

Complaint

88 F.T.C.

IN THE MATTER OF  
MEDICAL SERVICE CORPORATION OF SPOKANE  
COUNTY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2853. Complaint, Dec. 3, 1976 — Decision, Dec. 3, 1976*

Consent order requiring a Spokane, Wash., operator of a "Blue Shield" health care payment plan and an association of participating physicians, among other things, to cease boycotting health maintenance organizations (HMO's), HMO physicians or other physicians who practice on other than a fee-for-service basis.

*Appearances*

For the Commission: *Jonathan E. Gaines* and *Selig S. Merber*.

For the respondents: *Arthur W. Harrigan, Jr., Lane, Powell, Moss & Miller*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding by it in respect thereof would be in the interest of the public, hereby issues this complaint, stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Medical Service Corporation of Spokane County (hereinafter "MSC") is a corporation organized and existing under the laws of the State of Washington, with its principal offices in Spokane, Washington.

PAR. 2. Medical Service Bureau of Spokane County (hereinafter "MSB") is an unincorporated association of physicians. Except as hereinafter alleged, membership in MSB is open to all members of the medical societies of Adams, Benton, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens Counties of the State of Washington (hereinafter "Eastern Washington"). Over 300 physicians, constituting over 90 percent of all physicians in Eastern Washington, are members of MSB.

TRADE AND COMMERCE

PAR. 3. In Eastern Washington, physicians are compensated for

services on either a fee-for-service basis or a prepayment basis. Health care plans which compensate physicians by the prepayment method are known as health maintenance organizations (hereinafter "HMO's"). In 1975, approximately \$15 million of paid physician services were rendered in Eastern Washington. Over 95 percent of such services were supplied on a fee-for-service basis.

PAR 4. Except to the extent that competition has been restrained as herein alleged, physicians providing services on a fee-for-service basis are in competition with each other and with HMO's in the provision of physician services.

PAR. 5. MSC is engaged in the business of establishing and administering plans pursuant to which it contracts with physicians rendering services on a fee-for-service basis to provide such services to consumers who subscribe to the plan. Physicians who enter into such contracts are known as participating physicians. MSC's contracts with subscribers and participating physicians usually provide that MSC will reimburse participating physicians for covered services rendered to subscribers and that such reimbursement will constitute payment in full of the participating physicians' fees for such services. Most MSC contracts with subscribers apply, with minor exceptions, only to services rendered by participating physicians.

PAR. 6. At least 25 percent of the population of Eastern Washington subscribes to an MSC plan. Over 90 percent of all practicing physicians in Eastern Washington are participating physicians in MSC. MSC is the only entity in Eastern Washington which is affiliated with National Association of Blue Shield Plans and offers consumers health benefit plans utilizing participating physicians. Physicians value the status of participating physicians and are disadvantaged by deprivation of such status.

#### JURISDICTION

PAR 7. Substantial Federal government funds flow across State lines into Eastern Washington to pay physicians' fees and encourage the development of HMO's. In the conduct of their business, MSB and MSC, collectively and severally, engage, *inter alia*, in the following activities which could also be engaged in by HMO's:

(a) receiving, treating, and contracting for the treatment of patients from other States and countries;

(b) receiving and administering substantial sums of money from the Federal government and from private insurers engaged in interstate commerce to pay physician fees;

(c) paying out substantial sums of money across State lines to health

care providers or plans which have rendered or paid for services to MSC subscribers, which services MSC is obligated to pay for;

(d) investing claim reserves in the interstate money market;

(e) participating in reciprocal arrangements for the provision of medical care to subscribers of medical care plans throughout the country which belong to the National Association of Blue Shield Plans, in the course of which MSC sends and receives substantial sums of money across State lines;

(f) prescribing medicines which are shipped in interstate commerce.

#### ACTS AND PRACTICES

PAR. 8. MSC and MSB have individually, collectively and collusively engaged in the following acts, practices, and methods of competition for the purpose, and with the effect, of boycotting HMO's and physicians providing services to or for HMO's.

(a) Since its formation in 1933, MSC has followed the practice of:

(i) entering into provider contracts only with physicians who are or could be members of MSB;

(ii) refusing to enter into provider contracts with physicians who enter into similar contracts with other persons or organizations.

(b) From its formation in 1933 until in or about October 1974, MSB has followed the practice of:

(i) refusing membership to any physician who agrees to provide services to or for an HMO; and

(ii) permitting its members to become participating physicians only in MSC.

(c) Since in or about October 1974, MSB has provided in its By-Laws that:

(i) membership would be granted to physicians who have contracted to provide services to an HMO only if the HMO is approved by MSB; and

(ii) members are permitted to become participating physicians for organizations other than MSC only if such organizations are approved by MSB.

