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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APR 10 1995

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

1 UNITED STATES OF AMERICA,)
 2)
 3)
 4 Plaintiff)
 5)
 6 v.)
 7 OREGON DENTAL SERVICE,)
 8 Defendant)
 9)

Civil No. **FMS**
C95 1211

Entered: July 14, 1995

FILED

APR 17 1995

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

FINAL JUDGMENT

12 WHEREAS, plaintiff, United States of America through its attorney, filed its Complaint
13 on April 10, 1995, alleging a violation of the Sherman Act, 15 U.S.C § 1;

14 WHEREAS, the defendant denies liability with respect to all matters subject of the
15 complaint;

16 WHEREAS, there has been no determination by the Court that a violation of law has
17 occurred;

18 WHEREAS, the plaintiff and defendant desire to resolve their disputes without trial or
19 adjudication of any issue of law or fact; and

20 WHEREAS, this Final Judgment shall not be evidence against or an admission by any
21 party with respect to any issue of law or fact;

22 NOW THEREFORE, before the taking of any testimony and without trial or adjudication
23 of any issue of law or fact herein, it is hereby ORDERED, ADJUDGED, AND DECREED as
24 follows:
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I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "ODS" means Oregon Dental Service;

(B) "Most Favored Nation Clause" or "MFN" means those provisions in the defendant's participating dentist agreements that prior to September 28, 1994 required that the lowest fee accepted by the participating dentist for services rendered to any group constituted the dentist's filed fee schedule for payment of ODS claims.

III.

APPLICABILITY

(A) This Final Judgment applies to ODS and to ODS' officers, employees, members acting as corporate policy makers, directors, successors, assigns, subsidiaries, divisions and any other organizational units of any kind, and to all other persons in active concert or participation with any of them. Within 60 days of entry, ODS shall provide a copy of this Final Judgment by mail or personal service to ODS' officers, directors and managerial employees. Thereafter, ODS shall distribute in a timely manner a copy of this Final Judgment to any new officer, director, or managerial employee.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

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IV.

INJUNCTION

(A) ODS is enjoined and restrained from:

- (1) Maintaining, adopting, or enforcing an MFN or similar provision in participating dentist agreements or by any other means or methods;
- (2) Taking any other action, directly or indirectly, to influence or attempt to influence any dentist to refrain from offering discount fees to any person or dental plan or to refrain from participating in any dental plan;
- (3) Disclosing or in any way directly revealing to a dentist or dentists the maximum allowable or acceptable fee for a dental procedure or procedures.

V.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling either party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, modify it on the basis of changed circumstances, terminate any of its provisions, enforce compliance, and punish violations of its provisions.

Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

VI.

ACCESS TO INFORMATION

For the purposes of determining or securing compliance with the Final Judgment, from time to time:

(A) Duly authorized representatives of the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to ODS, shall be permitted, subject to any legally recognized privilege, access, during office hours, to

1 inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and
2 documents in the possession or under the control of ODS relating to any matters contained in this
3 Final Judgment; and

4 (B) In the event that the plaintiff has reasonable cause to believe that ODS had not
5 complied with the terms of this Final Judgment, then upon the written request of the Assistant
6 Attorney General in charge of the Antitrust Division, ODS shall submit such written reports,
7 under oath if requested, with respect to any of the matter contained in this Final Judgment.

8 ODS shall have the right to be represented by counsel in any such process.

9 Any information provided to the plaintiff under this section of the Final Judgment shall be
10 kept confidential by the plaintiff and shall not be disclosed to third parties except as necessary to
11 enforce the Final Judgment or as otherwise previously agreed or required by law.

12 Nothing in this Final Judgment prohibits the plaintiff from using any other investigatory
13 method authorized by law.

14 VII.

15 TERM

16 This Final Judgment shall expire five years from the date of its entry.

17 VIII.

18 PUBLIC INTEREST

19 Entry of this Final Judgment is in the public interest.

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21 DATED this 14th day of July, 1995.

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23 
24 UNITED STATES DISTRICT JUDGE
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