

THE SOUTH FLORIDA BUSINESS JOURNAL

May 6-12, 2005 • \$2.00

southflorida.bizjournals.com

Litigants want Dr. Notes to pay up

BY BRIAN BANDELL

Dr. Angel M. Garcia's software is designed to help doctors properly bill patients, but his company has some unpaid bills of its own.

His Dr. Notes was evicted from one

office after the landlord said \$152,249 in rent was owed. While many doctors say Dr. Notes' software works just fine, 10 doctors have won lawsuits, with most claiming free trial warranties were not honored.

Federal tax liens indicate Dr. Notes

and its predecessor, Datamed Forms and Software, owe \$1.19 million to the IRS.

A lawyer who has filed a lawsuit on behalf of three former employees says he wants to file a class action suit over unpaid wages.

The company has moved to a new, small-

er office, but its workforce has shrunk from 160 last summer to no more than eight, according to Garcia and former employees.

The owner of Dr. Notes expressed opti-

mism last summer when he flew dozens of doctors from across the country to his Boca Raton offices to test the latest version of his program, which allows doctors to enter patient records and order prescriptions into tablet PCs to avoid paper-work and save time.

Four doctors and more than 10 former employees say Dr. Notes said it would collect prescription data from practices, sell it to a research university and reimburse doctors to lower their cost of using the system. Despite telling doctors a deal had been struck with a university, none was made, the doctors and former employees told *The Business Journal*.

Garcia did not respond to repeated requests for comment on the issues raised in this story. His attorney refused comment.

In July, Garcia talked during an interview about the company's revenues tripling year-over-year to \$9.2 million in 2003. He said the product would revolutionize physician practices by saving them a lot of time and money. He spoke of an IPO.

In a mid-April e-mail, the doctor still talked positively about his company.

"We have started signing up distributors and are going to announce a pretty large sale in the next 30 days," he wrote. "It is a national provider's organization of 840 doctors who receive multimillions of grant money from the government."

The organization's board determined that only Dr. Notes could collect the clinical information for their grant money every year, he said.

"We are pretty proud of the fact that this national association of cardiologists have spent three years looking for the right electronic medical record system and have chosen Dr. Notes after this three-year search," he said.

Garcia has previously stated that more than 5,000 physicians have purchased the company's software.

Ten doctors have won lawsuits against Dr. Notes, which changed its name from Datamed in 2003, for a total of \$826,990 in judgment liens issued since 2002, according to court records. Most of them claimed the company refused to honor its money-back warranty agreement on the Dr. Notes program after they weren't satisfied with it.

An additional \$398,924 in judgment liens has been issued against the company since 2002 from 11 other parties, including former employees claiming they weren't paid salary, overtime and expenses.

Dr. Notes didn't defend itself from most of those lawsuits, according to court documents and interviews with the plaintiff parties. To date, \$334,057 of liens from all the lawsuits have been paid, court records indicate.

The \$1.19 million federal tax lien, under the Datamed name, spans from tax years 2000 through 2004, the lien filings state. They account for unpaid payroll taxes and unemployment taxes.

Dr. Notes was evicted from its 25,300-square-foot office, at 5201 Congress Ave., on March 2 after owing landlord Cingular Wireless \$152,249 in rent as of

Jan. 1, according to court records. With a monthly rent of \$35,882, that indicates more than four months of non-payment.

Dr. Notes now occupies a 6,500-square-foot office at One Park Place in Boca Raton. The eight employees include one salesperson and three people in tech support to cover a program purchased by more than 5,000 physicians.

"That's the startling part. The company was doing so well and then, overnight - boom," said Ruby Daniels, who worked in tech support for Dr. Notes for three years until leaving in January. "We looked at the company as having so much potential. It was just poor management."

Court records show Datamed was evicted from another Boca Raton office in 1994 - the same year Garcia filed personal Chapter 11 bankruptcy amid claims from unpaid vendors and the IRS. He emerged from bankruptcy court protection in 1996.

