

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**                    **Deborah Platt Majoras, Chairman**  
   **Pamela Jones Harbour**  
   **Jon Leibowitz**  
   **William E. Kovacic**  
   **J. Thomas Rosch**

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**In the Matter of** )  
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**PUERTO RICO ASSOCIATION** )                    **Docket No. C-**  
**OF ENDODONTISTS, CORP.,** )  
   )  
   )  
**a corporation.** )  
\_\_\_\_\_ )

**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, having reason to believe that the Puerto Rico Association of Endodontists, Corp. has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

**RESPONDENT**

**PARAGRAPH 1:** Respondent Puerto Rico Association of Endodontists, Corp. is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of Puerto Rico, with its office and principal place of business at PMB #92, 400 Kalaf Street, San Juan, Puerto Rico 00918. Prior to its incorporation in September 2003, many of the endodontists that now are members of Puerto Rico Association of Endodontists, Corp., acting together as an unincorporated association, belonged to, participated in, and represented to the public that they were members of the Puerto Rico Association of Endodontists. As used herein, the term "PRAE" therefore refers to both the corporation and the predecessor unincorporated association known as the Puerto Rico Association of Endodontists.

## **JURISDICTION**

**PARAGRAPH 2:** According to its Certificate of Incorporation, PRAE was formed by endodontists to serve as a professional association for endodontists and to thereby provide information and education to the members of the association and to the public in general concerning dental surgery. At all times relevant to this Complaint, member endodontists of PRAE have been engaged in the business of providing endodontic care for a fee. Except to the extent that competition has been restrained as alleged herein, member endodontists of PRAE have been, and are now, in competition with each other for the provision of endodontic services.

**PARAGRAPH 3:** PRAE was founded by, is controlled by, and operates for the pecuniary benefit of the endodontists who belong to PRAE. In its internal and external communications, PRAE refers to the endodontists who belong to PRAE as members of PRAE. Accordingly, the participating endodontists are “members” of PRAE, and PRAE therefore is a “corporation,” as those terms are used in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**PARAGRAPH 4:** The general business practices of PRAE, including the acts and practices herein alleged, are in or affecting “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **OVERVIEW OF MARKET AND ENDODONTIST COMPETITION**

**PARAGRAPH 5:** PRAE has approximately 30 member endodontists licensed to practice endodontics in Puerto Rico, who are engaged in the business of providing professional services to patients throughout the island. The PRAE membership includes all or almost all of those professionals practicing endodontics in Puerto Rico.

**PARAGRAPH 6:** Endodontists often contract with health insurance plans and other third party payors (“payors”) to establish the terms and conditions, including price terms, under which such endodontists will render services to the payors’ subscribers. Endodontists entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors’ relationship with insureds. These contracts may reduce payors’ costs, enable them to lower the price of insurance, and reduce out-of-pocket medical expenditures by subscribers to the payors’ health insurance plans.

**PARAGRAPH 7:** Similarly, endodontists entering into such contracts with payors often agree to accept, as payment in full for services rendered, an agreed upon fee from the payor and co-payment from the subscriber. Where such a term is included in the payor-endodontist contract, the endodontist agrees not to “balance bill” the patient for any balance or difference between the agreed upon payments and the endodontist’s desired rate. Agreements not to balance bill reduce the cost of endodontic care to patients.

**PARAGRAPH 8:** Absent agreements among competing endodontists on the terms, including price, on which they will provide services to subscribers or enrollees in health care plans offered or provided by payors, competing endodontists decide individually whether to enter into contracts with payors to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

### **RESTRAINT OF TRADE**

**PARAGRAPH 9:** PRAE's member endodontists, including its officers and the members of its Board of Directors, constitute numerous discrete economic interests. The conduct of PRAE constitutes combined or concerted action by its participating endodontists.

**PARAGRAPH 10:** PRAE, acting as a combination of competing endodontists, and in combination with endodontists, has restrained competition among its member endodontists by, among other things:

- A. facilitating, negotiating, entering into, and implementing agreements among its participating endodontists on price and other competitively significant terms;
- B. refusing or threatening to refuse to deal with payors except on collectively agreed-upon terms; and
- C. negotiating fees and other competitively significant terms with payors in contracts for PRAE's member endodontists.

### **PRAE's ILLEGAL ACTS AND PRACTICES**

**PARAGRAPH 11:** PRAE has engaged in various acts and practices, as more fully described below, that unlawfully restrain competition among PRAE's member endodontists. PRAE has undertaken these acts and practices with the knowledge of its officers, directors, and member endodontists, and often at their explicit instruction.

