

Ontario, Canada, and Genesis Microchip Corp. of Alviso, California (collectively, "Genesis"). *Id.* The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain digital display receivers and digital display controllers and products containing same by reason of infringement of claims 1–12, 14, and 20 of U.S. Letters Patent 5,905,769. *Id.*

On December 7, 2001, complainant SII moved to withdraw the complaint and to terminate the investigation on the basis of the withdrawal of the complaint. On December 13, 2001, the Commission investigative attorney filed a response in support of the motion. On December 18, 2001, respondents Genesis filed a response stating that they did not oppose the motion. On January 24, 2002, the presiding ALJ issued an ID (Order No. 7) granting the motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: February 7, 2002.

By order of the Commission.

**Marilyn R. Abbott,**

*Acting Secretary.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

[Civil No. 98–475 JJF]

#### Public Comments and Response on Proposed Final Judgment in United States v. Federation of Physicians and Dentists, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comment received on the proposed Final Judgment in United States v. Federation of Physicians and Dentists, Inc., Civil Action No. 98–475 JJF, filed in the United States District Court for the District of Delaware, together with the United States' response to the comment.

Copies of the comment and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, Telephone: (202) 514–2481, and at the office of the

Clerk of the United States District Court for the District of Delaware, Federal Building, Room 4209, 844 King Street, Wilmington, Delaware 19801. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations and Merger Enforcement.*

#### Comments of Jones, Day, Reavis & Pogue

Jones, Day, Reavis & Pogue, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "Tunney Act"), submits these comments on the Final Judgment proposed by the United States Department of Justice to settle charges that the Federation of Physicians and Dentists (the "Federation") violated the antitrust laws by coordinating an understanding among competing physicians to negotiate exclusively through the Federation.

#### Summary

The proposed Final Judgment provides injunctive relief prohibiting unlawful collective negotiations by the Federation and its members, and contains a number of other provisions to protect payers that wish to negotiate with individual providers rather than dealing through the Federation. In one particular area, however, the proposed Final Judgment could be strengthened to provide additional protection.

The provisions of the Final Judgment should prohibit retaliation against payers that decline to communicate with providers through the Federation. Such a restriction would prevent the Federation and its members from taking adverse actions against payers that choose not to deal with the Federation. Such adverse actions could prevent individual negotiations, thereby circumventing the Final Judgment's prohibition on exclusive negotiations through the Federation.

#### The Final Judgment Should Prohibit Retaliation Against Payers That Decline To Communicate With Providers Through the Federation

##### I. Background

The Final Judgment settles charges that the Federation unlawfully coordinated an understanding among competing physicians to negotiate exclusively through the Federation. The illegal agreement among the Federation and its members was enforced through a concerted refusal by Federation members to deal with payers individually. These refusals to deal

impaired the ability of payers to seek lower prices from Federation members.

In carrying out the illegal agreement, the Federation and its members claimed that they were acting pursuant to the "messenger model," a method of communicating with payers that does not entail an agreement among the competing providers who use the messenger. A concerted refusal to deal, however, is not a legitimate use of a messenger model. To the contrary, the messenger model was developed to avoid concerted action by competing providers. See United States Department of Justice and Federal Trade Commission *Statements of Antitrust Enforcement Policy in Healthcare*, 4 Trade Reg. Rep. (CCH) ¶13,153 at 20,831 (Aug. 28, 1996). Thus, the Federation and its members improperly invoked the messenger model.

##### II. The Proposed Final Judgment

The proposed Final Judgment prohibits the Federation and its members from entering into or facilitating an agreement among competing providers to deal with payers exclusively through the Federation. With respect to the use of a messenger model, the proposed Final Judgment expressly forbids the Federation and its members from requiring that a payer deal only with providers through the messenger (or other agent or representative of the providers) (Paragraph IV.A.2.), and requires the Federation, when acting as a messenger, to inform payers that they are free to decline to communicate with providers through the messenger (Paragraph IV.A.8.f.). Thus, the proposed Final Judgment directly prohibits the unlawful conduct engaged in by the Federation and its members.

The protection afforded by the proposed Final Judgment appears, however, to be incomplete. If a payer declines to deal with the Federation, and chooses to deal with individual providers instead, the proposed Final Judgment does not directly prohibit retaliation against that payer. For example, the proposed Final Judgment does not expressly forbid the Federation from assisting a member to "unilaterally" terminate an existing contract with a payer that declines to deal through the Federation. If the Federation and individual providers are able to engage in such retaliation, the ability of payers to decline to deal through the Federation could provide to be illusory.

### III. Proposed Language Modifying the Final Judgment

The gap in coverage identified above could easily be remedied with one small change to the Final Judgment. The following language, which would be inserted as a new Subparagraph 9 in Paragraph IV.A., would prevent the Federation from orchestrating provider retaliation against payers that declined to deal through the Federation. The Federation would be prohibited from:

encouraging, facilitating, assisting, or participating in the termination of any existing contract or in any other action adverse to any payer after that payer has declined to communicate with a physician through defendant.

