

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FEDERATION OF PHYSICIANS AND
DENTISTS, INC.,

Defendant.

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) Civil Action No. 98-475
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) Filed: August 12, 1998
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COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Defendant Federation of Physicians and Dentists, Inc. ("the Federation") to prevent and enjoin Defendant's and its Delaware orthopedic surgeon members' ongoing violation of Section 1 of the Sherman Act.

I.

INTRODUCTION

1. In coordination with its member orthopedic surgeons located in Delaware ("Federation members"), the Federation organized and became the hub of a conspiracy to oppose and prevent proposed reductions in payments for orthopedic services by Blue Cross and Blue

Shield of Delaware ("Blue Cross"). The Federation and Federation members reached a common understanding that Federation members would deal and communicate with Blue Cross only through the Federation's officials, thereby facilitating a boycott to extract artificially high fees from Blue Cross and to prevent other health care insurers in Delaware from reducing the fees they paid to these surgeons.

2. After meeting in late 1996 with a Federation representative, some Delaware orthopedic surgeons began to join the Federation and to encourage other Delaware orthopedic surgeons to join for the purpose of acting jointly in contract negotiations with health care insurers over fees or other terms of their individual contracts. By the fall of 1996, virtually all orthopedic surgeons then in individual or group independent practice in Delaware had joined the Federation. When Blue Cross proposed to reduce its payments to orthopedists and other physicians, to become effective in November 1997, the Federation and Federation members conspired to resist the orthopedic fee reductions.

3. By the end of 1997, acting pursuant to the conspiracy, nearly all of the Federation members had rejected Blue Cross's proposed fee reductions and had given notice of their intent to terminate their Blue Cross contracts in 90 days. The Federation members recognized that, if Blue Cross faced the prospect of losing its panel of orthopedic surgeons in Delaware as a result of their combined boycott, Blue Cross would be more likely to agree to pay higher fees to Federation members.

4. Defendant's unlawful conspiracy with Federation members has blocked Blue Cross's efforts to reduce the rate of health care cost increases by reducing the fees paid to Federation members and has disrupted physician-patient relationships by severely limiting the

panel of orthopedic surgeons participating with Blue Cross. These effects were caused by collusive distortion of what should have been independent negotiations between Blue Cross and each of the several independent orthopedic surgeon practices in Delaware. The United States, through this suit, asks this Court to enjoin such illegal behavior promptly, before further injury to consumers in Delaware and elsewhere occurs.

II.

DEFENDANT

5. The Federation is a labor organization with its headquarters in Tallahassee, Florida. The Federation has traditionally acted, in employment contract negotiations, as a collective bargaining agent under federal and state labor law for physicians who are employees of public hospitals or other health care entities. Recently, however, the Federation has begun to recruit economically independent physicians in private practice in many states (including Arizona, California, Connecticut, Delaware, Florida, Maryland, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Virginia, and Washington) to encourage these independent physicians to use the Federation in negotiating their fees and other terms in their contracts with health care insurers.

III.

JURISDICTION AND VENUE

6. The United States brings this action to prevent and restrain Defendant's continuing violations of Section 1 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 4 and 28 U.S.C. §§ 1331 and 1337.

7. The Federation transacts business and has committed many of the unlawful acts at issue in Delaware. Moreover, the Federation has, as members, 44 orthopedic surgeons, as well as

a number of other physicians, in Delaware. Consequently, this Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 15 U.S.C. § 1391(b)(2).

IV.

CO-CONSPIRATORS

8. Various persons, not named as defendants herein, have participated as co-conspirators in the offense hereinafter alleged, and have performed acts and made statements in furtherance thereof.

V.

EFFECTS ON INTERSTATE COMMERCE

9. The activities of Defendant that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

10. Federation representatives have traveled across state lines to meet with Delaware orthopedic surgeons and also have communicated with them by mail and telephone across state lines. Federation members who have conspired with the Federation have communicated with Federation representatives and have sent their Federation membership dues across state lines.

11. Some health care insurers remit substantial payments across state lines to Federation members. Some Federation members provide medical services to patients who live outside Delaware. Federation members also purchase equipment and supplies that are shipped to Delaware across state lines.