**PARAGRAPH 12:** In January 2003, PRAE formed a Pre-Payments Committee for the purpose of negotiating with payors on behalf of PRAE members so as to secure higher reimbursement rates for PRAE members.

**PARAGRAPH 13:** Beginning as early as January 2003, PRAE, acting through its Pre-Payments Committee, began to negotiate with various payors regarding the rates that those payors paid PRAE members. By March 2003, the PRAE Pre-Payments Committee had met with representatives of two payors and had convinced those payors to increase the rates paid to PRAE members. At a March 2003 PRAE meeting, the PRAE Pre-Payments Committee reported on its successful price negotiations with certain payors and stated that it would send a letter on behalf

of the PRAE to several other payors as part of an effort by PRAE to have those payors raise the rates paid to PRAE members.

**PARAGRAPH 14:** In March 2003, PRAE sent a letter to at least four payors requesting a meeting "with the intention of revising the fees paid to Endodontists" that participate in the payor's dental plan. Thereafter, the Pre-Payments Committee contacted payors to urge the payors to raise their rates. In one such discussion, the payor representative informed the Committee member that the Committee's negotiation on behalf of PRAE members was illegal under the antitrust laws. In response, the PRAE representative informed the payor that other payors had been disinclined to accede to the rate increases proposed by the PRAE, and that those payors now were facing potential problems with their networks.

**PARAGRAPH 15:** PRAE's efforts to negotiate higher rates from payors for its members succeeded. In response to the various efforts of PRAE's Pre-Payment Committee, in 2003 at least five payors raised the rates that they paid PRAE members.

**PARAGRAPH 16:** In early 2004, PRAE's Pre-Payment Committee began a campaign to raise rates again, this time by seeking to end the payors' ban on balance billing. PRAE sought this change in contract terms to permit its members to raise the prices directly paid by patients and to avoid the cost-containment function of a ban on balance billing.

**PARAGRAPH 17:** In furtherance of this plan, in early 2004, the PRAE Pre-Payments Committee contacted several payors to request that the payors waive their ban on balance billing. The Committee followed those discussions with a letter in June 2004, which the Committee sent to at least seven payors. The letter urges each payor to eliminate their ban on balance billing so that the insurance company did not have to absorb the price increase that the PRAE members desired. The letter states that waiver of the ban "could result in all Endodontists in Puerto Rico becoming dental participants of your Dental Plan since there would be no financial discrepancies. This could be of great usefulness in your marketing strategy." To emphasize the collective nature of the demand being made by the PRAE, and the potential risk to payors of failing to acquiesce to that demand, twenty-three members of PRAE co-signed the letter. The Pre-Payments Committee followed the letter with repeated phone calls to the payors urging an end to ban on balance billing.

**PARAGRAPH 18:** Thus far, the payors pressured by the PRAE to end the ban on balance billing have resisted the coordinated action of the PRAE.

#### **LACK OF SIGNIFICANT EFFICIENCIES**

**PARAGRAPH 19:** The acts and practices described in Paragraphs 10 through 18, including PRAE's negotiation of fees and other competitively significant terms under which each endodontist is paid on a fee-for-service basis, have not been, and are not, reasonably related to any efficiency-enhancing integration of their respective practices. PRAE's member endodontists

do not share substantial financial risk and are not otherwise integrated in ways that would create the potential for increased quality and reduced cost of endodontic care that the endodontists provide to patients.

#### **ANTICOMPETITIVE EFFECTS**

**PARAGRAPH 20:** PRAE's acts and practices as described herein have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of endodontic services in Puerto Rico area in the following ways, among others:

- A. price and other forms of competition among PRAE's participating endodontists were unreasonably restrained;
- B. prices for endodontist services were increased; and
- C. health plans, employers, and individual consumers were deprived of the benefits of competition among endodontists.

#### **VIOLATION OF THE FEDERAL TRADE COMMISSION ACT**

**PARAGRAPH 21:** The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this \_\_\_\_ day of \_\_\_\_\_, 2006, issues its Complaint against Respondent PRAE.

By the Commission.

Donald S. Clark  
Secretary

SEAL

**ANALYSIS OF AGREEMENT CONTAINING  
CONSENT ORDER TO AID PUBLIC COMMENT  
In the Matter of Puerto Rico Association of Endodontists, Corp.  
File No. 051 0170**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Puerto Rico Association of Endodontists Corp. (“PRAE”). The agreement settles charges that PRAE violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by orchestrating and implementing agreements among endodontist members of PRAE on price and other competitively significant terms; refusing or threatening to refuse to deal with payors except on collectively agreed-upon terms; and negotiating fees and other competitively significant terms with payors in contracts for PRAE’s member endodontists. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by PRAE that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

### **The Complaint**

The allegations of the complaint are summarized below.

