

IN THE MATTER OF

MICHIGAN ASSOCIATION OF OSTEOPATHIC PHYSICIANS &
SURGEONS, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3112. Complaint, July 26, 1983—Decision, July 26, 1983

This consent order requires a Michigan professional association, among other things, to cease inhibiting competition by restricting or advising member physicians against the truthful advertising of fees and services, and by declaring such activities unethical. The association must timely repeal any provision of its Code of Ethics and policy statements which are inconsistent with the prohibitions contained in the order, and publish revised versions of these documents. However, the order does not prohibit the association from enforcing reasonable guidelines governing advertising or solicitation which it reasonably believes to be false or deceptive. The order further requires the association to mail to all present and future members a letter notifying them of the consent agreement and its provisions, and send to each of its component and affiliate societies a copy of the order.

Appearances

For the Commission: *Cynthia E. Smith* and *Eric L. Prahl*.

For the respondent: *Robert L. Weyhing, III, Clark, Klein & Beaumont*, Detroit, Mich.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, *as amended* (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc. ("MAOP&S") is a corporation formed pursuant to the laws of the State of Michigan, with its mailing address at 33100 Freedom Road, Farmington, Michigan.

PAR. 2. Respondent is a professional association formed to represent the interests of osteopathic physicians and surgeons who practice in Michigan. Respondent has approximately two thousand, one hundred

forty-seven (2,147) members, constituting a substantial majority of osteopathic physicians and surgeons in Michigan.

PAR. 3. Respondent is a divisional society of the American Osteopathic Association, Inc.

PAR. 4. Members of respondent are engaged in the business of providing medical health care services for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been, and are now, in competition among themselves and with other physicians and surgeons.

PAR. 5. Respondent is organized for the purpose, among others, of guarding and fostering the interests of its members. Respondent engages in activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 6. In the conduct of their business, members of respondent receive and treat patients from other states and counties, receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines, and prescribe medicines which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect interstate activities of respondent's members, third parties who pay for medical services, other third parties, and some patients of respondent's members, and are in or affect commerce, within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 7. Respondent has acted as a combination of at least some of its members, or has conspired with at least some of its members, to foreclose, frustrate, and eliminate competition among osteopathic physicians and surgeons in the State of Michigan by:

A. prohibiting its members from truthfully advertising their services to the public, from distributing truthful information about their fees and services, and from otherwise soliciting patients' business; and

B. coercing individual members into abandoning their efforts to truthfully advertise their services, to distribute truthful information about their fees and services, and to otherwise solicit patients' business.

PAR. 8. Respondent has engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

A. adopting and implementing written and unwritten codes of ethics that prohibit efforts by its members to truthfully advertise their services in the Yellow Pages or in other media, or to otherwise distrib-

ute truthful information to the public about their fees and services; by virtue of such ethical restraints, members are prohibited from advertising, among other things, their fees, whether they accept Medicare assignment of benefits, whether they accept credit cards, their professional training and experience, their business hours and office locations, and their knowledge of languages other than English;

B. publishing statements made by some of MAOP&S' officials advising members that advertising is unethical;

C. sending letters to individual members who truthfully advertise their fees and/or services, or who otherwise solicited patients' business, advising members that advertising is unethical and/or in "poor taste," thereby tending to discourage such advertising and/or solicitation;

D. summoning individual members to meetings of respondent's Bureau of Ethics, and threatening at those meetings to take disciplinary or other action to compel members to cease truthfully advertising their fees or services or otherwise soliciting patients' business; and

E. attempting to prohibit sellers of advertising space from accepting truthful advertisements from MAOP&S members.

PAR. 9. Through the combination or conspiracy and the acts or practices described above, members of respondent have agreed not to, and do not, advertise their services or otherwise solicit patients' business, and certain individual members of respondent have been coerced into abandoning advertising their services or otherwise soliciting patients' business. Such advertising and solicitation enables physicians to compete on the basis of price, quality, and convenience, and enables individual patients to choose among osteopathic physicians and surgeons on the basis of price, quality, or convenience. Consequently:

