

Wisconsin Chiropractic Association and Its Director Agree to Settle FTC Charges of Price Fixing

RELATED SETTLEMENT WITH TWO LA CROSSE CHIROPRACTORS RESOLVING ALLEGATIONS OF PRICE-FIXING AND ORGANIZING BOYCOTT OF LOCAL MANAGED CARE PLAN

Editorial Staff

The Wisconsin Chiropractic Association (WCA) and its executive director, Russell Leonard, have agreed to settle Federal Trade Commission allegations that they orchestrated a conspiracy among WCA members to increase prices for chiropractic services and to boycott third-party payers to obtain higher reimbursement rates. The result, the FTC said, was higher prices for consumers of chiropractic services. The proposed settlement would prohibit the WCA and Leonard from fixing prices for any chiropractic goods or services, or the terms of third-party payer contracts.

The Wisconsin Chiropractic Association, based in Madison, is an association of more than 900 chiropractors, representing about 90 percent of those licensed in the state. In January 1997, the federal government and many private insurance companies began using new billing codes for "chiropractic manipulations." According to the FTC's complaint, the WCA and Leonard used the new codes as a vehicle for orchestrating a collective price increase by Wisconsin chiropractors. The WCA and Leonard organized and conducted seminars on the new codes throughout the state, at which, among other things, Leonard advised chiropractors to raise their prices to specific levels, and assured members that if they all raised their rates, third-party payers would not reject or reduce those higher charges for the new codes. The FTC also stated that Leonard surveyed member pricing in certain localities, and reported back to members that chiropractors in these areas had succeeded in raising reimbursement levels.

The complaint further charges that the WCA, again acting principally through its executive director, engaged in other acts and practices to increase compensation for chiropractors in the state. In particular, the WCA: circulated fee surveys to facilitate coordinated pricing by its members; urged chiropractors to negotiate higher fees with the plans, advising members to discuss contract offers with one another to improve their bargaining position with third-party payers; and encouraged and assisted in boycotts of two managed care plans to obtain higher reimbursement rates for chiropractic services.

The proposed settlement would prohibit the WCA from fixing prices or encouraging others to fix prices for chiropractic services, and from creating or endorsing any fee schedule for health care services. It also would bar the WCA from organizing or engaging in any agreement to negotiate on behalf of any chiropractor or group of chiropractors, or to boycott any payer or provider. In addition, the settlement would prohibit the WCA from advising chiropractors to refuse or accept any term of any participation agreement; soliciting or communicating any chiropractor's intentions concerning any participation agreement; or organizing or participating in any meeting or discussion that they expect or reasonably

would expect to facilitate communications concerning any chiropractor's intentions pertaining to any participation agreement.

Because of the WCA's misuse of fee surveys alleged in the FTC complaint, the proposed settlement also would prohibit the WCA from initiating, conducting or distributing any fee surveys for any health care goods or services prior to December 31, 2001. In addition, for five years thereafter, the WCA may conduct or distribute any fee survey only if (1) it conforms to the requirements of the "safe harbor" provisions regarding fee surveys contained in the Statements of Antitrust Enforcement Policy in Health Care issued by the FTC and Department of Justice; and (2) respondents do not have access to the raw data.

The settlement with Leonard is similar to that with the WCA. It contains a proviso that allows Leonard to engage in certain acts otherwise prohibited by the order, providing he is acting as an agent, employee or representative exclusively for a single provider or payer.

Drs. Berkley and Cassellius

In a second case involving the WCA, Michael Berkley,DC, and Mark Cassellius,DC, have agreed to settle FTC allegations that they conspired to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan (Gundersen) to obtain higher reimbursement for chiropractic services in and around La Crosse, Wisconsin.

The FTC alleged that shortly after attending the WCA's seminars, Drs. Berkley and Cassellius organized two meetings of La Crosse area chiropractors to discuss Gundersen's failure to use the new CMT codes and its reimbursement rates. The FTC alleged that at these meetings, the chiropractors discussed prices, agreed that Gundersen should increase its reimbursement rate, and agreed to terminate their participation in the Gundersen plan if it did not address their concerns. According to the complaint, Dr. Berkley, acting on behalf of the La Crosse area chiropractors, notified Gundersen of the meetings and told Gundersen that if it did not increase its reimbursement rates to at least 85 percent of average billed charges, Gundersen would be unable to obtain agreements with the chiropractors. In June 1997, fearing the loss of a significant number of its chiropractic providers, Gundersen acceded to the chiropractors' demands and increased its reimbursement rates by 20 percent.

The proposed consent agreement to settle these allegations would prohibit Drs. Berkley and Cassellius from fixing prices for any chiropractic goods or services. They would be prohibited from: (1) engaging in collective negotiations on behalf of any chiropractors; (2) orchestrating concerted refusals to deal; and (3) fixing prices, or any other terms, on which chiropractors deal. Further, the proposed settlement would prohibit Drs. Berkley and Cassellius from encouraging, advising or pressuring any person to engage in any action that would be prohibited if the person were subject to the order. The proposed settlement does include a proviso allowing Drs. Berkley and Cassellius to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) any "qualified clinically-integrated joint arrangement."

All of the proposed settlements include a number of recordkeeping and reporting requirements designed to assist the FTC with monitoring compliance with the order.

Note: A consent agreement is for settlement purposes only and does not constitute an admission of a

law violation. When the commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

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