PRAE is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico (“Commonwealth” or “Puerto Rico”), with its office and principal place of business in San Juan, Puerto Rico.

PRAE has approximately 30 member endodontists, who are engaged in the business of providing professional services to patients throughout Puerto Rico. PRAE membership includes all or almost all of those professionals who are licensed practicing endodontists in the Commonwealth. Except to the extent that competition has been restrained, member endodontists of PRAE have been, and are now, in competition with each other for the provision of endodontic services.

In January 2003, PRAE formed a Pre-Payments Committee, which then began negotiating with payors on behalf of PRAE members in order to secure higher reimbursement rates for PRAE members. By March 2003, the PRAE Pre-Payments Committee had met with representatives of two payors and convinced those payors to increase the rates paid to PRAE members.

Also in March 2003, PRAE sent a letter to at least four insurance companies requesting a meeting “with the intention of revising the fees paid to Endodontists” that participate in the

insurer's dental plan. Thereafter, the Pre-Payments Committee contacted these payors to urge them to raise their rates. In one such discussion, the payor representative informed the Committee member that the Committee's negotiation on behalf of PRAE members was illegal under the antitrust laws. In response, the PRAE representative informed the payor that other payors had been disinclined to accede to the rate increases proposed by the PRAE, and that those payors now were facing potential problems with their networks.

PRAE's efforts to negotiate higher rates from payors for its members succeeded. In response to the various efforts of PRAE's Pre-Payment Committee, in 2003 at least five payors raised the rates that they paid PRAE members.

In early 2004, PRAE's Pre-Payment Committee began a campaign to raise rates again, this time by seeking to end the payors' ban on balance billing<sup>1</sup>. PRAE sought this change in contract terms to permit its members to raise the prices directly paid by patients and to avoid the cost-containment function of a ban on balance billing.

In furtherance of this plan, in early 2004, the PRAE Pre-Payments Committee contacted several payors to request that the payors waive their ban on balance billing. The Committee followed those discussions with a letter in June 2004, which the Committee sent to at least seven payors. The letter urges each payor to eliminate their ban on balance billing so that the payor did not have to absorb the price increase that the PRAE members desired. The letter states that waiver of the ban "could result in all Endodontists in Puerto Rico becoming dental participants of your Dental Plan since there would be no financial discrepancies. This could be of great usefulness in your marketing strategy." To emphasize the collective nature of the demand being made by the PRAE, and the potential risk to payors of failing to acquiesce to that demand, twenty-three members of PRAE co-signed the letter. The Pre-Payments Committee followed the letter with repeated phone calls to the payors urging an end to ban on balance billing. Thus far, the payors pressured by PRAE to end the ban on balance billing have resisted the coordinated action of PRAE.

PRAE engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees or other terms. By the acts set forth in the Complaint, PRAE violated Section 5 of the FTC Act.

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<sup>1</sup> Endodontists entering into contracts with payors often agree to accept, as payment in full for services rendered, an agreed upon fee from the payor and co-payment from the subscriber. Where such a term is included in the payor-endodontist contract, the endodontist agrees not to "balance bill" the patient for any balance or difference between the agreed upon payments and the endodontist's desired rate. Agreements not to balance bill reduce the cost of endodontic care to patients.

## **The Proposed Consent Order**

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. The proposed order is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits PRAE from entering into or facilitating agreements among endodontists: (1) to negotiate on behalf of any endodontist with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any endodontist deals, or is willing to deal, with any payor; and (4) not to deal individually with any payor or through any arrangement other than PRAE.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits PRAE from exchanging or facilitating the transfer of information among endodontists concerning any endodontist's willingness to deal with a payor, or the terms or conditions, including price terms, on which the endodontist is willing to deal. Paragraph II.C prohibits PRAE from attempting to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D prohibits PRAE from encouraging, pressuring or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

Paragraphs III.A and B require PRAE to distribute the complaint and order to its members, payors with which it has been in contact since the beginning of 2001, and specified others.

Paragraphs IV, V, and VI of the proposed order impose various obligations on PRAE to report or provide access to information to the Commission to facilitate monitoring PRAE's compliance with the order.

The proposed order will expire in 20 years.