

IN THE MATTER OF

W. LANE SCHULZE ET AL. TRADING AS CHICAGO
SCHOOL OF NURSING, DIVISION OF CAREER
INSTITUTEORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6515. Complaint, Feb. 20, 1956—Decision, June 10, 1958*

Order requiring Chicago operators of a mail order course in auxiliary nursing to cease representing, contrary to fact, that persons completing the course were eligible for employment as practical nurses in all 48 States.

William A. Somers, Esq., for the Commission.

Edward J. Metzdorf, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On February 20, 1956, the Federal Trade Commission issued its complaint against W. Lane Schulze and W. C. Schulze II¹ (hereinafter collectively called respondents), copartners doing business as Chicago School of Nursing, Division of Career Institute, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act (hereinafter called the act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents.

The complaint alleges in substance that respondents, in conducting Chicago School of Nursing, which offers a correspondence course in auxiliary nursing, made certain false representations. Respondents appeared by counsel and filed a joint answer admitting the partnership, commerce, and competition allegations of the complaint and the advertising excerpts set forth therein, but denying any false representations or violations of the act.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding, at various times and places from June 26, 1956, to April 3, 1957. At the conclusion of the case-in-chief, a motion to amend the complaint and a corresponding motion to amend the answer thereto were granted.

¹ Incorrectly referred to as W. Lane Schultz and W. C. Schultz, III, in the caption of the complaint and other documents.

All parties were represented by counsel, participated in the hearings and afforded a full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All parties filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof, and waived oral argument thereon. All such findings of fact and conclusions of law proposed by the parties, respectively, not herein-after specifically found or concluded are herewith specifically rejected.²

Upon the entire record in the case and from his observations of the witnesses, the undersigned makes the following:

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I. The Business of Respondents

The complaint alleged and respondents' original answer admitted that they were copartners trading under the name of Chicago School of Nursing, Division of Career Institute. However, respondents' amended answer, filed November 5, 1956, after the complaint was amended, alleged that the partnership had been dissolved as of July 31, 1956, and that since August 1, 1956, W. Lane Schulze had conducted Career Institute and Chicago School of Nursing, a division thereof, as an individual proprietorship. While this is now the situation, it does not change the fact that during the time of the alleged unlawful practices, W. C. Schulze II was a copartner with his father in conducting Chicago School of Nursing and Career Institute. Accordingly, it is found that, while at the present time Chicago School of Nursing is conducted individually by W. Lane Schulze, at all times pertinent to this proceeding he and W. C. Schulze II were copartners conducting said organizations. The principal office and place of business of respondents is located at 25 East Jackson Boulevard, Chicago, Ill.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted, and it is found that for more than two years preceding the issuance of the complaint they were engaged in the sale and distribution in commerce between and among the various States of the United States of a course in auxiliary nursing, including practical nursing and nursing aide, through the

² 5 U.S.C. 1007(b).

medium of the United States mails. Respondents have caused said courses of instruction to be transported from their place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois. Respondents at all times mentioned herein have maintained a substantial course of trade in commerce in said courses of instruction. In the course and conduct of their business, respondents at all times mentioned herein have been in direct and substantial competition in commerce with other individuals and with corporations and firms likewise engaged in the sale in commerce of courses of instruction in auxiliary nursing.

III. The Alleged Unlawful Practices

A. *The Issues Framed and Background Facts*

The principal issues in this case are whether respondents, in connection with the advertising of their courses of instruction in auxiliary nursing by means of newspaper and magazine advertisements and brochures sent directly to prospective purchasers through the mail, made certain representations, and if made, whether or not such representations were false and misleading.

Respondents are engaged in conducting Chicago School of Nursing, which since 1899 has been engaged in the sale of a home study course of instruction in auxiliary nursing, previously called practical nursing, through the U.S. mails. Before the issues in this case can be clarified, it is necessary to define certain personnel classifications in the field of nursing used throughout the pleadings and the hearings. In the first place, registered professional nurses have been classified as such for more than 50 years. This category refers to those who have had 3 or more years of formal hospital training, have passed a State board examination, and have then been licensed as registered professional nurses. Dating back even before this has been a category traditionally known as practical nurse. As the term implies, practical nurses are persons not formally educated or trained in the field of nursing, who by practice and actual experience in taking care of patients have become known as practical nurses. In general, it may be said that they perform simpler nursing functions in the care of the ill than those performed by professional nurses. Until recent years there were no requirements whatsoever necessary to practice practical nursing. In other words, anyone who so desired could hold himself or herself out as a practical nurse without restriction.

