention that Excela in fact shared this information with third parties, including Facebook in particular. It does, however, claim that "[u]ltimately, you are solely responsible for

maintaining the secrecy of your personal information.”<sup>7</sup> That representation is false as it relates to information shared with Excelsa. Patients cannot be “solely responsible for maintaining the secrecy of [their] personal information” if Excelsa disclosed that information without their knowledge.

52. Excelsa’s Notice of Privacy Practices likewise fails to disclose that its site tracks the activities of site visitors and shares their personal information with Facebook. Although the Notice of Privacy Practices includes an extensive list of the ways in which Excelsa may use and disclose its patients’ health information about its patients, it makes no mention that it used anything akin to Meta Pixel to track and automatically transmit communications to Facebook. It does, however, provide that “[o]ther uses and disclosures not described in this notice will be made *only with your written authorization. Examples: ... for marketing purposes, or the sale of your protected health information.*”<sup>8</sup>

53. Excelsa’s Notice of Privacy Practices also claims that “Excelsa Health is required by law to keep your health information private,” and that “[w]e respect the privacy of your health information.”<sup>9</sup>

54. The web pages that are visible to patients and patients’ interactions with the website are communications between Excelsa and its patients.

55. Excelsa allowed Facebook to intercept those communications by embedding Meta Pixel on its website.

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<sup>7</sup> See Excelsa Health – Privacy Policy (available at <https://www.excelsahealth.org/privacy-policy/>) (last visited Mar. 7, 2023).

<sup>8</sup> See Excelsa Health – Notice of Privacy Practices (available at [https://www.excelsahealth.org/documents/Notice-Priv-Practices-EXC-9500-009\\_Rev-8-21\\_334973.pdf](https://www.excelsahealth.org/documents/Notice-Priv-Practices-EXC-9500-009_Rev-8-21_334973.pdf)) (last visited Mar. 7, 2023) (emphasis in original).

<sup>9</sup> *Id.*

Applicable Law

56. WESCA, 18 Pa. Cons. Stat. § 5701, *et. seq.* prohibits the intentional (1) interception or procurement of any other person to intercept “any wire, electronic or oral communication;” (2) disclosure to any other person of the contents of “any wire, electronic or oral communication, or evidence derived therefrom,” knowing or having reason to know that the information was obtained through such interception; and (3) using the contents of “any wire, electronic or oral communication, or evidence derived therefrom,” knowing or having reason to know the information was obtained through such interception. 18 Pa. Cons. Stat. § 5703.

57. WESCA authorizes civil actions for damages against “any person who intercepts, discloses, or uses or procures any other person to intercept, disclose, or use” a “wire, electronic, or oral communication” in violation of WESCA. 18 Pa. Cons. Stat. § 5725(a).

58. WESCA defines “intercept” as any “acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.” 18 Pa. Cons. Stat. § 5702. “Contents” as “used with respect to any wire, electronic or oral communication, is any information concerning the substance, purport, or meaning of that communication.” *Id.*

59. WESCA defines “person” as “any individual, partnership, association, joint stock company, trust or corporation.” *Id.* Excelsa is a corporation, and thus a “person” as defined by WESCA.

60. WESCA defines “electronic communication” as “[a]ny transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system.” *Id.*



61. Plaintiffs' and Class Members' text entries, keystrokes, clicks, scrolling and swiping finger movements, and other interactions with Excelsa's website are "contents" of "electronic communications" as defined by WESCA.

62. Prevailing plaintiffs in a WESCA action are entitled to an award of (1) actual damages, not less than liquidated damages computed at the rate of \$100/day for each violation or \$1,000, whichever is higher; (2) punitive damages; and (3) reasonable attorneys' fees and costs. 18 Pa. Cons. Stat. § 5725(a).

63. HIPAA prohibits the disclosure of IIHI. HIPAA's privacy rule defines IIHI as information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- b. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - i. that identifies the individual; or
  - ii. with respect to which there is a reasonable basis to believe the information can be used to identify the individual. 45 C.F.R. § 160.103.

64. HIPAA defines PHI as information that is transmitted or maintained in electronic, written, or oral form. *Id.*

65. On December 1, 2022, the Office for Civil Rights of the U.S. Department of Health and Human Services issued a bulletin to highlight the obligations of HIPAA-covered entities using "online tracking technologies," as Excelsa did.

