

# Health Care Alert

*March 2008*

## **CONNECTICUT CHIROPRACTIC TRADE ASSOCIATIONS AND CONNECTICUT ATTORNEY SIGN SETTLEMENT AGREEMENT WITH THE FTC AFTER BEING ACCUSED OF GROUP BOYCOTT OF MANAGED CARE ORGANIZATION**

On March 5, 2008, the Connecticut Chiropractic Association (“CCA”), the Connecticut Chiropractic Council (“CCC”), and a Connecticut attorney representing CCA entered into a settlement agreement, (including a Consent Order to Cease and Desist) with the Federal Trade Commission after the FTC accused all three parties of orchestrating and implementing agreements among competing chiropractors to boycott American Specialty Health in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45.

### **FACTS:**

American Specialty Health (“ASH”), a health care benefits organization, offered a chiropractic cost-savings benefits program to Anthem Blue Cross and Blue Shield of Connecticut, CIGNA HealthCare, and Empire Blue Cross Blue Shield. In the case of Anthem, ASH was required to contract with 80% of Anthem’s existing network of chiropractors. ASH gave the chiropractors the option to “opt out” of the existing ASH network so that they could join the ASH/Anthem network.

### **FTC ALLEGATIONS:**

The FTC alleged that the CCA and CCC (both trade associations including over 500 chiropractors) and the attorney representing CCA conspired to boycott ASH by engaging in the following conduct:

- A campaign through meetings and communications urging members to resign from ASH (e.g., “united we stand, divided we fall”, “We must band together”, “We all need to unite on this issue”, “Get [ASH] out of this state!”);
- Discussions at CCA meetings regarding dissatisfaction with price terms and utilization requirements;
- Monthly meetings to discuss concerns and draft letters for the chiropractors to “opt out” of ASH;



- Regular updates of the number of chiropractors who opted out, and the number needed to ensure that ASH would not meet its minimum network requirements;
- Communications from the attorney, such as “There need to be 60 more resignations to cripple ASH provider list”, “We need 50 more to destroy the panel”, “A little more effort and we will be there”, “The list is now 18 [chiropractors]. 5 Counties out 100%.”, “A great victory for Chiropractic!”, “It would be nice to get 100% out in Hartford and New Haven Counties tomorrow.”;
- Communications by the chiropractors, CCA, CCC and the attorney to encourage chiropractors to resign from all ASH affiliated plans; “[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!!” Chiropractors “voted overwhelmingly” to terminate their participation in the ASH program for CIGNA and CIGNA was forced to form a new network of chiropractors to serve its enrollees.

#### **FTC FINDINGS:**

The FTC, working in collaboration with the Connecticut Office of the Attorney General, found this conduct to be illegal because CCA and CCC were neither clinically integrated in the delivery of chiropractic services (that is they did not have systems in place to modify clinical practice patterns to control costs and ensure quality) nor did their members share significant financial risk. In addition, the FTC concluded that the conduct had the effect of restraining trade and unreasonably hindering competition in the provision of chiropractic services in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. §45 by:

- Unreasonably restraining price and other forms of competition among chiropractors;
- Increasing costs for chiropractic care;
- Depriving payors and individual consumers access to chiropractic services cost-savings programs; and
- Depriving payors and individual consumers of the benefits of competition among chiropractors.

#### **FTC ORDER:**

To settle the charges, the FTC entered into a settlement agreement with all three parties. In that agreement, the FTC ordered the CCA, CCC and the Connecticut attorney to cease and desist from:

- 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: (i) to negotiate on behalf of any chiropractor with any payor; (ii) to deal, refuse to deal, or threaten to refuse to deal with any

payor; (iii) 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;

- Requesting, proposing, urging, advising, recommending, advocating, or attempting to persuade 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;
- Exchanging or facilitating the exchange 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;
- Continuing a formal or informal meeting of chiropractors after any person makes any statement about one or more chiropractors' intentions or decisions, that if agreed to would violate the orders described above, unless the assembled chiropractors immediately eject such person from the meeting; or
- Attempting to engage in any action prohibited by the above paragraphs or encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by the orders described above.

The Consent Order will not be final until it has been subject to a 30 day public comment period and the FTC accepts it as such. Nevertheless, the FTC unanimously voted in favor of accepting the Consent Order. Once approved, the Order must be sent to the payors doing business in Connecticut and will expire in 20 years.

#### **SHIPMAN & GOODWIN ADVICE:**

Unless your legal counsel advises you that you are in a clinically integrated network of competitors or participating in substantial risk-sharing arrangement with competitors, do not discuss or conspire with a competitor the terms or fees associated with a particular payor contract, and do not agree expressly or tacitly not to deal with a particular payor.

#### **QUESTIONS OR ASSISTANCE?**

If you have any questions, please don't hesitate to call Joan Feldman at (860) 251-5104, Alex Lloyd at (860) 251-5102, John Lawrence at (860) 251-5139, Maureen Anderson at (860) 251-5589, Sheila Huddleston at (860) 251-5723 or Vincenzo Carannante at (860) 251-5096.

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