

Complaint

106 F.T.C.

IN THE MATTER OF
MICHIGAN OPTOMETRIC ASSOCIATION

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

Docket C-3170. Complaint, Oct. 10, 1985—Decision, Oct. 10, 1985

This consent order requires the Michigan Optometric Association, among other things, to cease prohibiting, restricting or restraining any optometrist from: (1) entering into or affiliating with a corporate practice; (2) practicing in any location; or (3) disseminating truthful, non-deceptive information. Additionally, the Association is required to repeal those Bylaws and Standards of Conduct that conflict with the order. Further, the Association is required to send notice of the order to: (1) all optometrists who resigned or were terminated because they engaged in a corporate practice or practiced in a retail location; (2) all members of the Association; (3) all other optometrists currently licensed in the State of Michigan; and (4) everyone to whom the Association sends an application for membership for the next five years.

Appearances

For the Commission: *Robert P. Weaver.*

For the respondent: *William R. Ralls, Lansing, 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 Michigan Optometric Association, a corporation, 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 Optometric Association is a corporation formed pursuant to the laws of the State of Michigan, with its mailing address at 530 West Ionia Street, Suite A, Lansing, Michigan.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of optometrists who practice in Michigan as well as the profession of optometry in Michigan. Respondent has approximately six hundred thirty (630) members, constituting approximately two-thirds of the practicing optometrists in Michigan. A significant portion of respondent's activities furthers 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. 3. Respondent's members are engaged in the business of providing optometric care or services for a fee. Some are also engaged in the sale of optical goods and devices. Except to the extent that competition has been restrained as herein alleged, respondent's members have been and are now in competition among themselves.

PAR. 4. In the conduct of their business, respondent's members receive substantial sums of money, which monies flow across state lines, from the federal government and from private insurers for rendering optometric services; they prescribe and sell optical goods and devices that are shipped in interstate commerce; they receive and treat patients from other states; and they use supplies and equipment that are shipped across state lines. The acts or practices described below are in interstate commerce; or affect the interstate activities of respondent's members, third parties who pay for optometric 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. 5. The practice of optometry is defined by Michigan law to include: the examination of the human eye to detect abnormal conditions that may be corrected by lenses or other mechanical devices; the determination of visual ability or muscular equilibrium of the human eye; the adjustment of lenses used to correct an abnormal condition of the human eye; the examination and fitting of the human eye for contact lenses; and the use of certain pharmaceutical agents in the examination of the human eye. Michigan law also provides that a layperson may, pursuant to a written prescription of a licensed optometrist or physician, sell eyeglasses as an article of merchandise.

PAR. 6. In Michigan, most optometric services have traditionally been provided by optometrists practicing as sole proprietorships, as partners in partnerships, as shareholders of professional corporations, or as employees of proprietorships, partnerships, professional corporations, hospital clinics, or health maintenance organizations.

PAR. 7. For purposes of this complaint, *corporate practice* shall mean practice by an optometrist as an owner of, an employee of, or an affiliate of a business corporation that is not a hospital clinic, health maintenance organization, or professional corporation. Some optometric services in Michigan are provided by optometrists engaging in corporate practices.

PAR. 8. For various reasons, including their scale of operation, corporate practices are often able to deliver optometric services and to provide quality optical goods and devices at prices lower than those

generally charged for comparable services or items by traditional optometrists or independent opticians.

PAR. 9. For purposes of this complaint, *retail location* shall mean a location of a practice in a department, division, or section of a retail, department, or discount store. Some optometric services in Michigan are provided by optometrists practicing in retail locations. Optometrists can increase consumer access to optometric care and can achieve operating efficiencies through the use of retail locations.

PAR. 10. In selecting an optometrist and/or provider of optical goods, consumers consider factors such as quality of service, price and other terms of sale, reputation, experience, availability of different types or styles of optical goods, and location and other convenience factors. Advertising in a variety of media, including billboards, and at store locations, enables optometrists to inform consumers about these factors. Such truthful, non-deceptive advertising benefits consumers by increasing the information available to them and promoting competition among optometrists.

