

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

KENNETH A. THOMAS MD, LLC, a
Connecticut limited liability company,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BEST DOCTORS, INC., a Delaware
corporation,

Defendant.

Case No. 1:18-cv-10957-DPW

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Kenneth A. Thomas MD, LLC (“Thomas” or “Plaintiff”) brings this Amended Class Action Complaint against Defendant Best Doctors, Inc. (“Best Doctors” or “Defendant”), to stop its practice of sending unauthorized and unwanted fax advertisements, and to obtain redress for all persons and entities similarly injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by its attorneys.

NATURE OF THE ACTION

1. This case challenges Defendant Best Doctors’ practice of sending unsolicited faxes to doctors’ offices.¹

2. The faxes ostensibly invite the doctor-recipient to be included in Defendant’s “Best Doctors of America List” by verifying and updating their contact information such as the doctor-recipient’s clinic address. But, there are at least four advertising related reasons that

¹ Copies of the faxes Best Doctors sent to Plaintiff are attached as Exhibit A.

Defendant sends these faxes.

3. First, the faxes advertise the commercial availability and quality of Defendant's "programs and services" including its "Find a Best DoctorTM service in which members request names of Best Doctors who treat their specific condition and who are in their geographic location," and its "virtual medical review service called InterConsultation®." Plaintiff is a potential direct consumer of these programs and services, which are often a component of employee benefits packages. In fact, if Plaintiff had responded to Best Doctors' fax advertisements, Best Doctors would have provided Plaintiff with "complementary" access to Best Doctors' list of Best Doctors physicians for Plaintiff's "professional or personal use."²

4. Second, the faxes are a pretext to advertise "Best Doctors" branded merchandise to doctors, and are a direct precursor to subsequent express solicitations by Best Doctors to fax recipients to purchase *exclusive* Best Doctors branded plaques. In fact, on information and belief, among other follow-up attempts to subsequently sell Best Doctors plaques to fax recipients, in the information packet Best Doctors provides as a follow-up to all physicians, hospitals, and medical practices that respond to Best Doctors' faxes and become Best Doctors, Best Doctors repeatedly solicits the "**Purchase [of] the exclusive Best Doctors wall plaque or desktop commemorative**, a tasteful addition to your waiting room or office."³ (Emphasis in original.)

5. Third, the faxes are part of an overall marketing campaign to make Best Doctors' products and services more desirable to consumers by growing Best Doctors' network of

² See a copy of the information packet that, on information and belief, Best Doctors provides as a follow-up to all physicians, hospitals, and medical practices that respond to Best Doctors faxes and become Best Doctors, attached as Exhibit B, at p. 2.

³ Exhibit B at pp. 2, 16, 18.

providers.

6. And fourth, the faxes are *help wanted* advertisements through which Best Doctors solicits physicians to offer their services to Best Doctors in return for compensation. In fact, one of the express “benefits” of being a listed Best Doctor is the opportunity to “**Earn honoraria**,” and in the faxes, Best Doctors admits that it solicits fax recipients “to participate in other Best Doctors programs such as ... Interconsultation,” for which Best Doctors pays the fax recipients “a fee for the Services.”⁴

7. Defendant Best Doctors sent the faxes at issue to Plaintiff and the Class despite: (i) having no established business relationship with them; (ii) never receiving the recipients’ consent to send them such faxes; and (iii) that none of the faxes sent contained requisite opt-out notices.

8. As such, Defendant’s fax advertisements violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and caused Plaintiff and putative members of the Class to suffer actual harm, including the aggravation and nuisance of receiving such faxes, the loss of use of their fax machines during the receipt of such faxes, and increased labor expenses.

9. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized fax-based marketing activities, as well as an award of actual and statutory damages, along with costs.

⁴ See Exhibit A; Exhibit B at p. 2; and an exemplar Agreement for Expert Consulting Services between physicians and Best Doctors describing the independent contractor relationship and compensation between the parties, attached as Exhibit C, at pp. 1, 3.

PARTIES

10. Plaintiff Kenneth A. Thomas MD, LLC is a Connecticut limited liability company with its principal place of business in Stratford, Connecticut.

11. Defendant Best Doctors is a Delaware corporation with its principal place of business in Boston, Massachusetts.

JURISDICTION & VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, as the action arises under the TCPA, a federal statute for which there is federal question jurisdiction.

13. The Court has personal jurisdiction over Defendant and venue is proper in this District because the wrongful conduct giving rise to Plaintiff's cause of action arose and emanated from this District and because Defendant Best Doctors maintains its primary place of business in this District.

COMMON FACTUAL ALLEGATIONS

14. Defendant is a for-profit company that sells health programs and services to consumers and organizations, sells "Best Doctors" branded goods to doctors included in the Best Doctors database, and solicits Best Doctors to provide their services for pay.

15. As part of an overall marketing plan to advertise its programs, services, and goods, Best Doctors sends unsolicited faxes to doctors and their organizations. The faxes constitute advertisements for at least four different reasons.

16. First, the unsolicited faxes advertise the commercial availability and quality of the Best Doctors "programs and services" Defendant provides to its "members" for a fee built into their employee benefits package or health insurance policy, including Defendant's Find a Best

DoctorTM service and its InterConsultation® service.

17. As stated in the faxes, the Find a Best Doctor service allows “members [to] request names of Best Doctors who treat their specific condition and who are in their geographic location.” Similarly, Best Doctors’ “virtual medical review service called InterConsultation®” makes use of the Best Doctors database of physicians.

18. As explained on Best Doctors’ website, “[t]he Best Doctors network includes over 50,000 of the world’s top medical experts. Each has been designated as among the best by other doctors through an exclusive, Gallup®-certified process.”⁵ These are the same qualities of the Find a Best Doctor and InterConsultation service described in Defendant’s fax advertisements, which explain “clinicians selected for the newest Best Doctors database ... are included based on the result of our extensive, confidential peer review process” and based on Best Doctors’ “process ... to confirm that [physicians in its newest database] are currently seeing patients [and] to insure the accuracy of [physicians’] information” in Best Doctors’ database.

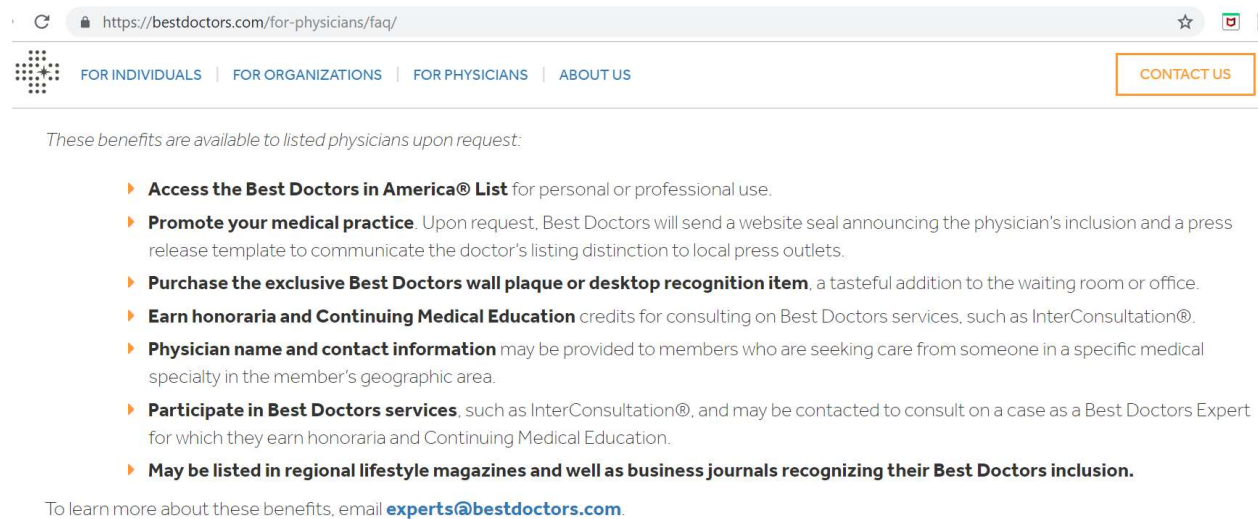
19. Plaintiff is a potential direct consumer of Best Doctors’ Find a Best Doctor and Interconsultation services, which are frequently included as part of employee benefits packages. In fact, fax recipients like Plaintiff that ultimately respond to Best Doctors’ faxes and become Best Doctors physicians are provided “complementary benefits” including access to the list of Best Doctors for their “professional or personal use” while they remain Best Doctors.⁶

20. Second, in addition to advertising the commercial availability and quality of Best Doctors’ programs and services, the faxes also serve as a pretext to advertise Best Doctors branded goods to doctors. The faxes identify Best Doctors’ webpage for physicians

⁵ Best Doctors, *How it Works* (<https://bestdoctors.com/for-individuals/how-it-works/>) (last accessed Apr. 19, 2018)).

⁶ See Exhibit B.

(<http://bestdoctors.com/for-physicians>) that serves only three express purposes: to explain the process for the Best Doctors poll, to sell Best Doctors branded goods (on a linked webpage titled “Plaques”), and to respond to questions frequently asked by physicians. Notably, aside from the multiple solicitations and plaque order form included in the webpage titled “Plaques,” the frequently asked questions page for physician also includes a solicitation to purchase Best Doctors plaques:



21. Additionally, Best Doctors faxes are a precursor to subsequent, explicit solicitations to fax recipients to purchase plaques. In fact, the information packet provided to every fax recipient that responds to the fax and becomes a Best Doctor includes multiple solicitations for Best Doctors plaques, including a full-page plaque order form:

The Best Doctors in America® Commemoratives

At the request of Best Doctors physicians, we offer customized recognition items to any physician who has ever been selected as a Best Doctor. These items make a handsome addition to any lobby, waiting room or home office to tastefully showcase your accomplishment.

All items feature the physician's name in preferred format: John Sample, MD or Dr. John Sample.



STANDARD PLAQUE

Features the Best Doctors logo, your name and appropriate inclusion years on a polished brass plate mounted on beautifully crafted, hand-finished solid cherry.

\$265

1ST YEAR INCLUSION PLAQUE

Same as the standard, this one is designed for physicians who have been selected for multiple years and is customized to display both the first year of selection and the current listing years.

\$290



DESKTOP COMMEMORATIVE

For those who prefer, this is a stylishly curved, clear acrylic with light catching gold accent and a flat base.

\$265

Please allow a minimum of 8 weeks for customization and delivery. Delivery times may be longer during peak demand.

ORDER YOURS ONLINE

usplaques.bestdoctors.com

Contact us at plaques@bestdoctors.com
or 617.963.1167 with questions



HOW TO ORDER YOUR BEST DOCTORS PLAQUE

Online with Credit Card—Order at usplaques.bestdoctors.com (For your security we do not accept credit card orders by fax or U.S. Mail).

By Mail—complete this form and mail with check to Best Doctors, Inc. at the address noted below.

By Purchase Order—fax this form with the Purchase Order to 866.904.0913 or mail both to the address noted below.

Contact us for discounts on multiple orders.

ORDER FORM

I would like to purchase:

Qty. ☐ Desktop Commemorative(s) \$265

Qty. ☐ Standard Plaque(s) \$265

Qty. ☐ 1st Year Inclusion Plaque(s) \$290

Name as it should appear on the plaque (Dr, MD or DO)
(up to 28 characters)

Shipping Address (UPS/FedEx Delivery. Physical address required.)

Attn:

City State Zip

Telephone

Email (required for order confirmation)

Payment Information: (Prices include Shipping & Handling)

Check # Purchase Order #

We are required to collect sales tax in the following states where Best Doctors, Inc. is located: FL, IL, MA, MD, SC.

Tax exempt facilities must provide a current legible copy of the tax exempt certificate.

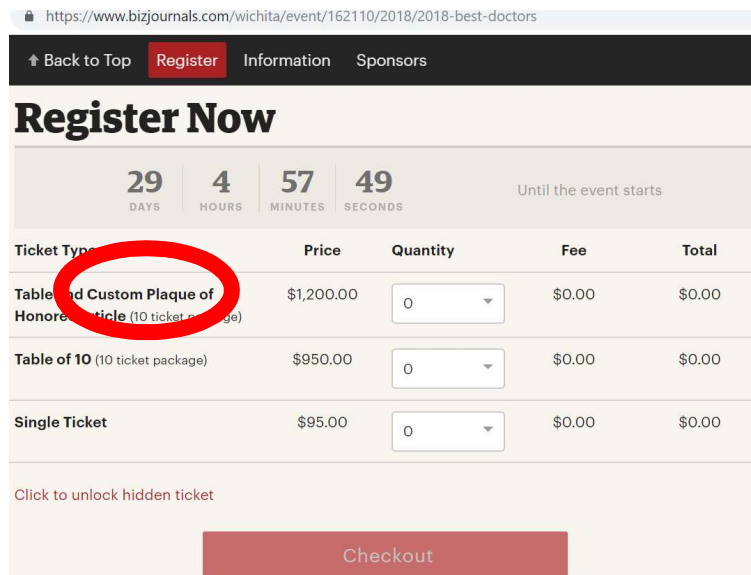
Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803
Phone 800.675.1199 | Fax 866.904.0913

Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803 | Tel: 800.675.1199 | Fax: 803.643.0315 | www.bestdoctors.com
BEST DOCTORS® and the STAR-IN-CROSS logo are registered trademarks of Best Doctors, Inc. in the United States and in other countries. Used with permission.

