

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of law or fact herein, it is hereby ordered, adjudged, and decreed as follows:

### **I. Jurisdiction**

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section I of the Sherman Act, 15 U.S.C. 1.

### **II. Definitions**

As used herein, the term:

(A) "ODS" means Oregon Dental Service;

(B) "Most Favored Nation Clause" or "MFN" means those provisions in the defendant's participating dentist agreements that prior to September 28, 1994, required that the lowest fee accepted by the participating dentist for services rendered to any group constituted the dentist's filed fee schedule for payment of ODS claims.

### **III. Applicability**

(A) This Final Judgment applies to ODS and to ODS' officers, employees, members acting as corporate policy makers, directors, successors, assigns, subsidiaries, divisions and any other organizational units of any kind, and to all other persons in active concert or participation with any of them. Within 60 days of entry, ODS shall provide a copy of this Final Judgment by mail or personal service to ODS' officers, directors and managerial employees. Thereafter, ODS shall distribute in a timely manner a copy of this Final Judgment to any new officer, director, or managerial employee.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

### **IV. Injunction**

(A) ODS is enjoined and restrained from:

(1) Maintaining, adopting, or enforcing an MFN or similar provision in participating dentist agreements or by any other means or methods;

(2) Taking any other action, directly or indirectly, to influence or attempt to influence any dentist to refrain from offering discount fees to any person or dental plan or to refrain from participating in any dental plan;

(3) Disclosing or in any way directly revealing to a dentist or dentists the

maximum allowable or acceptable fee for a dental procedure or procedures.

### **V. Retention of Jurisdiction**

Jurisdiction is retained by the Court for the purpose of enabling either party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, modify it on the basis of changed circumstances, terminate any of its provisions, enforce compliance, and punish violations of its provisions.

Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

### **VI. Access to Information**

For the purposes of determining or securing compliance with the Final Judgment, from time to time:

(A) Duly authorized representatives of the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to ODS, shall be permitted, subject to any legally recognized privilege, access, during office hours, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ODS relating to any matters contained in this Final Judgment; and

(B) In the event that the plaintiff has reasonable cause to believe that ODS had not complied with the terms of this Final Judgment, then upon the written request of the Assistant Attorney General in charge of the Antitrust Division, ODS shall submit such written reports, under oath if requested, with respect to any of the matter contained in this Final Judgment.

ODS shall have the right to be represented by counsel in any such process.

Any information provided to the plaintiff under this section of the Final Judgment shall be kept confidential by the plaintiff and shall not be disclosed to third parties except as necessary to enforce the Final Judgment or as otherwise previously agreed or required by law.

Nothing in this Final Judgment prohibits the plaintiff from using any other investigatory method authorized by law.

### **VII. Term**

This Final Judgment shall expire five years from the date of its entry.

### **VIII. Public Interest**

Entry of this Final Judgment is in the public interest.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

United States District Judge.

In the United States District Court  
Northern District of California

In the matter of: United States of America,  
Plaintiff, v. Oregon Dental Service,  
defendant.

[Civil No. C95 1211]

### **Competitive Impact Statement**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment (or "the Judgment") submitted for entry against and with the consent of Oregon Dental Service ("ODS" or "the defendant") in this civil proceeding.

#### **I. Nature and Purpose of the Proceeding**

On April 10, 1995, the United States filed this single-count civil antitrust suit alleging that ODS, an Oregon non-profit corporation which does business in the Northern District of California, entered into a combination in unreasonable restraint of trade consisting of agreements to restrain price competition for dental services in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Plaintiff asked the Court to find that the defendant has violated Section 1 of the Sherman Act and further asked the Court to enjoin the continuation of the combination.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for any further proceedings required to interpret, enforce or modify the judgment or to punish violations of any of its provisions.

#### **II. Practices Giving Rise to the Violation**

ODS is an Oregon non-profit corporation. ODS' principal place of business is in Portland, Oregon. It was created by the Oregon Dental Association, a professional association of dentists. Dentists hold the majority of positions on ODS' Board of Directors. ODS contracts with businesses, governmental agencies, and other organizations to provide pre-paid dental care coverage to their employees. ODS contracts directly with dentists or groups of dentists to provide dental services to patients who are members of those covered groups.