In recent years, most of the States have passed laws setting up a new category of nurse, generally known as a licensed practical nurse (hereinafter sometimes called LPN), but at the same time permitting the continued existence and practice of those persons called practical nurses, provided they do not hold themselves out to be licensed. Under these licensing laws, a certain period of formal education in accredited resident schools, usually 9 months to 1 year, is required, together with the passing of a State board examination. Substantially all of these laws, however, permit persons already practicing practical nursing for a certain number of years to take the examination and become licensed without any formal education. As the record establishes, it is a well-known fact that over the years there have been thousands of capable and efficient practical nurses who acquired their knowledge and ability solely through actual experience in doing the work. In addition to such so-called permissive laws for the licensure of practical nurses, a few of the States have adopted mandatory laws under the terms of which everyone practicing practical nursing must be licensed. Thus in these States the age-old category of unlicensed practical nurse has been eliminated.

Including the District of Columbia as a State for the purpose of this proceeding, there are 40 States which have permissive laws under which anyone can practice practical nursing if they do not claim to be licensed, and 3 States which have no laws governing practical nursing. Thus there are in all 43 States in which the practice of unlicensed practical nursing is permitted without any educational or experience requisites. The other 6 States, Arkansas, Idaho, Louisiana, Nevada, New York, and Rhode Island, have mandatory laws prohibiting all practical nursing without license.³

The fourth category of nursing personnel used in both the pleadings and throughout this proceeding is that of auxiliary nurses, which includes in general all of those persons working in the nursing field below the level of LPN's, frequently referred to as part of the nursing "team." In addition to unlicensed practical nurses, the category of auxiliary nursing includes many other titles, such as nursing aides, hospital attendants, doctor's office nurse, baby nurse, and nurse-companion. In the so-called mandatory States, as well as all of the others, all of these categories of auxiliary nurse, other than practical nurse, have no legal requisites, and anyone who so desires may seek employment in those fields. In the other 43 States all auxiliary nurses, including unlicensed practical nurses, may work as such without any requirements. Thus it is found that there are four categories

³ However, in Rhode Island a practical nurse may work in institutions without license.

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of nursing personnel, registered professional nurses, LPN's, practical nurses, and auxiliary nurses, the last including unlicensed practical nurses, nursing aides, and numerous other titles.

A considerable amount of confusion developed in this case because the complaint before amendment apparently was bottomed upon the theory that the term practical nurse meant LPN and therefore respondents' representations concerning their course having reference to practical nurses referred to LPN's. This confusion was further enhanced by the fact that many of the expert witnesses in the nursing field called in support of the complaint, all of whom were registered professional nurses in various executive capacities, testified that a practical nurse was an LPN and refused, contrary to the fact now established in the record, to recognize the existence of unlicensed practical nurses in spite of the fact that the term practical nurse was used to designate them for many years prior to the existence of any licensure laws. The fact that such laws adopted the term practical nurse as part of the title of the new category while at the same time they permitted the continuation of the prior category of practical nurses added to this confusion. Historically speaking, the term "practical nurse" applied to one who was neither formally trained nor licensed, and was developed to distinguish this group from registered professional nurses. If the licensure laws had adopted a different term, such as is the case in Texas and California where they are called "licensed vocational nurses," some of the confusion in terminology would have been obviated. The title used in most of the States is "licensed practical nurse." Wisconsin uses the term "trained practical nurse" to designate its LPN's.

Chicago School of Nursing has been using the term practical nurse for many years. In 1927, in order to conform to changes of terminology in common usage in the nursing field, the school adopted the term "trained practical nurse." Until the development of the licensure laws, such terminology caused no confusion. In 1950, because of the increase of the licensure programs, the designation by many graduates from accredited hospital training programs under such licensing laws as "trained practical nurses," and the adoption by the State of Wisconsin of the term "trained practical nurse" to designate its LPN's, respondents dropped that term and used "practical nurse" in lieu thereof. In 1954, as a result of a survey conducted by respondents concerning the various titles under which their graduates were employed, and the increasing confusion caused by the titles "licensed practical nurse" and "practical nurse," respondents adopted the term "auxiliary nursing" to describe their course. Since 1954,

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respondents have referred to their course as one teaching auxiliary nursing, including practical nursing and nursing aide, having reference to practical nurse as an unlicensed practical nurse. All of this voluntary action occurred long before the complaint in this proceeding was issued.

Prior to its amendment, the complaint herein was substantially similar to that issued in *National Institute of Practical Nursing*⁴ (not cited by either counsel), wherein representations substantially similar to those alleged in this proceeding were found to be false, based on a finding that the respondent therein was falsely representing its course as qualifying graduates to be licensed practical nurses, which finding necessarily rendered most of the representations therein false. In addition, the complaints in two recent cases decided by the Commission,⁵ adopting initial decisions of the undersigned approving agreements for consent orders, also alleged that the respondents therein falsely represented that their respective courses qualified students for licensure, and the orders agreed to in those cases prohibited, among other things, such representation.

