

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

_____)
In the Matter of)
)
The Connecticut Chiropractic Association,)
a corporation,)
)
and) Docket No. C-4217
)
The Connecticut Chiropractic Council,)
a corporation,)
)
and)
)
Robert L. Hirtle, Esq.,)
individually.)
_____)

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that the Connecticut Chiropractic Association (“CCA”), the Connecticut Chiropractic Council (“CCC”), and Robert L. Hirtle, Esq., hereinafter sometimes collectively referred to as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns a series of agreements among competing chiropractors to boycott American Specialty Health (“ASH”) to preclude ASH from administering a chiropractic cost-savings benefits administration program on behalf of payors offering coverage for health care services in the State of Connecticut. The chiropractors engaged in this conduct with and

through their respective trade associations, CCA and CCC, CCA's legal counsel, Robert L. Hirtle, Esq., and through activities undertaken collectively among CCA, CCC, Mr. Hirtle, and other licensed chiropractors in the State of Connecticut.

2. The Respondents' illegal conduct had the purpose and effect of unreasonably restraining prices and other forms of competition among hundreds of otherwise independent chiropractors in the State of Connecticut.

RESPONDENTS

3. CCA is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal address at 2257 Silas Deane Highway, Rocky Hill, Connecticut 06067. CCA is a voluntary trade association whose membership consists of approximately 375 chiropractors licensed to practice chiropractic in the State of Connecticut.

4. CCC is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal address located at 8 Tyler Avenue, Branford, Connecticut 06405. CCC is a voluntary trade association whose membership consists of approximately 150 chiropractors licensed to practice chiropractic in the State of Connecticut.

5. Mr. Hirtle was legal counsel for CCA at all times relevant herein. His principal address is 185 Asylum Street, Hartford, Connecticut 06103.

JURISDICTION

6. CCA is organized for the purpose, among others, of serving the interests of its members. CCA exists and operates, and at all times relevant to this Complaint has existed and operated, in substantial part for the pecuniary benefit of its members.

7. CCC is organized for the purpose, among others, of serving the interests of its members. CCC exists and operates, and at all times relevant to this Complaint has existed and operated, in substantial part for the pecuniary benefit of its members.

8. At all times relevant to this Complaint CCA chiropractors and CCC chiropractors have been engaged in the business of providing chiropractic services for a fee. Except to the extent competition has been restrained as alleged herein:

- a. CCA chiropractors have been and are in competition with other CCA chiropractors for the provision of chiropractic services in areas throughout the State of Connecticut;

- b. CCC chiropractors have been and are in competition with other CCC chiropractors for the provision of chiropractic services in areas throughout the State of Connecticut; and
- c. CCA chiropractors and CCC chiropractors have been and are in competition with each other, and with other chiropractors, for the provision of chiropractic services in areas throughout the State of Connecticut.

9. All Respondents are “persons” or “corporations” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of Respondents, including the acts and practices alleged herein, affect the interstate movement of patients, the interstate purchase of supplies and products, and the interstate flow of funds, and are in or affect “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF CHIROPRACTOR CONTRACTING WITH PAYORS

11. Individual chiropractors and chiropractic group practices contract with payors of health care services and benefits, including insurance companies, managed care organizations, health care benefits organizations, and others, to establish the terms and conditions, including price terms, under which the chiropractors will render their professional chiropractic services to the payors’ enrollees. Chiropractors and chiropractic group practices entering into such contracts often agree to accept lower compensation from payors in order to obtain access to additional patients made available by the payors’ relationship with the covered individuals. These contracts may reduce payors’ costs and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower health care costs for covered individuals.

12. Absent anticompetitive agreements among them, otherwise competing chiropractors and chiropractic group practices unilaterally decide whether to enter into contracts with payors to provide services to individuals covered by a payor’s programs, and what prices and other terms they will accept as payment for their services pursuant to such contracts.

ASH CHIROPRACTIC COST-SAVINGS PROGRAM

13. ASH is a health care benefits organization that offers a chiropractic cost-savings benefits administration program to payors nationwide, including payors in the State of Connecticut. The purpose of the program is to improve the efficiency, increase the quality, and reduce the cost of providing chiropractic care to the payors’ enrollees.

14. Under the program, payors delegate the management of chiropractic services and benefits for their enrollees to ASH. ASH contracts with chiropractors to provide chiropractic

services to the payors' enrollees under the cost-savings program. In addition to its chiropractor network, ASH administers chiropractic benefits, including utilization management, credentialing, claims processing, and other management services, for payors under the program.

