

## IN THE MATTER OF

## INDIANA FEDERATION OF DENTISTS

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9118. Complaint, Oct. 18, 1978—Final Order, Feb. 17, 1983*

This Final Order, among other things, prohibits an Anderson, Ind. dental association ("IFD") from engaging in any action or course of conduct having the effect of requiring or organizing dentists to refuse to submit radiographs or other materials requested by third-party payers for use in benefit determinations or to deal with a third-party payer in a certain way. The order also forbids IFD from engaging in any action that compels a third-party payer to deal with or to operate in a certain way in connection with dental health care benefits programs; or whose purpose is to influence a consumer's choice of dentists based on the degree of non-cooperation between such dentists and a third-party payer. Additionally, the association is required to timely mail to each of its members a copy of the Commission order together with a letter advising that IFD has abandoned all policies and guidelines that fail to conform to the provisions of the order, and that members are free to deal with dental health care programs and payers as they see fit.

*Appearances*

For the Commission: *L. Barry Costilo, M. Elizabeth Gee, James McCarty and Laurel Brandt.*

For the respondent: *Ronald K. Fowler, Anderson, Ind. and Bruce W. Graham, West Lafayette, Ind., intervenor for State of Indiana.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent named in the caption hereof has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definition shall apply in this Complaint. *Third-party payer* or *payer* means any entity that provides a program of reimbursement for dental health care services to employees or members of any business organization, and any person, such as an independent claims adjuster, who provides evaluative services in connection with any such reimbursement program.

PAR. 2. Respondent Indiana Federation of Dentists ("IFD") is an unincorporated association with its principal place of business at 2403 Raible Ave., Anderson, Indiana. The IFD is composed of dentists licensed to practice dentistry in the State of Indiana and has approximately 250 members.

PAR. 3. The Indiana Dental Association ("IDA"), is an Indiana corporation with approximately 2000 members, all of whom are licensed to practice dentistry in Indiana. IDA charters, and is divided into, geographic component societies. Membership in a component society is a condition of membership in IDA.

PAR. 4. Members of respondent and of IDA are engaged in the business of providing dental health care services to patients for a fee and are paid for such services from the patients' personal funds and/or from funds provided under dental health care benefits programs. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other dentists. [2]

PAR. 5. Among respondent's objectives is representation of dentists in socio-economic matters, as a result of which respondent is a corporation organized to carry on business for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 6. In 1976, total expenditures for dental health care services in the United States were approximately \$8.6 billion. The annual rate of expenditure in Indiana is at least \$150 million.

PAR. 7. In the course and conduct of their businesses, members of respondent, among other things,

(A) Receive substantial revenue from private third-party payers and from the Federal Government in payment for rendering dental health care services, which money flows across state lines;

(B) Provide dental health care services to patients who receive reimbursements from private third-party payers and from the Federal Government for payments made for such services, which reimbursements flow across state lines;

(C) Receive and treat patients from states other than Indiana; and

(D) Utilize and prescribe drugs, medicines, and other products which are shipped in interstate commerce;

as a result of which the acts and practices herein below alleged are in or affect commerce within the meaning of the Federal Trade Commission Act, and respondent is subject to the jurisdiction of the Federal Trade Commission.

PAR. 8. A substantial portion of the population of Indiana is covered by dental health care benefits programs administered by third-party

payers. Many of such programs include provisions for determination of benefits in advance of treatment ("predetermination") and limitation of coverage to the least expensive adequate course of treatment, with a requirement that radiographs ("X-rays") be submitted to aid in benefit determination. The purpose of such provisions is to contain the cost of dental care. Their efficient utilization requires cooperation from treating dentists.

PAR. 9. Since at least 1961, IDA, its component societies, and their members have engaged in acts, practices, and methods of competition to eliminate, prevent, or hinder competition among dentists with respect to cooperation by dentists with dental health care benefits programs containing predetermination and least expensive adequate course of treatment [3] provisions. In the course thereof, IDA, its component societies, and their members in concert and agreement among themselves, and with IFD and its members, as hereinbelow alleged, *inter alia*:

A. Promulgated and distributed to their members guidelines and principles for dealing with third-party payers, along with forms and information to facilitate adherence to such guidelines and principles;

B. Encouraged and induced their members to discontinue serving and/or to refuse to serve as dental consultants for third-party payers and to refuse to provide payers with other professional services such as, but not limited to, taking X-rays for use in benefits determination;

C. Conducted meetings, workshops, and pledge campaigns among their members to gain the agreement of individual members not to compete with other dentists in dealing with third-party payers;

D. Urged dental organizations in other states to pursue courses of conduct similar to that hereinabove described; and

E. Urged payers, purchasers, and beneficiaries of dental health care benefits plans to eliminate provisions of such plans that they find unacceptable.

PAR. 10. In or about September 1976, respondent was organized and founded by dentists, at least some of whom were or had been members or officers of IDA. In or about September 1976, respondent announced its intention to adopt and pursue the purposes of the agreement and concert of action alleged in Paragraph Nine.

PAR. 11. Since September 1976, respondent and its members, in concert and agreement among themselves, have acted in furtherance of the agreement and concert of action alleged in Paragraph Nine, and have otherwise engaged in acts, practices, and methods of competition to eliminate, prevent, or hinder competition among dentists with respect to cooperation with dental health care benefits programs

containing predetermination and least expensive course of treatment provisions by, *inter alia*:

A. Promulgating, adopting, publishing, and distributing to its members a purported "work rule" that details certain uniform courses of conduct for dentists in their dealings with third-party payers; and [4]

B. Urging payers, purchasers and beneficiaries of dental health care benefits plans to eliminate provisions of such plans that respondent finds unacceptable.

PAR. 12. The acts, practices and methods of competition alleged in Paragraphs Nine through Eleven have had, or have the tendency or capacity to have, among others, the following effects:

A. Competition among dentists in Indiana has been hindered, restrained, foreclosed, and frustrated;

B. The cost of dental health care services in Indiana has been or may be stabilized, fixed, or otherwise tampered with;

C. Consumers have been or may be deprived of the benefits of third-party payers' cost-containing measures, including lower or potentially lower costs for dental health care services and dental health care benefits insurance;

D. Consumers have been or may be denied the benefits of a second dentist's opinion as to the adequacy of proposed dental treatment; and

E. Consumers have been limited in their opportunity to select dentists who cooperate with dental health care benefits programs.

PAR. 13. The aforesaid acts and practices of respondent constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, and are within the scope of Section 5(m)(1)(B) of said Act.