As will be seen hereinafter, most of respondents' representations alleged in the complaint unquestionably would be false if respondents were representing their course as qualifying graduates to be licensed practical nurses. However, because of respondents' answer and the facts adduced during the presentation of the case-in-chief, it became evident that respondents, as counsel supporting the complaint now concedes, not only were not representing that their course qualified graduates for licensure, but in fact specifically advised all applicants that the course did not so qualify graduates. In addition, as found above, respondents had changed their terminology in order to prevent any such confusion prior to the issuance of the complaint. After this development and at the conclusion of the case-in-chief, counsel in support of the complaint moved to amend it to substitute the term "auxiliary nurse, including practical nurse and nurse's aide," for the term "practical nurse" wherever it appeared in the complaint, which motion was granted. This, of course, changed the entire theory of the complaint and, as will be seen hereinafter, in effect destroyed the basis for alleging most of the representations to be false. While such representations would have been false if respondents had claimed that their course qualified graduates for licensure, it will be seen that

⁴ *National Institute of Practical Nursing*, 48 FTC 1253 (1952).

⁵ *Post Graduate Hospital School of Nursing, Inc.*, docket No. 6437 (1956); and *Wayne School, Inc.*, docket No. 6430 (1956).

in the absence of such a claim and proof of the contrary, such representations, with one exception, are in fact true and correct.

Before considering the merits of the various issues, one further point must be treated. Counsel in support of the complaint in his proposed findings of fact and conclusions of law now proposes the finding of certain representations not set forth in the complaint, not alleged in the complaint to be false, and not litigated at the hearing. Without reviewing them here in detail, a number of such proposed findings vary in substance from the issues framed by the pleadings and were not litigated at the hearing. It is, of course, an elementary principle of due process that unfair trade practices neither alleged nor litigated cannot be found. Anything less would deprive respondents of a full and fair hearing and the right to show cause why an order should not be issued, as required by the act, the Administrative Procedure Act, and the Commission's rules and regulations. This principle is too fundamental to require extended discussion. No one now could even speculate what proof respondents might have offered if they had been apprised of such allegations. In addition, although counsel supporting the complaint moved to amend the complaint at the conclusion of the case-in-chief to change the term practical nursing to auxiliary nursing, he did not move the inclusion therein of the changed representations he now proposes. For all of the above reasons, this proceeding must be and is decided upon the issues framed by the pleadings, i.e., the allegations of unfair trade practices set forth in the complaint and litigated at the hearing.

B. The Alleged False Representations

In substance, the complaint as amended alleges that respondents falsely represented that:

1. Their course is a complete course in auxiliary nursing, and graduates thereof are "trained auxiliary nurses" eligible for employment in hospitals and like institutions as trained auxiliary nurses;
2. There is an urgent need for trained auxiliary nurses and their graduates can help fill this need;
3. A high school education is not required in order to become a trained auxiliary nurse;
4. Doctors rely upon respondents' graduates as auxiliary nurses;
5. Graduates are assured of success as trained auxiliary nurses in homes and hospitals and may expect to receive unusually good wages;
6. Their course is endorsed by physicians; and

7. Certificates awarded by respondents to graduates will be of valuable assistance in obtaining positions as auxiliary nurses.

In addition, the complaint alleged that respondents by the use of the word "Institute" in their trade name falsely represented the existence and operation of a nonprofit resident institution of higher learning with a staff of competent, experienced, and qualified educators offering instruction in the arts, sciences, and subjects of higher learning.

Certain portions of the aforesaid allegations overlap in that they deal in effect with the same representation, that the course qualifies graduates for employment. All of the allegations are considered *seriatim*.

1. The completeness of the course and eligibility for employment

The proposed finding of counsel supporting the complaint on this subject varies in certain material respects from the representations alleged in the complaint and litigated at the hearing. For the reasons previously stated, each issue must be decided as framed and litigated. The complaint as amended alleges that respondents represented their course as a complete course in auxiliary nursing, including practical nursing and nursing aide, and that graduates thereof are trained auxiliary nurses with all the privileges and benefits associated with said title including the opportunity of employment in hospitals and like institutions as trained auxiliary nurses, including practical nurses and nurse's aides.

This first allegation is an excellent example of the effect brought about by the amendment of the complaint after the facts established that respondents do not represent their course to qualify graduates as trained or licensed practical nurses. As originally alleged, this representation if made would obviously have been false, because respondents' course does not qualify graduates as trained or licensed practical nurses. That was the basis of the findings in the *National Institute* case, *supra*, and the basis of the orders in the *Post Graduate* and *Wayne* cases, *supra*. Here, however, the record established that respondents not only voluntarily dropped the terms "trained practical nurse" and "practical nurse" from their designation of their course long before the complaint was issued, but also specifically advised all applicants that their course did not qualify for licensure.

