

IN THE MATTER OF

WYOMING STATE BOARD OF REGISTRATION IN PODIATRY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3176. Complaint, Jan. 24, 1986—Decision, Jan. 24, 1986

This consent order requires the Wyoming State Board of Registration in Podiatry ("Board"), among other things, to cease restricting or discouraging podiatrists from truthfully advertising their goods and services by: (1) adopting rules or policies prohibiting such advertising; (2) suspending or revoking podiatrists' licenses as a result of such advertising; or (3) declaring such advertising illegal or unethical. Under the terms of the order, the Board is allowed to prohibit and enforce restrictions that ban false or misleading ads or to seek legislation related to the practice of podiatry.

Appearances

For the Commission: *Jack Young and Cynthia Wicker.*

For the respondent: *Gay Woodhouse, Cheyenne, Wyo.*

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 Wyoming State Board of Registration in Podiatry ("Board") has violated Section 5 of the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

Respondent

1. Respondent Wyoming State Board of Registraton in Podiatry is organized, exists and transacts business under the laws of the State of Wyoming. The Board's principal office and place of business is located at the office of Curtis Deming, D.P.M., its Secretary-Treasurer, at 50 East Loucks, Suite 202, Sheridan, Wyoming. The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

2. Membership on the Board is limited to podiatrists. The Board is composed of three podiatrists who are appointed by the governor to staggered three year terms. Wyo. Stat. § 33-9-102.

3. The Board has exclusive authority to license podiatrists in Wyoming. It is unlawful to practice podiatry in Wyoming without first obtaining a license from the Board. Wyo. Stat. §§ 33-9-103, 104, 105.

4. The Board is authorized to adopt rules and regulations governing the examination and licensing of podiatrists in the state. Wyo. Stat. § 33-9-105. The Board is further authorized to revoke or refuse to renew the license of any podiatrist who is found guilty of the following offenses: obtaining a license by fraudulent representation, use of untruthful or improbable statements in advertisements, incompetency, alcoholism or habitual use of controlled substances, and engaging in unprofessional conduct. Wyo. Stat. § 33-9-110. The Board is not authorized to discipline podiatrists for other violations or to adopt rules establishing additional grounds for disciplinary action.

5. By law all Board members must have practiced podiatry in Wyoming for the two years preceding their appointment to the Board, and members must continue to practice podiatry while on the board. Board members spend a relatively small percentage of their time on Board matters, and compensation is limited to reimbursement for per diem, mileage and expenses for attending meetings, and other necessary incidental expenses. Wyo. Stat. § 33-9-112.

6. Except to the extent that competition has been restrained as alleged herein, podiatrists in Wyoming compete with one another and Board members who are podiatrists compete with other podiatrists they regulate.

7. In the conduct of their business, podiatrists in Wyoming advertise in media having interstate circulation, receive and treat patients from other states, receive substantial sums of money that flow across state lines from the federal government and from private insurers for rendering podiatric services, prescribe or administer medicines that are shipped in interstate commerce, and use supplies and equipment that are shipped across state lines. The acts and practices described below are in interstate commerce, or affect these and other interstate activities, and are in or affect commerce within the meaning of Section 5 (a)(1) of the Federal Trade Commission Act. 15 U.S.C. 45(a)(1).

State Policy Concerning Podiatric Advertising

8. The State of Wyoming does not restrict competition among podiatrists except by authorizing the Board to establish standards for licensing podiatrists, and by disciplining them for the offenses described above.

9. There are no Wyoming Statutes indicating that the state intended to restrict or supplant competition among licensed podiatrists or to restrict truthful advertising by podiatrists. The only authority to prohibit the use of "untruthful or improbable statements" in adver-

tisements. Wyo. State. § 33-9-110(a)(iii). The State of Wyoming has thereby expressly denied the Board any authority to regulate truthful advertising.

10. The State of Wyoming gives the Board no discretion to adopt rules other than those necessary to conduct examinations and issue licenses.

Board Conduct

11. Despite the fact that state law does not authorize the Board to restrict truthful advertising, the Board has restrained competition among podiatrists in Wyoming by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the dissemination by podiatrists of truthful, nondeceptive information. In furtherance of this combination or conspiracy, the Board has engaged in the following acts or practices without statutory authorization:

A. Adopted Principles of Professional Conduct for Podiatrists, which state that "[t]he use of advertising in any form to solicit patients is inconsistent with [the podiatrist's] obligation."

B. Adopted a Code of Ethics that sets forth content restrictions on advertising by podiatrists in Wyoming. The Code permits advertising of little information beyond name, address, telephone number, office hours and limited descriptions of practice. These sections restrict advertising to office signs, telephone listings, newspapers, and direct mail announcements. They limit use of these media, stating for example, that newspapers and direct mailings may be used only to announce the opening of new offices or changes of address or telephone number. They also impose additional limitations on the use of media, including complete bans on radio and television advertising.

C. Intimidated and coerced or attempted to intimidate and coerce individual podiatrists into abandoning their efforts to advertise the availability of podiatric services, and coupons for free services. In so doing, the Board has not based its actions on a determination that the advertising was false or deceptive.

D. Directed competing podiatrists in one town to conspire for the purpose of establishing an agreement on the extent of advertising they would permit in their market.

12. By these and other means the Board has continued its anticompetitive course of conduct, despite the fact that the Board has known since at least 1982 that the restrictions contained in the Principles of Professional Conduct and Code of Ethics violated the law.