12. Health care insurers' payments to Federation members affect the premiums those insurers charge for health care coverage to firms that sell products and services in interstate commerce. The premiums those health care insurers charge firms for coverage of their employees

represent a cost of production for those firms and, therefore, affect the prices at which those firms' products are sold in interstate commerce.

VI.

DEFENDANT'S UNLAWFUL ACTIVITIES

A. DELAWARE HEALTH INSURERS AND ORTHOPEDIC SURGEONS

13. Currently, there are four major health care insurers operating in Delaware: Aetna/US Healthcare, AmeriHealth, Blue Cross, and Principal Healthcare. Blue Cross is the largest insurer of Delaware residents and covers nearly 200,000 subscribers in its service area (Delaware and border communities in New Jersey, Pennsylvania, and Maryland), including 20-30% of Delaware residents with private health care insurance. In 1997, Blue Cross paid approximately \$4 million for health care services rendered by Delaware orthopedic surgeons to Blue Cross subscribers.

14. Each of the four major Delaware health care insurers offers a variety of insurance plans to employers and their employees, including "managed care" plans such as health-maintenance organizations and preferred provider organizations. To offer such plans, an insurer typically forms networks (or "panels") of participating providers, including physicians and hospitals, through contracts that, among other things, establish the fees that these providers will accept as payment in full for providing covered medical care to the insurer's subscribers. By so doing, the insurer ensures that its patient-subscribers will not be billed by the provider, other than for any applicable deductible amount or co-payment.

15. All four of the major health care insurers operating in Delaware consider it necessary to include orthopedic surgeons who practice in Delaware in their panels to make their

health care plans marketable to Delaware employers and their employees. During the period of the conspiracy, approximately 47 orthopedic surgeons were actively engaged in private practice in Delaware. Twenty-six of them practice in New Castle County, including 20 who belong to the County's three major, competing, and independent orthopedic group practices: Delaware Orthopaedic Center ("Delaware Orthopaedic"), First State Orthopaedics ("First State"), and Orthopaedic Specialists. The other 21 practice in Sussex or Kent County ("downstate"), and all but one of these belong to the seven orthopedic surgical groups located in Dover, Lewes, Milford, or Seaford.

16. Most health care insurers offering managed care plans find that it is necessary to contract with many, but not all, of New Castle County and downstate orthopedic surgeons to offer a marketable plan in Delaware. The New Castle County orthopedic surgical groups compete with each other, in their willingness to accept proposed fee levels and other contractual terms, to be included in managed care plans' panels. Likewise, the downstate orthopedic surgeon groups, to the extent that they serve similar geographic areas, also compete with each other to be included in managed care plans' panels.

B. DELAWARE ORTHOPEDIC SURGEONS JOIN THE FEDERATION

17. In the fall of 1996, at the initiative of Dr. William Newcomb ("Dr. Newcomb"), one of the ten orthopedic surgeons in First State, Delaware's largest orthopedic surgical group, the Federation began actively recruiting as members Delaware orthopedic surgeons who generally compete with each other for patients in their private practices. As part of that recruitment drive, the Federation's representatives disseminated information touting the

Federation's ability to provide private practice physicians with more bargaining leverage in their negotiations with health care insurers if nearly all of them joined the Federation.

18. To cloak its patently illegal activities, the Federation described its actions as an effort to implement a "messenger model arrangement," purportedly in accordance with the Statements of Antitrust Enforcement Policy in Health Care issued in August 1996 by the Department of Justice and the Federal Trade Commission. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153, at 20,831 (August 28, 1996) ("the Statements"). There, federal antitrust authorities, applying settled antitrust principles, discussed the use of "messenger model arrangements" in which third parties act merely as efficient conduits for information and communications between insurers and individual physicians or physician group practices. But nothing in the Statements suggests a messenger may negotiate on behalf of competing independent physicians or may in any way enhance the bargaining leverage of such physicians.