Numerous exhibits consisting of respondents' advertisements, and pamphlets and brochures sent to persons answering such advertisements, were received in evidence. In general, the advertisements published in newspapers and magazines were relatively small in size and brief in content. Persons answering such advertisements were

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not purchasing the course but merely requesting the advertised booklet and sample lessons. While the record contains a number of small pamphlets, brochures, form letters and the like which were sent to applicants expressing an interest in the course, the basic piece of literature was a brochure of some 35 pages on good quality paper entitled: "Opportunities in Auxiliary Nursing." This brochure explained the course in some detail, sought to persuade the reader of the benefits to be derived from it, included a number of testimonials from former graduates, pointed out that the course would not qualify for licensure, and, in general, might be characterized as respondents' principal advertisement and explanation of their course.

Although respondents in their proposed findings contend that they do not represent their course in auxiliary nursing to be complete, the documentary evidence in the record establishes, and it is found, that they do represent their course as a complete course in auxiliary nursing. Some of the advertising excerpts relied upon by counsel supporting the complaint appear in respondents' advertising and brochure prior to 1954. As found above, in 1954 respondents adopted the terminology "auxiliary nurse" and modified their advertising, and particularly their brochure, representations that the course qualified graduates as trained practical nurses because of the confusion in terminology. In view of this voluntary discontinuance of such terminology prior to the issuance of the complaint, it would not appear to be equitable to judge respondents' advertising in the light of representations made prior to this voluntary modification. On the other hand, the record establishes that their advertising as so modified does represent their course as a complete course in auxiliary nursing. It is also clear, and is found, that respondents' advertising represents that graduates will be able to obtain employment in hospitals, private homes, and other places as auxiliary nurses, including unlicensed practical nurses and nursing aides.

Having found that respondents make such representations, the next question for determination is whether they are false and deceptive. To start with, in 43 of the States there are no requirements whatsoever necessary for employment as an auxiliary nurse, including practical nurse, nurse's aide, and all other titles, and in the 6 other States, there are no requirements, educational or otherwise, necessary for employment as an auxiliary nurse, including nurse's aide and all the other titles used, except practical nurse. Since the record establishes that in all of the foregoing circumstances there are no requirements whatsoever for auxiliary nurses, and anyone may so designate himself and seek employment as such, obviously respond-

ents' course cannot be called incomplete. Respondents' course, consisting of 53 lessons, approximately 2,000 pages of text, 1,300 illustrations, requiring an average of 500 hours to complete, including a total of 23 examinations during the course and the necessity of attaining a passing grade, is certainly far superior to the little or no training possessed by thousands of persons who have entered the field of auxiliary nursing. By comparison with a requisite of no training, respondents' course is infinitely complete.

As found above, the original allegation was based upon the theory that respondents represented their course to be complete in, and to qualify graduates for, licensed practical nursing. Nearly all of the witnesses called in support of the complaint, who testified that in their opinion respondents' course was not complete because it was a home study course and did not include demonstration and return demonstration of nursing functions upon live patients by, and in the presence of, qualified teachers, based this conclusion upon their opinion and belief that respondents were representing their course as qualifying for licensure. Since this is no longer in issue, much of this testimony is no longer relevant.

The record establishes that the nursing functions performed by auxiliary nurses, including unlicensed practical nurses and nursing aides, are simple manual skills, relatively easy to learn and considerably below the level of the duties and functions of a registered professional nurse. No great amount of educational background or intellect is necessary to learn these simple functions. Experienced, highly-qualified educators in the field of home study education called by respondents testified that the simple skills taught in this course are easily learned by home study, and that demonstration is not necessary in order to learn such skills. The record establishes that many outstanding universities, high schools, and branches of the U.S. Government, including the U.S. Navy and the U.S. Armed Forces Institute, effectively teach, through correspondence schools by home study, manual skills of considerably greater complexity than auxiliary nursing. Some examples are industrial electricity, commercial art, mechanical drawing, arc welding, electronics, and many others of similar complexity.

The record also establishes that respondents' text material is complete, correct, and thorough in its coverage of the various functions performed by auxiliary nurses. The principal complaint of the witnesses called in support of the complaint was the lack of personal demonstration by instructors and return demonstration by the students. As noted above, most of this was claimed to be necessary in

teaching a course qualifying for licensed practical nursing and hence was not relevant to this issue. Nevertheless, some of the witnesses testified that in their belief such demonstration and return demonstration were necessary in order to teach auxiliary nursing. The record establishes that none of these witnesses had any experience in the home study field of education, did not know what if any skills could be taught by this method, and had neither completely read nor examined respondents' entire course. An additional fact controverting this contention is that in the past many of respondents' graduates, without such formal training, have become licensed practical nurses by taking and passing State examinations under the waiver clauses.