PAR. 11. Respondent has restrained competition in the delivery of optometric services and the sale of optical goods and devices in Michigan by acting as a combination of at least some of its members, or by combining and conspiring with at least some of its members, to restrict the use of corporate practices and retail locations, and to restrict dissemination by optometrists of truthful, non-deceptive information to consumers. In particular, respondent has combined or conspired with at least some of its members to:

(A) Prohibit or restrict optometrists from providing or offering to provide optometric services through a corporate practice, or from selling or offering to sell optical goods and devices to the public through a corporate practice;

(B) Prohibit or restrict optometrists from providing or offering to provide optometric services in a retail location, or from selling or offering to sell optical goods and devices to the public in a retail location; and

(C) Prohibit or restrict optometrists from disseminating information to consumers through truthful, non-deceptive advertising.

PAR. 12. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

(A) Requesting the resignation and terminating the membership of optometrists who provide services or sell optical goods and devices through a corporate practice;

those optometrists who provide services or sell optical goods and devices other than through a corporate practice;

(C) Requesting the resignation and terminating the membership of optometrists who provide services or sell optical goods and devices in a retail location;

(D) Adopting and maintaining a bylaw restricting membership to those optometrists who provide services or sell optical goods and devices other than in a retail location; and

(E) Adopting and maintaining standards of conduct that prohibit optometrists from:

(1) displaying their names in the lobby or public hall of a building in any manner that stands out from a listing of other occupants of the building;

(2) using professional cards, billboards, letterhead, or stationery containing any information other than certain limited items;

(3) using large signs or any representations of eyes, eyeglasses, or the human head; and

(4) using lettering that is larger than a specified size on windows or doors.

PAR. 13. The purposes or effects of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Eleven and Twelve have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

(A) Competition in the delivery of optometric services and the sale of optical goods and devices on the basis of price, service, and quality has been frustrated and restrained;

(B) Consumers have been deprived of the benefits of a variety of truthful, non-deceptive information about optometric services and optical goods and devices; and

(C) Consumers have been deprived of the potential cost savings, convenience, and efficiency benefits of corporate practices and retail locations in their purchases of optometric services and optical goods and devices.

PAR. 14. The combination or conspiracy and acts or practices described above constitute unfair methods of competition or unfair or deceptive acts or practices that violate Section 5 of the Federal Trade Commission Act. The combination or conspiracy, the acts or practices, and the effects thereof are continuing and will continue unless the Commission enters appropriate relief against respondent.

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 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 Optometric Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its mailing address at 530 West Ionia Street, Suite A, Lansing, 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) *Respondent* means the Michigan Optometric Association, its directors, trustees, councils, committees, officers, representatives,

(B) *Optometrist* means any individual duly licensed to engage in the practice of optometry in the State of Michigan.

(C) *Corporate practice* means practice by an optometrist as an owner of, an employee of, or an affiliate of a business corporation that is not a hospital clinic, health maintenance organization, or professional corporation.

(D) *Retail location* means the location of a practice in a department, division, or section of a retail, department, or discount store.

II

It is ordered, That respondent, directly, indirectly, or through any corporate or other device, in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(A) Prohibiting, restricting, or restraining any optometrist from entering into or affiliating with a corporate practice, through any means, including, but not limited to:

(1) Declaring it to be an unethical or otherwise objectionable practice in violation of the respondent's constitution, bylaws, standards of conduct, code of ethics, or policies, for any optometrist to enter into or affiliate with a corporate practice;

(2) Expelling or suspending, or threatening to expel or suspend, any optometrist from membership, or refusing to grant membership to any optometrist, or taking any other disciplinary action against any optometrist, for entering into or affiliating with a corporate practice; and

(3) Adopting or maintaining any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from entering into or affiliating with a corporate practice;

(B) Prohibiting, restricting, or restraining any optometrist from practicing in any location, through any means, including, but not limited to:

(1) Declaring it to be an unethical or otherwise objectionable practice in violation of the Respondent's constitution, bylaws, standards of conduct, code of ethics, or policies, for any optometrist to practice in a retail location;

(2) Expelling or suspending, or threatening to expel or suspend, any optometrist from membership, or refusing to grant membership to any optometrist, or taking any other disciplinary action against any optometrist, for practicing in a retail location; and

(3) Adopting or maintaining any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from practicing in a retail location; and

(C) Restricting, regulating, prohibiting, impeding, declaring unethical, interfering with, or advising against the advertising, publication, or dissemination of information about optometric services or optical goods and devices that are offered for sale or made available by an optometrist or by any organization with which an optometrist is affiliated, through any means, including, but not limited to, adopting, maintaining, or enforcing any constitution, bylaw, standard of conduct, code of ethics, or policy that prohibits any optometrist from:

(1) Displaying an optometrist's name in the lobby or public hall of a building in any manner that stands out from a listing of other occupants of the building;

(2) Using professional cards, billboards, letterhead, or stationery containing any information other than certain limited items;

(3) Using large signs, or depictions in advertising that contain representations of eyes, eyeglasses, or the human head; and

(4) Using lettering that is larger than a specified size on windows or doors, or displaying ophthalmic materials and certificates visible from other than just within the ophthalmic office.

