

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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AGREEMENT CONTAINING CONSENT  
ORDER TO CEASE AND DESIST

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the Colegio de Cirujanos Dentistas de Puerto Rico ("Colegio"), hereinafter sometimes referred to as "proposed respondent," or "respondent Colegio," and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from those acts and practices, and providing for other relief,

IT IS HEREBY AGREED by and between proposed respondent and its counsel, and counsel for the Commission that:

1. Proposed respondent Colegio is an incorporated professional association of almost all dentists practicing dentistry in Puerto Rico, and is organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business located at Calle Manuel V. Domenech #200, Hato Rey, Puerto Rico, 00918.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - (a) Any further procedural steps;

- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. By signing this agreement containing consent order, proposed respondent represents that the full relief contemplated by this agreement can be accomplished. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent agrees to comply with the terms of the proposed order from the date it signs this agreement. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## ORDER

### I.

IT IS ORDERED that, for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "Colegio" means Colegio de Cirujanos Dentistas de Puerto Rico, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, chapters, and affiliates controlled by Colegio de Cirujanos Dentistas de Puerto Rico, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Dentist" means a provider of dental services as defined by the laws of Puerto Rico, with a degree of D.M.D. or D.D.S..
- C. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- D. "Payer" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; employer or other person providing or administering self-insured health benefits programs; and patients who purchase health care or dental services for themselves.
- E. "Provider" means any person, including but not limited to any dentist, physician, hospital, or clinic, that supplies health care services to any other person.
- F. "Reimbursement" means any payment, whether cash or non-cash, or other benefit received for the provision of dental services.

### II.

IT IS FURTHER ORDERED that respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Endorsing or approving, refusing to endorse or approve, or prohibiting or declaring unethical participation in, any health plan based on the amount of, manner of calculating, or other terms relating to reimbursement for dental services, or on whether the plan is open to participation by all Colegio members.
- B. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding:
  - 1. To negotiate on behalf of any dentists with any payer or provider;
  - 2. To deal, refuse to deal, or threaten to refuse to deal with any payer or provider;
  - 3. Regarding any term, condition, or requirement upon which any dentists deal, or are willing to deal, with any payer or provider, including, but not limited to, terms of reimbursement and whether the health plan is open to participation by all Colegio members.
- C. Communicating to any payer or provider any term, condition, or requirement, on which Colegio members are willing or unwilling to deal with any payer or provider, including, but not limited to, terms of reimbursement and whether the health plan is open to participation by all Colegio members.
- D. Communicating with any member regarding the desirability or appropriateness of any term or condition of dealing with any payer or provider that relates to the amount of, manner of calculating, or other terms relating to reimbursement for dental services, or to whether the plan is open to participation by all Colegio members.

- E. Exchanging, transferring, or facilitating in any manner the exchange or transfer among dentists of information (including, but not limited to, any actual or possible views, intentions, or positions) concerning any dentist's intention or decision with respect to:
  - 1. entering into, refusing to enter into, threatening to refuse to enter into, or withdrawing from any existing or proposed agreement with any payer; or
  - 2. agreeing to, or refusing to agree to, any term, condition, or requirement upon which any dentist deals, or is likely willing to deal, with any payer or provider.
  
- F. Encouraging, urging, suggesting, requesting, advising, pressuring, inducing, or attempting to induce any nongovernmental person or organization to engage in any action that would be prohibited if the person were subject to Part II. of this Order.

PROVIDED, HOWEVER, that nothing contained in this Order shall be construed to prevent respondent from petitioning any federal, state, or Commonwealth government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal, state, or Commonwealth administrative or judicial proceeding, in so far as such activity is protected by the Noerr-Pennington doctrine.

### III.

IT IS FURTHER ORDERED that respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of dental services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated.
  
- B. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the solicitation of patients, patronage, or contracts to supply dentists' services by any dentist or by any organization with which dentists are affiliated, through advertising or by any other means.
  
- C. Encouraging, urging, suggesting, requesting, advising, pressuring, inducing, or attempting to induce any nongovernmental person or organization to engage in any action that would be prohibited if the person were subject to Part III. of this Order.

PROVIDED, HOWEVER, that nothing contained in this Order shall prohibit respondent from formulating, adopting, disseminating, and enforcing, reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or with respect to uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

#### IV.

IT IS FURTHER ORDERED that respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, to:
  1. Each person who, at the time this Order becomes final, is an employee or member of the Colegio;
  2. Each payer or provider with whom, at any time since January 1, 1995, the Colegio has had communications regarding a possible or executed contract for the provision of dental services.
- B. For a period of five (5) years after the date this Order becomes final:
  1. Within thirty (30) days of the date the person assumes such position, distribute by first-class mail a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, to each new officer, director, manager, agent, representative, employee, committee member, or member of the Colegio;
  2. Annually publish, in an official annual report, newsletter, or memorandum sent to all members of the Colegio, a copy of this Order and the accompanying complaint, as well as certified Spanish translations thereof, with such prominence as is given to official communications or regularly featured articles;
  3. Annually provide a briefing, class, or seminar for members of the Colegio, available and open to all members of the Colegio and in conjunction with a meeting open to the full Colegio membership, on the meaning and requirements of this Order and the antitrust laws, including penalties for the violation of this Order.

- C. For a period of ten (10) years after the date this Order becomes final:
1. Maintain complete files and records of all correspondence and other communications concerning advertising and solicitation by dentists;
  2. Create and maintain records of nonwritten communications, in which the Colegio participates, concerning advertising and solicitation by dentists, including in such records the names and positions of all participants, the dates and locations of the meetings or other communications, a summary or description of any advice or information given or stated by the Colegio, and the nature of such information or advice;
  3. Maintain complete files and records of all ethical codes, bylaws, rules, and regulations of the Colegio, or amendments or proposed amendments thereto, which concern advertising or solicitation by dentists;
  4. Retain and make available to any authorized representative of the Commission on request the complete files and records required by subparagraphs 1, 2, and 3 of IV. C of this Order.

PROVIDED, HOWEVER, that nothing contained in the requirements of IV.C. of this Order shall require respondent to retain any individual document or record responsive to IV.C. that is over five years old.

V.

IT IS FURTHER ORDERED that the Colegio shall file a verified written report with the Commission within sixty (60) days after this Order becomes final, annually thereafter for five (5) years on the anniversary of the date the Order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent intends to comply, is complying, and has complied, with this Order. In addition to any other information that may be necessary to demonstrate compliance, the Colegio shall include in such reports information identifying each payer and provider that has communicated with the Colegio concerning a possible contract for dental services, the proposed terms and conditions of any such contract, and the Colegio's response to such payer or provider.

VI.

IT IS FURTHER ORDERED that the Colegio shall notify the Commission at least thirty (30) days prior to any proposed change in the Colegio, such as dissolution, assignment, sale, or other event resulting in the emergence of a successor corporation or association, the creation or dissolution of subsidiaries or constituent societies or associations, changes in the requirements for membership in the Colegio, or any other change in the Colegio that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, the Colegio shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of the Colegio relating to any matter contained in this Order; and
- B. Upon five (5) business days' notice to the respondent, and without restraint or interference from it, to interview the Colegio's officers, directors, employees, agents, and other representatives.



VIII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order was issued by the Commission.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2000.

COLEGIO DE CIRUJANOS DENTISTAS  
DE PUERTO RICO

COUNSEL FOR  
FEDERAL TRADE COMMISSION

BY:

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