



It's About *Life!*

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March 29, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Telemarketing Rulemaking – Comment. FTC File No. R411001

Ladies and Gentlemen:

America's Blood Centers (“ABC”) is the association of not-for-profit, community-based blood centers, which provide about half of the nation’s volunteer donor blood supply.

In response to the Federal Trade Commission’s Notice of Proposed Rulemaking to amend the FTC’s Telemarketing Sales Rule, ABC requests that the definition of “charitable contribution” in 16 C.F.R. § 310.2(f) be modified to add the following language:

“Provided, further, that requests for voluntary blood donations by or on behalf of a not-for-profit, tax exempt blood center licensed by the U.S. Food and Drug Administration shall be excluded from the definition of charitable contribution for purposes of this Rule.”

Background – The Nation’s Blood Supply.

The nation's blood supply depends on volunteer donors. Every year, voluntary blood donations save more than 4 million lives.

Throughout America, volunteer donors show their altruism by going to not-for-profit, tax-exempt blood centers and rolling up their sleeves. This activity costs the donor nothing, except that it requires him or her (and often his or her employer) to give up significant time. The centers then subject the blood to a battery of tests, process the blood into various components, and supply the components mostly to hospitals for life-saving transfusions.

About half of the nation’s volunteer blood supply is drawn by ABC members, the remainder by the American Red Cross, other independent centers, the military and hospital-based programs. For example, an ABC member, the New York Blood Center, was responsible for providing blood to the surviving victims of the September 11, 2001 attacks on the World Trade Center. ABC’s member in Oklahoma City provided blood for the victims of the 1995 bombing and our member in Denver provided blood for the 1999 Columbine shooting victims.

All of these not-for-profit blood centers are licensed by the U.S. Food and Drug Administration and heavily regulated by that agency. *See* 21 C.F.R. § 600, *et seq.* The FDA prescribes detailed screening requirements that must be followed before a donor is allowed to give blood. *Id.* § 640, *et seq.*

Unfortunately, because of changes in our society and a growing number of donor “deferrals” due to tighter donor eligibility rules, the pool of available and willing blood donors has declined in recent years. Meanwhile, the need for blood products becomes ever greater due to an aging population and advances in medicine – made possible in part by blood transfusion support.

To address the growing shortages of blood, some not-for-profit blood centers, lacking resources to maintain these kinds of programs internally, have contracted with outside telemarketers to assist in blood donor recruitment. When placing outbound calls, these telemarketers do not ask the person being called to give money or property to the blood center. They simply ask that person to give his or her time by donating blood.

ABC is concerned that the definition of “charitable contribution” in the proposed rule is so broad that it will prevent not-for-profit blood centers from using telemarketers to phone persons and request them to donate blood, if those persons previously asked to be on the “Do Not Call” registry. *See* 16 C.F.R. § 310.4(b) (1)(iii)(B). ABC believes that clarifying the definition of “charitable contribution” to expressly exclude a blood donor’s donation of blood would be consistent with Congress’s purposes in enacting the authorizing legislation (*i.e.*, the USA PATRIOT Act) and would better serve the public interest.

Reasons Why 16 CFR § 310.2(f) Should Be Modified.

Section 310.2(f) of the proposed rule should be modified to expressly exclude requests for blood donations on behalf of not-for-profit blood centers for the following five reasons.

1. Blood centers that use telemarketers to urge people to make an appointment to donate blood are not asking for “a gift of money or any other thing of value” in the sense that the USA PATRIOT Act uses those terms. The donor’s blood is of great value to the recipient of the blood donation, but the donor is not being asked to part with anything other than his or her *time*.

In that sense, blood donations are analogous to phone calls asking someone to vote for a candidate, activity that is expressly excluded from the proposed rule. *See* 16 C.F.R. 310.2(f)(2). (In fact, the proposed rule goes even further and excludes *all* solicitations by telemarketers on behalf of political committees, even when they are solicitations for campaign contributions.)

2. Most of the abuses that were the impetus for the FTC’s proposed rule simply do not and cannot apply to blood donation. Concerns about misleading sales tactics or misunderstood payment authorizations have no applicability to blood donation. A prospective blood donor is *not* being asked over the phone to buy anything or to authorize any kind of transaction. The prospective donor cannot even give blood until he or she decides to go to the blood center’s facility and passes FDA-mandated screening.
3. Much of the FTC’s proposed rule is not relevant to the context of blood donation. For example, the proposed rule would prohibit a telemarketer that is soliciting charitable contributions from misrepresenting “[t]hat any charitable contribution is tax deductible in

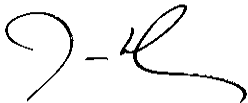
whole or in part,” “[t]he purpose for which any charitable contribution is used,” or “[t]he percentage or amount of any charitable contribution that will go to a charitable organization.” *See* 16 CFR 310.3(d). These prohibitions make sense in the context of a charity that is using a telemarketer to solicit money, but not blood donations.

4. The FTC’s proposed rule is based in part on a stated assumption that telemarketing is of little social value. Yet when telemarketers are used to seek out potential blood donors, that assumption is demonstrably not true. Blood donation literally saves lives. In those instances when a blood center employs an outside telemarketing firm to seek out donations, it does so because of a pressing need for blood in the community. In weighing the relative social costs and benefits, few will question the importance of saving lives.
5. Failing to exempt the blood collection activities of not-for-profit blood centers would ignore the role of the FDA in this area. The FDA prescribes detailed requirements that must be followed before an individual can donate blood. For example, if a blood donor receives an “incentive” for donating that consists of cash or is convertible to cash, the blood donation no longer is considered voluntary and cannot be labeled as such, thereby effectively precluding its use for transfusion purposes. *See* 21 C.F.R. § 606.121(c); FDA Guidance § 230.150 (“Blood Donor Incentives). A not-for-profit blood center that used misleading or abusive telemarketing practices to “badger” someone into donating (a scenario that does not exist in the real world) likely would be violating FDA regulations. Thus, FTC regulation of telemarketing practices with respect to blood donations is not needed in light of the existing body of FDA regulations.

Conclusion.

America’s Blood Centers respectfully urges the FTC to consider the foregoing comments and to modify the amended Telemarketing Sales Rule to exclude requests for blood donation that are made on behalf of not-for-profit FDA-licensed blood centers. Thank you.

Sincerely,



Jim MacPherson
CEO