

Complaint

98 F.T.C.

IN THE MATTER OF

SHERMAN A. HOPE, M.D., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9144. Complaint, July 30, 1980—Decision, Aug. 5, 1981*

This consent order requires, among other things, that five individual Brownfield, Tex. physicians each cease, for the ten-year duration of the order, from taking any concerted action with another person or entity which would improperly restrict, impede or otherwise interfere with a hospital's physician recruitment program or contractual arrangement with a physician.

Appearances

For the Commission: *Benjamin I. Cohen* and *Erika R. Wodinsky*.

For the respondent: *Jim Pete Hale*, Brownfield, Tex.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents Dr. Sherman A. Hope, Dr. Morris S. Knox, Dr. Carl R. Smith, Dr. Noah W. Stone, and Dr. Harlan L. Willis ("respondents") have violated and are violating Section 5 of the Federal Trade Commission Act, and that this proceeding is in the public interest, issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. During August and September 1979, respondents were the sole active members of the medical staff of the Brownfield Regional Medical Center (the "Hospital") in Brownfield, Texas and were the only physicians in full time, active practice in Brownfield.

PAR. 2. The Hospital is operated under the auspices of the Terry County Memorial Hospital District, whose Board of Directors is popularly elected pursuant to Texas law. The Hospital is the only hospital in Terry County, Texas, and serves the county's population of approximately 16,000 persons. The next nearest hospital is approximately 35 miles away.

PAR. 3. Respondents practice in the medical specialty fields of internal medicine (Dr. Smith), surgery (Dr. Willis), and family practice (Drs. Hope, Stone, and Knox). No other specialty field is represented on the current medical staff of the Hospital. In 1979, about half of the hospital admissions of residents of Terry County

were at hospitals outside Terry County; about 80 percent of the babies born in hospitals to Terry County residents in 1979 were born in hospitals outside Terry County.

PAR. 4. In February 1979 the Hospital and the respondents agreed that additional physicians were needed in the community, and the Hospital embarked on a program to bring approximately six new physicians to Brownfield.

PAR. 5. In May 1979 the Hospital succeeded in recruiting the first new physician, an obstetrician-gynecologist. The Hospital and the new physician agreed that the Hospital would guarantee him a minimum income, would allow him to use the facilities of the Hospital, and would pay his office expenses; the physician agreed to give the Hospital a percentage of his fees not to exceed the direct cost of operating his office.

PAR. 6. In late July or early August 1979 respondents entered into a conspiracy to restrain competition in the provision of health care services in Brownfield by preventing the Hospital from recruiting and entering into contracts with new physicians, regardless of their medical qualifications, where the contract contained financial or commercial terms opposed by respondents. As part of this conspiracy, respondents agreed that they would:

(A) boycott the Hospital by concertedly refusing (1) to provide emergency room services, and (2) to perform certain administrative functions, for the Hospital;

(B) boycott physicians recruited by the Hospital by concertedly refusing to deal with such physicians; and

(C) take other actions either to coerce the Hospital into abandoning its plan to recruit and to enter into contracts with new physicians or to coerce physicians not to enter into contracts with the Hospital.

PAR. 7. The activities of respondents, in furtherance of this conspiracy, form a single and unified course of conduct and consist, in part, of the following acts:

(A) the submission to the Hospital in August 1979 of a document, signed by each respondent, threatening to cease performing emergency room service at the Hospital because of the Hospital's agreement with the new physician (exhibit A attached hereto);

(B) the submission to the Hospital in August 1979 of a document, signed by each respondent, threatening to cease performing certain necessary administrative functions at the Hospital because of the

Hospital's agreement with the new physician (exhibit B attached hereto);

(C) the submission to the Hospital in August 1979 of a document, signed by each respondent, threatening to refuse to professionally support, refer patients to, or receive referrals from the new physician (exhibit C attached hereto);

(D) informing the new physician that if he were to come to Brownfield pursuant to his contract with the Hospital, he would be making a serious financial and professional mistake, he would have his position terminated if respondents succeeded in electing a new Hospital Board of Directors, and he would probably not be accepted in the local medical society; and

(E) responding to a request for information from the Texas Medical Association by stating that the area's medical needs were being met adequately although both the Hospital and the respondents were at that time seeking to attract one or more additional physicians to Brownfield because of their belief that the area's medical needs were not, in fact, being adequately met.

PAR. 8. As a direct result of the respondents' conspiratorial acts:

(A) the Hospital ceased its physician recruiting program in September 1979;

(B) the new physician informed the Hospital, in October 1979, that he would not come to Brownfield; and

(C) the Hospital's agreement with the new physician was formally terminated in February 1980.

