

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

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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.)	
_____)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that the Connecticut Chiropractic Association (“CCA”), the Connecticut Chiropractic Council (“CCC”), and Robert L. Hirtle, Esq., hereinafter sometimes collectively referred to as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns a series of agreements among competing chiropractors to boycott American Specialty Health (“ASH”) to preclude ASH from administering a chiropractic cost-savings benefits administration program on behalf of payors offering coverage for health care services in the State of Connecticut. The chiropractors engaged in this conduct with and

through their respective trade associations, CCA and CCC, CCA's legal counsel, Robert L. Hirtle, Esq., and through activities undertaken collectively among CCA, CCC, Mr. Hirtle, and other licensed chiropractors in the State of Connecticut.

2. The Respondents' illegal conduct had the purpose and effect of unreasonably restraining prices and other forms of competition among hundreds of otherwise independent chiropractors in the State of Connecticut.

- b. CCC chiropractors have been and are in competition with other CCC chiropractors for the provision of chiropractic services in areas throughout the State of Connecticut; and
- c. CCA chiropractors and CCC chiropractors have been and are in competition with each other, and with other chiropractors, for the provision of chiropractic services in areas throughout the State of Connecticut.

9. All Respondents are “persons” or “corporations” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of Respondents, including the acts and practices alleged herein, affect the interstate movement of patients, the interstate purchase of supplies and products, and the interstate flow of funds, and are in or affect “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF CHIROPRACTOR CONTRACTING WITH PAYORS

11. Individual chiropractors and chiropractic group practices contract with payors of health care services and benefits, including insurance companies, managed care organizations, health care benefits organizations, and others, to establish the terms and conditions, including price terms, under which the chiropractors will render their professional chiropractic services to

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services to the payors' enrollees under the cost-savings program. In addition to its chiropractor network, ASH administers chiropractic benefits, including utilization management, credentialing, claims processing, and other management services, for payors under the program.

20. The arrangement required ASH to contract with a minimum of 80 percent of the chiropractors who were members of Anthem's existing chiropractic provider network to ensure

26. During this time, CCA and CCC conveyed the concerns of their members regarding the ASH fee schedule and utilization management requirements to ASH. In September 2006, CCA and CCC informed ASH that the chiropractors were “grateful that everyone at ASH [was] critically re-thinking things such as the fee schedule.” Faced with numerous opt-outs and concerns about the program, ASH sent a revised offer to the chiropractors with an increase in the fee schedule on September 19, 2006.

27. Dissatisfied with ASH’s revised offer, CCA, CCC, and Mr. Hirtle continued their efforts to persuade the chiropractors not to contract with ASH or, if they were currently members of ASH’s existing network, to opt out of ASH’s network for Anthem. In response, the chiropractors continued sending their opt-out letters to ASH to reject the revised offer.

28. As a consequence of the boycott, all but four chiropractors opted out of ASH’s chiropractic network for Anthem, and the network had no chiropractors in seven out of the eight counties in the State of Connecticut. The boycott succeeded in defeating the ASH network and forcing Anthem and ASH to cancel their arrangement as of December 1, 2006.

CCA AND CCC CHIROPRACTORS COLLECTIVELY TERMINATE THEIR PARTICIPATION FROM ASH’S PROGRAM FOR CIGNA ENROLLEES

29. ASH entered into an agreement with CIGNA in 2000 to provide a chiropractic provider network and administer chiropractic benefits for CIGNA enrollees in the State of Connecticut.

30. During the time CCA chiropractors and CCC chiropractors were opting out of the ASH chiropractic program for Anthem, they also collectively decided to terminate their existing relationship with the ASH chiropractic program for CIGNA.

31. Communications among the chiropractors included the warning that “[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!!”

32. CCA and CCC echoed this rallying cry for action through their communications with the chiropractors. CCC told the chiropractors, “There is no option except for ASH to get out of Connecticut. No more negotiations. No more new contracts.”

33. Following these communications, the chiropractors sent letters to ASH terminating their participation in the ASH program for CIGNA.

34. In November 2006, Mr. Hirtle announced that the chiropractors had “voted overwhelmingly” to terminate their participation in the ASH program for CIGNA.

35. The terminations forced CIGNA to develop its own chiropractic network to continue to provide adequate chiropractic coverage to its enrollees.

CCA AND CCC CHIROPRACTORS CONSPIRE TO BOYCOTT EMPIRE

36. ASH manages chiropractic benefits for Empire enrollees in the State of New York. Empire also has enrollees who reside in Connecticut, but obtain health coverage from their employers in New York. ASH attempted to contract with chiropractors in Connecticut to provide chiropractic services to Empire enrollees residing in Connecticut.

37. At a meeting in December 2006, CCA and CCC chiropractors discussed ASH's offer to provide services to Empire enrollees. CCA and CCC advised their members that if they did not want to participate in the ASH program for Empire, they should send a letter to ASH declining the offer and provide a copy of the letter to Mr. Hirtle. Following the meeting, many CCA and CCC members sent opt-out letters to Empire.

38. In January 2007, CCA informed all chiropractors in Connecticut that an insufficient number of chiropractors agreed to join ASH's chiropractic network for Empire enrollees residing in Connecticut. The collective conduct of the chiropractors forced ASH to abandon its efforts to contract with chiropractors in Connecticut.

RESPONDENTS' CONDUCT IS NOT LEGALLY JUSTIFIED

39. Respondents have not identified any reason for the agreement among CCA and CCC chiropractors to boycott ASH, and Mr. Hirtle's activities to encourage, facilitate, and help implement the boycott, other than to prevent ASH from managing chiropractic benefits on behalf of payors and their enrollees in Connecticut.

40. Neither CCA nor CCC has undertaken any programs or activities that create any integration among their members in the delivery of chiropractic services. Members do not share any financial risk in providing chiropractic services, do not collaborate in a program to monitor and modify clinical practice patterns of their members to control costs and ensure quality, or

ANTICOMPETITIVE EFFECTS

42. Respondents' actions described in paragraphs 15 through 41 of this Complaint have had the effect of restraining trade unreasonably and hindering competition in the provision of chiropractic services in areas throughout the State of Connecticut in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among chiropractors;
- b. increasing costs for chiropractic care;
- c. depriving payors and individual consumers access to chiropractic services cost-savings programs; and
- d. depriving payors and individual consumers of the benefits of competition among chiropractors.

43. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of April, 2008, issues its Complaint against Respondents Connecticut Chiropractic Association, Connecticut Chiropractic Council, and Robert L. Hirtle, Esq.

By the Commission.

Donald S. Clark
Secretary

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