



## GOVERNOR'S OFFICE OF CONSUMER PROTECTION

December 18, 2013

### **Re: An in depth discussion of the required statutory provisions, part 5**

We have had extensive discussions on the provision which warns consumers that should they pre-pay for their membership, they are taking a risk and may lose the money they paid in advance should the gym close. Yet we have found that there are misunderstandings among gyms regarding pre-paid services in general. While this provision provides a specific warning to consumers about the risk of pre-paying their gym membership, it does not give gyms the right to refuse to refund payments made on memberships, group classes, tanning or other services which are offered to members. Under the Fair Business Practices Act, it is an unfair business practice to refuse to provide a prorated refund on any pre-paid service which is offered to consumers. In the event that a consumer's pre-paid membership or other services, is cancelled by the consumer or the gym, a prorated refund must be provided to the consumer since funds that were paid in advance were for future services. Gym owners should be aware that there is no valid reason under State law that will justify their decision to refuse to provide a prorated refund on any pre-paid membership or service. Such a decision will always be construed by OCP to be an unfair business practice. In sum, it is an unlawful practice to terminate a membership or service that had been paid in advance and to retain those funds that were paid in advance by the consumer.

Other podcasts have addressed the provision that states that no payments would be due to anyone, if a gym closed its doors and did not transfer the memberships to another comparable facility that is substantially similar and is located within ten miles. In expanding on those podcasts, we must elaborate that this provision applies only to gyms and not to independent contractors. Sometime ago, OCP inquired into a series of consumer complaints regarding an independent contractor or organization that had been providing training services within a certain gym. Consumers alleged that the contractor had informed them that their training programs had been moved to another gym which was located twenty miles away. This meant that those gym members were required to continue to use the gym for its services but had to travel twenty miles to another gym for training programs. OCP had three concerns about this particular situation: 1) No gym memberships can be moved to any other location unless it is substantially similar and is located within ten miles. 2) Memberships cannot be moved unless they are moved at the closing of a gym to another gym's location that is substantially similar and is located within ten miles and, 3) Independent Contractors and other organizations that are working within established gyms which already had a membership base when they opened, are not allowed to move the gym's memberships to another location regardless of whether it is substantially similar and is located within ten miles. Since the health spa provisions of the FBPA applies only to gyms, we believe that Independent Contractors are not allowed to transfer a gym's memberships to any location whatsoever.