A. competition among osteopathic physicians and surgeons for patients has been foreclosed, frustrated, and eliminated; and

B. consumers have been deprived of the benefits of competition among osteopathic physicians and surgeons. In particular, patients have been deprived of truthful information about osteopathic physicians' and surgeons' fees and services, including, among other things, whether they accept Medicare assignment of benefits, whether they accept credit cards, their professional training or experience, their business hours and office locations, and their knowledge of languages other than English.

PAR. 10. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices which violate Section 5 of the Federal Trade Commission Act. Such combination or conspiracy is continuing,

and will continue, absent the entry against respondent of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its 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 aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 33100 Freedom Road, in the City of Farmington, State of Michigan.

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

ORDER

I

For purposes of this Order, the following definitions shall apply:

A. *MAOP&S* means respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc., its component and affiliate societies, its delegates, trustees, councils, committees, Bureau of Ethics, officers, representatives, agents, employees, successors, and assigns.

B. *Physician* means any individual duly licensed to engage in the practice of osteopathic medicine and/or surgery.

II

It is ordered, That MAOP&S shall cease and desist from, directly or indirectly or through any corporate or other device:

A. restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms, or conditions of sale of physicians' services, or of information about physicians' services, facilities, or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; or

C. inducing, urging, encouraging, or assisting any physician or any medical association, group of physicians, hospital, insurance carrier, telephone company, or any other non-governmental organization, to take any of the actions prohibited by this part of the Order.

Nothing contained in this part of the Order shall prohibit MAOP&S from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that MAOP&S reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

III

It is further ordered, That MAOP&S shall:

A. for a period of three (3) years after this Order becomes final, provide each new member of MAOP&S with a copy of the letter in the form shown in Appendix A at the time the member is accepted into membership;

B. within sixty (60) days after this Order becomes final, send by first-class mail to each of its present members a copy of the letter in the form shown in Appendix B;

C. within sixty (60) days after this Order becomes final, send by first-class mail to the Michigan Bell Telephone Company supervisor in charge of professional advertising a copy of the letter in the form shown in Appendix C;

D. within sixty (60) days after this Order becomes final, publish a copy of the Order, with such prominence as feature articles are regularly published, in the *Michigan Osteopathic Journal* and the *MAOP&S Newsletter*, or in any successor publications;

E. within sixty (60) days after this Order becomes final, send by first-class mail to each of its component and affiliate societies, a copy of this Order;

F. within ninety (90) days after this Order becomes final, remove from its *Code of Ethics*, its *Interpretation of the Code of Ethics*, and any other existing policy statements or guidelines of MAOP&S, any provision, interpretation, or policy statement which is inconsistent with this Order; and, within one hundred twenty (120) days after this Order becomes final, publish in the *Michigan Osteopathic Journal* and the *MAOP&S Newsletter* or in any successor publications, the revised versions of such documents, statements, or guidelines;

G. within one hundred twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which MAOP&S has complied with this Order;

H. for a period of five (5) years after this Order becomes final, maintain records adequate to describe in detail any action taken in connection with the activities covered by Part II and Part III.A of this Order, including, but not limited to, any advice or interpretations rendered with respect to advertising or solicitation involving any of its members;

I. one year after this Order becomes final, and annually thereafter for a period of two (2) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part II and Part III.A of this Order, including, but not limited to, any advice or interpretations rendered with respect to advertising or solicitation involving any of MAOP&S' members; and

J. include in all compliance reports, as required by Part III.G and I, such information and documentation as may be required to show compliance with this Order.