Thus, any adverse action taken by the Federation after a payer declines to deal with providers collectively would be presumed to be in furtherance of an unlawful agreement. With this language, attempts to circumvent the prohibitions of the Final Judgment by retaliating against payers that declined to deal with the Federation would be prohibited.

### Conclusion

The proposed Final Judgment imposes strict requirements to prevent the Federation and its members from engaging in the unlawful behavior that prompted this litigation, and provides significant protections for payers that do not wish to engage in collective negotiations with competing physicians. With the additional language outlined above, the Federation and its members will not be able to retaliate against such payers, and the protection afforded by the Final Judgment will be enhanced.

Dated: January 18, 2002.

Respectfully submitted,  
Jones, Day, Reavis & Pogue

Toby G. Singer,

Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001-2113, Telephone: (202) 879-939.

### United States Response to Public Comments

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act (the "APPA"), 15 U.S.C. 16(b)–(h), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

#### I. Procedural History

On August 12, 1998, the United States filed a civil antitrust Complaint alleging that defendant, Federation of Physicians and Dentists, Inc. ("the Federation"), restrained competition in the sale of orthopedic surgical services, in violation of Section 1 of the Sherman

Act, 15 U.S.C. 1. The Complaint alleges that the Federation, in coordination with certain of its members—nearly all private practice orthopedic surgeons located in Delaware—organized and became the hub of a conspiracy to oppose and prevent reductions in payments for orthopedic services by Blue Cross and Blue Shield of Delaware ("Blue Cross").

On October 22, 2001, the United States filed a proposed Final Judgment (D.I. 228) and a Stipulation (D.I. 226) signed by both it and defendant, agreeing to entry of the Final Judgment following compliance with the APPA. Pursuant to the APPA, the Stipulation, proposed Final Judgment, and Competitive Impact Statement ("CIS") (D.I. 227) were published in the **Federal Register** on November 20, 2001, at 66 FR 58,163–69 (2001). A summary of the terms of the proposed Final Judgment and CIS were published for seven consecutive days in the Washington Post from October 25 through October 31, 2001, and in The News Journal from November 15 through November 21, 2001. Pursuant to 15 U.S.C. 16(b)–(d), the 60-day period for public comments on the proposed Final Judgment began on November 21, 2001 and expired on January 22, 2002. During that period, one comment was received.

#### II. Summary of the Complaint's Factual Allegations

The defendant Federation is a labor organization with its headquarters in Tallahassee, Florida. The Federation has traditionally acted, in employment contract negotiations, as a collective bargaining agent under federal and state labor laws for physicians who are employees of public hospitals or other health care entities. For several years, however, the federation has recruited economically independent physicians in private practice in several states to encourage these independent physicians to use the Federation in negotiating their fees and other terms in their contracts with health care insurers.

The Federation and its Delaware orthopedic surgeon members allegedly conspired to restrain competition in the sale of orthopedic surgical services in various areas of Delaware. This alleged conspiracy developed in the fall of 1996 when the Federation began recruiting orthopedic surgeons in Delaware, touting itself as a vehicle for increasing their bargaining leverage with insurers in fee negotiations. During 1997, the Federation succeeded in recruiting nearly all of the orthopedic surgeons in private practice in Delaware.

In August 1997, Blue Cross notified all of its network physicians, including

orthopedic physicians, of a planned fee reduction. By this action, Blue Cross sought to set the fees for Delaware orthopedic surgeons at levels closer to those paid to orthopedic surgeons in nearby areas, such as metropolitan Philadelphia. To resist Blue Cross's proposed fee reductions, the Federation and its orthopedic-surgeon members allegedly reached an understanding that Federation members would negotiate fees with Blue Cross solely through the Federation's executive director, John "Jack" Seddon.

The purpose of the Federation's and its members' alleged agreement was to force Blue Cross to rescind the proposed fee reduction for orthopedic surgeons and to inhibit Blue Cross effort to contract with those surgeons at reduced fees. In some cases, Blue Cross subscribers who needed to receive orthopedic services either paid higher prices to receive care from their former physicians as non-participating providers or had to forego or delay receiving such care.

#### III. Response to Public Comment

The only comment received (copy attached) recognizes that the decree contains "strict requirements" to prevent a recurrence of the challenged conduct and provides "significant protection" for payers that prefer not to engage in collective contractual negotiations with competing physicians. Comment at 4. Nevertheless, the comment argues that in "one particular area" the decree "could be strengthened to provide additional protection." *Id.* at 1. Specifically, the comment asserts that the proposed Final Judgment does not expressly forbid the Federation from "orchestrating provider retaliation" or "assisting a member to 'unilaterally' terminate an existing contract with a payer that declines to deal through the Federation." *Id.* at 3. The comment, therefore, proposes adding a provision that prohibits retaliation against payers that decline to communicate with provides through the Federation.<sup>1</sup>

The comment's proposed addition is unnecessary because the proposed Final Judgment already prohibits such activity. The proposed Final Judgment contains a prophylactic measure to preclude the Federation from influencing individual members' contractual decisions. Section IV(A)(4)

<sup>1</sup> The comment suggests inserting a new subparagraph 9 in section IV(A), prohibiting the Federal from: encouraging, facilitating, assisting, or participating, in the termination of any existing contract or in any other action adverse to any payer after that payer has declined to communicate with a physician through defendant.