19. In mid-November 1996, Dr. Newcomb commenced his efforts by sending a letter inviting all Delaware orthopedic surgeons in private practice to attend a Federation meeting in Wilmington on November 21, 1996. The meeting featured Dr. Michael Connair, a practicing orthopedic surgeon from Connecticut, who is a "representative" of the Federation and had been instrumental in recruiting virtually all of the orthopedic surgeons in New Haven, Connecticut, to join the Federation. According to Dr. Newcomb's letter inviting the surgeons to the November 21st meeting, "[t]he Connecticut union has been very successful in negotiating favorable contracts with insurance carriers." A number of Delaware orthopedic surgeons attended the meeting,

including physicians from all three major orthopedic surgical groups in New Castle County as well as some downstate orthopedic surgeons.

20. Within a few days of the meeting, Dr. Newcomb reported to his First State colleagues that Dr. Connair had presented the following “primary reasons” for Delaware orthopedic surgeons to join the Federation:

The union would negotiate contracts for all members using the ‘messenger model.’ The idea is that an organization representing all orthopaedic surgeons would have bargaining leverage.

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The union would defend all anti-trust actions brought by the insurance carriers. Anti-trust litigation can be very costly so a union defense is an appealing feature.

Dr. Newcomb further informed First State physicians that “[t]he union has the negotiators and expertise to negotiate very good contracts,” and that “there is momentum and a groundswell of support for the federation.”

21. Accordingly, at a November 27, 1996 meeting of First State physicians, Dr. Newcomb encouraged all of his partners to join the Federation. All of the First State physicians present at the meeting voted “to join the union.” At a December 11, 1996 meeting, a First State physician, who had not attended the November 27th First State meeting, cautioned his partners that this proposed use of the Federation is “on the cutting edge. [First State] could be burned.” At this later meeting, First State reconsidered its previous vote and decided not to join the Federation at that time.

22. All physicians in the second major New Castle County orthopedic group practice, Delaware Orthopaedic, joined the Federation shortly after the November 21, 1996 meeting, as did several other orthopedic surgeons from around the state.

23. In January 1997, Orthopaedic Specialists, the third major New Castle County orthopedic group, decided to postpone joining the Federation.

24. At a February 12, 1997 meeting, First State surgeons again considered joining the Federation, but upon learning that Orthopaedic Specialists had decided not to join at that time, they “table[d] . . . membership until Orthopaedic Specialists joins” because the Federation “will only be effective if every [orthopedic surgical] group is in.”

25. At their February 12th meeting, First State physicians also discussed the possible formation of a “management services organization” (“MSO”) among the three major New Castle County groups (Delaware Orthopaedic, First State and Orthopaedic Specialists) to engage in several mutually beneficial business activities. The First State physicians were informed, however, that Delaware Orthopaedic was “making their participation in the MSO contingent upon all [orthopedic surgical] groups joining the Federation of Physicians and Dentists.”

26. On June 11, 1997, two of Orthopaedic Specialists’ physicians attended a First State doctors’ meeting to discuss the prospects for forming the MSO. It was mentioned at that meeting that Delaware Orthopaedic was continuing to resist joining the MSO until the physicians in First State and Orthopaedic Specialists also became members of the Federation. Dr. Newcomb commented that “the Federation will not be effective unless all 3 [orthopedic surgical] groups join.”

27. On July 21, 1997, Delaware Orthopaedic doctors reaffirmed their refusal to join the MSO unless First State and Orthopaedic Specialists joined the Federation. At that time, Dr. Newcomb reiterated that First State would join the Federation if Orthopaedic Specialists also joined.

28. By the end of July 1997, all of the physicians in Orthopaedic Specialists agreed to join the Federation, and the Delaware Orthopaedic physicians agreed, in turn, to join the MSO. At the same time, all First State physicians decided to "join the Federation for one year so that all [New Castle County] orthopedic groups are members." On August 13, 1997, Dr. Newcomb was able to report to his First State colleagues that First State, Delaware Orthopaedic, and Orthopaedic Specialists had all joined the Federation, along with additional orthopedic surgeons in New Castle County and downstate Delaware.