Provided, That nothing contained in this part shall prohibit respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III

It is further ordered, That respondent shall:

(A) No later than ninety (90) days after the date this order becomes final, remove from its constitution, bylaws, standards of conduct, codes of ethics, and any other policy statements of respondent, any provision, rule, standard, interpretation, or policy statement that is inconsistent with Part II of this order, by amendment, revision, or in such other manner as to eliminate the inconsistency, including, but not limited to, removal of respondent's Bylaws, Article I, Sections 1(A)(b) and (c), and respondent's Standards of Conduct, Article III, Sections (B)(c), (e), (f), and (g); and

(B) Within one hundred twenty (120) days after the date this order becomes final, publish in the *Michigan Optometrist* or, if that publica-

date this order becomes final, in any successor publication, notice of the removal or amendment of any such provision, rule, standard, interpretation, or policy statement as described above.

IV

It is further ordered, That respondent shall:

(A) Within sixty (60) days after the date this order becomes final, send by first-class mail the letter attached hereto as Attachment A, an application for membership, and a copy of this order and the attached complaint to each optometrist whose membership was terminated or who resigned, and for which the basis of such termination or resignation was his or her corporate practice status or practice in a retail location [e.g., a violation of respondent's Bylaws, Article I, Section 1(A)(b) or (c)]; offer to reinstate any such optometrist's membership in respondent; and if any optometrist so desires, reinstate such membership within thirty (30) days after the application is returned, *provided*, the optometrist meets respondent's current requirements for membership as they are generally applied to all existing members and, *provided*, these requirements are fair and reasonable;

(B) Within sixty (60) days after the date this order becomes final, send by first-class mail the letter attached hereto as Attachment B, an application for membership, and a copy of this order and the attached complaint to every optometrist who is licensed to practice in the State of Michigan, but who has not been notified pursuant to Part IV(A) of this order and is not a member of respondent;

(C) Within sixty (60) days after the date this order becomes final, and ten (10) days prior to the publication of this order and the attached complaint pursuant to Part IV(D) of this order:

(1) send by third-class mail the letter attached hereto as Attachment C to every optometrist who is a member of respondent, or

(2) at the respondent's option, include the letter attached hereto as Attachment C as a separate two (2) page insert in the front of any third-class mailing sent in the respondent's normal course of business to every optometrist who is a member of respondent, *provided, however*, the total mailing to each optometrist does not exceed ten (10) pages;

(D) Within sixty (60) days after the date this order becomes final, publish a copy of this order and the attached complaint in the *Michigan Optometrist* or, if that publication is no longer in existence sixty (60) days after the date this order becomes final, in any successor publication; and

(E) For a period of five (5) years after the date this order becomes final, include the notice attached hereto as Attachment D in or with

every application for membership sent, disseminated, or distributed by respondent to any person. The notice shall be printed as a separate paragraph in type at least as large as the type face of the major portion of the text of the application, and in such manner that it is clear and prominent.

V

It is further ordered, That respondent shall:

(A) Within one hundred twenty (120) days after the date this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order, including, but not limited to, a copy of each constitution, bylaw, standard of conduct, code of ethics, or policy statement that was revised or amended to assure compliance with this order;

(B) Annually, for a period of two (2) years after the date this order becomes final, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with any activity covered by Parts II, III, and IV of this order, including, but not limited to, the rendering of any advice or interpretation with respect to any corporate practice, retail location, or advertising involving any optometrist; and

(C) For a period of five (5) years after the date this order becomes final, maintain, and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Parts II, III, and IV of this order, including, but not limited to: the rendering of any advice or interpretation with respect to any corporate practice, retail location, or advertising involving any optometrist; rulemaking and enforcement proceedings; and written communications, and any summaries of oral communications, to or from the respondent.

VI

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

ATTACHMENT A

Dear Dr. _____:

This letter is to inform you of a Consent Order (copy enclosed) that we have signed with the Federal Trade Commission. Our agreement to this Order is for settlement purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, non-deceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A)(b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or as a partner in a partnership; or as an employee of a proprietorship, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Sections (B)(c), (e), (f), and (g) of the Standards of Conduct, which prohibited certain methods of providing information about optometric services.