Comment at 3.

enjoins the Federation from directly or indirectly "making any recommendation to competing physicians about any actual or proposed payer contract or contract term or whether to accept or reject any such payer contract or contract term." Moreover, Section IV(A)(2) of the proposed Final Judgment enjoins the Federation from directly or indirectly "participating in, encouraging, or facilitating any agreement or understanding between competing physicians to deal with any payer exclusively through a messenger rather than individually or through other channels." Consequently, any Federal recommendation that competing providers' concerted termination of their contracts in retaliation against payers' declination to communicate with them through the Federation would violate the proposed Final Judgment.

These injunctive provisions prevent the Federation from engaging in the sort of conduct addressed by the comment: retaliation against payers that refuse to deal with the Federation. Therefore, the proposed modification is not necessary to provide an effective and appropriate remedy for the antitrust violation alleged in the complaint.

#### IV. Conclusion

The United States has concluded that the proposed Final Judgment reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this response to comments, pursuant to the APPA, and submission of the United States' certification of compliance with the APPA, the United States intends to request entry of the proposed Final Judgment once the Court determines that entry is in the public interest.

Dated: January 31, 2002.

Respectfully submitted,

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Richard S. Martin,  
Scott Scheele,  
Adam J. Falk,

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Virginia Gibson-Mason,

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## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)-1345]

#### Drug-Free Communities Support Program

**AGENCY:** Office of National Drug Control Policy, Executive Office of the President, and Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Executive Office of the President, Office of National Drug Control Policy (ONDCP), and the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), are requesting applications for the fiscal year 2002 Drug-Free Communities Support Program to reduce substance abuse among youth and, over time, among adults. Approximately 70 grants of up to \$100,000 each will be awarded to community coalitions that are working to prevent and reduce substance abuse among youth.

**DATES:** Applications must be received by April 24, 2002.

**ADDRESSES:** All applications must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301-519-5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *FY 2002 Drug-Free Communities Support Program Application Package*, which includes the Program Announcement, required forms, and instructions on how to apply at OJJDP's Web site at <http://www.ojjdp.ncjrs.org> (click on "Grants & Funding").

**FOR FURTHER INFORMATION CONTACT:** One of the following Program Managers at the Office of Juvenile Justice and Delinquency Prevention:

- Tom Bell, Northwest Region, at 202-616-3664 or e-mail [bell@ojp.usdoj.gov](mailto:bell@ojp.usdoj.gov)
- Mark Morgan, Southwest Region, at 202-353-9243 or e-mail [morganm@ojp.usdoj.gov](mailto:morganm@ojp.usdoj.gov)
- Jay Mykytiuk, Midwest/West Region, at 202-514-1351 or e-mail [mykytiuk@ojp.usdoj.gov](mailto:mykytiuk@ojp.usdoj.gov)
- Judy Poston, Southeast Region, at 202-616-1283 or e-mail [poston@ojp.usdoj.gov](mailto:poston@ojp.usdoj.gov)
- James Simonson, Northeast/East Region, at 202-353-9313, or e-mail [simonson@ojp.usdoj.gov](mailto:simonson@ojp.usdoj.gov)

• Gwen Williams, Central Region, at 202-616-1611, or e-mail [williamg@ojp.usdoj.gov](mailto:williamg@ojp.usdoj.gov)

[These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** The Drug-Free Communities Support Program was established by the Drug-Free Communities Act of 1997 (Pub. L. 105-20). On December 14, 2001, Pub. L. 107-82 reauthorized the program for 5 years. The program is designed to strengthen community antidrug coalitions and reduce substance abuse among youth.

Grantees will receive up to \$100,000 in funding and training and technical assistance to reduce substance abuse among youth by addressing the factors in a community that serve to increase or decrease the risk of substance abuse and establish and strengthen collaboration among communities, including Federal, State, local, and tribal governments and private nonprofit agencies to support community coalition efforts to prevent and reduce substance abuse among youth.

Eligible applicants are community coalitions whose members have worked together on substance abuse reduction initiatives for a period of not less than 6 months. The coalition will use entities such as task forces, subcommittees, community boards, and any other community resources that will enhance the coalition's collaborative efforts. With substantial participation from community volunteer leaders, the coalition will implement multisector, multistrategy, long-term plans designed to reduce substance abuse among youth. Coalitions may be umbrella coalitions serving multicounty areas.

Dated: February 6, 2002.

**Gregory L. Dixon,**

*Administrator, Drug-Free Communities Support Program, Office of National Drug Control Policy.*

Dated: February 6, 2002.

**Terrence S. Donahue,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 02-3312 Filed 2-12-02; 8:45 am]

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents