

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Illinois Podiatry Society, Inc., U.S. District Court, N.D. Illinois, 1977-2 Trade Cases ¶61,767, (Dec. 6, 1977)

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United States v. Illinois Podiatry Society, Inc.

1977-2 Trade Cases ¶61,767. U.S. District Court, N.D. Illinois, Eastern Division, Civil Action No. 77 C 501, Entered December 6, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 47890).

Case No. 2563, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Podiatrists: Relative Value Scales: Consent Decree.— An association of Illinois podiatrists was barred by a consent decree from using relative value studies or guides in settling fee disputes between podiatrists and their patients, between podiatrists and insurers, or between podiatrists and governmental reimbursement agencies; or from suggesting that any of its members use such studies or guides.

For plaintiff: John H. Shenefield, Actg. Asst. Atty. Gen., William E. Swope, John E. Sarbaugh, William H. Page, Steven M. Kowal, and Ruth Dicker, Attys., Dept. of Justice, Chicago, Ill. **For defendant:** Saul A. Epton and Russel S. Barone, Chicago, Ill.

Final Judgment

Grady, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 14, 1977, and defendant Illinois Podiatry Society, Inc. having filed its answer to said complaint and plaintiff and defendant, by their respective attorneys, having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party thereto with respect to any issue;

Now, therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

[*Jurisdiction*]

This court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims 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 in this Final Judgment:

(A) "Defendant" shall mean the Illinois Podiatry Society, Inc.;

(B) "Person" shall mean any individual, partnership, firm, association, corporation, or other business or legal entity;

(C) "Relative Value Study" shall mean any list or compilation of surgical, medical or other procedures or services that sets comparative values for such procedures or services, whether or not those values are expressed in monetary terms; and

(D) "Appeals, Controls, and Review Commission" shall mean defendant's commission which arbitrates and settles fee disputes between podiatrists and their patients; between podiatrists and the insurers of such patients; or between podiatrists and the governmental agencies who reimburse them for rendering services to such patients.

III.

[*Applicability*]

The provisions of the Final Judgment applicable to defendant shall apply to its officers, directors, members, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Relative Value Guides*]

Defendant, whether acting unilaterally or pursuant to an agreement or understanding with any other person, is enjoined and restrained from directly or indirectly:

(A) initiating, developing, maintaining, publishing, or circulating any relative value study or any other similar guide;

(B) urging, recommending, or suggesting that any of its members adhere to or use any relative value study or any other similar guide; and

(C) employing or referring to any relative value study or similar guide in performing the functions of its Appeals, Controls, and Review Commission.

Nothing in this Final Judgment shall prohibit defendant or its Appeals, Controls, and Review Commission from furnishing testimony or information to any government agency or to any third party directly engaged in the provision, reimbursement, indemnification or pre-payment of the costs of health services; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for podiatric services or procedures it shall be limited to information or testimony derived solely from the professional experience of the individual members of defendant without reference to any relative value study or similar compilation.

V.

[*Cancellation of Guides*]

Defendant is ordered and directed within thirty (30) days from the date of entry of this Final Judgment:

(A) to cancel, repeal, abrogate, and withdraw permanently any and all relative value studies that it has initiated, developed, maintained, published, or circulated; and

(B) to amend its rules, bylaws, resolutions, code of ethics, and policy statements in the manner necessary to comply with this paragraph V and to eliminate any provision which is contrary to or inconsistent with any provision of this Final Judgment.

VI.

[*Notice*]

Defendant is ordered and directed:

(A) to distribute by first class mail within thirty (30) days from the date of entry of this Final Judgment a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix "A", to all podiatrists who at any time since January 1, 1973 have been members of defendant, instructing them to return to defendant all copies of defendant's relative value studies in their possession;

(B) to file with the Court, and with plaintiff herein, within ten (10) days of its compliance with Section VI(A) a report setting forth the fact and manner of its compliance with Section VI(A), together with the name and address of each person to whom a copy of this Final Judgment and a letter identical in text to that attached to this Final Judgment as Appendix "A" have been mailed in compliance herewith; and

(C) to file with the Court, and with the plaintiff herein, within sixty (60) days of its compliance with Section VI(A) a report setting forth the name and address of each person from whom a copy of a relative value study has been received in response to the letters of instruction mailed by defendant in compliance with paragraph VI(A).

VII.

[*Inspection*]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

VIII.

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

IX.

[*Public Interest*]

The entry of this Final Judgment is in the public interest.