ANTICOMPETITIVE CONDUCT

15. CCA acted in conspiracy with its members, CCC acted in conspiracy with its members, and CCA, CCC, and their members acted in conspiracy with each other. Through their joint agreements, CCA, CCC, and their respective members, restrained competition by, among other things, collectively agreeing to boycott ASH. The purpose and effect of the boycott was to prevent ASH from providing its cost-savings chiropractic benefits administration program to Anthem Blue Cross and Blue Shield of Connecticut ("Anthem"), CIGNA HealthCare ("CIGNA"), Empire Blue Cross Blue Shield ("Empire"), and other payors.

16. Mr. Hirtle acted to restrain competition by, among other things, encouraging, facilitating, and implementing agreements, among competing CCA and CCC chiropractors, and other chiropractors licensed in the State of Connecticut, to boycott ASH to prevent ASH from providing its chiropractic cost-savings program to Anthem, CIGNA, Empire, and other payors.

17. In furtherance of the combinations and agreements, CCA, CCC, and Mr. Hirtle engaged in a campaign through meetings and other communications to encourage and assist chiropractors in the State of Connecticut to boycott ASH. CCA and CCC urged their respective members and other chiropractors licensed in the State of Connecticut to "take a stand and resign" from ASH. The communications conveyed the message, "united we stand, divided we fall."

18. During these meetings and through other communications, CCA and CCC chiropractors discussed with each other their dissatisfaction with ASH's price terms and utilization management requirements for chiropractic services. The chiropractors repeatedly incited each other to unite in their fight to defeat the ASH program through communications that included the following:

- a. "We all need to unite on this issue."
- b. "We must band together."
- c. "Get [ASH] out of this state!"

CCA AND CCC CHIROPRACTORS COLLECTIVELY AGREE TO OPT OUT OF ASH'S CHIROPRACTIC NETWORK FOR ANTHEM

19. Anthem entered into an arrangement with ASH in early 2006 under which ASH agreed to provide a chiropractic provider network and administer chiropractic benefits for Anthem enrollees.

20. The arrangement required ASH to contract with a minimum of 80 percent of the chiropractors who were members of Anthem's existing chiropractic provider network to ensure adequate coverage of chiropractic services for Anthem enrollees in the State of Connecticut. ASH's existing chiropractic network included approximately 40 percent of the chiropractors in Anthem's chiropractic network. Therefore, ASH needed to contract with an additional 40 percent of the chiropractors in Anthem's network.

21. On July 28, 2006, ASH notified chiropractors that the arrangement with Anthem was effective November 1, 2006. ASH also provided applications and contracting materials to the chiropractors. The chiropractors who already were members of ASH's network had the opportunity to "opt out" of the ASH network for Anthem.

22. In response, CCA, CCC, and Mr. Hirtle organized monthly meetings starting in August, 2006, for all licensed chiropractors in the State of Connecticut to discuss their concerns regarding the ASH program and provide instructions on how to opt out of the ASH program.

23. CCA and CCC distributed a model opt-out letter to the chiropractors to notify ASH that the chiropractors elected not to participate in the ASH chiropractic network for Anthem. CCA and CCC also instructed the chiropractors to send copies of the signed opt-out letters to Mr. Hirtle. The chiropractors sent opt-out letters to ASH using the model CCA and CCC had provided to them.

24. Mr. Hirtle regularly circulated written updates to the chiropractors informing them of how many chiropractors had opted out of the ASH network. He also advised them on how many more chiropractors needed to opt out to ensure that ASH would not meet the minimum number of chiropractors required to have a sufficient network under the ASH/Anthem arrangement.

25. Mr. Hirtle also encouraged the chiropractors to refuse to participate in the ASH/Anthem program. Throughout the fall of 2006, he told them:

- a. "There need to be 60 more resignations to cripple the ASH provider list."
- b. "We need 50 more to destroy the panel."
- c. "A little more effort and we will be there."
- d. "The list is now 18 [chiropractors]. 5 Counties out 100%. A great victory for Chiropractic!"
- e. "It would be nice to get 100% out in Hartford and New Haven Counties tomorrow. "

26. During this time, CCA and CCC conveyed the concerns of their members regarding the ASH fee schedule and utilization management requirements to ASH. In September 2006, CCA and CCC informed ASH that the chiropractors were “grateful that everyone at ASH [was] critically re-thinking things such as the fee schedule.” Faced with numerous opt-outs and concerns about the program, ASH sent a revised offer to the chiropractors with an increase in the fee schedule on September 19, 2006.

