

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.)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Connecticut Chiropractic Association (“CCA”), the Connecticut Chiropractic Council (“CCC”), and Robert L. Hirtle, Esq. (hereinafter collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Act, and that a Complaint should issue

stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. Respondent 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 place of business located at 2257 Silas Deane Highway, Rocky Hill, Connecticut 06067.
2. Respondent 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 place of business located at 8 Tyler Avenue, Branford, Connecticut 06405.
3. Respondent Robert L. Hirtle, Esq., an individual, and a member of the Connecticut bar, was CCA's legal counsel at all times relevant to the facts alleged in the Complaint. His principal address is 185 Asylum Street, Hartford, Connecticut 06103.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this order the following definitions shall apply:

- A. "Respondent CCA" means the Connecticut Chiropractic Association, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. "Respondent CCC" means the Connecticut Chiropractic Council, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. "Respondent Hirtle" means Robert L. Hirtle, Esq.
- D. "Respondent Corporations" means Respondent CCA and Respondent CCC, each of which is a "Respondent Corporation."
- E. "Respondents" means Respondent CCA, Respondent CCC, and Respondent Hirtle.

- F. “Chiropractic group practice” means a bona fide, integrated firm in which chiropractors practice chiropractic together as partners, shareholders, owners, members, or employees, or in which only one chiropractor practices chiropractic.
- G. “Chiropractor” means a doctor of chiropractic (“D.C.”) or any other person licensed to engage in the practice of chiropractic.
- H. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- I. “Payor” means any person that pays, or arranges for payment, for all or any part of any health care services, including, but not limited to, chiropractic services, for itself or for any other person, as well as any person that develops, leases, or sells access to networks of chiropractors.
- J. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- K. “Principal address” means either (1) primary business address, if there is a business, or (2) primary residential address, if there is not a business address.
- L. “Qualified clinically-integrated joint arrangement” means an arrangement to provide chiropractic services in which:
1. all chiropractors who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the chiropractors who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- M. “Qualified risk-sharing joint arrangement” means an arrangement to provide chiropractic services in which:
1. all chiropractors who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the chiropractors who participate jointly to control costs and improve quality by managing the provision of chiropractic services such as risk-sharing involving:

- a. the provision of chiropractic services at a capitated rate,
 - b. the provision of chiropractic services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for chiropractors who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by chiropractors in different specialties offering a complementary mix of services, for a fixed, predetermined price, when the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of chiropractic 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. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any chiropractors with respect to the provision of chiropractic services:
 1. to negotiate on behalf of any chiropractor with any payor;
 2. to deal, refuse to deal, or threaten to refuse to deal with any payor; or
 3. regarding any term, condition, or requirement upon which any chiropractor deals, or is willing to deal, with any payor, including, but not limited to, price terms;
- B. Requesting, proposing, urging, advising, recommending, advocating, or attempting to persuade in any way any chiropractor to deal or not deal with a payor, or accept or not accept the terms or conditions, including, but not limited to, price terms, on which the chiropractor is willing to deal with a payor;

- C. Exchanging or facilitating in any manner the exchange or transfer of information among chiropractors concerning any chiropractor's willingness to deal with a payor, or the terms or conditions, including price terms, on which the chiropractor is willing to deal with a payor;
- D. Continuing a formal or informal meeting of chiropractors after any person makes any statement concerning one or more chiropractors' intentions or decisions, that if agreed to would violate Paragraphs II.A through II.C above, unless Respondents immediately eject such person from the meeting;
- E. Attempting to engage in any action prohibited by Paragraphs II.A through II.D above; and
- F. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.E above.

PROVIDED, HOWEVER, that nothing in this Paragraph II. shall prohibit any agreement or conduct involving Respondent Hirtle: (a) that is reasonably necessary to form, participate in, or take any action in furtherance of, a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement; or (b) where such agreement or conduct solely involves chiropractors in the same chiropractic group practice.

III.

IT IS FURTHER ORDERED that nothing in this Order shall be construed to prevent Respondent Corporations from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal, state, commonwealth, or local government including any executive or legislative body, or to participate in any federal, state, commonwealth, or local administrative or judicial proceeding, or to engage in communications reasonably necessary to develop a position or communicate with chiropractors about positions presented to any federal, state, commonwealth, or local government including any executive or legislative body.

IV.

IT IS FURTHER ORDERED that for a period of five (5) years from the date that this Order becomes final, Respondent Corporations shall maintain a copy of any written communication distributed to any chiropractor relating to any subject that is covered by any provision of this Order.

V.

IT IS FURTHER ORDERED that each Respondent Corporation shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
 - 1. send by first-class mail with delivery confirmation or electronic mail with return confirmation, a copy of this Order and the Complaint to:
 - a. every chiropractor who is or has been a member of Respondent Corporation at any time since January 1, 2005;
 - b. each current officer, director, manager, and employee of Respondent Corporation;
 - 2. send by first-class mail, return receipt requested, a copy of this Order and the Complaint to the chief executive officer of each payor set forth in Appendix A of this Order;
- B. For five (5) years from the date this Order becomes final:
 - 1. distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each chiropractor who becomes a member of Respondent Corporation, and who did not previously receive a copy of this Order and the Complaint from such Respondent Corporation, within thirty (30) days of the time such membership begins;
 - b. each person who becomes an officer, director, manager, or employee of Respondent Corporation, and who did not previously receive a copy of this Order and the Complaint from such Respondent Corporation, within thirty (30) days of the time that he or she assumes such position with such Respondent Corporation; and
 - 2. publish on the official website of Respondent Corporation, and, if Respondent Corporation sends an annual report or newsletter to all chiropractors who are members of Respondent Corporation, publish annually in such report or newsletter, a copy of this Order and the Complaint with such prominence as is given to regularly featured information.
- C. Notify the Commission at least thirty (30) days prior to any proposed:
 - 1. dissolution of Respondent Corporation;
 - 2. acquisition, merger or consolidation of Respondent Corporation; or

3. other change in Respondent Corporation that may affect compliance obligations arising out of this Order, including but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Corporation.
- D. File verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
1. a detailed description of the manner and form in which Respondent Corporation has complied and is complying with this Order;
 2. the name, address, and telephone number of each payor with which such Respondent Corporation has had any contact; and
 3. copies of the delivery confirmations or electronic mail with return confirmations required by Paragraph V.A.1, and copies of the signed return receipts required by Paragraphs V.A.2 and V.B.1.

VI.

IT IS FURTHER ORDERED that Respondent Hirtle shall file a verified written report within ninety (90) days from the date this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include a detailed description of the manner and form in which Respondent Hirtle has complied and is complying with this Order.

VII.

IT IS FURTHER ORDERED that, for five (5) years from the date this Order becomes final, each Respondent shall notify the Commission of any change in his or its respective principal address within twenty (20) days of such change in address.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request:

- A. Each Respondent shall permit any duly authorized representative of the Commission 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 such Respondent relating to any matter contained in this Order; and

B. Upon five (5) days' notice:

1. each Respondent Corporation shall, in the presence of counsel and without restraint or interference, permit any duly authorized representative of the Commission to interview its officers, directors, or employees;
2. Respondent Hirtle shall, in the presence of counsel and without restraint or interference, permit any duly authorized representative of the Commission to interview him.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on April 14, 2028.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: April 14, 2008