Consumer and Competitive Injury

13. The acts and practices described above have restrained and continue to restrain competition unreasonably and injure consumers in the following ways, among others:

A. Consumers and potential consumers of podiatric goods and services are deprived of the benefits of vigorous competition;

B. Consumers and potential consumers are deprived of truthful, useful information about podiatric goods and services;

C. Podiatrists are prevented from disseminating truthful information about their goods and services; and

D. Podiatrists are unreasonably restrained from competing in the market for podiatric goods and services, and restrained in their ability to make podiatric services fully and readily available to consumers needing such services.

14. The acts and practices described above constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act. The acts and practices are continuing and will continue absent the entry of an order for appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of the draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, the Commission hereby issues its com-

plaint, makes the following jurisdictional findings and enters the following order:

1. The respondent is organized, exists and transacts business under the laws of the State of Wyoming, with its principal office and place of business located at the office of Curtis Deming, D.P.M., its Secretary-Treasurer, at 50 East Loucks, Suite 202, Sheridan, Wyoming.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purposes of this order, the following definitions shall apply:

A. *Board* shall mean the Wyoming State Board of Registration in Podiatry, its members, officers, agents, employees, successors and assigns.

B. *Disciplinary action* shall mean:

1. The refusal to grant, or the restriction, revocation or suspension of, a license to practice podiatry in Wyoming; the refusal to admit a person to examination for a license to practice podiatry; the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; or the imposition of a fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil court proceeding against any person or organization.

I.

It is ordered, That the Board, directly or indirectly, through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding, or discouraging any person from advertising or publishing the prices, terms, conditions of sale, or other information concerning any podiatric service or product offered for sale or made available by any person or organization that may lawfully offer the service or product. Such actions include, but are not limited to:

1. adopting or maintaining any rule, regulation, policy, or course of conduct that has the purpose or effect of prohibiting, restricting, or

discouraging any person from advertising information about podiatric goods and services;

2. taking or threatening to take any disciplinary action against any person or organization for advertising information about podiatric goods and services;

3. declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise information about podiatric goods and services; and

B. Inducing, urging, encouraging or assisting any podiatrist or any podiatric association, group of podiatrists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this part.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action to prohibit the use in advertising of statements that the Board reasonably believes are "untruthful or improbable" within the meaning of Wyo. Stat. § 33-9-110(a)(iii);

Provided further, That, this order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of podiatry.

II.

It is further ordered, That the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A and a copy of this order:

1. Within thirty (30) days after the date this order becomes final, to each person licensed to practice podiatry in Wyoming on the date this order becomes final and to each person who has on such date a pending application for a license; and

2. Within thirty (30) days after a person applies for a license to practice podiatry in Wyoming, for a period of five (5) years after the date this order becomes final, to each such person;

B. For a period of five (5) years after this order becomes final, maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of all records relating to advertising, including but not limited to, written communications, and any summaries of oral communications to or from the Board regarding the offering, publishing or advertising of information about podiatric services;

C. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in

the Board's authority to regulate the practice of podiatry in Wyoming that may affect compliance obligations arising out of this order, such as the complete or partial assumption of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board;

D. Within ninety (90) days after this order becomes final remove from its Principles of Professional Conduct, Code of Ethics and any other policy statement or guideline, any provision, interpretation or statement that is inconsistent with Part I of this order;

E. Within one hundred twenty (120) days after this order becomes final, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which the Board has complied with this order.

APPENDIX A

[Date]

ANNOUNCEMENT

As you may be aware, the Wyoming State Board of Registration in Podiatry has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit podiatrists from advertising their services in a truthful or probable manner. The Board may not (1) adopt or maintain rules, regulations, or policies that prohibit truthful, probable advertising with respect to the sale of podiatric goods, or services, (2) take disciplinary action (such as the suspension or revocation of a certificate of license) or threaten disciplinary action against any person or organization so advertising or (3) declare it to be illegal or unethical for persons to so advertise. The Board is also prohibited from encouraging any podiatrist or any professional group or association to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit and discipline licensees for advertising that is untruthful or improbable.

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed. Further information may be obtained from the FTC by calling Jack L. Young at (202) 523-3596.

[Title]

Wyoming State Board of Registration in Podiatry

Complaint

107 F.T.C.

IN THE MATTER OF

ROY B. KELLY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3177. Complaint, Feb. 4, 1986—Decision, Feb. 4, 1986*

This consent order requires a former corporate officer of a Washington, D.C.-based employment counseling service, among other things, to cease misrepresenting: (1) the basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondent's services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondent a finder's fee. Additionally, respondent is required to have a reasonable basis for any placement claims he makes, and whenever such placement claims are made, to maintain records of his placements and make a composite of these records available to clients on request. Further, respondent is prohibited from accepting a fee until a client has obtained employment through respondent's services.

Appearances

For the Commission: *Walter C. Gross and E. Charles Lane.*

For the respondent: *Thomas R. Dyson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc. (JWCA), hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roy B. Kelly was an officer of John William Costello Associates, Inc. The corporation's principal office and place of business was located at 1612 K Street, N.W., Washington, D.C.. John William Costello Associates, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia. He directed, formulated and controlled the acts and practices of John William Costello Associates, Inc., including the acts and practices hereinafter set forth.

The aforementioned respondent Roy B. Kelly cooperated and acted