August 4, 2017

Board Members
Washington Dental Service/Delta
400 Fairview Ave N
Seattle, WA 98109

Re: Response to Delta’s Antitrust Concerns

In a letter addressed to “WSDA Board Members from WSDA Dentists on the WDS Board,” the signatories offered their opinion that suggested bylaw changes “are ill advised and ultimately destructive to WDS, WSDA and the profession of dentistry in our state.” The Board members expressed concerns about fee setting and potential antitrust violations, and suggested passage of the bylaws “may force the parties into litigation.”

Let us begin by thanking you for your letter and for sharing your thoughts. Please accept the following in response. We aim to constructively continue our pursuit of improving patient care by utilizing the rights given to all member dentists by the WDS bylaws.

We are all members of WDS, and we all have the best interests of the entity at heart. Given that we are all members of the same entity, we are not sure what “parties” might be forced into litigation. We assume that, if the membership approves amendments to the bylaws as permitted, everybody will accept the results. We do not believe board members would have a basis to bring a lawsuit against WDS.

Second, we do not believe the proposed bylaw amendments raise fee schedule or antitrust concerns. The proposed amendments must be read in concert with the entire body of the bylaws and with the board’s duty to comply with the bylaws and all applicable laws, including antitrust laws.

We presume that your antitrust concerns are focused on the proposed changes which affect Independent Directors. First, the definition of Independent Director continues to limit who can serve in these positions. Second, the proposed change to the Provider Compensation Committee, in bylaws subsection M(2), strikes the mandated mix of “Independent Directors” but retains other important provisions that ensure the PCC complies with the law. For example, subsection M(3) of the bylaws allows the board to remove committee members “whenever the best interests of the corporation would be served by such a removal.” Further, subsection M(8)(c) requires “strict confidentiality” with respect to fees and pricing, and requires consistency “with state and federal laws and regulations.” Additionally, subsection K of the bylaws allows for the removal of a board member for “willful or negligent disregard” of the bylaws, or “breach of fiduciary duty as a director.”

As you can see, when the proposed amendments are read as part of the entire body of bylaws, there should be no concern they would permit improper pricing or antitrust violations. Only a board acting contrary to the total body of the bylaws and in breach of its fiduciary duty
could allow the proposed amendments to lead to the ‘destruction’ suggested by your letter. We have no reason to believe any of the signatories to the aforementioned letter, or any other directors of WDS, would breach their fiduciary duty or act contrary to the bylaws.

If this does not address your antitrust concerns, we implore WDS to be specific instead of continuing to speak in vague generalities. Such rhetoric is not seen by member dentists as raising constructive concerns but instead is seen as a scare tactic. We welcome the opportunity to have our legal counsel discuss with the counsel of WDS its concerns related to the antitrust laws and work with them to address any issues.

We do agree that antitrust is very much a “live” issue and that the state and federal antitrust enforcers are active in this space. In addition, we agree that price fixing must be avoided. As we have said before and will continue to say, this initiative is not about pricing or fee schedules. This initiative is not attempting to increase the fee schedule and we understand that this initiative should not lead to an increased fee schedule. The purpose of this initiative is to put the focus back where it belongs: on patients and patient care.

As member dentists, we have repeatedly encountered policies, instituted by WDS, inconsistent with our standard of care. Attempts to work with WDS to address these concerns have been routinely ignored. Attempts to institute neutral, third-party mediation, which already exists for medical benefits carriers, has been strongly fought by WDS. This pattern of repeated rejections has prompted us to take a different course – reforms to the WDS bylaws aimed at improving the entity’s culture and governance practices.

Sincerely,

Dr. Theodore M. Baer
Dr. Marissa N. Bender
Dr. Dennis L. Bradshaw
Dr. Christopher Delecki
Dr. Bryan C. Edgar
Dr. Linda J. Edgar
Dr. Todd R. Irwin
Dr. Christine L. Kirchner
Dr. Bernard J. Larson
Dr. Cynthia R. Pauley
Dr. James W. Reid
Dr. Nathan G. Russell
Dr. Ashley L. Ulmer