

**Statement**

**of**

**Mike Rothman  
Commissioner of the Department of Commerce  
State of Minnesota**

**on**

***Accretive Health, Inc.***

**before the**

**United States Senate  
Committee on Health, Education, Labor and Pensions**

**May 30, 2012**

Good morning. Chairman Franken and members of the committee, my name is Mike Rothman, and I am the Commissioner of the Minnesota Department of Commerce serving for Governor Mark Dayton. Thank you for the opportunity to testify today on Accretive Health, Inc.

## **I. Department Jurisdiction**

The Minnesota Department of Commerce has a broad and diverse jurisdiction, serving as the state's regulator of financial institutions, real estate sector, securities and investments, insurance products and producers, weights and measures, the energy sector, telecommunications, and other business sectors. My position as Commissioner comes with the important responsibilities of protecting Minnesota consumers, and safeguarding the public interest.

Specific to today's hearing, the commissioner of commerce has the powers, duties and responsibilities under Minnesota law to regulate collection agencies, including the licensing of debt collection companies, registration of individual debt collectors, and regulation of the eligibility and activities of collection agencies and their collectors pursuant to Minnesota Statutes section 332.

Under Minnesota law, any collection agency wishing to do business in Minnesota first must be licensed by the Department of Commerce. A collection agency must be a financially responsible entity and ensure a proper screening process for its collectors to verify eligibility. Any person wishing to act as a debt collector in Minnesota must also register with the Department.

Minnesota law also sets forth a regulatory scheme for debt collection practices and activity. Pursuant to Minnesota Statutes section 332.37, to maintain licensure and compliance with state regulations no collection agency or collector shall engage in any of the following prohibited practices, among others:

(3) use or threaten to use methods of collection that violate Minnesota law; . . .

(5) communicate with consumers in a misleading or deceptive manner by using . . . instruments which simulate the form and appearance of the judicial process; . . .

(12) violate any of the provisions of the Fair Debt Collection Practices Act of 1977, Public Law 95-109, while attempting to collect on any account, bill or other indebtedness; . . .

(14) in collection letters or publications, or in any communication, oral or written, imply or suggest that health care services will be withheld in an emergency situation; . . .

(16) when attempting to collect a debt, fail to provide the debtor with the full name of the collection agency as it appears on its license; . . .

(21) when initially contacting a Minnesota debtor by mail, fail to include a disclosure on the contact notice, in a type size or font which is equal to or larger than the largest other type of type size or font used in the text of the notice. The disclosure must state: "This collection agency is licensed by the Minnesota Department of Commerce."

The Minnesota Department of Commerce takes these and other laws regulating debt collection activity very seriously. The public has entrusted the Department to enforce these regulations, and law-abiding debt collectors rely on us to ensure fair competition in the marketplace. These laws, and our consistent enforcement of them, are a crucial line of defense for Minnesotans, meant to protect the rights and dignity of consumers. The protections are particularly important for the most vulnerable among us: the poor, the sick, the disabled, and the elderly.

When our Department receives complaints about unlicensed collection activity, harassment of consumers, violations of consumer rights, or violations of the Fair Debt Collection Practices Act, our staff works to carefully determine the merit of these complaints. When warranted, the Department's review may move to the stage of a formal, comprehensive investigation.

If I as commissioner determine, based on the evidence of our investigations, that there has been a violation of the law, I reserve the authority to impose a civil penalty of up to \$10,000 per violation and/or revoke or suspend an agency license or collector registration. If the Department's investigation reveals allegations of criminal activity, the Minnesota Department of Commerce may refer the case to local, state, or federal law enforcement authorities for further investigation and criminal prosecution.

## **II. Recent Enforcement Actions**

The Department has taken a number of actions in response to serious allegations in the debt collection industry. For example, in October 2011, I signed consent orders involving eight Minnesota collection agencies that allegedly: 1) hired convicted felons; 2) harassed consumers; 3) forged signatures; 4) failed to properly report instances of criminal identity theft; and 5) doctored financial documents. In February 2012, the Department took action against 49 debt collection agencies nationwide based on allegations that their parent company failed to properly screen employees and employed known felons.