PAR. 9. The purpose, tendency, capacity, and effects of the respondents' conspiracy are to restrain trade and hinder competition in the provision of health care services, in the following ways, among others:

(A) physicians have been excluded from providing maternity and other health care services in Terry County;

(B) residents of Terry County are forced to travel great distances, at additional expense and inconvenience, to obtain medical care;

(C) residents of Terry County are deprived of the opportunity to choose from among a larger number of physicians;

(D) physicians are prevented from practicing medicine in Terry County on terms desired by the physicians and acceptable to the Hospital; and

(E) the Hospital is prevented from recruiting physicians on terms desired by the Hospital and acceptable to the recruited physicians.

PAR. 10. The challenged acts and practices are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, since:

(A) both the respondent physicians and the Hospital:

(i) receive substantial revenue both from the federal government, in the form of Medicare and Medicaid payments, and from private insurance companies and other private entities that pay physicians and hospitals for services rendered to patients, which money flows across state lines;

(ii) utilize or prescribe substantial quantities of drugs, medicines, surgical supplies, equipment, and other products which are shipped in interstate commerce; and

(iii) treat a substantial number of patients who come into Texas from New Mexico for medical care;

(B) the Hospital recruited additional physicians by advertising in medical journals circulated throughout the United States, and the new physician resided outside Texas when he entered into the contract with the Hospital.

PAR. 11. The conspiracy and the acts and practices of respondents alleged in Paragraphs Six and Seven constitute unfair methods of competition and unfair acts and practices in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

EXHIBIT A

RESIGNATION FROM EMERGENCY ROOM COVERAGE

WHEREAS the active medical staff of the Brownfield Regional Medical Center has served in providing professional medical care in the emergency room without pay, compensation or supplement from the tax funds of Terry County Hospital, and

WHEREAS this coverage has been provided continually since the opening of the county hospital and the creation of the Terry County Hospital District, twenty-one (21) years ago, and

WHEREAS this service has been provided without any guarantee of revenue to the physician and the medical care has been provided for all emergencies that were presented to the hospital emergency room for treatment, irregardless of race, medical situation, economic status, or being a private doctor's patient, and

WHEREAS the Brownfield Regional Medical Center has chosen to operate an emergency room along with its other departments and facilities, and has the responsibility, for equipping and manning this service, and

WHEREAS the hospital board and administrator have unilaterally decided to use hospital revenue and tax money to subsidize or employ hospital based physicians, and whereas these physicians will be in the confines of the hospital facilities,

Therefore, let it be known to the administrator, hospital board, and general public that when the hospital uses tax money to employ or subsidize hospital based physicians that the active private medical staff will no longer furnish emergency room coverage and will return this responsibility to the administrator and his employed hospital based physicians.

S. A. Hope, M.D.
S. A. Hope, M.D.

W. S. Knox, M.D.
W. S. Knox, M.D.

Carl R. Smith, M.D.
Carl R. Smith, M.D.

Marlan L. Willis, M.D.
Marlan L. Willis, M.D.

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EXHIBIT B

~~RESIGNATION FROM ASSISTING WITH ADMINISTRATIVE RECORDS~~

WHEREAS the active medical staff has fully cooperated with the Brownfield Regional Medical Center in assisting the administrator in the voluminous administrative paper work requested by the various government agencies, and

WHEREAS the responsibility of the physician to his patient is to make proper medical records that are a necessary part of the patient's hospital care, and since the filling out of surveys, reports, utilization reviews, "on going studies," etc., and, only distract from patient care and is primarily for administrative or financial functions, and

WHEREAS the hospital is employing part time physicians to complete some of these functions at present, and

WHEREAS the hospital is planning to use tax money and tax built facilities to subsidize and/or employ full time hospital based physicians,

Therefore, let it be resolved and known that the private physicians of the active staff of Brownfield Regional Medical Center will no longer donate their time and services to assisting the administration in completing paper work that is not directly related to patient care.

S. A. Hope, M.D.

Carl R. Smith, M.D.

Harlan L. Willis, M.D.

Morris S. Knox, M.D.

W. J. Stone, M.D.

EXHIBIT C --

DECLARATION OF MEDICAL STAFF

In as much as the hospital administration has:

1. Refused to cooperate with the local medical community in recruiting physicians and
2. Entered into private and secret negotiations without any knowledge, consent or advise of local physicians to
3. Hire and employ a foreign born, foreign trained physician whose credentials and capabilities are completely unknown to us and
4. Who will be subsidized by tax money, located in a tax supported institution and whose employees will be paid by the hospital, then

WE, the private physicians of Brownfield:

1. Will not support him professionally.
2. Will not work with him medically in any capacity.
3. Will not refer patients to him or take referrals or consultations from him.
4. Will not sponsor him or vote for him to be accepted on the medical staff until such time as he has proven himself medically capable and of good moral and ethical character.