While, as respondents concede, it may be more desirable to include actual demonstration and return demonstration in a course teaching auxiliary nursing, this does not mean either that it is necessary or legally required. While it is a requisite of resident courses leading to licensure as a practical nurse in 43 States, it is definitely not required in order to qualify for auxiliary nursing, including unlicensed practical nursing and nursing aides. In view of the undisputed shortage of and need for auxiliary nursing personnel, a requirement that such personnel must take resident courses including demonstration and return demonstration before being eligible for such employment would serve to augment this shortage by eliminating from the field many of the persons now serving in it without such training. While no doubt it would be preferable that all practical nurses be licensed and have such training, it might also be argued that it would be preferable that all nurses be registered professional nurses with their requisite training. For practical reasons, it is better to have the best result possible rather than require the best possible result. The laws of the substantial majority of the States which permit the continued practice of practical nursing without such training demonstrate their recognition of this principle.

While not necessarily determinative, an additional factor is relevant in evaluating whether or not respondents' course is complete. Respondents' course of auxiliary nursing has been approved and accredited by the Accrediting Commission of the National Home Study Council, an organization established in 1926 for the purpose of promoting sound educational standards and ethical business practices among correspondence schools. The standards of evaluation applied by the Accrediting Commission are: (1) a competent faculty, (2) an educationally sound and up-to-date course, (3) the admission of only qualified students, (4) satisfactory educational experiences, (5) demonstrated student success and satisfaction, (6) reasonable

charges, (7) truthful advertisements, and (8) financial ability. The Accrediting Commission is an autonomous group of nine members completely independent of the Home Study Council, including the former U.S. Commissioner of Education and the present Undersecretary of the Department of Health, Education, and Welfare, among others. While this accreditation cannot and has not taken the place of an independent evaluation of the completeness of respondents' course, it is entitled to consideration in arriving at such an evaluation.⁶

A preponderance of the credible evidence in the entire record convinces the undersigned, and accordingly it is found, that respondents' course in auxiliary nursing is complete. Even aside from the merits of the course, as evidenced by the experts in the field of home study education called by respondents, this conclusion is almost inescapable when it is considered that no course of any kind or training whatsoever is required to qualify persons in the field of auxiliary nursing.

Substantially the same conclusion applies with respect to the allegation that respondents represented that graduates would be trained auxiliary nurses with all the privileges and benefits associated with said title, including the opportunity of employment in hospitals and like institutions. The record establishes that there is no such title as "trained auxiliary nurse" similar to the title "trained practical nurse," and accordingly the word "trained" must be considered as an adjective and not as a specific category or type of nurse. Since the record establishes that anyone may be employed in hospitals, like institutions, private homes and doctors' offices as an auxiliary nurse, including practical nurse and nursing aide, in 43 States, and as an auxiliary nurse, including nurse's aide but not practical nurse, in all 49 jurisdictions, it cannot be contended that respondents' graduates are not eligible for such employment. Actually, the record establishes, and it is found, that many of respondents' graduates have been employed as auxiliary nurses, including practical nurses and nurse's aides, in numerous hospitals, like institutions, private homes, and doctors' offices. While the record also establishes that a number of the larger hospitals in the larger cities will not employ unlicensed practical nurses as practical nurses but will employ them as nurse's aides, many other hospitals and like institutions, as well as private families and doctors, employ unlicensed practical nurses as practical nurses.

⁶ Additionally, the Benton Harbor High School offers to its students respondents' course in auxiliary nursing.

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2. The need for auxiliary nurses and the fulfillment thereof by respondents' graduates

Here again counsel supporting the complaint proposes finding a different representation from that alleged in the complaint. The representation alleged in the complaint and litigated at the hearing was that respondents represented that there is an urgent need for trained auxiliary nurses, and that persons who have completed respondents' course can help fill this need. This allegation is a slight although unimportant exaggeration, inasmuch as respondents did not characterize the need as urgent nor the auxiliary nurses as trained. Again the allegation collapses because of the amendment. The record establishes indisputably and it is found that there is an urgent need for all kinds of nurses, including auxiliary nurses. The record also establishes beyond dispute and it is found that graduates of respondents' course help fill this need because they are employed as auxiliary nurses, including practical nurses and nursing aides.

3. A high school education is not required

The record establishes that respondents represented that a high school education is not required to become an auxiliary nurse, including practical nurse and nursing aide. This representation is true. The evidence establishes that there are no educational prerequisites for becoming either an unlicensed practical nurse, a nursing aide or any of the other classifications of auxiliary nursing. As a matter of fact, with the exception of one State, Oregon, a high school education is not required to become a licensed practical nurse. Substantially all of the licensure laws require either 2 years of high school or an age of 25 or older, in which case no time in high school is required. A preponderance of the evidence establishes, and it is found, that a high school education is not required to become an auxiliary nurse.