27. Dissatisfied with ASH’s revised offer, CCA, CCC, and Mr. Hirtle continued their efforts to persuade the chiropractors not to contract with ASH or, if they were currently members of ASH’s existing network, to opt out of ASH’s network for Anthem. In response, the chiropractors continued sending their opt-out letters to ASH to reject the revised offer.

28. As a consequence of the boycott, all but four chiropractors opted out of ASH’s chiropractic network for Anthem, and the network had no chiropractors in seven out of the eight counties in the State of Connecticut. The boycott succeeded in defeating the ASH network and forcing Anthem and ASH to cancel their arrangement as of December 1, 2006.

CCA AND CCC CHIROPRACTORS COLLECTIVELY TERMINATE THEIR PARTICIPATION FROM ASH’S PROGRAM FOR CIGNA ENROLLEES

29. ASH entered into an agreement with CIGNA in 2000 to provide a chiropractic provider network and administer chiropractic benefits for CIGNA enrollees in the State of Connecticut.

30. During the time CCA chiropractors and CCC chiropractors were opting out of the ASH chiropractic program for Anthem, they also collectively decided to terminate their existing relationship with the ASH chiropractic program for CIGNA.

31. Communications among the chiropractors included the warning that “[o]pting out of ASH/Anthem but staying with ASH/CIGNA sends a message of weakness and furthermore strengthens their position in our state. By not resigning completely we have to continue opting out of every new plan they try to pass Just Resign!!”

32. CCA and CCC echoed this rallying cry for action through their communications with the chiropractors. CCC told the chiropractors, “There is no option except for ASH to get out of Connecticut. No more negotiations. No more new contracts.”

33. Following these communications, the chiropractors sent letters to ASH terminating their participation in the ASH program for CIGNA.

34. In November 2006, Mr. Hirtle announced that the chiropractors had “voted overwhelmingly” to terminate their participation in the ASH program for CIGNA.

35. The terminations forced CIGNA to develop its own chiropractic network to continue to provide adequate chiropractic coverage to its enrollees.

CCA AND CCC CHIROPRACTORS CONSPIRE TO BOYCOTT EMPIRE

36. ASH manages chiropractic benefits for Empire enrollees in the State of New York. Empire also has enrollees who reside in Connecticut, but obtain health coverage from their employers in New York. ASH attempted to contract with chiropractors in Connecticut to provide chiropractic services to Empire enrollees residing in Connecticut.

37. At a meeting in December 2006, CCA and CCC chiropractors discussed ASH's offer to provide services to Empire enrollees. CCA and CCC advised their members that if they did not want to participate in the ASH program for Empire, they should send a letter to ASH declining the offer and provide a copy of the letter to Mr. Hirtle. Following the meeting, many CCA and CCC members sent opt-out letters to Empire.

38. In January 2007, CCA informed all chiropractors in Connecticut that an insufficient number of chiropractors agreed to join ASH's chiropractic network for Empire enrollees residing in Connecticut. The collective conduct of the chiropractors forced ASH to abandon its efforts to contract with chiropractors in Connecticut.

RESPONDENTS' CONDUCT IS NOT LEGALLY JUSTIFIED

39. Respondents have not identified any reason for the agreement among CCA and CCC chiropractors to boycott ASH, and Mr. Hirtle's activities to encourage, facilitate, and help implement the boycott, other than to prevent ASH from managing chiropractic benefits on behalf of payors and their enrollees in Connecticut.

40. Neither CCA nor CCC has undertaken any programs or activities that create any integration among their members in the delivery of chiropractic services. Members do not share any financial risk in providing chiropractic services, do not collaborate in a program to monitor and modify clinical practice patterns of their members to control costs and ensure quality, or otherwise integrate their delivery of care to patients.

41. Respondents' conduct described above has not been, and is not, reasonably related to any efficiency-enhancing integration among the chiropractor members of CCA and CCC, or between CCA and CCC and their respective members.

ANTICOMPETITIVE EFFECTS

42. Respondents' actions described in paragraphs 15 through 41 of this Complaint have had the effect of restraining trade unreasonably and hindering competition in the provision of chiropractic services in areas throughout the State of Connecticut in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among chiropractors;
- b. increasing costs for chiropractic care;
- c. depriving payors and individual consumers access to chiropractic services cost-savings programs; and
- d. depriving payors and individual consumers of the benefits of competition among chiropractors.

43. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of April, 2008, issues its Complaint against Respondents Connecticut Chiropractic Association, Connecticut Chiropractic Council, and Robert L. Hirtle, Esq.

By the Commission.

Donald S. Clark
Secretary

SEAL