PAR. 9. In Eastern Washington, as a result of the acts, practices, and methods of competition alleged in paragraphs one through eight hereinabove,

(a) the prices of physician services have been stabilized and otherwise interfered with;

(b) competition among physicians has been restrained;

(c) entry of HMO's into the physician services market and the growth of HMO's have been restrained;

(d) the development of organizations offering health benefit plans utilizing participating physician contracts has been restrained; and

(e) consumers have been deprived of the benefits of competition among physicians, fee-for-service medical care plans, and physician prepayment medical care plans.

#### VIOLATION

Par. 10. The acts, practices, and methods of competition alleged herein individually and in conjunction with each other, constitute unfair methods of competition or unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act by the respondents herein, individually and collectively.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45; and

Respondents and complaint counsel having executed an agreement containing a consent order, an admission by the respondents of the Commission's jurisdiction and the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission that the law has been violated, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.32 of the Commission's Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Service Corporation of Spokane County is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at Spokane, Washington.

2. Medical Service Bureau of Spokane County is an unincorporated association with its principal place of business located at Spokane, Washington.

3. The Federal Trade Commission has jurisdiction of this proceeding and of the Respondents, and this proceeding is in the public interest.

## ORDER

## I

*It is ordered,* That the following definitions shall apply in this order.

A. "MSB" means respondent Medical Service Bureau of Spokane County, its successors and assigns, its officers and directors, and all the members thereof as of January 1, 1976, individually and collectively.

B. "MSC" means respondent Medical Service Corporation of Spokane County, its successors and assigns, and its officers, directors, and members.

C. "Participating physician" means a physician who is paid or reimbursed by MSC for service rendered to an MSC subscriber or policyholder (including covered dependents), pursuant to a participating physician agreement with MSC.

D. "Health maintenance organization" means a health care payment plan which compensates physicians by a prepayment method, as opposed to the fee-for-service method.

## II

*It is further ordered,* That neither MSC nor MSB shall directly or indirectly enter into, adhere to, promote or follow any course of conduct, practice or policy, or any agreement or understanding which (a) discriminates against any health maintenance organization, or (b) discriminates against any lawfully practicing physician, or excludes any lawfully practicing physician from being a participating physician in MSC, by reason of the fact that such physician practices medicine, in whole or in part, on other than a fee-for-service basis, or by reason of the fact such physician is associated in any way with a health maintenance organization.

## III

*It is further ordered,* That within sixty (60) days following the date of issuance of this order MSC shall revise its Charter and By-Laws and MSB shall revise its By-Laws, to conform with the requirements of this order.

## IV

*It is further ordered,* That MSC shall mail a copy of this order and of the complaint in this proceeding to each trustee, member, and officer of MSC and to each person who was a member of MSB as of January 1, 1976.

V

*It is further ordered,* That nothing in this order shall be construed to exempt MSC or MSB from compliance with the antitrust laws or the Federal Trade Commission Act, and that the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws and statute.

VI

*It is further ordered,* That MSB and MSC shall, within sixty (60) days after service upon it of this order, and that MSC annually for each of the five (5) years thereafter, shall file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

VII

*It is further ordered,* That MSC notify the Commission at least thirty (30) days prior to any proposed change in MSC such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

Order

88 F.T.C.

IN THE MATTER OF  
KRAFTCO CORPORATION, ET AL.

*Docket 9035. Interlocutory Order, Dec. 8, 1976*

Commission directs parties to submit memoranda responding to relative merits of ALJ's proposed order and the consent order in IBM case, File 761 0063.

*Appearances*

For the Commission: *Ronald A. Bloch, Clinton R. Batterton, and Joseph Tasker, Jr.*

For the respondents: *David C. Bogan and C. Lee Cook, Jr., Chadwell, Keyser, Ruggles, McGee & Hastings, Chicago, Ill.; Howard Hoosin and William G. Taffe, Glenview, Ill.; William E. Willis, Sullivan & Cromwell, New York City; and Frederic L. Ballard, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

ORDER REQUIRING ADDITIONAL BRIEFING

The Commission recently accepted and placed upon the public record for comment a consent order against International Business Machines Corporation, File No. 761 0063, pertaining to an allegedly unlawful interlocking directorate. At oral argument in Dkt. 9035 counsel were invited to comment upon the IBM order, but the necessity and purpose of such comment were left subject to question. The Commission desires the views of the parties in this matter concerning the following:

Assuming *arguendo* that the Commission finds that SCM has violated the law and that a remedial order is deemed appropriate, is the remedial approach taken in the IBM consent order preferable (and in what respects and why) to the order recommended in this case by the administrative law judge?

Receipt of the views of respondent SCM will, of course, by without prejudice to the position expressed in its brief that the consent order signed by respondent Kraftco is the appropriate one, but the Commission seeks the views of respondent as to the relative merits of the ALJ's proposed order and the IBM order. Therefore,

*It is ordered*, That within fifteen days from receipt of this order, the parties shall submit memoranda in response to the above-mentioned question.