Legal documents and accounts from more than 10 former employees and their attorneys indicate an array of problems, some dating back to Datamed.

Dr. Hersell Lindo in Calais, Maine, said he purchased software to run his office from Datamed in 2000 for more than \$40,000 and bought \$2,500 worth of shares in the company. The program didn't meet the needs of his OB-GYN practice, so he tried to return it under the

free trial warranty.

The company wouldn't take it back, he said, and didn't reimburse him. So Lindo sued and, in 2002, was awarded a \$45,584 verdict. It still hasn't been paid.

The Datamed software and equipment has been sitting in boxes in the Waynesboro, Pa., office of cardiologist Rose M. Dagen for three years, but she said she hasn't been able to collect on her \$49,640 verdict against the company for not honoring the warranty.

Her Boca Raton attorney, Lloyd Comiter, said the bank accounts he found were all closed or transferred.

"I thought when you get a judgment, that means you get what's due to you," Dagen said. "I don't understand how a business stays in business when you do all these things to people."

A review of court records indicated the only doctor who has collected on part of his verdict against Dr. Notes - of the 10 who won judgments in the last three years - is Gerald Weaver of Worland, Wyo., who is owed \$43,270. Attorney Andrew Schwartz, of Deerfield Beach, helped him garnish \$8,727 from Dr. Notes' Bank of America account in January. Schwartz was also successful in garnishing \$44,654 from the company on behalf of Robert Frackiewicz, who had lent money to Dr. Notes.

Prescription data plan

The free trial offer wasn't the only sales promise the company broke, according to doctors and ex-employees. Dr. Notes sales representatives told physicians they'd collect prescription data from their practices to sell to a university that it had a contract in place with to conduct a research study,

the doctors and ex-employees said. The doctors were supposed to be paid monthly for providing the data.

Dr. Notes pledged to pay Family and Sports Medicine in Manchester, N.H., \$1,400 a month for providing the data, but it hasn't collected a cent, said Lainee Trudel, the practice's business manager. It chose Dr. Notes because the addition of the prescription program would have made it the cheapest option, she said. Instead, it's costing the two-physician practice \$1,600 a month.

According to Trudel, the company's excuses for not sending the payments included "the checks in the mail," the secretary forgot it in her desk and the hurricanes damaged their offices and banks.

The company eventually offered promissory notes or stock certificates in lieu of payment, but the practice refused, she said.

Trudel said the practice is speaking to attorneys about suing Dr. Notes. She also said she is owed several thousand dollars in unpaid reimbursements for traveling to Boca Raton for the beta testing last summer and calling doctors to promote the program. Although some doctors are unhappy with the program, Trudel and others say it works fine and the practice continues to use it.

Three other doctors contacted for the story reported not getting paid under the prescription program.

Dr. Eric Roth, of Bailey Cove Family Physicians in Huntsville, Ala., said Dr. Notes owes his practice more than \$25,000 in payments. The physicians there pay more than \$1,000 a month to lease Dr. Notes instead of the \$200 to \$300 it would cost with the program's reimbursements.

"The sales basically slowed down dramatically and that might have been because of the dissatisfaction of not being paid on the promises that were made," said Morris, who won a \$5,097 verdict against the company in March over unpaid wages.

Dr. Notes' business model depended on closing sales, said former employees, including Morris. The physicians' monthly payments were to lease the equipment from computer makers such as Hewlett-Packard and Dr. Notes collected lump sums of tens of thousands of dollars each for selling its software.

'They finally came and said those contracts never materialized. We're basically stuck holding the bag.'

Dr. Eric Roth
Bailey Cove Family Physicians, Huntsville, Ala.

Last summer, Garcia started changing the sales strategy to focus on the Internet-based DrNotes.net, which was offered as a subscription service of \$500 to \$700 a month. As he brought the physicians in to beta test the program, he told a reporter that would make it more affordable for doctors.

But with the commission rate kept flat at 8 percent, the lower price meant lower pay for salespeople, two former employees said. Within three months, members of a more than 50-person sales team started leaving.