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66. These technologies include pixels, fingerprinting scripts, cookies and web beacons, code that tracks and profiles users' online activities and discloses the collected user data to technology vendors for marketing purposes without HIPAA-compliant authorization.

67. The HHS Bulletin states: "Regulated entities are not permitted to use tracking technologies in a manner that would result in impermissible disclosures of protected health information (PHI) to tracking technology vendors or any other violations of the HIPAA Rules."

68. As a medical provider for Plaintiffs and Class Members, Excela owed its patients a fiduciary duty of confidentiality in providing health care and in maintaining patients' health information.

69. All health care providers owe their patients a duty not to disclose patients' medical information without the patient's informed consent.

#### Class Action Allegations

70. Pursuant to Rule 1702 of the Pennsylvania Rules of Civil Procedure, Plaintiffs seek certification of a class of all Pennsylvania residents who:

- a. were Excela patients at any time between the date Excela initially installed Meta Pixel or its predecessor products on its website, and the date Excela removed Meta Pixel from its website; and
- b. used Excela's website during that period to search for or communicate information concerning the symptoms, diagnosis or treatment of a medical condition, search for a physician, or schedule an appointment.

71. Excluded from the Class are Excela, any entity in which Excela has a controlling interest, and Excela's officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judicial officer presiding over this matter, members of their immediate family, and members of their judicial staff.

72. Based on the volume of patient use of Excela's medical website, the prospective Class numbers more than 200,000, making joinder of all members impracticable. The exact size

of the proposed Class and the identities of the Class Members are readily ascertainable from Excela's business records.

73. There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class Members. Common issues regarding the Class include among others whether:

- a. Excela's use of Meta Pixel was without patient consent or authorization;
- b. Excela obtained and shared or caused to be obtained and shared Plaintiffs' and Class Members' PHI and/or IIHI through tracking using Meta Pixel;
- c. Excela's practices relating to disclosures of Plaintiffs' and Class Members' communications with Excela to Facebook attached to PHI and/or IIHI were intentional;
- d. Excela profited from its disclosures to Facebook;
- e. Excela's practices relating to disclosures of Plaintiffs' and Class Members' communications with Excela to Facebook attached to PHI and/or IIHI violate WESCA;
- f. Excela's practices constituted an invasion of privacy and breach of fiduciary duty; and
- g. Excela's conduct harmed and continues to harm Plaintiffs and Class Members, and, if so, the extent of injury.

74. Plaintiffs reserve the right to modify or amend the definition of the proposed Class as additional information becomes available to Plaintiffs.

75. There are no difficulties likely to be encountered by the Court in the management of this proposed class action. There are no individual questions, other than those which can be determined by ministerial inspection of Excela's records, and the issues of liability are determinable entirely from the face of the operative documents.

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76. Plaintiffs' claims are typical of those of the class they seek to represent, and they will fairly and adequately protect and represent the interests of the Class. There is no conflict between Plaintiffs and the proposed Class.

77. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Because the damages suffered by the individual Class Members may be relatively small compared to the expense and burden of litigation, it would be impractical and economically unfeasible for Class Members to seek redress individually. In addition, it is likely that most Class Members are unaware that they have claims. Finally, the prosecution of separate actions by the individual Class Members, even if possible, would create a risk of inconsistent or varying adjudications regarding the individual Class Members against Excela.

78. Plaintiffs are represented by counsel who are competent and experienced in both consumer protection and class action litigation.

**Tolling of Statutes of Limitation**

79. All applicable statutes of limitation have been tolled by Excela's knowing and active concealment of the facts alleged in this Complaint.

80. Plaintiffs and Class Members could not have reasonably discovered Excela's practice of sharing their PHI and/or IIHI with Facebook until shortly before this class action was filed.

81. Excela was and remains under a continuing duty to disclose to Plaintiffs and Class Members its practice of sharing PHI and/or IIHI with Facebook.

82. As a result of Excela's active concealment, all applicable statutes of limitation have been tolled.

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**Claims for Relief**

**Count I**

**Violation of WESCA, 18 Pa. Cons. Stat. Ann. § 5701 et seq.**

83. Plaintiffs re-allege and incorporate by reference herein all the allegations contained in the preceding paragraphs.

84. Excela is a “person” as defined by WESCA.

85. All communications between Plaintiffs or Class Members and Excela qualify as “electronic communications” under WESCA because each such communication was a “transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system.”

