

IN THE MATTER OF
CALIFORNIA MEDICAL ASSOCIATION

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

Docket C-2967. Consent Order, April 17, 1979—Modifying Order, April 19, 1985

In response to a petition filed by the California Medical Association ("CMA"), this Order reopens the proceeding and modifies the consent order entered in Docket C-2967, 93 F.T.C. 519, by deleting Paragraph II(C), which prohibits the association from advising in favor of or against any relative value scale developed by third parties, and inserting a provision that permits CMA more freedom to discuss issues relating to reimbursement with governmental entities and third-party payers. Such modification is consistent with the Commission's decision in Docket 9219, *Michigan State Medical Society*, 101 F.T.C. 191, and its modified order in Docket C-2855, *American College of Obstetricians and Gynecologists*, 104 F.T.C. 524 (1985). The Commission, however, denied the other modifications requested by CMA, holding that CMA had failed to show that changed circumstances or the public interest warranted further modification of the order.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed October 1, 1984, the California Medical Association ("CMA") asked the Commission to reopen and modify the Commission order in Docket No. C-2967 ("Order") entered with CMA's consent on April 17, 1979 [93 F.T.C. 519]. CMA requested that the Commission modify the Order by a) deleting Paragraph II(C) of the Order, which prohibits CMA from advising in favor of or against any relative value scale developed by third parties (except that CMA 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 CMA more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. CMA also requested that the Commission modify the order so that it would no longer prohibit CMA from developing and disseminating a relative value scale. CMA's petition was placed on the public record for comment, and none of the comments received specifically related to the modification of Paragraph II(C).

Upon consideration of CMA's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(C) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. Modification is consistent with both the Commission's decision in *Michigan State*

and its modification of the Order in *American College of Obstetricians and Gynecologists*, Docket No. C-2855, August 28, 1984 [104 F.T.C. 524].

The Commission has denied the other modifications requested by CMA because CMA failed to show that changed circumstances or the public interest requires such modifications of the order. Therefore, the Order continues to prohibit CMA from developing or circulating its own relative value guide for use by its members.

Relative value studies may have anticompetitive consequences in several ways. First, they establish price relationships that may become stable without regard to quality or efficiency differences. Second, they may result in new and separate billing categories that are fragmented from others, thereby resulting in higher prices simply because charges are made for more numerous services. Third, if medical associations were permitted to publish RVS's it could lead to concerted or interdependent adherence to an RVS by physicians. Fourth, RVS's may facilitate an actual agreement by physicians to fix prices by providing a "starting point" from which collusion may occur. Given these possibilities of competitive harm and the absence of a convincing showing of the need for CMA to develop an RVS, we believe the public interest lies in the continuation of the prohibition against CMA.

In addition, although the Order no longer will prohibit CMA from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were CMA 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-2967 be modified 1) to delete Paragraph II(C) and to redesignate Paragraphs II(D) and II(E) of the Order as Paragraphs II(C) and II(D) respectively; 2) to renumber Paragraphs III, IV and V of the Order as 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 CMA 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 adminis-

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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

DESCENT CONTROL, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF SECTION 5
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3152. Complaint, April 29, 1985—Decision, April 29, 1985

This consent order requires a Fort Smith, Ark. marketer and distributor of the "Sky Genie" and other descent systems that are used for descent, rescue, or escape from high places, among other things, to cease misrepresenting that any descent system provides an automatically-controlled descent or contains long-lasting line. The order requires the company to have a reasonable basis consisting of specified data before making claims concerning the safety and performance characteristics of descent systems; or representations that the products meet or exceed any standard or are used as sold by any government agency or non-government organization. The firm is also required to disclose in catalogs, technical bulletins and operating instructions that the line should be replaced after two uses for rapid descent at speeds exceeding 15 feet per second; and that the line must be replaced immediately if exposed to certain chemicals or used to arrest a free fall of two feet or more. Technical bulletins and operating instructions must warn users that a line that has been used as a utility line should not be used as a safety line; that the safety and speed of descent is dependent upon manual control by the user; and that descent systems should not be used by individuals who are unfamiliar with their use. Additionally, the firm is required to affix a warning label to all descent systems; mail specified safety information to past purchasers; and place advertisements containing the safety information in specified trade publications.

Appearances

For the Commission: *Jeffrey M. Karp.*

For the respondent: *Joseph Weiss, Weiss and Golden, Philadelphia, Pa.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Descent Control, Inc., hereinafter referred to as respondent, has violated the provisions 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 its complaint, stating its charges as follows:

PARAGRAPH 1 Respondent Descent Control, Inc., is a corporation