C. THE FEDERATION MEMBERS' CONCERTED RESPONSE TO BLUE CROSS'S FEE PROPOSAL

29. While the Federation was creating the combination of Delaware orthopedic surgeons, Blue Cross sought to lower the fees it paid to physician specialists (including orthopedic surgeons) in order to remain competitive in the health care insurance marketplace. In effect, Blue Cross sought to bring the fees it paid to orthopedic surgeons in Delaware into line with the fee levels -- calculated as a percentage of Medicare rates for a specialty -- applicable to other specialists in the state. On August 29, 1997, Blue Cross notified its participating orthopedic surgeons and other specialists that its proposed fee schedule would become effective November 1, 1997. Thereafter, when explaining to Delaware orthopedic surgeons the reasons for proposing to

reduce their fees, Blue Cross emphasized that its new fee schedule would bring their fees closer to the lower fees paid to orthopedic surgeons in nearby areas, including metropolitan Philadelphia.

30. The Federation members, by then poised to act jointly, responded promptly to Blue Cross's fee proposal. On September 12, 1997, Dr. Newcomb of First State wrote to ten orthopedic surgeons who practiced in the competing Delaware Orthopaedic and Orthopaedic Specialists groups and in four downstate Delaware orthopedic surgical groups. The recipients of Dr. Newcomb's letter represented all of the Delaware orthopedic surgical groups whom Dr. Newcomb then believed to be Federation members. In his letter, Dr. Newcomb instructed Federation members on how to respond to Blue Cross's proposed fee reduction and provided a sample letter for this purpose. Dr. Newcomb urged the physicians not to follow the sample too closely, so that all of the letters would appear to be different. Dr. Newcomb wrote:

Now that most orthopedic surgeons are members of the Federation of Physicians and Dentists, it is appropriate to initiate the 'Third Party Messenger' model. We would like to use the 'Third Party Messenger' to communicate with Blue Cross Blue Shield about the proposed November 1, 1997 fee reduction.

I am attaching a sample letter to Paul King notifying him that Jack Seddon [John J. ("Jack") Seddon, the executive director of the Federation] has been selected as the 'Third Party Messenger' for your practice. *Please use the sample letter as a guide only. We prefer that all of the letters be different.*

Please send your letters with a copy to Jack Seddon as soon as possible. *Remember that the 'Third Party Messenger' approach will only be effective if everyone participates.* (emphasis added).

31. The Federation members shared a common concern that if Blue Cross succeeded in lowering the fees it paid to New Castle County orthopedic surgeons, not only would the Federation members suffer lost income from Blue Cross, other managed care plans that competed

with Blue Cross might also seek to reduce the fees they paid to orthopedic surgeons. For example, a September 19, 1997 letter from First State's office manager to Mr. Seddon (Defendant's executive director) stated:

Blue Cross represents the linch pin for New Castle County. If they can impose these fees on providers, the entire managed care market in New Castle County will collapse. This will be the defining battle for orthopaedics. . . . This is the test case for the third party messenger.

32. Federation members responded quickly and uniformly to Dr. Newcomb's September 12th letter. Over the next three weeks, all three of the major orthopedic surgical groups in New Castle County designated Mr. Seddon as their "third-party messenger" by letters addressed to Paul King, vice-president of Blue Cross. The letters further stated that Mr. Seddon would be dealing with Blue Cross on their behalf. Within the same period, three of the seven downstate Delaware orthopedic surgical groups submitted similar letters to Blue Cross.

33. Dr. Newcomb kept himself and his First State colleagues informed about other Federation members' responses to Blue Cross's proposed fee reduction. At a September 24, 1997 meeting of First State doctors, Dr. Newcomb reported that "[a]ll Federation members are sending letters to Paul King appointing Jack Seddon as the 'Third Party Messenger' for orthopaedics."

