

Modifying Order

105 F.T.C.

IN THE MATTER OF

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2856. Consent Order, Dec. 14, 1976—Modifying Order, March 29, 1985*

In response to a petition filed by the American Academy of Orthopaedic Surgeons ("AAOS"), this Order reopens the matter of Docket C-2856, and modifies the consent order entered against AAOS, 88 F.T.C. 968, by deleting Paragraph II(B) of the Order which bars the organization from advising in favor of or against any relative value scale developed by third parties, and inserting a provision identical to one contained in the FTC's order in *Michigan State Medical Society (Michigan State)*, Docket No. 9129, 101 F.T.C. 191, that permits AAOS more freedom to discuss reimbursement issues with third-party payers and governmental entities. The Commission noted that it had recently modified a similar order entered against the American College of Obstetricians and Gynecologists ("ACOG"), Docket No. C-2855, [104 F.T.C. 524 (1984)] after finding that the benefits derived from its restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities were outweighed by the resulting injury to ACOG and the public, and that finding was applicable to AAOS. Accordingly, the Commission has modified the AAOS order in the same manner as it modified the ACOG order, and that modification is also consistent with the Commission's decision in *Michigan State*.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed November 19, 1984, the American Academy of Orthopaedic Surgeons ("AAOS") asked the Commission to reopen and modify the Commission order in Docket No. C-2856 entered by consent against AAOS on December 14, 1976 ("Order") [88 F.T.C. 968]. AAOS requested that the Commission modify the Order by a) deleting Paragraph II(B) of the Order, which prohibits AAOS from advising in favor of or against any relative value scale developed by third parties (except that AAOS 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 AAOS more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. AAOS's petition was placed on the public record and no comments were received.

Upon consideration of AAOS'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*. The Commission's

order against the American College of Obstetricians and Gynecologists ("ACOG") in Docket No. C-2855 is similar to the AAOS order, and the Commission recently reopened and modified the ACOG order, finding that its restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities had caused injury to ACOG and the public that outweighed any benefit that might be derived from the restriction. [104 F.T.C. 524 (1984)] AAOS's petition is based on ACOG's petition and the Commission has determined that its finding in ACOG is applicable to AAOS. Accordingly, the Commission has modified the AAOS order in the same manner as it modified the ACOG order. The modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit AAOS from developing and circulating its own relative value guide for use by its members. In addition, although the Order no longer will prohibit AAOS from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were AAOS 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-2856 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 AAOS 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.

Complaint

105 F.T.C.

IN THE MATTER OF

WARD CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9160. Complaint, March 9, 1982—Decision, April 5, 1985*

This Consent Order, among other things, requires five Rockville, Maryland builders and sellers of residential housing, together with a corporation officer, to cease failing to fully honor valid warranty claims within a reasonable period of time; representing that materials are defect-free, unless defects due to faulty material, workmanship or design are corrected or remedied within a reasonable period of time; failing to provide purchasers with building lots substantially conforming to the physical characteristics represented by the sellers; and failing to disclose, prior to the signing of a sales contract, all disclaimers or limitations of the firms' responsibilities with regard to the physical condition of the lot. The text of all written warranties must be clearly and conspicuously displayed in sales offices and model homes, and a copy of such warranties must be provided to prospective buyers if requested. In addition, the firms are required to provide future purchasers with an opportunity to arbitrate warranty disputes; provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order; and, subject to conditions set forth in the order, provide repairs and/or payments to qualified homeowners who had purchased their homes between March 10, 1978 and a date one year prior to the effective date of the order, and who still own these homes.

Appearances

For the Commission: *Miriam Daniels, Louise R. Jung, Karen Egbert, Anne Maher and Richard C. Donahue.*

For the respondents: *Mitchell S. Cutler and Michael E. Kris, Finley, Kumble, Wagner, Heine, Undedberg & Casey, Washington, D.C. and Robert A. Skitol, Steven K. Yablonski and Jane Seigler, Wald, Harkrader & Ross, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents Ward Corporation, R.E. Ward, Inc., Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., corporations, and Richard E. Ward, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said