22. Best Doctors also solicits fax recipients to purchase plaques in the press releases Best Doctors issues in connection with the selection of new Best Doctors.⁷ For example, in Best Doctors' press release identifying "Connecticut's Best Doctors 2018," which, on information and belief, would have included Plaintiff if he had responded to the faxes, Best Doctors solicits listed doctors to purchase *exclusive* Best Doctors branded plaques, stating:

*Best Doctors, Inc. is the only authorized source of the official Best Doctors in America® plaque and other recognition items. Best Doctors does not authorize, contract with or license any organization to sell recognition items for Best Doctors, Inc. Please contact Best Doctors at plaques@bestdoctors.com with any questions. For more information or to order visit usplaques.bestdoctors.com or call 617-963-1167.*⁸

23. Best Doctors also expressly solicits recipients of faxes who become Best Doctors to purchase plaques as part of their registration for Best Doctors celebratory events:



https://www.bizjournals.com/wichita/event/162110/2018/2018-best-doctors

Back to Top Register Information Sponsors

Register Now

29 DAYS 4 HOURS 57 MINUTES 49 SECONDS Until the event starts

Ticket Type	Price	Quantity	Fee	Total
Table and Custom Plaque of Honoree (10 ticket package)	\$1,200.00	0	\$0.00	\$0.00
Table of 10 (10 ticket package)	\$950.00	0	\$0.00	\$0.00
Single Ticket	\$95.00	0	\$0.00	\$0.00

Click to unlock hidden ticket

Checkout

⁷ See Exhibit B at p. 2, describing "Recognition in local media" as one of the "benefits" of becoming a Best Doctors physician.

⁸ *Connecticut's Best Doctors 2018 press release*, Connecticut Magazine (http://www.connecticutmag.com/article_af095394-27da-11e8-b933-9b11a0051c15.html (last accessed Oct. 31, 2018)).

⁹ *Wichita Best Doctors celebration registration*, Wichita Business Journal (<https://www.bizjournals.com/wichita/event/162110/2018/2018-best-doctors> (last accessed Oct. 31, 2018)).

24. Remarkably, if every Best Doctors physician were to purchase one Best Doctors plaque, Best Doctors would net over \$13 million in revenue every two years. More remarkably, Best Doctors offers bulk pricing, suggesting that some Best Doctors physicians purchase “30 or more” plaques at a time:

https://usplaques.bestdoctors.com/BulkDiscounts.asp?ProductID=10&ProductCode=BD-PLI&Orig_Price=290

Discount10		
Buy...	Save...	New Price...
10 - 19	5%	\$275.50 per order
Discount20		
Buy...	Save...	New Price...
20 - 29	10%	\$261.00 per order
Discount30		
Buy...	Save...	New Price...
30 or more	15%	\$246.50 per order

25. Third, in addition to being a pretext and precursor to further solicitations to purchase Best Doctors plaques, the faxes are advertisements because they are part of an overall marketing campaign to make Best Doctors’ products and services more desirable to consumers by growing Best Doctors’ network of providers.

26. Fourth, and finally, the faxes are advertisements because they solicit physicians’ services for pay, and/or were a precursor to soliciting physicians’ services for pay. Although a physician cannot pay to be added to the Best Doctors list, one of the touted “benefits” of being a Best Doctor is the opportunity to “**Earn honoraria**” and to otherwise “participate in other Best Doctors programs such as ... Interconsultation,” for which Best Doctors also pays the fax recipients “a fee for the[ir] Services.”¹⁰

27. Accordingly, Best Doctors faxes are advertisements.

28. The fax advertisements at issue failed to provide recipients with proper opt-out

¹⁰ See Exhibit A; Exhibit B at p. 2; Exhibit C. at pp. 1, 3.

notice information required by the TCPA and implementing regulations. Specifically, the faxed failed to provide notice identifying a facsimile number and domestic contact telephone number for fax recipients to transmit their opt-out requests.

29. Defendant Best Doctors sends these fax advertisements to individuals and business with which it has no existing business relationship, and without express invitation or permission, in violation of the TCPA.

30. Best Doctors used a telephone facsimile machine, computer, or other device to send the fax advertisements at issue.

FACTS SPECIFIC TO PLAINTIFF THOMAS

31. On or about May 16, 2017, Best Doctors used a telephone facsimile machine to send five unsolicited fax advertisements to Plaintiff Thomas. (True and accurate copies of the fax advertisements are attached hereto as Exhibit A).

32. The fax advertisements promoted the commercial availability and quality of Best Doctors' Find a Best Doctor and InterConsultation services and its Best Doctors branded goods, were part of an overall campaign to increase Best Doctors' business, and solicited physicians to provide their services to Best Doctors for pay, and/or were a precursor to such solicitations.

33. Although Plaintiff corresponded in 2011 and/or 2012 with Defendant regarding its Best Doctors database, at the time Plaintiff received Defendant's five fax advertisements, Plaintiff Thomas had no existing business relationship with Best Doctors, and had never provided it with consent to receive advertisements through any medium, let alone by fax.

34. The fax advertisements failed to contain the required opt-out notice mandated by 47 U.S.C. § 227(b)(2)(D) and 47 C.F.R. § 64.1200(a)(4)(iii)-(iv). Specifically, the faxes failed to contain language that identified a facsimile number and telephone number for fax recipients to

transmit their opt-out requests.

CLASS ACTION ALLEGATIONS

35. **Class Definitions:** Plaintiff Thomas brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) individually and on behalf of a Class of similarly situated individuals defined as follows:

All persons and entities who (1) on or after four years prior to the filing of the initial complaint in this action, (2) received a telephone facsimile advertisement, (3) sent from or on behalf of Best Doctors, and (4) from whom Best Doctors did not have a record of prior express consent to send the facsimile advertisements.

The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the class definitions following appropriate discovery.

36. **Numerosity:** The exact size of the Class is unknown and unavailable to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant faxed unsolicited advertisements to thousands of individuals and entities who fall into the definition of the Class. Class membership can be easily determined from Defendant's records.

37. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff is a member of the Class, and if Defendant violated the TCPA with respect to

Plaintiff, then it violated the TCPA with respect to the other members of the Class. Plaintiff and the Class sustained damages as a result of Defendant's uniform wrongful conduct.

38. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) How Defendant gathered, compiled, or obtained the fax numbers of Plaintiff and the Class;
- b) Whether Defendant's faxes advertised the commercial availability or quality of property, goods, or services;
- c) Whether Defendant sent the fax advertisements without first obtaining Plaintiff and the Class's prior express permission or invitation to do so; and
- d) Whether Defendant's conduct was willful such that Plaintiff and the Class are entitled to treble damages.

39. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

40. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's practices challenged herein apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law

applicable only to Plaintiff.

41. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions ensured.

FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On Behalf of Plaintiff and the Class)

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The TCPA makes it unlawful for any person to "use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement. . . ." 47 U.S.C. § 227(b)(1)(C).

44. The TCPA defines "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." 47

U.S.C. § 227(a)(5).

45. The faxes sent by Defendant advertised the commercial availability and quality of its goods and services and were commercial in nature. Therefore, Defendant's faxes are advertisements under the TCPA.

46. Defendant sent the fax advertisements at issue to Plaintiff and members of the Class without their prior express invitation or consent, and despite the lack of an existing business relationship between it and members of the Class.

47. By sending the unsolicited fax advertisements at issue to Plaintiff and members of the Class without their prior express invitation or permission, Defendant violated 47 U.S.C. § 227(b)(1)(C).

48. As a result of Defendant's conduct, Plaintiff and the members of the No Consent Class suffered actual damages, including the conversion or loss of paper and toner consumed in the printing of the faxes, the loss of use of the recipients' fax machines during the time required to receive, review and route the unauthorized faxes, as well as increased labor expenses.

49. Plaintiff and the Class are therefore entitled to a minimum of \$500 in damages for each violation under 47 U.S.C. § 227(b)(3)(B). To the extent Defendant's misconduct is determined to be willful, the Court should treble the amount of statutory damages under 47 U.S.C. § 227(b)(3).

50. Additionally, as a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that Defendant's violations of the TCPA do not continue into the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kenneth A. Thomas MD, LLC, on behalf of itself and the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Kenneth A. Thomas MD, LLC as the representative of the Class, and appointing its counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate the TCPA;
- C. An order declaring that Defendant's faxes constitute unsolicited advertisements, that they lacked the required opt-out language, and that Defendant sent the faxes without first obtaining prior express invitation or permission of the recipients, and enjoining Defendant from further violations, and otherwise protecting the interests of the Class;
- D. An award of statutory damages;
- E. An award of pre-judgement interest and costs; and
- F. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully Submitted,

KENNETH A. THOMAS MD, LLC, individually
and on behalf of all others similarly situated,

Dated: October 31, 2018

By: /s/ Jason Campbell

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jasonrcampbell@ymail.com

Avi R. Kaufman*
kaufman@kaufmanpa.com

Kaufman P.A.
400 NW 26th Street
Miami, FL 33127
Telephone: (305) 469-5881

Attorneys for Plaintiff and the Class

** Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Jason Campbell



Fax

Attention of: Dr. Kenneth A. Thomas	Fax No: 203-377-6497
From: Tommysina Bryant (return fax: 866-904-0913)	Date: 5/16/2017
Ref: Review your Best Doctors inclusion data	Pages (including cover): 1

Dear Dr. Thomas,

Best Doctors® is preparing to notify the clinicians selected for the newest Best Doctors database. Physicians are included based on the result of our extensive, confidential peer-review process. As you may know, we accept no fees from doctors in exchange for a listing in our database. Physicians not currently seeing patients, even though selected by their peers to be a Best Doctor, will not be included in our Best Doctors in America List.

One step in this process is to verify and update your clinical address and to confirm that you are currently seeing patients to insure the accuracy of your information and to facilitate delivery of your formal inclusion letter this summer.

Please review the information below and either confirm its accuracy or indicate required corrections or additions. In particular, please let us know if the clinical address below is incomplete, or if it is not the address where you see patients.

To help us meet our deadline, please respond within 7 days of your receipt of this request.

CLINICAL ADDRESS**

Dr. Kenneth A. Thomas
305 Boston Ave, Ste 205

MAILING ADDRESS (if different)

Stratford, CT 06614

Appointment Phone: 203-377-7670**Administrative Fax:** 203-377-6497**Email address:**

Thank you for taking the time to update this information. If you have any questions or concerns, please do not hesitate to contact me at the number or email listed below. You will find some helpful information about us at <http://bestdoctors.com/for-physicians>.

Sincerely,

Tommysina Bryant
Best Doctors, Inc. | Polling and Research Division
5230 Woodside Executive Court
Aiken, SC 29803
ph: 800-675-1199 x3201 | fax: 866-904-0913
research@bestdoctors.com

147420

CURRENTLY SEEING PATIENTS? ☐ YES ☐ NO

If YES, are you accepting NEW patients?

- ☐ Yes, all patients ☐ Yes, referral required
☐ Not accepting new patients

If NOT currently seeing patients, what is the reason?

- ☐ Administrative only ☐ Research only ☐ Retired
☐ Other (explain:)

**The information you provide at this time will be used by Best Doctors to determine your eligibility for inclusion in the Best Doctors in America list. If you are not accepted for inclusion, Best Doctors will not use or disclose the information you provide any further. If you are accepted as a Best Doctor and included in the Best Doctors in America list, we may use and disclose your information as follows: Best Doctors will use, and may disclose to subcontractors, your contact information only for purposes of administering our programs and services. Best Doctors may list your name, clinical address and affiliation, and specialty in local and regional magazines and newspapers as recognition of your inclusion in the Best Doctors in America® List. Prior to any publication, we will notify you and provide you with the ability to opt out of your inclusion in such publication. We may disclose your name, clinical address, and specialty to our members as part of our Find a Best Doctor™ service in which members request names of Best Doctors who treat their specific condition and who are in their geographic location. Finally, we may reach out to you from time to time to invite you to participate in other Best Doctors programs such as our virtual medical review service called InterConsultation®.

Best Doctors® and the star-in-cross logo are registered service marks of Best Doctors, Inc., in the United States and other countries.



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One step in this process is to verify and update your clinical address and to confirm that you are currently seeing patients to insure the accuracy of your information and to facilitate delivery of your formal inclusion letter this summer.

Please review the information below and either confirm its accuracy or indicate required corrections or additions. In particular, please let us know if the clinical address below is incomplete, or if it is not the address where you see patients.

To help us meet our deadline, please respond within 7 days of your receipt of this request.

CLINICAL ADDRESS**

Dr. Kenneth A. Thomas
305 Boston Ave, Ste 205

MAILING ADDRESS (if different)

Stratford, CT 06614

Appointment Phone: 203-377-7670**Administrative Fax:** 203-377-6497**Email address:**

Thank you for taking the time to update this information. If you have any questions or concerns, please do not hesitate to contact me at the number or email listed below. You will find some helpful information about us at <http://bestdoctors.com/for-physicians>.

Sincerely,

Tommysina Bryant
Best Doctors, Inc. | Polling and Research Division
5230 Woodside Executive Court
Aiken, SC 29803
ph: 800-675-1199 x3201 | fax: 866-904-0913
research@bestdoctors.com

147420

CURRENTLY SEEING PATIENTS? ☐ YES ☐ NO

If YES, are you accepting NEW patients?

- ☐ Yes, all patients ☐ Yes, referral required
☐ Not accepting new patients

If NOT currently seeing patients, what is the reason?

- ☐ Administrative only ☐ Research only ☐ Retired
☐ Other (explain:)

**The information you provide at this time will be used by Best Doctors to determine your eligibility for inclusion in the Best Doctors in America list. If you are not accepted for inclusion, Best Doctors will not use or disclose the information you provide any further. If you are accepted as a Best Doctor and included in the Best Doctors in America list, we may use and disclose your information as follows: Best Doctors will use, and may disclose to subcontractors, your contact information only for purposes of administering our programs and services. Best Doctors may list your name, clinical address and affiliation, and specialty in local and regional magazines and newspapers as recognition of your inclusion in the Best Doctors in America® List. Prior to any publication, we will notify you and provide you with the ability to opt out of your inclusion in such publication. We may disclose your name, clinical address, and specialty to our members as part of our Find a Best Doctor™ service in which members request names of Best Doctors who treat their specific condition and who are in their geographic location. Finally, we may reach out to you from time to time to invite you to participate in other Best Doctors programs such as our virtual medical review service called InterConsultation®.