4. Doctors rely upon respondents' graduates as auxiliary nurses

While not expressed precisely in the terms of the complaint, it is a fair inference from all of respondents' advertising that they represent that doctors rely upon their graduates as auxiliary nurses, including practical nurses and nursing aides. Statistical data in the record establishes that nationally there are well over 50,000 practical nurses employed in private homes, doctors' offices, clinics, and other places than hospitals. Contrary to the proposed finding of counsel supporting the complaint, the record establishes beyond dispute that many doctors have employed, and do rely upon, respondents' grad-

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uates as practical nurses both in their offices and in private home duty. It is concluded and found that this representation is true and correct.

5. Graduates are assured of success as auxiliary nurses at unusually good wages

As evidenced by the proposed findings of counsel supporting the complaint, he now equates this representation as one that graduates are assured of employment as trained auxiliary nurses in hospitals and homes at unusually good wages. As pointed out above, many of the alleged false representations overlap in that they deal with the same subject, whether or not respondents' graduates are eligible for employment as auxiliary nurses. Respondents do not represent that their graduates are assured of employment nor that they may expect to receive unusually good wages. Respondents do represent that graduates will in all probability be able to secure employment as auxiliary nurses in hospitals and homes, and further represent that if so employed they may expect to earn from \$50 to \$60 a week. To characterize such an amount today as unusually good wages seems somewhat of an exaggeration.

Although alleged in the complaint, counsel supporting the complaint no longer proposes a finding that respondents represent that their graduates are assured of success. The record does not support the contention that respondents guarantee or assure the employment of their graduates. On the other hand, it certainly establishes that respondents represent that there are numerous employment opportunities available for their graduates, and that in all probability they can secure employment in the field of auxiliary nursing if desired. As previously found, many of respondents' graduates are employed as auxiliary nurses in both hospitals and homes. Here as in other instances the weakness of the case-in-chief brought about by the amendment to the complaint is demonstrated. The evidence further establishes that many of respondents' graduates earn \$50 to \$60 a week and more as auxiliary nurses. Based upon all of the evidence in the record, the respondents' choice of figures appears to be reasonable and not exaggerated. A preponderance of the credible evidence in the record establishes, and accordingly it is found, that respondents' representations concerning probable employment and earnings are true and correct.

6. Respondents' course is endorsed by physicians

The complaint alleges and the record establishes that respondents represent that their course is endorsed by physicians. Counsel sup-

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porting the complaint offered no proof that this representation is false, as alleged. It is, of course, well-established that the burden of proof to sustain the allegations of the complaint is upon counsel supporting the complaint, and in the absence of any proof in support thereof such allegations must be dismissed. Nevertheless, in an excess of caution, respondents offered proof that their course was endorsed by physicians. The course was founded by a physician and at all times has had a physician as medical supervisor. The present medical supervisor is a practitioner in internal medicine and an assistant professor of medicine at Northwestern University Medical School. Dr. Lauder, a captain in the U.S. Naval Reserve at Northwestern University with specialized experience in the field, was the subject-matter specialist of the examining committee of the Accrediting Commission of the National Home Study Counsel. He approved respondents' course as to authenticity, completeness, objectives, qualification of faculty, and instructional service. The record further establishes that many doctors have recommended and endorsed the course to prospective students. All of the foregoing stands un rebutted. It is concluded and found that this representation is not false and misleading, as alleged in the complaint.

7. Certificates awarded graduates are of valuable assistance in obtaining positions as auxiliary nurses

Here again counsel supporting the complaint proposes finding a representation substantially different from that alleged in the complaint and litigated at the hearing. The record establishes, and respondents concede, that they represent that the certificates issued by them will be of assistance in obtaining employment. The complaint also alleged that such certificates are not recognized nor accepted by hospitals, institutions, or any State authority. Here, too, the amendment of the complaint after the case-in-chief substantially has affected the import of the representation. With respect to the field of auxiliary nursing, the record establishes the representation to be correct. However, if applied to licensed practical nurses, it would unquestionably be false.

Respondents do not issue their certificates to those who successfully have completed their course, but issue them only to graduates who have fulfilled an additional requirement of demonstrating proficiency in the field by either attending respondents' 2-week resident review course or supplying written evidence of satisfactory employment for either 6 months in a hospital or 9 months in private homes, doctors' offices, and the like. Thus respondents' certificate evidence not only

that the person has completed successfully respondents' course but also has demonstrated actual proficiency in the performance of the functions included in the field of auxiliary nursing. This requirement is voluntary on the part of respondents and evidences commendable caution. There is nothing in the law which prohibits respondents from issuing certificates to their graduates. Nevertheless, they require demonstrated proficiency before doing so. They do issue a form letter to graduates which states that they have completed the course, but which also states that such graduates have yet to fulfill the additional requirement of demonstrated proficiency to obtain a certificate. Substantial evidence in the record establishes and it is found that respondents' certificates are of valuable assistance to holders thereof in securing employment as auxiliary nurses.

8. The word "institute" implies a resident institution of higher learning

The complaint alleges that by the use of the word "institute" in the name of the parent organization, Career Institute, of which Chicago School of Nursing is a division, respondents falsely represent that they conduct a nonprofit, resident institution of higher learning with a staff of competent, experienced and qualified educators offering instruction in the arts, sciences, and subjects of higher learning, with the primary object of scientific investigation and instruction. A great deal of evidence was received on this issue. The record establishes that respondents did not adopt the name "Career Institute" until 1947, when they added to their organization an English language division, offering a 10-month home study course in practical English for adults, and the Pearson School of Real Estate, offering a 10-session resident course preparing adults for Illinois licensure as real estate salesmen or brokers.

In respondents' advertising herein, the name "Chicago School of Nursing" is used throughout. The term "Division of Career Institute" appears in small print in its brochure under the large print, "Chicago School of Nursing." The record establishes that Career Institute does educational research for itself and others, including the U.S. Armed Forces Institute, and has published a 5-volume work on modern real estate practice, an auxiliary nursing dictionary, and an exhaustive text book on practical English. The text material of its English course is used by other organizations as well as Career Institute. The record further shows that more than 10 percent of the adults taking the English course hold Ph.D. and masters degrees. Respondents cite numerous leading dictionary definitions of the term "institute," and, without reviewing all of them here, in general

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such definitions include an organization of the type conducted by respondent. Highly qualified experts in the educational field testified that Career Institute is an "institute" within the established use and meaning of that term. In addition thereto, there was received in evidence an exhibit showing the use of the word "institute" by various organizations throughout the United States. This exhibit reveals that of a total of some 629 organizations using the term "institute" as part of their trade name 243 were trade and technical schools, primarily proprietary and nondegree offering; 146 were trade associations and various promotional groups; 49 were correspondence and home study schools; 43 were private business schools, mostly proprietary; 29 were high schools; 26 were bible schools; 24 were engineering and technological schools; 20 were art schools; 12 were general institutions of higher learning; 10 were military schools; 10 were schools of music; 8 were Jewish folk schools; 4 were schools of embalming and mortuary science; 3 were driving schools; and 2 were collegiate business schools. It is apparent that less than 40 of such organizations would be "institutes" within the meaning of the term set forth in the complaint.

Typical of the hundreds of technical, trade, and vocational schools using the term "institute" in their trade name are the following: Acme Shoe Repair Institute, American Hair Design Institute, Columbia Institute for Child Care, Detroit Air Conditioning Institute, Fiance Hair Design Institute, Institute of Better Reading, Institute of Lettering and Design, Memory Training Institute, National Landscape Institute, Practical Trades Institute, Real Estate Institute, and Sales Training Institute. Typical of the hundreds of trade associations using the term "institute" as part of their name are the following: American Meat Institute, Asphalt Institute, Barley & Malt Institute, California Dried Fruit Institute, Carpet Institute, Inc., Hat Institute, Inc., National Institute of Dry Cleaning, Pretzel Bakers Institute, Sport Fishing Institute, and Wax Paper Institute. In addition to the foregoing, certain branches of the U.S. Armed Services use the term "institute" to designate certain agencies whose primary activity is correspondence study. Among these are U.S. Armed Forces Institute, Marine Corps Institute, and U.S. Air Force Extension Course Institute. The dictionary definition and general usage establish that "Career Institute" is an "institute" within the general meaning and application of the term.

More persuasive than any of the foregoing is the fact that in *National Institute of Practical Nursing, supra*, involving the same allegation concerning the use of the word "institute," the Commission

reversed the hearing examiner and dismissed the allegation, although the facts in that case justifying the use of the term are considerably less impressive than the facts herein. In that case the respondent was conducting a resident course in practical nursing and nothing else. The course, contrary to the representations made, did not qualify its graduates as licensed practical nurses. Here, as found above, Career Institute conducts a school of English and a resident school in real estate, engages in research, publishes text books, and in general more than meets the dictionary definition and general usage of the term. A preponderance of the credible evidence in the entire record convinces the undersigned, and accordingly it is found, that the use by respondents of the term "institute" in the trade name of their parent organization is not false and misleading as alleged in the complaint.

