



Department of Justice

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JUSTICE DEPARTMENT ALLOWS ONLINE FEE SURVEY AMONG INDEPENDENT LACTATION CONSULTANTS

WASHINGTON, D.C. – The Department of Justice today announced that it will not challenge an online fee survey proposal among competing Internationally Board-Certified Lactation Consultants (IBCLCs). Based upon information provided in the proposal, the Department said that the survey will determine the range of prices customarily charged by self-employed IBCLCs and will allow independent practitioners to set reasonable fees for their area, providing procompetitive benefits while raising little risk of anticompetitive effects.

The Department's position was stated in a business review letter from R. Hewitt Pate, Assistant Attorney General for the Antitrust Division, to Diana West, an IBCLC, Registered Lactation Consultant, of Gaithersburg, Maryland. Lactation consultants provide breast-feeding assistance to babies and mothers.

Assistant Attorney General Pate stated that "the independent collection of fee data for dissemination to the public, including other competing lactation consultants, should promote healthy competition and help independent practitioners who are not affiliated with hospitals or doctors' offices to set reasonable fees for their area. The online survey, conducted according to

Department of Justice and Federal Trade Commission guidelines, is a practical and efficient way to disseminate fee ranges for the benefit of consultants, clients, and insurers.”

The proposal stated that the survey would be conducted by an independent online survey company and would go only to independent IBCLCs with access to the Internet (believed to be a majority of IBCLCs). The survey data would be collected anonymously, sorted by region and other criteria (e.g., rural vs. urban), and disseminated as a range of fees. The data provided would be more than three months old and would be made available in both electronic and printed format at no cost to any interested parties. At least 20 and potentially several thousand participants will provide data for this survey and no individual participant’s data will represent more than 25 percent, on a weighted basis, of any given statistic. The information disseminated will be sufficiently aggregated that it will not allow recipients to identify the fees charged by any particular provider. These conditions meet the standards outlined in Statement 6 of the *Statements of Antitrust Enforcement Policy in Health Care*, jointly issued by the Department and the Federal Trade Commission in August 1996.

In his letter, Pate cautioned the consultants against the use of the data to coordinate pricing activity in any region or to artificially maintain higher than competitive pricing. The caution was given in response to past communications by IBCLCs on several Internet list serves where lactation consultants have episodically mentioned prices or sensitive fee information.

IBCLCs may or may not be affiliated with the International Lactation Consultants Association, which does not sanction any of the list serves used by members of the profession.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Antitrust Documents Group of the Antitrust Division, Suite 215, Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file, unless a basis for their exclusion for reasons of confidentiality has been established pursuant to Paragraph 10(c) of the Business Review Procedure, 28 C.F.R. § 50.6.

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