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Bureau of Competition
FEDERAL TRADE COMMISSION WASHINGTON, D.C. 20580

Frederick C. 04240

Dear Dr. Holler:

This letter responds to your request for guidance concerning
the legality under the antitrust laws of a medical society such as the Xaine Nedical Association urging its members to freeze their fees or to lower their fees by a particular percentage. YOU have indicated that your question was prompted by reports in

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the press of proposals for a freeze on physicians' fees. I have treated your inquiry as a request for informal advice. More specific facts regarding the proposed conduct would be required for a formal advisory opinion.

I applaud your sensitivity to potential antitrust concerns. Collective decision-making by competitors on matters related to fees can raise significant antitrust issues, and an association such as yours should proceed with care in these matters.

As you may know, one of the fundamental rules of antitrust
law is the ban on price-fixing. The law prohibits naked agree- ments among competitors to fix or stabilize the price at which they sell their goods or services. So basic is this rule to the framework of our economic system that conduct found to constitute price-fixing is deemed per se, or automatically, illegal. When per se illegal price fixing is involved, courts will not inquire

into the reasonableness of the prices set or the validity of any proffered justifications for the restraint on competition,
The rule against price-fixing is not limited to agreements
inwhich competitors agree to charge the same price. Catalano,
Inc. v. Target Sales, Inc., 446 U.S. 643 (1980). As the Supreme
Court recently reaffirx-?d in Arizona v. Yaricopa C~untv Y2dical

Society, 457 U.S. 332 (1352), a&-pTo'nibi tion a;3plie~wi",n~qila~ force to agreements to set maximum prices. ~urthermor6, agree-

8 ments designed to stabilize prices are illegal, even though

actual price levels have not Seen set. United States v. Socony-
Vacuum Oil Co., 310 U.S. 150 (1940).

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The Supreme Court explained the policy underlying the rule Court

A medical society resolution that merely encouraged