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HEALTH PROFESSIONALS PETITION FTC FOR RELIEF FROM RED FLAGS RULE

CHICAGO – In light of a recent federal court decision, four national organizations representing dentists, physicians and veterinarians called on the Federal Trade Commission (FTC) today to exclude health professionals from controversial new regulation intended to combat identity theft.

A letter sent to FTC Chairman Jon Leibowitz by leaders of the American Dental Association (ADA), American Medical Association (AMA), American Osteopathic Association (AOA) and American Veterinary Medical Association (AVMA) is the latest challenge to the so-called “red flags” rule. The FTC’s interpretation of the regulation imposes an unjustified, unfunded mandate on health professionals for detecting and responding to identity theft.

The organizations asked the FTC to make it clear that the rule will not apply to their members given the result of recent litigation brought by the American Bar Association against the FTC. In that case, the U.S. District Court for the District of Columbia ruled that lawyers should be excluded from the requirements imposed by the red flags rule.

The court decision follows wide criticism that the FTC’s overly broad interpretation of the Fair and Accurate Credit Transactions Act of 2003 (FACT) led the commission to create a rule that oversteps its authority. In response to these concerns, the FTC postponed the rule’s effective date to June 1, but it has never changed the position that the rule will apply to health professionals.

“Congress did not intend the original red flags legislation to apply to small businesses, but rather it was intended to encourage large businesses like banks, credit firms and national retailers to implement best practices to protect customers’ from identity theft,” said ADA President Ronald Tankersley, D.D.S.

In its ruling against the FTC, the court said that the application of this rule to attorneys “is both plainly erroneous and inconsistent with the purpose underlying enactment of the FACT Act.” The court also stated that the FTC “not only seeks to extend its regulatory power beyond that authorized by Congress,” but also “arbitrarily selects monthly invoice billing as the activity it seeks to regulate.”

“The court ruling sends a clear signal that the FTC needs to re-evaluate the broad application of the red flags rule,” said AMA President J. James Rohack, M.D. “Our four organizations firmly believe that applying the rule to health professionals, but not to lawyers, would be unfair.”

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“Postponement of the rule’s effective date is inadequate,” said AOA President Larry A. Wickless, D.O. “Our four organizations need a commitment from the FTC that it will not apply the red flags rules to health professionals if it is not applied to lawyers.”

“The burdens of complying with this rule outweigh the benefits,” said AVMA President Larry R. Corry, D.V.M. “The FTC’s interpretation of the FACT Act should be redefined to exclude health professionals.”

For a copy of the joint letter to the FTC, please visit the AMA website at: <http://www.ama-assn.org/ama1/pub/upload/mm/399/ftc-letter-red-flags.pdf>

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