There remains for disposition only one area of alleged misrepresentation and deception. As found above, the first, fifth, and seventh, and possibly the second, representations alleged to be false include, in effect, a representation that respondents' graduates are eligible for employment in hospitals and like institutions as auxiliary nurses, including practical nurses and nursing aides. It has been found that such a representation is made. It has further been found that such graduates are eligible for employment as auxiliary nurses, including practical nurses, in all of the 43 States which permit unlicensed practical nurses. However, as found above, there are six States which have mandatory laws which require all practical nurses to be licensed and do not permit unlicensed practical nurses. It is true that in those States respondents' graduates are qualified to work as auxiliary nurses, including nursing aides, but they are not qualified for employment as practical nurses.

As previously found, respondents make clear that their course does not qualify for licensure. However, respondents also clearly represent that their graduates are eligible for employment as unlicensed practical nurses. With respect to 43 States, this is correct. With respect to the other six, it is not. Despite the otherwise overall veracity of respondents' representations, this particular one must be modified to prevent deception and misunderstanding in those six States.

Although the representation is correct in a substantial majority of the States, nevertheless counsel supporting the complaint proposed a finding that it is completely false and that no hospitals or institutions would employ such graduates (hereinabove found to the contrary), and further proposed an order prohibiting any such rep-

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resentation without qualification. This form of order is proposed in spite of the fact that in the two preceding cases, *Wayne School* and *Post Graduate, supra*, handled by counsel supporting the complaint, where the respondents did not litigate the issues and entered into consent orders to cease and desist representing, unlike this case, that their course qualified graduates for licensure as lpn's and employment as such, nevertheless, the orders therein permitted the respondents to continue to represent that their graduates would be employed in hospitals as practical nurses, provided that it was clearly revealed that such persons would not be eligible for such employment in those States having mandatory laws. Patently, where no such representation concerning licensure and employment is made, the order should not be broader and prohibit a representation in substantial areas where true and correct. For even more cogent reasons than present in *Wayne* and *Post Graduate*, the order here should not exceed the scope of misrepresentation.

C. The Effect of the Unlawful Practice

The act and practice of respondents, as hereinabove found, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to such representation and thereby induce the purchase in commerce of substantial quantities of respondents' courses of instruction. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found act and practice in the course and conduct of their business in commerce, as "commerce" is defined in the act.
2. The act and practice of respondents hereinabove found is to the prejudice and injury of the public and of respondents' competitors, and constitutes an unfair method of competition and an unfair and deceptive act and practice in commerce, within the intent and meaning of the act.
3. As a result of the above-found act and practice of respondents, substantial injury has been done to competition in commerce.
4. This proceeding is in the public interest, and an order to cease and desist the above-found act and practice should issue.
5. Respondents have not violated the act by any of the other representations alleged in the complaint.

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Decision

ORDER

It is ordered, That respondents, W. Lane Schulze and W. C. Schulze II, individually and as copartners, trading under the name of Chicago School of Nursing, Division of Career Institute, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a course of instruction in auxiliary nursing, including practical nursing and nurse's aide, or any similar or related course of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that persons completing respondents' course of instruction are eligible for employment or will be employed as practical nurses by hospitals or institutions unless it is clearly revealed that such persons will not be eligible for employment and will not be employed as practical nurses in the States of Arkansas, Idaho, Louisiana, Nevada, or New York, or in hospitals in the State of Rhode Island, or in any other State that may now have, or may hereafter enact, a law making it mandatory for practical nurses to be licensed.

DECISION OF THE COMMISSION

Respondents, W. Lane Schulze and W. C. Schulze II, and counsel in support of the complaint having respectively appealed from the hearing examiner's initial decision herein; and

The Commission having considered the entire record, including the briefs and oral arguments of counsel, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That the aforesaid appeals be, and they hereby are, both denied.

It is further ordered, That the hearing examiner's initial decision filed November 18, 1957, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, W. Lane Schulze and W. C. Schulze II, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

Commissioner Anderson not participating.

IN THE MATTER OF
MASTER FURRIERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6895. Complaint, Sept. 26, 1957—Decision, June 10, 1958

Consent order requiring furriers operating a retail store in Washington, D.C., to cease violating the Fur Products Labeling Act by representing that fictitious prices on labels affixed to fur products were the regular retail selling prices; by failing to comply with invoicing requirements; by advertising in newspapers which represented falsely that fur products were being sold "below cost" and were reduced from regular prices which were in fact fictitious, and which used comparative prices and percentage savings claims not based on usual retail prices; and by failing to keep adequate records as a basis for such pricing claims.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Ben Ivan Melnicoff, of Washington, D.C., for Master Furriers, Inc., and certain individual respondents.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY JOHN LEWIS,
HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1957, charging them with having violated the Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by counsel and filed their answers thereto. Thereafter the respondents Master Furriers, Inc., Ernest E. Marx, Erwin C. Bein, and M. J. Swartz entered into an agreement, dated March 18, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said parties. Said agreement, which has been signed by the named respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with section 3.25 of the Commission's rules of practice for adjudicative proceedings.

The signatory respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of juris-