

IN THE MATTER OF

THE AMERICAN COLLEGE OF OBSTETRICIANS AND
GYNECOLOGISTSMODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-2855. Consent Order, Dec. 14, 1976—Modifying Order, Aug. 28, 1984

This Order reopens the proceeding and modifies the Consent Order entered against The American College of Obstetricians and Gynecologists ("ACOG"), 88 F.T.C. 955. Pursuant to ACOG's request, the Order has been modified by deleting Paragraph II(B), which barred the association from advising in favor of or against any relative value scale developed by third parties; and by inserting a provision identical to that contained in the Commission Order entered against *Michigan State Medical Society*, 101 F.T.C. 191. This provision allows ACOG more freedom to discuss any issue, including reimbursement, with third-party payers and governmental entities.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed May 2, 1984, the American College of Obstetricians and Gynecologists ("ACOG") asked the Commission to reopen and modify the Commission order in Docket No. C-2855 entered by consent against ACOG on December 14, 1976 ("Order") [88 F.T.C. 955]. ACOG requested that the Commission modify the Order by a) deleting Paragraph II(B) of the Order, which prohibits ACOG from advising in favor of or against any relative value scale developed by third parties (except that ACOG is permitted to provide historical data), and b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow ACOG more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. ACOG's petition was placed on the public record and no comments were received.

Upon consideration of ACOG's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(B) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. ACOG has demonstrated that the Order's restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities has caused injury to ACOG and the public that outweighs any benefit that may be derived from the restriction. Modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit ACOG from developing or circulat-

ing its own relative value guide for use by its members. In addition, although the Order no longer will prohibit ACOG from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were ACOG to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the Order in Docket No. C-2855 be modified 1) to delete Paragraph II(B) and to redesignate Paragraphs II(C) and II(D) of the Order Paragraphs II(B) and II(C) respectively; 2) to renumber Paragraphs III, IV and V of the Order Paragraphs IV, V and VI respectively; and 3) to insert the following:

III.

It is further ordered, That this order shall not be construed to prevent ACOG from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

IN THE MATTER OF

SMITTY'S SUPER MARKETS, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9172. Complaint, Dec. 16, 1983—Decision, Sept. 7, 1984*

This consent order requires a Springfield, Missouri operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of five years, the company is prohibited from requiring price checkers to purchase items to be priced as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. The company is also required to offer to reimburse TeleCable up to \$1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, respondent is further required to post signs and place newspaper ads notifying the public that such a program is being broadcast.

Appearances

For the Commission: *Patricia Bremer.*

For the respondent: *Donald W. Jones, Springfield, Mo.*

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 Smitty's Super Markets, Inc., Roswil, Inc., and David Porter (hereinafter sometimes referred to collectively as "respondents") have violated Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint charging as follows:

1. Smitty's Super Markets, Inc., is a Missouri corporation with its principal offices at 218 South Glenstone, Springfield, Missouri.
2. Roswil, Inc., is a Missouri corporation trading and doing business as Ramey Super Markets. Its registered agent is Flavius Freeman, 1-130 Corporate Square, Springfield, Missouri.
3. David Porter is an individual trading and doing business as Porter's So-Lo Markets. Porter's business address is 1475 North National, Springfield, Missouri.