



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

July 11, 1984

Lynn C. Perkins, M.D.
President
Tarrant County Medical Society
3855 Tulsa Way
Fort Worth, Texas 76107

Dear Dr. Perkins:

Thank you for your letter dated June 27, 1984, requesting a formal opinion as to whether the Insurance Review Committee's proposed fee review program would violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Given its limited resources the Commission can issue an official advisory opinion only if a matter involves a substantial or novel question of fact or law on which there is no clear Commission or court precedent, or if issuance of an advisory opinion would serve a significant public interest. FTC Rules of Practice § 1.1(a)(1), (a)(3). The Commission previously has examined the legal issues surrounding professional association peer review of fees, utilization, and quality of care in its April 1982 advisory opinion letter to the Iowa Dental Association ("IDA") and in its May 1983 advisory opinion letter to the Rhode Island Professional Standards Review Organization ("RIPSRO"). In August 1983, the Bureau of Competition also issued an advisory opinion to the American Podiatry Association ("APA") that analyzed the legality of APA's proposed fee review program.

The Commission's opinion letters to IDA and RIPSRO, and the Bureau's opinion letter to APA, taken together, provide a fairly complete statement of the Commission's and the Bureau of Competition's analysis of the issues presented by professional association peer review. I believe we have sent you copies of them previously. I am enclosing new copies of these opinion letters for your convenience. In light of the analysis contained in the IDA, RIPSRO, and APA opinion letters, I do not think that the issuance of an official Commission or Bureau of Competition opinion is warranted under the Commission's rules. I can, however, give you guidance and advice on behalf of the Bureau's health care section. As I stated to you in my letter on May 25th, I do not believe that operation of the Insurance Review Committee's proposed fee review program, as described, would violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. I base this conclusion on several factors.

First, your purpose in re-establishing the Insurance Review Committee -- to provide a mechanism for the voluntary resolution of disputes concerning charges of members of the Tarrant County Medical Society -- does not appear to be anticompetitive.

Second, the advisory nature of the program makes it unlikely that the review process could be used either to coerce the parties into adopting any Tarrant County Medical Society or Insurance Review Committee fee schedule or to facilitate any anticompetitive conspiracies or boycotts. Third, the fact that the Insurance Review Committee will not release the results of its review to the general membership should help prevent the Committee's decisions from effectively setting fees charged throughout the county. Thus, if the program is operated as proposed, it is unlikely that the Committee's fee review program will cause significant anticompetitive effects in the physicians' services market or in the insurance market.

In implementing the proposed program, you should continually exercise care and vigilance to insure that the program's purpose remains legitimate and that it does not produce significant anticompetitive effects and thereby violate the antitrust laws.

You should be aware that the above advice does not bind either the Commission or Bureau of Competition. Both the Commission and the Bureau of Competition retain the right to reconsider the questions involved. If implementation of the proposed program results in substantial anticompetitive effects, or if the program is used for improper purposes, the Bureau or the Commission may take such action as would be in the public interest.

I hope this information has been helpful to you..

Sincerely,

Arthur N. Lerner

Arthur N. Lerner
Assistant Director

Enclosures