34. Recognizing the need to present a united front against Blue Cross to resist the proposed fee reduction, Federation members intensified their efforts to recruit the few remaining downstate Delaware orthopedic surgeons who had not yet joined the Federation. A letter invitation to a meeting to be held in Dover on September 18, 1997, was sent to all Delaware orthopedic surgeons. The letter pointed out that essentially all of the orthopedic surgeons in

Wilmington, Lewes, Seaford, and Milford had already joined the Federation, but that some of the orthopedic surgeons in Dover had not yet become members. The letter also exhorted the orthopedic surgeons to “stand united” in their dealings with insurance companies and posited the Federation as “the forum” for doing so, noting, “[a] collective voice is far more likely to [e]ffect change than any one of us separately.” The letter also urged Federation members to work actively to recruit the few physicians who had not yet joined:

[T]hose Union members in Wilmington, Lewes, Seaford, Milford and Dover, please show support and help us convince the few orthopedists in the State of Delaware that are not yet union members of the benefit of the Orthopedic Surgeons Union.

The recruiting drive was a success. Dr. Newcomb, who spoke at the meeting in Dover, told his First State colleagues a few days later that “[t]he Dover orthopaedic surgeons are enthusiastic about joining up.”

35. By early November 1997, nearly all of Delaware’s orthopedic surgical groups in active private practice, including all three of the New Castle County orthopedic surgical groups and all of the downstate groups, had become Federation members. All of them had also officially issued written notices to Blue Cross appointing Mr. Seddon as their “third-party messenger” for all Blue Cross contractual negotiations.

D. THE FEDERATION FACILITATES DELAWARE ORTHOPEDIC SURGEONS’ UNITED POSITION ON BLUE CROSS’S FEE PROPOSAL

36. While Federation members were sending letters to Blue Cross designating Jack Seddon as their “messenger,” and within a few days after the September 18th meeting of Federation members in Dover, Mr. Seddon initiated several steps to ensure a unified response to Blue Cross’s fee proposal. In a September 23, 1997 memorandum -- the first of a series of

memoranda addressed collectively to Federation members -- Mr. Seddon suggested that Federation members reject Blue Cross's fee proposal and made clear to them that all were simultaneously receiving the same advice. Couching the concern about fees as a "standard of care" issue, in that memorandum, addressed and sent to "All Delaware Federation Members," Mr. Seddon suggested:

If reductions in reimbursement will sacrifice 'standard of care' and force medicine by the numbers, th[e]n Provider Agreements and amendments to those agreements, such as that proposed by Blue Cross/Blue Shield, should be rejected.

37. Then, on October 10, 1997, Mr. Seddon sent substantively identical letters to Blue Cross vice-president Paul King on behalf of all Delaware orthopedic surgeons or groups of surgeons who had then designated him as their "messenger." In each letter, Mr. Seddon echoed his own earlier recommendation, stating:

The named physicians are concerned with the proposed fee schedules to be enacted on November 1, 1997; and, the negative impact such change will have in regard to maintaining office standards and quality care. Therefore, this is again notice that the unilateral proposed schedule changes are not acceptable and continued participation with Blue Cross/Blue Shield may require reconsideration if the changes take place.

38. On October 22, 1997, the office manager for First State, at Dr. Newcomb's direction, organized a meeting of New Castle County Federation members, in part to introduce Lynda Odenkirk, whom the Federation had recently employed to help coordinate Federation activities in the Northeast, including Delaware. Consulting with First State's office manager and Mr. Seddon, Ms. Odenkirk arranged for Dr. Connair (the orthopedic surgeon from Connecticut who had spoken at the first organizational meeting) to speak to the Federation again at this

meeting. In planning for the meeting, Ms. Odenkirk noted its purpose: "Blue Cross/Blue Shield-- have to hold ground [with] fee schedule." Ms. Odenkirk also noted in her preparations for the meeting: "Explain the importance of 'sticking' together: HMO will have to come to the bargaining table if they have a threat of losing an entire panel of specialists." The meeting was attended by representatives of the three large orthopedic surgical groups in New Castle County.

39. Both before and after the October 22, 1997 meeting, on October 15th and October 31st, Blue Cross told Mr. Seddon that it would not deal with him as a "messenger" for nearly all of Delaware's orthopedic surgeons. Blue Cross also notified the Federation members, in letters faxed and mailed to them on October 29, 1997, that it sought to deal with them directly, rather than through Mr. Seddon.

40. Mr. Seddon, however, took quick and repeated steps to thwart Blue Cross's efforts to negotiate with Federation members separately and without his involvement. On October 31, 1997, Mr. Seddon directed Ms. Odenkirk to telephone several Federation members to reemphasize the importance of refusing to deal directly with Blue Cross, and to ask them to direct Blue Cross to deal with them only through Mr. Seddon. Ms. Odenkirk enlisted the office managers of several Federation members' practice groups to help her emphasize to other Federation members the importance of Mr. Seddon's instructions.

41. For example, letters sent on October 31, 1997, at Ms. Odenkirk's request, by one orthopedic group's office manager to several other orthopedic groups stated:

Word has been received that Paul King is reluctant to speak to Jack Seddon regarding negotiating fees. Jack [Seddon] has asked that if Paul King, or anyone else for [Blue Cross], contact us to negotiate,

we are to refer them to Jack Seddon at 1-800-373-5777. *It is Jack's belief that this is the only effective way to get [Blue Cross] to negotiate.* (emphasis added).

42. At Dr. Newcomb's request, Dr. Connair, who had encouraged Delaware orthopedic surgeons to join the Federation, also telephoned several Federation members in early November 1997 to emphasize the importance of dealing with Blue Cross exclusively through Mr. Seddon.

43. On November 3, 1997, Mr. Seddon informed each Federation member of the joint negotiating position that the Federation was advancing on behalf of all Federation members by sending them a notice via facsimile addressed to "Delaware Doctors," together with a copy of a November 3rd letter that Mr. Seddon had written to Blue Cross vice-president Paul King. In his letter to Mr. King, Mr. Seddon admonished:

Keep in mind that those physicians which have notified your office of my 'third party' role have indicated, in writing, that the unilateral changes are unacceptable. Implementation of unilateral amendments, including fee schedule reduction, without written agreement of individual physicians is therefore unacceptable.

44. Two days later, on November 5, 1997, Mr. Seddon further instructed Federation members about how to sustain their joint position in negotiations with Blue Cross. Specifically, in a memorandum addressed to "Delaware Federation Physicians," Mr. Seddon recommended to all Federation members that they:

Immediately notify Mr. King that any unilateral adjustment is unacceptable. Furthermore, specific instruction should be given to Mr. King to not contact your office except through your 'third party' messenger. Furthermore, notification should be given to Mr. King that failure to abide by your request may place you in a position to reconsider any relationship with Blue Cross/Blue Shield of Delaware.

In addition, Mr. Seddon requested all Federation members to, “[p]lease FAX and forward a hard copy of any correspondence to Mr. King to my office.” Most Federation members sent letters to Blue Cross on November 5th or 6th, restating that Blue Cross was to deal with Mr. Seddon as their “third-party messenger.”

45. In letters faxed on behalf of Federation members to Blue Cross on November 18, 1997, Mr. Seddon again reemphasized the position of all Federation members. These letters, which were substantively similar in content, each stated that Blue Cross should not directly contact the Federation member or the member’s staff, that Blue Cross’s proposed fees were unacceptable, and that the Federation member was giving immediate consideration to terminating its contract with Blue Cross.

46. One week later, Mr. Seddon carried through on the contract termination threats he had issued on behalf of the Federation members. By letters dated November 25, 1997, he gave Blue Cross 90-day contract termination notices on behalf of approximately 30 of the Federation’s 44 Delaware members. By early December 1997, the Federation had obtained approvals to send termination notices to Blue Cross on behalf of nearly all remaining Federation members. The Federation sent the remaining termination notices to Blue Cross before the end of December 1997.

47. Starting in November 1997, and continuing into early 1998, some Federation members, in coordination with Mr. Seddon and collectively with other Federation representatives, formulated and distributed notices to patients and referring physicians stating that these Federation members would soon cease to participate in Blue Cross plans. Coordination of the notices was important to the conspiracy because, as reflected in the minutes of a First State

doctors' meeting on January 14, 1998, "[p]atient letters have been very effective in other states in bringing pressure on insurance carriers."

