

Oregon Optometric Physician Association / Testimony / HB 3530 / April 20, 2015

Chairman Greenlick and members of the Committee. I am Dr. Bonnie Gauer, an optometrist in private practice in Roseburg [Oregon]. I serve as the current President for the Oregon Optometric Physician's Association.

Firstly, Oregon Optometry is duly in favor of HB 3530. Oregon optometrists are noting an alarming trend with certain national vision care plans (VCPs) that have become, again, a dominant figure in regards to the provision of eye and vision care in the state. This takes me back to my early days in practice over 'twenty-some' years ago; in 1996, I recall the Department of Justice filing a lawsuit against the nation's largest vision care insurance plan (VSP)¹; the allegations were reducing price competition through what is known as the 'most favored nation' clause². The contracting provisions with providers gave this VCP the most favorable rates. As a matter of course, the DOJ and this insurance plan settled by limiting certain administrative controls such as the 'most favored nation' clause. Needless to say, this DOJ agreement expired in 2001. Now, stronger than ever, and expanding their scope of business through vertical integration³ and aggressive contracting, these plans have resulted in reduced competition, higher prices for some products, and less choice for the patients.

For example Oregon small business owners, like Dr. Daran and Pam deCalesta of Rainbow Optics and Lab in Eugene, have noted a terrific downturn in their ability to be competitive with these large vision care plans. Specifically, in 2014, almost 82% of their total number of patients was covered by insurance plans, with one of the major national VCP carriers representing 44% of their total business. In a look back twenty years ago, this same VCP only represented 14% of their business. Such a large expanse in their patient VCP volume has encumbered the survival of the practice due to limitations of services or sale of products; it leaves little choice or options for this small business with such a monopolizing power.

With restrictive contractual arrangements, these major VCPs are now controlling the entire sequence of the vision care trade. And, thus, this forces the consumer into a narrow path of using only the VCPs lenses, frames, laboratories for their dedicated coverage benefits. A common tenet with these VCP contracts is the restriction of services (e.g. in-house labs, preferred materials or lens designs) that may be offered by the optometrist. Renewal of VCPs contracts, at times, have noted changes in terms, rates, or discounts without signature agreement by the provider.

VCPs dedicated coverage benefits are stated for the patient; however, optometrists are required to offer [forced] discounts on non-covered services and materials, such as secondary sales of prescription glasses, sunwear, prescription sunglasses, and, even retinal imaging to VCPs beneficiaries. I have personally noted this in my optical, having to discount a secondary pair of glasses by 20% to VCPs beneficiaries up to a year of their initial examination. Increasing scrutiny of these VCPs' business practices are becoming more predominate; the playing field is being leveled for consumers in addition to limiting the control of VCPs over provider practices (e.g. Kansas and Vermont Vision Services Act)^{4,5,6}.

Oregon Optometry recommends this equitable action. Again, thank you for the opportunity to be here and participate in today's discussion.

References:

1. **U.S. v. Vision Service Plan**, Case No. 94-cv-02693 (D.D.C. 1996). Available at <http://www.justice.gov/atr/cases/f0700/0764.htm>. Accessed 04/17/2015.
2. **Most Favored Nation Provision (MFN). Definition: Commercial transactions.** A contractual provision, also known as a "most-favored-customer clause," "prudent buyer clause" or "non-discrimination clause," in which the seller promises the buyer that it will not offer another buyer better terms before offering those terms or better terms to the first buyer. Because of antitrust concerns that this practice may be used in an anticompetitive manner, courts will examine these provisions closely using a *rule of reason* analysis. Courts will determine the enforceability of the MFN provision by balancing the pro-competitive benefits of the provision (such as cost savings for buyers that may be passed on to downstream buyers) against the anticompetitive harms (such as discouraging price cutting and potentially encouraging *monopolies*). Available at <http://us.practicallaw.com/8-382-3637>. Accessed 04/17/2015.
3. **VERTICAL INTEGRATION. Definition:** the combining of manufacturing operations with source of materials and/or channels of distribution under a single ownership or management especially to maximize profits. Available at <http://www.merriam-webster.com/dictionary/vertical%20integration>. Accessed 04/17/2015.
4. *Spectera, Inc. v. Wilson*. Case No. S12G1935 (Ga. S.Ct., Oct. 7, 2013). Available at <http://judicialview.com/State-Cases/georgia/Contracts/Spectera-Inc.-v-Wilson/13/589900>. Accessed 04/17/2015.
5. *FTC v. Transitions Optical*. Docket No. C-4289 (FTC Apr. 22, 2010). Available at <http://www.ftc.gov/sites/default/files/documents/cases/2010/04/100427transopticaldo.pdf>. Accessed 04/17/2015
6. McCarthy C. New laws restrict MVC plan contracts with ODs in Kansas and Vermont. *Optometry Times*. Available at <http://optometrytimes.modernmedicine.com/optometrytimes/news/new-laws-restrict-mvc-plan-contracts-ods-kansas-and-vermont?page=0.0&contextCategoryId=140>. Accessed 04/17/2015.