In addition, the Minnesota Department of Commerce engaged in discussions and worked with the collections industry during the 2012 Minnesota Legislative Session to address underlying issues that have led to recent compliance and other regulatory issues. Working together, we clarified and strengthened laws to improve collector screening processes and achieved other important reforms.

## **III. Initial Investigation**

In light of its regulatory responsibilities, the Minnesota Department of Commerce has begun a thorough investigation of allegations that Accretive Health, Inc. was conducting unlicensed and prohibited collection activity in the State of Minnesota and had allegedly gone to great lengths to disguise its role as a collection agency from consumers. I directed our Enforcement Division to look into these allegations, determine whether they had any merit, and pursue a formal investigation.

Allegations investigated by the Minnesota Department of Commerce were based on an extensive complaint filed in U.S. District Court by the Minnesota Office of the Attorney General in January 2012. The Attorney General's complaint included allegations that Accretive Health, Inc. committed the following wrongful conduct:

1. Failed to implement policies and procedures to prevent, detect, contain and correct data security violations of 45 C.F.R § 164.308(a)(1) and the Minnesota Health Records Act, Minn. Stat. §144.293, in violation of Minn. Stat. § 45.027, subd. 7;
2. Engaged in a practice of allowing unregistered persons to act as debt collectors in violation of Minn. Stat. § 332.33;
3. Failed to provide proper notice to Minnesota debtors in violation of Minn. Stat. § 332.37;
4. Used false, deceptive, or misleading representations or means in connection with the collection of debts in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e and Minn.Stat. § 332.37; and
5. Used unfair or unconscionable means to collect or attempt to collect debts in violation of Minn. Stat. § 332.33.

These allegations of unlicensed activity and prohibited collection practices raise serious concerns, and the Minnesota Department of Commerce promptly exercised its regulatory authority to effectively put a stop to this activity in Minnesota. After an initial investigation, I signed a Consent Order ("Consent Order") on February 3, 2012, that was agreed to by Accretive

Health, Inc. to summarily terminate any further collection activity until its collection practices came into full compliance with Minnesota law. Specifically, the Consent Order directed Accretive Health, Inc. to do the following:

1. Cease and desist from any further activity requiring a collector's license in Minnesota until:
  - a. The company provides at least ten days prior notice to the Commissioner of its intent to resume licensed collector activity; and
  - b. The company files with the Commissioner an affidavit signed by an officer authorized by the company to sign on its behalf that Accretive is in compliance with Minnesota debt collection laws
2. Provide a copy of all letters and notices, including dunning notices or other communications, provided to debtors in their attempts to collect debts from Minnesota consumers;
3. Provide its debt collector screening process to the Department;
4. Provide all collector training materials;
5. Provide all policies and procedures for protecting and safeguarding of consumers' personal information; and
6. Provide any and all other documents requested by the Department.

#### **IV. Ongoing Investigation**

The Consent Order agreed to by Accretive Health, Inc. was an important first step in ensuring the full protection of Minnesota consumers in response to these troubling allegations. Our Enforcement Division is continuing a full and detailed investigation of these allegations: to determine their merit, to identify any violations of state or federal law, and to take appropriate and decisive action to enforce the law and correct and appropriately penalize any unlawful wrongdoing.

Under Minnesota Statutes section 13.39, the details relating to an ongoing investigation are classified as confidential until the investigation is no longer active. This ongoing investigation will require the full cooperation of Accretive Health, Inc.

#### **V. Severity of Allegations**

False and deceptive collections practices from any collector or collection agency – licensed or unlicensed – will not be tolerated on my watch. I want to make it very clear that to the extent that the evidence collected in our investigation substantiates these allegations, such actions would represent a severe and troubling disregard for consumer rights and a clear violation of both state and federal law.

As I stated earlier, I take our Department's regulatory responsibilities very seriously. As Commerce Commissioner, I will not allow the rights of consumers to be violated. The public, consumers and businesses alike, have entrusted us to fairly and consistently enforce the law. It is our responsibility and our charge to carefully review these allegations, investigate the matter fully, make an objective determination, and enforce the full measure of the law.



## **VI. Conclusion**

The Minnesota Department of Commerce is committed to protecting consumers and the public interest, and to working with the debt collection industry to ensure a fair marketplace.

Mr. Chair and members of the committee, thank you for inviting me to speak with you here today. I would be pleased to answer your questions.