86. Excela engaged in an “interception” by allowing Facebook to secretly record the contents of Plaintiffs’ and Class Members’ electronic communications.

87. Excela aided in the interception of “contents” as defined by WESCA in that the data from the communications exchanged between Plaintiffs and Excela that were redirected to and recorded by Facebook include information which identifies the parties to each communication, their existence, and the exact contents of such communications.

88. Excela aided in the interception of “contents” in at least the following forms:

- a. The parties to the communications;
- b. The precise text of patient search queries;
- c. The precise text of patient communications about specific doctors;
- d. The precise text of patient communications about specific medical conditions;
- e. The precise text of patient communications about specific treatments;
- f. The precise text of patient communications about billing and payment;
- g. The precise text of specific buttons that patients clicked;

- h. The precise dates and times when patients clicked to login to the Excela website;
- i. Information that was a general summary or informed Facebook of the general subject of communications that Excela sent back to patients in response to search queries and requests for information about specific doctors, conditions, treatments, billing, payment, and other information; and
- j. Any other content Excela aided Facebook in collecting from the internet.

89. Plaintiffs and Class Members did not consent to having their communications intercepted by Excela or Facebook and were not even aware that this was occurring. In fact, Plaintiffs and Class Members reasonably expected under the circumstances that their electronic communications would not be intercepted.

90. At all relevant times, Excela's conduct was knowing and intentional.

91. Pursuant to 18 Pa. Cons. Stat. § 5725(a), Plaintiffs and Class Members have been damaged by the interception, disclosure, and/or use of their communications in violation of WESCA and are each entitled to: (1) actual damages, not less than liquidated damages computed at the rate of \$100/day for each violation or \$1,000, whichever is higher; (2) punitive damages; and (3) reasonable attorneys' fees and other litigation costs incurred.

**Count II**  
**Invasion of Privacy – Intrusion Upon Seclusion**

92. Plaintiffs re-allege and incorporate by reference herein all the allegations contained in the preceding paragraphs.

93. Pennsylvania law recognizes that patients have a right to privacy with respect to their medical records. *See, e.g.*, 28 Pa. Code § 115.27; 49 Pa. Code § 16.61.

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94. Despite its duty to maintain the confidentiality of Plaintiffs' and Class Members' PHI and IIHI, Excela disclosed that information without Plaintiffs' and Class Members' knowledge, consent, or authorization.

95. The information Excela disclosed was substantial and included Plaintiffs' and Class Members' status as Excela patients, and the contents of communications exchanged between Plaintiffs or Class Members and Excela, including but not limited to information regarding treating physicians, potential physicians, conditions, treatments, appointments, search terms, and bill payment.

96. Excela's intentional disclosure of patients' PHI and IIHI to Facebook without their consent would be highly offensive to a reasonable person. Plaintiffs and Class Members reasonably expected that their PHI and IIHI would not be disseminated to outsiders strictly for commercial purposes.

97. Excela's disclosure of Plaintiffs' and Class Members' PHI and IIHI was highly offensive to a reasonable person at least because such disclosures violated expectations of privacy that have been established by the Pennsylvania Constitution, the Pennsylvania Patient's Bill of Rights (55 Pa. Code § 5100.53) and established social norms. Privacy polls and studies show that Americans believe that one of the most important privacy rights is the need for an individual's affirmative consent before their personal data is collected, shared, or used.

98. Plaintiffs and Class Members had a legitimate and reasonable expectation of privacy with respect to their PHI and IIHI, and were entitled to anticipate that Excela would maintain its confidentiality rather than disclose it by unreasonable means.

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99. Excela owed a duty to Plaintiffs and Class Members to maintain the confidentiality of their PHI and IIHI, rather than share that information with Facebook for marketing purposes without Plaintiffs' and Class Members' express written consent.

100. Excela obtained Plaintiffs and Class Members' PHI and IIHI by falsely promising that it would safeguard the confidentiality of that information and that it would never disclose such information to third parties for marketing purposes without written consent. The deceitful method through which Excela obtained Plaintiffs' and Class Members' PHI and IIHI would be objectionable to a reasonable person.

