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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FMS

C95 1211

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No.
	)	
v.	)	Filed: April 10, 1995
	)	
OREGON DENTAL SERVICE,	)	
	)	
Defendant.	)	
	)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed by the United States under Section 4 of the Sherman Act; 15 U.S.C. § 4, as amended, to prevent and restrain a continuing violation by the defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The defendant maintains an office, transacts business, and is found within the Northern District of California, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

DEFENDANT

3. Oregon Dental Service ("ODS"), is a corporation organized and existing under the laws of the State of Oregon with its principal place of business in Portland, Oregon. ODS provides dental coverage to employees of Oregon corporations and others. Certain of those employees are located in the Northern District of California.

4. ODS is a non-profit corporation whose participating providers consist of dentists licensed to practice in Oregon and who execute participating provider agreements with ODS. At material times, dentists comprised the majority of the Board of Directors of ODS. At material times, in excess of ninety percent of dentists licensed to practice in Oregon were participating providers of ODS.

5. Various firms and individuals, not named as defendants in this Complaint, have entered into agreements with ODS in violation of the Sherman Act as alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

III.

TRADE AND COMMERCE

6. At material times, ODS has engaged in the business of providing dental insurance coverage. ODS contracts directly with individual dentists and groups of dentists for the provision of dental services to persons covered by ODS' dental insurance plans. Participating dentists agree to comply with the terms of the contractual agreements with ODS, and to abide by ODS' rules and policies.

7. ODS compensates participating dentists on the basis of submitted fee schedules. At material times, payments from ODS to Oregon dentists constituted a significant portion of most individual participating dentist's receipts from the provision of dental services to patients.

8. At material times, ODS' "Participating Dentist Rules and Policies" contained provisions known as "most favored nation" clauses. These provisions stated that, for example,

the "lowest fee accepted by the Dentist for services to be rendered to any group shall constitute the Dentist's filed fee schedule for payment of ODS Health Plan claims."

9. ODS' enforcement of the most favored nation clauses in its rules and policies resulted in most participating dentists' refusal to discount their fees to non-ODS patients or competing dental plans.

10. ODS' most favored nation clauses have caused significant numbers of dentists to drop out of or refuse to join competing discount dental plans. Because such a large percentage of Oregon dentists participate with ODS' plan, the ODS most favored nation clauses have resulted in many competing dental plans being unable to attract and/or retain sufficient numbers of dentists to serve their members.

11. ODS periodically determines the amount it will pay for procedures to participating dentists based upon fee filings submitted by the participating dentists. A majority of these dentists used the fee schedule they filed with ODS as their fee schedule for all other patients, including those covered by other insurance plans and uninsured patients.

12. ODS sets the maximum fee allowable for a particular procedure at the 90th percentile of all fees submitted to it by participating dentists (the level at or above the fee charged by 90% of participating dentists). If 10 or fewer of a dentist's submitted fees are above the 90th percentile, ODS notifies the dentist of the amount of the maximum allowable fee. Most participating dentists file fee schedules proposing to charge more than the maximum allowable fee for 10 or fewer procedures; when one of these dentists is advised of the exact maximum allowable fees, he or she is able to lower the fees no more than necessary to obtain approval from ODS. If the dentist agrees to charge the maximum allowable amount, the dentist signs the notification and returns it to ODS.

13. Most dentists who are participants with ODS are in independent, private practices and are in actual or potential competition with other participating dentists for the provision of dental services.

14. At material times, ODS and participating dentists have utilized interstate banking facilities and purchased not insubstantial quantities of goods and services from outside the state of Oregon, for use in providing dental insurance coverage or dental services to patients.

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

IV.

VIOLATION ALLEGED

16. Beginning at a time unknown to the plaintiff and continuing through at least September 1994, ODS and others engaged in a combination in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. ODS voluntarily abandoned the combination in September, 1994, but this offense is likely to recur unless the relief hereinafter sought is granted.

17. For the purpose of forming and effectuating this combination, ODS did the following things, among others:

(a) adopted and enforced most favored nation clauses in the contracts with dentists and in rules and policies the dentists agreed to abide by, and

(b) received and disseminated information on the maximum allowable fees for certain procedures, and obtained signed commitments from participating dentists to charge the maximum allowable fees.

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18. These agreements had the following effects, among others:

(a) price competition among dentists for the provision of dental services has been unreasonably restrained and fees for such services have been stabilized at a level higher than they might otherwise have been;

(b) price competition among dental insurance plans has been unreasonably restrained; and

(c) consumers of dental services in Oregon have been deprived of the benefits of free and open competition.

V.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that ODS engaged in an unlawful combination in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as alleged in the Complaint.

2. That ODS, its members, officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained and prohibited for a period of five years from, in any manner, directly or indirectly, continuing, maintaining, or renewing the alleged agreements, or from entering into any other agreement, understanding, plan, program, or other arrangement having a similar purpose or effect as the alleged agreements.

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3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

DATED: April 10, 1995

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