Buteru of Competition
FEDERAL TRADE COMMISSION WASHINGTON. O.C. i(HbO

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Bear Mr. Sfikas:

Pour letter of April 30, 1985, requests a staff advisory opinion regarding the legality of proposed fee surveys that your client, the Araerican Dental Association (BlrDA"), intends to

conduct,

According to your letter, the MA would like to conduct ad

ADA
staff

Peter M. Sfikas, Esq.

Based on the information provided in your letter, the

program proposed does not appear to involve or raise significant antitrust dangers, The antitrust laws generally forbid

agreements among competitors or their agents that fix, formulate,

or interfere with prices, fees, or otherwise unreasonably restrict terms of trade. Depending on the purpose and effeceaof

the conduct, dissemination of information about prices by an organization of competitors, especially to its members, can

facilitate or constitute an unlawful agreement to set or regulate prices. Several aspects of the proposed conduct, however, indicate that it is unlikely that the ADA's proposal would be

used to facilitate price fixing. First, the survey results would

not be made generally available to competing dentists, Second, the fee data that would be distributed to consumers and insurers, and perhaps on occasion to specific dentists, would be a range of
fees, rather than survey results regarding one specific price, Third, the program would be voluntary in nature -- no party is

required to take any action as a result of the survey findings, Given these facts, and in light of the purpose of the proposal and the generally unconcentrated nature of local dental services

markets, the proposed conduct would not appear likely to violate
the Federal Trade Commission Act.

Of course, if the fee survey results were, despite these
factors, to be used as a vehicle for an agreement to restrain competition, the program would raise serious antitrust
concerns. If used as a tool for collectively affirming the lI

- "legitimacy" of fees that fall within a particular range, then , the surveys could suggest collusion among dentists, or with the ADA, on pricing policies in local communities, Similarly, antitrust concerns would be raised if the survey results were

used to create collective pressure on third-party payers to
accept particular prices or benchmarks for reimbursement

schedules. In this regard, the ADA should be particularly careful should it choose to provide information directly to

insurers on the request of individual dentists, Such conduct
could, under certain circumstances, create the implication that the ADA is acting as a representative for the 'collectiven of its members in defining usual, customary, or reasonable fees.

In sum competition in local markets for dental services will apparently be adequately protected against anticompetitive abuse
of the program if the statistics produced through the proposed surveys are treated by all parties solely as a means for helping
to educate patients, third-party payers, and dentists, In implementing the program, however, continued care In �1 it

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Peter M. Sfikas, Esq. -3-

and that it does not produce anticompetitive effects. The Bureau retains the right to reconsider the questions involved and, with

norice to the requesting party, to rescind or revoke its opinion if implementation of the proposed survey program results in

substantial anticompetitive effects, if the program is used for improper purposes, or if it would be in the public interest to do
so.

Finally, as f am sure you are awareo the above legal advice
is that of the Bureau of Competition only, Under the Commission" Rules of Practice S l.3(c), the Commission is not bound by this advice and reserves the right to rescind it at a later Lime.

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