Best Doctors® and the star-in-cross logo are registered service marks of Best Doctors, Inc., in the United States and other countries.



Fax

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Dear Dr. Thomas,

Best Doctors® is preparing to notify the clinicians selected for the newest Best Doctors database. Physicians are included based on the result of our extensive, confidential peer-review process. As you may know, we accept no fees from doctors in exchange for a listing in our database. Physicians not currently seeing patients, even though selected by their peers to be a Best Doctor, will not be included in our Best Doctors in America List.

One step in this process is to verify and update your clinical address and to confirm that you are currently seeing patients to insure the accuracy of your information and to facilitate delivery of your formal inclusion letter this summer.

Please review the information below and either confirm its accuracy or indicate required corrections or additions. In particular, please let us know if the clinical address below is incomplete, or if it is not the address where you see patients.

To help us meet our deadline, please respond within 7 days of your receipt of this request.

CLINICAL ADDRESS**

Dr. Kenneth A. Thomas
305 Boston Ave, Ste 205

MAILING ADDRESS (if different)

Stratford, CT 06614

Appointment Phone: 203-377-7670**Administrative Fax:** 203-377-6497**Email address:**

Thank you for taking the time to update this information. If you have any questions or concerns, please do not hesitate to contact me at the number or email listed below. You will find some helpful information about us at <http://bestdoctors.com/for-physicians>.

Sincerely,

Tommysina Bryant
Best Doctors, Inc. | Polling and Research Division
5230 Woodside Executive Court
Aiken, SC 29803
ph: 800-675-1199 x3201 | fax: 866-904-0913
research@bestdoctors.com

147420

CURRENTLY SEEING PATIENTS? ☐ YES ☐ NO

If YES, are you accepting NEW patients?

- ☐ Yes, all patients ☐ Yes, referral required
☐ Not accepting new patients

If NOT currently seeing patients, what is the reason?

- ☐ Administrative only ☐ Research only ☐ Retired
☐ Other (explain:)

**The information you provide at this time will be used by Best Doctors to determine your eligibility for inclusion in the Best Doctors in America list. If you are not accepted for inclusion, Best Doctors will not use or disclose the information you provide any further. If you are accepted as a Best Doctor and included in the Best Doctors in America list, we may use and disclose your information as follows: Best Doctors will use, and may disclose to subcontractors, your contact information only for purposes of administering our programs and services. Best Doctors may list your name, clinical address and affiliation, and specialty in local and regional magazines and newspapers as recognition of your inclusion in the Best Doctors in America® List. Prior to any publication, we will notify you and provide you with the ability to opt out of your inclusion in such publication. We may disclose your name, clinical address, and specialty to our members as part of our Find a Best Doctor™ service in which members request names of Best Doctors who treat their specific condition and who are in their geographic location. Finally, we may reach out to you from time to time to invite you to participate in other Best Doctors programs such as our virtual medical review service called InterConsultation®.

Best Doctors® and the star-in-cross logo are registered service marks of Best Doctors, Inc., in the United States and other countries.



Fax

Attention of: Dr. Kenneth A. Thomas	Fax No: 203-377-6497
From: Tommysina Bryant (return fax: 866-904-0913)	Date: 5/16/2017
Ref: Review your Best Doctors inclusion data	Pages (including cover): 1

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The Best Doctors in America®
PEER SELECTED 2017-2018

Information for Best Doctors Physicians, Hospitals & Large Medical Practices 2017 – 2018



Mission and Vision

We Solve the Unsolvable in Healthcare.

We identify and solve the most complex, critical and costly problems in healthcare by combining expert clinical analysis and data analytics with a premium patient experience across a global network.

By combining expert clinical services with analytics, Best Doctors can help individuals make the best decisions, experience the best outcomes and make the best use of healthcare resources.

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ABOUT BEST DOCTORS, INC.

Who is Best Doctors?

Founded in 1989 by Harvard Medical School physicians, Best Doctors, a division of Teladoc, Inc., is the world's leading medical consultation company. We connect individuals facing difficult diagnostic or medical treatment decisions with the best doctors, selected by impartial peer review in over 450 subspecialties of medicine, to review their diagnosis and treatment plans. Best Doctors serves more than 40 million members worldwide, utilizing access to the brightest minds in medicine, analytics and technology to deliver improved health outcomes while reducing costs. A Best Doctors expert opinion led to a change or refinement of diagnoses in 45% of cases that the company reviewed, as well as a change or improvement of treatment plans in 75% of cases. With every service offered, the goal remains the same: **to help people in need get the right diagnosis and treatment, significantly improving health outcomes while reducing costs.**

Who are members of Best Doctors?

Members are individuals and their families who can access Best Doctors services as a benefit through their employer or insurer.

Best Doctors is an employer-provided benefit that gives over 12 million eligible members in the U.S. and an estimated 40 million members worldwide a unique suite of services designed to do one thing: **eliminate medical uncertainty in a very uncertain landscape.**

Best Doctors not only identifies the very best clinicians, we partners with them to review members' medical diagnoses and treatment plans, as well as answer any questions a member may have—providing unparalleled clinical quality as an integral part of employers' benefits offerings.

Services offered to Best Doctors members

InterConsultation®

Best Doctors collects members' medical records and has them reviewed by world-renowned expert physicians to ensure the diagnoses and treatment recommendations are accurate.

Critical Care Support™

If members experience serious medical events, like an emergency or extended hospital stay, Best Doctors immediately gets experts involved and works with local treating teams to ensure the best care.

Ask the Expert™

When members have questions about medical conditions, treatment options or symptoms that do not require the extensive medical record collection and review of an InterConsultation, we utilize Ask the Expert. Through this service, expert physicians provide a succinct, personalized responses to member questions based upon clinically written vignettes.

FindBestDoc®

If members need to visit a specialist, we search for an appropriate doctor from among the physicians in our global database to meet their needs and may provide your clinical contact information to the member. Our proprietary database contains nearly 50,000 physicians globally, including close to 40,000 physicians in our Best Doctors in America® database.

Treatment Decision Support™

Members have free access to one-on-one coaching and interactive, online educational modules with information about specific conditions, giving members the tools to confidently make medical decisions.

Medical Records eSummary™

Best Doctors collects and organizes members' medical records and creates personal Health Alert Summaries. Everything is provided on easy-to-access USB drives or secure digital files.

Who is Teladoc, Inc.?

Teladoc, Inc. (NYSE:TDOC) is the nation's first and largest telehealth platform. Recognized by MIT Technology Review as one of the "50 Smartest Companies," Teladoc is forging a new healthcare experience with an innovative portfolio of virtual care delivery solutions. Currently, Teladoc serves more than 7,500 clients – from payers to providers to employers – and more than 20 million members who connect within minutes to Teladoc's network of more than 3,100 board-certified, state-licensed physicians and therapists, 24/7. Teladoc's services and solutions marry a highly engaged consumer experience with the latest in data and analytics, and a highly flexible technology platform. Teladoc has delivered more than 2.5 million medical visits for general medical, dermatology, counseling, psychiatry, sexual health and tobacco cessation. To learn more, go online to www.teladoc.com.

THE BENEFITS & HOW TO GET INVOLVED

The benefits of being a Best Doctors physician

As a physician-founded and clinically focused organization, we are privileged to conduct our poll to recognize outstanding physicians like you and provide these unique, complementary benefits:

- **Promote your practice**—Upon request, we will send you or your PR/marketing department a website seal announcing your inclusion and a press release template to communicate your distinction as a Best Doctor to local press outlets.
- **Recognition in local media**—Inclusion on our list means your name and clinical location may be published in a major publication in your area.
- **Request a referral list** of Best Doctors physicians for your professional or personal use.
- **Purchase the exclusive Best Doctors wall plaque or desktop commemorative**, a tasteful addition to your waiting room or office.
- **Earn honoraria** and **Continuing Medical Education** credits for consulting on cases.
- **Participate in our next poll**—Only current Best Doctors physicians are eligible to participate in our next biennial poll. Your opinions are vital to recognizing other exceptional physicians.
 - **Nominate** physicians you believe should be considered in our next poll. Request a nomination form by emailing experts@bestdoctors.com.
 - **Vote** in our next poll, which will be conducted in late 2018.

Learn more about each of these benefits by emailing experts@bestdoctors.com or by calling 800.675.1199.

How to get involved in our in-depth medical review service

Guide members and their physicians to find the right diagnosis and treatment.

As a Best Doctors expert, you have the outstanding opportunity to participate in our InterConsultation® service for people around the world who are struggling with complex or chronic cases. We provide you with the information you need—a concise, physician-written clinical summary and access to the primary imaging and other diagnostics via our web-based platform. Then you can do the clinical work you enjoy most—thinking about challenging cases and utilizing your knowledge and experience to provide guidance about diagnosis and treatment.

There is no cost to the members we serve. Individuals and families receive free access to Best Doctors as a benefit through their employer or insurer.

Through this work, we are empowering members and their treating physicians, but you are never providing care directly. Our experts earn honoraria and CME credits, but far more important, you have the satisfaction of meaningfully helping members in need and providing access to clinical expertise they otherwise would not have.

How our process works:

1. The Best Doctors medical team compiles a concise but thorough case summary, including member records, lab results, pathology and imaging for a case in your clinical area of interest.
2. You provide your opinion on the diagnosis and/or treatment plan.
3. Best Doctors shares your report and recommendation with the member and treating physician.
4. You earn an honorarium and Continuing Medical Education credit for each case.

Please consider helping members by consulting on these cases. If you would like to learn more about consulting on cases with Best Doctors, we would be happy to answer your questions. Contact our Physician Services Department at physicianhelp@bestdoctors.com.

PROFESSIONAL PROFILES

Best Doctors, Inc. develops and maintains detailed profiles of physicians in the database through in-depth, ongoing research.

What is your professional profile?

Your professional profile is the information we have in the Best Doctors database about your practice, education and training, hospital and academic affiliations, diagnoses and procedures in your expertise, board certifications, publication topics and special areas of medical research.

We are pleased to announce our new, online professional profile tool to replace the paper form we have used in the past. Our goal is to provide a better experience for you.

Your online profile is populated with information we have on file. We ask physicians to review, complete and submit their updates to ensure we have current information in our database. This helps our clinical staff match members who are in need of a physician within your specialty. Best Doctors may refer members to you through the FindBestDoc® service.

When are professional profiles sent to Best Doctors?

An invitation to complete your professional profile will be emailed to you a few weeks after you receive your inclusion packet with a link and your login information to update and complete your profile. We rely on you to review, complete and submit your updated profile to ensure we have current information in our database.

Please check the email address on your welcome letter and contact us if it is not correct. Please direct any questions to: profiles@bestdoctors.com.

"I have had the privilege of working with Best Doctors for the past six years, both providing Best Doctors evaluations and receiving them and am continually impressed by the excellence of service to the patient, their families and all healthcare providers involved in the patient's care."

Dr. Neal Futran

Director of Head and Neck Surgery
Chair of the Department of Otolaryngology
University of Washington Medicine

Selected a Best Doctors physician since 1998
Otolaryngology/General and Head and Neck Surgery;
Surgery/Head and Neck Surgery

Data collection and use

Best Doctors will use, and may disclose to subcontractors, your contact information only for purposes of administering our programs and services. We may disclose your name, clinical address and specialty to our members as part of our FindBestDoc® service, in which members request names of Best Doctors who treat their specific condition and who are in their geographic location. Best Doctors may also list your name, clinical address and affiliation, and specialty in local and regional magazines and newspapers as recognition of your inclusion in the Best Doctors in America® List. Prior to any publication, we will notify you and provide you with the ability to opt out of your inclusion in such publication. Finally, we may reach out to you from time to time to invite you to participate in other Best Doctors programs, such as our in-depth medical review service called InterConsultation® or the telemedicine programs of our parent company, Teladoc, Inc.

HOW DOES BEST DOCTORS SELECT EXPERT PHYSICIANS?

The doctors other doctors trust most

Since 1989, Best Doctors has conducted one of the largest ongoing peer physician polls in healthcare to identify the physicians other physicians trust most. We start by asking: **“If you or a loved one needed a physician in your specialty, to whom would you refer?”**

All listed Best Doctors have received consensus of their peer physicians’ support. Physicians who receive peer consensus are then researched and verified for clinical activity, licensure and disciplinary actions.

A selected Best Doctor doesn’t remain in the database forever. The peer-review process requires that every listed Best Doctor physician be re-evaluated by their peers in each poll. Best Doctors does not pay physicians to be included in the database, nor can physicians or their organizations pay Best Doctors. A physician cannot apply to become a Best Doctors physician. The only way for a physician to be selected to the database is to be nominated by and then receive voting consensus from current Best Doctors physicians.

As a result, Best Doctors has a proprietary, global database of physicians – free from commercial and financial bias – numbering nearly 50,000 in over 450 specialties and subspecialties worldwide. There are close to 40,000 Best Doctors in the U.S.

Best Doctors is not a list company and does not publish a directory of the database.

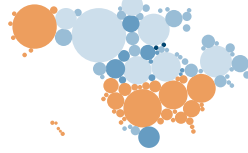
Why Best Doctors is unique

- Only currently listed Best Doctors physicians are eligible to submit nominations and vote in the poll. Best Doctors does not survey the medical community randomly or in its entirety.
- The large pool of voting physicians helps eliminate the commercial, financial and other biases of smaller-scale surveys and the potential distortion that results from a random survey of the entire physician community.
- Each physician votes a custom ballot, generated to include a mix of candidates at their own and other area medical facilities and practices, as well as candidates with national reputations.
- Best Doctors has developed proprietary software that analyzes the votes and provides an aggregate score for each physician candidate. This yields a preliminary set of physicians who meet the initial criteria for inclusion.
- Only physicians who earn consensus of their peers and meet all additional criteria are selected to the database.
- Best Doctors verifies all physicians in its database for clinical activity and medical licensure.
- Best Doctors never accepts compensation of any kind from physicians or hospitals in return for listing physicians in the database, nor does Best Doctors pay physicians to participate in the poll.
- A physician cannot apply to become a Best Doctor. The only way to be selected to the database is to be nominated and voted on by other Best Doctors physicians.
- No one is a Best Doctors physician for life. Every physician must be reselected in each biennial poll.
- Best Doctors is not a list company and does not publish a paper or electronic directory of the database.
- Best Doctors develops and maintains detailed profiles of each physician in the database through in-depth, ongoing research. The profile includes education and training, diagnoses and procedures in the doctor’s expertise, publications, special areas of medical research and experience and board certifications.

Gallup® has audited and certified Best Doctors, Inc.’s database of physicians, and its companion Best Doctors in America® List, as using the highest industry standards, survey methodology and processes.



Nearly 50,000
leading doctors
worldwide



Close to 40,000
in the U.S. alone



Covering
450+ medical
specialties and
subspecialties



Peer-selected as
the best 4% of
U.S. physicians

Polling & Research Staff continually verify the following for Best Doctors physicians:

- Clinical activity
- Current clinical address at which patients are seen
- Medical license: number, expiration date and any restrictions
- DEA number and expiration date
- Hospital affiliations and titles
- Academic affiliations and titles
- Board certifications and sub-certifications
- Education
- Training: internship, residency and fellowship
- Research
- Publications
- Diagnoses and procedures

Independent credentialing and verification

All physicians who receive consensus of peer support through voting are subject to additional qualifying criteria before inclusion in the database. All physicians in the Best Doctors database must be accessible to current and/or new patients and have an active medical license free from any disqualifying disciplinary actions.

Best Doctors Polling & Research staff maintains and updates information on each physician. This ongoing verification process includes updates to clinical contact and other information to ensure an accurate profile of each specialist. Physicians who retire, are no longer clinically active, go on sabbatical or other leave or have a disqualifying disciplinary action on their medical license are removed from the database.

Quality and collaboration on member cases

Because a physician's ability to positively impact care through remote consultation is our highest priority, we take great care in matching the member's case to a Best Doctors physician in our database using criteria directly related to the member's specific medical condition, such as:

- Research influence—we review the published research of the physician and the extent to which other physicians have cited the physicians' work.
- Affiliation with Centers of Excellence renowned for leading care in the member's condition.
- Degree of medical leadership as demonstrated by the physician's faculty appointments at academic centers and medical schools.

The process of ensuring quality doesn't end with the case review. After a Best Doctors expert physician completes the member's case report, our supervising physicians critically review and score the report. This ensures physicians who are most highly skilled in remote consultation and diagnostic decision support are consistently engaged in service to our members.

Finally, our commitment to supporting all physicians in providing the highest quality of care includes partnership with the treating physicians of our members to develop the best clinical roadmap for any condition.

MORE ABOUT THE SELECTION PROCESS

How does Best Doctors, Inc. determine who to include on the Best Doctors in America® List?

Every two years, Best Doctors undertakes the largest, continuous, peer-to-peer survey of the medical profession to develop the Best Doctors in America® List.

Doctors have a unique, professional perspective about who's at the top of their profession, who's up on the latest advances in their field and therefore, where they personally would turn for state-of-the-art care when faced with a serious medical problem.

What is the process for a physician to be on the Best Doctors in America® List?

A physician must be nominated by a current listee to be considered for inclusion. The doctor then must go through the evaluation process.

During the evaluation process, currently listed Best Doctors confidentially evaluate other Best Doctors, as well as nominees in their own and related medical specialties. Once a consensus of peer support is achieved, the physicians are subject to additional qualifying criteria, including verification of clinical activity, accessibility to existing and/or new patients and an active medical license with no disqualifying disciplinary actions.

How does a Best Doctors physician nominate other physicians?

Only currently listed Best Doctors are eligible to submit nominations.

Each biennial poll begins with a formal, online nomination phase. A Best Doctor may also nominate by requesting an official nomination form.

We limit nominations to ten physicians per two-year period, but not by specialty or geographic area. We ask only that doctors recommend others to whom they would personally refer for care. All nominees and listees are subject to the biennial evaluation process.

Requests for nomination forms must be made by the physician to experts@bestdoctors.com or 800.675.1199.

How important is the voting portion of the process?

The knowledge and expertise of currently listed doctors is integral to our polling process. Listed physicians are uniquely qualified to provide their assessment of their peers.

We appreciate any assistance hospital, practice PR and marketing contacts can provide in encouraging polling participation by listed Best Doctors at their institution.

What are the clinical requirements for a Best Doctor?

In addition to receiving consensus of peer support, listed Best Doctors must be accessible to existing and/or new patients and have a current medical license free from any disqualifying disciplinary actions.

How does Best Doctors avoid reflecting bias in the database?

Enough doctors participate in the polling process to eliminate commercial, financial and other biases. Each physician votes a custom ballot. Some of the most critical evaluations come from doctors evaluating others within their own facility.

Best Doctors has developed proprietary software that analyzes the votes and provides an aggregate score for each physician. This yields a preliminary set of doctors who meet the initial criteria for inclusion. Only doctors who earn consensus of their peers and meet all additional criteria are selected for the list.

Gallup® has audited and certified Best Doctors, Inc.'s database of physicians, and its companion Best Doctors in America® List, as using the highest industry standards survey methodology and processes.

How are doctors selected for your list notified of their inclusion?

Upon completion of the poll and research, all physicians selected to the list are notified by inclusion packet via U.S. mail.

THE 2017-2018 BEST DOCTORS IN AMERICA® LIST

What is the Best Doctors in America® List?

The Best Doctors in America® List is the companion to the Best Doctors proprietary database of close to 50,000 global physicians in over 450 specialties and subspecialties.

Only physicians who are peer-selected in our biennial poll and are clinically active are included. The list is comprised of physicians from whom other physicians would seek care for themselves and loved ones—approximately 4% of U.S. physicians.

How many U.S. physicians are on the Best Doctors in America® List?

Approximately 4% of doctors practicing in the U.S. are selected for the Best Doctors list. There are currently close to 40,000 Best Doctors in the U.S.

Do you recognize physicians from all states on the Best Doctors in America® List?

Best Doctors are selected in every state via our poll. However, cities tend to have more Best Doctors than rural areas. Major universities, hospitals and large healthcare provider networks typically attract doctors with the level of expertise we identify on our list and therefore usually yield a higher number of Best Doctors. See the maps on pages 8-10 for additional information.

How many doctors are selected per specialty or per metro area?

We do not have quotas or choose a certain number of doctors per specialty or geographic area. Each doctor is evaluated individually with selection based on meeting all qualifying criteria. See the maps on pages 8-10 for additional information.

“This list of physicians is unique in that it is peer recognized. No one knows another physician’s skill set like we do of each other. I appreciate the service Best Doctors offers.”

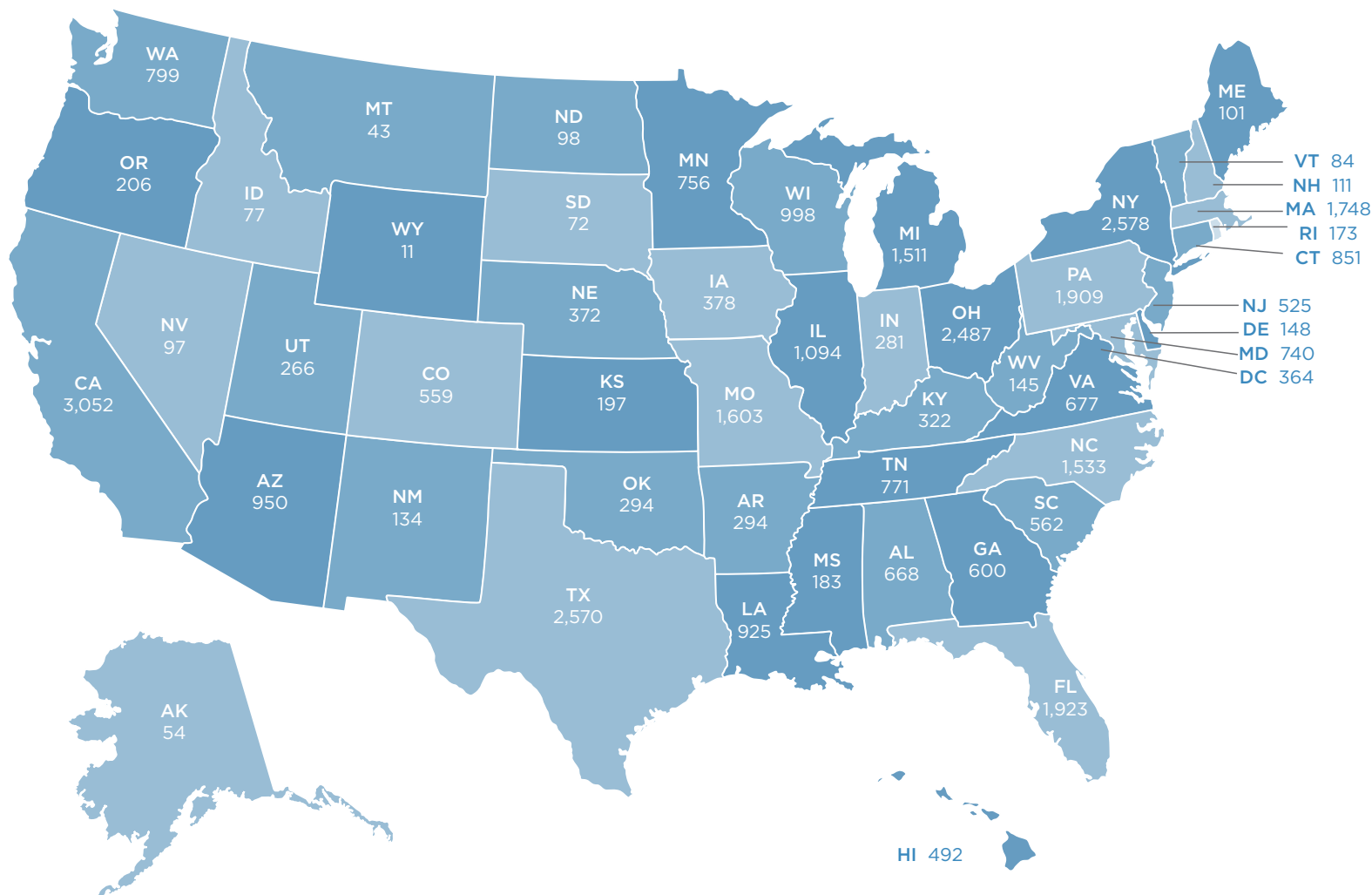
Dr. Paul Lewis
Turley Family Health Center, Clearwater, FL

Selected a Best Doctors physician since 2007
Family Medicine/General Family Practice

Best Doctors in America® List 2017-2018



Location of close to 40,000 physicians selected by their peers

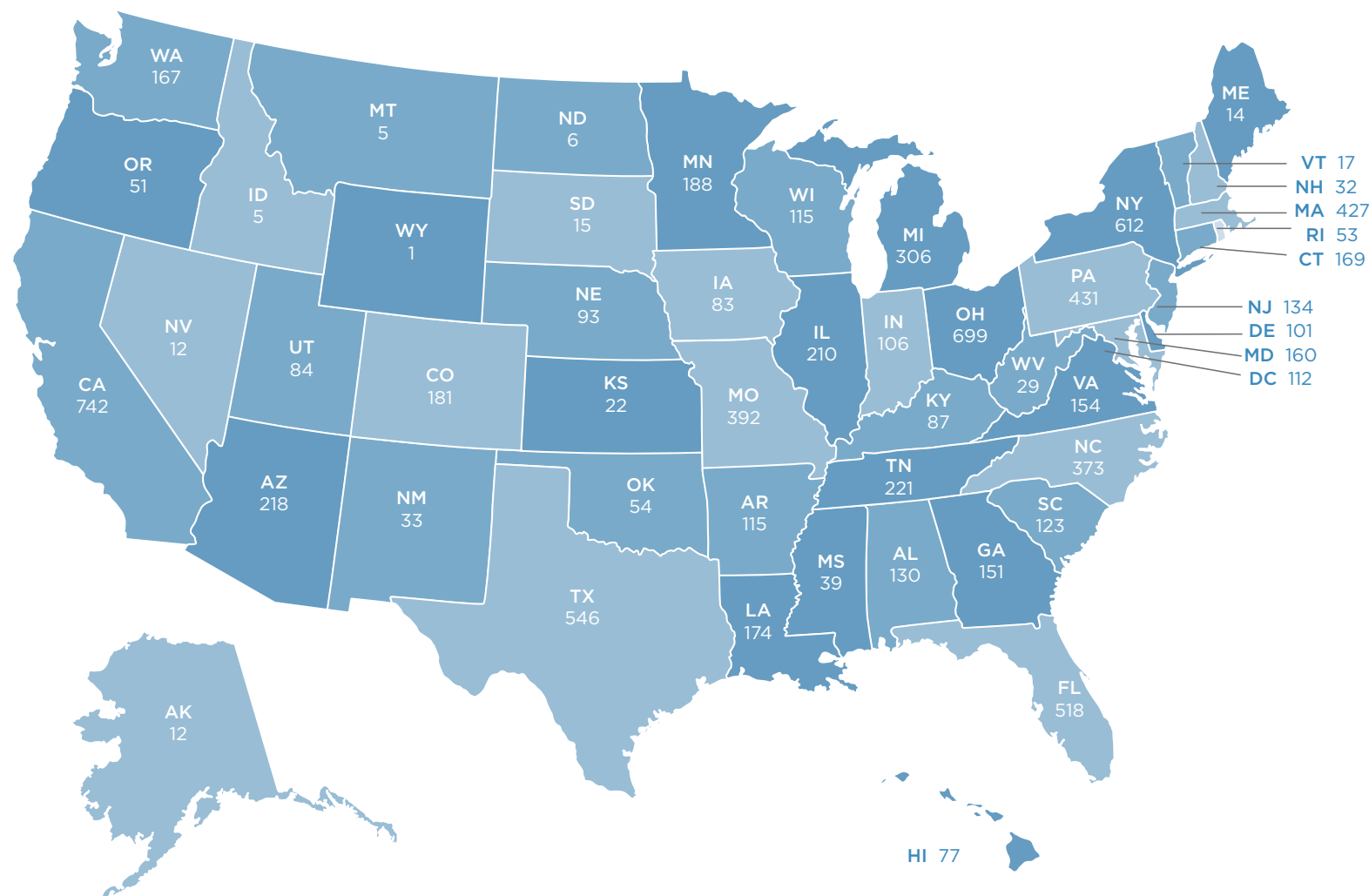


U.S. Best Doctors physicians by specialty

Addiction medicine	45	Hepatology	196	Pediatrics	1,914
Allergy and immunology	389	Infectious disease	714	Pediatric specialist	7,018
Anesthesiology	687	Internal medicine	2,058	Physical medicine & rehabilitation	512
Cardiovascular disease	1,713	Medical genetics	128	Plastic surgery	544
Clinical pharmacology	27	Medical oncology & hematology	1,481	Psychiatry	1,585
Colon & rectal surgery	200	Nephrology	550	Public health & preventative medicine	2
Critical care medicine	723	Neurological surgery	563	Pulmonary medicine	842
Dermatology	948	Neurology	1,544	Radiation oncology	431
Eating disorders	15	Nuclear medicine	135	Radiology	1,080
Emergency medicine	153	Obstetrics & gynecology	2,326	Rheumatology	521
Endocrinology & metabolism	577	Occupational medicine	20	Sleep medicine	143
Family medicine	1,359	Ophthalmology	1,726	Surgery	842
Gastroenterology	785	Orthopedic surgery	1,373	Surgical oncology	426
Geriatric medicine	377	Otolaryngology	911	Thoracic surgery	391
Hand surgery	260	Pathology	514	Urology	656
				Vascular surgery	312

*Numbers from 2017-2018 poll results and additional research.

Location of close to 9,000 pediatricians and pediatric specialists selected by their peers



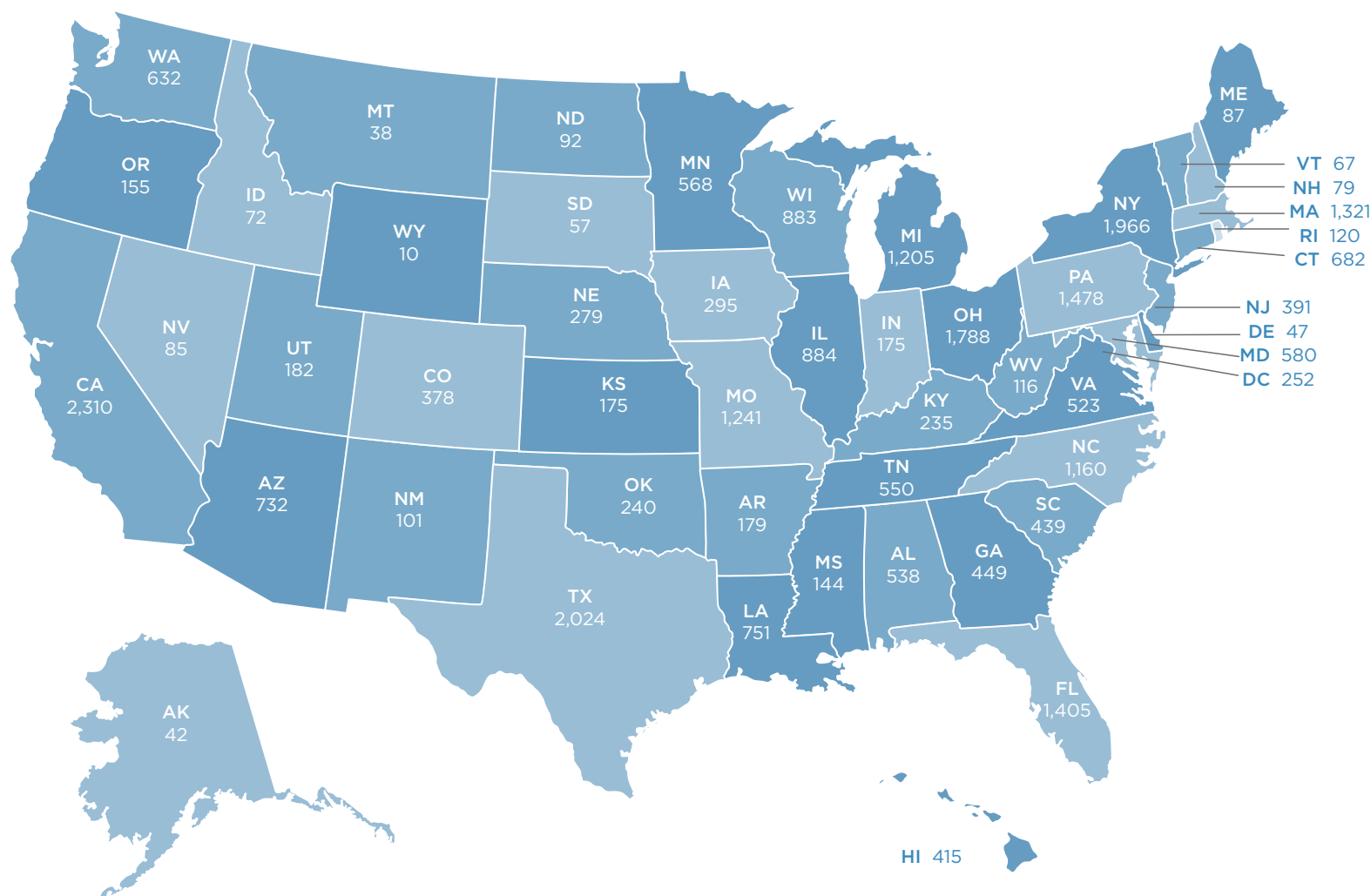
Pediatrics only: U.S. Best Doctors by specialty

Abused children	66	Pediatric & adolescent gynecology	56	Pediatric neuroradiology	15
Adolescent & young adult medicine	143	Pediatric anesthesiology	281	Pediatric nuclear medicine	6
Carcinoid/neuroendocrine tumor	9	Pediatric cardiac surgery	51	Pediatric nutrition	26
Child & adolescent psychiatry	457	Pediatric cardiology	529	Pediatric obesity	5
Hospice & palliative medicine	17	Pediatric cardiovascular anesthesia	63	Pediatric ophthalmology	222
Neonatal-Perinatal medicine	567	Pediatric clinical genetics	17	Pediatric orthopaedic surgery	228
Neurology, clinical neurophysiology	1	Pediatric critical care	433	Pediatric otolaryngology	221
Neurology, epilepsy	99	Pediatric dermatology	108	Pediatric pain management	18
Neurology, general	226	Pediatric developmental & behavior problems	105	Pediatric pathology	30
Neurology, HIV/AIDS	1	Pediatric emergency medicine	95	Pediatric physical medicine & rehabilitation	48
Neurology, inherited biochemical disorders	3	Pediatric endocrinology	310	Pediatric plastic surgery	40
Neurology, movement disorders	14	Pediatric gastroenterology	305	Pediatric pulmonology	295
Neurology, muscular dystrophy	7	Pediatric general hepatology	39	Pediatric radiation oncology	35
Neurology, neonatal neurology	12	Pediatric general hematology	501	Pediatric radiology	116
Neurology, neuro-oncology	15	Pediatric hematology-oncology	501	Pediatric rheumatology	94
Neurology, neurodevelopmental disabilities	8	Pediatric infectious disease	304	Pediatric sleep medicine	45
Neurology, neuromuscular disease	20	Pediatric interventional radiology	6	Pediatric sports medicine	20
Neurology, pediatric metabolic diseases	11	Pediatric medical genetics	45	Pediatric surgery	294
Neurology, sleep medicine	5	Pediatric medical toxicology	6	Pediatric thoracic surgery	23
Neurology, vascular neurology	1	Pediatric metabolic diseases	62	Pediatric transplant hepatology	20
Pediatric allergy & immunology	200	Pediatric nephrology	191	Pediatric urology	146
		Pediatric neurodevelopmental disabilities	6	Pediatrics, general	1,914
		Pediatric neurological surgery	106		

**Numbers from 2017-2018 poll results and additional research.*

Adults only: Best Doctors In America® List 2017-2018

Location of close to 31,000 adult physicians selected by their peers



Adults only: U.S. Best Doctors physicians by specialty

Addiction medicine	45	Hepatology	196	Physical medicine & rehabilitation	512
Allergy and immunology	389	Infectious disease	714	Plastic surgery	544
Anesthesiology	687	Internal medicine	2,058	Psychiatry	1,585
Cardiovascular disease	1,713	Medical genetics	128	Public health & preventative medicine	2
Clinical pharmacology	27	Medical oncology & hematology	1,481	Pulmonary medicine	842
Colon & rectal surgery	200	Nephrology	550	Radiation oncology	431
Critical care medicine	723	Neurological surgery	563	Radiology	1,080
Dermatology	948	Neurology	1,544	Rheumatology	521
Eating disorders	15	Nuclear medicine	135	Sleep medicine	143
Emergency medicine	153	Obstetrics & gynecology	2,326	Surgery	842
Endocrinology & metabolism	577	Occupational medicine	20	Surgical oncology	426
Family medicine	1,359	Ophthalmology	1,726	Thoracic surgery	391
Gastroenterology	785	Orthopedic surgery	1,373	Urology	656
Geriatric medicine	377	Otolaryngology	911	Vascular surgery	312
Hand surgery	260	Pathology	514		

*Numbers from 2017-2018 poll results and additional research.

HEALTHCARE FACILITIES & PRACTICE RESOURCES

How to promote your facility's Best Doctors physicians.

How can a physician's hospital or practice receive information for recognition purposes?

We are pleased to work with hospitals and other healthcare provider organizations to recognize physicians selected to the Best Doctors in America® List. We provide list information, logos, web seals, press release templates and statistical information to doctors and PR contacts for internal or external recognition purposes. They are available at any time and at no charge upon request from experts@bestdoctors.com. We provide periodic updates as needed.

What is the Hospital List?

The Hospital List is a list of Best Doctors physicians affiliated with a specific hospital or healthcare system.

Do all listed Best Doctors affiliated with a medical facility name appear on the Hospital List?

We send all Best Doctors physicians a Professional Profile that asks specific questions about their practice, including hospital affiliations. Due to incomplete reporting from doctors who may have multiple affiliations, it is important for PR contacts to review the Hospital List carefully so all Best Doctors are properly listed and appropriately recognized by their hospital. We appreciate any assistance PR and marketing contacts may be able to provide in identifying doctors included in the Affiliation Unreported section, as well as any other necessary revisions.

Are hospital affiliations for the doctors provided to the publications?

Best Doctors includes the hospital name only if a doctor's primary clinical address is at a hospital. Due to the number of doctors with multiple affiliations, as well as incomplete reporting, hospital affiliations are not included on lists sent to publications.

The Best Doctors in America® List is not available to the general public, so this is a great way for a medical facility or practice to publicize the Best Doctors at their facility. We welcome recommendations regarding any publications you think would be appropriate for us to contact.

How current is the Best Doctors database?

The database is constantly updated by our research staff to reflect doctors' geographical moves, retirement, death, changes in clinical activity and other criteria with data we receive from listed Best Doctors, their professional profiles, PR contacts in the medical community and publicly available information like licensing. If a PR or marketing contact receives information from us in January and decides to run a second press release later in the year, we recommend that they contact us for a new list that will include any changes occurred on the Hospital List during the interim.

Do we need to have press releases and advertisements approved by Best Doctors, Inc.?

Best Doctors must approve all advertisements and press releases utilizing the Best Doctors name and/or logo in advance of release in any public media in compliance with our Trademark Usage Requirements (page 15). Send requests to experts@bestdoctors.com. The turnaround time for approval is 3 to 5 business days. If you are working on a deadline, we will do our best to accommodate your timeline.


PR & MARKETING CONTACTS

How do PR and marketing contacts ensure receipt of the Best Doctors in America® List information, as well as future updates?

We will add contact and request information to our PR Directory upon receipt of the completed Request for Information form on page 15. This will ensure you receive current information and additional updates as they become available. Please be assured that contact data is only used by Best Doctors and is never sold or shared. Removal from the PR Directory may be made by request at any time.

Can you tell which hospital has the most listed Best Doctors in a state or metro area?

These statistics are not exact due to the fact that many listed Best Doctors have not provided their hospital affiliations to us. We appreciate any encouragement PR and marketing contacts can give to physicians to complete their professional profiles.



“Without a doubt, Best Doctors is a simple and transparent way of providing high-quality expert second opinions to patients in difficult situations, in a way that benefits both the patient and the doctor.”

Dr. Luís Costa
*Professor of Medicine and Director of Oncology
Hospital de Santa Maria
Lisbon, Portugal*

REQUEST FOR INFORMATION

Please complete and submit this form to be added to our PR Directory to receive information and updates to your Hospital List.

Name and Title:

Institution:

Address:

Telephone:

Fax:

E-mail:

Other institutions/clinics also affiliated with location listed above (please use complete, official names of institutions) and their location (city/state):

Requesting information on physicians located in:

State/Metro/City

Names of the physicians listed in

Hospital

Additional List(s) or Cities requested:

In exchange for this information, I agree that Best Doctors, Inc. requires approval of all advertisements and/or press releases utilizing the Best Doctors name and/or logo, in advance of their release to any public medium, and that I must contact Best Doctors and provide a sample of any materials using the Best Doctors Marks and obtain the written approval of such sample by Best Doctors prior to distributing any materials containing a Best Doctors Mark in any form.

expressly permits Best Doctors to reproduce the provider's press release and/or advertisement for promotional purposes.

Signature

Date

Note: Please return this form by email to clyon@bestdoctors.com or fax to 803.643.0315.

LICENSE TO USE NAME & WEB SEAL

Best Doctors, Inc. grants _____ a license for **one-time reproduction** rights for the Best Doctors, Inc. name and web seal. This limited license extends solely to the production and distribution of one promotional advertisement (web site) and will automatically expire upon the production and distribution of such advertisement.

In consideration for this **one-time grant of rights**, _____ agrees to pay to Best Doctors a fee of \$1.

The promotional advertisement shall display the Best Doctors name and web seal in strict compliance with the Best Doctors, Inc. Trademark Usage Requirements.

In addition, _____ agrees that this work will not be presented in any manner that might lead to confusion about its source or be presented as the work product of anyone other than the _____. _____ also agrees that the Best Doctors web seal will be presented “as is,” without changes, cuts, additions, edits or emendations and will not remove or alter any copyright or trademark ownership notices appearing on the promotional piece. Only official logos and web seals obtained directly from Best Doctors under this license are permitted for use.

Finally, _____ understands and agrees that it cannot print or reprint versions of these materials without the prior participation and written permission from Best Doctors, Inc.

ACCEPTED AND AGREED TO:

Signature

Email Address

Please print name

Date

Best Doctors, Inc.

Date:

Email or fax form to:

Christy Lyon

Phone: 800.675.1199 x3318

Fax: 803.643-0315

Email: clyon@bestdoctors.com

TRADEMARK USAGE REQUIREMENTS

All logos, dated logos and web seals must be obtained from Best Doctors under license. Use of logos and web seals obtained from other sources is not permitted.

Best Doctors print logos and web seals are available to listed Best Doctors physicians and their facilities upon request.



Note: Print logos can be sized according to your needs. Logo may not be altered in design.

Web seals may be reduced in size if necessary but not enlarged in order to maintain resolution quality. Web seals may not be altered in design or date.



For additional information or requirements on logo usage,
please contact experts@bestdoctors.com or phone 800.675.1199.

The Best Doctors in America® Commemoratives

At the request of Best Doctors physicians, we offer customized recognition items to any physician who has ever been selected as a Best Doctor. These items make a handsome addition to any lobby, waiting room or home office to tastefully showcase your accomplishment.

All items feature the physician's name in preferred format: John Sample, MD or Dr. John Sample.



STANDARD PLAQUE

Features the Best Doctors logo, your name and appropriate inclusion years on a polished brass plate mounted on beautifully crafted, hand-finished solid cherry.

\$265

1ST YEAR INCLUSION PLAQUE

Same as the standard, this one is designed for physicians who have been selected for multiple years and is customized to display both the first year of selection and the current listing years.

\$290



DESKTOP COMMEMORATIVE

For those who prefer, this is a stylishly curved, clear acrylic with light catching gold accent and a flat base.

\$265

Please allow a minimum of 8 weeks for customization and delivery. Delivery times may be longer during peak demand.

ORDER YOURS ONLINE

usplaques.bestdoctors.com

Contact us at plaques@bestdoctors.com

or 617.963.1167 with questions



HOW TO ORDER YOUR BEST DOCTORS PLAQUE



Online with Credit Card—Order at usplaques.bestdoctors.com (For your security we do not accept credit card orders by fax or U.S. Mail).



By Mail—complete this form and mail with check to Best Doctors, Inc. at the address noted below.



By Purchase Order—fax this form with the Purchase Order to 866.904.0913 or mail both to the address noted below.

Contact us for discounts on multiple orders.

ORDER FORM

I would like to purchase:

Qty. x Desktop Commemorative(s) \$265

Qty. x Standard Plaque(s) \$265

Qty. x 1st Year Inclusion Plaque(s) \$290

Name as it should appear on the plaque (Dr, MD or DO)
(up to 28 characters)

Shipping Address (UPS/FedEx Delivery. Physical address required.)

Attn:

City

State

Zip

Telephone

Email (required for order confirmation)

Payment Information: (Prices include Shipping & Handling)

Check #

Purchase Order #

We are required to collect sales tax in the following states where Best Doctors, Inc. is located: FL, IL, MA, MD, SC.

Tax exempt facilities must provide a current legible copy of the tax exempt certificate.

Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803
Phone 800.675.1199 | Fax 866.904.0913

PUBLICATION PARTNER PROGRAM

Does Best Doctors publish physician information?

While we are not a list company and do not publish a print or electronic directory, Best Doctors does partner with newspapers and magazines across the country to recognize current Best Doctors. We verify clinical activity and address information with each physician prior to publication to provide accurate information to readers.

Consequently, physicians will know in advance that they will be published, at which time they can opt out. Only Best Doctors whose clinical activity and address have been verified in advance will be printed in a publication.

It is Best Doctors' policy to confirm clinical and address information directly with each individual physician. We do not verify information with any other outside source.

Best Doctors provides statistical support and graphics, but is otherwise not involved in advertising agreements between a publication and individual doctors or a healthcare facility. All advertising arrangements are strictly between the ad purchaser and the publication.

Any advertisements with Best Doctors mention and/or using the Best Doctors logo, Best Doctors in America® logo or web seal must be obtained via license and approved by Best Doctors, Inc. prior to publication or other use.

Best Doctors protects the use of its Intellectual Property, and as such, we require that doctors and healthcare facilities comply with our **Trademark Usage Requirements** (page 15) and submit all advertising, media and/or press releases for compliance approval prior to release.

Please contact experts@bestdoctors.com for further information.

What information does Best Doctors send to publications?

Best Doctors provides information to select magazine and newspaper partners to recognize the doctors selected in a state or metro area and to provide readers a reference list of local medical specialists. Best Doctors provides publications with specialties, the primary clinical address where patients are seen and the appointment phone. We never share fax numbers, email or mailing addresses. Only doctors whose clinical activity and address have been verified in advance will be printed in a publication.

Are hospital affiliations for the doctors provided to the publications?

Best Doctors includes the hospital name only if a doctor's primary clinical address is at a hospital. Due to the number of doctors with multiple affiliations, as well as incomplete reporting, hospital affiliations are not included on lists sent to publications.

The Best Doctors in America® List is not available to the general public, so this is a great way for a medical facility or practice to publicize the Best Doctors at their facility.

We welcome recommendations regarding any publications you think appropriate for us to contact.

BEST DOCTORS CONTACT INFORMATION

How can physicians update contact and other information?

Physicians can contact us at any time to update their clinical address, email, phone and other information. This ensures that they do not miss the opportunity to participate in the nomination and voting processes or be included in publications. Contact us at research@bestdoctors.com.

It is important that we have Best Doctors physicians' current, complete contact information to invite participation in our poll and to list correctly in regional lifestyle and business publications. If contact or other information changes, please let us know immediately at expertupdate@bestdoctors.com.

Who to contact regarding:

Your benefits as a selected Best Doctor – experts@bestdoctors.com

Recognition items – plaques@bestdoctors.com

Consulting on medical cases for our members and earning an honorarium and Continuing Medical Education credits – physicianhelp@bestdoctors.com

Request a nomination form to recommend physicians for consideration in our next poll – experts@bestdoctors.com

Information about your inclusion years and CV citations – experts@bestdoctors.com

PR and marketing contacts at your hospital or practice – experts@bestdoctors.com

Physician referral list for your personal or professional use – experts@bestdoctors.com

Professional profile for login information to update your professional profile – profiles@bestdoctors.com



Please visit bestdoctors.com to learn more.

Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803
p: 800.675.1199 | f: 866.904.0913



Agreement for Expert Consulting Services

This Agreement for Expert Consulting Services is made by and between Best Doctors, Inc. ("**Best Doctors**") and **[DOCTORS NAME]** ("**You**"), on **[05/28/2013]**. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements between the Parties with respect to such subject matter.

1. **What We Ask You to Do:** Best Doctors may request that you provide a written report on our behalf regarding a medical condition that a member of the Best Doctors program wants to better understand or analyzing certain medical information of a member (the "**Services**"). In certain circumstances, we may ask You to speak with one or more of the doctors and nurses who work for Best Doctors regarding your findings. In some cases, You may wish to or be asked to speak with the doctor treating the member. We may request in the future that you perform additional services to us pursuant to a written request and any such services shall be considered "**Services**" for purposes of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, none of the **Services** shall require You to provide medical care or treatment or make medical decisions concerning any individual patients or establish a doctor-patient relationship with a member.

2. **What We Require from You:** Because we provide a very high quality service, we expect that you will spend the time required to thoughtfully review the material presented and give us appropriate insights as a result. For this reason, we require everyone we work with to agree that they will comply with the laws that apply to them while they are working with us, and we expect the same from You. For example, we understand that You are licensed to practice medicine in the State in which you live or practice, and we require that You stay licensed during your performance of services under this agreement. If you have reason to believe your license is in jeopardy, you are expected to notify Best Doctors and stop performing services under this agreement. In addition, we require that any report You deliver contain only true and original material that You prepared and, to the best of Your knowledge, is not anyone else's material.

You agree to complete Best Doctors' Application for Expert Services (attached as Exhibit A) so that Best Doctors can review your credentials and qualifications. You attest that all information you provide in the Application for Expert Services is accurate and complete and if any information changes or becomes inaccurate, You will notify Best Doctors prior to performing additional **Services** for Best Doctors. You hereby consent to the disclosure, inspection and copying of information and documents relating to my credentials, qualifications, and performance by and between Best Doctors and other healthcare organizations.

You understand and acknowledge that federal and state laws provide immunity protections to certain individuals and entities for their acts and/or communications in connection with evaluating the qualifications of healthcare providers. You hereby release all persons and entities, including Best Doctors, engaged in quality assessment and expert approval on behalf of Best Doctors, and all persons and entities providing expert approval information to Best Doctors, from any liability they might incur for their acts and/or communications in connection with the evaluation of Your qualifications for participation in Best Doctors programs, to the extent that those acts and/or communications are protected by state or federal law.

3. **You Are Not Our Employee:** Obviously, we are not hiring You as an employee of Best Doctors. In performing the **Services**, You are doing work for Best Doctors as an "independent contractor." This means You have complete control over where and when and how You do Your work for us. In addition, we will not withhold any taxes from our payments to You, and instead You are responsible for all of Your own federal, state and local tax obligations related to what we pay You.

4. **Who owns the Reports.** As Best Doctors is paying You a fee for the **Services**, the reports shall become Best Doctors property, and You give Best Doctors or an affiliate the right to copyright the Report as a "work made for hire". You give Best Doctors the right to the materials included in the Report so that Best Doctors may give it to members of the Best Doctors program and use for its own business purposes.

5. **We Will Insure You:** Some doctors ask if their own insurance will cover them for the work they perform for Best Doctors. It may. But to be sure, Best Doctors has obtained and shall continue to provide to You insurance under Best Doctors' standard errors and omissions insurance policy to insure against a contingent medical malpractice liability claim against You for Your performance of the **Services**. Of course, this insurance would not cover You if You were to actually treat the member as a patient at some point in the future, nor will it cover You against medical malpractice claims from Your own patients. You represent and warrant that You currently have in place, and will maintain on an ongoing basis, Your own medical malpractice insurance coverage to insure You in the event one of Your own patients files a claim against You. You agree to provide, upon request, periodic attestations to Best Doctors that such malpractice insurance policy is in place.

6. **Confidentiality of Proprietary Information:** As You perform the **Services** on behalf of Best Doctors, You will have access to and gain knowledge of our processes, strategies, policies, and how we perform the **Services**, all of which is valuable to our business and is considered Proprietary Information. You agree to only use Proprietary Information for purposes relating to



Your performance of the Services and You agree that You will not disclose the information or use it for any other purpose without the express written consent of Best Doctors.