Therefore, even though you are affiliated with a corporate practice or practice in a retail location, you now qualify for membership in the Michigan Optometric Association, and you have a right to reinstatement of your membership provided that you still meet current membership requirements of the Association. If you wish to reinstate your membership, please do the following:

1. Fill out the enclosed application form. Please note, however, that you do not have to obtain the signatures of two current members of the Association for reinstatement.
2. If you have unpaid dues from your former period of membership, a statement is enclosed with this letter. If you have questions regarding the amount due, please contact us. Payment for any outstanding dues should be enclosed with the application.
3. You must also enclose payment for current applicable dues.
4. Return the application and payment to the Association.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)
Michigan Optometric Association

ATTACHMENT B

Dear Dr. _____:

This letter is to inform you of a Consent Order (copy enclosed) that we have signed with the Federal Trade Commission. Our agreement to this Order is for settlement

purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, non-deceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A)(b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or as a partner in a partnership; or as an employee of a proprietorship, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Sections (B)(c), (e), (f), and (g) of the Standards of Conduct, which prohibited certain methods of providing information about optometric services.

Consequently, membership in the Michigan Optometric Association is now open to any optometrist licensed to practice in Michigan, regardless of the structure or location of his or her practice, and you are welcome to apply. We have enclosed a membership application for your convenience.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)

Michigan Optometric Association

ATTACHMENT C

Dear Dr. _____:

This letter is to inform you of a Consent Order that we have signed with the Federal Trade Commission. Our agreement to this Order is for settlement purposes only, and does not constitute an admission of a law violation by the Michigan Optometric Association. Under the terms of this Order, the Association has agreed that we will not prevent any optometrist from entering into or affiliating with a corporate practice, practicing in a retail location, or using any form of truthful, nondeceptive advertising.

Specifically, we have revised our Bylaws and Standards of Conduct to reflect the requirements of the Consent Order, including:

1. Removal of Article I, Sections 1(A)(b) and (c) of the Bylaws, which stated that Association membership is only open to a licensed optometrist who:

"(b) Practices optometry primarily as a proprietor, as a shareholder or shareholder-employee of a professional corporation; or as a partner in a partnership; or as an employee of a proprietorship, professional corporation or partnership; or as an employee of a health maintenance organization or hospital clinic, and

"(c) Practices optometry primarily in an office which is not held out to the public as a department, division or section of a retail store;" and

2. Removal of Article III, Sections (B)(c), (e), (f), and (g) of the Standards of Conduct, which prohibited certain methods of providing information about optometric services.

Consequently, membership in the Michigan Optometric Association is now open to any optometrist licensed in the State of Michigan, regardless of the structure or location of his or her practice. For your information, a complete copy of the Federal Trade Commission's Complaint and the Consent Order will appear in the [Month, 19__] issue of the *Michigan Optometrist*.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)
Michigan Optometric Association

ATTACHMENT D

The Michigan Optometric Association welcomes all optometrists to apply for membership regardless of the type or location of their practice. The Association treats all optometrists equally, in accordance with an agreement it entered into with the Federal Trade Commission on [insert date of issuance of the Consent Order]. If you have any questions about this policy, feel free to call the Association at (517) 482-0616 or the Federal Trade Commission at (216) 522-4207.

Complaint

106 F.T.C.

IN THE MATTER OF
WRIGHT-PATT CREDIT UNION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
THE FAIR CREDIT REPORTING ACT

Docket C-3171. Complaint, Oct. 21, 1985—Decision, Oct. 21, 1985

This consent order requires a Fairborn, Ohio, credit union, among other things, to cease failing to tell consumers, when applications for credit are denied because of information contained in credit reports (including non-derogatory information), that the adverse action had been taken on the basis of such information; and provide the rejected credit applicants with the names and addresses of the credit bureaus that had submitted the reports. The order further bars the organization from failing to identify applications submitted between Sept. 1, 1983 and the date of issuance of the order, for which adverse action had been taken on the basis of information obtained from a consumer reporting agency, and to send to those rejected applicants who had not been given the legally-required disclosures, a copy of the notification letter attached to the order as Appendix A.

Appearances

For the Commission: *Eileen M. Harrington.*

For the respondents: *Robert G. Palmer, Palmer & Perdue, Columbus, Ohio.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Wright-Patt Credit Union, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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 in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the accompanying order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, *consumer reporting agency* and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act. 15 U.S.C. 1681a.