



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

March 12, 1984

James F. Phillips, M.D.
President
Medical Society of the County of Erie
1514 Main-Seneca Building
237 Main St.
Buffalo, New York 14203

Dear Dr. Phillips:

This letter is in response to your recent request concerning the legality of discussions with third-party payers on the subject of fee allowances. Although your inquiry did not contain enough facts for a formal advisory opinion, we can provide you with the following general guidance. You should understand that this advice does not bind the Commission.

Some of the legal parameters of permitted communications, discussions and negotiations between medical societies and third-party payers are detailed in the enclosed, recent Federal Trade Commission opinion Michigan State Medical Society, 101 F.T.C. 191 (1983) ("MSMS"). This case concerned an agreement or conspiracy among members of the Michigan State Medical Society to dictate, or attempt to set, through collective action, the amount, manner of calculation, and terms of Blue Cross and Blue Shield reimbursements. The Commission enjoined the conspiracy and the Society's activities in furtherance of the conspiracy. Thus a medical society would probably be acting unlawfully if it not only had an informational discussion with a third-party payer, but also negotiated or reached an agreement with a third-party payer on reimbursement levels or criteria.

The MSMS order prohibits the Michigan State Medical Society from:

- 1) threatening third-party payers with departicipation by member physicians from their insurance plans;
- 2) organizing members' concerted cancellation of, or refusal to enter into, participation agreements with third-party payers;
- 3) acting as an agent for any of its members in dealings with third-party payers;
- 4) organizing any concerted refusal to file claim forms;

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- 5) making any collective attempt to extract a fee agreement through coercion or otherwise; and
- 6) advocating that Society members engage in the prohibited actions described above.

In contrast to the conduct at issue in that case, the MSMS decision indicates that it is generally lawful for a medical society to provide information or views to third-party payers concerning reimbursement issues. Although MSMS does not directly address your question concerning the legality of a society's request for information on reimbursement criteria from Blue Cross and Blue Shield, it would generally be permissible for a society to inquire, and to be informed of, how third-party payers arrive at fee allowances and what criteria they use in their fee determinations, as long as the inquiry does not evolve into a prohibited agreement in restraint of trade.

Sincerely,



Arthur N. Lerner
Assistant Director

Enclosure