48. From January through March 1998, Federation members uniformly rebuffed overtures by Blue Cross to reopen negotiations without their collective agent, Mr. Seddon. Thus, by the end of February 1998, Blue Cross was left with an extremely limited panel of participating orthopedic surgeons. By the beginning of April 1998, the terminations of nearly all of the Federation members had taken effect.

49. As a result, Blue Cross was forced to direct many of its subscribers to non-participating orthopedic surgeons -- often those same orthopedic surgeons who had terminated their participation through the Federation. These patients have been, and still are, at risk of being billed by their surgeons for additional, unexpected charges because these physicians no longer participate in Blue Cross's plans.

50. In some instances, Federation members who have terminated their Blue Cross contracts have required Blue Cross patients to pay them more than the amount Blue Cross has reimbursed the patients. In other instances, some Federation members who formerly participated with Blue Cross have forgone billing charges in excess of Blue Cross's reimbursement while under investigation by the Department of Justice.

51. Aware of the Federation's activities on behalf of its orthopedic surgeon members, other specialists in Delaware have joined the Federation. Still others have been awaiting the outcome of the Department of Justice's investigation before deciding whether to join. Some of those who have joined have recently designated Mr. Seddon to act as their representative in dealing with Blue Cross.

VII.

VIOLATION ALLEGED

52. Beginning at least as early as November 1996, and continuing to date, Defendant and its co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless the relief requested is granted.

53. The combination and conspiracy consisted of an understanding and concert of action among Defendant and its co-conspirators that Federation members would negotiate their contractual fees with Blue Cross only through the Federation's executive director, Mr. Seddon, for the purpose of collusively resisting any reductions in fees paid by Blue Cross for their provision of medical services to its plan subscribers.

54. For the purpose of forming and effectuating this combination and conspiracy, Defendant and its co-conspirators did the following things, among others:

- (a) Successfully recruited as members of the Federation nearly all competing orthopedic surgeons practicing in Delaware;
- (b) Designated Mr. Seddon to represent nearly all Federation members in their fee negotiations with Blue Cross;
- (c) Reached an understanding to refuse, and did refuse, to negotiate except through Mr. Seddon; and
- (d) Through Mr. Seddon, jointly rejected Blue Cross's fee proposals and ultimately terminated their contracts with Blue Cross.

55. This combination and conspiracy has had the following effects, among others:

- (a) Price competition among independent and competing Federation member physicians in Delaware has been restrained;
- (b) Blue Cross and its subscribers have been denied the benefits of free and open competition in the purchase of orthopedic surgical services in Delaware; and
- (c) Some Blue Cross subscribers have paid higher prices for orthopedic surgery services in Delaware than they would have paid in the absence of this restraint of trade.

VIII.

REQUEST FOR RELIEF

56. To remedy these illegal acts, the United States of America requests that the Court:

- (a) Adjudge and decree that Defendant entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- (b) Enjoin Defendant and its members, officers, agents, servants, employees and attorneys and their successors, and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. § 1, through price fixing of medical services, collective negotiation on behalf of competing independent physicians or physician groups, or group boycotts of the purchasers of health care services;

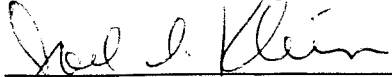
(c) Declare null and void all termination notices sent to Blue Cross by the Federation on behalf of any of the Federation members;

(d) Enjoin the Federation and any Federation representative, from serving as a “third-party messenger” or from directly or indirectly communicating with any physician about any actual or proposed payer contract or contract term or about the use of the Federation, or any other person or entity, to communicate with any payer; and

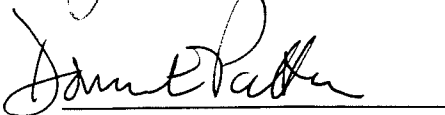
(e) Award to plaintiff its costs of this action and such other and further relief as may be required and the Court may deem just and proper.

DATED: AUGUST 12, 1998

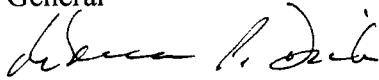
FOR PLAINTIFF
UNITED STATES OF AMERICA



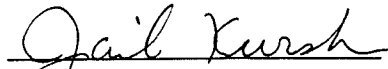
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