Since the hospital has employed a hospital based physician who will be tax subsidized, then we relinquish those services performed for the hospital without pay or any other form of remuneration. These are:

1. Emergency room coverage.
2. Administrative paper work.
3. Various committee assignments that have no bearing on patient care.

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We, as the private physicians of Brownfield, recognize that our primary responsibility is to our patients and the people of this area. We will continue to serve them to the best of our capabilities, as we are allowed to do so, under the circumstance.

We hope for a restoration of cooperation and good will between the hospital and the local medical community and will continue to work toward that end.

S. A. Hope, M.D.
S. A. Hope, M.D.

Carl R. Smith, M.D.
Carl R. Smith, M.D.

Harlan L. Willis, M.D.
Harlan L. Willis, M.D.

Morris S. Knox, M.D.
Morris S. Knox, M.D.

Noah W. Stone, M.D.
Noah W. Stone, M.D.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. The respondents are individuals and medical doctors with offices located in the City of Brownfield, State of Texas at the following addresses:

Sherman A. Hope, M.D., Brownfield Medical Clinic, 901 Tahoka Road, Brownfield, Texas.

Morris S. Knox, M.D., Knox-Stone-Hurd Clinic, 706 E. Felt Street, Brownfield, Texas.

Carl R. Smith, M.D., Brownfield Medical Clinic, 901 Tahoka Road, Brownfield, Texas.

Noah W. Stone, M.D., Knox-Stone-Hurd Clinic, 706 E. Felt Street, Brownfield, Texas.

Harlan L. Willis, M.D., Brownfield Medical Clinic, 901 Tahoka Road, Brownfield, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Dr. Sherman A. Hope, Dr. Morris S. Knox, Dr. Carl R. Smith, Dr. Noah W. Stone, and Dr. Harlan L. Willis shall each cease and desist from directly or indirectly, through any agent or otherwise, taking any concerted action with any person or entity with the purpose or effect of restricting, impeding, or in any way interfering with any hospital's recruitment of or contractual arrangement with any physician by any means, including but not limited to any threatened or actual concerted refusal to:

- (a) provide emergency room coverage;
- (b) perform administrative functions; or
- (c) professionally refer patients to, or receive referrals of patients from, any physician.

The above provisions do not prohibit respondents from:

- (a) commenting on bona fide quality of care considerations relating to any physician who is recruited or employed by, or associated with, any hospital;
- (b) recruiting, employing, or associating with any physician for the private practice of medicine; or
- (c) contacting, reporting to, or conferring with the Texas State Board of Medical Examiners, any state or federal drug enforcement agency, and/or any other governmental body concerning a violation of law by any physician.

II.

This Order will expire ten years after the date on which it is served on respondents.

III.

It is further ordered, That each respondent shall within sixty days after service upon them of this Order file with the Commission a written report setting forth the manner and form in which the respondent has complied with this Order and that additional reports shall be filed at such other times as the Commission may by written notice to each respondent require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

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IN THE MATTER OF
HOUSEHOLD FINANCE CORPORATION

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE TRUTH IN LENDING ACT

Docket 9111. Complaint, June 13, 1978—Order, Aug. 6, 1981

This order dismisses the Commission's June 13, 1978 complaint charging one of the largest small-loan companies in the United States with violating the Truth in Lending Act (TILA). The Commission held that the company's practice of requiring customers to repay loans discharged in bankruptcy before receiving a new loan constituted "refinancing" under the TILA and therefore the amount of the discharged debt need not be disclosed as part of the "finance charge."

Appearances

For the Commission: *David G. Grimes, Jr., Rena Steinzor and Lawrence DeMille-Wagman.*

For the respondent: *J. Wallace Adair, Richard A. Kleine and R. Bruce Beckner, Howrey & Simon, Washington, D.C., and Richard P. McManus and Thomas M. Ryan, in-house counsel.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and its implementing Regulation Z, 12 C.F.R. 226, duly promulgated by the Federal Reserve Board, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Household Finance Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Regulation, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Household Finance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Prudential Plaza, Chicago, Illinois.

PAR. 2. Respondent Household Finance Corporation is now and for some time past has been engaged in the extension of consumer loans to members of the public.

PAR. 3. In the ordinary course and conduct of its business as