101. Excela's conduct damaged Plaintiffs and Class Members in at least the following ways:

- a. Sensitive and confidential information that Plaintiffs and Class Members intended to remain private is no longer private;
- b. Excela undermined the confidential nature of the physician-patient and health care provider-patient relationships;
- c. Excela took something of value from Plaintiffs and Class Members, and derived benefit therefrom without Plaintiffs' and Class Members' knowledge or consent, and without sharing the benefit of such value;
- d. Plaintiffs and Class Members did not receive the full value of the medical services for which they paid, which included Excela's duty to maintain the confidentiality of their PHI and IIHI; and
- e. Excela's actions diminished the value of Plaintiffs and Class Members' PII and IIHI.

102. Plaintiffs and Class Members have been damaged as a direct and proximate result of Excela's invasion of their privacy and are entitled to seek just compensation, including monetary damages.

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103. Plaintiffs and Class Members seek appropriate relief for their injuries, including but not limited to damages that will compensate Plaintiffs and Class Members for the harm to their privacy interests.

104. Plaintiffs and Class Members are also entitled to punitive damages resulting from the malicious, willful, and intentional nature of Excelsa's actions, which caused injury to Plaintiffs and Class Members in conscious disregard of their rights. The award of such damages is necessary to deter Excelsa from engaging in such conduct in the future.

**Count III**  
**Breach of Fiduciary Duty**

105. Plaintiffs re-allege and incorporate by reference herein all the allegations contained in the preceding paragraphs.

106. Plaintiffs and Class Members have both equitable and legal interests in the PHI and IIHI that Excelsa shared with Facebook. As a healthcare provider, Excelsa owed fiduciary duties to Plaintiffs and Class Members, including a duty to safeguard and not improperly disclose that information.

107. Plaintiffs and Class Members were entitled to expect that information they shared with Excelsa would remain confidential. Plaintiffs and Class Members did not consent to or authorize Excelsa's disclosure of their PHI and IIHI to outsiders.

108. Excelsa breached its fiduciary duty of confidentiality by disclosing Plaintiffs' and Class Members' PHI and IIHI, including the content of their communications with Excelsa.

109. Excelsa's breach of fiduciary duty injured Plaintiffs and Class Members in at least the following ways:

- a. Sensitive and confidential information that Plaintiffs and Class Members intended to remain private is no longer private;
- b. Excelsa undermined the confidential nature of the provider-patient relationship;

- c. Excela took something of value from Plaintiffs and Class Members and derived benefit therefrom without Plaintiffs' and Class Members' knowledge or informed consent and without sharing the benefit of such value;
- d. Plaintiffs and Class Members did not get the full value of the medical services for which they paid, which included Excela's duty to maintain confidentiality; and
- e. Excela's actions diminished the value of Plaintiffs' and Class Members' PHI and IIHI.

110. As a direct and proximate result of Defendant's breach of its fiduciary duties, Plaintiffs and Class Members are entitled to damages, including compensatory, punitive, and/or nominal damages, in an amount to be proven at trial.

**Prayer for Relief**

Plaintiffs' and Class Members' damages are not less than the maximum amount for compulsory arbitration. *See* Westmoreland Cty. R. Civ. P. 1021.

WHEREFORE Plaintiffs, individually and on behalf of all others similarly situated, pray for relief as follows:

- a. an Order certifying the Class as defined herein, and appointing Plaintiffs and their counsel to represent the Class;
- b. equitable relief permanently enjoining Excela from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiffs' and Class Members' PHI and IIHI;
- c. an award of damages, including actual, nominal, consequential, enhanced compensatory, and punitive damages, as allowed by law in an amount to be determined;
- d. an award of attorneys' fees, costs, and litigation expenses, as allowed by law;
- e. pre-judgment and post-judgment interest on all amounts awarded;
- f. declaring Excela's business practices alleged in this Complaint to be unlawful; and
- g. such other and further relief as this Court may deem just and proper.

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**Demand for Jury Trial**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: April 14, 2023

Respectfully submitted,

**BAILEY GLASSER LLP**

/s/ Bart D. Cohen

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Excela Health Shared Web Visitors' Info with Facebook Without Consent, Class Action Claims](#)

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