7. Confidentiality of Protected Health Information: Both of us have obligations under the law to maintain the privacy and security of Member's protected health information ("and not to use such information for any purpose other than to perform the Services. By performing the Services on Best Doctors' behalf, You are our Subcontractor, as that term is defined by the Health Insurance Portability and Accountability Act's Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164 ("HIPAA Rules"). As such, with respect to protected health Information You receive from, or create on behalf of Best Doctors ("PHI") You agree to:

- a. use and disclose PHI only as necessary for you to perform the Services or as required by law;
- b. not use or disclose PHI in a manner that would violate the HIPAA Rules if done by Best Doctors;
- c. use, disclose and request only the minimum amount of PHI necessary to perform the Services;
- d. use commercially reasonable and appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provide for by this Agreement. More specifically you agree to:
 - i. Send PHI via email only when the email is encrypted or otherwise secure (e.g. via Best Doctors' secure physician portal); and
 - ii. Save PHI to a laptop or other mobile device only if the laptop or mobile device is fully encrypted.
- e. in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on your behalf agree to the same restrictions, conditions, and requirements that apply to You herein..
- f. report, within thirty (30) days of becoming aware, to Best Doctors any use or disclosure of the PHI not provided for by this Agreement, any breaches of Unsecured PHI as required at 45 C.F.R. 164.410, and any Security Incident of which You becomes aware.
- g. make available PHI in a Designated Record Set to Best Doctors as necessary to satisfy Best Doctors' obligation under 45 C.F.R. § 164.524.
- h. make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Best Doctors pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Best Doctors' obligations under C.F.R. § 164.526.
- i. maintain and make available the information required to provide an accounting of disclosures to the Individual as necessary to satisfy Best Doctors' obligations under 45 C.F.R. § 164.528.
- j. comply with the requirements of Subpart E of 45 C.F.R. Part 164 to the extent You carry out one or more of Best Doctors' obligations under Subpart E of 45 C.F.R. Part 164.
- k. make Your internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

8. Medicare Rules and Regulations: You may, at times, be asked to perform Services for members who are in Medicare Advantage or Medicare Fee for Service plans. Both of us have obligations under the law and by contract to comply with applicable Medicare rules and regulations while performing the Services for such members. Such applicable laws and regulations include, but are not limited to, CMS instructions relating to the prevention or detection of fraud, waste and abuse, the privacy and security provisions set forth at 42 C.F.R. Section 422.118, federal laws, rules and regulations designed to prevent or ameliorate fraud, waste, and abuse, including, but not limited to, applicable provisions of federal criminal law, the False Claims Act (31 U.S.C. §§ 3729 et seq.), and the anti-kickback statute (section 1128B(b) of the Social Security Act), and any other laws applicable to recipients of federal funds. Additionally, You:

- a. represent You have not been excluded from participation in any federal- or state-funded health program; or You have not been listed in the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, or the OIG or GSA exclusion lists. You agree to provide, upon request by Best Doctors, an attestation of ongoing compliance with this section 8(a);



- b. represent You have taken, and will continue to take on an annual basis, a Medicare compliance education and training program course that meets, at a minimum, the education and training requirements adopted by CMS. You agree to provide, upon request by Best Doctors, an attestation of completion of such Medicare compliance education and training program.
- c. agree that You will not, in any event, including without limitation, non-payment by Best Doctors, insolvency of Best Doctors or breach of this agreement by Best Doctors, bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse against any member
- d. understand that Best Doctors and/or CMS as applicable, has the right of inspection, evaluation and audit of documentation related to Services rendered to Medicare members.

9. **Payment Terms:** As an "independent contractor" doing work for Best Doctors, You will be paid for the Services on a per case basis. Fee structure for each case may differ depending on the nature of the case assigned. Every reasonable effort will be made so that fees are paid within ten (10) days of the date on which the Services performed are confirmed by Best Doctors personnel. In order to ensure timely payment, we require that the attached Form W-9 be completed before payments can be made so that we have proper record of the payee (name & address) to be paid and the tax id for which tax records will be sent. In addition, we recommend completion of the attached direct deposit form which will allow us to deposit your funds directly into a specified bank account. An electronic payment remittance will be sent to a specified email address at the time of deposit which will detail the case fees being paid. If the direct deposit form is not completed, You will be paid via check which will result in additional processing time as the result of sending the check via regular mail.

10. **Term:** This Agreement will remain in effect until terminated in writing by either Party.

11. **Termination:** This Agreement may be terminated by either Party for any reason upon thirty (30) days written notice.

12. **Effect of Termination:** Upon termination of this Agreement, You agree to return to Best Doctors all PHI and retain no copies of such PHI.

Best Doctors, Inc.

By: _____

Name: Lewis Levy
Title: Medical Director

Name: [DOCTORS NAME]



EXHIBIT A

Application for Expert Consulting Services

Thank you for your interest in participating in Best Doctors InterConsultation™ and Ask the Expert™ programs. In order to approve you for participation in our programs, we ask that you complete the following form and sign the following agreement.

Please review the information below and confirm its accuracy:

Name:

NPI:

Primary Clinical Address:

DEA Number: _____

Medical License Number: _____

Primary Hospital Affiliation(s): _____

Board Certification: _____

- ☐ The information above is accurate and complete
☐ The information above is not accurate and complete. Corrected information:

Please indicate your attestation to the following by checking the box:

- ☐ I am currently engaged in active clinical practice.
- ☐ I have never had a medical license refused, restricted, suspended, or revoked by any state licensing authority or surrendered my medical license while a formal disciplinary proceeding was pending before a state licensing authority.
- ☐ I have never had a revocation or suspension of an accreditation.
- ☐ I have never had any suspension or exclusion from participation in, or any sanctions imposed by, a Federal or State health care program, or any debarment from participation in any Federal Executive Branch procurement or non-procurement program.
- ☐ I have never had a Medicare payment suspension under any Medicare billing number.
- ☐ I have never had an action taken against me by the Licensing Board of any state and I am not, to the best of my knowledge, currently under investigation by a Licensing Board of any state.
- ☐ I have never had my license to prescribe or dispense narcotics refused, suspended, or revoked.
- ☐ I have never resigned from or had my privileges suspended, restricted, or revoked by any hospital (other than for medical records, administrative rules and regulations).



- ☐ I have never been reprimanded by or had my membership refused, suspended or revoked by any professional organization.
- ☐ I have never had my malpractice insurance cancelled, suspended, not renewed, restricted, or specially rated.
- ☐ I have never had any felony conviction under Federal or State law, regardless of whether it was health care related.
- ☐ I have never had any misdemeanor conviction, under Federal or State law, related to:
 - the delivery of an item or service under Medicare or a State health care program,
 - the abuse or neglect of a patient in connection with the delivery of a health care item or service,
 - theft, fraud, embezzlement, breach of fiduciary duty, or other financial misconduct in connection with the delivery of a health care item or service,
 - the interference with or obstruction of any investigation into any criminal offense described in 42 C.F.R. Section 1001.202 or 1001.201, or
 - the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.
- ☐ I am not currently engaged in the illegal use of drugs.
- ☐ I have never been assessed a civil penalty by anyone for false or fraudulent submittal of claims for payment, or other violation of payment practice standards.
- ☐ I have never, to the best of my knowledge, been the subject of investigation by any peer review Committee.

If you are unable to attest to any of the statements above, please explain:

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

KENNETH A. THOMAS MD, LLC, a
Connecticut limited liability company,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BEST DOCTORS, INC., a Delaware
corporation,

Defendant.

Case No. 1:18-cv-10957-DPW

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Kenneth A. Thomas MD, LLC (“Thomas” or “Plaintiff”) brings this Amended Class Action Complaint against Defendant Best Doctors, Inc. (“Best Doctors” or “Defendant”), to stop its practice of sending unauthorized and unwanted fax advertisements, and to obtain redress for all persons and entities similarly injured by its conduct. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by its attorneys.

NATURE OF THE ACTION

1. This case challenges Defendant Best Doctors’ practice of sending unsolicited faxes to doctors’ offices.¹

2. The faxes ostensibly invite the doctor-recipient to be included in Defendant’s “Best Doctors of America List” by verifying and updating their contact information such as the doctor-recipient’s clinic address. But, there are ~~two real~~ at least four advertising related reasons

¹ Copies of the faxes Best Doctors sent to Plaintiff are attached as Exhibit A.

that Defendant sends these faxes.

3. First, the faxes advertise the commercial availability and quality of Defendant's "programs and services" including its "Find a Best DoctorTM service in which members request names of Best Doctors who treat their specific condition and who are in their geographic location," and its "virtual medical review service called InterConsultation®." Plaintiff is a potential direct consumer of these programs and services, which are often a component of employee benefits packages. In fact, if Plaintiff had responded to Best Doctors' fax advertisements, Best Doctors would have provided Plaintiff with "complementary" access to Best Doctors' list of Best Doctors physicians for Plaintiff's "professional or personal use."²

4. Second, the faxes are a pretext to advertise "Best Doctors" branded merchandise to doctors, and are a direct precursor to subsequent express solicitations by Best Doctors to fax recipients to purchase *exclusive* Best Doctors branded plaques. In fact, on information and belief, among other follow-up attempts to subsequently sell Best Doctors plaques to fax recipients, in the information packet Best Doctors provides as a follow-up to all physicians, hospitals, and medical practices that respond to Best Doctors' faxes and become Best Doctors, Best Doctors repeatedly solicits the "Purchase [of] the exclusive Best Doctors wall plaque or desktop commemorative, a tasteful addition to your waiting room or office."³ (Emphasis in original.)

5. Third, the faxes are part of an overall marketing campaign to make Best Doctors' products and services more desirable to consumers by growing Best Doctors' network of

²² See a copy of the information packet that, on information and belief, Best Doctors provides as a follow-up to all physicians, hospitals, and medical practices that respond to Best Doctors faxes and become Best Doctors, attached as Exhibit B, at p. 2.

³ Exhibit B at pp. 2, 16, 18.

providers.

2.6. And fourth, the faxes are *help wanted* advertisements through which Best Doctors solicits physicians to offer their services to Best Doctors in return for compensation. In fact, one of the express “benefits” of being a listed Best Doctor is the opportunity to “**Earn honoraria.**” and in the faxes, Best Doctors admits that it solicits fax recipients “to participate in other Best Doctors programs such as ... Interconsultation,” for which Best Doctors pays the fax recipients “a fee for the Services.”⁴

3.7. Defendant Best Doctors sent the faxes at issue to Plaintiff and the Class despite: (i) having no established business relationship with them; (ii) never receiving the recipients’ consent to send them such faxes; and (iii) that none of the faxes sent contained requisite opt-out notices.

4.8. As such, Defendant’s fax advertisements violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and caused Plaintiff and putative members of the Class to suffer actual harm, including the aggravation and nuisance of receiving such faxes, the loss of use of their fax machines during the receipt of such faxes, and increased labor expenses.

5.9. Accordingly, Plaintiff seeks an injunction requiring Defendant to cease all unauthorized fax-based marketing activities, as well as an award of actual and statutory damages, along with costs.

⁴ See Exhibit A; Exhibit B at p. 2; and an exemplar Agreement for Expert Consulting Services between physicians and Best Doctors describing the independent contractor relationship and compensation between the parties, attached as Exhibit C, at pp. 1, 3.

PARTIES

6.10. Plaintiff Kenneth A. Thomas MD, LLC is a Connecticut limited liability company with its principal place of business in Stratford, Connecticut.

7.11. Defendant Best Doctors is a Delaware corporation with its principal place of business in Boston, Massachusetts.

JURISDICTION & VENUE

8.12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, as the action arises under the TCPA, a federal statute for which there is federal question jurisdiction.

9.13. The Court has personal jurisdiction over Defendant and venue is proper in this District because the wrongful conduct giving rise to Plaintiff's cause of action arose and emanated from this District and because Defendant Best Doctors maintains its primary place of business in this District.

COMMON FACTUAL ALLEGATIONS

10.14. Defendant is a for-profit company that sells health programs and services to consumers and organizations, ~~and~~ sells "Best Doctors" branded goods to doctors included in the Best Doctors database, and solicits Best Doctors to provide their services for pay.-

11.15. As part of an overall marketing plan to advertise its programs, services, and goods, Best Doctors sends unsolicited faxes to doctors and their organizations. The faxes constitute advertisements for at least four different reasons.

12.16. First, The unsolicited faxes advertise the commercial availability and quality of the Best Doctors "programs and services" Defendant provides to its "members" for a fee built into their employee benefits package or health insurance policy, including Defendant's Find a

Best DoctorTM service and its InterConsultation® service.

~~13.~~17. As stated in the fax~~es~~, the Find a Best Doctor service allows “members [to] request names of Best Doctors who treat their specific condition and who are in their geographic location.” Similarly, Best Doctors’ “virtual medical review service called InterConsultation®” makes use of the Best Doctors database of physicians.

18. As explained on Best Doctors’ website, “[t]he Best Doctors network includes over 50,000 of the world’s top medical experts. Each has been designated as among the best by other doctors through an exclusive, Gallup®-certified process.”⁵ These are the same qualities of the Find a Best Doctor and InterConsultation service described in Defendant’s fax advertisements, which explain “clinicians selected for the newest Best Doctors database ... are included based on the result of our extensive, confidential peer review process” and based on Best Doctors’ “process ... to confirm that [physicians in its newest database] are currently seeing patients [and] to insure the accuracy of [physicians’] information” in Best Doctors’ database.

19. Plaintiff is a potential direct consumer of Best Doctors’ Find a Best Doctor and Interconsultation services, which are frequently included as part of employee benefits packages. In fact, fax recipients like Plaintiff that ultimately respond to Best Doctors’ faxes and become Best Doctors physicians are provided “complementary benefits” including access to the list of Best Doctors for their “professional or personal use” while they remain Best Doctors.⁶

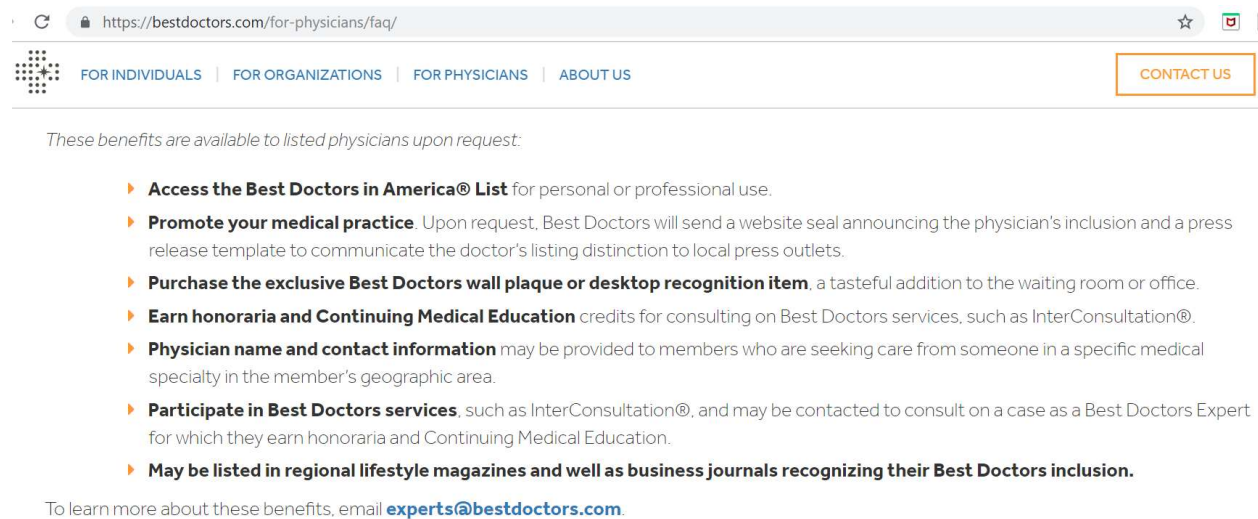
Second.

20. ~~I~~n addition to advertising the commercial availability and quality of Best Doctors’ programs and services, the faxes also serve as a pretext to advertise Best Doctors branded goods

⁵ Best Doctors, *How it Works* (<https://bestdoctors.com/for-individuals/how-it-works/>) (last accessed Apr. 19, 2018)).

⁶ See Exhibit B.

to doctors. The faxes identify Best Doctors' webpage for physicians (<http://bestdoctors.com/for-physicians>) that serves only three express purposes: to explain the process for the Best Doctors poll, to sell Best Doctors branded goods (on a linked webpage titled "Plaques"), and to respond to questions frequently asked by physicians. Notably, aside from the multiple solicitations and plaque order form included in the webpage titled "Plaques," the frequently asked questions page for physician also includes a solicitation to purchase Best Doctors plaques:



21. Additionally, Best Doctors faxes are a precursor to subsequent, explicit solicitations to fax recipients to purchase plaques. In fact, the information packet provided to every fax recipient that responds to the fax and becomes a Best Doctor includes multiple solicitations for Best Doctors plaques, including a full-page plaque order form:

The Best Doctors in America® Commemoratives

At the request of Best Doctors physicians, we offer customized recognition items to any physician who has ever been selected as a Best Doctor. These items make a handsome addition to any lobby, waiting room or home office to tastefully showcase your accomplishment.

All items feature the physician's name in preferred format: John Sample, MD or Dr. John Sample.



STANDARD PLAQUE

Features the Best Doctors logo, your name and appropriate inclusion years on a polished brass plate mounted on beautifully crafted, hand-finished solid cherry.

\$265

1ST YEAR INCLUSION PLAQUE

Same as the standard, this one is designed for physicians who have been selected for multiple years and is customized to display both the first year of selection and the current listing years.

\$290



DESKTOP COMMEMORATIVE

For those who prefer, this is a stylishly curved, clear acrylic with light catching gold accent and a flat base.

\$265

Please allow a minimum of 8 weeks for customization and delivery. Delivery times may be longer during peak demand.

ORDER YOURS ONLINE

usplaques.bestdoctors.com

Contact us at plaques@bestdoctors.com or 617.963.1167 with questions



HOW TO ORDER YOUR BEST DOCTORS PLAQUE

Online with Credit Card—Order at usplaques.bestdoctors.com (For your security we do not accept credit card orders by fax or U.S. Mail).

By Mail—complete this form and mail with check to Best Doctors, Inc. at the address noted below.

By Purchase Order—fax this form with the Purchase Order to 866.904.0913 or mail both to the address noted below.

Contact us for discounts on multiple orders.

ORDER FORM

I would like to purchase:

Qty. x Desktop Commemorative(s) \$265

Qty. x Standard Plaque(s) \$265

Qty. x 1st Year Inclusion Plaque(s) \$290

Name as it should appear on the plaque (Dr, MD or DO)
(up to 28 characters)

Shipping Address (UPS/FedEx Delivery. Physical address required.)

Attn:

City

State

Zip

Telephone

Email (required for order confirmation)

Payment Information: (Prices include Shipping & Handling)

Check #

Purchase Order #

We are required to collect sales tax in the following states where Best Doctors, Inc. is located: FL, IL, MA, MD, SC.

Tax exempt facilities must provide a current legible copy of the tax exempt certificate.

Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803
Phone 800.675.1199 | Fax 866.904.0913

Best Doctors, Inc. | Polling & Research
5230 Woodside Executive Court | Aiken, SC 29803 | Tel: 800.675.1199 | Fax: 803.643.0315 | www.bestdoctors.com
BEST DOCTORS® and the STAR-IN-CROSS logo are registered trademarks of Best Doctors, Inc. in the United States and in other countries. Used with permission.

The faxes also identify Best Doctors' phone number (800-675-1199). Notably, however, the

~~faxes fail to provide any other information on how to unsubscribe or opt-out of Best Doctors’ solicitations, driving the recipients to call the phone number or visit the website.~~

22. Best Doctors also solicits fax recipients to purchase plaques in the press releases Best Doctors issues in connection with the selection of new Best Doctors.⁷ For example, in Best Doctors' press release identifying "Connecticut's Best Doctors 2018," which, on information and belief, would have included Plaintiff if he had responded to the faxes, Best Doctors solicits listed doctors to purchase *exclusive* Best Doctors branded plaques, stating:

Best Doctors, Inc. is the only authorized source of the official Best Doctors in America® plaque and other recognition items. Best Doctors does not authorize, contract with or license any organization to sell recognition items for Best Doctors, Inc. Please contact Best Doctors at plaques@bestdoctors.com with any questions. For more information or to order visit usplaques.bestdoctors.com or call 617-963-1167.⁸

23. Best Doctors also expressly solicits recipients of faxes who become Best Doctors to purchase plaques as part of their registration for Best Doctors celebratory events:

The screenshot shows a web page for the 2018 Best Doctors celebration registration. At the top, there is a navigation bar with links: Back to Top, Register, Information, and Sponsors. Below this is a large 'Register Now' button. A countdown timer indicates 29 days, 4 hours, 57 minutes, and 49 seconds until the event starts. Below the timer is a table of ticket options:

Ticket Type	Price	Quantity	Fee	Total
Table and Custom Plaque of Honor (10 ticket package)	\$1,200.00	0	\$0.00	\$0.00
Table of 10 (10 ticket package)	\$950.00	0	\$0.00	\$0.00
Single Ticket	\$95.00	0	\$0.00	\$0.00

Below the table, there is a link that says 'Click to unlock hidden ticket'. At the bottom of the page, there is a 'Checkout' button.

⁷ See Exhibit B at p. 2, describing “**Recognition in local media**” as one of the “benefits” of becoming a Best Doctors physician.

⁸ *Connecticut's Best Doctors 2018 press release*, Connecticut Magazine http://www.connecticutmag.com/article_af095394-27da-11e8-b933-9b11a0051c15.html (last accessed Oct. 31, 2018).

⁹ *Wichita Best Doctors celebration registration*, Wichita Business Journal <https://www.bizjournals.com/wichita/event/162110/2018/2018-best-doctors> (last accessed Oct. 31, 2018).

24. Remarkably, if every Best Doctors physician were to purchase one Best Doctors plaque, Best Doctors would net over \$13 million in revenue every two years. More remarkably, Best Doctors offers bulk pricing, suggesting that some Best Doctors physicians purchase “30 or more” plaques at a time:

https://usplaques.bestdoctors.com/BulkDiscounts.asp?ProductID=10&ProductCode=BD-PLI&Orig_Price=290

Discount10		
Buy...	Save...	New Price...
10 - 19	5%	\$275.50 per order
Discount20		
Buy...	Save...	New Price...
20 - 29	10%	\$261.00 per order
Discount30		
Buy...	Save...	New Price...
30 or more	15%	\$246.50 per order

25. Third, in addition to being a pretext and precursor to further solicitations to purchase Best Doctors plaques, the faxes are advertisements because they are part of an overall marketing campaign to make Best Doctors’ products and services more desirable to consumers by growing Best Doctors’ network of providers.

26. Fourth, and finally, the faxes are advertisements because they solicit physicians’ services for pay, and/or were a precursor to soliciting physicians’ services for pay. Although a physician cannot pay to be added to the Best Doctors list, one of the touted “benefits” of being a Best Doctor is the opportunity to “**Earn honoraria**” and to otherwise “participate in other Best Doctors programs such as ... Interconsultation,” for which Best Doctors also pays the fax recipients “a fee for the[ir] Services.”¹⁰

27. Accordingly, Best Doctors faxes are advertisements.

~~15.~~28. The fax advertisements at issue failed to provide recipients with proper opt-out

¹⁰ See Exhibit A; Exhibit B at p. 2; Exhibit C. at pp. 1, 3.

notice information required by the TCPA and implementing regulations. Specifically, the faxed failed to provide notice identifying a facsimile number and domestic contact telephone number for fax recipients to transmit their opt-out requests.

~~16.29.~~ Defendant Best Doctors sends these fax advertisements to individuals and business with which it has no existing business relationship, and without express invitation or permission, in violation of the TCPA.

~~17.30.~~ Best Doctors used a telephone facsimile machine, computer, or other device to send the fax advertisements at issue.

FACTS SPECIFIC TO PLAINTIFF THOMAS

~~18.31.~~ On or about May 16, 2017, Best Doctors used a telephone facsimile machine to send five unsolicited fax advertisements to Plaintiff Thomas. (True and accurate copies of the fax advertisements are attached hereto as Exhibit A).

~~19.32.~~ The fax advertisements promoted the commercial availability and quality of Best Doctors' Find a Best Doctor and InterConsultation services and its Best Doctors branded goods, were part of an overall campaign to increase Best Doctors' business, and solicited physicians to provide their services to Best Doctors for pay, and/or were a precursor to such solicitations.

~~20.33.~~ Although Plaintiff corresponded in 2011 and/or 2012 with Defendant regarding its Best Doctors database, at the time Plaintiff received Defendant's five fax advertisements, Plaintiff Thomas had no existing business relationship with Best Doctors, and had never provided it with consent to receive advertisements through any medium, let alone by fax.

~~21.34.~~ The fax advertisements failed to contain the required opt-out notice mandated by 47 U.S.C. § 227(b)(2)(D) and 47 C.F.R. § 64.1200(a)(4)(iii)-(iv). Specifically, the faxes failed to contain language that identified a facsimile number and telephone number for fax recipients to

transmit their opt-out requests.

CLASS ACTION ALLEGATIONS

22.35. **Class Definitions:** Plaintiff Thomas brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) individually and on behalf of a Class of similarly situated individuals defined as follows:

All persons and entities who (1) on or after four years prior to the filing of the initial complaint in this action, (2) received a telephone facsimile advertisement, (3) sent from or on behalf of Best Doctors, and (4) from whom Best Doctors did not have a record of prior express consent to send the facsimile advertisements.

The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the class definitions following appropriate discovery.

23.36. **Numerosity:** The exact size of the Class is unknown and unavailable to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant faxed unsolicited advertisements to thousands of individuals and entities who fall into the definition of the Class. Class membership can be easily determined from Defendant's records.

24.37. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff is a member of the Class, and if Defendant violated the TCPA with respect to

Plaintiff, then it violated the TCPA with respect to the other members of the Class. Plaintiff and the Class sustained damages as a result of Defendant's uniform wrongful conduct.

25.38. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) How Defendant gathered, compiled, or obtained the fax numbers of Plaintiff and the Class;
- b) Whether Defendant's faxes advertised the commercial availability or quality of property, goods, or services;
- c) Whether Defendant sent the fax advertisements without first obtaining Plaintiff and the Class's prior express permission or invitation to do so; and
- d) Whether Defendant's conduct was willful such that Plaintiff and the Class are entitled to treble damages.

26.39. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

27.40. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's practices challenged herein apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law

applicable only to Plaintiff.

~~28.41.~~ **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions ensured.

FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On Behalf of Plaintiff and the Class)

~~29.42.~~ Plaintiff incorporates the foregoing allegations as if fully set forth herein.

~~30.43.~~ The TCPA makes it unlawful for any person to “use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement. . . .” 47 U.S.C. § 227(b)(1)(C).

~~31.44.~~ The TCPA defines “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.” 47

U.S.C. § 227(a)(5).

32.45. The faxes sent by Defendant advertised the commercial availability and quality of its goods and services and were commercial in nature. Therefore, Defendant's faxes are advertisements under the TCPA.

33.46. Defendant sent the fax advertisements at issue to Plaintiff and members of the Class without their prior express invitation or consent, and despite the lack of an existing business relationship between it and members of the Class.

34.47. By sending the unsolicited fax advertisements at issue to Plaintiff and members of the Class without their prior express invitation or permission, Defendant violated 47 U.S.C. § 227(b)(1)(C).

35.48. As a result of Defendant's conduct, Plaintiff and the members of the No Consent Class suffered actual damages, including the conversion or loss of paper and toner consumed in the printing of the faxes, the loss of use of the recipients' fax machines during the time required to receive, review and route the unauthorized faxes, as well as increased labor expenses.

36.49. Plaintiff and the Class are therefore entitled to a minimum of \$500 in damages for each violation under 47 U.S.C. § 227(b)(3)(B). To the extent Defendant's misconduct is determined to be willful, the Court should treble the amount of statutory damages under 47 U.S.C. § 227(b)(3).

37.50. Additionally, as a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class are entitled to an injunction under 47 U.S.C. § 227(b)(3)(A), to ensure that Defendant's violations of the TCPA do not continue into the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kenneth A. Thomas MD, LLC, on behalf of itself and the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Kenneth A. Thomas MD, LLC as the representative of the Class, and appointing its counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate the TCPA;
- C. An order declaring that Defendant's faxes constitute unsolicited advertisements, that they lacked the required opt-out language, and that Defendant sent the faxes without first obtaining prior express invitation or permission of the recipients, and enjoining Defendant from further violations, and otherwise protecting the interests of the Class;
- D. An award of statutory damages;
- E. An award of pre-judgement interest and costs; and
- F. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully Submitted,

KENNETH A. THOMAS MD, LLC, individually
and on behalf of all others similarly situated,

Dated: October 31, 2018

By: /s/ Jason Campbell

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Attorneys for Plaintiff and the Class

* Admitted Pro Hac Vice ~~Admission to Be Sought~~

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Jason Campbell