



U.S. Department of Justice

Antitrust Division

*Liberty Place Building
325 Seventh Street NW
Washington, DC 20530*

May 13, 1999

BY HAND DELIVERY

Honorable Joseph J. Farnan, Jr.
United States District Court
for the District of Delaware
Federal Building, Room 6325
844 King Street
Wilmington, DE 19801

Re: United States v. Federation of Physicians and Dentists, 98-CV-475 JJF

Dear Judge Farnan:

The United States submits this letter in response to the letter motion (D.I. 85) filed on May 6, 1999 by nonparties AmeriHealth of Delaware, Inc. and Independence Blue Cross (referred to hereafter collectively as "AmeriHealth"), seeking limited modifications to the protective order entered by the Court on March 3, 1999. (D.I. 68).

The United States has no objection to AmeriHealth's letter motion. As the Court is aware, the United States has, since it first sought entry of a protective order in this litigation, recognized the harm that would result from permitting defendant Federation's representatives, such as its executive director, Jack Seddon, full access to non-parties' confidential information. See United States' Brief in Support of its Motion for Entry of its Proposed Protective Order (D.I. 36); Plaintiff's Reply to Defendant's Answering Brief In Opposition to Plaintiff's Motion For Entry of Its Proposed Protective Order (D.I. 54). For the reasons set forth in the cited briefs and at the February 16, 1999 scheduling hearing, the United States believes that AmeriHealth's proposed modifications to the protective order are appropriate to protect the business interests of non-parties, such as AmeriHealth, as well as the public interest in competition in the market for physician services.

We would like to add a point that may assist the Court in resolving the issue presented by AmeriHealth as well as plaintiff's pending letter motion to compel production of documents from the Federation and several of its member practice groups (argued before the Court on April 20). The point arises from a glaring contradiction in positions taken by counsel for the Federation and

these orthopedic practice groups concerning the relevance of documents relating to health care insurers, other than Blue Cross Blue Shield of Delaware (“Blue Cross”). In an April 5, 1999, letter brief (D.I. 73) opposing the United States’ motion to compel, Federation counsel argued to this Court that the United States is “misus[ing] . . . the discovery process to inquire into the Federation’s [and its members’] dealings with other insurers,” such as AmeriHealth, because such dealings are, purportedly, irrelevant to the claims at issue. (D.I. 73, at p. 5). But in an April 30, 1999, letter to AmeriHealth, purporting to explain why the Federation would not agree to further limit disclosure of documents from AmeriHealth’s files that Mr. Seddon had not seen previously, Federation counsel contends that AmeriHealth’s documents are “highly relevant to the case and essential to our client’s full and fair defense of this action.” Letter from Mary Beth Fitzgibbons (counsel for Defendant) to Peter E. Halle (counsel for AmeriHealth and IBC) (April 30, 1999) (Attached as Exhibit E to AmeriHealth/IBC letter motion) (D.I. 85).

Defense counsel’s “heads I win; tails you lose” approach to relevancy has no place in this litigation. Surely, if, as the Federation contends, documents in AmeriHealth’s files are “highly relevant to this case,” defendant’s and its member groups’ own documents relating directly to their dealings with Delaware insurers such as AmeriHealth, are *a fortiori* relevant to this case and should be produced by the Federation and its member physicians.

Respectfully submitted,

_____/S/
Virginia Gibson-Mason

_____/S/
Melvin A. Schwarz
Steven Kramer

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cc: Counsel for Defendant

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