Bill Schmidt, a salesperson and demonstrator, said there was only one salesperson remaining when he left on Jan. 28.

"They were either forcing sales staff

"They finally came out and said those contracts to sell data never materialized," Roth said. "We're basically stuck holding the bag."

Dr. Notes never secured a contract with any university to sell the prescription data, according to more than 10 former employees. The program was an incentive to sell the software, and doctors were often told it would be closing in 30 to 60 days to push them to buy, said Cesar Fisher, who worked in sales for Dr. Notes from July 2004 until November.

"The Dr. Notes computer program seemed to help doctors, but the company was poorly led and used dishonest tactics to sell the program," Fisher said, referring to the prescription data promise.

Salespeople told doctors that a research organization was in place to buy the data, but a contract never materialized, said Donald Morris, the company's former controller.

Garcia spent millions of dollars developing a prescription drug database, but couldn't compile enough data to sell it to a research organization, Morris said. At first, Dr. Notes used its operating cash to pay the doctors, but that soon became too expensive, so it stopped paying them, he said.

Word spread among the physicians, with many Dr. Notes customers ranting against the company on a message board of a prominent medical software site, EMRUpdate.com.

to quit or finding reasons to fire them," Schmidt said. "One girl complained about not getting paychecks before Christmas, and they went to her desk and asked her to ship out."

Dr. Notes' paychecks were often late and sometimes bounced, and expense reimbursement was withheld or replaced by promissory notes, stock certificates or office supplies, according to more than five former employees.

In lieu of travel expenses, former senior trainer Jim Wallman said he accepted a laptop computer, three high-end PCs and a USB hard drive. He forgave an additional \$1,500 in expenses in exchange for a stock certificate that he said is now "not worth the paper it's written on."

The company continued deducting health insurance from their paychecks after failing to notify employees the policy was canceled months earlier, and continued collecting payroll taxes it didn't pay to the government, more than five former employees said. Four former employees gave an account of an employee who was nearly arrested after the company neglected to pay the child support it was deducting from his paycheck.

"Dr. Garcia really hurt a lot of people," said Wallman, who worked there for a year and a half. He "kept us going and in the end he left us with nothing."

On Dec. 17, Dr. Notes comptroller Gregory J. Hilliar sent an e-mail to all employees, criticizing them for not holding Friday's checks until after 2 p.m. on Monday as instructed and adding: "Dr. Notes will not be handing out checks until monies are readily available for everyone."

"It got to the point where they had to start locking the front door," former tech worker Daniels said. "Dr. Garcia had several threats on his life."

According to Daniels and other ex-employees, Garcia then gathered his execu-

tives and told them to give employees the message: "If you're here for a paycheck, then you're here for the wrong reasons."

Even after employees left the company, many said they had difficulty getting paid. Daniels said she was owed \$600 in salary and Dr. Notes offered to pay her back at minimum wage. Other former employees also reported being offered such a deal.

Companies aren't allowed to reduce an employee's salary in back pay after the rate was already agreed upon, Miami labor attorney Susan Potter Norton said.

Adding insult to injury for former employees that were owed money, Dr. Notes sent them letters through its lawyer, telling them to stop working for competitors under a non-compete clause. One of these letters obtained by *The Business Journal* threatened the former employee with a lawsuit if she didn't leave her new job in five days.

Dr. Garcia should be held personally responsible for how he treated his employees, Hollywood labor attorney Richard Celler said. He has filed a lawsuit against Dr. Notes and Garcia that names three employees and seeks a class action status on behalf of other former workers.

The lawsuit says Dr. Notes repeatedly withheld the first and last weeks' paychecks from many employees and failed to pay overtime in some cases.

The motion asks Dr. Notes to provide names and contact information for other ex-workers so they can be added to the suit.

"I think it's wrong to have employees work and continue to line your own pockets while not paying them," Celler said. "We know there are hundreds of creditors, but we won't have to wait in line. We'll take Dr. Garcia's assets if he can't pay his employees."

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