On the premise that advertising promotes competition and competition encourages better price choices, the Federal Trade Commission has ordered the American Medical Association to revise its "ethical restrictions" on advertising and solicitation.

The order, issued Oct. 24, claims that through its principles of medical ethics, the association has unlawfully restricted the advertising, solicitation and even the contractual practices of its members.

The order states that "specific fee information is important to consumers, that (at present) consumers lack access to fee and other information necessary to make an informed choice of a physician and that information obtained by word of mouth does not fill this need."

The association, which claims it will appeal the ruling to the US Court of Appeals, contends it does not proscribe advertising - including price advertising - so long as the information is factual, not misleading, fraudulent or resembling solicitation.

The FTC, however, states that AMA's interpretation of what constitutes legitimate advertising (office signs, professional cards, dignified announcements, telephone listings and reputable directories) is unduly restrictive and impedes competition.

The FTC concedes that nothing in the wording of the AMA's principles specifically bans price advertising, but it strikes at what it calls the many ambiguities in the ethics code as well as at the association's much publicized "negative attitude toward physician advertising".

It notes that "subtle influences may be just as effective as the threat or use of formal sanctions to hold people in line."

The order directs the AMA to "cease and desist" from:

- Restricting, regulating, impeding, declaring unethical, interfering with or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of physicians' services, or of information about physicians' services, facilities or equipment offered for sale or made available by physicians or by any organization with which physicians are affiliated.

The FTC does recognize the association's "valuable and unique" role in governing deceptive or misleading advertising and permits it to continue this function.

Nothing in the order is intended to keep the AMA from enforcing "reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations [considered] false or deceptive . . . or with respect to uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence."

The FTC contends that the AMA's principles of medical ethics make it quite clear that all solicitation whether direct or indirect is forbidden, and as the AMA interprets "solicitation" this precludes any statements or claims that:

- Contain testimonials.
- Are self-laudatory and imply that the physician has skills superior to other physicians engaged in his field or specialty of practice.
- Contain incorrect or incomplete facts, or representations or implications that are likely to cause the average person to misunderstand or to be deceived.

As the FTC sees it, this pretty well emasculates any advertising initiative.

All advertising is to some degree self-laudatory, says the FTC. And such a ban would in effect eliminate all forms of comparative statements no matter how truthful.

For example, it would ban any reference to a doctor's special skills or experience because that in itself may imply superiority.

Such proscription also suggests that all testimonials regarding physicians' services are inherently misleading.

By taking so narrow an interpretation of advertising criteria the "AMA wishes to interdict a vast spectrum of advertising practices based on its view that such practices are inherently deceptive," says the FTC.

Advertising performs an indispensable function in the allocation of resources in a free-enterprise system, says the FTC. "Bans on advertising increase the difficulty of finding the lowest-cost seller of acceptable ability or quality, isolating sellers from competition and reducing the incentive to price competitively."
"Entry barriers are often lower with advertising than they would be in its absence, allowing new competitors to penetrate the market. "As a result of easier entry and lower search costs, prices are often lower when advertising is unrestrained."

**FTC argument**

The FTC argues that AMA's principles of medical ethics have very effectively prevented doctors and medical organizations from disseminating information on the prices and services they offer. And it is especially important that price advertising remain as unfettered as possible, says the commission. It adds that these impediments to advertising have seriously affected alternative healthcare systems, such as health maintenance organizations (HMOs) and other prepaid care plans that must depend heavily on advertising to announce their existence and explain their programs.

The FTC says it does not mean to imply that precise guidance regarding what claims are true and deceptive is feasible for all kinds of physician advertising. What may be false and deceptive for doctors may be permissible for sellers of other products and services.

"Harmless puffery for a household product may be deceptive in a medical context," says the FTC. But a doctor might well have some difficulty distinguishing between the innocuous and the misleading.

The FTC adds: "The AMA provides no assistance whatsoever in making this distinction, and its studied ambiguity overall is likely . . . to deter truthful ads unnecessarily."

The FTC order arose out of an earlier FTC complaint lodged in 1975 challenging the association's ethical restrictions. Since that time, hearings were held before an administrative law judge of the FTC, and in October the full commission issued its final order.

Betty Jane Anderson, counsel to the AMA, told CMAJ that it was unlikely the ruling would effect any dramatic changes in the way physicians now advertise their services. She said she did not expect any groundwork of advertising by physicians just as she would not expect any groundswell of efforts by the AMA to prohibit such action.

She noted that a physician in Chicago recently rented an airplane that flew over the downtown area for 3 hours trailing a banner that said: "Feel ill? . . . Call Dr. Dave (phone number)." Apparently he was disappointed because he received no calls, and none of the newspapers paid any attention.

The FTC order goes beyond advertising to address other areas in which it feels the AMA principles tend to restrain trade and suppress competition.

It cites restrictions against contractual arrangements that affect the adequacy of fees, involve underbidding or preclude the choice of a physician, compensation of physicians other than by fees for service and physician arrangements with nonphysicians.

The order states that AMA's advocacy of fees for service "clearly limits the ability of hospitals, prepaid medical plans and other lay organizations to deal with physicians on the traditional basis of fee-for-service and precludes the use of salaries or other arrangements that may be more cost-efficient."

"The purpose of this restriction is manifest: to retain for the physician the full profit generated by his or her services and to preclude competition by group health plans, hospitals and other organizations not directly under the control of physicians."

**Alternative unreasonable**

The FTC states that the AMA's efforts to prevent the use of such alternatives to fees for service are "unreasonable and constitute an unfair method of competition . . . ." The FTC also strikes out at AMA's proscription of partnerships between physicians and nonphysicians that involve the sharing or splitting of professional fees.

"These provisions were designed to avoid problems that can occur when a nonphysician partner or associate advocates medically unsound treatment that the physician is powerless to oppose," says the FTC order.

But it argues that such an ethical proscription is too all-encompassing. It covers too much territory.

Such restrictions may be counterproductive in that they keep the physician from adopting more economically efficient business formats. And the requirement that all corporations and associations be owned and managed by physicians could be used to prevent physicians from associating with HMOs or other prepaid health-care plans. [4]

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**PLASTIC SURGEONS**

*continued from page 1538*

emotional reaction and operative morbidity. It also allows time for evaluating risk factors.

He said that in a sample of 112 prophylactic contralateral mastectomies on patients in the high-risk group who had no clinical or radiographic signs of cancer, 19 (16.9%) unsuspected malignancies were found, of which 12 (63.2%) were noninvasive and 7 (36.8%) were invasive. Another 21 patients (18.7%) had atypias. Dr. Leis said that of 48 patients followed for 10 or more years, 92.3% showed no evidence of disease.

He added that since most patients in his series had modified radical mastectomies rather than radical procedures for their first breast cancers, bilateral restorative procedures have been possible without much difficulty. He said the patients had expressed satisfaction at not having to wear an external prosthesis, and that the removal of the second breast had set their minds at ease over fear of developing another cancer.