



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

April 23, 1991

Robert J. Wilensky, M.D.
President-Elect
National Capital Society of Plastic and
Reconstructive Surgeons
5530 Wisconsin Avenue
Suite 855
Chevy Chase, Md. 20815

Dear Dr. Wilensky:

This letter responds to your request for a staff advisory opinion concerning a proposal by the National Capital Area Society of Plastic and Reconstructive Surgeons ("the Society") to establish a physician panel to render advisory opinions regarding questions or disputes involving fees charged by members of the Society. You ask whether the proposed program, described below, would violate Section 5 of the Federal Trade Commission Act.

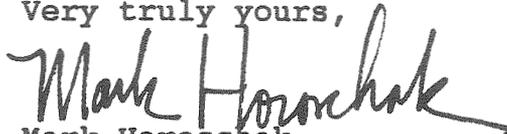
According to your letter, the Society is a regional branch of the American Society of Plastic and Reconstructive Surgeons, which is a major national professional association of plastic surgeons. The Society proposes to set up a panel composed of several of its members that would be available to members, to consumers, and to third party payors to give advisory opinions concerning disputes or questions involving specific fees charged by individual plastic surgeons. Participation in the evaluation process would be voluntary, and fee determinations made by the panel would be purely advisory. Each case would be evaluated based on its particular circumstances, with no effort made to establish a fee scale, floor, or ceiling for any specific procedure. Decisions of the panel would not be disclosed except to the parties involved, and there would be no compilation of decisions of the review panel. The panel does not intend to collect or compile information on the fees charged by members, and does not intend to disseminate to the membership information on fees or appropriate levels of charges for any services.

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Based on the information which you have provided to us, it does not appear that the proposed action of the Society would violate Section 5 of the Federal Trade Commission Act. The proposed fee review program appears to be similar in many respects to those which have been approved in the Commission's Iowa Dental Association advisory opinion, 99 F.T.C. 648 (1982), and in subsequent staff opinions. In particular, the factors of voluntary participation in the program, non-binding decisions, lack of dissemination of panel decisions beyond the participants to the dispute, and the lack of an intention to establish a general compilation or schedule of approved or "reasonable" fees appear to offer substantial protection against the possibility that the program would lead to a significant reduction in competition among members of the Society. Of course, this opinion applies only to the proposal described above, and does not extend to conduct that differs in any material respect from that described in your request for an advisory opinion.

I hope that this discussion proves helpful to you. Under the Commission's Rules of Practice § 1.3(c), the Commission is not bound by this or other advice rendered by the Commission's staff, and reserves the right to rescind it at a later time and take such action as the public interest may require. Moreover, this office retains the right to reconsider the questions involved and, with notice to the requesting party, to rescind or revoke its opinion if implementation of the proposed 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.

Very truly yours,



Mark Horoschak
Assistant Director