IV

It is further ordered, That MAOP&S shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

APPENDIX A

Dear Doctor:

This letter is to inform you of recent developments concerning the issue of physician advertising. In March, 1982, the Supreme Court upheld the Federal Trade Commission's Order prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians & Surgeons, Inc. entered into a Consent Agreement with the Federal Trade Commission on November 1, 1982. This Agreement was entered into as a result of an investigation initiated by the FTC concerning MAOP&S' alleged restraint of competition by means of its ethical restrictions on physician advertising and solicitation. The Agreement is for settlement purposes only and does not constitute an admission by MAOP&S that the law has been violated.

In accordance with this Consent Agreement, MAOP&S revised its Code of Ethics in October, 1982. Under the revised code, MAOP&S does not restrict its members from advertising or soliciting patients. MAOP&S does not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

As a new member, you have received a copy of the revised Code of Ethics.

Thank you for your cooperation.

Sincerely,

President

APPENDIX B

Dear Doctor:

This letter is to inform you of the most recent developments concerning the issue of physician advertising. The Supreme Court recently affirmed the Federal Trade Commission's Order, as modified by the U.S. Court of Appeals for the Second Circuit, prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians & Surgeons, Inc. is in the process of revising its Code of Ethics.

Under the new code, MAOP&S will not restrict its members from advertising or soliciting patients. MAOP&S will not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services or information about physicians'

services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

The revisions to the Code of Ethics will appear in the *Michigan Osteopathic Journal* and in the MAOP&S *Newsletter*.

Thank you for your cooperation.

Sincerely,

President

APPENDIX C

Dear _____:

This letter is to inform you of the most recent developments concerning the issue of physician advertising. The Supreme Court recently affirmed the Federal Trade Commission's Order, as modified by the U.S. Court of Appeals for the Second Circuit, prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians and Surgeons, Inc. is in the process of revising its Code of Ethics.

Under the new Code, MAOP&S will not restrict its members from advertising or soliciting patients. MAOP&S will not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services or information about physicians' services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

Accordingly, MAOP&S will not seek to restrict truthful advertising in the telephone book. In particular, MAOP&S will not seek to restrict such things as the size, color, or format of such advertising.

Thank you for your cooperation.

Sincerely,

Chairman
Department of Judiciary and Ethics

IN THE MATTER OF

SANSUI ELECTRONICS CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2754. Consent Order, Oct. 24, 1975—Modifying Order, Aug. 1, 1983

This order reopens the proceeding and modifies the Commission's order issued on October 24, 1975 (86 F.T.C. 995) by modifying Paragraph I (11), so as to allow the company to impose nondiscriminatory standards on the kind of retailers its distributors and dealers can serve.

ORDER MODIFYING CEASE AND DESIST ORDER
ISSUED ON OCTOBER 24, 1975

By a petition filed on March 23, 1983, Sansui Electronics Corporation ("Sansui") requests that the Commission reopen the proceeding in Docket No. C-2754 and modify Paragraph I (11) of the order issued by the Commission on October 24, 1975 so that the order would no longer prohibit Sansui from restricting transshipment by sellers of its products. Pursuant to Section 2.51 of the Commission's Rules of Practice, Sansui's request was placed on the public record for comments. One comment was received.

On March 8, 1983, the Commission issued a modified order in *U.S. Pioneer Electronics Corporation*, Docket No. C-2755 [101 F.T.C. 372], allowing Pioneer (one of Sansui's competitors) to prevent transshipment of its products to dealers who do not meet reasonable, non-discriminatory standards of promotion, service and display. The *Pioneer* and *Sansui* orders contain most favored respondent clauses pursuant to which the Commission may modify the respective orders to bring them into conformity with less stringent restrictions imposed on the respondents' competitors.

In view of the Commission's action in *Pioneer* and upon consideration of Sansui's request and supporting materials, the Commission now finds that Sansui would likely suffer significant competitive injury unless the order is modified to conform to the *Pioneer* order in accordance with Sansui's request. Such modification would be in the public interest.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that Paragraph I (11) of the order in Docket No. C-2754 be modified to read as follows: